

General Terms and Conditions of Schreurs Holland B.V. for the sale, delivery and licence to grow gerberas and roses (and/or other plants and products).

SECTION 1. GENERAL PROVISIONS

Article 1. Definitions

In these General Terms and Conditions the following definitions shall apply:

1. **Schreurs:** Schreurs Holland B.V., with its registered office at Hoofdweg 81, 1424 PD in De Kwakel, The Netherlands, and registered with the Chamber of Commerce under number 33200406.
2. **Client:** the person or legal entity that enters into an agreement with Schreurs for the delivery of Propagating Material and/or obtains a Licence.
3. **Propagating Material:** any plant material (including cut flowers) of gerberas and roses, with related accessories, to be delivered to or grown by the Client.
4. **Licence:** the granting by Schreurs of one or more intellectual property rights of Schreurs (trademark rights, plant breeders' rights, trade name rights, or patent rights) by means of a licence or sub-licence to the Client.
5. **Mutant:** a new variety found in or created from existing Propagating Material.
6. **Territory:** the area within which the Client shall market the Propagating Material.
7. **Production Site:** land, buildings, greenhouses, cooling installations, laboratories or structures used by the Client for the cultivation of Propagating Material.

Article 2. Scope of application

1. These General Terms and Conditions apply to all offers made by and all agreements concluded with Schreurs.
2. The General Terms and Conditions of the Client shall not apply, unless expressly agreed in writing.
3. Provisions deviating from these General Terms and Conditions must be agreed in writing.
4. The Client, its directors and its Ultimate Beneficial Owner(s) are not sanctioned nor act or intend to act in violation of international sanction law.

Article 3. Offers and prices

1. All offers of Schreurs are without obligation, unless stated otherwise in writing. An offer will remain valid for a maximum of 30 days.
2. If an offer is made by the intervention of agents, Schreurs shall only be bound by a binding agreement after this has been confirmed by Schreurs in writing to the Client.
3. The prices quoted by Schreurs are exclusive of VAT, transport costs, costs of export documents, costs of packaging, costs of quality control and/or phytosanitary testing, bank costs, import duties and government and other public levies, including withholding tax and other taxes, unless stated otherwise.
4. Unless otherwise stated, all prices are in euros (€).

Article 4. Payment

1. Payment must be made within 30 days after the invoice date, unless otherwise agreed.
2. The Client shall not be entitled to deduct any amount from what it owes Schreurs on account of any alleged counterclaim. The Client shall not be entitled to suspend the fulfilment of its payment obligation.
3. The Client shall pay directly to Schreurs. Only after prior requested permission from Schreurs in writing, the Client is allowed to pay through third parties. The Client will provide among others the following information: explanation who the third party is, the business activities of the third party and the reason for making the payment for the Client. Documents, such as bank statements and/or invoices, are requested as evidence to ensure a transparent flow of funds. If the Client does not fulfil these requirements, Schreurs is obliged to refund the amount to the paying third party and the Client's payment obligation shall continue to exist. Schreurs shall not be liable for damage to the Client as a result of the delay or suspension of orders or return of a payment.
4. If the Client fails to meet its payment obligations in a timely manner, the Client shall be in default. In that case, Schreurs shall be entitled to charge an interest of 2% per month for the period of default.
5. If the Client is in default, all reasonable costs incurred to obtain payment, both judicial (including those of the Client's legal assistance) and extrajudicial, shall be entirely for the account of the Client.
6. Schreurs reserves the right to not or no longer perform orders or agreements if the Client fails to fulfil its payment obligations. Schreurs shall not be liable for damage to the Client as a result of the suspension of orders.

7. The Client with its registered office in an EU Member State other than the Netherlands shall notify Schreurs in writing of its correct VAT identification number. The Client shall indemnify Schreurs against all claims arising from and against all adverse consequences of the Client's failure to comply, or to comply in full, with the provisions of this paragraph.

SECTION 2. SALES AND DELIVERY CONDITIONS FOR PROPAGATING MATERIAL

Article 5. Delivery and transport

1. Delivery of Propagating Material shall be based on the FCA De Kwakel delivery condition, unless otherwise agreed. Upon delivery, the risk of the Propagating Material concerned shall pass to the Client.
2. Schreurs shall determine the delivery date or period in consultation with the Client. The delivery date shall not constitute a deadline for Schreurs. If Schreurs is unable to deliver on the agreed delivery date, it shall inform the Client thereof as soon as possible. The Parties shall determine a new date of delivery in consultation.
3. If the Client takes delivery of the ordered Propagating Material before the agreed delivery date, the resulting risk with respect to immaturity of the Propagating Material shall be borne by the Client.
4. If the Client takes delivery of Propagating Material after the agreed delivery date, the risk of loss of quality shall be borne by the Client. Any additional storage or transport costs shall also be borne by the Client.

Article 6. Packaging/wrapping/trolleys/pallets

1. Packaging, both single-use and reusable, may be charged by Schreurs.
2. Single-use packaging provided by Schreurs will not be taken back.
3. If trolleys, roll containers or reusable pallets are supplied, the Client must return identical material with the same registration (such as a chip or label) within one week, unless agreed otherwise. The Client is not permitted to use these materials for its own purposes or to allow them to be used by third parties.
4. In the event of damage to or loss of packagings, trolleys, roll containers, pallets, etc., the Client shall reimburse Schreurs for all additional costs.

Article 7. Transfer of ownership, retention of title and furnishing of security

1. The risk with respect to the Propagating Material shall pass to the Client upon delivery.
2. All Propagating Material delivered and still to be delivered and Propagating Material arising from this, irrespective of the state of the cultivation process, shall remain the property of Schreurs until all claims Schreurs has or will have against the Client, including in any case the claims referred to in Book 3, article 92, paragraph 2 of the Dutch Civil Code, have been settled in full.
3. As long as ownership of the Propagating Material has not been transferred to the Client, the latter may not pledge the Propagating Material or grant third parties any other right to it, except within the normal course of its business. The Client hereby pledges to Schreurs the claims the Client obtains or will obtain against its Clients on account of the resale of Propagating Material.
4. Schreurs shall be entitled to recover the Propagating Material delivered subject to retention of title and that is still at the Client's premises, if the Client fails to comply with its payment obligations or encounters difficulties with payments. The Client shall at all times grant Schreurs free access to its premises and/or buildings for the purpose of inspecting the Propagating Material and/or exercising its rights.
5. If Schreurs has serious doubts about the Client's ability to pay, Schreurs shall be entitled to postpone its performance until the Client has furnished security for payment.

Article 8. Prohibition of propagation

1. The Client undertakes to keep Propagating Material exclusively at its production site and to not reproduce, strike cuttings, rejuvenate or replace Propagating Material, other than by growing cut flowers, to sell and/or put it into circulation (or have it put into circulation) or make it available to third parties in any other way, unless Schreurs has given its prior written consent for doing so.

Article 9. Force Majeure

1. If, as a result of force majeure, Schreurs is unable to perform the agreement, or is unable to do so in good time or in full, Schreurs shall not be liable for any resulting consequences.

2. Force majeure shall be understood to mean: any circumstance outside the direct sphere of influence of Schreurs, as a result of which performance of the agreement by Schreurs cannot reasonably be demanded, or cannot be demanded under the same conditions. This shall include strikes, dangerous situations (e.g. fire risk), extreme weather conditions or government measures and diseases and pests, and defects in the Propagating Material delivered or to be delivered to Schreurs.

Article 10. Complaints

1. Schreurs does not guarantee the varietal identity of the Propagating Material, which is known as reverse-mutating. Schreurs does not guarantee the growth and blossoming of the Propagating Material supplied.
2. The Client is obliged to check the supplied quantity of the delivered batch of Propagating Material for completeness and quality upon delivery.
3. Complaints regarding visible defects, including those regarding the number, size or weight of the supplied Propagating Material, must be made known to Schreurs within two days of delivery at the latest and must be notified to Schreurs in writing within eight days at the latest.
4. Complaints regarding invisible defects must be made known to Schreurs immediately after discovery by the Client.
5. A complaint shall contain an accurate description of the defect, as well as the location of the Propagating Material to which the complaint relates.
6. If the supplied Propagating Material is rejected by the Client and the Client and Schreurs do not immediately agree on a settlement, the Client shall, at its expense, engage an independent officially recognised expert to draw up an assessor's report. If the rejection is justified, the costs of the assessor's report shall be borne by Schreurs and, if it is unjustified, by the Client.
7. A complaint shall not suspend the payment obligation of the Client, irrespective of the possible merits thereof.

Article 11. Liability

1. All liability of Schreurs for the quality of the Propagating Material supplied and for the presence of (potentially) harmful (known and unknown) organisms, bacteria, fungi, viruses, prions, insects or other plant-foreign material is excluded. The quality of the Propagating Material may vary according to the season.
2. In all cases, the liability of Schreurs shall be limited to the invoice amount in respect of the defective delivery. Under no circumstances shall Schreurs be liable for any form of consequential damage, additional costs incurred by the Client, loss of turnover or loss of profit.
3. The Client accepts that he uses the Propagating Material and the related rights granted to him entirely at his own risk. Schreurs shall not be liable for:
 - a. Damage in any way related to the Client's choices with respect to the Propagating Material, tools used as part of cultivation (including rootstock or other auxiliary materials and aids, natural or otherwise) and the cultivation method.
 - b. Disappointing yield, growth or blossoming of the Propagating Material, with respect to both the quality and the quantity of Propagating Material and/or cut flowers obtained through the use of Propagating Material.
 - c. Damage for the Client that may occur as a result of as yet unknown unfavourable variety characteristics which only manifest themselves in the Propagating Material after a certain period of time.
4. All liability with respect to the late delivery of Propagating Material by Schreurs is excluded.
5. Any right to compensation of the Client shall expire if the Client does not institute legal proceedings with respect to his complaint within 6 months after the complaint.

SECTION 3. LICENCE TERMS

Article 12. Licence

1. On the condition of timely payment of the Licence Fee for the lifetime of the Propagating Material, Schreurs shall grant the Client a non-exclusive and non-transferable Licence to grow a limited quantity of Propagating Material and to market the yield thereof (cut flowers), as further specified (and subject to any additional conditions) on the order form or in the licence agreement.
2. Schreurs shall also grant the Client a non-exclusive and non-transferable licence to use brand names, logos and figurative marks with respect to the Propagating Material for the (offer for) the sale of the cut flowers from the Propagating Material. The prohibition referred to in article 8.1 of these terms and conditions shall also apply to the Licence on Propagating Material.

3. The Client undertakes to designate Propagating Material with the names specified by Schreurs for (the offer for) the sale of Propagating Material, making actual and exclusive use of trade names, brand names, logos and figurative marks of Schreurs, without any modification or addition. Schreurs shall not indemnify the Client against any infringement of the rights of third parties within the Client's region and shall not be liable for such infringement.
4. The Client undertakes to obtain Propagating Material exclusively from Schreurs or from a supplier authorised by Schreurs, subject to the prior consent of Schreurs.
5. The Client undertakes not to market (or cause to market) Propagating Material outside the Territory without Schreurs' written permission.
6. The Client shall at all times grant Schreurs access to its Production Site for inspection, and shall make available all reasonable information requested, in order to monitor the Client's compliance with the agreement. Schreurs will determine the quantity of Propagating Material present at the production site and the size of the area.
7. In the absence of full compliance with the agreement by the Client, the latter shall owe Schreurs an immediately payable fine of € 15,000 for each violation, without prejudice to the right of Schreurs to claim compensation where this exceeds the fine. The fine shall not replace the licence fee.
8. The Client shall also owe the Licence Fee as a general fee for the research and development costs incurred in breeding the variety. The Client agrees that this forms the basis for the rights he has been granted, irrespective of whether a variety is protected by plant breeders' rights, or whether plant breeders' rights have been applied for, or whether the commercial trademark has been registered and irrespective of whether plant breeders' rights may be protected within the Territory.

Article 13. Property rights

1. In the event of revocation, expiry, unfoundedness, or the end of any right for which the Client has been granted a licence by Schreurs, the Client shall not be entitled to compensation or to restitution of amounts paid to Schreurs.
2. If a legal action is instituted against the Client by a third party on the grounds of infringement of intellectual property rights asserted by that third party or third parties, the Client shall immediately inform Schreurs in writing and Schreurs shall defend itself.

Article 14. Mutants

1. Schreurs is the party holding the rights to Mutants of which the Client is the finder. The Client shall immediately inform Schreurs and designate Schreurs as the entitled party. Schreurs shall decide whether the Mutant will be commercialised and exploited.

Article 15. Duration and termination of Licence

1. Unless otherwise agreed, the licence agreement shall enter into force on the date of the order confirmation. The License is granted for the lifespan and number of the plants that have been sold and delivered to the Client and in any case shall end when they are grubbed up. The licence fee shall be due for as long as the Propagating Material is in use at the Client's.
2. Schreurs shall be entitled to terminate the agreement prematurely, with immediate effect if:
 - The Client fails to meet his payment obligations;
 - The Client endeavours to effect the transfer of the licence (agreement) or of rights and obligations arising therefrom without the prior written consent of Schreurs;
 - The Client has struck cuttings or has propagated in violation of the Licence Terms, without the prior written consent of Schreurs;
 - The Client has given one or more rights under the agreement or Propagating Material or Mutants in any way as security (ownership) to third parties, by way of pledge or otherwise, without the prior written consent of Schreurs;
 - The Client applies for a suspension of payments or bankruptcy of the Client is petitioned;
 - The Client transfers, rents or otherwise brings under the control of a third party its company, or at least that part of its company within the scope of the agreement and/or that carries out the business, without the prior written consent of Schreurs.
3. In the event of termination of the Licence, all rights granted to the Client shall lapse. In that case, the Client undertakes to immediately destroy Propagating Material present at his production site.

SECTION 4. FINAL PROVISIONS

Article 16. Applicable law and competent court

1. All agreements to which these General Terms and Conditions apply in whole or in part, and all disputes arising therefrom, shall be governed exclusively by Dutch law. The UN Convention on Contracts for the International Sale of Goods ("Vienna Sales Convention") does not apply.
2. Disputes shall be submitted exclusively to the competent court in the district of Amsterdam. The proceedings shall be conducted in the Dutch language.
3. In derogation from the provisions of Article 16.2, if disputes arise between Schreurs and the Client and the Client is not established in a country in the European Union, the dispute may, at the discretion of Schreurs, be settled in arbitration in accordance with the arbitration rules of the Netherlands Arbitration Institute (NAI). The language of arbitration shall be English. The arbitration tribunal shall consist of one person. The place of arbitration shall be Amsterdam.