

## **GENERAL TERMS OF SALE AND DELIVERY**

Valid as of 1 August 2013

### **1. Scope**

- 1.1. These General Terms of Sale and Delivery apply to all agreements on deliveries from ZenFlora A/S (hereinafter referred to as ZENFLORA) unless otherwise prescribed by mandatory rules of law or expressly agreed between the parties.
- 1.2. These General Terms of Sale and Delivery take precedence over any provisions set out in the Buyer's order/acceptance, including the Buyer's general terms and conditions.

### **2. Offer and Acceptance**

- 2.1. Information and materials sent to the Buyer prior to ZENFLORA's order confirmation shall not be deemed to constitute a binding offer to the Buyer but shall only be considered an invitation for the Buyer to place an order. Consequently, an agreement on delivery, prices and other terms shall not be deemed to have been concluded until the Buyer receives ZENFLORA's order acceptance. Subject to unsold.
- 2.2. Any information in ZENFLORA's product information, price lists or similar shall only be binding where expressly stated in the agreement on delivery.
- 2.3. ZENFLORA shall be entitled to change agreed prices in accordance with changes in foreign exchange rates, purchase prices, tariff and duty rates, shipment costs, insurance charges or any other matters beyond the control of ZENFLORA.

### **3. Pallets and Containers**

- 3.1. ZENFLORA delivers plants on containers (trolleys) and shelves approved by Container Centralen A/S ("CC containers" and "CC shelves") and/or on Euro pallets and/or spruce gratings (collectively referred to as "Equipment"). The Buyer shall be in possession of Equipment to an extent that allows 1:1 exchange when deliveries are made.

The Equipment the Buyer hands over to ZENFLORA must be clearly labelled as intended for ZENFLORA.

- 3.2. In the event that no exchange of CC containers or CC shelves takes place in connection with a delivery, ZENFLORA will charge the Buyer a daily rent corresponding to the applicable rent fixed at all times by Container Centralen A/S for the items in question, unless otherwise specified.

In the event that no Equipment is exchanged otherwise, ZENFLORA shall be entitled to invoice the Buyer for the missing Equipment at replacement cost.

- 3.3. Unless otherwise documented, the Equipment receipts issued by ZENFLORA or the carrier used by ZENFLORA shall be considered complete and final documentation for the Equipment balance in connection with the delivery. The Buyer may, at any time, request a statement of account for the total outstanding Equipment balance with ZENFLORA.

In the event that the Buyer notes discrepancies between the Equipment prepared for exchange by the Buyer and the details entered on the Equipment receipt by ZENFLORA or its carrier in connection with a delivery, the Buyer shall give notice of the discrepancy to ZENFLORA without delay, or - in the event of delivery outside the Buyer's normal business hours - within 24 hours after delivery has taken place.

### **4. Delivery**

- 4.1. Where a delivery clause has been agreed, it shall be interpreted in accordance with the Incoterms in effect at the time of concluding the agreement.
- 4.2. Where no delivery clause has been agreed, delivery shall be considered effected "EXW", Ex Works.

### **5. Payment**

- 5.1. Unless otherwise agreed, the agreed purchase price with the addition of VAT and other charges, if applicable, are payable cash on delivery. The Seller may demand cash payment against delivery of original transport documents (Cash against Documents).
- 5.2. In the event that the Buyer refuses to take delivery on the agreed day, he shall nonetheless be obliged to effect payment as if delivery had taken place as agreed.
- 5.3. In the event of the Buyer's failure to pay at the agreed time, ZENFLORA shall be entitled to charge interests on overdue payments of 1.5% per month or part thereof effective of the due date and to charge a collection fee in accordance with applicable law.

## 6. Delay

- 6.1. Where ZENFLORA is unable to effect delivery on time or where a delay on the part of ZENFLORA is considered likely, ZENFLORA will notify the Buyer without undue delay, stating the cause of the delay and, if possible, the time of expected delivery.
- 6.2. Where a delivery delay is due to circumstances that provide exemption from liability in accordance with clause 10.1 (force majeure) or is due to any action or omission on the part of the Buyer, the delivery time shall be extended to the extent deemed reasonable under the circumstances. The time of delivery shall be extended even where the cause of the delay arises after the expiry of the originally agreed delivery time.
- 6.3. Where ZENFLORA fails to effect delivery on time or before the expiry of an extension of the delivery time in accordance with clause 6.2, the Buyer may submit a written request for delivery to ZENFLORA and determine a final, reasonable time-limit for such delivery, however, at least 8 (eight) days.

Where ZENFLORA fails to deliver within this fixed time limit as well, without this being due to circumstances for which the Buyer is responsible, the Buyer may cancel the agreement by written notice to ZENFLORA in respect of the part of the order that has not been delivered.

- 6.4. In the event of the Buyer's justified cancellation of the agreement, the Buyer shall be entitled to compensation for documented costs incurred for purchases made to replace the cancelled part of the order. However, such compensation cannot exceed the net purchase price agreed between the Buyer and ZENFLORA for the cancelled part of the order.

Where the Buyer maintains the agreement in respect of the delayed part of the order, the Buyer shall not be entitled to financial compensation or any other form of compensation due to the delay.

- 6.5. **With the exception of cancellation with limited compensation in accordance with clause 6.4, any claims shall be excluded - including claims for business interruption, loss of earnings and other consequential financial losses - raised by the Buyer due to delay on the part of ZENFLORA.**

## 7. Liability for Defects

- 7.1. ZENFLORA shall be obliged and entitled to remedy any defects in the quality of the goods compared to the agreed quality, by means of repairing or redelivering the defective part of the order in accordance with the rules set out in this clause. The burden of proving that the delivery was defective at the time of delivery rests on the Buyer.
- 7.2. **Upon receipt of delivery, the Buyer shall immediately examine the delivered goods and, in the event of any defects, file a due complaint with the carrier. In addition, the Buyer shall, within 12 hours, notify ZENFLORA in writing of the any defects ascertained at the time of delivery. Complaints about defects shall generally be made within 24 hours after receiving the delivery. Complaint notices must include a description of how the defect manifests itself.**

**The Buyer shall be obliged to arrange for the safe storage of defective parts of the delivered goods for the purpose of inspection by a representative of ZENFLORA and/or an impartial, recognised damage inspector.**

- 7.3. After having received a written notice from the Buyer in accordance with clause 7.2, ZENFLORA shall remedy the defect, cf. clause 7.1, without undue delay.
- 7.4. In the event that ZENFLORA fails to comply with its obligations under clause 7.1 within a reasonable time, the Buyer may present ZENFLORA with a final deadline for compliance of no less than 8 (eight) days. In the event of non-compliance with the obligations by the expiry of this deadline, the Buyer may pursue usual remedies for breach against ZENFLORA, **but any financial claim against ZENFLORA in the form of compensation, proportionate reduction or based on any other premises can never exceed the net purchase price agreed between the Buyer and ZENFLORA for the defective part of the delivery.**
- 7.5. ZENFLORA shall not be liable for any defects other than set out in clauses 7.1 - 7.4. This applies to any losses caused by the defect, including business interruption, loss of earnings and other consequential financial losses.

## 8. Retention of Title

- 8.1. The delivered products shall remain the property of ZENFLORA until payment has been made in full, to the extent that such retention of title is valid.
- 8.2. Items 8.3 - 8.6 apply to all deliveries in the United Kingdom:
- 8.3. Title to the Product shall remain the property of ZENFLORA until:

- 8.3.1. the price for the Product is paid for in full; and  
8.3.2. all other sums then due from the Buyer are paid for in full.
- 8.4. Until such time as the title in the Products has passed to the Buyer under clause 8.3 the Buyer shall:
- 8.4.1. hold such Product on a fiduciary basis as ZENFLORA's bailee and shall insure them as ZENFLORA's property and shall store and mark them in such a way that they are readily identifiable as ZENFLORA's property, and shall hold the proceeds of such insurance on trust for ZENFLORA;
- 8.4.2. not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Product; and
- 8.4.3. not dispose of or deal with the Product or any documents of title relating to them or any interest in them;  
except that the Buyer may on its own account use and sell the Product to its usual type of customers in the ordinary course of its trade, provided that the Buyer's right to use or sell the Product shall automatically cease upon the occurrence of an Insolvency Event.
- 8.5. If payment becomes overdue, the Buyer is in breach of any of its other obligations to ZENFLORA or an Insolvency Event occurs or ZENFLORA reasonably expects that an Insolvency Event is about to occur:
- 8.5.1. ZENFLORA may by written notice terminate the Buyer's right (if still subsisting) to use or sell the Product; and/or
- 8.5.2. ZENFLORA shall be entitled upon demand to the immediate return of all the Product which remain in the ownership of ZENFLORA, and the Buyer irrevocably authorises ZENFLORA to recover such Product and any documentation relating to them and for that purpose, to enter any place. The Buyer shall take all reasonable steps to help ZENFLORA recover them. Recovery by ZENFLORA of, the Product shall not of itself cancel the Buyer's liability to pay the whole or balance of the price for the Product or any other rights of ZENFLORA.
- 8.6. "Insolvency Event" means the Buyer has any order, proceeding, appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, dissolution, administration, receivership or bankruptcy, or any similar event occurs in any jurisdiction in which the Buyer is incorporated, resident or carries on business.
- 9. Product liability**
- 9.1. ZENFLORA shall only be liable for product liability damages if it can be proved that the damage or loss was due to errors or negligence on the part of ZENFLORA.
- 9.2. ZENFLORA shall not be liable for any damage inflicted by the delivered products on real or movable property while the delivered products are in the possession of the Buyer.
- 9.3. ZENFLORA shall not be liable for damage inflicted on products manufactured by the Buyer or on products of which they form part, or for damage to real or movable property caused by these products in consequence of the delivery of the order.
- 9.4. ZENFLORA shall not be liable for damage/losses in respect of movable property in consequence of transfer of plant diseases and/or pests arising from the delivery of the order.
- 9.5. ZENFLORA shall not be liable for any indirect losses, including business interruption, loss of earnings and other consequential financial losses.
- 9.6. The total amount of compensation cannot exceed DKK 1,000,000.00.
- 9.7. If ZENFLORA is held liable to a third party for defects in its products, the Buyer shall indemnify ZENFLORA to the extent that ZENFLORA is held liable to third parties for such damages and losses for which ZENFLORA is not liable towards the Buyer in accordance with clauses 9.1 - 9.6.
- 9.8. If a third party presents a claim to either party for liability in damages under this clause, such party shall notify the other party without delay.
- 10. Force majeure**
- 10.1. The following circumstances and situations shall provide exemption from liability where they obstruct the performance of the agreement or render its performance unreasonably burdensome:
- Labour disputes and any other circumstances beyond the control of either party, such as fire, war, mobilisation or military call-up of a similar scope, requisition, seizure, currency restrictions, insurrection and disturbances, lack of means of transportation, general shortage of goods, restrictions on motive power, formation of queues or any other external obstacles to completing an unrestricted transport process, as well as defects in or delays of deliveries from sub-contractors caused by any of the circumstances mentioned in this clause.

- 10.2. The party wishing to raise a claim for exemption from liability as set out in clause 10.1 shall, without delay, notify the other party in writing of the occurrence and discontinuation of such claim.
- 10.3. Notwithstanding the general provisions of these General Terms of Sale and Delivery, either party may terminate the agreement by written notice to the other party where the agreement performance is obstructed for more than 6 (six) months by any event mentioned in clause 10.1.

#### **11. Intellectual Property Rights**

- 11.1. It is brought to the attention of the Buyer that the delivery may be fully or partly comprised and protected by national or international rules on plant novelty protection; such as the Danish Act on Plant Novelties and the EC Council Regulation on Community plant variety rights, trademark rights or other rules on protection of intellectual property rights which limit the Buyer's right of use and disposal of the products comprised by the delivery. The Buyer shall observe compliance with such rules.

#### **12. Special Rules for Trade in Young Plants**

- 12.1. Generally, these terms of trade also apply to trading in young plants, cuttings, etc. It is emphasised that in accordance with the Danish Act on Plant Novelties, varieties subject to a royalty may only be propagated after concluding a valid royalty agreement with the holder of the rights.

The following applies in terms of complaints deadlines:

In respect of 'rooted young plants', a complaint deadline of 72 hours applies from the time of delivery to the Buyer. However, a complaint deadline of 14 days applies in cases where the cause of the complaint is pest attacks caused by pests in the delivered products at the time of delivery.

Similarly, in respect of 'unrooted cuttings' the complaints deadline is 72 hours after rooting has ended. Weekends and public holidays shall be included in the calculation of this deadline. However, the complaints deadline shall run until after the rooting has been concluded in cases where the cause of the complaint is pest attacks caused by pests in the delivered products at the time of delivery.

#### **13. Consultancy etc.**

- 13.1. The above terms applying between the parties in respect of defects, product liability and force majeure shall also apply in cases where ZENFLORA - or one or more of the companies forming part of the group - acts as a consultant to the Buyer.
- 13.2. The same shall apply if claims in respect of defects or liability are made against ZENFLORA in consequence of instructions - or information about delivered products and their use - including instructions for use of delivered products.

#### **14. Governing Law and Venue**

- 14.1. The parties agree that the agreement, the delivery and any related issues shall be subject to Danish law and that the agreement shall consequently be construed and implied in accordance with the rules of Danish law and any disputes shall be settled under the rules of Danish law.
- 14.2. Any disputes arising out of the agreement and any related issues shall be settled at the home court of ZENFLORA. ZENFLORA shall also be entitled to bring legal action before the Buyer's home court.