

General conditions of sale and delivery

of

**Frowein Export B.V.**

domiciled and registered at St. Agatha

registered with the Chamber of Commerce and Industry `s-Hertogenbosch on 6 August 2003

composed by Graydon Nederland B.V. at Amsterdam.

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GENERAL

1. In these General Terms and Conditions "Tree Cultivation Products" shall be understood to mean: woody plants, supplied in their entirety or as grafts/rootstocks, cuttings without roots/sprigs or bud-eyes, material derived from tissue culture, as well as perennial plants and water plants, all these living plants.
  - product", the scientific name of the treecultivation product.
  - "article", the name together with indications about quality and dimensions.
2. All our inquiries, offers, contracts and the execution thereof shall be exclusively governed by these conditions.  
Any deviations should be expressly agreed upon in writing.
3. By "the opposite party" in these terms is understood: any (legal) entity which has entered into, or expressed the intention of entering into, a contract with our company, its representative(s), authorised agent(s), assignee(s) and heirs.
4. The opposite party's own conditions remain intact as far as they are not in conflict with the terms at hand. In that case Frowein Export B.V. conditions shall prevail at all times, even if preference has been claimed otherwise.

OFFERS

1. All offers made by Frowein Export B.V., in any form whatever, are free of all obligation, unless expressly stated otherwise.
2. If the offer entails that a lot is to be reserved for the prospective customer (option), a date will have to be set by which the prospective purchaser must have made his decision known to us.
3. If no date is set, a period of 6 working days shall apply, calculated from the date on which the offer was made
4. In case an offer is accompanied with an estimation, plan, blueprint, catalogue or other documents, these will remain our property and must be returned post paid on our first request. Without our authorisation all forms of reproduction and examination



by any third party is prohibited.

5. Forwarding of offers and/or (other) documentation does not oblige us to accept an order. The opposite party will be informed by us of non-acceptance as soon as possible, but at any rate within a period of 7 days.
6. Frowein Export B.V. reserve the right to deliver by reimbursement or to refuse orders without explanation.

## CONTRACTS

1. Subject the following stipulations, a contract with us will be established only by our written acceptance or confirmation, while the date of confirmation shall be decisive. The confirmation of order is held to state the contract in an exact and complete way, unless the opposite party has immediately protested against it in writing.
2. Any subsequent supplementary agreements or modifications shall be considered binding only if confirmed by us in writing.
3. The invoice is held to state the contract in an exact and complete way for transactions for which according to their nature and extend, no offer or confirmation of order is sent out, unless objections to it are announced within 3 working-days.
4. The written acceptance, respectively the confirmation of the agreement shall state whether direct delivery or delivery on call is involved.
5. All contracts are made by us under the suspensive condition, that opposite party appears- exclusively at our discretion - to have sufficient credit to allow the monetary fulfilment of the contract.
6. On entering into, or subsequent to this contract, we have the right, before complying with our obligations (any further), to insist upon the opposite party's giving of certainty that pecuniary, as well as all other obligations, will be met.
7. Frowein Export B.V. is authorised - should Frowein Export B.V. consider it necessary or desirable - after consultation with the opposite party, call upon others for the correct implementation of the order made to us pursuant to the contract, the costs of which shall be charged to the other party in conformity to the quotation made.
8. The opposite party has to supply us with all the information and documents necessary to the correct execution of the agreement.

## PRICES

1. Unless otherwise stipulated our prices are:
  - based on delivery from our company, store or other accomodation,.
  - exclusive of B.T.W. (Dutch VAT), inspection costs, any licence fees, in and export levies, other taxes, levies and duties, and the expenses attached to export documents.
  - exclusive of the costs of packaging, (un)loading, transport and insurance,
  - in Euro currency, any alterations in the exchange rate shall be charged.

2. In the case of increases in one or more of the cost price factors, we reserve the right to raise the agreed order price; this shall take into account any relevant legal obligations, with the understanding that future price-rises already known when the order was confirmed shall be stated.

## CANCELLATION

1. If it is stated in the contracts of sale that the items purchased on call are intended for exportation to a particular country, and the export to that country cannot be effected due to government measures of a general nature, conditions of war, measures arising from it or strikes of a general nature which make transportation to that country absolutely impossible, the other party shall be entitled to cancel the sale with due observance of the following terms:
  - a) 2 months if the above-mentioned circumstances have become known during the period 1 May to 1 October;
  - b) 1 month if the above-mentioned circumstances have become known in the period 1 October to 15 December;
  - c) 2 weeks if the above-mentioned circumstances have become known in the period 1 January to 1 April;In the period from 15 December to 1 January contracts of sale for fall delivery may not be cancelled and from 1 April to 1 May contracts of sale for spring delivery may not be cancelled.
2. Should the other party make use of the above-mentioned entitlement, then Frowein Export B.V. will be entitled to demand indemnification in the form of payment of:  
15% of the agreed purchase price in case of cancellation before February of any season;  
35% of the agreed purchase price in case of cancellation during the period 1 February to 1 March;  
50% of the agreed purchase price in case of cancellation on or after 1 March of any season.
3. The other party shall make its decision to cancel known in writing and by registered mail. This letter shall state the date on which the circumstances as referred to in paragraph 1 originated.

## DELIVERY

1. The sold tree-cultivation products, whether or not winterhardy, stand at the risk of Frowein Export B.V. up to the point in time of delivery to the other party; this with due regard to the provisions laid down under point 2.
2. Liability for the items sold passes to the other party:
  - from the point in time of delivery at the premises of the other party in instances where it has been agreed that Frowein Export B.V. will transport the items purchased;
  - from the point in time of delivery to be other party's means of transport, if it has been agreed that the other party will be responsible for the transportation of the items purchased;

- in instances where a third party will see to the transport, the party who is to pay for the transport shall bear the risk during the time the goods are in transit up to the point in time of delivery at the premises of the other party.

In instances where Frowein Export B.V., at the request of the other party, delivers tree-cultivation products to a transshipment, the tree-cultivation products at this site shall be at the risk of the other party.

3. Carriage paid delivery will only take place if and in so far as this has been agreed with the opposite party and is indicated on the invoice or other document.
4. The opposite party is obliged to check the delivered goods or packaging immediately upon receipt, and if not, in any case within 3 working days, for any shortcomings and/or damage, or to carry out said check after having been informed by us that the goods are at the disposal of the opposite party.
5. Any shortcomings and/or damage to the delivered goods and/or its packaging which are present at delivery shall be designated by the opposite party on the delivery receipt, the invoice and/or the transport documents; the absence of said designation shall be considered the equivalent of approval by the other party of the delivery, and no objections shall thereafter be considered.
6. Frowein Export B.V. are entitled to deliver by instalments, which we may invoice separately.
7. Statement of the time of delivery always takes place approximately, unless expressly agreed otherwise in writing.
8. If the goods, after the expiration of the time of delivery, have not been collected by the opposite party, they will be stored at his disposal, at his expense and risk.

## DELIVERY

per consignment

Upon delivery the consignment shall be accompanied by a delivery note which shall state the names and the addresses of Frowein Export B.V. as well as those of the other party, the quantities and the articles.

delivery per packing unit:

Upon delivery each packing unit shall bear an identification mark which shall state the particulars of the tree-cultivation products.

## DELIVERY ON CALL

1. Blanket order calls orders shall be in writing.
2. Blanket order calls shall have reached us as early as possible in order for the necessary measures to be taken.
3. The other party shall be entitled to indicate that the tree-cultivation products called



are not to be delivered before a certain date.

4. In instances where the tree-cultivation products have not been called before the date agreed upon, Frowein Export B.V. will, at the utmost at the end of 5 working days after the agreed date, hold the other party liable in writing.

#### TRANSPORT/RISK

1. In the absence of further instructions to us by the opposite party, the method of transport, shipping, packaging, etc. shall be determined by us, as prudent and reasonable men.  
Unless otherwise agreed upon, the opposite party will bear all risks involved, including guilt/laches of the transporter.
2. In instances where the other party or third parties contracted by by them is/are responsible for the transport, the other party or these third parties shall guarantee that the necessary measures to prevent the loss of quality of the tree-cultivation products, such as drying out, freezing up, breakage of branches, etc. are taken.
3. Frowein Export B.V. shall be entitled to charge extra for (durable) packaging materials, which charge will be reflected on the invoice.  
In those instances where we charge such costs, this amount will be settled upon the return of this consignment in undamaged condition.

#### FORCE MAJEURE

1. Force majeure is understood to mean the following:  
all circumstances, unforeseen or occurring independent of the will of the parties, through which compliance with the agreement can no longer reasonably be demanded by the other party.
2. If, in Frowein Export B.V. opinion, the force majeure will be of a temporary nature, we have the right to suspend the implementation of the agreement until such time that said force majeure is no longer in effect.
3. If, in Frowein Export B.V. opinion, the force majeure is of a permanent nature, the two parties can come to mutual agreement to the dissolution of the contract and the associated consequences.
4. Frowein Export B.V. have the right to claim payment for work performed under the agreement concerned prior to the occurrence of the force majeure.
5. The party subject to force majeure shall immediately inform the other party of this fact.

#### QUALITY REQUIREMENTS AND STANDARDS

1. The tree-cultivation products delivered are free of diseases and harmful insects and meet at least the required quality standards.
2. Frowein Export B.V. guarantees that the tree-cultivation products meet the fyto-

sanitary requirements which certain countries stipulate for importation, in case the other party has made known for which countries the tree-cultivation products are destined.

#### LIABILITY

1. Frowein Export B.V. exclude any liability as far as it has not been regulated by Law.
2. Frowein Export B.V. liability shall never exceed the total amount of the order involved.
3. Except for general legislation of public order and good faith, Frowein Export B.V. exclude any liability for compensation of damages of any kind, direct or indirect, including industrial/commercial damages, to movables and/or immovables and/or persons, concerning both the opposite party as any third party.
4. In any case Frowein Export B.V. are not liable for damage arising from, or caused by the use of the goods delivered or by the unsuitability thereof for the purpose for which the opposite party has acquired them.
5. By the acceptance of the goods delivered by, or in the name of the opposite party, we shall be released from any claims of the opposite party and/ or of third parties for the payment of damages, regardless of whether the damage results from installation and/or manufacturing faults, or through any other cause.
6. Frowein Export B.V. assumes no liability for the regrowth or flowering of the tree-cultivation products supplied.
7. Frowein Export B.V. quarantees the genuineness of the botanical species of the tree-cultivation products supplied by it, unless it has been agreed otherwise beforehand.
8. Hidden damage must immediately after discovery be reported in writing to Frowein Export B.V.  
It will be endeavoured to come to a fair arrangement.  
The amount of the damage shall not exceed the total amount of the order.
9. If, after the conclusion of the contract of sale, however prior to the delivery, it appears that the purchased lot, in its entirety or in part, does not meet the reasonable requirements for quality and/or dimensions, or shows defects in any other respects, Frowein Export B.V. will notify the other party of this as early as possible.
10. Tree-cultivation products, rejected by an inspection institute on account of the presence of diseases, harmful insects of damage as a result of this will, at the option of the other party, be returned or be put at our disposal.  
Frowein Export B.V. must be notified of this in writing.



The other party shall be entitled to dissolve that part of the contract without notice of default and without judicial intervention being required.

11. In the event of one quarter or more of the purchased lot not meeting the requirements for quality and/or dimensions, while this cannot be imputed to Frowein Export B.V. and provided that this has been reported in time, the other party shall be entitled to dissolve the contract with regard to the entire consignment without notice of default and without judicial intervention being required.

## COMPLAINTS

1. Complaints about tree-cultivation products not meeting the conditions agreed upon or about products showing defects shall be lodged in writing within 7 days of delivery. The date of the postmark or the fax shall apply. The complaints shall give an accurate specification of the nature of and the grounds for the complaints.
2. The tree-cultivation products which are the subject of the complaints shall be kept at our disposal at the premises of the other party for a period of 5 working days after despatch of the other party's written complaint.  
After this period has expired, the other party shall, unless Frowein Export B.V. has requested the other party to keep the consignment at its disposal for another 5 working days, be entitled to destroy these tree-cultivation products.
3. Any right to complain shall lapse if the other party has failed to treat the tree-cultivation products rejected by it with the necessary care for the duration the products were in its care.

## PAYMENT

1. Unless otherwise agreed upon in writing, payment should be effected in cash without discount and upon delivery, or by means of a deposit or a remittance on a bank of Girobank account indicated by us, within 2 months after the date of the invoice.
2. All payments effected by the counterparty serve primarily to settle the interest, if any, and the collection-charges incurred by us and, subsequently, to settle the oldest outstanding invoice.  
The due date as stated on our bank or giro statements is regarded as the day of payments.
3. In case the opposite party:
  - a. is declared bankrupt, had submitted a request for suspension of payment, disposes of his assets, calls in the receiver, or all or part of his assets are seized,
  - b. dies or is placed under legal guardianship,
  - c. fails to meet any of the contractual obligations imposed on him by the Law or by these conditions,

- d. fails to pay an invoice sum or part thereof within the stipulated period,
- e. is subject to stoppage or the transfer of his business or a significant part thereof, including of the incorporation of its firm in a company already existing or to be founded, or proceeds to change the goal of its firm,

we have the right, pursuant to the occurrence of any one of the aforementioned circumstances, to regard the agreement as void without the necessity for any legal intervention and to demand in its entirety any sum owed us by the opposite party for services rendered by us, immediately and without warning or the necessity of proof of default, without prejudice to our right to compensation for costs, damages and interest.

#### PROPERTY RIGHTS

1. All goods supplied remain Frowein Export B.V. property until full payment for our deliveries and services made or yet to be made, inclusive of inventual interest and costs, has been made.  
In case of bankruptcy, suspension of payment, liquidation of the opposite party, or decease (in case the opposite party is a natural person), we shall be entitled to cancel the order completely or partly, without serving a formal summon or applying for juridical intervention, and to claim back the part of the goods left unpaid.  
Cancellation and taking back of goods leave our right to compensation of loss or damage intact.  
In these cases any claim of ours on the opposite party will be due for payment immediately and completely.
2. The goods may be sold or used by the opposite party within the framework of its normal business activities but shall neither be given as collateral nor provided as a security for the claims of a third party.
3. As a security against the due payment of all our claims, of any nature, Frowein Export B.V. shall moreover receive the right of unpropertied lien (bezitloos pandrecht) - through the occurrence of the claim - for all those goods in which substances supplied by us have been incorporated, or are a part.  
The order as signed by the opposite party, and our written confirmation thereof, are valid as a private deed as expressed by law.

#### INTEREST AND COSTS

1. If payment has not been made within the period specified in the previous article, the opposite party will be legally in default and liable for interest of 1% per month (or part of a month) from date of invoice for the unpaid amount.
2. All legal and extra-legal costs shall be at the expense of the opposite party. The legal costs include all actual costs of litigation and legal advice made in connection

with a dispute, including those exceeding the Dutch "liquidatietarief".  
The opposite party shall owe extra-legal collection costs of at least 15% of the amount due, including the aforementioned interest.

#### APPLICABLE LAW

All our offers, agreements and the execution thereof will be governed by the Law of the Netherlands only.

#### DISPUTES

1. All disputes, including those which are regarded as such by one party only, resulting from or connected with the contract to which these conditions apply or the conditions involved themselves and their explanation or execution, both of factual and judicial nature, will be subject to the jurisdiction of the Civil Court of our domicile, unless the District Court has been appointed to adjudicate in such disputes.
2. Nevertheless we are entitled to have the dispute adjudicated by arbitration, in which case we will notify the opposite party in writing. In case the opposite party is a consumer, during one month it has the opportunity to express itself in favour of adjudication by a civil judge.
3. In the case that the dispute is decided by arbitration, three arbitrators shall make an award in reason and fairness.

Each of the parties shall designate one arbitrator and the third shall be designated jointly by the two already appointed.

The expenses of the arbitrator and their fees shall be born by the parties in the manner decided by the arbitrators.

To the extent that it does not deviate from the foregoing, the provisions of Book IV of the Civil Code (Wetboek van Burgerlijke Rechtsvordering) apply.

#### TRANSLATION

The terms as drawn up in the Dutch language shall be valid and decisive in case of contrariness or differences in interpretation between the Dutch text and a translation thereof.