

GENERAL TERMS AND CONDITIONS CONCERNING PRODUCTS FOR PROFESSIONAL CULTIVATION 3/2017

1. Scope of application

1.1 These general terms and conditions shall apply to all bids, sales and deliveries concerning Novarbo Oy's (the seller) growth substrate products and fertilizers (products for professional cultivation), unless specifically otherwise agreed in writing, or unless otherwise provided for by mandatory law.

2. The bid and conclusion of an agreement

2.1 The seller's written bid shall remain valid for the period specified in the bid. If the period of validity has not been specified, the bid shall remain valid for 30 days from the date of the bid.

2.2 The price in the bid is based on the information provided by the buyer in the call for bids, or in some other manner. If the order does not match the information provided, the seller shall have the right to check the delivery and/or price in accordance with the final information.

2.3 An agreement shall become binding once the buyer and seller have signed the agreement document or once the seller has confirmed the order in writing.

2.4 The agreement terms and conditions are included in the agreement document or order confirmation and their annexes. It is the buyer's responsibility to check that the order confirmation is correct.

3. The hierarchy of documents and product information

3.1 The documents related to the agreement supplement each other. If documents conflict with each other, the order of precedence is as follows:

- the contract document
- the order confirmation
- the annexes to the contract document and order confirmation, including these general terms and conditions
- the order
- the offer and the annexes to it, including these general terms and conditions
- the call for bids

3.2 The information included in the seller's marketing material, price lists or other product information is binding only if specifically referred to in the agreement.

4. Prices, terms of payment and delayed payments

4.1 The prices of products are specified in the agreement document, the order confirmation or the annexes to it. Unless otherwise agreed, the prices do not include transportation costs, applicable value-added tax or any other fees.

4.2 The seller has the right to change the prices by notifying the buyer of the change 30 days in advance. Changes to the price lists have no effect on orders delivered before the changes to the price list take effect.

4.3 The prices of the products shall be paid against an invoice in accordance with the agreed payment schedule. Invoicing may also be carried out through a local agriculture, hardware or gardening store by their consent. Unless otherwise agreed in writing, the term of payment is 14 days net from the delivery date of the products. A delay in delivery for a reason that is attributable to the buyer does not affect the agreed payment schedule.

4.4 If the buyer fails to pay by the due date, the seller shall be entitled to penalty interest, in accordance with the Finnish Interest Act, from the due date. In case of delayed payment, the seller shall also have, at its discretion, the right to cancel/discontinue the delivery of the agreed orders, demand immediate payment of any unpaid amounts and/or dissolve the agreement and reclaim any delivered products at the buyer's expense.

4.5 In order to secure its receivables, the seller may demand an advance payment or an acceptable surety from the buyer.

4.6 The buyer cannot withhold any payments that belong to the seller, and the buyer shall not have the right to use any possible counterclaim to set off a receivable to the seller without a written consent from the seller.

5. Time of delivery and delayed delivery

5.1 The provided delivery dates and times are estimates, unless the seller specifically guarantees their validity in writing. Unless otherwise agreed, the delivery period starts from the latest of the following:

- the date of signing the agreement document/the date of sending the order confirmation;
- the date of providing the agreed surety or making the agreed advance payment; or
- the date on which the buyer provided the information necessary for the delivery.

5.2 The seller has the right to deliver the products ahead of schedule and/or in multiple delivery lots if this is not considered exorbitant from the buyer's point of view.

5.3 If the seller anticipates that it cannot make the delivery at the agreed time, or that the delivery will probably be delayed for a reason attributable to the seller, the seller shall notify the buyer of this without undue delay. In the notification, the seller must also provide the reason for the delay and the expected new delivery date, whenever possible.

5.4 If the buyer anticipates that it is unable to receive the delivery of the products at the agreed time, or that the reception of the delivery will probably be delayed for a reason attributable to the buyer, the buyer shall immediately notify the seller of this in writing. In the notification the buyer shall also provide the reason for the delay and, whenever possible, the expected new reception date. If the buyer cannot receive the delivery at the agreed time, the buyer is still liable to make any payments related to the delivery, as if said delivery had been made.

5.5 If the buyer has contributed to the delay or the delay is caused by a default by the buyer, the delivery period shall be extended by a reasonable number of days considering the circumstances, regardless of whether the reason for the delay has arisen before or after the agreed delivery deadline.

5.6 If the seller has guaranteed the delivery time and the products are delivered late due to negligence of the seller, the buyer shall have the right to demand liquidated damages from the seller, starting from the date on which the delivery should have been made. The liquidated damages shall be payable at the rate of 0.5 per cent of the value of the delayed delivery for each full week of delay. However, the amount of liquidated damages shall not exceed 7.5 per cent of the value of the delayed delivery. The liquidated damages become due at the buyer's written demand but not before the delivery has been made in full. The buyer shall lose the right to liquidated damages if it fails to file a written claim for such damages within six (6) months of the date on which the delivery should have taken place. The buyer shall not be entitled to any other compensation for a delayed delivery of products.

5.7 If the buyer is entitled to the maximum amount of liquidated damages under Clause 5.6 but the products still have not been delivered, the buyer may submit a written demand for delivery within a final reasonable extension of time which shall not be less than two (2) weeks. If the seller fails to deliver the products during this time, the buyer may cancel the order.

6. Terms of delivery, liability for risk and transfer of title

6.1 The delivery term is 'Free Carrier, Eura' (FCA) (Incoterms 2010), unless otherwise agreed by the parties.

6.2 The liability for risk is transferred to the buyer in accordance with the agreed delivery clause (e.g. Incoterms and Finnterms). If the buyer does not accept the delivery of the products on the agreed date, the liability for risk shall nevertheless be transferred to the buyer no later than the moment at which the seller is considered to have fulfilled its obligations under the agreement relating to the delivery of the products.

6.3 Title of the products shall pass to the buyer once the buyer has fulfilled all of its payment obligations related to the products to the seller. Until the transfer of title, the buyer undertakes to store the products on behalf of the seller separate from the rest of the buyer's store of products, so that they can be clearly distinguished from the buyer's other property.

7. Force majeure

7.1 Force majeure refers to an obstacle which is beyond the seller's control and which the seller cannot reasonably be expected to have taken into account. A force majeure circumstance is a situation that the seller has not been able to influence, and has not been able to prevent the occurrence or effects of by reasonable measures. A force majeure circumstance may be, for example, a strike, a lockout, a boycott, a war or comparable armed conflict, a mobilisation or unexpected military call up of a comparable scope, a fire, a flood, an earthquake or other natural disaster, a disruption in general traffic or payment transactions, an export or import ban, a shortage of transport equipment, a shortage of raw materials or energy, breaking of machines, termination of manufacture, and provisions of law or other government measures that prevent the buyer from performing its obligations pursuant to the agreement.

7.2 The seller shall not be responsible for any delay or damage that is caused by a force majeure

circumstance. A strike, lockout, boycott or other industrial action is considered as a force majeure circumstance also in the event that the seller is subject to or a participant in the circumstance in question. A delay by the seller's subcontractor is also considered as a force majeure circumstance.

7.3 The seller shall at once notify the buyer of a force majeure circumstance and its cessation in writing. If the delivery of products is delayed because of a force majeure circumstance, the agreed delivery date shall be extended by as many days as the delay caused by the force majeure lasted. If a delay caused by a force majeure circumstance has lasted or is estimated to last for more than four (4) months, the seller may cancel the order, and the cancellation shall not be considered a breach of agreement.

8. Product inspection and acceptance and product defects

8.1 Professional cultivation products are sold for professional use in full pallets, packed in bags, pressed bales or loosely packed bags. Products are also available in large bags and large bales.

8.2 The buyer shall inspect the delivery and all the products immediately after reception and notify the seller in writing of any claims concerning externally detectable defects within seven (7) days of receiving the products. If the above defects are not reported by the deadline specified above, the buyer shall be considered to have irrevocably accepted the products.

8.3 The buyer shall notify the seller in writing of claims other than those concerning externally detectable defects within 30 days of delivery. If such a notification has not been made, the seller shall not be responsible for defective products, unless otherwise provided by Finnish mandatory law.

8.4 Defective products must not be sent to the seller without the seller's written consent. The seller is not responsible for the cost of sending defective products if these have been sent without the seller's written consent.

8.5 As regards claims concerning defects in a product's fertilizer quality or other growth characteristics, such a defect must be verified by an accredited laboratory or authority. In addition, the defective products shall be kept available to the seller for inspection for 180 days from the date of the notification and, by the seller's request, samples of products considered defective shall be delivered to the seller. The buyer shall be responsible for the appropriate storage of the products, until the buyer's claim has been resolved. If the buyer's claim is found to be justified, the seller shall reimburse for reasonable costs incurred by the buyer for the use of external experts.

8.6 The seller shall always have the right to replace the defective products with a new delivery. The buyer shall be entitled to a price reduction only in the event that the seller fails to make a replacement delivery. The maximum price reduction shall be the purchase price of the products. The seller will not be liable to pay any other compensation for the defects.

8.7 The seller shall not be responsible for ensuring that the products are suitable for the buyer's intended specific purpose or that the products comply with the requirements of any other than Finnish law.

8.8 If the quantity of products delivered by the seller is not within the normal or agreed tolerance limits, the seller's only obligation shall be to deliver more products to the buyer to meet the ordered quantity.

8.9 The seller shall not be responsible for small deviations in the agreed delivery quantities or product quality, or for damage that directly or indirectly results from incorrect handling or storage of the products, or from use that has an adverse effect on product characteristics. The buyer must follow the seller's instructions on the use and storage of the products.

8.10 If the buyer starts using defective products in production after detecting a defect, the buyer shall have no right to present any claims to the seller concerning product defects, and the seller shall have no liability for damages.

9. Damages

9.1 Unless otherwise agreed in these general terms and conditions or otherwise provided by Finnish mandatory law, the following shall apply to damages and limitations of liability:

9.2 A party shall be liable to compensate for direct damage it has caused to the other party by negligence. Excluding damage resulting from the breaching of Clause 10.1, there shall be no liability to provide compensation for indirect damage.

9.3 However, the seller's liability to compensate for direct damage incurred by the buyer shall be limited to the price of the delivered products that the claim concerns.

9.4 The above limitations of liability shall not apply if the damage resulted from intentional conduct or gross negligence.

9.5 The limitations of liability specified in these general terms and conditions shall also apply to the seller's legal representatives, employees, distributors, retailers and agents.

10. Non-disclosure

10.1 The buyer shall keep confidential any information received from the seller, regardless of the format of the information. The confidentiality obligation shall remain in force after the end of the business relationship between the parties, until the information has become available in the public domain or has otherwise become public in some other manner than as a result of the buyer's operations or neglect.

11. Intellectual property rights

11.1 When selling products, the seller does not assign any intellectual property rights, such as patents, trademarks, a business name, business secrets or any other intellectual or industrial property rights related to the products.

12. Applicable law and settlement of disputes

12.1 The agreement is governed by Finnish law, excluding the conflict of laws provisions.

12.2 Any disputes arising from the agreement shall primarily be settled through negotiations between the parties. If any disputes arising from the agreement cannot be resolved through negotiations, they shall be finally resolved by the arbitration court in accordance with the accelerated arbitration rules of the Central Chamber of Commerce in Finland, so that the arbitration court consists of one arbitrator. The place of arbitration is Turku. The arbitration is carried out and the decision issued in Finnish. The parties agree that the arbitration and any related material and information are confidential.

12.3 However, the seller has the right to collect an outstanding receivable through the district court of the seller's domicile.

12.4 Before or during a court proceeding, each party has the right to apply to the competent court for a temporary restraining order or precautionary measure if this is necessary in order to safeguard the interests and rights of the party in question during the possible proceedings.

13. Other terms and conditions

13.1 To the extent permitted by law, the seller may dissolve an agreement between the parties, with immediate effect, if the buyer voluntarily arranges its debts with its creditors, is declared bankrupt, is placed in liquidation, or applies for corporate restructuring.

13.2 The buyer shall not have the right to transfer the agreement or the buyer's receivables that are based on the agreement to a third party without the seller's written advance consent. The seller shall have the right to transfer the agreement and the seller's receivables that are based on the agreement to a third party.

13.3 If the seller foregoes any of its rights included in the general terms and conditions or in some case chooses not to refer to its right that is based on the general terms and conditions, this shall not limit the seller's right to appeal to the terms and conditions in a similar case in the future.

13.4 If any clause in the general terms and conditions is invalid or not enforceable, this shall not affect the other clauses. The parties undertake to negotiate in a spirit of mutual understanding on the replacement of such a clause with a corresponding valid and enforceable clause.

13.5 The seller has the right to change these general terms and conditions by notifying the buyer of the change 30 days in advance. The changes shall not have any effect on orders delivered before the changes take effect.