

VALSTAR SPAIN GENERAL TERMS AND CONDITIONS OF SALES

Article 1. Applicability

1. The provisions of this section of the Valstar Spain S.L. General Terms and Conditions apply to all legal relationships existing between any Spanish branch, subsidiary or group associated with Valstar Spain S.L. (hereafter called 'We') and third parties (hereafter called 'Client'), including: offers, quotes, agreements such as for the delivery of items intended for sale (hereafter called: 'Products'), unless expressly agreed otherwise in writing.
2. Insofar as any provision of these General Terms and Conditions is in conflict with a provision of a written agreement, between Us and the Client, the infringing provision will not apply except when the provision of the General Terms and Conditions is more beneficial to the acceding party than the provision of the written agreement. In such case, said provision from the General Terms and Conditions will apply. Notwithstanding the aforementioned, the other provisions of these General Terms and Conditions will remain applicable in full.
3. The applicability of the General Terms and Conditions of the Client is expressly excluded.

Article 2. Offers, quotes, conclusion of agreements and prices

1. All offers and quotes by us are free of obligation, unless expressly stated otherwise.
2. Agreements will only be regarded as concluded:
 - a. following the signing by both parties of an agreement;
 - b. in the absence thereof, following the written acceptance and confirmation by Us of an order placed by the Client;
 - c. in the absence thereof, by the factual delivery of the sold Products.
3. Further and/or supplementary agreements or changes will only be valid if agreed in writing by the parties.
4. The person granting the assignment on behalf of the Client declares to be authorised to represent the Client and to have fulfilled all necessary formalities in that respect.
5. Verbal commitments by and agreements with employees of Ours are binding only if and insofar as confirmed by Us in writing.
6. We may charge on price increases of more than 10% if between the time of acceptance and delivery price changes have occurred with respect to, for example, prices of the Product, exchange rates, wages, raw materials and packaging materials.

Article 3. Delivery

1. Delivery will be made from one of our locations (ExW Incoterms, version 2010), unless expressly agreed otherwise in writing. The Client will take receipt of the purchased Products at the agreed location(s).
2. The Client assumes the risk of loss or damage with respect to the purchased Products from the time of delivery and - if the Client does not cooperate in the delivery - from the time that delivery is refused or no cooperation is granted while the Client was obliged to do so. As soon as the Products have left our company, the Client, also in deviation of the provisions of Article 2 paragraph 1, will assume risk for all damage, directly or indirectly, that may be caused by or to the Products.
3. The Client will accept the Products at the agreed location(s) and times. If the Client fails to take receipt of the Products on the day of delivery, we are entitled to store, sell or destroy the Products, whereby the costs of transport, storage, sale or destruction of the Products shall be charged to the Client.
4. If the Products are stored by us or a third party on behalf of the Client, delivery will be deemed to have taken place at the time of storage of the Products. The storage will take place for the risk and account of the Client.
5. If not delivery time is agreed, the delivery times are indicative only. If several days of delivery are stated in an order confirmation, we will strive to evenly distribute delivery over those days. Any delay in delivery, insofar as within reasonable bounds, will not entitle the Client to rescind the agreement or to claim compensation.

Article 4. Products for delivery

1. It is understood that goods delivered will; as regards number, weight and fulfilment with agreement and legal requirements; comply with the provisions agreed by Us and the Client, except when other agreements can be proven.
2. Minor deviations in terms of size, quality and colour will be tolerated.
3. Due to the special characteristics of our products, the delivery goods agreed will be conditional based on the number and quality of these available on the delivery date. The Client will sign for receipt of the goods in the place and on the date of delivery. If the grower has insufficient goods available for delivery on the specified date, We and the Client can proceed to supplement the order as mutually agreed.

Article 5. Complaints

1. The Client will directly on delivery of the Products and packing materials check whether the delivery complies with the agreement, namely:
 - a. whether the correct Products have been delivered;
 - b. whether the delivered Products comply with the agreed quality requirements for normal use and/or sale;
 - c. whether the quantity (number, amount, weight) of the delivered Products complies with that which was agreed. If the deviation is less than 10% of the total, the Client will accept the delivery against a proportionate reduction of the price.
2. Complaints will be stated by the Client on the delivery note/freight document, failing which the Client cannot appeal to any defects.
3. Any defects that could not be ascertained during the aforementioned check will be reported immediately by the Client to Us, by means of an email to the relevant commercial contact. The Client will in any event, in case of soft fruit, report the defect within 8 hours and, in all other cases, within 12 hours of delivery of the Products to the Client, or Products will be considered delivered. The written complaint will at least include a detailed description of the defect with accompanying photos. In the absence of a timely written report, the Client cannot appeal to any defects.

4. The Products subject to complaint will be stored in their entirety and the Client will give Us an opportunity to inspect them. The Client will take care of the Products as befits a good custodian.
5. The Client can only return Products with our written approval. All return shipments are for the risk and account of the Client.
6. If the Products are wrongly rejected by the Client, all related costs, including the costs of (re)inspection (whether or not by third parties), handling and storage, will be for the account of the Client.
7. If we deem the complaint founded, we can at our election retrieve and replace the Products or credit the Client for the relevant part of the delivery. Our liability in case of a justified and correctly submitted complaints is limited within the boundaries of Article 9.

Article 6. Retention of title

1. Ownership of the Products delivered by Us will first pass to the Client after the latter has fulfilled all its obligations to Us, including the payment of invoices, contractual interest and extrajudicial collection costs. The consequences under property law of the extended and extensive retention of title are governed by the laws of the country of destination.
2. The Client may only within the context of its normal business operations use or resell the Products delivered by us, which pursuant to Paragraph 1 fall under the retention of title.
3. If we wish to exercise the retention of title provided for by this article, the Client now for then gives its unconditional and irrevocable permission to Us or third parties designated by Us to access the places where Our property is located and to retrieve the Products.
4. If third parties wish to attach any right to the Products delivered under retention of title, the Client will inform Us thereof as soon as can be reasonably expected.
5. The Client will insure the Products delivered under retention of title and keep such insured against fire, theft, explosion and water damage, and will provide us with a copy of the policy at our first request.

Article 7. Invoicing and payment

1. Payment of the delivered Products will take place within 14 days of the invoice date, unless expressly agreed otherwise in writing.
2. We are entitled to send periodic invoices.
3. Any costs attached to payment in a currency other than invoiced, such as bank costs and exchange rate differences, will be fully for the account of the Client.
4. Claims, complaints and/or objections against the amount of the invoice will not suspend the payment obligation.
5. The Client is not entitled to set off amounts owed to Us against claims on a company forming part of our concern.
6. The Client will on expiry of the term of payment be in default without any notice of default being required. The Client will from that moment owe compound interest of 1% per month on the entire outstanding amount. The Client will also owe extrajudicial costs set at 15% of the principal due, subject to a minimum of € 500.
7. Payments made by the Client will always first serve as settlement of interest and additional costs due, followed by the oldest principal due.
8. We can award a credit limit to the Client. A credit limit is the maximum balance of all outstanding claims and orders at any time.
9. We may require an advance payment or other form of security from the Client if the parties have no transaction history or, in our opinion, the Client's payment amount to Us and/or the size of the transactions or special circumstances give reason for such.

Article 8. Force majeure

1. We are entitled in case of temporary force majeure to suspend the agreement and in case of permanent force majeure (a contiguous period of at least 2 months) to rescind the agreement with immediate effect, without owing any compensation.
2. Force majeure will in any event include – but is not limited to – all circumstances that hinder or seriously impede the performance of the agreement, such as: war, war risk, civil law, civil unrest, water hazard, water damage, fire, transport problems, unforeseen technical complications, business interruptions, industrial action, blockades, import and export bans, full or partial seizure or reclamation of supplies by a civilian or military government, lack of transport capacity, late or non-delivery by our suppliers, as well as scarcity that permanently or temporarily hampers or rules out delivery, both as regards Us and any third parties engaged by Us in the delivery.

Article 9. Liability

1. Except for cases of fraud or gross negligence on Our part, we accept no liability - including business or indirect responsibility - for any type of damage caused, whether direct or indirect. This exemption of liability includes possible dependents and subordinates, who are implied as a result of this agreement.
2. If legally found that We are liable for the damages incurred, said liability will be limited to a maximum of the amount invoiced/contractually agreed (excluding VAT), or as the case may be, the amount credited by the Client as insurance for the agreement concluded between the parties.
3. We accept no liability for indirect loss, including consequential loss, loss of profit, missed savings, loss resulting from stagnation in operations and all other loss not falling under direct loss in the sense of these General Terms and Conditions.
4. The Client will indemnify Us, Our employees and Our engaged auxiliary persons for all claims (for compensation) by third parties ensuing from, or in any way related to, the sale or delivery of Products by Us or the Client, including claims based on (an infringement of) intellectual property rights, such as breeder's rights, and liability ensuing from any defect in the delivered Products.

Article 10. Suspension and rescission

1. We are entitled, by means of a written statement and without prior notice of default or notification, to fully or partially suspend or rescind any agreement with immediate effect:
 - a. If the Client attributably defaults on one or more of its obligations and/or fulfilment is impossible.

- b. If we can foresee that the Client is unable or unwilling to fulfil its obligations, including if attachment is opposed on the property of the Client due to significant debts and said attachment is maintained for longer than two months.
 - c. If significant changes occur in the ownership or control structure of the Client or Ourselves, including mergers and takeovers.
 - d. In case of permanent force majeure as described in Article 8.
2. We are never obliged to pay any form of compensation in case of suspension or rescission.
 3. If we suspend fulfilment of the obligations, we reserve our rights under the agreement and the law. All our claims on the Client immediately fall due if the agreement is rescinded.
 4. The Client will in case of rescission of the agreement compensate all costs incurred by us, without prejudice to our right to demand compensation in full.

Article 11. Intellectual property

1. We reserve all intellectual property rights to items that we use or that may rest upon items that we deliver to a Client.
2. We have and retain ownership of all intellectual property rights directly and indirectly related with all graphic designs, tools, packaging, etc., produced on our instruction and these may not be used by third parties without our written permission.
3. The Client guarantees that the Delivery or use of Products or the tools purchased or produced by the Supplier on our behalf does not infringe upon any patent rights, brand rights, model rights, copyrights or other intellectual property rights held by third parties.
4. The Client indemnifies us against all claims ensuing from any infringement of the rights referred to in the previous paragraph and will compensate us for any losses resulting from any infringement.

Article 12. Delivery in Pooling Fust/other packaging

1. We make use of various Pooling Partners. If the parties agree that delivery will take place via a Pooling system, the provisions of paragraphs 2 up to and including 6 of this article will apply. The Client acknowledges that the General Terms and Conditions of the relevant Pooling Partner may apply to the use of the provided Pooling Fust and will observe these conditions.
2. We grant no guarantee with respect to delivery of the ordered Pooling Fust.
3. The Pooling Fust will remain the inalienable property of the relevant Pooling Partner. The Client may not give third parties the use of an empty Pooling Fust provided by us, unless a contract for (re)use has been concluded with the Pooling Partner. The Client will exclusively use the Pooling Fust for the performance of the agreement.
4. A deposit will be charged for the Pooling Fust provided by us to the Client. We will bindingly determine and separately communicate the amount of the deposit. The deposit is claimable and payable on acceptance of the Pooling Fust. The deposit will be refunded to the Client on return of the Pooling Fust in good condition, as described in the paragraph below.
5. The Client will properly maintain and transport the Pooling Fust. The Client will return the Pooling Fust in an empty, clean and undamaged condition (damage includes staples or irremovable stickers), sorted according to type and placed on permitted pallets, to the depot of the Pooling Partner. A foldable Pooling Fust will be returned in a folded condition.
6. We are in case of non-compliance entitled to deduct the costs of emptying, discharging, repairing, removing stickers and staples and suchlike from the deposit.
7. All other packing materials are subject to the Fust Protocol as applied by us.

Article 13. Confidentiality

1. The Client will respect the confidentiality of all company information that it acquires within the context of the agreement from us or any other source, such as information about products and know-how in the broadest sense of the word, except in case of a statutory or professional duty of disclosure or if we have waived the duty of confidentiality in writing.
2. The Client will impose the obligations stated in this article on its personnel and/or on third parties engaged by the Client in the performance of the agreement.

Article 14. Final provisions

1. Changes to the agreement and deviations from these General Terms and Conditions will apply only if agreed in writing (including email).
2. The invalidity or annulment of any provision of these General Terms and Conditions in no way affects the validity of the remaining provisions of these conditions.
3. We reserve the right to adopt new General Terms and Conditions. Said new General Terms and Conditions will come into force when the Client has had reasonable opportunity to take note thereof.
4. Obligations of the Client that by their very nature are intended to continue after termination of the agreement will subsequently remain in force. Termination of the agreement expressly does not dismiss the Client from the provisions regarding, inter alia: intellectual property rights, confidentiality, applicable law and competent court.
5. In case of any deviation between the various translations of this agreement and the original Spanish text, the latter will prevail.

Article 15. Applicable law and disputes

1. All agreements concluded in the national territory and issuing agreements between us and the Client shall be governed exclusively by Spanish law. When concluding international agreements between us and the Client, the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) will apply in all cases that apply within the framework of said Convention. When not applicable, Spanish law will apply. Any disputes arising from this agreement and issuing agreements between the parties will exclusively be submitted to our company's competent Courts and Legal system.