

**SDF Horti Software General Sales & Supply Terms and Conditions, version July 2022**

**Article 1. Definitions**

1.1.	In these General Terms and Conditions, the following definitions have the following meaning	
	Buyer	The natural person or legal person with whom SDF has entered into an Agreement, or may enter into an Agreement, or enters into negotiations about it, as well as its representative(s), authorized representative(s), successor(s) in title and heirs.
	General Terms and Conditions	These general terms and conditions of sale and delivery of SDF Horti Software B.V.,
	Article	An article included in the General Sales & Supply Terms & Conditions.
	CC	Civil Code (Dutch).
	Service	One or more performances to be delivered by SDF for, or at least for the benefit of, the Buyer, including development and/or maintenance of software, applications, software, etc., is determined in the agreement/quotation or the agreement/quotation usually indicates which Services and in these General Terms and Conditions further rules are set for specific Services.
	Employee	An employee, freelancer/self-employed person without personnel or an auxiliary person hired by SDF from a third party, who is deployed by SDF or carries out work for SDF.
	Agreement	An Agreement between SDF and Buyer.
	Parties	SDF and Buyer
	Results	The results of the work performed by SDF under the Agreement.
	SDF	SDF Horti Software B.V.
	In writing	On paper or by email.
	Software	Software whether delivered or not by the Buyer to the Buyer, or at least made available for use, of which the Buyer is the owner or otherwise entitled, as well as software delivered by the Buyer to the Buyer of which a party other than the Buyer is the owner or otherwise entitled.
	Goods	Material goods to be delivered or delivered by SDF to the Buyer, including but not limited to systems, such as all kinds of labor registration systems, camera sorting systems, cultivation systems, etc.

1.2 With regard to the definitions under 1.1 and for the rest in these General Terms and Conditions, unless explicitly stated otherwise from the text:

- 'in writing' also includes e-mail and communication by fax, provided that the identity of the sender and the integrity of the message are sufficiently established;
- words expressed in the singular also include the indicated things in the plural, and vice versa;
- reference to male includes female or any other gender.

## **Article 2. Applicability of the General Terms & Conditions**

- 2.1. The General Terms and Conditions regulate all legal relationships between SDF and its Buyers and are, among other things, applicable to and form part of
  - (i) all legal acts and actual acts (including, but certainly not limited to, correspondence, such as messages regarding the issuance of and (the content of) quotations and/or offers) of SDF and the Buyer that influence or may influence existing or future legal relationships between SDF and the Buyer,
  - (ii) all Agreements and
  - (iii) all other legal relationships between SDF and the Buyer.
- 2.2. The applicability of general terms and conditions to which the Buyer may refer is expressly rejected by SDF.
- 2.3. If one or more stipulations from the General Terms and Conditions prove to be invalid or are annulled, this will not affect the legal force of the other stipulations. In that case, the invalid or voided clause will be replaced by that which corresponds as closely as possible to the purpose and purport of the invalid or voided clause.
- 2.4. Provisions in the General Terms and Conditions can only be deviated from if and insofar as the Parties agree in writing.
- 2.5. If and insofar as a provision included in the Agreement deviates from a stipulation in the General Terms and Conditions, the relevant provision included in the Agreement will prevail.
- 2.6. If there are any differences between these General Terms and Conditions and a version thereof in another language, the provisions of the General Terms and Conditions in the Dutch language shall prevail.

## **Article 3. Offer, Acceptance, Agreement**

- 3.1 Every quotation and every offer from SDF is always without obligation and can be revoked at any time.
- 3.2 Every quotation and every offer from SDF expires by operation of law after 14 days have passed from the day of the offer/quotation, if the offer/quotation has not been accepted by the Buyer in writing or otherwise within this period.
- 3.3 Acceptance of an offer/quotation made by SDF to the Buyer should preferably be made in writing by the Buyer, but if the Buyer agrees to the offer/quotation in any other way than in writing or gives the impression that it is, then this/these may be accepted by SDF. be considered accepted.
- 3.4 If and insofar as the acceptance of the Buyer deviates from the offer/quotation of SDF, the relevant deviations are only valid if and insofar as SDF agrees to these deviations in writing and in detail.
- 3.5 Offers, quotations from and Agreements with SDF are based on the application of the laws and regulations applicable in the Netherlands, as well as on the performance of the Agreement by SDF under normal circumstances and during normal working hours.
- 3.6 An Agreement is concluded after receipt by SDF of timely written or other acceptance by the Buyer of an offer/quote made by SDF to the Buyer, or after SDF has sent its written order confirmation to the Buyer or by commencing the execution of the Agreement by SDF.
- 3.7 An Agreement is concluded upon receipt by the Buyer of a timely written acceptance by the Buyer of an offer made by the Buyer to the Buyer, or upon sending of its written order confirmation to the Buyer by the Buyer.
- 3.7 All that SDF delivers and/or performs and/or adds in more than is expressly and specifically laid down in the Agreement, constitutes additional work. The Buyer must pay for this, in addition to what it already has to pay to SDF under the Agreement, regardless of whether the additional work has been recorded in writing and regardless of whether the additional work was foreseeable. SDF determines the amount owed by the Buyer for the additional work in reasonableness. Less work does not lead to a reduction of the agreed price, unless this has been agreed in writing.
- 3.8 Verbal promises by and agreements with representatives of SDF only bind SDF if and insofar as SDF confirms them in writing.
- 3.9 If the Buyer does not enter into a maintenance agreement with SDF simultaneously with an Agreement, SDF is not obliged to enter into a maintenance agreement with the Buyer afterwards.
- 3.10 All assignments/Agreements are deemed to have been given to/entered into with SDF and not to any natural or legal person associated with it. This applies even when an assignment has been expressly or tacitly given to a specific person, or is intended to be performed by a specific person. The applicability of Sections 7:404 and 7:407 paragraph 2 of the Dutch Civil Code is expressly excluded here. Joint and several liability is hereby excluded if the assignment is carried out by two or more persons.
- 3.11 SDF is entitled to engage third parties in the performance of an Agreement.

- 3.12 The Buyer acknowledges that electronic communication is not secure and can be intercepted, manipulated, infected, delayed or incorrectly forwarded or forwarded, for example by viruses and spam filters. If Buyer acts in the exercise of a profession or business, the applicability of Article 6:227b paragraph 1 of the Dutch Civil Code, which relates to the provision of information in e-commerce transactions, and of Article 6:227c of the Dutch Civil Code, which relates to the manner in which e-commerce transactions are hereby excluded.

#### **Article 4. Price**

- 4.1. The prices stated by SDF are in EURO, are exclusive of turnover tax and other taxes and government charges to be charged, and are based on delivery 'Ex Works' (EXW) in accordance with the Incoterms applicable at the time of the conclusion of the relevant Agreement.
- 4.2. If after making an offer/quote by SDF, or after the conclusion of an Agreement, one or more of the factors determining the proposed or agreed price (such as raw material prices) undergo an increase, SDF - irrespective of whether this was foreseeable - has the right to increase the proposed or agreed price accordingly.
- 4.3. If a price in a quotation is based on information provided by the Buyer and this information proves to be incorrect, then SDF has the right to adjust the prices to the prices reasonably associated with the correct information, even after the Agreement has already been concluded. .
- 4.4. All prices stated in SDF's quotation or elsewhere are subject to typing and calculation errors.
- 4.5. SDF has the right to (separately) charge the costs for making a quotation, drawings, calculations, descriptions, models or tools, etc. to the Buyer. If SDF has to make new drawings, calculations, descriptions, models or tools, etc. in the case of repeat orders, the costs thereof will also be charged to the Buyer.
- 4.6. Packaging is, unless agreed otherwise, not included in the price and will be charged separately. Packaging is taken back, except insofar as this cannot be required of SDF.
- 4.7. Costs of loading and unloading and transport of raw materials, semi-finished products, models, tools and other items made available by the Buyer are not included in the price and will be charged separately.
- 4.8. Spare and consumable parts are not included in the price. The Buyer is recommended to keep a stock of spare and consumable parts itself, for which a list will be supplied by SDF on request.
- 4.9. SDF has the right to adjust prices of current Agreements at most once a year without the consent of the Buyer. In the event of price increases of more than 5%, the Buyer has the right to terminate the Agreement on the date on which the new prices will come into effect.

#### **Article 5. Information, IP rights etc.**

- 5.1. Information provided by SDF to the Buyer, such as images, drawings, models, diagrams in a quotation, catalogs used by SDF and provided to the Buyer, etc., is for illustration purposes only. Displayed specifications, data and characteristics of products to be delivered (including Goods and Hardware) are only binding if and insofar as this is expressly stipulated in the Agreement.
- 5.2. All information produced by SDF, whether or not provided to the Buyer, such as drawings, calculations, software, Software, descriptions, models, manufacturing and production methods, applications, etc. and Results and all related (intellectual and/or industrial property) rights remain the property of, or at least continue to belong to, SDF. Agreement. Quotation or an offer thereto does not lead to any full or partial transfer of property rights, intellectual and/or industrial rights or any other rights of SDF to the Buyer.
- 5.3. The Buyer is not authorized to copy or otherwise reproduce information, drawings, calculations, software, Software, descriptions, models, manufacturing and production methods, applications, Results, etc. produced or provided by SDF without the prior written permission of SDF. to show or otherwise disclose to third parties, in the broadest sense of the word.
- 5.4. SDF is entitled to take and continue technical and/or software measures to protect everything it has manufactured and/or provided.
- 5.5. At the first demand of SDF, the Buyer is obliged to immediately return the information, drawings, calculations, software, Software, descriptions, models, manufacturing and production methods, applications, Results, etc. originating from SDF and to return all copies and digital copies thereof. destroy files.
- 5.6. For each violation by the Buyer of the provisions of Article 5, the Buyer always owes SDF an immediately due and payable penalty of EUR 15,000.00. The relevant fine(s) is without prejudice to any right of SDF to compensation.

## **Article 6. Licence Conditions**

### **6.1. Use of Right, scope of the Use of Right**

- 6.1.1. If there is a License Agreement, SDF grants the Buyer a non-exclusive right to install and use the agreed quantity of copies of (the agreed version of the) Software (module(s) and/or customization) on one of the Buyer's own systems. The right to use one copy of the Software extends to the documentation accompanying the Software.
- 6.1.2. The right of use commences after SDF has received the License Agreement signed by the Buyer and the Buyer has fulfilled its (payment) obligations under the License Agreement.
- 6.1.3. The Buyer may only use the Software on the configuration in which the Software has been installed by or on behalf of SDF, or with the consent of SDF on a current configuration that is supported by SDF according to the most current manual.
- 6.1.4. The right of use also includes standard adjustments to the Software as well as new versions, releases and maintenance releases of the Software that are made available to the Buyer pursuant to the License Agreement or any maintenance agreement concluded with SDF.
- 6.1.5. If newer versions of Software offer additional functionalities compared to the agreed version of Software, SDF is entitled to demand additional payment for the right of use thereof.

### **6.2. Mode of Use**

- 6.2.1. Unless the Buyer and SDF have agreed that SDF is responsible for the installation and configuration of the Software on its system, the Buyer itself is responsible for this.
- 6.2.2. The Buyer is obliged to use the Software correctly. Buyer is not permitted to modify the Software, except in cases specified by the Software or SDF, which includes adding files or modifying files used by the Software.
- 6.2.3. The Buyer shall install or have installed new maintenance releases, releases, versions and the like provided by SDF to the Buyer in a timely and correct manner.
- 6.2.4. The Buyer will always provide SDF with all information necessary for the performance of the Agreement in a timely manner.
- 6.2.5. If Software does not work properly, Buyer will report this immediately and specifically to SDF.
- 6.2.6. The Buyer must at least make a daily back-up of the data files, not relating to the Software, which can be regarded in any way as input or output of the Software. The Buyer must also make such a back-up in all cases where the Software indicates this and in all cases where it should reasonably be clear to the Buyer that this may be necessary for the proper and safe functioning of the Software. If the Buyer fails to fulfill its aforementioned obligations (in time), SDF shall not be liable to the Buyer, without prejudice to other exclusions and limitations of liability of SDF under the General Terms and Conditions or otherwise applicable, for loss, destruction, alteration and otherwise unusable data. and related damage suffered or to be suffered by the Buyer.
- 6.2.7. Without the express prior written consent of SDF, the Buyer is not permitted to copy, reproduce, decompile, imitate, modify or reconstruct.
- 6.2.8. The Buyer must at all times prevent its employees or third parties from using or taking possession of the Software without being authorized to do so, misusing, damaging, stealing, destroying or copying. If such a situation does arise, the Buyer must immediately and fully inform SDF in writing.

### **6.3. Transferability**

- 6.3.1. The right of use/license agreement is non-transferable and cannot be sub-licensed without the prior written consent of SDF. The Buyer is not permitted to rent, lease, sub-license, sell, dispose of, pledge, or transfer the Software under any title (free of charge or otherwise) to any third party for any purpose whatsoever, except to have it used by third parties, or to encumber it with any right.
- 6.3.2. If the Buyer provides unauthorized use of the Software to a third party due to violation of the provisions of the previous paragraph, the Buyer is jointly and severally liable in addition to this third party for the damage, which will at least consist of the payment of the license fee and the maintenance fee for the relevant Software from the license registration date of the Buyer, without prejudice to SDF's right to recover from the Buyer the full damage suffered as a result of the violation of the previous paragraph.

### **6.4. Intellectual property rights**

- 6.4.1. The copyright, patent, trade name, logo and any other intellectual or industrial property rights and similar rights to protect information relating to the Software (including standard modifications and new versions), database,

documentation or materials, all to the fullest extent sense of the word, belong exclusively to SDF or its licensor. Nothing in the License Agreement is intended to transfer any such rights in whole or in part.

- 6.4.2. The Buyer is not permitted to change, remove or make unrecognizable any indication of intellectual or industrial property rights of SDF. The Buyer is not permitted to reduce the Software in whole or in part to the source code (reverse engineering), except in cases where this is expressly permitted by law.
- 6.4.3. SDF is permitted to take technical measures to protect the intellectual property rights to the Software and/or materials.
- 6.4.4. The provisions of Article 5 remain in full force alongside this Article 6.4, but in the event of conflict, this Article 6.4 will prevail with regard to License Agreements.

#### 6.5. Guarantee on Software

- 6.5.1. SDF guarantees for six months after the date of delivery that the Software it supplies will function in accordance with the specifications it has given and agreed upon in writing.
- 6.5.2. Recovery of damaged or lost data is not covered by the warranty. The warranty does not apply if the Software has been modified by anyone other than SDF without its prior written consent and/or as a result of improper or unauthorized use of the Software. SDF can charge the costs of repair in case of usage errors and/or other causes that cannot be attributed to SDF.
- 6.5.3. The Software does not function properly if and insofar as any malfunctions are reproducible, failing which the Software is deemed to function properly.
- 6.5.4. For the rest, reference is made to Article 13 of these General Terms and Conditions.

#### 6.6. Confidentiality

- 6.6.1. Afnemer verbindt zich om te allen tijde de inhoud (waaronder begrepen maar niet beperkt tot de code) van in gebruik gegeven Software als strikt vertrouwelijk te behandelen. Voorts zal Afnemer haar werknemers en andere door haar ingeschakelde personen daartoe eveneens verplichten.

#### 6.7. Termination

- 6.7.1. Upon termination of the License Agreement, Buyer shall immediately cease and desist from any use of the Software, including any copy, documentation and/or other materials provided by SDF, and return it to SDF.

#### 6.8. Fines

- 6.8.1. For each violation by the Buyer of the provisions of Articles 6.1 to 6.4 inclusive, 6.6 and 6.7, the Buyer always owes SDF an immediately due and payable penalty of EUR 15,000.00. The relevant fine(s) is without prejudice to any right of SDF to compensation..

### **Article 7. Delivery time**

- 7.1. An agreed delivery period commences on the latest of the following times:
  - a. the next working day after the conclusion of the Agreement;
  - b. the next working day after SDF has received the documents, data, permits, etc. necessary for the performance of an Agreement;
  - c. the next working day after the formalities necessary for the implementation of the Agreement have been carried out;
  - d. the next working day after SDF has received the agreed advance payment from the Buyer;
  - e. the day on which work has commenced by SDF.
- 7.2. An agreed delivery period or specific time of delivery is always a best efforts obligation on the part of SDF, not a guarantee and/or strict deadline. The delivery of additional work is not included in the agreed delivery period or the specific delivery time, unless SDF and the Buyer have agreed to this.
- 7.3. An agreed delivery period or specific time of delivery is based on the working conditions applicable at the time of the conclusion of the Agreement, as well as on the timely delivery of the materials and/or services ordered by SDF for the implementation of the Agreement. If, beyond intent, gross negligence or conscious recklessness of the Employees of SDF belonging to the management, a delay occurs due to a change in working conditions or because the materials and/or services ordered for the execution of the work are not delivered on time, the agreed period will be until delivery is extended by the duration of that delay. The agreed period for delivery (or the specific moment of delivery) will also be extended (or moved) by the duration of any period in which the Buyer fails to fulfil any obligation arising from the Agreement, and/or by the duration of the Buyer's failure to provide cooperation to be required with

regard to the implementation of the Agreement. If an extended delivery time or rescheduled time of delivery cannot be fitted into SDF's planning, it will be fitted into the next opportunity offered by that planning. Insofar as extension or relocation is attributable to the Buyer, all additional costs caused by the changes will be charged to the Buyer as immediately due.

- 7.4 A Good is deemed to have been delivered when SDF notifies the Buyer that the Good is ready for shipment or, if an inspection or test at SDF's company has been agreed, that the Good is ready for inspection or test.
- 7.5 Exceeding the delivery time does not entitle the Buyer to fully or partially perform the obligations assigned to SDF under the Agreement or to have them performed by third parties.
- 7.6 If an agreed period for delivery, despite the provisions of Article 7.2, is to be regarded as a strict deadline, then the compensation owed by SDF to the Buyer on account of that term being exceeded, without prejudice to the other limitations of liability of SDF on the basis of the General Terms and Conditions or otherwise, shall be: a maximum of 2.5% of the order amount, on the understanding that a maximum of 0.25% of the order amount per fully elapsed week may be due. No compensation is due if the exceeding of the delivery time is the result of force majeure or if there is no other shortcoming attributable to SDF in the fulfilment of its obligations.

### **Article 8. Assembly/Installation**

- 8.1. The Buyer is responsible to SDF for the correct and timely execution/making available of all devices, facilities and/or conditions that are necessary for the manufacture, installation, commissioning and set-up of the Goods to be delivered/assembled/installed, or Software and /or the correct operation thereof in agreed/assembled/installed condition.
- 8.2. With due observance of Article 8.1, the Buyer guarantees in any event, but not exclusively, at its own expense and risk that:
  - a. Employees of SDF, as soon as they have arrived at the agreed place, can start their work (including Services) and can continue to perform it during normal working hours and, moreover, if SDF deems it necessary, outside normal working hours;
  - b. required facilities (including but not limited to utilities and continuous internet access) for (the Employees of) SDF available under government regulations, Agreement, and/or for the use of the Good and/or Software and/or the performance of Services to be;
  - c. the access roads to the agreed place (of housing, set-up and storage) are suitable and accessible for the necessary transport;
  - d. the agreed place (of housing, set-up and storage) is suitable for the performance of Services, placement, storage and/or assembly;
  - e. the necessary lockable storage areas for material, tools and other items of SDF are present and available;
  - f. the necessary and customary auxiliary workers, auxiliary tools, auxiliary and operating materials (water, electricity, steam, compressed air, lighting, etc., all this in accordance with the standards customary in the Netherlands, including) and the normal measuring and testing equipment for the business of the Buyer be available to (Employees of) SDF in a timely manner and free of charge at the right place;
  - g. all necessary safety and precautionary measures have been taken and are maintained, as well as that all measures have been taken and are maintained in order to comply with the applicable government regulations in the context of the assembly/installation;
  - h. at the start of and during the assembly/installation of the Good and/or Software and/or the performance of Services, the materials to be provided by the Buyer are present in the correct place. Damage and costs, which have arisen for the Buyer as a result of the Buyer's failure to comply with the conditions mentioned in this Article or to do so in time, shall be borne by the Buyer. The Buyer may charge the costs and compensation of damages incurred to the Buyer in the interim.
- 8.3. Damage and costs that have arisen for SDF because the Buyer does not or does not timely comply with the conditions referred to in this Article, are for the account of the Buyer. SDF may charge the Buyer for the costs and compensation for damage suffered in the interim.
- 8.4. Article 7 applies mutatis mutandis with regard to assembly/installation time.
- 8.5. Insofar as SDF only supervises the assembly and/or installation work performed by third parties, SDF does not guarantee the work performed by such third parties, on the understanding that it cannot be held liable for any shortcoming, except insofar as it is demonstrably in its supervisory duties. failed. All consequences of shortcomings of the supervised third parties are for the account of the Buyer, and insofar as SDF has to incur costs or suffer damage as a result, the Buyer must compensate SDF for those costs and damage.
- 8.6. Where the Buyer chooses to carry out parts of the scope of delivery (or related work) either itself or to have it performed by third parties, the Buyer cannot derive any rights from designs, drawings, diagrams and other

documents of SDF. Nor can the Buyer derive any rights from instructions and/or advice given by SDF. SDF is neither responsible nor liable (nor held on any other basis) for work (or consequences) performed by Buyer or third parties have been performed, regardless of whether SDF has manufactured or supplied materials for such work

#### **Article 9. Checking, Inspection, and Testing**

- 9.1. The Buyer will check a Good, Software and/or Service delivered by SDF for any incompleteness or defects and (if an inspection is required) inspect it within 14 days after delivery or - if assembly/installation has been agreed - within 14 days at the latest. after its assembly/installation. If SDF does not receive a written, specified notification of a complaint from the Buyer within that period, the delivered goods will be deemed to comply with the Agreement and to have been accepted by the Buyer.
- 9.2. If a test by SDF has been agreed, the Buyer shall, after receipt of the Good, Software and/or Service delivered by SDF or, if assembly/installation has been agreed, immediately after the assembly/installation thereof, give SDF the opportunity to carry out the tests in accordance with and to make improvements and/or changes according to the outcome of the test, as SDF deems necessary. The test will be carried out immediately after SDF's request in the presence of the Buyer. If the test results do not lead to specified and well-founded complaints, as well as if the Buyer does not give SDF the opportunity to carry out tests or to make the improvements or changes deemed necessary, the Good, Software and/or Service is deemed to comply with the Agreement. answer and to be accepted by the Buyer.
- 9.3. The Buyer shall provide the facilities required for the inspection and/or test, including but not limited to those referred to in Article 8.2 sub f., as well as representative samples of any materials to be treated or processed, in sufficient quantity, in good time and free of charge, in the correct manner. place available to SDF, so that the conditions of use for the Good and/or Software envisaged by the Parties can be simulated as much as possible. If the Buyer does not comply with this, the Good and/or Software will be deemed to comply with the Agreement and to have been accepted by the Buyer.
- 9.4. In the event of insignificant shortcomings or incompleteness, in particular those that do not or hardly affect the intended use of the Good and/or Software, they will be deemed to comply with the Agreement regardless of these shortcomings and to have been accepted by the Buyer. In the event of sufficiently substantial shortcomings or incompleteness, SDF will remove these by repair or replacement of the defective part, whether or not at SDF's company, or by sending a part for replacement, or by re-executing the Service, one and other always at the discretion of SDF. All costs for work that include more than described in the previous sentence, such as (but not limited to) transport costs, travel and accommodation costs and the costs of disassembly and assembly, are for the account of the Buyer.
- 9.5. The Buyer is entitled, instead of removing a defect, to proceed to repay the Buyer a part of the purchase price paid by the Buyer to the Buyer for the defective Good, Software and/or Service that reasonably corresponds to the defect. In that case, the Buyer shall be entitled, but not obliged, not to repair, replace, re-execute or take back the Good, Software and/or Service. Under no circumstances shall the Buyer be obliged to compensate more than the aforementioned part of the purchase price that reasonably corresponds to the defect.
- 9.6. SDF is also authorized, instead of removing a defect, to refund to the Buyer a part of the purchase price that reasonably corresponds with the defect to SDF for the defective Good, Software and/or Service. In that case, SDF is entitled, but not obliged, not to repair, replace, redo or take back the Good, Software and/or Service. SDF is under no circumstances obliged to pay more than the aforementioned part of the purchase price that reasonably corresponds to the defect.
- 9.7. If the Good, Software and/or Service are deemed to comply with the Agreement and/or are deemed to have been accepted by the Buyer within the meaning of this Article, the Buyer loses the right to make any claim in this respect due to (alleged) non-compliance. conformity of the Good, Software and/or Service.
- 9.8. SDF is not obliged to accept returns from the Buyer. The receipt of a return shipment by SDF does not imply acknowledgment by SDF of the specified reason for the return shipment.

#### **Article 10. Risk and owner ship transfer, and retention of title**

- 10.1. From the moment a Good and/or Software is delivered, the Buyer bears the risk for all direct and indirect damage (including loss or destruction) that arises from or may arise from that Good and/or Software, unless the occurrence of damage to intent, gross negligence or conscious recklessness of the Employees belonging to the management of SDF is due.

- 10.2. If the Buyer remains in default with the purchase or acceptance of a Good, Software and/or a Service, SDF has the right to charge the costs of storage of the Good and/or Software or the reserved time for the provision of the Service and other charge related costs to the Buyer.
- 10.3. If SDF intends to transfer ownership of the Goods to the Buyer by delivery of Goods to the Buyer, SDF reserves itself pursuant to art. 3:92 of the Dutch Civil Code retains ownership of the Goods until the Buyer has fully fulfilled all obligations under all Agreements it has concluded with SDF, including any claims of SDF against the Buyer due to the Buyer's non-fulfilment of obligations towards SDF. If the Buyer has fulfilled all its existing obligations at any time, the retention of title will continue to exist in the event that a new obligation arises in this regard afterwards.
- 10.4. The Goods delivered by SDF that fall under the retention of title pursuant to Article 10.2 may only be resold within the framework of normal business operations. The Buyer is not authorized to pledge the delivered Goods or to encumber them with any other right.
- 10.5. If the Buyer does not fulfill its obligations or if SDF has a well-founded fear that the Buyer will not fulfill its obligations, SDF has the right to remove the delivered Goods subject to the aforementioned retention of title from the Buyer or from third parties who hold these Goods for the Buyer ( do) take. The Buyer is obliged to fully cooperate in this regard.
- 10.6. If third parties wish to establish or enforce any right to the Goods delivered under retention of title, the Buyer is obliged to immediately inform SDF thereof in writing.
- 10.6. If third parties wish to establish or assert any right to the Goods delivered under retention of title, the Buyer shall be obliged to inform the Buyer thereof immediately in writing.
- 10.7. Buyer is obliged:
  - to insure the Goods delivered under retention of title and to keep them insured against fire and water damage and against theft and to make the policies of this insurance available to SDF for inspection on first request;
  - to transfer all claims of the Buyer against insurers with regard to the Goods delivered under retention of title to SDF at SDF's first request and/or (at the option of SDF) to pledge them to SDF; due to the applicability of the General Terms and Conditions, the Buyer grants SDF an irrevocable power of attorney to make such transfer or pledge in advance or not;
  - to transfer the claims that the Buyer acquires against its Buyers when reselling Goods delivered under retention of title by SDF to SDF at SDF's first request and/or (at SDF's option) to pledge them to SDF; due to the applicability of the General Terms and Conditions, the Buyer grants SDF an irrevocable power of attorney to make such transfer or pledge in advance or not;
  - to mark the Goods delivered under retention of title visibly to third parties as the property of SDF.
- 10.8. For each violation by the Buyer of the provisions of Article 10, the Buyer owes SDF a penalty of 25% of the purchase price owed by the Buyer to SDF for the relevant Good or Goods, which in any case amounts to a minimum of EUR 15,000.00. The relevant fine is without prejudice to any right of SDF to compensation.
- 10.9. The risk with regard to Goods returned by the Buyer to SDF remains with the Buyer unless (and in that case: until such time as) those Goods have been credited by SDF.

#### **Article 11. Payment**

- 11.1. Payment of the agreed price, including sales tax, and other taxes and government charges to be charged, must be received by SDF from the Buyer at the latest, as agreed in the Agreement.
- 11.2. Within 7 days after SDF has charged additional work to the Buyer, payment for additional work must be received by SDF from the Buyer.
- 11.3. SDF invoices must be paid in full. The Buyer is not authorized to apply any deduction, discount and/or settlement to SDF's invoices.
- 11.4. If deliveries are made in phases, SDF is entitled to invoice per delivered phase, monthly or on the basis of hours worked (at the discretion of SDF). The payment term of an invoice is 14 days after the date of the invoice, unless otherwise agreed between the Parties.
- 11.5. If the Buyer does not fulfill any payment obligation, whether or not relating to an invoice issued to the Buyer by SDF, towards SDF within the agreed period, or at least the term prescribed by SDF, the Buyer will be in default by operation of law. From the moment of default, even without any prior notice of default being required, the Buyer owes SDF the statutory commercial interest as referred to in Article 6:119a of the Dutch Civil Code on the amount due. In addition, without prior notice of default being required, the Buyer owes SDF the extrajudicial costs actually incurred by SDF, which the Parties consider to be proven to amount to at least 15% of the outstanding claim with a minimum of € 1,000.00 per each separate outstanding claim (concerning each separate invoice or claim of any other nature).

- 11.6. If SDF claims performance of a payment obligation or other obligation from the Buyer in legal proceedings, and that claim is awarded in whole or in part, the Buyer is obliged to pay all costs actually incurred by SDF for the conduct of those legal costs, including costs for legal assistance, payable to SDF. The Buyer is also obliged to do so if the Buyer institutes a legal claim against SDF, which is rejected in whole or in part.
- 11.7. If the Purchaser is in any way in default vis-à-vis SDF, the Purchaser is obliged to establish sufficient collateral security in favor of SDF on SDF's first written request, which serves as (sufficient) security for fulfillment of the obligations resting on the Purchaser.
- 11.8. Any claim for payment is immediately due and payable in the event that the Buyer is declared bankrupt, applies for suspension of payment, the Buyer dies and furthermore, if it goes into liquidation, is dissolved, otherwise discontinues its business or undergoes major changes.

#### **Article 12. Prohibition of Transfer and Impossibility of Transfer**

- 12.1. The Buyer is not authorized to transfer existing or future rights against SDF to others without SDF's prior written consent.
- 12.2. Any existing or future claims of the Buyer against SDF for whatever reason are not transferable under property law pursuant to art. 3:83 paragraph 2 of the Dutch Civil Code and as such cannot be pledged in a property law sense. The parties may agree in writing that such transfer and pledging will be made possible under property law.

#### **Article 13. Guarantee and fulfilment**

- 13.1. In any case, defects that occur as a full or partial result of:
  - a. non-compliance by the Buyer with operating and maintenance instructions and/or use of Goods, Software and/or Services other than the purpose or destination known in accordance with the Agreement;
  - b. normal wear and tear;
  - c. the use by the Buyer of chemicals of which the Buyer may be aware that they may damage or change the Goods used or at least delivered by SDF, or at least negatively affect the functioning of the Goods delivered by SDF;
  - d. the application of any government regulation regarding the nature or quality of the materials used;
  - e. materials or items applied and/or processed by SDF on the instructions of or in agreement with the Buyer that have already been used before and are therefore not new, and otherwise defective materials or items;
  - f. materials, items, working methods and constructions, insofar as applied on the express instructions of the Buyer, as well as materials and items supplied by or on behalf of the Buyer;
  - g. parts purchased by SDF from third parties, insofar as that third party has not provided a guarantee to SDF;
  - h. insufficient, inadequate and/or deficient facilities, including (data) communication facilities, inadequate power supply, faulty earth connection, overload or violence.
- 13.6. If the Buyer does not, does not properly or does not timely comply with any obligation arising for it from the Agreement or from a related agreement, SDF is not obliged to provide any guarantee - by whatever name - with regard to any of these agreements.
- 13.7. If the Buyer, without prior written approval from SDF, proceeds with or causes a third party to carry out assembly, disassembly, repair or other work with regard to the Good or Software, and/or to take it into use prematurely, any right to claim under this Agreement will lapse. Guarantee. SDF does not provide any guarantee on Goods or Software that are used for work carried out by the Buyer itself or by third parties on behalf of the Buyer.
- 13.8. Complaints about defects must be reported to SDF immediately, but no later than 14 days after discovery thereof, in writing and with reasons, and must be received by SDF within that period. If the Buyer does not comply with that regulation, it will lose any claim against SDF with regard to the defects in question.
- 13.9. If SDF replaces parts/goods to fulfill its warranty obligations, the replaced parts/goods become the property of SDF. Any repair or overhaul work or other services carried out by the Buyer shall only be guaranteed for the required quality of the execution of the assigned work, for a period of 6 months. This guarantee concerns only the sole obligation of the Buyer to redo the relevant work, insofar as it is defective, in case of defectiveness. Article 13.3 applies accordingly in that case.
- 13.10. The repair or revision work or other Services performed by SDF is only guaranteed for the soundness of the performance of the work ordered, for a period of 6 months. This guarantee only concerns SDF's sole obligation to redo the relevant work, insofar as it is defective, in the event of defects. Article 13.3 applies mutatis mutandis in that case.
- 13.11. No guarantee is given on the inspections, advice and similar activities carried out by SDF.

- 13.12. The Buyer must maintain, monitor and secure all critical processes of its (horticultural business operations and cultivation process), also with facilities outside the (control) computer. Surveillance outside the computer means the use of equipment that is not linked to (or dependent on) the control computer, in addition to regular (visual) checks. The Buyer bears all responsibility for (timely) checking and calibration of measuring equipment.
- 13.13. If SDF performs work on a Good, Software or any equipment or installation of the Buyer in a more comprehensive sense, the Buyer is obliged to check the settings, calibration, calibration and the like of the relevant Good, Software, equipment or installation and make changes if necessary. SDF is not liable for any changes to the relevant settings, calibrations, calibration and so on.
- 13.14. The alleged non-compliance by SDF with its warranty obligations does not release the Buyer from its obligations arising from any agreement concluded with SDF. The Buyer is not obliged to suspend such obligations.

#### **Article 14. Force Majeure**

- 14.1. In these General Terms and Conditions, force majeure is understood to mean: any circumstance arising beyond the control of SDF - even if this could already be foreseen at the time of the conclusion of the Agreement - which permanently or temporarily prevents compliance with the Agreement, as well as, for insofar as not already included, war, danger of war, civil war, acts of terrorism, sanctions imposed by the government or imposed trade restrictions, riots, strikes by and illness of Employees of SDF, exclusion of workers by the Buyer, transport problems, fire, flooding (including flooding), electricity failures, computer malfunctions and other serious malfunctions. Force majeure also applies if SDF falls short towards the Buyer as a result of shortcomings on the part of third parties engaged by SDF, such as (non-exhaustive:) subcontractors, suppliers and transporters.

#### **Article 15. Exclusion and limitation of liability for damage**

- 15.1. SDF is not liable for (or otherwise held with regard to) the consequences of excavation work, including any direct damage to the cables and/or pipelines, as well as the consequences thereof.
- 15.2. SDF is, except for any liability of SDF for direct material damage, not liable for any (or otherwise held in connection with) indirect damage of the Buyer. SDF is therefore not liable for (or otherwise held with regard to) inter alia any consequential damage, damage caused by delay, trading loss, loss of turnover and profit, growth and flowering damage, damage or loss of goods made available by the Buyer and personal injury. SDF's exclusion of liability and obligation applies irrespective of the basis of liability (such as breach of contract, tort, obligation to repair or reverse or otherwise).
- 15.3. Insofar as this is unacceptable according to standards of reasonableness and fairness, Article 15.2 will not be invoked in the event of intent or gross negligence on the part of (the management of) SDF.
- 15.4. The scope of SDF's total obligation on any basis whatsoever, including but not limited to liability for existing and future damage suffered by the Buyer on account of breached obligations under Agreements concluded with SDF, is limited to the relevant amount under a (liability or damage) insurance actually amount to be paid to SDF.
- 15.5. If it is determined in court that the limitation of the scope of SDF's total liability (on whatever basis) cannot be applied on the basis of Article 15.4 (if that is unacceptable in court according to standards of reasonableness and fairness or in conflict with mandatory law), then the scope of the total obligation (including the liability of SDF for existing and future damage of the Buyer) is limited to the total amount that the Buyer owes and will owe to SDF, and has actually paid and will pay in in respect of Goods and Services delivered by SDF to the Buyer.
- 15.6. If it is determined in court that the limitation of the scope of SDF's total liability (on whatever basis) pursuant to Article 15.5 does not apply (if this is unacceptable in court according to standards of reasonableness and fairness or in conflict with mandatory is deemed to be law), then the extent of SDF's total obligation (including liability for existing and future damage of the Buyer) is limited to the lowest possible amount to be determined by law in this respect.
- 15.7. Any liability of SDF for damage suffered by the Buyer is limited to direct material damage that has arisen within 12 months after delivery of the Good or Service to which the damage is related, and insofar as SDF has notified this in writing within 14 days after discovery of the damage. received from the Buyer, with a clear description of the damage, its cause and the time it occurred.
- 15.8. Any right to compensation on the part of the Buyer will lapse if the Buyer does not at all times immediately provide all cooperation that SDF deems necessary to investigate the nature, extent and cause of the damage alleged by the Buyer.
- 15.9. The Buyer indemnifies SDF and will hold SDF harmless against all claims of third parties (including clients of the Buyer where SDF acts as a subcontractor) against SDF up to compensation of costs and/or damage, for which SDF is not or would not be liable towards the Buyer on the basis of the General Terms and Conditions or otherwise.

- 15.10. If SDF is liable for damage suffered or to be suffered by the Buyer, notwithstanding the exclusion of SDF's liability, the Buyer can only claim (i) performance or (ii) compensation. If the Buyer demands compliance, its right to compensation will lapse. If the Buyer claims compensation, its right to performance will lapse.
- 15.11. The Buyer is not authorized to set off any claims for damages against SDF against any payment obligation towards SDF.
- 15.12. Affiliated parties and (legal) persons who perform work for SDF, on the basis of an employment relationship with SDF, a contract for services or otherwise, can also invoke this Article 15 towards the Buyer for the limitation of their liability (cf. Article 2.2) .

#### **Article 16. Suspension and Dissolution**

- 16.1. If an Agreement cannot be performed due to force majeure, SDF has the right to either suspend the performance of the Agreement with immediate effect (including suspending the use of Software by the Buyer), or to dissolve the Agreement in whole or in part, without that SDF will be obliged to pay any compensation. In the event of dissolution, SDF is authorized, but not obliged, to take back the Goods or the Service delivered to the Buyer.
- 16.2. Both in the event of suspension and in the event of dissolution pursuant to Article 16.1, SDF has the right to immediate payment of the raw materials, materials, parts and other Goods reserved, processed and/or manufactured by it for the performance of the Agreement, for the values to be reasonably assigned to it by SDF. In the event of dissolution pursuant to Article 16.1, the Buyer is obliged, after payment of the amount due under the previous sentence, to take possession of the Goods referred to therein within a reasonable period set by SDF, failing which SDF is authorized to dispose of these Goods at its own discretion. store it or have it stored or sell it at the expense and risk of the Buyer.
- 16.3. If the Buyer does not, does not properly or does not timely comply with any obligation arising for it from the Agreement or a related agreement, or if there are good grounds for fearing that the Buyer is or will not be able to fulfill its contractual obligations towards SDF, as well as if there is bankruptcy, suspension of payments, prejudgment or execution of a substantial part of the assets on the part of the Buyer, cessation, liquidation or full or partial transfer - whether or not as security - of the company of the Buyer, including the transfer of an important part of its claims, SDF has the right, without notice of default, to immediately suspend the performance of each of these agreements (including suspending the use of Software by the Buyer), either to dissolve it in whole or in part, without any compensation or warranty will be held and without prejudice to its further rights. Furthermore, in the aforementioned cases, SDF is entitled to cancel an order in whole or in part without notice of default or judicial intervention and to reclaim the unpaid part of the delivered goods. Cancellation and return do not affect SDF's right to compensation. In these cases, any claim of SDF against the Buyer will be immediately due and payable in full.
- 16.4. In the event of suspension pursuant to Article 16.3, the agreed price becomes immediately due and payable, after deduction of the installments already paid, and SDF is authorized to use the raw materials, materials, parts to store or have stored other goods at the expense and risk of the Buyer. In the event of dissolution pursuant to Article 16.3, the agreed price - if no prior suspension has taken place - becomes immediately due and payable, after deduction of the installments already paid, and the Buyer is obliged to pay the amount described above and to take back the Goods included therein. , failing which the SDF is authorized to store these Goods at the expense and risk of the Buyer or to have them stored or to sell them at the Buyer's expense.
- 16.5. The Buyer is not entitled to suspend its obligations towards SDF. The Buyer is not entitled to dissolve, destroy or change an Agreement in whole or in part pursuant to art. 6:230 paragraph 2 of the Dutch Civil Code), or to dissolve it in whole or in part on the basis of unforeseen circumstances pursuant to Art. 6:258 Civil Code.

#### **Article 17. Confidentiality**

- 17.1. The Buyer is obliged to keep all information obtained directly and indirectly from SDF confidential and thus, without the prior written consent to the contrary from SDF, not to disclose and/or allow third parties to use it, and to use that information only for the purpose for which the information has been made available. This information includes offers, drawings, calculations, software, descriptions and models provided by SDF.
- 17.2. If the Buyer violates the foregoing provision, SDF will suffer damage as a result, which the Buyer must compensate. The amount of damage for each violation is determined in advance at an amount of EUR 15,000.00 per separate violation, without prejudice to SDF's right to claim compensation for further damage that exceeds that predetermined amount. These claims for compensation of damage are immediately due and payable, without prior notice of default from SDF being required.
- 17.3 SDF respects the personal data of the Buyer and the other parties involved and ensures that these are treated confidentially. Where necessary, SDF has taken technical and organizational measures to properly protect such data and asks third parties engaged by it to do the same.

- 17.4 SDF collects, stores, uses and shares information obtained from the Buyer and the other parties involved exclusively in the context of the performance of the Agreement and/or the preparation of offers/quotations, including the collection of invoices as well as the fulfilment of its own legal obligations. After completion of the assignment/termination of the Agreement, this information will be destroyed by SDF or returned to the Buyer, unless a retention period applies or if this is desirable with a view to subsequent assignments. (SDF will make a choice between the two). Contact information will – if permission has been given – also be used to send newsletters and offers from SDF. By providing information to SDF, the Buyer and the other parties involved agree to this.
- 17.5 Requests for inspection, correction, limitation, transfer or deletion of personal data can be sent to info@sdf.nl. The applicant receives a subsequent message from SDF. There may be circumstances under which SDF cannot (fully) implement a request, for example because it is bound by a duty of confidentiality, or is bound by professional rules or statutory retention periods.

#### **Article 18. Duty of notification and Correspondence**

- 18.1. The Buyer has a duty of disclosure towards SDF with regard to all information (in the broadest sense of the word) of which the Buyer knows, should know or should have known that this information could be of importance to SDF in any way.
- 18.2. In its correspondence with SDF, the Buyer must use the postal and e-mail addresses designated for this purpose by SDF. If the Buyer uses another SDF address and SDF, or at least the SDF Employee who should have taken cognizance of the relevant correspondence, does not (in time) take cognizance of the relevant correspondence, that correspondence shall be regarded as not sent and not received, if SDF opts for this.

#### **Article 19. Limitation**

- 19.1. The Buyer's rights of action shall lapse no later than one year after.

#### **Article 20. No legal processing**

- 20.1. The exercise of its rights by SDF and the time and/or order in which SDF does so is at the discretion of SDF. The non-exercise of rights by SDF can never be interpreted as a waiver or processing of rights.

#### **Article 21. Disputes**

- 21.1. Contrary to the legal rules for the jurisdiction of the civil court, any possible dispute between SDF and the Buyer, subject to the mandatory jurisdiction of another court, will be settled in the first instance by the competent sector of the court in Rotterdam, location Rotterdam. However, the SDF remains authorized to summon the Buyer before the competent court according to the law or the applicable international treaty.

#### **Article 22. Applicable law**

- 22.1. The offers and/or agreements to which these General Terms and Conditions apply in whole or in part are governed by Dutch law, unless the Parties have agreed otherwise in writing. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

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