

## Terms and Conditions for the Delivery of potted plants from Danish nurseries *'Terms of Trade of the Flora Dania'*

### **1. Commencement and validity**

These Terms and Conditions including Appendices 1 to 9 come into force on 1 January 2013 and replace the previous applicable version of same and are valid for all sales companies and growers which are members of the association.

The Terms and Conditions have been adopted by the trade association Flora Dania (previously *DANSKE PRYDPLANTER (TRADE ASSOCIATION DANISH ORNAMENTALS)*) and are applicable for all trade in potted plants and young plants in Denmark, both in connection with transactions between sales companies and growers as well as in connection with mutual transactions between growers and sales companies in cases where just one of the parties is a member of Flora Dania. These Terms and Conditions also apply to purchases/sales via the DANPOT system and supplement the rules on trading on DANPOT, which are available at [www.danpot.dk](http://www.danpot.dk).

In accordance with Article 3 of the Articles of Association, members of Flora Dania are obliged to respect these Terms and Conditions. These Terms and Conditions do not, however, apply to auction sales.

In accordance with Clause 13 of these Terms and Conditions, Appendix 1 lays down specific rules on trade in young plants and cuttings.

These Terms and Conditions with Appendices 1 to 9 can be derogated from only by separate written agreement between the parties signed by both the seller and the buyer.

### **2. Definitions**

Where the following concepts are used, they are deemed to have the following meaning:

Delivery instructions:

Delivery instructions mean a message sent from the buyer to the seller containing information about the time and place of the seller's delivery of the product.

DANPOT:

DANPOT means the IT-based supply and purchasing system operated by DANPOT DATA A/S.

Net price:

Net price is the price of the product exclusive of packaging and variable amounts charged for labels, bags and other variable costs, if any. See Appendix 2 for further information on coming into force and further definitions.

### **3. Quotations**

Oral, written or electronic quotations from the seller to the buyer concerning products are deemed to be non-binding quotations even though quantity, price etc. are stated.

If the buyer wishes to buy the products offered by the seller, the buyer must make a purchase offer, which, as a minimum, must contain the following information:

- Generic name, species name and variety name, if any ('product name').
- Product description (including quality requirements, volume, development stage, if relevant, and packaging).
- Quantity in number of packages and items per package.
- Date of delivery and place of delivery.
- *Price per item.*
- Time limit for acceptance of the purchase offer.

#### **4. 'Day-to-day' orders**

When an oral, written or electronic purchase offer is accepted by the seller in compliance with the rules before expiry of the time limit for acceptance, an order exists and thus a binding agreement. A written purchase offer must be accepted in writing, just as an electronic purchase offer must be accepted by way of an electronic indication of acceptance. Orders entered into are legally binding on both parties.

#### **5. Orders for later delivery (sales agreement)**

If the seller has confirmed an offer from a buyer in writing or by electronic means concerning products for later delivery, a 'sales agreement' has been concluded and both parties are legally bound by this agreement. To be legally binding on the parties, the sales agreement must as a minimum contain the elements appearing from the 'Standard Sales Agreement' form shown in Appendix 3. The sales agreement may be in writing or in electronic form.

Both parties are deemed to have performed a sales agreement if a minimum of 90% of the agreed quantity has been delivered/bought. If one of the parties breaches the agreement in respect of the agreed quantity, the other party may make covering purchases or covering sales, respectively, and the party in breach is obliged to compensate the other party for its losses.

#### **6. Delivery note/invoice and labelling of products**

If requested by the buyer, lots must upon delivery be accompanied by a delivery note or an invoice containing information about the lot, as stated in Clauses 3 and 5. Unless otherwise indicated by the buyer, each package must be marked in accordance with applicable labelling provisions (issued by the Danish Agrifish Agency (previously the Danish Plant Directorate) and as set out in the Danish Plant Varieties Act (*Plantenyhedsloven*)), including container front labels (*gavletiketter*).

## **7. Delivery, passing of risk and consequences of delayed delivery**

The product is deemed to have been delivered at the time when it is delivered to the buyer's warehouse or to the agreed place of delivery. If it has been agreed that the product is to be delivered to another place – for example 'ex nursery' – the product is deemed to have been delivered when it is placed at the buyer's disposal or has been handed over to the buyer's carrier. The seller bears the risk of the loss of the product – including accidental loss – until the time when the product is delivered.

Appendix 4 shows the 'Penalty system in the event of delayed delivery' agreed between the parties.

## **8. Force majeure**

In accordance with these Terms and Conditions, neither the seller nor the buyer can be held liable for any consequences of force majeure. A force majeure situation may be invoked as a justified reason for a delay, but only for the number of working days corresponding to the duration of the force majeure situation. If a time limit is postponed as a result of force majeure, any payments incidental thereto will be postponed accordingly.

A party may invoke force majeure only if that party has notified the other party thereof in writing within 24 hours of the force majeure situation having occurred. The party who is not affected by the force majeure situation is entitled to cancel the agreement if the agreed date of delivery is exceeded by more than 2 working days as a result of force majeure. In the event of such cancellation, a party cannot enforce any claims against the other party.

## **9. Containers**

If nothing else has been agreed separately, all products must be delivered on containers for use for flower transport approved by Container Centralen A/S. Both the seller and the buyer are obliged to have a sufficient number of containers at their disposal to ensure, as a principal rule, that containers, shelves, corner posts and corner post extensions can be exchanged in the ratio of 1:1 in connection with deliveries.

If this is not the case, the party not exchanging such containers and accessories will be debited rent per day, corresponding to the applicable daily rent charged by Container Centralen A/S. In addition, reference is made to Appendix 5 concerning currently applicable administrative rules on container management etc.

Unless otherwise separately agreed in connection with the individual order, the contractual terms in force at any time under the agreement mentioned above apply between the parties in relation to the exchange etc. of containers and accessories therefor.

## **10. Non-conformities and complaints**

Complaints are processed in accordance with the applicable rules set out in Appendix 6, 'Documentation of transport conditions' and Appendix 7 'Complaints supplement'.

### **11. Expert appraisal**

In the event of disagreement between the seller and the buyer regarding the quality and grading of the product, the parties may arrange to have a plant expert prepare an independent report ('expert opinion') to preserve the evidence. In such case, the parties are obliged to respect the contents and conclusion of such report. Appendix 8 contains a list of the plant experts jointly approved by the parties for performing expert appraisals.

### **12. Payment**

The terms of payment are agreed individually between the seller and the buyer. In the event of non-compliance with the terms of payment, the seller is entitled to charge interest at a rate of 2.0% per month or part thereof after the due date. The seller is obliged to state a bank account number to which electronic payment can be made. A party is not entitled to set off any receivables due from the other party, unless the parties have made a written agreement on credit terms which allow for such set-off.

### **13. Special rules on trade in young plants and cuttings**

As a general rule, these Terms and Conditions also apply to all trade in young plants, cuttings etc. However, the special rules set out in Appendix 1 apply in respect of the Danish Plant Varieties Act and the deadlines for submission of complaints regarding 'rooted young plants' and 'unrooted cuttings'.

### **14. Product liability**

If a product delivered by the seller causes damage to commercial property, the seller is liable only to the extent that it can be established that the damage is attributable to errors or omissions on the part of the seller or on the part of other parties for whom the seller is responsible. The liability for property damage under this clause is limited to DKK 50,000,000.

The liability for products which include products delivered by the buyer and for products grown by the buyer which include products delivered by the seller is, however, limited to DKK 2,000,000.

The seller will under no circumstances be liable for operating loss, time consumption, loss of profit or other indirect losses suffered by the buyer or a third party. For members of Flora Dania with joint owners, it has been agreed that product liability imposed on one member by another member may be claimed only if the joint ownership is less than 50%, which factor is taken into consideration in the insurance policy.

The seller disclaims any and all liability for any pollution damage caused by the seller's products in the USA and/or Canada.

If the seller incurs product liability in relation to a third party as a result of products delivered to the buyer, the buyer is obliged to indemnify the seller to such an extent as the seller has limited its liability in the paragraphs above.

The members of Flora Dania have taken out collective product liability insurance. The insurance terms and conditions applicable at the time of the adoption of these Terms and Conditions are shown in Appendix 9.

### **15. Disputes**

In the event of disputes between the seller and the buyer, including in relation to the understanding and interpretation of these Terms and Conditions, Danish law applies in its entirety, with the exception of Danish private international law and international procedural law. The buyer's home court is the agreed venue for all disputes arising out of the present Terms and Conditions.

### **16. Adoption and publication**

These Terms and Conditions have been adopted by Flora Danias extraordinary general assembly on 7 November 2012.

The Terms and Conditions were published on 31 December 2012 by distribution to all members of GAU, all members of Flora Dania as well as all known sales companies which are not members of Flora Dania.

Information regarding the new terms of trade of the trade association Flora Dania, which have the objective of improving quality and transport conditions, can also be found at [www.danpot.dk](http://www.danpot.dk) and [www.floradania-org.dk](http://www.floradania-org.dk).

Appendix 1 (Clause 1): Special terms and conditions of trade in young plants

Appendix 2 (Clause 2): Transition to net prices

Appendix 3 (Clause 5): Standard Sales Agreement

Appendix 4 (Clause 7): Possible penalties in the event of delayed delivery

Appendix 5 (Clause 9): Container agreement

Appendix 6 (Clause 10): Documentation of transport conditions

Appendix 7 (Clause 10): Rules regarding the practical handling of complaints as well as complaints form

Appendix 8 (Clause 11): List of approved experts

Appendix 9 (Clause 14): Product liability insurance