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## Conditions:

1. All our offers and agreements are subject to the general terms and conditions of the Dutch Potting Soil and Substrate Manufacturers Association with its registered office in 's-Gravenzande (Westland municipality) and filed the general terms and conditions version 2014 of 21st November 2014 under number 56/2014.
2. A copy of these terms and conditions are attached to this offer.
3. When placing an order or accepting this offer, you agree to the terms and conditions as described.
4. Other terms and conditions are expressly rejected.
5. Any charges/cases pertaining to random pull, customs flag, Vacis examination, inspection due to US customs and Border Protection (CBP) or Canada customs is completely on account of consignee at USA/Canada.
6. These prices are calculated accurately as per today's freight and market situation. In case of any contingency we reserve the right to discuss/review the price.

## General Terms and Conditions Dutch Potting Soil and Substrate Manufacturers Association (De Vereniging van Potgrond- en Substraatfabrikanten Nederland) (VPN-Terms and Conditions 2014)

The Vereniging van Potgrond- en Substraatfabrikanten, with its registered office in 's-Gravenzande (Westland municipality), has filed the general terms and conditions version 2014 of 21st November 2014, at the Clerk of the District Court's office in The Hague on 21<sup>st</sup> November 2014 under number 56/2014. The general terms and conditions were also filed at the Chamber of Commerce under C of C number 40397216.

### ARTICLE 1 – GENERAL

**1.1** "Substrate manufacturer" in these General Terms and Conditions shall refer to the members of the Dutch Potting Soil and Substrate Manufacturers Association. (Whether a Substrate Manufacturer is a member of this association can be confirmed by the association free of charge.) The association has its registered office in 's-Gravenzande (Westland municipality) and is registered in the Trade Register under no. 40397216.

**1.2** "Other party" in these General Terms and Conditions shall refer to the party the Substrate Manufacturer enters into a legal relationship with.

**1.3** "Order" in these General Terms and Conditions shall refer to the fact that an other party orders delivery of substrate or other products and services, including any advice, either free of charge or not, after having requested a quotation.

**1.4** "General Terms and Conditions" shall refer to the most recent and filed General terms and Conditions of the Dutch Potting Soil and Substrate Manufacturers Association with its registered office in 's-Gravenzande (Westland municipality).

### ARTICLE 2 – GENERAL/ APPLICATION

**2.1** Applicability of the General Terms and Conditions of the other party or other terms and conditions is specifically declined.

**2.2** These General terms and Conditions shall apply to all legal relationships in which the Substrate Manufacturer acts as (potential) seller and/or supplier of goods and/or services. The Substrate Manufacturer mainly focuses on the sale of potting soil and substrates. Nevertheless these General terms and Conditions are also part of every legal relationship entirely or partially concerning the provision of services by the Substrate Manufacturer.

**2.3** These General Terms and Conditions may only be departed from, if such is established in writing by both parties or confirmed in writing by the Substrate Manufacturer.

### ARTICLE 3 – ESTABLISHMENT OF THE AGREEMENT

If the other party places an order, the agreement shall only be established by the Substrate Manufacturer's written acceptance or his unmistakable starting to fill the order.

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## **ARTICLE 4 – SUPPLEMENT TO THE AGREEMENT**

If the other party wishes to make changes to what has been agreed - which may be requested in writing exclusively - the Substrate

Manufacturer shall only be obliged to cooperate in that, if such is reasonably feasible and the other party shall be obliged to take on the additional costs resulting from that change.

## **ARTICLE 5 – PRICES**

**5.1** All prices shall be ex warehouse - except if agreed otherwise in writing - or if that applies, ex depot. All prices are excluding VAT.

**5.2** Future changes in costs of labor, transport, raw materials and/or exchange rates movements with regard to the agreed performance which are not already known at the time an agreement is concluded, shall give the Substrate Manufacturer the right to charge these on automatically. Charging on within three months after conclusion of the agreement shall give the other party the right to terminate the agreement for that reason by notifying the Substrate Manufacturer in writing.

## **ARTICLE 6 - DELIVERY / DELIVERY TIME**

**6.1** Delivery times agreed with the Substrate Manufacturer shall apply as an indication and not as a final deadline. If delivery does

not take place in time, the Substrate Manufacturer must be declared in default in writing by the other party therefore.

**6.2** Delivery shall take place - except if otherwise agreed in writing - ex warehouse or if applicable, ex depot.

**6.3** The Substrate Manufacturer shall determine the mode of transport and the insurance during the transport, both of which are charged on to the other party. Transportation shall take place at the other party's risk.

**6.4** The Substrate Manufacturer shall be entitled to comply with the performance(s) owed by him in parts, unless this is specifically in breach of written agreements with the other party.

## **ARTICLE 7 – PAYMENT**

**7.1** The Substrate Manufacturer's invoices must be paid before the due date stated on the invoice in the way specified by the Substrate Manufacturer. Payment must take place effectively in the agreed currency. The other party shall not be allowed to deduct any amount from the invoices to be paid on account of a counter claim brought by the other party. The other party shall also not be allowed to suspend the compliance with its payment obligation in the event of a complaint by them to the Substrate Manufacturer about the products supplied, unless the Substrate Manufacturer expressly agrees with suspension in exchange for a provision of security.

**7.2** In the event of an overdue payment, all payment obligations of the other party shall be due at once, regardless whether the Substrate Manufacturer already sent an invoice in this matter. The Substrate Manufacturer shall inform the other party in writing, in the event the Substrate Manufacturer relies on this provision, and shall send an appropriate invoice. In that case, the Substrate Manufacturer shall be entitled for instance to suspension of his delivery obligation and/or may require sufficient security as referred to in Article 9 of these General Terms and Conditions or has the right to terminate - partially or not - the agreement, as referred to Article 12 of these General Terms and Conditions.

**7.3** In the event of overdue payment, the other party shall owe interest in the amount of the legal commercial interest. **7.4** If the other party does not or not timely comply with any of their obligations, all costs of obtaining settlement out of court, including the costs of drawing up and sending notices, making a settlement proposal and making inquiries, shall be for the account of the other party, apart from the price and costs agreed. Extrajudicial costs shall be calculated according to the graduated scale of the Compensation of Extrajudicial Collection Costs Decree. If the Substrate Manufacturer can prove having made higher costs, these shall qualify for compensation.

**7.5** if for any reason, the Substrate Manufacturer is held to account by the other party and the Substrate Manufacturer as a result feels required to call in an expert to establish the facts on which the other party bases its claim, the other party shall be held to compensate for the costs charged to the Substrate Manufacturer by this expert if and in as far as the claim or claims of the other party, whether or not after reference to the General Terms and Conditions, turn(s) out to have been

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unjustified, in order to prevent a potential lawsuit. After conclusion of the investigation by the expert, the other party shall have 7 days to submit any claims.

**7.6** Payments by or because of the other party shall be for the extrajudicial collection costs owed by them, the legal costs and the interests owed by them in that order and then for the outstanding principal sums by order of age, regardless of other instructions by the other party.

**7.7** The other party shall only be able to object to the invoice in writing within 14 days of the invoice date.

## **ARTICLE 8 – RETENTION AND PLEDGE OF TITLE**

**8.1** The Substrate Manufacturer shall retain the ownership of all goods delivered or to be delivered until full payment of: a. All performances owed by the other party for goods delivered or to be delivered under agreement as well as work performed or to be performed under such agreement; b. All claims because of failure of the other party to comply with such agreement(s). The other party shall not be allowed to claim the right of retention as regards the storage costs and to offset these costs against the performances owed by them.

**8.2** If the Substrate Manufacturer is entitled to any good or goods pursuant to paragraph 1, the other party shall only be able to dispose of it as part of its normal business operations.

**8.3** If the other party is in default as regards the performances as referred to in paragraph 1, the Substrate Manufacturer shall be entitled to retrieve the goods belonging to him from the place where they are kept or to have them retrieved, for the account of the other party. The other party shall irrevocably authorize the Substrate Manufacturer already now to access space at or in use by the other party or to have them accessed for that purpose in that case.

**8.4** The other party hereby commits to pledging to the Substrate Manufacturer upon his first request to that end and who will then accept this pledge in that case, all goods of which the other party shall be (co-)owner by specification, investigation, mixing/blending with the goods delivered or to be delivered by the Substrate Manufacturer, as well as all claims the other party will have on their customers as a result of resale by the other party to their customers of goods that were sold and delivered to the other party by the Substrate Manager as security for everything the Substrate Manufacturer has to or will claim from the other party at some point in time. The other party shall sign a pledge deed drawn up by the Substrate Manufacturer at the first request. The other party has further irrevocably authorized the Substrate Manufacturer by the applicability of these General Terms and Conditions and with the right of substitution, to pledge those goods and claims as referred to before in this Article to himself in behalf of the other party, repeatedly if necessary, and to do everything that is required for the pledging.

## **ARTICLE 9 – SECURITY**

**9.1** By these General Terms and Conditions becoming effective, the other party has bound himself to the Substrate Manufacturer to provide (additional) security for all existing and future claims of the Substrate Manufacturer against the other party for whatever reason, at the first request of the Substrate Manufacturer, to the satisfaction of the Substrate Manufacturer. This should always be such, and be replaced and/or replenished for that purpose if necessary to the satisfaction of the Substrate Manufacturer, that the Substrate Manufacturer continuously has adequate and sufficient security. As long as the other party has not fulfilled its obligations, the Substrate Manufacturer is entitled to suspend the compliance of his obligations.

**9.2** If the other party does not comply with a request as referred to in paragraph 1 within 14 days of a written notice to that end, all their obligations become due and payable instantly.

## **ARTICLE 10 - COMPLAINTS, INVESTIGATION OBLIGATION, LIMITATION AND COMPLIANCE**

**10.1** The other party is obliged to investigate upon delivery and no later than 24 hours after delivery (randomly if not possible otherwise) whether the delivery meets the agreement, i.e.:

- whether the right goods have been delivered;
- whether the goods delivered meet the agreement in terms of quantity (e.g. number and amount);
- whether the goods delivered meet the agreed quality standards or
- if these are missing - the requirements for normal use and/or commercial purposes;

If this is not the case and the other party does not give notice of this in writing within eight days to the Substrate Manufacturer, the other party shall lose all rights with regard to the failure to comply in connection with the delivery not

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meeting the terms of the agreement. If the Substrate Manufacturer does not receive written notice within eight days that the delivery does not meet the terms of the agreement, it shall then be considered proven between the parties that the delivery meets the terms of the agreement.

**10.2** Claims and defences, based on facts and/or statements meaning that the delivery does not meet the agreement, shall be barred by lapse of one year after the moment of delivery. Rights of claim of the other party shall lapse 18 months after the moment of delivery.

**10.3** If the delivery does not meet the agreement, the Substrate Manufacturer shall be able to choose to be held to only deliver the missing goods, repair or replacement of the delivered good or goods.

**10.4** The provision in the article shall equally apply to the performance of services, on the understanding that the one day term after delivery referred to in paragraph 1 refers to one month after delivery if services are concerned.

## **ARTICLE 11 - NUMBERS, MEASURES, WEIGHTS FURTHER INFORMATION**

**11.1** Slight differences with regard to the listed measures, weights, numbers, colors and other such information do not count as shortcomings.

**11.2** There is a slight difference in case of a margin of max. 10% more or less than the specification indicated. Samples produced or provided only serve as an indication.

**11.3** Samples produced or provided only serve as an indication, without a good subject to a sales or service agreement having to meet that.

**11.4** The substrates to be delivered shall meet the quality requirements or standards of Dutch legislation and regulations. In as far as the goods supplied in the Netherlands will be used outside the Netherlands, the other party shall be responsible for the substrates to be delivered having to meet the quality requirements or standards of the country concerned, unless agreed otherwise. Specific notification by the other party also must be given of all other quality requirements of the other party for the goods to be delivered and which differ from the normal requirements, when the sales agreement is concluded.

## **ARTICLE 12 - NON-COMPLIANCE**

**12.1** The claims of the Substrate Manufacturer against the other party are due instantly if: - circumstances which have come to the knowledge of the Substrate Manufacturer after the agreement was concluded present good grounds to fear that the other party will not fulfil its obligations; - the Substrate Manufacturer has requested the other party to provide security for the compliance and this security remains forthcoming or is insufficient. In the cases referred to, the Substrate Manufacturer shall be authorized to suspend further execution of the agreement or to terminate the agreement, all this subject to the right to claim damages.

**12.2** If there are circumstances with regard to people and/or equipment which the Substrate Manufacturer uses or usually uses when executing the agreement, which are then of such nature that the execution of the agreement becomes impossible or thus problematic and/or disproportionately costly that compliance with the obligation under the agreement can no longer reasonably be required, the Substrate Manufacturer shall be entitled to terminate the agreement.

**12.3** Force majeure refers to circumstances preventing compliance with the agreement and which shall not be attributable to the Substrate Manufacturer. Included are (if and in as far as these circumstances make compliance impossible or unreasonably interfere with it): fire, strikes in other companies than those of the Substrate Manufacturer, wildcat strikes or political strikes in the company of the Substrate Manufacturer; a general lack of required raw materials and other goods or services required for the agreed performance; any quality problems at the Substrate Manufacturer or supplier of the Substrate Manufacturer, unforeseeable stagnation at the suppliers or other third parties on which the Substrate Manufacturer relies and general transportation problems.

**12.4** The Substrate Manufacturer shall also have the right to invoke force majeure, if the circumstance which prevents (further) compliance, occurs after the Substrate Manufacturer should have complied with the agreement.

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**12.5** The obligation of delivery and other obligations of the Substrate Manufacturer shall be suspended during situations of force majeure. If the period in which compliance with the obligations by the Substrate Manufacturer is not possible longer than 48 hours due to force majeure, both parties shall be entitled to terminate the agreement without mandatory damage compensation in that case.

**12.6** If the Substrate Manufacturer already partially fulfilled his obligations at the occurrence of the force majeure or is only able to fulfil his obligations partially, he shall be entitled to separately invoice what has already been delivered or the deliverable part and the other party shall be obliged to pay this invoice as if a separate contract was concerned. However, this does not apply if what has already been delivered or the deliverable part has no independent value.

## **ARTICLE 13 – LIABILITY AND COMPENSATION**

**13.1** The Substrate Manufacturer shall make an effort as regards the delivery of the substrate to supply substrate that is free of quantities of organisms harmful to people, animals or plants.

**13.2** The Substrate Manufacturer shall only be liable for damage due to his intent or gross negligence for the delivery of products and services as described for instance in Article 1.3.

**13.3** The Substrate Manufacturer shall never be held to compensate for damage other than to people or goods.

**13.4** If, according to the above, there is liability, this liability shall be limited at all times to at most the connected invoice amount payable by the other party for that legal relationship concerned, or in as far as this would be unreasonable, to at most the amount made available as compensation for damage by the insurance company of the Substrate Manufacturer.

**13.5** The Substrate Manufacturer shall insist on all legal and contractual means of defence which he can invoke to resist his own liability against the other party, also for the benefit of his subordinates and the non-subordinates.

## **ARTICLE 14 - APPLICABLE LAW AND COMPETENT COURT**

**14.1** Dutch law shall apply to all legal relationships, both nationally and internationally, between the Substrate Manufacturer and the other party. The applicability of the Vienna Convention on the International Sale of Goods of 1980 (CISG) shall be excluded.

**14.2** Contrary to all non-mandatory legal provisions applicable to the legal relationship between the Substrate Manufacturer and the other party, all disputes between the Substrate Manufacturer and the other party shall be presented to a Dutch judicial authority with subject matter jurisdiction, with the exclusion of other courts. Contrary to all non-mandatory legal provisions between the parties, the court in the place of the statutory seat of the Substrate Manufacturer shall have territorial jurisdiction, with the exclusion of all other judicial authorities. The Substrate Manufacturer shall however be entitled to request a different judicial authority with territorial jurisdiction, if he starts a lawsuit as claimant or petitioner.

## **ARTICLE 15 – CONVERSION**

If and in as far as no provision or a part of any provision in these General Terms and Conditions can be invoked due to breach of the applicable law, that provision shall have the meaning which agrees as much as possible in terms of content and purport with what the intention was when the (partial) provision concerned was drawn up, so that the parties will still be able to invoke that.

## **ARTICLE 16 - PREVALENCE OF DUTCH TEXT**

These General Terms and Conditions have been drawn up to be used in national and international agreements. In that context, these General Terms and Conditions will also be translated from Dutch into other languages. If the parties have a difference of opinion about the explanation of a non-Dutch version of these General Terms and Conditions, the Dutch text of these

General Sales Terms and Conditions shall prevail over a translation or translations of them.

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