

GENERAL SALES AND DELIVERY TERMS AND CONDITIONS

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LUDVIG SVENSSON B.V.
Marconiweg 2
3225 LV Hellevoetsluis

hereinafter referred to as: "Svensson"

Article 1. General

1.1. These terms and conditions apply to any (legal) act of Svensson with regard to the delivery of goods and/or the supply of services by Svensson to a buyer, insofar the parties have not expressly deviated from these terms and conditions in writing.

1.2. In the case of conflict between this version of the terms and conditions and the Dutch version, the Dutch version shall prevail.

Article 2. Conclusion of Agreements

2.1. All oral and written offers of Svensson shall be free of obligation and revocable.

2.2. Any Information provided regarding the products to be delivered, as obtained from for example models, samples, examples, catalogues, prospectuses, circulars, advertisements and price lists, is purely indicative. Svensson shall not be bound by such information.

2.3. An agreement with a buyer shall exist only if concluded in writing, unless the agreement is confirmed in writing by Svensson or unless Svensson has started its performance under the agreement. In the latter case the delivery slip/invoice shall be deemed to correctly represent the contents of the delivery. The buyer declares beforehand that he agrees with the contents of the aforementioned delivery slip/invoice.

Article 3. Delivery

3.1. Insofar as not agreed otherwise in writing, the delivery shall be Free Carrier (FCA) at the Svensson location in Hellevoetsluis, the Netherlands, as per which moment the products shall be at the risk of the buyer. All agreed delivery terms and conditions shall apply in conformity with the most recent version of the ICC Incoterms.

3.2. The buyer is obliged to comply with the national and international laws, rules and regulations applicable to the import and export of products and possible trade restrictions arising therefrom and the buyer shall ensure that the delivery by Svensson to buyer shall comply with such laws, rules and regulations.

Article 4. Ownership and Security

4.1. The products delivered by Svensson shall remain the property of Svensson until the buyer has performed all obligations - in the broadest sense of the word - under all agreements concluded with Svensson. These obligations shall also include obligations/performances arising from the failure of the buyer to fulfil agreements as concluded with Svensson.

4.2. Products delivered by Svensson which, pursuant to paragraph 4.1, fall under the retention of title, may only be resold or processed in the regular course of business.

4.3. If the buyer fails to perform his obligations or if there is a justified suspicion that he will not do so, Svensson shall be entitled to remove the products on which the retention of title rests from the premises of the buyer. The buyer gives Svensson permission in advance to access areas where the products are stored at any time and at any moment.

Article 5. Prices and Payment

5.1. All prices stated in offers of Svensson and in agreements shall be based on the delivery terms set forth in these terms and conditions, and shall be exclusive of VAT, shipment, transportation and any (other) government charges and taxes.

5.2. Unless otherwise agreed upon between the parties in writing, payment of all Svensson's invoices shall be made without any deduction, suspension or settlement within 30 days of the invoice date on a bank account specified by Svensson. The settlement date stated on the bank statements of Svensson shall be decisive and therefore qualifies as the payment date. Bank costs shall be at the buyer's expense.

5.3. Svensson may demand further security or payment in advance at any time should the creditworthiness of the buyer reasonably give rise to do so, failing which Svensson may suspend the performance of the agreement.

5.4. Payments made by the buyer shall at all times first be used to pay all costs and interest owed, and subsequently to pay the due and payable invoices that have been outstanding the longest, even if the buyer states that the payment regards a later invoice.

5.5. Furthermore, the buyer shall be bound to indemnify Svensson for all current and future financial damage suffered by Svensson, caused by late payment. Expenses for (extra-)judicial collection costs shall be fixed at 15% of the total amount due by the buyer. Should the legal expenses incurred by Svensson as a result of a lawsuit exceed this fixed amount, the buyer shall be bound to pay the costs up to that higher amount.

Article 6. Complaints and Warranty

6.1. With due observance of the provisions set forth below, Svensson warrants to the buyer that the products it delivers:

(a) shall, on delivery, be free of visible and invisible defects resulting from faulty materials or workmanship;

(b) comply with the agreement in terms of type, quantity, size and/or weight at the time of delivery;

(c) as far as ground cover is concerned, are resistant to UV-radiation according to ISO 4892-3 cycle 3 (based on QUV testing min 7400 h (cycles of 5 h light exposure UV-A 340 nm 0,83 W/m² at 50°C and 1 h water spray), which corresponds theoretically to a solar irradiation of 800 kLy.;

(d) as far as screens other than screens for ground cover are concerned, shall not become unusable as a result of deterioration due to ultraviolet radiation, which, as far as it regards products manufactured by Svensson or affiliated companies that are intended for outdoor use, shall only be the case if the products concerned have lost more than 60% of their original strength in both directions according to ISO 13934-1;

(e) will shrink by no more than 3% compared to the product measurements on delivery (in connection with possible shrinkage Svensson advises the buyer to order at least 2% extra of a product);

(f) shall, on delivery, be fit for professional use in greenhouses, (open air) horticulture and garden centres, as well as for the purpose for which the products concerned have been manufactured.

6.2. Regarding products that have not been manufactured by Svensson or affiliated companies, Svensson only extends the warranty that it receives from its suppliers and has no other warranty obligations towards the buyer than the warranty obligations extended by the suppliers to Svensson.

6.3. Svensson's liability under the warranties referred to in Article 6.1. or an attributable failure to fulfil an agreement shall be excluded if:

(a) the defect or failure concerns a small deviation in quality, colour, finish, size and weight, that is deemed permissible in the trade, or that is technically unavoidable;

(b) (insofar it regards delivered products that are intended for indoor use) the products concerned have not been installed behind glass, plastic or a similar covering that allows full or partial transmission of ultraviolet radiation, but prevents that the exposure of products to the weather (rain, hail, snow, wind and the like);

(c) the delivered products have not been installed or maintained correctly or have been installed with systems or components which have not been installed or qualified as suitable by Svensson;

(d) the defect or failure is the result of inexpert use by the buyer or his customers, or is the result of use by the buyer or his customers contrary to the instructions provided by Svensson;

(e) the defect or failure has a mechanical cause;

(f) the defect or failure is the result of the use of chemicals in spaces in which the products concerned have been installed;

(g) the defect or failure relates to the ability of the products delivered to keep insects in or out a certain space;

(h) the defect or failure relates to the possibly detrimental effects of coloured light on crops due to the use of coloured screens;

(i) the defect or failure relates to the colour fastness of a screen delivered by Svensson;

(j) the defect or failure is the result of excessive temperatures exceeding the temperature that is usually maintained in professional greenhouses and horticulture in spaces with living plants;

(k) the defect or failure is the result of atmospheric or phytosanitary pollution;

(l) the delivered products are not fit for the use intended by the buyer or his customers and this use does not comply with the use referred to in Article 6.1. sub (f);
(m) the buyer is in default with the performance of any obligation towards Svensson arising from the agreement or previous agreements;
(n) the defect or failure is the result of an act of third parties for which Svensson is not legally liable;
(o) the defect or failure is the result of force majeure on the part of Svensson;

6.4. The buyer must submit complaints and/or claims relating to defects and/or failures to Svensson in writing within one month of delivery in the case of a visible defect or failure and in case of a hidden defect or failure within one month after he has discovered the defect or failure or reasonably should have discovered the same, but in any event within the warranty term stated in Article 6.5., providing full details regarding the nature and the scope of the defect/failure and sending supporting documents, on penalty of forfeiture of the claims of the buyer. The foregoing shall apply notwithstanding the provisions of Section 7:23, subsection 1, of the Dutch Civil Code.

6.5. If the buyer has made a complaint or claim in accordance with the provisions of Article 6.4., the warranties referred to in Article 6.1. shall lapse with an expiry term of five years after delivery insofar as it regards products manufactured by Svensson or affiliated companies that are intended for indoor use, and with an expiry term of three years after delivery insofar as it regards products manufactured by Svensson or affiliated companies that are intended for outdoor use, and with an expiry term of one year after delivery insofar as it regards products that have not been manufactured by Svensson or affiliated companies. Contrary to the foregoing, an expiry term of two years applies to the HARMONY O E (A) FR product in the case of outdoor use.

6.6. If products delivered by Svensson do not comply with the warranties referred to in Article 6.1., Svensson shall exclusively be bound, at its own discretion, either to repair the products concerned, or to replace them with sound products against the prices that apply at the moment that Svensson accepts the buyer's complaint and/or the claim, with the application of a discount proportional to the relation between the length of the period calculated from the date at which Svensson accepts the complaint and/or the claim until the date at which the warranty period for the products concerned pursuant to the provisions set forth in Article 6.5. ends, and the length of the total warranty period. Disassembly and assembly costs shall be at the buyer's expense.

6.7. The obligations arising from the Articles 6.1. up to and including 6.6. shall be the only obligations of Svensson in the event of a failure to fulfil the obligations of an agreement with the buyer due to the noncompliance of the products delivered by Svensson under the warranties referred to in Article 6.1 or non-conformity as meant in Section 7:17 of the Dutch Civil Code. The applicability of Section 7:17 of The Dutch Civil Code is expressly excluded, as far as Section 7:17 of the Dutch Civil Code would provide remedies that do not expressly arise from the provisions of these terms and conditions.

Article 7. Liability

7.1. Svensson shall in no event be liable for damages resulting from an attributable breach of an agreement with the buyer.

7.2. In the event that Svensson would nonetheless be liable due to an attributable breach of an agreement, the total and aggregate liability of Svensson shall be limited to compensation for direct damages up to the net amount invoiced for the products delivered under the agreement with the buyer (exclusive of VAT). Direct damages are exclusively understood as:

(a) reasonable costs the buyer would need to incur in order to have the performance of Svensson comply with the agreement; these alternative damages are, however, not compensated if the agreement is dissolved by or on behalf of the customer;
(b) reasonable costs incurred in order to establish the cause and the scope of the damages, to the extent that the establishment is related to direct damages within the meaning of these terms and conditions;
(c) reasonable damages incurred in order to prevent or limit damages, to the extent that the buyer can prove that these costs lead to limitation of direct damages within the meaning of these terms and conditions.

7.3. Svensson's liability for indirect damages, consequential damages, lost profit, lost savings, reduced goodwill, damages resulting from business interruptions, damages resulting from claims of customers of the buyer, and all other forms of indirect damages for whatever reason is excluded.

7.4. The restrictions set forth in the preceding paragraphs of this article shall expire if and to the extent that the damages are the result of wilful intent or gross negligence on the part of Svensson.

7.5. Svensson shall provide (technical) information and advice regarding the installation of products delivered by Svensson to the best of its abilities. However, the installation of products delivered by Svensson is carried out under the sole responsibility of the buyer. Svensson cannot be held liable by the buyer or its customers for damages resulting from or relating to the information or advice provided by Svensson.

7.6. The buyer shall indemnify and hold Svensson and its directors and employees harmless from and against all claims made by customers of the buyer, on whatever ground, for damages, costs, interest and expenses relating to the performance or any other act of Svensson under an agreement with the buyer.

Article 8. Force Majeure

8.1. Failure of Svensson in the performance of the agreement cannot be attributed to Svensson if these failures are caused by force majeure.

8.2. For the purpose of these terms and conditions, force majeure is defined as any autonomous circumstance beyond the control of Svensson that obstructs the due and proper performance of the agreement, whether temporarily or permanently, and whether in whole or in part. Force majeure shall in any event include, but shall not be limited to, strikes, exclusions, acts of authorities, state of war and siege, danger of war, fire and other business interruptions, (natural) disasters, extreme weather conditions such as tornadoes, storms, lightning strikes and the like, embargoes, riots, terrorist actions or consequences thereof, shortages of raw materials and/or labour required for the delivery of the products, problems in the transportation of the products, and problems in the electronic transmission or receipt of messages and data. Force majeure as defined herein on the part of suppliers or other third parties on which Svensson depends for the delivery of its products, shall also be qualified as force majeure on the part of Svensson.

8.3. Force majeure must be notified by the party invoking the force majeure within 14 days of its occurrence.

8.4. If, on commencement of the force majeure, either on its part or on the buyer's part, Svensson has already performed its obligations in full or in part, or can only perform its obligations in part, Svensson shall be entitled to invoice the delivered or the deliverable part separately, and the buyer shall be bound to pay this invoice as if it regarded a separate agreement. This shall, however, not apply if the already delivered or deliverable part has no independent value.

Article 9. Legal Claims

9.1. Without prejudice to the provisions set forth in Article 6.4, all legal claims of the buyer based on an agreement governed by these terms and conditions, except for any provisions of mandatory law, shall lapse after expiry of a term of one year following the moment on which the claim has arisen.

Article 10. Applicable Law, Settlement of Disputes

10.1. All agreements between Svensson and the buyer shall be governed by the laws of the Netherlands.

10.2. All disputes arising from or in connection with these terms and conditions or agreements governed thereby, shall exclusively be settled by means of arbitration in conformity with the arbitration rules of the Netherlands Arbitration Institute. The arbitration board shall consist of 3 arbitrators that shall rule in compliance with the rules of law. The arbitration procedure shall be conducted in the English language. The place of arbitration shall be Rotterdam (the Netherlands).

10.3. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (1980) is hereby excluded.