

GENERAL TERMS AND CONDITIONS OF SALE (VITALIS'S REF. NO. EX08)

Article 1 – Definitions

1. **Vitalis** shall mean Vitalis Biologische Zaden B.V, having its registered office in Voorst at Hengelderweg 6 and registered at the Chamber of Commerce of Oost Nederland.
2. **Buyer** shall mean the natural or legal person entering into a contract of sale with Vitalis for the purchase of Products.
3. **Parties** shall mean Vitalis and Buyer jointly.
4. **Party** shall mean either Vitalis or Buyer.
5. **Products** shall mean seeds and planting material delivered by Vitalis to the Buyer.
6. **Processing** shall mean the treatment of the Product including, without limitation, the treatment for the improvement of the sowability, germination, plant quality and/or for the prevention of pests and/or diseases.
7. **Price List** shall mean an overview of the selling prices of Products that Vitalis publishes and distributes from time to time. Vitalis retains the right to change those prices at any time.
8. **Incoterms 2000** shall mean the Incoterms 2000 drawn up by the International Chamber of Commerce in Paris (ICC).
9. **Product Specifications** shall mean the information provided in Schedule 1.
10. **Resistance** shall mean the information and terminology provided in Schedule 2.
11. **Naktuinbouw** shall mean the Netherlands Inspection Service for Horticulture having its registered office at Sotaweg 22, Postbus 40 2370 AA Roelofarendsveen, The Netherlands.
12. **Order Confirmation** shall mean written confirmation of acceptance by Vitalis of the purchase order placed by the Buyer.
13. **Offer** shall mean the specific sale conditions offered by Vitalis to a Buyer.

Article 2 – Applicability of These General Terms and Conditions

1. These General Terms and Conditions of Sale shall apply to an 17-Dec-08d form part of all contracts of sale of Products entered into by Vitalis and Buyer unless the Parties deviate explicitly from one or more of these provisions in writing.
2. The applicability of Buyer's general terms and conditions are hereby explicitly excluded.
3. The Product Specifications and Resistance Terminology, which have been attached hereto as Schedule 1 and 2 respectively, form an integral part of these General Terms and Conditions of Sale.
4. Any provision of these General Terms and Conditions of Sale that is considered to be null, void or invalid and therefore is set aside, shall be replaced by a provision that approximates as much as possible the nature and intent of the invalid provision. The invalidity of one of the provisions shall not affect the other provisions agreed by the Parties.

Article 3 – Purchase Order and Order Confirmation

1. Vitalis agrees to sell Product to Buyer at the rates set forth in Vitalis's Price List valid at the time of Buyer's purchase order.
2. Offers made by Vitalis are without commitment and will lapse in any case after five working days.
3. An agreement (hereinafter Agreement) shall be considered to be made between Vitalis and the Buyer upon Order Confirmation or upon acceptance of an Offer. No rights or obligations shall therefore arise between the Parties until the Order Confirmation has been sent or an Offer has been accepted.
4. All purchase orders are subject to seed availability and may be prorated by Vitalis. Buyer shall not be entitled to damages if Vitalis elects to prorate any Buyer's purchase order.
5. Vitalis shall always perform its delivery obligation to the best of its ability. Nevertheless, Vitalis shall be entitled to deviate minimally from the purchase order placed by the Buyer with respect to size, packaging, quantity or weight.
6. When placing an order, Buyer shall report which information, specifications and documents are

required under the rules and regulations of the country of delivery. The Buyer shall be responsible to inform Vitalis of any formalities that must be complied with to enable importation. The Buyer shall also provide Vitalis with information on any required certificates, phytosanitary matters, import documents or invoices.

7. Vitalis cannot be held liable for delays or non-delivery of an order due to Buyer's failure to comply with the abovementioned obligations. The Buyer shall be liable for any loss or damage incurred by Vitalis due to incorrect or late information.

Article 4 – Prices

1. All prices stated by Vitalis in its Price List and/or in an Offer are:
 - in Euros,
 - exclusive of a handling fee of EUR 5, which shall be charged if the value of the Products ordered is less than EUR 25,
 - exclusive of costs of transport and insurance,
 - exclusive of VAT and other government levies.
2. Vitalis shall invoice the Buyer for the costs of Products, plus any other costs such as costs of transport, insurance, VAT, etc.

Article 5 – Cancellation

If a purchase order is cancelled after an Agreement has been made, Buyer shall be required to pay 10% of the invoice price that would have been charged, without prejudice to Vitalis's right to demand compensation in full.

Article 6 – Delivery

1. Vitalis shall deliver the purchased Products to Buyer within a reasonable period of time after Order Confirmation and in accordance with the planting season.
2. Delivery times agreed by the Parties serve as an indication but should not be regarded as firm dates. In the event of late delivery, Buyer shall provide Vitalis with written notice thereof and shall allow Vitalis a further reasonable period of time to deliver the Products. In no event shall Vitalis be liable for damages due to late delivery nor shall Buyer be entitled to end the Agreement made by the Parties.
3. Delivery by Vitalis takes place carriage paid to the agreed destination (CPT) Incoterms 2000, after which the Product shall be for Buyer's own risk and account. Buyer hereby authorizes Vitalis to select the carrier and to charge the cost of transport to Buyer.
4. Vitalis shall be allowed to make partial deliveries and to invoice each delivery separately.

Article 7 – Payment

1. The Buyer shall arrange for payment in Euros within thirty days from the date of invoice by transfer into a bank account specified by Vitalis.
2. The Buyer does not have the right to suspend payment or make deductions or set-offs.
3. If on the thirty-first day after invoice Vitalis has not received payment in full the Buyer shall be in default without any notice being required.
4. In case of payment in installments, the Buyer shall be in default without any notice being required in the event of late payment of any installment and the remaining installments shall become immediately payable.
5. Contractual interest at a rate of one percent per calendar month shall be charged to overdue accounts. The contractual interest due shall be computed over the total invoice amount inclusive of VAT. The contractual interest shall be charged from the date on which the Buyer is in default until the date of payment in full, with part of a calendar month counted as a full month. Each time after expiry of a calendar year the amount on which contractual interest is charged shall be computed increased by the contractual interest due over that calendar year.
6. Vitalis has the right to proceed with extrajudicial collection of overdue accounts without prior notice being required. The Buyer shall pay all costs of extrajudicial collection which are deemed to amount to at least 15% of the amount to be collected with a minimum of EUR 250 ex VAT.
7. Payments made by the Buyer shall first serve to reduce the extrajudicial costs of collection due at that point, then to reduce the outstanding contractual interest and finally to reduce the oldest

outstanding invoice.

8. In the event of the Buyer's bankruptcy, liquidation or suspension of payments, all Buyer's payment obligations shall immediately become payable and Vitalis shall be authorized to suspend any further performance of the Agreement or to terminate it, without prejudice to Vitalis's right to claim damages from the Buyer.
9. Vitalis's office in Voorst shall be regarded as the place of payment for all amounts to be paid in relation to the Agreement.

Article 8 – Complaints

1. Buyer shall inspect the Products upon delivery or as soon as possible thereafter. Buyer shall determine, in accordance with the Order Confirmation, whether:
 - the correct items have been delivered;
 - the correct quantities have been delivered;
 - the items delivered satisfy all quality requirements expressly agreed to in writing by the Parties.
2. Within five working days after delivery, Buyer shall notify Vitalis in writing of any visible defect or shortcomings. In case of non-visible defects, the written notification should be made within five working days after discovery of the defect.
3. The writing notification shall provide the consignment information (seed lot number, the packing slip and the invoice details) as well as the basis for any complaint in such a manner that Vitalis or an outside expert can verify each complaint.
4. In no event shall the Buyer return the Products unless otherwise agreed by Vitalis in writing.
5. If Vitalis does not receive written notice of a complaint within the applicable time periods, Buyer shall be deemed to have accepted the Products and the sale shall be final. All claims for damage or loss not made in writing within the applicable time period shall be deemed waived by Buyer and Buyer expressly assumes and accepts all liability for such damage or loss.
6. If the Parties are unable to resolve a dispute regarding the quality of the Products, either Party may order an inspection to be performed by Naktuinbouw, with the Party proven to be wrong paying the costs of it. The inspection shall be performed on a certified sample and the findings shall be binding on both Parties, without prejudice to their right to submit disputes concerning the consequences of these findings to the bodies referred to in Article 16.
7. If a complaint is well-founded, Vitalis shall have the right to replace the Products in question or, at its discretion, credit the Buyer for that part of the delivery.
8. In any event, Vitalis liability is limited as provided in Article 12 below.

Article 9 – Reservation of Title

1. Vitalis shall retain title to the Products until the Buyer has complied with all its obligations towards Vitalis including but not limited to payment of invoices, contractual interest and extrajudicial costs of collection.
2. The Buyer may use the Products delivered by Vitalis in the ordinary course of business but may not pledge them to third parties or otherwise use them as security for claims without Vitalis's written consent.
3. If the laws of the country where the Products are delivered provide for farther-reaching possibilities to reserve title other than those contained in this Article, such possibilities shall be deemed to have been agreed by the Parties. The provisions contained in paragraph 2 shall continue to apply if it is unclear whether other possibilities to reserve title apply.
4. At the first request of Vitalis, the Buyer shall create a pledge on all proceeds from the growing of the Products and the sale of them.

Article 10 – Force majeure

1. In the event of force majeure and without judicial intervention being required, Vitalis shall be able to wholly or partially suspend execution of the Agreement or, if the event of force majeure

persists, to wholly or partially terminate it. In no event shall Vitalis be required to pay any compensation to the Buyer.

2. Force majeure means: any circumstance that could not be reasonably foreseen and/or influenced by Vitalis and a result of which delivery is impossible or frustrated wholly or partially. Force majeure includes at any rate war, risk of war, riots, floods, water damage, fire, transport difficulties, unforeseen technical complications, breakdowns, strikes at Vitalis or at any third parties engaged by Vitalis, blockades, bans on import and export, full or partial seizure or requisition of stocks at Vitalis or its suppliers by civil or military authorities, lack of transport capacity, non-delivery or late delivery by suppliers of Vitalis, machine breakdowns, destruction and other stagnations in the companies of Vitalis or its suppliers as well as scarcity as a result of which delivery is impossible or frustrated wholly or partially.
3. Force majeure also means any circumstance that gives reason to rely on the harvesting and processing reservations usual in the seed industry. Such circumstances entitle Vitalis to deliver to the Buyer a pro rata volume of the order, without prejudice of the rights provided in the first paragraph of this Article.

Article 11 Product Information, Use and Warranty

1. All illustrations, catalogues and statements provided by or on behalf of Vitalis about quality, composition, weight, measurement, treatment in the broadest sense, applications and properties of the Products correspond as closely as possible to Vitalis's tests and practical experience.
2. Buyer acknowledges that any information provided by Vitalis in relation to the quality (such as viability, germination, mechanical or genetic purity, seed health) and performance of the Products applies only to the tests done by Vitalis, to the specific seed sample used and to the specific conditions under which the tests were done. Buyer agrees that the abovementioned information does not constitute an express or implied warranty.
3. The results obtained by the Buyer will depend on such factors as the place of cultivation, the conditions prior to and during cultivation, including how the Product are stored, the climate, the soil and crop protection methods used by the Buyer. The Buyer shall be solely responsible for determining the suitability and appropriateness of the use of the Products in the different conditions and/or for the different purposes.
4. Vitalis provides all Product information to assist the Buyer and under no circumstances shall Vitalis be liable to Buyer for results deviating from that information. Vitalis shall not be held liable for any information provided in relation to Resistances as defined in Schedule 2 and/or Resistances to diseases indicated per Product.
5. Vitalis shall not be liable to Buyer for any Product that has been treated and/or conditioned and/or manipulated in any other manner by Buyer or by a third party on the Buyer's request.
6. Buyer acknowledges that Products delivered by Vitalis are not fit for human or animal consumption.

Article 12 – Liability

1. Vitalis shall under no circumstances be liable for special, incidental or consequential damages (including but not limited to lost profits, lost goodwill, lost revenue, lost production, lost contracts or lost opportunity).
2. In any case and to the greatest extent permitted by law, Vitalis's liability shall be limited to the invoice amount of the delivered Products related to the problem.
3. Buyer hereby explicitly understands and agrees to this limitation of Vitalis's liability.
4. Article 12 may be also invoked by current or former personnel, directors and any third parties engaged by Vitalis, including heirs and legal successors.

Article 13 – Intellectual Property Rights and Use of the Products

1. Buyer agrees that all intellectual property rights relating to the Products shall at all times be and remain absolutely vested in Vitalis and Buyer shall acquire no rights thereto.
2. Buyer agrees that Vitalis has the exclusive right, title and interest in and to Vitalis's trademarks, trade names and trade dress (including designs and color schemes).

3. Buyer agrees neither to register, nor to have registered, any trademarks, trade names or symbols of Vitalis or those which are confusingly similar to those of Vitalis.
4. Buyer may not use Vitalis's trademark, trade name and/or trade dress for any purpose unless otherwise approved in writing by Vitalis.
5. Buyer shall not use the Products for any other purpose than growing crops for human or animal consumption.
6. Under no circumstances shall Buyer use the Products and/or its components and/or its harvestable material in any way for multiplication and/or reproduction of any kind of material.
7. Buyer agrees to allow and fully cooperate with any inspection by Vitalis for the purpose to verify any possible infringement of Vitalis's rights. Buyer shall allow Vitalis or a person or company appointed by Vitalis to have direct access to Buyer's premises including, but not limited to, its greenhouses, administrative and farming activities. The term "activities" shall be understood to include activities carried out by third parties on behalf of the Buyer.
8. Buyer shall fully cooperate with Vitalis to defend its rights against infringement.
9. Buyer shall ensure that anyone who manipulates or somehow receives Products from Buyer shall comply with the obligations set forth in this article.

Article 14 – Suspension and Dissolution of the Agreement

1. In the event a Party fails to perform any of its obligations under the Agreement and such failure continues for a period of thirty (30) days after written notice, the other Party shall be authorized to suspend any further performance of the Agreement or to terminate it, without prejudice to its right to claim damages.
2. If the Buyer is liquidated, files for bankruptcy or is granted suspension of payments, its payment obligations shall be immediately payable and Vitalis shall be authorized to suspend any further performance of the Agreement or to terminate it, without prejudice to the right to claim full compensation from Buyer.

Article 15 – Applicable Law

These General Terms and Conditions of Sale and all Agreements are governed by Dutch law. The applicability of the Vienna Sales Convention is expressly excluded.

Article 16 – Resolution of Disputes

1. All claims and disputes arising out or relating to the sale of Products or to any provision of these General Terms and Conditions of Sale shall be first referred to mediation to be held in Voorst (The Netherlands).
2. If the Parties fail to resolve the dispute through mediation or in the event that one of the Parties refuse to mediate, the matter shall be decided by binding arbitration to be held in Voorst under the Rules of Arbitration of the International Chamber of Commerce. Vitalis shall however be entitled to summon Buyer at any time to appear before the competent court in the district in which Buyer has its registered office.
3. All rights of action against Vitalis, its employees, directors and members of the Advisory Board ('commisarissen') and/or third parties engaged by it, including heirs and legal successors shall lapse after one calendar year of the occurrence of the incident that gave rise to the action.

Schedule 1 – Product Specifications

1. – Introduction

Vegetable growing has become a highly specialized and intensive activity. As a result of the ever increasing demand for a better quality, vegetable growers and plant raisers require an improved quality of basic material.

The demand for specific seed forms and more information about seed quality has strongly increased to better influence emergence and required number of plants.

Seed is a natural product. The often varying environmental conditions thus influence final results. It is therefore often not possible to give detailed information about seed performance and other seed characteristics.

In order to meet customer's demands, ECS has drawn up quality standards for the various seed categories.

The specifications mentioned are ECS' minimum standards. In relation to germination, the specifications are based on the use of ISTA methods. In the event that the seed does not meet the product specifications mentioned, ECS will inform their customers.

2. – General Definitions

a) 'Normal Seed'

In general normal seed has not been subjected to special processes. It is sold by weight and/or by count, depending on the product. Normal seed complies with the EEC standards.

b) 'Precision'

'Precision' seed has been subjected to additional processes. It is of a uniform size and has high germination capacity. 'Precision' seed is sold by count .

c) 'Priming'

Priming is defined as an activation of the germination process in order to break seed dormancy or obtain a faster or more uniform emergence after sowing. Primed seed is sold by count.

d) 'Pill'

Pill is the product of a seed pelleting/coating procedure. Pelleting is defined as the process of changing the seed form by covering it with filling materials with the main purpose to facilitate easier sowing. Pelleted seed is sold by count.

e) 'Germination'

The germination figure mentioned is valid from the moment of delivery. Germination figures refer to the ISTA procedures.

f) 'Genetic Purity'

Genetic Purity is defined as the percentage of plants derived from a seed lot that meets the variety description.

3. "Organic Seed"

- a) All seeds, delivered by Vitalis are certified organic according EEG regulation 2092/91
- b) The organic certification covers seed production, processing and treatments.
- c) All seeds delivered by Vitalis are not obtained by genetic modification.

4. – Information per crop

Crop	Product	Germination %	Seed Size mm	Genetic Purity
Cauliflower	Precision	90	0.20 or 0.25 round sieve	90
Others Brassica	Precision	90		93
Carrot	Precision	85	0.20 or 0.25 round sieve	
Chicory Witlof	Precision	85	0.20 or 0.25 round sieve	
Corn salad	Precision	85	0.20 or 0.25 round sieve	
Cucumber	Precision	92		99
Red beet monogerm	Precision	80	0.50	
Red beet multigerm	Precision	90	0.50	
Eggplant	Precision	90		98
Endive	Precision	90		
Endive	Pill	92		
Leek OP	Precision	90	0.2 or 0.25 round sieve	
Leek F1	Precision	85		
Butterhead, Batavia, Iceberg, Cos	Precision	93		98
Butterhead, Batavia, Iceberg, Cos	Pill	95		98
Others Lettuce	Precision	93		
Others Lettuce	Pill	95		95
Melon	Precision	90		98
Sweet and hot pepper	Precision	90		97
Radish	Precision	92	0.25 round sieve	
Spinach	Precision	85	0.75	
Squash	Precision	92		97
Tomato	Precision	92		98
Onion	Precision	90	2.00-2.75	

Schedule 2 – Resistance

1. – Terminology and definitions

- a) ‘**Immunity**’ means not subject to attack or infection by a specified pest or pathogen.
- b) ‘**Resistance**’ is the ability of a plant variety to restrict the growth and development of a specified pest or pathogen and/or the damage they cause when compared to susceptible plant varieties under similar environmental conditions and pest or pathogen pressure. Resistant varieties may exhibit some disease symptoms or damage under heavy pest or pathogen pressure.
- *Two levels of resistance are defined:*
 - I. High resistance (HR): plant varieties that highly restrict the growth and development of the specified pest or pathogen under normal pest or pathogen pressure when compared to susceptible varieties. These plant varieties may, however, exhibit some symptoms or damage under heavy pest or pathogen pressure.
 - II. Intermediate resistance (IR): plant varieties that restrict the growth and development of the specified pest or pathogen, but may exhibit a greater range of symptoms or damage compared to highly resistant varieties. Intermediately resistant plant varieties will still show less severe symptoms or damage than susceptible plant varieties when grown under similar environmental conditions and/or pest or pathogen pressure.
- c) ‘**Susceptibility**’ is the inability of a plant variety to restrict the growth and development of a specified pest or pathogen.

2. – Information per variety

Resistances in varieties of our crops will be coded (see coding list at www.biovitalis.eu), unless indicated otherwise. In case a variety is resistant to more than one pathogen, the individual resistance codes will be separated by the symbol ‘/’.

If in a resistance code of a certain variety reference is made to certain strains for which the resistance is claimed this means that no resistance is claimed to other strains of the same pathogen.

If, in a resistance code, no reference is made to strains of the pathogen for which the resistance is claimed, resistance is claimed only to certain not further specified strains of the pathogen and we hereby disclaim any guarantee that the variety will not be infected by the said pathogen.