

# GENERAL TERMS AND CONDITIONS OF DE VERENIGING VAN POTGROND- EN SUBSTRAATFABRIKANTEN NEDERLAND (THE NETHERLANDS ASSOCIATION OF POTTING SOIL AND SUBSTRATE MANUFACTURERS) (VPN TERMS AND CONDITIONS 2022)



De Vereniging van Potgrond- en Substraatfabrikanten Nederland, with its registered office in 's-Gravenzande (municipality of Westland), filed the 2022 version of the General Terms and Conditions on 27 December 2022 at the Registry of the District Court of The Hague under number 2022/37. The General Terms and Conditions have also been filed with the Chamber of Commerce under Chamber of Commerce number 40397216.

## ARTICLE 1 - GENERAL

**1.1** "Substrate Manufacturer" in these General Terms and Conditions means the members of De Vereniging van Potgrond- en Substraatfabrikanten Nederland. (The association can itself confirm free of charge whether a substrate manufacturer is a member of this association) The association has its registered office in 's-Gravenzande (municipality of Westland) and is filed in the Commercial Register under number 40397216.

**1.2** In these General Terms and Conditions, "the Other Party" means the party with whom the Substrate Manufacturer enters into a legal relationship.

**1.3** In these General Terms and Conditions, "Order" means the fact that an Other Party, after requesting a quotation, orders the delivery of substrate or other products and services, including any advice - free of charge or otherwise.

**1.4** "General Terms and Conditions" means the most recent and filed General Terms and Conditions of De Vereniging van Potgrond- en Substraatfabrikanten Nederland, with its registered office in 's-Gravenzande (municipality of Westland).

## ARTICLE 2 - GENERAL / SCOPE

**2.1** The applicability of the General Terms and Conditions used by the Other Party or other conditions is expressly rejected.

**2.2** These General Terms and Conditions apply to all legal relationships in which the Substrate Manufacturer acts as (potential) sellers or suppliers of goods or services. The Substrate Manufacturer mainly focuses on sales of substrates. Nevertheless, these General Terms and Conditions also form part of any legal relationship that relates in whole or in part to services provided by the Substrate Manufacturer.

**2.3** These General Conditions may only be departed from if laid down in writing by both parties or confirmed in writing by the Substrate Manufacturer.

## ARTICLE 3 - CONCLUSION OF THE AGREEMENT

When the Other Party places an Order, the agreement shall not come into effect until the Substrate Manufacturer has accepted it in writing or unmistakably commenced its performance.

## ARTICLE 4 - SUPPLEMENTARY AGREEMENT

If the Other Party wishes to make changes to what has been agreed - which request must be made in writing only - the Substrate Manufacturer will be obliged to cooperate only if doing so is reasonably practicable and subject to the Other Party's obligation to bear the additional costs resulting from the change.

## ARTICLE 5 - PRICES

**5.1** Unless otherwise agreed in writing, all prices are ex-warehouse or where applicable, ex-storage. All prices are exclusive of VAT.

**5.2** The Substrate Manufacturer is automatically entitled to pass on future changes in labour wages, transport costs, cost prices of raw materials or materials or exchange rate changes not already known at the time of concluding an agreement, which relate to the agreed performance. Passing on such charges within three months after the conclusion of the agreement gives the Other Party the right to dissolve the agreement on those grounds by notifying Substrate Manufacturer of this in writing.

## ARTICLE 6 - DELIVERY / DELIVERY TIME

**6.1** Delivery times agreed with the Substrate Manufacturer are indicative and not deadlines. In the event of late delivery, the Other Party must therefore give the Substrate Manufacturer written notice of default.

**6.2** Unless otherwise agreed in writing, delivery shall be ex-warehouse or, if applicable, ex-storage.

**6.3** If the Substrate Manufacturer arranges transport, it will also determine the method of transport and insurance during transport, both of which may be charged separately to the Other Party. Transport is at the Other Party's risk.

**6.4** The Substrate Manufacturer is entitled to meet its contractual obligations in parts unless this is expressly contrary to agreements made in writing with the Other Party.

**6.5** The Other Party is obliged to take delivery of the purchased goods at the time of delivery. If the Other Party refuses to take delivery or fails to provide the information or instructions necessary for delivery, the goods will be stored at the Other Party's risk. The Other Party will be liable for the payment of all additional costs, at least including storage and transport costs.

## ARTICLE 7 - PAYMENT

**7.1** Invoices of the Substrate Manufacturer shall be paid before the due date indicated on the invoice in the manner specified by the Substrate Manufacturer. Payment is to be made in the agreed currency. The Other Party is not entitled to deduct/set off any amounts from the payable invoices on account of an asserted counterclaim. Nor is the Other Party entitled to suspend the fulfillment of its payment obligation if it lodges a complaint with the Substrate Manufacturer regarding the products delivered, unless the Substrate Manufacturer expressly agrees to suspension in exchange for security.

**7.2** In the event of late payment, all payment obligations of the Other Party, regardless of whether the Substrate Manufacturer has al-

ready invoiced them, shall become immediately due and payable. The Substrate Manufacturer shall notify the Other Party in writing if the Substrate Manufacturer invokes this provision and send an appropriate invoice. In that case, the Substrate Manufacturer is entitled, among other things, to suspend its delivery obligation and may require sufficient security as referred to in Article 9 of these General Terms and Conditions or shall have the right to dissolve the agreement - in part or otherwise - as referred to in Article 13 of these General Terms and Conditions.

**7.3** In the event of late payment, the Other Party shall be liable for interest in the amount of the statutory commercial interest rate.

**7.4** If the Other Party fails to fulfil one of its obligations or fails to do so on time, in addition to the agreed price and costs, all extrajudicial collection costs shall be borne by the Other Party, which also includes the costs of preparing and sending reminders, making a settlement proposal and gathering information. The extrajudicial costs are calculated according to the scale of extrajudicial collection costs scale (Buitengerechtelijke incassokosten, BIK). If the Substrate Manufacturer proves to have incurred higher costs, these are also eligible for reimbursement.

**7.5** To avoid the need for legal proceedings, if the Substrate Manufacturer is held accountable by the Other Party on any grounds whatsoever and the Substrate Manufacturer is thus forced to engage an expert to establish the facts on which the Other Party bases its claim, the Other Party shall be obliged to reimburse the Substrate Manufacturer for the costs charged by the Substrate Manufacturer by the expert if and insofar as the claim or claims of the Other Party, whether or not after invoking the General Conditions, prove to have been unjustified. The Other Party has 7 days to submit claims once the expert's investigation is completed.

**7.6** Payments made by or on behalf of the Other Party shall serve successively to pay the extrajudicial collection costs, the legal costs, the payable interest, and then, in order of age, the outstanding principal sums, regardless of any order of priority to the contrary by the Other Party.

**7.7** The Other Party can only object to the invoice in writing within 14 days of the invoice date.

## ARTICLE 8 - RETENTION OF TITLE AND PLEDGE

**8.1** Goods delivered by the Substrate Manufacturer remain the property of the Substrate Manufacturer until the Other Party has fulfilled all the following obligations under all purchase agreements concluded with the Substrate Manufacturer:

- the consideration(s) in respect of item(s) delivered are to be delivered;

- the consideration(s) in respect of services performed or to be performed by the Substrate Manufacturer under the purchase agreement(s);

- any claims for non-performance of these agreements by the Other Party(s).

**8.2** Unless the Substrate Manufacturer stipulates otherwise, the implications under property law of an item destined for export are governed by the law of the country of destination of the item in question if the retention of title under the law of the destination country does not lose its effect until the full price has been paid.

**8.3** Goods delivered by the Substrate Manufacturer, subject to retention of title pursuant to paragraph 1 may only be resold in the normal course of business. Furthermore, the Other Party is not authorised to pledge the goods or to establish any other right on them.

**8.4** The Substrate Manufacturer hereby reserves, now for then, the rights of pledge referred to in Section 3:237 of the Dutch Civil Code as additional security for claims, other than those referred to in paragraph 1 of this article, that the Substrate Manufacturer may have against the Other Party on any account whatsoever, in respect of goods delivered that have passed into the ownership of the Other Party through payment. The authority provided in this paragraph also applies to items delivered by the Substrate Manufacturer which have been treated or processed by the Other Party, resulting in the Substrate Manufacturer losing its retention of title.

**8.5** If the Other Party fails to fulfil its obligations or if there is good cause to presume that the Other Party is unable to fulfil its obligations, the Substrate Manufacturer is entitled to repossess or have repossessed the delivered goods to which the retention of title referred to in paragraph 1 applies from the Other Party or from third parties holding the goods for the Other Party. The Other Party is obliged to cooperate in full with this on penalty of a 10% penalty of the daily payable amount.

**8.6** If third parties wish to establish or assert any right to the goods delivered under retention of title, the Other Party is obliged to inform the Substrate Manufacturer of this as soon as can reasonably be expected.

**8.7** The Other Party undertakes that the Substrate Manufacturer's first request to repossess, insure and keep insured the goods delivered under retention of title against fire, explosion and water damage and theft and to make the insurance policy available for inspection;

- pledge all claims of the Other Party against insurers in respect of the goods delivered under retention of title to the Substrate Manufacturer in the manner prescribed in Section 3:239 of the Dutch Civil Code;

- to pledge to the Substrate Manufacturer the claims that the Other Party acquires against its customers when reselling goods delivered by the Substrate Manufacturer under retention of title in the manner prescribed in Section 3:239 of the Dutch Civil Code;

- to mark the goods delivered under retention of title as the property of the Substrate Manufacturer;

- to otherwise cooperate with all reasonable measures the Substrate Manufacturer wishes to take to protect its property rights in respect of the goods and which do not unreasonably

hinder the Other Party in the normal conduct of its business.

## ARTICLE 9 - SECURITY

**9.1** By accepting these General Conditions, the Other Party undertakes to the Substrate Manufacturer to provide (additional) security for all existing and all future claims of the Substrate Manufacturer against the Other Party, on whatever grounds, at the Substrate Manufacturer's first request, to the satisfaction of the Substrate Manufacturer. This must always be designed, and if necessary replaced or supplemented by the Other Party to the satisfaction of the Substrate Manufacturer, that the Substrate Manufacturer has satisfactory and sufficient security on an ongoing basis. The Substrate manufacturer is entitled to suspend compliance with its obligations for as long as the Other Party has not complied with the above. **9.2** If the Other Party has not complied with a request as referred to in paragraph 1 within 14 days of a written demand to that effect, all its obligations shall become immediately due and payable.

## ARTICLE 10 - COMPLAINTS, DUTY TO INVESTIGATE, PRESCRIPTION TERM AND PERFORMANCE

**10.1** The Other Party is obliged to examine upon delivery and within 24 hours at the latest after delivery (if not possible otherwise by random sampling) to ascertain what has been delivered complies with the agreement i.e.:

- whether the right articles have been delivered;

- whether the delivered goods comply with the agreement in terms of quantity (e.g. number and quantity);

- whether the delivered goods meet the agreed quality requirements - or - if these are lacking - the requirements that may be set for normal use or commercial purposes;

If this is not the case and the Other Party does not inform the Substrate Manufacturer of this in writing within eight days, the Other Party shall forfeit all rights in respect of non-compliance relating to the non-compliance of what has been delivered with the agreement. If the Substrate Manufacturer does not receive written notification within eight days that what has been delivered does not comply with the agreement, it shall be deemed between the parties as proof that what has been delivered complies with the agreement.

**10.2** Claims and defences based on facts or assertions to the effect that what has been delivered does not comply with the agreement shall lapse one year after delivery. Claim rights of the Other Party expire 1.5 years after delivery.

**10.3** If the delivered goods do not comply with the agreement, the Substrate Manufacturer shall, at its discretion, only be obliged to deliver the missing goods, repair the delivered goods or replace the delivered goods.

**10.4** The provisions of this article apply mutatis mutandis to the provision of services, with the proviso that both the period of one day after delivery referred to in paragraph 1 and the period of eight days referred to in paragraph 1 in the case of services shall relate to one month after completion of the provision of services.

## ARTICLE 11 - FIGURES, MEASUREMENTS, WEIGHTS AND OTHER DATA

**11.1** Minor deviations concerning stated dimensions, weights, numbers, colours and other such data are not deemed to be deficiencies.

**11.2** A minor deviation is defined as a margin of up to 10% more or less than the stated specification. Samples shown or provided are indicative only.

**11.3** Samples shown or provided are for indicative purposes only, without it being necessary for items that are the subject of a contract of sale or service to correspond to them.

**11.4** The substrates to be supplied comply with the quality requirements or standards set by Dutch laws and regulations. Insofar as the items delivered in the Netherlands are to be used outside the Netherlands, the Other Party is responsible for ensuring that the substrates to be delivered meet the quality requirements or standards set in the country concerned unless otherwise agreed.

Any other quality requirements imposed by the Other Party on the goods to be delivered for its account. Such costs include those also to be explicitly reported by the Other Party when concluding the purchase agreement.

## ARTICLE 12 - PACKAGING

**12.1** The Other Party is obliged to return loaned packaging within the period stipulated in the agreement or, if there is no such period, at the Substrate Manufacturer's request within a reasonable period of time, empty and in undamaged condition. If the Other Party fails to fulfil its obligations concerning the loaned packaging, all costs resulting from this shall be for its account. Such costs include those arising from late returns and replacement, repair or cleaning costs.

**12.2** If the Other Party does not return loaned packaging after a reminder within the period specified in the first paragraph, the Substrate Manufacturer shall be entitled to proceed to replace the loaned packaging in question and charge the costs thereof, provided that the Substrate Manufacturer has referred to these steps in its reminder.

## ARTICLE 13 - NON-PERFORMANCE

**13.1** The claims of Substrate Manufacturer against the Other Party shall be immediately due and payable if:

- after the conclusion of the agreement, circumstances come to Substrate Manufacturer's knowledge that give good cause to presume that the Other Party will not fulfil its obligations

- the Substrate Manufacturer has requested the Other Party to provide security for fulfillment, and such security is not forthcoming

within the specified period or is insufficient.

- the Other Party is declared bankrupt, applies for a suspension of payments, requests the application of the debt restructuring for natural persons or is subjected to an attachment of all or part of its property.

In those cases, the Substrate Manufacturer shall be entitled to suspend further performance of the agreement or to dissolve the agreement, without prejudice to the right to claim damages.

**13.2** The Substrate Manufacturer shall be entitled to dissolve the agreement if circumstances arise concerning persons or equipment the Substrate Manufacturer uses in the performance of the agreement of such a nature that the performance of the agreement becomes impossible or so onerous or disproportionate that fulfillment of the obligation under the agreement can no longer reasonably be required.

**13.3** Force majeure means circumstances which prevent the fulfilment of the obligation and which cannot be attributed to the Substrate Manufacturer. This includes if and to the extent such circumstances make performance impossible or unreasonably onerous; fire, strikes in companies other than those of the Substrate Manufacturer, wildcat strikes or political strikes in the Substrate Manufacturer's company; a general lack of necessary raw materials and other items or services required for the realisation of the agreed performance; epidemics or pandemics possible quality problems affecting the Substrate Manufacturer or

supplier is not possible due to force majeure; last, but not least, stagnation among suppliers or other third parties on which the Substrate Manufacturer depends and general transport problems.

**13.4** The Substrate Manufacturer shall also be entitled to invoke force majeure if the circumstance preventing (further) fulfillment occurs after the Substrate Manufacturer should have fulfilled its obligations.

**13.5** During force majeure, the Substrate Manufacturer's delivery and other obligations shall be suspended. If the period in which fulfillment of the obligations by the Substrate Manufacturer is not possible due to force majeure lasts longer than 48 hours, both parties are authorised to dissolve the agreement without any obligation to pay compensation in that case.

**13.6** If the Substrate Manufacturer has already partially fulfilled its obligations when the force majeure occurs, or can only partially fulfil its obligations, it shall be entitled to invoice the part already delivered or the deliverable part separately, and the Other Party shall be obliged to pay this invoice as if it were a separate contract. However, this does not apply if the part already delivered or deliverable has no independent value.

## ARTICLE 14 - LIABILITY AND DAMAGES

**14.1** The Substrate Manufacturer shall make every effort to deliver substrate that is free of quantities of organisms harmful to humans, animals or plants. Growth media, especially organic growth media and their components, contain a wide range of beneficial microorganisms essential for their functionality. Therefore, they are not sterile and the occurrence of common human pathogens cannot be ruled out. Microorganisms may be indigenous or come from growing media during storage or cultivation, depending on the season and growing conditions. By far the largest percentage of all growing media contains high percentages of organic matter that is naturally exposed to microbial degradation by fungi, bacteria, actinomycetes and other organisms. Saprophytic organisms may be present in small numbers in growing media. The addition of nutrients and lime can promote the growth of saprophytic organisms. Therefore, the presence of saprophytic organisms and their effects, such as fungi, does not constitute a non-conformity in the substrate.

The Substrate Manufacturer's liability is excluded if the damage occurs:

(a) due to incompetent use or use contrary to the intended purpose of the delivered goods or the instructions, (cultivation) advice, directions for use and so on provided by or on behalf of the Substrate Manufacturer;

(b) due to the substrate becoming unusable due to fungi or any microbiological activity or organic action otherwise;

(c) due to the common colonisation of micro-organisms, as well as by the common presence of saprophytic organisms;

(d) due to improper preservation (storage) of the delivered substrate;

(e) due to errors or omissions in the data, documents or materials provided or prescribed to the Substrate Manufacturer by or on behalf of the Other Party;

(f) due to directions or instruction from or on behalf of the Other Party;

(g) because the Other Party has requested the Substrate Manufacturer, outside the standard range of the Substrate Manufacturer, to add components (whether or not processed by the Substrate Manufacturer) to or mix them into the substrate;

(h) due to other work, processing, treatment or adjustments being performed by or on behalf of the Other Party on the delivered goods (including drying of the growing media) without the express prior consent of the Substrate Manufacturer.

**14.2** Any form of oral or written advice by the Substrate Manufacturer is given from the best available knowledge and based on the Substrate Manufacturer's experience.

**14.3** If the Substrate Manufacturer has failed imputably in the fulfillment of any of its obligations or has committed a wrongful act towards the Other Party, the Substrate Manufacturer shall only be liable to the Other Party for damages it has suffered in that connection if the Other Party proves that this damage is due to the intentional act or gross negligence of the Substrate Manufacturer or its managerial subordinates.

**14.4** If the liability of the Substrate Manufacturer is to be assumed under Article 14.3, lia-

bility shall be limited to a maximum of the amount of the purchase price (excluding VAT). If the agreement consists of partial deliveries, the obligation to pay compensation is limited to a maximum of the purchase price of the respective partial delivery. The liability of the Substrate Manufacturer for indirect damage, such as, but explicitly not limited to; (growth) damage to crops, trading losses,

stagnation damage, personal or bodily injury, lost profit and lost turnover, is excluded.

**14.5** Notwithstanding the above, the total liability of the Substrate Manufacturer shall be limited to the amount of the payment made by the insurer plus the Substrate Manufacturer's deductible. The Substrate Manufacturer will provide a copy of its business liability insurance at the Other Party's request.

**14.6** The Other Party shall indemnify the Substrate Manufacturer and the (auxiliary) persons engaged by it in the performance of its obligations against all claims of third parties on account of damage suffered by these third parties arising from or related to the Substrate Manufacturer's performance of the agreement or delivery of the substrate unless there is intent or gross negligence on the part of the Substrate Manufacturer or the (auxiliary) persons it has engaged in the performance of the agreement. In case of intent or gross negligence on the part of the Substrate Manufacturer or the (auxiliary) persons engaged by it in the performance of the agreement, the Other Party shall indemnify the Substrate Manufacturer or the (auxiliary) persons engaged against such claims for the part that exceeds the amount of the payment made by the Substrate Manufacturer's liability insurer, increased by the Substrate Manufacturer's deductible.

**14.7** The right of the Other Party to dissolve all or part of the agreement with the Substrate Manufacturer in the event of an attributable breach by the Substrate Manufacturer is excluded.

## ARTICLE 15 - APPLICABLE LAW AND COMPETENT COURT

**15.1** All national and international legal relationships between the Substrate Manufacturer and the Other Party shall be governed by Dutch law. The applicability of the Vienna Sales Convention 1980 (CISG) is excluded.

**15.2** Notwithstanding any non-mandatory law 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 submitted to the Dutch court with absolute jurisdiction to the exclusion of other courts. Notwithstanding any non-mandatory provisions of law between the parties, the court of the Substrate Manufacturer's place of business shall have relative jurisdiction, to the exclusion of all other courts. However, the Substrate Manufacturer is entitled to seek another relatively competent judicial authority if it initiates proceedings as a plaintiff or applicant.

## ARTICLE 16 - CONVERSION

If and insofar as any provision or part of any provision in these General Terms and Conditions cannot be invoked due to conflict with applicable law, that provision shall have the meaning that corresponds as far as possible, in terms of content and purpose, to what was intended when the relevant (partial) provision was drafted, so that it can still be invoked by the parties.

## ARTICLE 17 - DUTCH TEXT PREVAILS

These General Terms and Conditions have been drawn up for use in national and international agreements. As part of this, these General Terms and Conditions will also be translated from Dutch into other languages. If the parties disagree on the interpretation of a non-Dutch version of these General Terms and Conditions, the Dutch text of these General Terms and Conditions of Sale shall prevail over any translations thereof.

## ARTICLE 18 - AMENDMENT OF THE TERMS AND CONDITIONS

**18.1** The Substrate Manufacturer is entitled to unilaterally amend these General Terms and Conditions with due regard to the requirements of reasonableness and fairness. Amendments shall also apply in respect of agreements already concluded as far as it concerns obligations(s) under the agreement to which the Substrate Manufacturer has committed itself and which have not yet been fulfilled in full or in part.

**18.2** The Substrate Manufacturer will inform the Other Party of the amendments by e-mail. The amended General Terms and Conditions will take effect 30 days after the Other Party has been informed of the amendments.

**18.3** If the Other Party disagrees with the announced changes, the Other Party has the right to dissolve the agreement.