

**General Conditions of the Association of Potting Soil Manufacturers in the Netherlands [Vereniging van Potgrondfabrikanten Nederland]**  
The Association of Potting Soil Manufacturers, whose registered office is situated in 's-Gravenzande (municipality of Westland), filed the general conditions version 1.1 dated 29 December 2009 at the court registry of the District Court of the Hague under number 119/2007 on 29 December 2009.

**ARTICLE 1 – GENERAL**

1.1 In these General Conditions a "Potting Soil Manufacturer" shall be understood to be a member of the Association of Potting Soil Manufacturers in the Netherlands [Vereniging van Potgrondfabrikanten Nederland], (Whether a Potting Soil Manufacturer is a member of this association may be confirmed by the association itself free of charge). The registered office of the association is situated at 's-Gravenzande (municipality of Westland) and entered in the Commercial Register under 40397216.

1.2 In these General Conditions the other party shall be the party with which the Potting Soil Manufacturer enters into a legal relationship.

In these General Conditions an order shall be the fact that after asking for a quotation an other party gives an order for the supply of potting soil or other products and services, including – whether or not free of charge – possible advice.

1.3 General conditions shall be the latest and filed general conditions of the Association of Potting Soil Manufacturers, whose registered office is situated in 's-Gravenzande (municipality of Westland).

**ARTICLE 2 – GENERAL / APPLICATION**

2.1 Applicability of the general conditions used by the other party or other conditions is explicitly rejected.

2.2 These General Conditions shall apply to all legal relations in which the Potting Soil Manufacturer acts as a (potential) vendor and/or supplier of goods and/or services. The Potting Soil Manufacturer mainly specializes in the sale of potting soil and substrates. Nevertheless these General Conditions are also part of any legal relationship that refers fully or partly to the rendering of service by the Potting Soil Manufacturer.

2.3 These conditions may only be deviated from if this is recorded in writing by both parties or is confirmed by the Potting Soil Manufacturer in writing.

**ARTICLE 3 – CONCLUSION OF AGREEMENT**

3.1 If the other party places an order, the agreement shall only be concluded if the Potting Soil Manufacturer has also accepted it in writing or unmistakably makes a start with its execution.

**ARTICLE 4 – ADDITION TO AGREEMENT**

If the other party wishes to make changes in the matters agreed – which request for the purpose must only be made in writing – the Potting Soil Manufacturer shall only be obliged to co-operate therein if this is feasible in reason and subject to the other party's obligation to take for its account any additional expenses following from that alteration.

**ARTICLE 5 – PRICES**

5.1 All the prices – except if something else has been agreed in writing – shall be ex warehouse or, if this applies, ex storage space. In that connection all prices shall be exclusive of VAT.

5.2 At the time when an agreement is concluded any future changes not already known in wages, transport charges, cost prices of raw materials or materials and/or exchange rate fluctuations that relate to the agreed performance shall entitle the Potting Soil Manufacturer to pass them on unconditionally. If these changes are passed on within three months after the conclusion of the agreement the other party shall be entitled to dissolve the agreement for that reason by means of a written statement to the Potting Soil Manufacturer.

**ARTICLE 6 – DELIVERY / TIME OF DELIVERY**

6.1 Delivery times agreed with the Potting Soil Manufacturer shall be considered an indication and not a strict deadline.

6.2 Delivery shall be made – except if something else has been agreed in writing – ex warehouse or, if this applies, ex storage space.

6.3 If he handles the transport, the Potting Soil Manufacturer shall determine the method of transport and the insurance during transport, which may both separately be passed on the other party. Transport shall be carried out at the risk of the other party.

6.4 The Potting Soil Manufacturer shall be entitled to render the performance(s) due from him in instalments unless this is explicitly contrary to arrangements made in writing with the other party.

**ARTICLE 7 – PAYMENT**

7.1 Invoices of the Potting Soil Manufacturer must be paid before the due date mentioned in the invoice in the manner to be indicated by the Potting Soil Manufacturer. The payment must be made effectively in the agreed currency and without set-off, discount and/or suspension.

7.2 In the event of non-timely payment all obligations of payment of the other party, irrespective of whether the Potting Soil Manufacturer has already sent invoices on the subject, shall become claimable immediately. If the Potting Soil Manufacturer relies on this provision, the Potting Soil Manufacturer shall inform the other party in writing and send it a suitable invoice. The Potting Soil Manufacturer shall then inter alia be entitled to suspend his obligation of delivery and/or may desire sufficient security as referred to in article 9 of these conditions or shall be entitled to dissolve the agreement – whether or not – in part as referred to in article 12 of these conditions.

7.3 In the event of non-timely payment the other party shall owe an interest to the amount of the statutory commercial interest.

7.4 If the other party fails to fulfil one or more of its obligations, all reasonable expenses to obtain payment out of court shall be for account of the other party, being:

for the first EUR 2,950.00 15%  
for the excess to EUR 5,900.00 10%  
for the excess to EUR 14,748.00 8%  
for the excess to EUR 58,990.00 5%  
for the excess 3%

If the Potting Soil Manufacturer proves that he has incurred higher costs, which were reasonably necessary, these costs to acquire payment out of court shall also qualify for compensation.

7.5 If a claim is brought against the Potting Soil Manufacturer by the other party for any reason whatsoever and the Potting Soil Manufacturer consequently finds himself compelled to engage an expert to determine the facts on which the other party bases its claim, the other party shall be obliged to compensate the Potting Soil Manufacturer for the costs charged by this expert to the Potting Soil Manufacturer if and in so far as the claim or claims of the other party, whether or not after reliance on the general conditions, appear(s) to have been unfounded, to prevent a possible action. After the expert's investigation has been completed, the other party shall have 14 days to submit a possible claim.

7.6 Payments by or on behalf of the other party shall successively be used for payment of the extrajudicial collecting charges payable by it, the legal costs, the interests payable by it and subsequently in sequence of age the outstanding principal amounts, irrespective of any different designation by the other party.

7.7 The other party may only make written objections against the invoice within the term of payment.

**ARTICLE 8 – RETENTION OF TITLE AND PLEDGING**

8.1 The Potting Soil Manufacturer retains the title to the goods supplied or to be supplied by him until he has received full payment of:

a. the performances due from the other party for all goods supplied or to be supplied by virtue of the agreement and also any work done or to be done by virtue of such an agreement.

b. claims owing to failure of the other party in the performance of such agreement(s). The other party shall not be permitted to rely on a lien with regard to the storage charge and to set off these charges against the performances due from it.

8.2 If any good is due to the Potting Soil Manufacturer in pursuance of paragraph 1, the other party may only dispose thereof within the framework of its normal conduct of business.

8.3 If the other party is in default with regard to the performances as referred to in paragraph 1, the Potting Soil Manufacturer shall be entitled to (have others) recover the goods that belong to him from the place where they are, for account of the other party. For that possible future event the other party hereby grants the Potting Soil Manufacturer irrevocable power of attorney to (have others) enter the spaces used by or for the other party.

8.4 The other party hereby undertakes to pledge to the Potting Soil Manufacturer, on the first relevant request of the latter, who will then accept this pledge, all the goods of which the other party becomes a (co)owner by specification, accession, mixing/blending with the goods supplied and/or to be supplied by the Potting Soil Manufacturer, and also all claims that the other party will have on its buyers, following from the other party supplying to its buyers any goods that have been sold and delivered by the Potting Soil Manufacturer to the other party, this as security for any claim that the Potting Soil Manufacturer has or will have at any time against the other party. The other party shall sign any prepared deed of pledge on first demand.

**ARTICLE 9 – SECURITY**

9.1 If there is a sound reason that the other party will not fulfil its obligations promptly, the other party shall be obliged to provide adequate security immediately and in the form desired by the Potting Soil Manufacturer and, if necessary, to supplement this for the fulfilment of all its obligations. As long as the other party has not fulfilled this, the Potting Soil Manufacturer shall be entitled to suspend fulfilment of his obligations.

9.2 If the other party has not complied with a request as referred to in paragraph 1 within fourteen days after a written reminder for the purpose, all its obligations shall become payable at once.

**ARTICLE 10 – COMPLAINTS, OBLIGATION OF EXAMINATION AND INVESTIGATION, LIMITATION PERIOD AND PERFORMANCE**

10.1 At the time of delivery and at the latest within 24 hours after delivery the other party shall be obliged to examine (by random tests if something else is not possible) whether the matters delivered comply with the agreement. If this is not the case and the other party does not notify this to the Potting Soil Manufacturer within seven days (after 48 hours after delivery) the other party shall lose all rights with regard to any shortcoming in performance relating to the delivered matters not complying with the agreement. If within seven days (after 48 hours after delivery) the Potting Soil Manufacturer does not receive written notice that the matters delivered do not comply with the agreement, it shall be deemed proven between the parties that the matters delivered comply with the agreement.

10.2 The limitation period for claims and defences based on facts and/or allegations to the effect that the matters delivered do not comply with the agreement shall expire one year after the time of delivery.

10.3 If the matters delivered do not comply with the agreement, the Potting Soil Manufacturer shall only be obliged, at his choice, to deliver the deficit, to repair the good delivered or replace the good delivered.

10.4 The provisions in this article shall apply accordingly to the rendering of services, on the understanding that in the event of services the one-day period after delivery mentioned in paragraph 1 shall be one month after the service rendered.

**ARTICLE 11 – FIGURES, SIZES, WEIGHTS AND OTHER DATA**

11.1 Minor deviations from stated sizes, weights, figures, colours and similar features shall not be considered shortcomings.

11.2 It shall be a question of a minor deviation in the event of a margin of at most 10% more or less than the stated specification. Shown or supplied samples shall only be considered indications, without the good due being required to comply therewith. Minor deviations from stated sizes, weights, figures, colours and similar data shall be permitted.

11.3 Shown or supplied samples shall only serve as indications, without a good that is the subject of an agreement for sale or the rendering of services having to comply therewith.

11.4 The Dutch government has made different administrative orders [Algemene Maatregelen van Bestuur] that contain prescriptions for the method of trading goods. Both the Potting Soil Manufacturer and the other party shall observe all Dutch statutory prescriptions, including applicable administrative orders. At the time when these conditions were prepared these at any rate included the administrative [AMvB] order of 24 March 2005 comprising rules for packaging, packaging waste, paper and cardboard. This administrative order may be viewed at localities of the government itself and also on its websites.

**ARTICLE 12 – NON-FULFILMENT**

12.1 If the other party in any way fails in respect of the Potting Soil Manufacturer in the fulfilment of any obligation, and also in the event of an application for a suspension of payment, the acquisition of a provisional suspension of payment, a bankruptcy petition, bankruptcy or liquidation or cessation of (part of) the enterprise of the other party, the Potting Soil Manufacturer shall be empowered to dissolve the agreement in full or in part with immediate effect to suspend (further) performance of the agreement, subject to the other rights and obligations due to it and without any obligation to provide compensation.

12.2 If on the strength of the provisions in 12.1 the Potting Soil Manufacturer dissolves the agreement, subject to the other rights of the Potting Soil Manufacturer, everything that the other party owes the Potting Soil Manufacturer for any reason whatsoever shall become payable at once and the Potting Soil Manufacturer shall be entitled to suspend the further performance of any order immediately.

12.3 If the proper performance by the Potting Soil Manufacturer as a result of one or more circumstances that are not for account of the Potting Soil Manufacturer, including the circumstances mentioned in 12.4 is wholly or partly impossible, either temporarily or permanently, the Potting Soil Manufacturer shall be entitled to dissolve the agreement with the other party in writing.

12.4 Circumstances (not exhaustive) that at any rate are not for account of the Potting Soil Manufacturer are:

- acts, bar willfulness or gross negligence, of persons that the Potting Soil Manufacturer uses in the performance of the agreement with the other party, whether or not within the framework of an employment with the Potting Soil Manufacturer;

- unsuitability of goods of which the Potting Soil Manufacturer makes use in the performance of the agreement with the other party;

- third parties exercising one or more rights in respect of the other party with regard to a shortcoming of the other party in the performance of an agreement concluded between the other party and the said third parties in connection with goods delivered by the Potting Soil Manufacturer;

- strike of work, lock-out of workers, sickness, prohibitions concerning import, export and/or transit, transport problems, non-fulfilment of obligations by ancillary suppliers of the Potting Soil Manufacturer, disruptions in production, natural and/or nuclear disasters and war and/or threat of war;

- possible quality problems as mentioned inter alia (not exhaustively) in more detail under article 13.1.

12.5 The agreement shall also be deemed to have been performed if a different allegation is based on circumstances mentioned in 12.4. The onus of proof for the allegation that it is a matter of non-performance shall always rest on the other party.

**ARTICLE 13 – LIABILITY AND COMPENSATION**

13.1 The Potting Soil Manufacturer shall make a maximum effort with regard to the supply of the products mentioned in this paragraph to supply breeding materials that, especially with regard to the organic breeding materials and their component parts, are free of micro-organisms that produce diseases in people or plants. The breeding materials are not sterile but bacteriologically active. Micro-organisms may be endemic and may colonize the breeding materials during storage or breeding of plants, depending on the season and the breeding circumstances. The vast majority of all breeding materials contain high percentages of organic materials that are automatically exposed to bacteriological decomposition by means of moulds, bacteria, actinomycetes and other organisms. Saprophytic threadworms may be present in breeding materials in small quantities. Addition of nutrients and lime may promote the growth of saprophytic organisms. The Potting Soil Manufacturer in any event accepts no liability whatsoever for damage to property and financial loss caused by the omnipresent colonization of micro-organisms and also by an omnipresent presence of saprophytic organisms, as a result of the growth of moulds on or in the breeding material.

13.2 For the supply of products and services as described inter alia under article 2.1 the Potting Soil Manufacturer shall only be liable for damage that is due to his willfulness or gross negligence.

13.3 The Potting Soil Manufacturer shall never be obliged to compensate damage other than to persons or goods.

13.4 If in conformity with the above it is a question of one or more liabilities, this liability or these liabilities jointly shall always be limited to at most the invoice amount payable by the other party relating to the relevant legal relationship, or at any rate in so far as this would manifestly be unreasonable to at most the amount that is made available by the insurer of the Potting Soil Manufacturer as loss payment.

13.5 The Potting Soil Manufacturer shall stipulate all statutory and contractual defences that he may invoke to defend his own liability in respect of the other party, also for the benefit of his subordinates and non-subordinates.

**ARTICLE 14 – APPLICABLE LAW AND COMPETENT COURT**

14.1 Dutch law shall apply to all legal relations both nationally and internationally between the Potting Soil Manufacturer and the other party.

14.2 In deviation from all non-mandatory legal provisions applicable to the legal relationship between the Potting Soil Manufacturer and the other party all conflicts between the Potting Soil Manufacturer and the other party shall be submitted, to the exclusion of all other courts, to the competent Dutch judicial authority with subject-matter jurisdiction. In deviation from all non-mandatory legal provisions between the parties, to the exclusion of all other judicial bodies, the court of the place of establishment of the Potting Soil Manufacturer shall have territorial jurisdiction. The Potting Soil Manufacturer shall be empowered, however, if he initiates an action as a claimant or petitioner, to approach another judicial authority with territorial jurisdiction.

**ARTICLE 15 – CONVERSION**

If and in so far as owing to any conflict with applicable law any provisions or part of any provisions in these General Conditions cannot be relied on, that provision shall have the meaning that, with regard to content and tenor, agrees as much as possible with the intentions when the relevant (partial) provision was made, so that this may be relied on as yet by the parties.

**ARTICLE 16 – DUTCH TEXT PREVAILS**

These General Conditions have been drawn up to be used in national and international agreements. Within that framework these General Conditions shall also be translated from Dutch into other languages. If the parties disagree about the interpretation of a non-Dutch version of these General Conditions the Dutch text of these General Conditions of Sale shall prevail over their translations.