

Van der Ende - General Terms and Conditions of sale

These General Terms and Conditions shall apply to all quotations, offers, orders, order confirmations, the Agreement and all subsequent agreements entered into between Van der Ende Horticultural Solutions Inc. ("Van der Ende") and Client in connection with the sale of Products and/or Services.

Article 1: Confirmation of Order / Acceptance of Quotation

A purchase order constitutes an offer by the Client to purchase the Products in accordance with these Terms. Van der Ende shall not be deemed to have accepted a purchase order until Client has received written, including electronic text form, confirmation from Van der Ende of the purchase order, at which point a binding agreement shall be formed ("Order"). Client's acceptance of a quotation or offer for Products given by Van der Ende shall also constitute an Order and acceptance of these Terms. Unless otherwise stated any quotation is valid only for sixty (60) days. Van der Ende reserves the right to update, change or make any corrections to quotations.

In the event of conflicts between the agreement entered into by the Client and Van der Ende and these Terms and Conditions, the provisions of the agreement will prevail.

The applicability of Client's general terms and conditions is hereby expressly excluded.

Article 2: Terms of Delivery, Costs, and Title transfer

Unless otherwise agreed, the Products are delivered FCA Kingsville, Ontario.

If Client fails to take delivery of Products, Van der Ende is entitled to claim payment for storage and handling and reserves the right to terminate the Order and claim damages.

Van der Ende retains title to all Products delivered by Van der Ende until receipt of payment for all amounts invoiced including interest and charges. In the event Client re-sells the Products before title passes to Client in accordance with this clause, Client shall account to Van der Ende for all of the proceeds of any resale. The retention of title shall not affect the passing of risk under applicable delivery terms.

Van der Ende shall use commercially reasonable efforts to meet the agreed delivery or performance date. If Van der Ende is, or is likely to be, unable to meet the delivery or performance date, Van der Ende will promptly give Client written notice of the relevant circumstances together with a date upon which Van der Ende reasonably expects to be able to deliver the Products or to perform the Services. Van der Ende shall not be liable in any way for any loss or damage sustained by Client as a result of Van der Ende's failure to make delivery of the Products or performance of the Services on or before the agreed delivery date, nor will such failure constitute a breach of the Agreement.

Article 3: Prices and Taxes

Unless otherwise set out in Van der Ende's quotation, the applicable currency shall be the currency of the Van der Ende selling entity's place of business.

Prices for Products are exclusive of HST/GST, other taxes or duties or other costs applicable at the delivery date.

Van der Ende will on prior review and written request invoice on zero-rated HST/GST basis according to applicable HST/GST regulations, in case Products are supplied by Van der Ende in one country (the “Country of Delivery”) and Client picks-up and transports the Products from the Country of Delivery to another country. As a condition for Van der Ende invoicing on zero-rated HST/GST basis, Client declares and warrants that: (i) The Products will be transported directly out of the Country of Delivery, and (ii) Client will provide all necessary documentation required by applicable authorities for proof of such transport and to ensure zero-rated HST/GST. If Client does not comply with the above-stated declarations and warranties, Client will a) pay the applicable HST/GST, and b) compensate Van der Ende for any resulting loss or cost incurred by Van der Ende. For the purposes of this clause, “HST/GST” means value added tax, sales and use taxes, goods and services taxes, and any similar indirect taxes.

Article 4: Payment conditions

Subject to approval of Client credit by Van der Ende, and unless other payment terms are specified in the Agreement, Client will pay all invoiced amounts within thirty (30) days after the date of invoice. Any credit shall be subject to Van der Ende being satisfied with the Client’s credit references and Van der Ende may (in its absolute discretion), refrain from delivering the Products or fulfilling any other obligations until such time as Client has complied with the payment requirements of Van der Ende.

All payments shall be made by bank wire transfer or direct debit directly from Client without deduction of any transfer or debit fees in immediately available funds to the bank account set out in the relevant invoice. Client is not entitled to allow third parties to pay on its behalf. From due date an interest rate of: i) two (2) % per month, or ii) the highest rate allowable under applicable law, whichever the lesser, will be payable. In addition, Client shall pay all costs and expenses incurred by Van der Ende, including reasonable attorney’s fees and reasonable collection fees on any action arising out of Client’s failure to pay timely.

Article 5: Product Information

Any information, including, but not limited to information on selection of Product, its application or use, Client product design, weight, dimensions, capacity or any other technical data in catalogue descriptions, advertisements, etc. and whether made available in writing, orally, electronically, online or via download, shall be considered informative, and is only binding if and to the extent, explicit reference is made in a quotation or order confirmation. Specific demands from Client are only binding if and to the extent they have been confirmed by Van der Ende in writing. Client is solely responsible for its products and applications that incorporate or use Van der Ende Products. Any Products made available as samples, prototype or similar type identification (whether charged for or not) may only be used for evaluation purposes, may not be resold or be made part of Client’s products for resale. Any technical assistance provided by Van der Ende’ personnel or representatives in system design is construed to be a proposal and not a recommendation. The responsibility for determining feasibility rests with the user and should be subject to test.

Article 6. Warranty

Van der Ende warrants that:

- during the Warranty Period the Products are free from substantive defects in workmanship and materials;
- the Services will be performed with at least the same degree of skill and competence normally practiced by consultants performing the same or similar services.

The Warranty Period for Products is twelve (12) months from the date of shipment, unless set out otherwise in the Agreement. Shorter Warranty Periods apply to Products and components that are subject to wear and tear or those having a limited service life. The Warranty Period of such Products and components are as indicated by Van der Ende on its price list. In any event, the Warranty Period of such Products of components shall never be longer than the expected service life.

During the Warranty Period, Van der Ende shall, at its option, either credit (in whole or in part) the Purchase Price of the defective Products, or repair or replace the defective (components of the) Products. Van der Ende shall re-perform, in a conforming manner, any nonconforming Services that are reported to Van der Ende by Client in writing within sixty (60) days after the date of completion of such Services.

The Warranties are in lieu of all other warranties, express or implied, including, but not limited to any statutory warranties, any implied warranties or warranties pertaining to merchantability or fitness for a particular purpose of the Products, which are hereby specifically disclaimed. The remedies set out in this article shall be Client's sole and exclusive remedy, and Van der Ende's sole liability, for claims based on breach of warranty or otherwise in relation to the nonconformity of the Products of Services.

Client shall inspect the Products upon receipt for visual and fairly apparent defects and, within ten (10) business days after delivery, give written notice to Van der Ende of any remedy claim under the Warranty based on such defects. Such notice shall include a specification of the basis of the claim in detail. Failing which Client shall be deemed to have lost its right to claim any remedy under the Warranty based on such visual and fairly apparent defects. Furthermore, pertaining to other defects, Client can no longer claim any remedy under the Warranty if Client has not notified Van der Ende of such claim within ten (10) business days after it discovered the defect or reasonably should have discovered it, including a specification of the basis of such claim in detail.

If Van der Ende replaces (components of) the Products in order to fulfil its Warranty obligations, the replaced (components of) such Products will become the property of Van der Ende. Client shall, promptly upon request by Van der Ende, return the replaced (components of) such Products to Van der Ende in their original packaging.

The Warranty obligation will lapse if the defects are completely or partly the result of improper, negligent or injudicious use, external causes such as fire or water damage, or if Client makes modifications or allows modifications to be made to the Products without Van der Ende's prior consent.

Article 7. Product Liability

Van der Ende shall not be liable for any damage caused by Products to Client owned or controlled property, to products manufactured by Client, or to products of which Client's

products form a part.

If Van der Ende incurs liability towards any third party for such damage as described in the preceding paragraph, Client shall indemnify, defend, and hold Van der Ende harmless from and against such liability. Client shall indemnify, defend and hold Van der Ende harmless from and against all claims arising from damage resulting from, the non-authorized use or operation of the Products because of the improper or incorrect, installation, repair, maintenance or operation of the Products by Client, the failure of Client to adequately train personnel in the operation of the Products, Client's failure to comply with applicable laws or regulations or otherwise, or any failure of the Product which Van der Ende is not liable for according to above article 6. If a claim for damage as described in this clause is lodged by a third party against either Van der Ende or Client, the respondent party shall immediately inform the other party thereof in writing. Client shall be obliged to let itself be summoned to the court or arbitral tribunal examining claims for damages lodged against Van der Ende on the basis of damage allegedly caused by the Product.

Article 8. Limitation of Liability

Van der Ende shall not be liable to Client for any of the following types of loss or damage arising under or in relation to an Order governed by these Terms: 1) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, loss of use of Products or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, or downtime costs; or 2) any loss or corruption of data; or 3) indirect, special, punitive, third party penalties, exemplary or consequential loss or damage whatsoever; even if Van der Ende was advised in advance of the possibility of such loss or damage, and whether arising out of breach of warranty, tort, statute, delay, faulty Products, product liability, recall or otherwise, and even if any express warranties fails its essential purpose.

Van der Ende' total liability arising under or in relation to an Order governed by these Terms shall not exceed the amount invoiced by Van der Ende to Client thereunder.

Client acknowledges and agrees that Van der Ende has set its prices and entered into the transaction in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, and that the same reflects a risk allocation between the parties forming an essential basis for the bargain between them.

Article 9. Confidentiality

Any non-public information, including, but not limited to, prices, drawings, descriptions, and technical documents which Van der Ende has made or may make available to Client ("Confidential Information") shall remain the property of Van der Ende, shall be treated as confidential by Client and its representatives, and must not, without the written consent of Van der Ende, be copied, reproduced, transferred to third parties, or be used for other purposes than those intended when the Confidential Information was made available. Confidential Information shall be returned upon Van der Ende's request.

Article 10. Intellectual Property

Van der Ende and or its licensors reserve all rights, title and interest in and to the Products, including all related intellectual property rights. No rights are granted to Client hereunder, other than as expressly set forth herein.

All changes, modifications or improvements made or developed with regard to the Products, whether or not made or developed at Client's request, will be and remain the property of Van der Ende.

Van der Ende will exclusively own any and all rights, title, and interest (including intellectual property rights) in and to any materials, documentation, software, websites or information resulting from the performance of the Services or developed for or made available to Client under or in relation to the Agreement.

Van der Ende will defend Client from any third-party claim, suit, or proceeding alleging that any Product, unmodified and as originally delivered by Van der Ende, when used as permitted under this Agreement infringes any intellectual property rights (a "Claim"), and will pay all settlement amounts agreed to by the litigants or damages finally awarded by a court of competent jurisdiction. If Van der Ende reasonably believes that any element of the Products is about to become the subject of a Claim, Van der Ende may, at its option, (a) obtain a license to permit Client to use such Product in accordance with this Agreement; (b) modify such Product in a manner such that it is no longer infringing; or, if neither of the foregoing options is commercially feasible, (c) recover the Product in exchange for a refund of the Purchase Price (less a prorated deduction to reflect past beneficial use).

In order for Van der Ende to indemnify Client under this article, Client must promptly notify Van der Ende in writing of any Claim, tender control of the defence and settlement of such Claim to Van der Ende and reasonably cooperate with Van der Ende in such defence.

Article 11. Export Controls

Client will ensure that all actions taken by Client in furtherance of fulfilment of this Agreement are in compliance with any applicable export control and/or import laws and regulations, including the EU export control legislation as well as the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. Client shall comply with any applicable embargoes and trade sanction regimes, including those imposed and enforced by the United Nations, U.S., EU or any competent third country. Client will not, directly or indirectly, (re-)sell, deliver, supply, transfer, export or re-export Products or Services to (i) any sanctioned party listed and subject to the applicable sanction regimes or (ii) any third party (beneficially) owned or controlled, directly or indirectly, by or, acting on behalf, of any such sanctioned party or (iii) any third party engaged, directly or indirectly, in activities where the Products or Services are or may be intended in their entirety or in part for proliferation of weapons of mass destruction or of their means of delivery.

Article 12. Force Majeure

Van der Ende is entitled to cancel Orders or suspend delivery of Products and shall not be liable for any non-delivery, faulty or delayed delivery, which partly or wholly is caused by circumstances beyond Van der Ende's reasonable control, which is not reasonably foreseeable, and which cannot be prevented or rendered harmless by economically reasonable means, including, but not limited to, floods, explosions, natural catastrophes, riots, civil unrest, war (declared or not), terrorism, vandalism, cyber-attacks, fire, insurrection, requisition, seizure, government or international embargo or regulation, quarantine, lock-downs, epidemics, defects or delays in deliveries by sub-suppliers, strikes, lockouts, slowdowns, lack of transportation, scarcity of materials, or insufficient supplies of energy. Any of Client's contractual rights are suspended or become void in any such circumstances referred to in this article. Client is not entitled to any kind of damages or to make a claim whatsoever in case of cancellation or delayed delivery due to such circumstances.

Article 13. Data Protection

Personal data of individual contacts of Client such as name and business contact details may be processed and stored globally outside of Client's country by Van der Ende, its affiliates or authorized third-party providers. Van der Ende will use personal data to perform its contractual obligations (such as administration of client relations and of payment transactions), to analyze and improve its products and services, and/or to send information on products, services and events of Van der Ende to contact persons of Client. Where consent is required by law, Client hereby agrees to the personal data being used and transferred as described above and acknowledges that personal data will be subject to the foreign law of the country where it is being held/server is located.

Van der Ende will use adequate contractual and technical mechanisms to protect personal data. Van der Ende will keep personal data for the duration of the contractual relationship. Where required by mandatory law and provided that the necessary conditions are satisfied, Client may as a natural person have the right to access, rectify, inquire about or, object to the processing of his personal data. Personal data of individual contacts of Van der Ende such as name and business contact details may be processed and stored in accordance with applicable laws, and solely as reasonably necessary for Client to perform its contractual obligations (such as administration of relations with Van der Ende and of payment transactions), and Client will use adequate contractual and technical mechanisms to protect Van der Ende personal data.

Article 14. Miscellaneous

If one or more of the terms and conditions in these Terms or any part of a term is deemed invalid, unenforceable, illegal or inoperable, the validity, enforceability, legality or operability of all further terms and conditions shall not be affected or diminished thereby.

Van der Ende and Client may at any time assign or transfer all or any of its rights under these Terms. Neither Party may assign or transfer any of its obligations under these Terms without the prior written consent of the other Party, provided however that Van der Ende shall be entitled upon written notice to assign, delegate, or transfer any obligations or rights in whole or in part to any Affiliate or in a merger or divestiture of the selling Van der Ende entity or a substantial part of the assets of the selling Van der Ende entity.

Any dispute between the parties arising from or in connection with an agreement or Order governed by these Terms shall be governed by the substantive law at Van der Ende's selling entity's place of business.