



## Trade & Distribution Division Floré Groep

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### GENERAL TERMS AND CONDITIONS OF PURCHASE

October 2015 version

#### **1. Definitions**

**1.1. Seller or Supplier:** the person who delivers goods to the Purchaser, renders services for the Purchaser or has agreed with the Purchaser to do so, and the person to whom the Purchaser has issued instructions of a different nature.

**1.2. Purchaser:** the trading companies of the Floré group, both severally ("Purchaser") and jointly ("Purchasers"). The current trading companies of the Floré group are:

##### *In the Netherlands*

Moterra International BV (private limited company)

Registered office at TPW2 - Venus 337; 2675 LP Honselersdijk - The Netherlands

Chamber of Commerce no. 27226060 - VAT NL 0077 58 510B01

[www.moterra.com](http://www.moterra.com)

Horticept BV

Registered office at Welbergweg 21, 7556 PE Hengelo - Netherlands,

Chamber of Commerce no. 2719245 - VAT NL 8188 89 640B02

[www.horticept.nl](http://www.horticept.nl)

##### *In Belgium*

Floréac NV - Trade and Distribution Division

registered office at Beerveldse Baan 4, 9080 Lochristi - Belgium

VAT BE 0421 712 250 RPR (Register of Legal Persons) Ghent

[www.floreac.com](http://www.floreac.com)

Coverde BVBA

registered office at Beerveldse Baan 4, 9080 Lochristi - Belgium

VAT BE 0847 800 685 RPR (Register of Legal Persons) Ghent

[www.coverde.be](http://www.coverde.be)

When a new trading company is incorporated or included in the Floré group, these General Terms and Conditions of Purchase become automatically applicable to all the activities of such new company.

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Horticept BV (Private Limited Company) - Welbergweg 21 - 7556 PE Hengelo – Netherlands  
Moterra BV - Venus 337 - 2675 LP Honselersdijk – Netherlands  
Coverde BVBA (Private Limited Company) - Beerveldsebaan 4 - 9080 Lochristi – Belgium

VAT BE0421712250  
VAT NL809576983B01  
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VAT BE0847800685



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### **2. Applicability**

**2.1.** These General Terms and Conditions of Purchase apply to any requests, offers, price quotations, instructions, invoices, agreements and legal actions between the Supplier and the Purchaser regarding:

- any deliveries of ornamental plant products and related objects (sale-purchase);
- any services provided regarding ornamental plant products and related objects;
- any instructions which the Purchaser gave to the Supplier;
- product development and pre-delivery agreements.

**2.2.** The General Terms and Conditions of Purchase can only be derogated from by a written agreement signed by both the Purchaser and the Supplier.

**2.3.** The Supplier unreservedly accepts the General Terms and Conditions of Purchaser by making an offer [to] and/or accepting an order from the Purchaser. Application of any general terms and conditions maintained by the Supplier is hereby expressly excluded.

**2.4.** The General Terms and Conditions of Purchase can be drawn up in different languages. However, the Dutch version is the only binding version and versions in other languages must be regarded as non-binding translations. Consequently, the Dutch version takes precedence if there is any conflict between the different versions of the General Terms and Conditions of Purchase.

**2.5.** The General Terms and Conditions of Purchase have a supplementary effect: in the event of any conflict between the Special Commercial Terms and Conditions and/or the Purchaser's Terms and Conditions for Logistics, the following order of priority applies: the provisions of the Special Commercial Terms and Conditions have priority over the Terms and Conditions for Logistics, and the provisions of the Terms and Conditions for Logistics have priority over the provisions of the General Terms and Conditions of Purchase.

### **3. Establishment of the agreement**

**3.1.** All the Supplier's offers and price quotations are binding and irrevocable. The dimensions, properties and other data regarding the goods offered to be purchased are also binding.

**3.2.** An agreement pursuant to a price quotation/offer by the Supplier comes into effect at the moment at which the Purchaser sends the written acceptance of the price quotation/offer. When the Purchaser places an order or submits a purchase order that was not preceded by the Supplier's price



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quotation, the agreement comes into effect at the moment at which the Supplier confirms the order or purchase order without any changes and in writing or, if a written confirmation is outstanding, at the moment at which the Supplier starts executing the order or purchase order.

### **4. Price and payment**

**4.1.** The agreed upon price is fixed. The price is quoted in euros, excluding VAT but including all (other) taxes.

**4.2.** Unless there is a statement to the contrary in the Purchaser's receipt of purchase/order or unless there is a written agreement to the contrary, the Purchaser has the option of the following 2 payment periods:

- a payment period of 60 (sixty) days as from the invoice date;
- a payment period of 14 (fourteen) days as from the invoice date, in which case the Purchaser is granted a 2% reduction on the invoice amount.

**4.3.** Payment by the Purchaser implies by no means whatsoever that the Purchaser agrees that the delivered goods and/or services provided are in accordance with the terms and conditions of the agreement. By paying, the Purchaser does not waive any right whatsoever arising from the agreement and/or from the General Terms and Conditions of Purchase.

**4.4.** The Purchaser has the right, without any notice whatsoever, to set off amounts - of whatever origin - owed to the Supplier (or to any other company belonging to the same group as the Supplier) against the amounts - of whatever origin - that the Purchaser can claim from the Supplier.

**4.5.** Partial or late payment by the Purchaser does not give the Supplier the right to suspend or interrupt further deliveries or further service provision.

### **5. Delivery**

**5.1.** The objects are delivered and/or the services are provided in the place and at the time referred to in the proof of purchase/purchase order and according to the Terms and Conditions for Logistics stated in it.

**5.2.** The delivery period, the place of delivery and the Terms and Conditions for Logistics referred to above are of vital importance to the Purchaser.

If the Supplier experiences difficulties with the delivery, if the delivery is delayed or if the Supplier



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expects a delay, the Supplier is obliged to immediately notify the Purchaser in writing (by email - fax - florecom).

**5.3.** Delivery deadlines are a fixed obligation to deliver at a fixed time and on a fixed date and the Supplier is therefore, automatically and without advance notice of default, liable if deliveries are not made according to deadline.

**5.4.** Whatever the reason for late delivery, the Purchaser reserves the right, automatically and without any advance notice of default, to either accept the delivery or to regard the agreement as terminated should it arrive past the deadline.

In both cases the Purchaser is entitled to compensation for damages for a fixed amount of 1% of the value of the delivery per commenced day of the period exceeding the delivery time, with a maximum of 10%, without prejudice to the right to claim compensation for any proven damage.

In the event of agreement termination, the Purchaser also reserves the right to partially, fully suspend or cancel any orders still running.

**5.5.** The Supplier remains liable for the expense and risk of goods delivered late without the Purchaser's express acceptance, until the moment at which the Purchaser does eventually expressly accept delivery.

If delivery is refused the Supplier shall assume responsibility for picking up the delivery. If, after having received a notice by the Purchaser, the Supplier fails to pick up the rejected goods at the latter's own expense, the Purchaser has one of the following options at the Supplier's expense and risk:

- to return the goods to the Supplier;(or)
- to have the goods destroyed; or
- to sell the goods and to recover from the Supplier the Purchaser's damage from (a part of) the return on the sale.

**5.6.** If the Supplier is unable to execute the order in full, the Purchaser can decide at his, her or its own discretion to accept partial deliveries or to refuse the order.

### **6. Acceptance**

**6.1.** The Purchaser accepts delivery at the moment at which he, she or it expressly approves the goods (or services) or, if there is no express acceptance, 8 (eight) working days after delivery.

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If the consignment is sent through to the Purchaser's buyer immediately after delivery, such delivery is accepted 8 (eight) working days after delivery has been made to the Purchaser's buyer.

The Purchaser (or his or her buyer) should contest a delivery due to visible defects in writing.

**6.2.** The Purchaser may keep rejected and refused goods at the Supplier's expense and risk for 5 (five) working days. If the Supplier has not picked up aforementioned goods within this period, the Purchaser has one of the following options at the Supplier's expense and risk:

- to return the goods to the Supplier;(or)
- to have the goods destroyed; or
- to sell the goods and to recover from the Supplier the Purchaser's damage from (a part of) the return on the sale.

The Supplier is also obliged to compensate the Purchaser for any material and immaterial, direct, indirect and consequential damage caused, which was suffered by the Purchaser as a result of the non-conforming delivery and, where appropriate, also for any expenses incurred by the Purchaser to bring the products into conformity or for expenses incurred to procure substitute delivery.

### **7. Property and risk**

**7.1.** Risk transfers at the moment of delivery and, in particular, by unloading the delivery in buildings located in the delivery zone, as stated in the proof of purchase/purchase order.

**7.2.** Ownership transfers at the moment at which the delivery is accepted. An ownership reservation proviso cannot be enforced vis-à-vis the Purchaser, and the Supplier also waives the rights accruing to him or her on the grounds of retention rights or repossession rights.

The Supplier guarantees that the ownership of the delivery is freely transferred to the Purchaser. In particular, the Supplier guarantees that the delivered goods are free of rights of retention, liabilities and third-party rights.

### **8. Warranties**

**8.1.** The Supplier guarantees that the goods delivered (or services provided) are in conformity with the price quotation/order, the Terms and Conditions for Logistics and that they have the properties that may reasonably be expected of similar good quality goods. The Supplier also guarantees that the



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delivered goods are in accordance with the normal requirements of usability, reliability and life expectancy and the Supplier guarantees, in addition, that the products are fit for the purpose for which they are intended.

**8.2.** Furthermore, the Supplier guarantees that all his, her or its goods offered and delivered are in conformity with the country's and EU's applicable laws and regulations relating to (the following non-exhaustive list:) composition, quality, traceability, packaging, labelling, the environment, health and the protection of and information for the consumer.

**8.3.** The Supplier guarantees that the products have undergone all the necessary controls to check that they are in conformity with the applicable regulations and provides proof thereof whenever so requested.

**8.4.** The Supplier guarantees that the goods were manufactured in an environment offering quality guarantee regarding the conformity of the goods with the aforementioned rules (8.1 to 8.3, inclusive).

**8.5.** The Supplier undertakes to observe its obligation to inform the consumer and to affix to his, her or its products any preventive measures and user information. The Supplier safeguards the Purchaser and the latter's buyers against any loss claim that could be imposed on them in this regard.

**8.6.** The Supplier is liable for and indemnifies the Purchaser and the latter's buyers against any damage that they could suffer as a result of the presence of unwanted (amounts of) substances in the delivered goods, e.g. as a result of a third-party claim on the grounds of the Crop Protection and Pesticides Law.

**8.7.** With regard to the goods the Supplier delivered the Supplier safeguards the Purchaser and the latter's buyers against any claim relating to any third-party's intellectual property rights, including (but not restricted to) plant breeders' right, copyright and the rights relating to patents, trademarks and trade names.

### **9. Liability**

**9.1.** The Supplier shall indemnify the Purchaser in full for any damage, costs, expenses and harmful consequences, including claims by third parties, which the Purchaser can suffer and/or incur as a result of:

- defects in goods delivered and/or services provided;
- late delivery or non-delivery;

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- negligence and/or harm;
- contravention of the applicable legislation;
- any mistake or error while executing the Agreement.

The Supplier's liability is not restricted to only his, her or its own liability but also extends to his, her or its personnel and persons he, she or it engages.

**9.2.** The Supplier's liability covers both direct and indirect damage. Any contractual liability restrictions which the Supplier might have cannot be enforced against the Purchaser.

**9.3.** The Supplier undertakes to take out an insurance policy with a well reputed insurance company to cover any damage (as outlined in 9.1) which the Purchaser (including the latter's buyers and other third parties) may suffer. Such policy must be a "fully comprehensive" policy which adequately covers the Supplier for his, her or its general, professional and product liability. The policy must be continued until a minimum of one year after the Supplier's last (contractual) obligation vis-à-vis the Purchaser has expired. A copy of such policy shall be provided whenever the Purchaser so requests.

**9.4.** The Purchaser is only liable vis-à-vis the Supplier, the latter's personnel and any assistants engaged by the latter for direct damage pursuant to the Purchaser's wilful intent or gross negligence.

### **10. Confidentiality**

**10.1.** The Supplier shall not use, copy, pass on or disclose in any manner any confidential information that has come to his, her or its knowledge within the context of or pursuant to the agreement, unless and to the extent that he, she or it is obliged to do so by law.

This applies to any information which the Supplier knows or should have known is confidential in nature, irrespective of whether or not an agreement of sale followed the exchange of the information.

**10.2.** The Supplier must assume responsibility for also imposing his, her or its confidentiality obligations on his, her or its personnel and third parties engaged within the scope of executing the agreement.

### **11. Force majeure and hardship**

**11.1.** In the case of force majeure, compliance with the agreement is suspended as long as a situation

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of force majeure lasts. The one party must immediately notify the other party in writing of the situation of force majeure. If the situation of force majeure lasts longer than 14 (fourteen) days, the other party has the right to terminate the agreement with immediate effect by means of a registered letter.

Such termination shall not give rise to any right to compensation for damages.

**11.2.** To the extent that the following events occur at the Supplier's, they can under no circumstances whatsoever be regarded as force majeure: strike, breach of contract on the part of engaged third parties, transportation problems, auxiliary equipment breakdown and financial problems.

**11.3.** If the result of a fundamental change in the (economic) situation is that execution of the agreement with the Supplier causes an unreasonable or disproportional burden for the Purchaser, the parties shall initiate consultations in order to achieve a fair adjustment of the agreement.

### **12. Termination**

**12.1.** Except in the cases provided for in the Law, the Purchaser also has the possibility of terminating the agreement with the Supplier in the following cases:

- in the case of a breach of contract by the Supplier;
- if the Supplier is declared bankrupt or if all or part of its assets are confiscated, requests payment deferment or is being liquidated, or in other cases from which it appears that the Supplier is insolvent.

**12.2.** The agreement is automatically terminated without judicial intervention and at the Supplier's expense as soon as the Purchaser notifies the Supplier accordingly by means of a registered letter.

### **13. Applicable law and competent Courts**

**13.1.** The legal relationship between Purchaser and Supplier is governed by the law of the country where the Purchaser has his, her or its registered office, to the exclusion of the Vienna Sales Convention (CISG, Vienna 11 April 1980), and to the exclusion of the principles of the CISG relating to applicable law.

If several of the Purchaser's companies from different countries are involved, then Belgian law shall apply.





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**13.2.** Any disputes relating to the validity, interpretation or execution of the agreement between the Supplier and the Purchaser shall be filed exclusively with the Courts of law of the place where the Purchaser's registered office is located.

### **14. Miscellaneous**

**14.1.** If one or more provisions of these General Terms and Conditions of Purchase proves or prove to be null and void, invalid or is or are set aside by a Court of law, the other provisions of the General Terms and Conditions of Purchase shall continue to apply in full force. Any provisions that are null and void, invalid or set aside shall be replaced by a valid provision that approximates as closely as possible the Purchaser's intention of the provision that is null and void or invalid or that was set aside.

**14.2.** The Purchaser reserves the right to amend these General Terms and Conditions of Purchase at all times.

**14.3.** The Supplier is not allowed to transfer the agreement between the parties to third parties, unless the Purchaser has given his, her or its prior and written permission to do so.

**14.4.** Any failure or delay on the part of the Purchaser in exercising the rights granted to him, her or it on the grounds of the agreement and these General Terms and Conditions of Purchase does not imply any waiver of any right on the part of the Purchaser. A waiver of right on the part of the Purchaser only applies if this was made expressly and in writing.