

**TRADING TERMS AND CONDITIONS FOR NURSERY STOCK IN THE NETHERLANDS
(HBN 2008)**

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APPENDIX

GENERAL PROCUREMENT TERMS AND CONDITIONS, BOOMKWEKERIJ GEBR. VAN DEN BERK B.V.

Unless explicitly agreed otherwise, the Trading Terms and Conditions for Nursery Stock in the Netherlands (2008), plus the appendix provided with these Trading Terms and Conditions, apply to all our procurement transactions.

***Chapter VI Article 9(3)**

The following is added here: On delivery of larger items that cannot be bundled, the sizes and types must be clearly separated.

***Chapter VI Article 9(6)**

The following is added here: On shipment by third parties, if partial loads are already present, the seller must exercise care to avoid damage to existing consignments.

***Chapter VI Article 9(7) (new paragraph)**

On shipment by third parties, the buyer and seller can expect maximum loading of the truck without causing damage to the product.

***Chapter VI Article 9(8) (new paragraph)**

On delivery, shrubs, trees and conifers must be bound or, if this is not the case, the buyer has the right to deduct the binding costs from the invoice.

***Chapter VI Article 9(9) (new paragraph)**

Waiting times

Unless explicitly agreed otherwise, on collection of plants from the nursery, the buyer assumes that loading of a full load or trailer will take three hours. Loading times for partial deliveries are calculated in proportion to the number of loading meters.

If loading times are exceeded or if extra loading addresses are added, the buyer has the right to charge the cost price of the extra loading hours/waiting hours.

***Chapter VII Article 11(6)**

This derogates from: Pre-burlapping is permitted.

Plants are lifted on call only, unless explicitly agreed otherwise with the buyer.

***Chapter XI Article 18(1)**

This derogates from: 4 working days after delivery.

Complaints must be submitted in writing within 10 working days of delivery.

TRADING TERMS AND CONDITIONS FOR NURSERY STOCK IN THE NETHERLANDS (HBN 2008)

These Trading Terms and Conditions for Nursery Stock in the Netherlands have been adopted by Anthos, the Royal Trade Association for Nursery Stock and Flower Bulbs in Hillegom, and the Netherlands Nursery Stock Association, registered in Bunnik, united in the Nursery Stock Council.

CHAPTER I: DEFINITIONS

Article 1

The following definitions apply for the purposes of these Trading Terms and Conditions:

- a. 'nursery stock' or 'plants': woody plants delivered as a whole or as scions, non-rooted cuttings or shield buds, material from tissue cultivation, as well as perennials and water plants, all in living condition;
- b. 'the Boskoop district': the territory of the municipalities of Alphen aan den Rijn, Bodegraven, Boskoop, Reeuwijk, Rijnwoude (Benthuisen and Hazerswoude), Waddinxveen and Zoeterwoude;
- c. 'Nursery Stock Council': the foundation in which Anthos and the Netherlands Nursery Stock Association work together;
- d. 'the Quality Standards Committee': a Committee appointed by the Nursery Stock Council with the task of describing the quality standards to be met by nursery stock;
- e. 'the Ancillary Materials Foundation': the foundation appointed by the Nursery Stock Council, with the task of imposing rules with which materials, packaging etc used for nursery stock must comply;
- f. 'product': the name of the plant, being the officially recognised name in accordance with the 'List of Names of Woody Plants' and the 'List of Names of Perennials', both issued by Practical Research for Plants and their Environment (PPO);
- g. 'Article': plant name with quality and size designation;
- h. 'freshly potted': plant that has not been potted for at least one growth season;
- i. 'hidden defect': a defect that can only reasonably be detected by the buyer after the term applying for complaints concerning non-hidden defects;
- j. 'working day': every day of the week, not being a Saturday, Sunday or generally recognised public holiday;
- k. Reusable packaging materials: packaging materials that, by their nature, can be used more than once, such as crates, pallet boxes and pallets;
- l. Disposable packaging materials: packaging materials that, by their nature, can be used once only, such as Danish boxes, plastic trays and plastic bags;
- m. 'CC carts': officially labelled carts issued by Poolorganisatie Container Centrale Benelux BV.

CHAPTER II: GENERAL

Article 2 Applicability declaration

1. These Terms and Conditions apply for all agreements contracted in the Netherlands to which they have been declared applicable and which concern the cultivation and trading of nursery stock;
2. If a sale contract for which a bill of lading/order confirmation has been drawn up contains provisions that represent a derogation from or omission of the provisions of these Terms and Conditions, such provisions shall be deemed not to have been contracted and shall be made invalid, unless these derogating provisions are explicitly stated on the front cover of all copies of the bill of lading/order confirmation.
3. These Trading Terms and Conditions are filed with the Registry of the District Court of The Hague.
Before or on contracting of an agreement, the seller shall make these Terms and Conditions available to the buyer on request.
4. In the event of disputes, the Netherlands Nursery Stock Arbitration Tribunal is competent to issue a binding award. In the event of disputes between buyers and sellers that are both registered in the Boskoop district, an award may be requested of the Boskoop Nursery Stock Arbitration Tribunal.

Article 3

If these Trading Terms and Conditions apply, they apply in full or in as far as the parties do not derogate from these in writing.

Article 4

The special terms and conditions for the Boskoop district described in these Trading Terms and Conditions apply only if both the buyer and the seller are registered in that district.

Article 5

If plants for tissue culture (TC) are propagated, bred indoors or sold as 'freshly potted', this must be stated in quotations, order confirmations, bills of lading, invoices, catalogues etc. Unless stated otherwise, products have been potted for at least one full growth season.

CHAPTER III: QUOTATIONS

Article 6

1. Quotations contain the provision that agreements will be contracted subject to these Trading Terms and Conditions and are without obligation, unless stated otherwise.
2. An irrevocable quotation (an 'option') means that a consignment will be reserved for a prospective buyer. In that case a date will be fixed by which the prospective buyer must notify the seller of its decision.
If no date is fixed, a term of three working days applies, from the date on which the prospective buyer received the quotation with the reservations. If the prospective buyer does not respond to this, the quotation is deemed to have been withdrawn.
3. Samples must display the name of the sender, with a clear description of the article (plant name, quality and size). Samples must be taken in such a way that these are representative of the entire consignment offered. Unless agreed otherwise, the samples are provided by the seller free of charge.

CHAPTER IV: CONTRACT

Article 7

1. Preferably, contracts of sale should be recorded in writing or confirmed in writing.
2. Preferably, contracts of sale should contain the following information:
 - a. date of the contract
 - b. name and address of the buyer
 - c. name and preferably the address of the seller
 - d. a statement that these Trading Terms and Conditions apply
 - e. number
 - f. a clear description of the article to be delivered (plant name, quality and size)
 - g. if already known: the country of destination and the phytosanitary conditions imposed by the country of destination for its imported products. The buyer must notify the seller of any changes in the country's phytosanitary requirements without delay
 - h. the price, including certification costs and any licensing costs
 - i. the payment term
 - j. the delivery and transportation methods
 - k. the method of delivery (direct delivery or delivery on call). If the sale is made on call, whether spring or autumn delivery is involved should preferably be stated. If this cannot be stated, the seller must take account of the possibility of spring delivery
 - l. whether delivery in jute gauze is required
 - m. In the event of a dispute, the Netherlands or the Boskoop Arbitration Tribunal are competent to hand down an award in that regard.

CHAPTER V: PRICES

Article 8

1. All costs that must be incurred before the delivery of the plants are included in the price, with the exception of VAT and unforeseen inspection costs.
2. If the Quality Standards Committee prescribes labels, the costs of these and the costs of jute, wire baskets, pots or containers are included in the price. If the buyer wishes to receive the plants without labels, this must be stated in the bill of lading/order confirmation and on the call-up message.
3. On delivery of the sold plants by the seller's own transportation, sufficient equivalent reusable packaging materials (as recommended by the Ancillary Materials Foundation) must be present at an accessible location at the buyer's and an exchange must take place, unless agreed otherwise. If the buyer itself collects or arranges to collect plants from the seller, an exchange is also required unless agreed otherwise. If an exchange is not possible due to force majeure, a charge will be made for these packaging materials, in accordance with the settlement prices fixed by the Ancillary Materials Foundation.
4. If the seller has the plants delivered by a transport company, the costs of reusable packaging materials will be charged in accordance with the settlement prices fixed by the Ancillary Materials Foundation.
5. Without prejudice to the provisions of paragraph 4, the buyer has the right to return equivalent reusable packaging materials. With the return by a transport company, further agreements will be reached between the buyer and the seller before the delivery takes place with regard to the costs of returning the packaging and the term within which such returns must take place. Returned packaging materials must be accompanied by a bill stating the number of items and containing a description of the packaging materials.

6. If disposable packaging materials are required in the event of a call-up, the costs of this are borne by the buyer.
7. If plants are delivered on CC carts, the CC carts must be exchanged at the time of delivery.

CHAPTER VI: DELIVERY

Article 9

1. **Delivery per consignment**
On delivery, the consignment is accompanied by a delivery slip (excluding the price), stating the names and addresses of the buyer and the seller, and for products requiring a plant passport, an accompanying plant passport. The delivery slip shows the connection numbers of the Netherlands General Horticulture Quality Service Foundation (Naktuinbouw), the numbers, the articles, the plant passport number if applicable, and the number of the warehouse to which the delivery must be made.
2. **Delivery per packing unit**
On delivery, every packing unit or consignment unit must carry an identifying text containing the plant details.
3. **Delivery in bundles**
With delivery in bundles, all bundles must contain the same types and equal numbers of plants, in accordance with the publication of the Quality Standards Committee. If the supplier is unable to comply with the standardised amounts in the composition of one of the bundles, that bundle must be provided with an extra label stating the different number.
4. **Packaging materials**
Unless agreed otherwise by the seller and buyer, only packaging materials approved by the Ancillary Materials Foundation may be used.
5. **Labels**
If the Quality Standards Committee has provided that certain plants may be delivered only with labels or indications of an equivalent nature, in as far as these are approved by the Ancillary Materials Foundation, the seller must comply with these provisions.
If labels approved by the Ancillary Materials Foundation are not used, other labels may be used by agreement. These labels may not contain details of the supplier. Plants must be labelled in a professional manner. Plants may not be tied with the rubber band of the label.
6. **Transportation**
If the seller provides or arranges for the transportation of the plants, it shall take the following measures in order to avoid loss of quality of the products during transportation:
 1. the product must be covered to prevent dehydration, spillage and freezing at all times;
 2. the product must be provided with adequate packaging to prevent damage and the product must be handled with care during loading and unloading;
 3. in no case may the products be shipped together with fruit and vegetables, in view of the risk of ethylene damage;If the transportation is outsourced, the seller must notify the shipper of the above measures.

Article 10

1. **Take-up messages**
Preferably, take-up messages should be sent in writing, by fax or by e-mail. If take-up is reported by telephone, the buyer, if the seller so wishes, is required to confirm the take-up in writing (by fax) as soon as possible, in accordance with the above provisions.

2. **Terms for take-up and delivery**

The buyer must send take-up messages at the earliest opportunity to enable the seller to take the necessary measures. The buyer shall state the date on which the plants taken up should be delivered.

If the buyer does not give a precise delivery date, the seller is required to deliver the plants taken up within two working days of the date on which it receives the buyer's take-up message, or to make these available if shipment is made by third parties. Other agreements may be reached in consultation. If the take-up message reaches the seller after 12.00 noon, the delivery term will be extended by one day. Take-up messages received by the seller on Saturdays, Sundays or on generally recognised public holidays will be deemed to have been received on the next working day for the purposes of calculating the delivery term. Other agreements may be reached in consultation.

3. **Autumn and spring deliveries**

For products purchased on call, whether this involves autumn or spring delivery should preferably be stated. Plants purchased for autumn delivery must be taken up before 15 December. Plants purchased for spring delivery must be taken up as follows:

- root stock before 15 April;
- pot and container plants before 15 May; products that can be visually attractive between 15 May and 1 June, before 1 June;
- other plants before 1 May.

4. **Late take-up**

If the plants are not called before the dates referred to in paragraph 3 of this Article, the seller shall send the buyer written notice of default within five working days of the said dates.

If the buyer fails to call and take up the plants within five working days of the notice of default, the seller has the right to deliver the plants immediately.

5. **Dispatch method and delivery times**

In principle, the seller determines the method of dispatch, unless the buyer states when calling the plants how it wishes the shipment to be arranged.

Delivery may take place only between 7.30 a.m. and 6.00 p.m. on working days, unless agreed otherwise. In the months of March, April and May, delivery is possible between 7.30 a.m. and 8.00 p.m.

Between these times, the buyer cannot impose any restrictions. Unless agreed otherwise, delivery on Saturdays is possible until 12.00 noon. If delivery cannot take place to the warehouse, the buyer shall ensure that the plants can be unloaded in an effective manner.

6. **Prevention of delivery**

If plants are not dispatched or delivered due to frost, the seller shall notify the buyer of this in writing without delay. Following such notification, the seller shall keep the plants available for the buyer. The reports of the KNMI in De Bilt determine whether the seller is unable to make a delivery due to frost. If plants are dispatched or delivered too late due to circumstances for which the seller can be held liable, the buyer has the right to cancel the contract and to claim compensation for the damage suffered from the seller.

7. **Estimated consignments**

a. In the case of estimated consignments, the number of plants delivered may not exceed the estimated number by more than 10% or be more than 15% less than the estimated number.

b. If the number of plants delivered exceeds the estimated number by more than 10%, the buyer may return the excess plants delivered or make these available.

c. If the number of plants delivered is more than 15% below the estimated number, the buyer may claim compensation for damage for the missing number of plants, except in the case of force majeure, of which the buyer is notified in writing in good time prior to or during lifting.

The compensation for damage is calculated on the basis of the net amount of plants, on the difference between the estimated number less 15%, and the actual number of plants delivered.

CHAPTER VII: QUALITY REQUIREMENTS AND STANDARDS

Article 11

1. The delivered plants must be practically free of disease and harmful insects and weeds, in compliance with the inspection regulations of Naktuinbouw and the orders of the Horticulture Product Board.
2. The standards established and published by the Quality Standards Committee serve as the minimum quality standards.
3. Dead branches and deposits on lower stems must be removed from all plants, and poor leaves must also be removed from leafy plants. Overgrowth and lower stems of cuttings and budding plants must be removed. If street trees and standard trees are lifted from open ground, they are delivered without a stick, unless agreed otherwise.
4. If deliveries must be made by different sizes, number of buds, number of branches etc, these must be represented in reasonable proportions.
5. **Sizes**
Thickness dimensions of standard trees are measured one metre above the root collar. Measurements are made with a tape measure. Thickness dimensions of potted roses are measured one metre above the soil level.
Measurements for lower stems are taken at the division between the above ground and underground sections (colour change); for rose seedlings, these are taken at the centre of the root collar. For pot and container plants, measurements are taken from the edge of the pot or container. Thickness measurements of pot roses, rose seedling and lower stems are taken in millimetres, using a metal slide rule.
6. **Plants with root balls**
Plants that are normally burlapped and marked with 'kl' in the Quality Standards Book of the Quality Standards Committee must be delivered with burlapping.
These plants must be burlapped in the manner prescribed by this Committee. If required by the buyer, the seller must burlap plants delivered with a soil ball. This requirement does not apply for Rhododendrons, including Azaleas, Erica and Calluna. The plants must be delivered with a substantial soil ball and, if burlapped, the burlap must be bound around the stem with no twists or knots.
Plants with a soil ball must be packed individually, in the soil in which they were grown. The soil ball must be in reasonable proportion to the plant, and the burlapping material used (jute, acrylic) must virtually fully cover the soil ball. Pre-burlapping is permitted if the soil ball and the burlap are in good condition on delivery. Stock with a soil ball packed in acrylic gauze which is lifted in autumn must be delivered with supports in spring, at the seller's risk and expense. The quality of the burlap must comply with the requirements drawn up and published by the Ancillary Materials Foundation.
Conifers delivered with a soil ball must be trenched in good time. This also applies for deciduous plants, if necessary. Plants with a soil ball must be virtually free of weeds.
Container plants and perennials must be optically free of liverwort and weeds. At the buyer's request, the seller is required to support soil balls for a fee fixed by the Ancillary Materials Foundation, which is shown separately in the invoice.
7. **Removal of leaves**
If deciduous plants with bare roots must be delivered before 25 October, the seller must consult the buyer about removal of leaves from the plant.
If the following deciduous plants with bare roots, including nursery stock, are delivered after 25 October, the leaves must be removed:
 - Acer, standard and street trees
 - Aesculus
 - Corylus, with the exception of 'Contorta'

Fraxinus
Laburnum watereri 'Vossii'
Malus in grafted cultivars
Platanus
Populus
Prunus in grafted cultivars
Tilia
Wisteria

Leaves need not be removed from nursery stock for woodland and hedge planting which is not cultivated at a distance. If the above requirements are not met, the buyer has the right to perform the required work at the seller's expense or to return the plants.

8. Filling soil

The filling soil and soil improvement materials used for the cultivation of nursery stock must be approved and certified by the Regulation of Filling Soil Foundation (R.A.G. Foundation) or by an organisation with equivalent recognition. Approved filling soil and soil improvement materials with an R.A.G. certificate can be delivered only by companies that are members of the R.A.G. Foundation or an equivalent organisation.

CHAPTER VIII: RISK

Article 12

1. The seller bears the risk for the plants sold, outdoor or otherwise, until the time of delivery to the buyer, in observance of the provisions of paragraph 2.
2. The risk of the sold articles transfers to the buyer:
 - from the moment of delivery to the buyer's company, if it has been agreed that the seller will arrange the shipping;
 - from the moment of delivery to the buyer on the transport vehicle, if it has been agreed that the buyer will provide for the shipping of the articles purchased;
 - If the seller delivers plants to the buyer at a transshipment site, the buyer bears the risk of the plants at that site.

CHAPTER IX: PAYMENT

Article 13

1. The buyer and seller fix the payment term by agreement.
2. In the event of failure to pay part or all of the purchase price, the seller has the right to claim from the buyer any reasonable expenses incurred in order to realise the buyer's compliance with its financial obligations to the seller. This includes legal fees and out-of-court expenses relating to the collection of the seller's receivable.
3. As long as the buyer fails to comply with its obligations to the seller, or fails to do so in full, the seller remains the owner of the plants delivered. As long as the delivered plants remain the property of the seller, the buyer is deemed to be holding these plants solely for the seller and may not dispose of or pledge these, transfer ownership of them as surety, or encumber them with any other rights. The buyer is also required to notify the seller without delay if plants that are still unpaid are garnished by third parties or if other measures are taken in relation to those plants.
4. If the buyer has not met its obligations in relation to the delivered plants on any due date, the seller has the right to require the provision of proper security for compliance with those obligations.

In that case the seller also has the right, on contracting a new sales agreement, to require the provision of proper security immediately for the obligations arising from that new contract.

If the required security is not provided within 14 days, the seller has the right to cancel current contracts or to suspend further deliveries, without prejudice to its right to claim compensation from the buyer for the damage that it has suffered or will suffer.

5. By way of derogation from the above agreements in sub-paragraph 'a' in relation to the due dates for the buyer's financial obligations, the amounts due become payable on demand, with no formalities being required, if the buyer is declared insolvent, applies for a moratorium on payments, loses control over his or her property, dies, discontinues or transfers his or her business or, if the buyer is a legal entity, as soon as that legal entity is dissolved.

CHAPTER X: LIABILITY

Article 14

1. The seller accepts no liability for the regrowth or flowering of the plants delivered.
2. The seller guarantees that the plants it delivers, the scions or the scions used are pure-bred. If the pure-breeding requirement is not met, or is not met in full, the buyer may, with sufficient justification, claim:
 - either a new delivery
 - or crediting of the purchase price (possibly since paid), plus compensation for damage of 50% of the purchase price plus the freight charges incurredIn the event of conflicts concerning pure-breeding, the opinion of an expert recognised by the profession, who is sufficiently skilled in this regard, must be requested.
3. If gross negligence on the part of the seller is involved in the delivery of non pure-bred plants, scions, scions used and/or scions used that cause incompatibility and the damage suffered by the buyer demonstrably exceeds the amount referred to in paragraph 2, the buyer may claim higher compensation for damage.
4. If required, the non-pure-bred plants must be made available to the seller at the seller's expense.

Article 15

1. If, following the contracting of the sales agreement but prior to delivery, the consignment purchased proves to be non-compliant or partially non-compliant with the quality standards and/or measurements (as established and published by the Quality Standards Committee, or as agreed by the buyer and the seller), or is defective in other ways, the seller is required to notify the buyer of this in writing immediately after its detection.
2. If less than one quarter of the consignment purchased fails to meet the agreed quality standards and this is not attributable to the seller, and this has been notified in a timely manner in compliance with paragraph 1, the buyer may dissolve the contract with regard to that element, without notice of default and without the intervention of a court.
3. If one quarter or more of the consignment purchased fails to meet the agreed quality standards and this is not attributable to the seller, and this has been notified in a timely manner in compliance with paragraph 1, the buyer may dissolve the contract with regard to the entire consignment, without notice of default and without the intervention of a court, or, following written notification of the seller, may charge the seller for the sorting costs. If required, the buyer may require the seller to perform the sorting work.

4. Within six working days of receipt of the notice referred to in paragraph 1, the buyer is required to notify the seller in writing of whether or not it wishes to maintain the contract, in part or in full. The relevant consignment must be kept at the nursery until the seller has received the written notice referred to above.
5. If the entire sold consignment, or a part thereof, fails to comply with the agreed quality requirements and gross negligence on the part of the seller is involved, the buyer has the right, at its own discretion, to claim compliance with the contract or its dissolution, with compensation for damage, in writing.
If the entire sold consignment, or a part thereof, fails to comply with the agreed quality requirements and no gross negligence on the part of the seller is involved, but the buyer did not issue notice of this, in compliance with paragraph 1, in good time, the buyer has the right, at its own discretion, to claim compliance with the contract or its dissolution, with compensation for damage, in writing.

Article 16

1. Plants that are rejected by a certification institution due to the presence of disease or harmful insects or damage as a result of these will be placed at the disposal of the seller. The seller must be notified of this in writing.
2. The costs of the return shipment shall be borne by the seller.

CHAPTER XI: COMPLAINTS

Article 17 Complaints concerning hidden defects

1. Complaints concerning hidden defects must be notified immediately after the defect can reasonably have been observed, accompanied by arguments.
2. The right to submit complaints lapses if the buyer or the later acquiring party disposes of the delivered products after the defect could reasonably have been observed.
3. After the first growth or flowering period following the delivery, complaints may be submitted in the event of non-pure breeding or contamination are possible only if the buyer proves that the non-pure breeding or contamination could not reasonably have been observed either on delivery or during the first growth period.
4. The maximum compensation for damage due to a hidden defect amounts to the purchase price for the delivered consignment, unless the defect arose through negligence on the part of the seller or one of its legal predecessors, in which case higher compensation for damage may be awarded.

Article 18 Complaints due to defects not qualified as hidden defects

1. Complaints concerning plants that do not comply with the agreed Terms and Conditions or that have visible defects must be notified in writing within four working days of delivery. The determining factor here is the date of the postage stamp, fax or e-mail.
2. By way of derogation from the provisions of paragraph 1 concerning the term, complaints regarding plants that, according to the chart or fax, were called for winter work in the period from 15 November to 20 December, must be submitted within 15 working days of delivery. This provision applies solely for the Boskoop district.
3. The buyer is required to clearly describe the complaints with every complaint submitted.

4. The plants that the complaint concerns, as described in paragraph 1 of this Article, must remain available to the seller at the buyer's business for five working days after the dispatch of the written notice of complaint by the buyer.
Following the expiration of this term, the buyer has the right to destroy these plants, unless the seller requests it in writing, in a timely manner, to keep the consignment available to the seller for a maximum of a further five days.
The party found to be in the wrong by the Boskoop or the Netherlands Arbitration Tribunal bears the costs of any destruction and the costs incurred to keep the plants available during the second five-day period.
5. If the complaints concern the underground section of the plants, plants that have been shaken or washed out may also be made available. Samples should be used as far as possible in this case.
6. All rights to complain lapse if the buyer failed to treat the rejected plants with due care during the period that they were in the buyer's possession.

CHAPTER XII: CANCELLATION

Article 19

If the contract of sale states that the products purchased on call are intended for export to a particular country and export to that country could not take place due to government measures of a general nature, phytosanitary measures, conditions of war, measures arising from this or strikes of a general nature making transportation to that country impossible, the buyer has the right to cancel the purchase, in observance of the following term. The buyer is required to notify the selling party of this in writing within one week of the official publication of the above circumstances.

CHAPTER XIII: DISPUTES

Article 20

1. All disputes concerning a contract to which these Trading Terms and Conditions apply, the contracts arising therefrom or these Trading Terms and Conditions themselves, including disputes that are regarded as such by one of the two parties, shall be adjudicated by means of arbitration by the Netherlands Nursery Stock Arbitration Tribunal.
2. By way of derogation from paragraph 1, the following applies:
 - a. If disputes arise between parties that are all registered in the Boskoop district, such disputes must in the first instance be adjudicated by the Boskoop Nursery Stock Arbitration Tribunal.
 - b. If disputes arise between parties that are all registered in the same region, for which the Nursery Stock Council has appointed Regional Mediators, these disputes must first be submitted to two mediators appointed by the Council. They shall mediate on the basis of their findings as a result of their own investigations into the subject of the dispute, with a view to realising an out-of-court settlement between the parties. If arbitration by the Netherlands Nursery Stock Arbitration Tribunal is requested in such a dispute, before any attempt at mediation by the Regional Mediators has taken place, the Arbitration Tribunal will refer the parties to the Regional Mediators for that region.
3. The parties may submit a written appeal against awards of the Boskoop Nursery Stock Arbitration Tribunal to the Netherlands Nursery Stock Arbitration Tribunal within one month of the dispatch date of the award.
The Boskoop Arbitration Tribunal will inform the parties of this possibility of appeal and the appeal term in the letter in which notice of the award is sent to the parties.
4. If the mediators referred to in paragraph 2b are not able to realise the envisaged out-of-court settlement within a reasonable term, they shall notify the parties of this in writing. They shall

also inform the parties here that both or one of them may request arbitration by the Netherlands Nursery Stock Arbitration Tribunal, in compliance with the provisions of paragraph 1 of this Article.

Following the expiration of this term of one month following the notification by the mediators, the right to request arbitration shall lapse.

CHAPTER XIV: FINAL PROVISIONS

Article 21

1. These Trading Terms and Conditions for Nursery Stock in the Netherlands may be referred to in abbreviated form under the title of: HBN 2008.
2. These amended Trading Terms and Conditions were filed under number 42/2008 with the Registry of the District Court of The Hague on 5 June 2008.
3. The above Trading Terms and Conditions may be declared applicable to contracts concluded from 1 July 2008.

REGULATIONS OF THE NETHERLANDS NURSERY STOCK ARBITRATION TRIBUNAL

Article 1

The Netherlands Nursery Stock Arbitration Tribunal consists of a chairman, deputy chairman, six members and six deputy members. The Arbitration Tribunal is supported by a secretary or deputy secretary.

Article 2

The Boards of the Association of Plant Traders and the Netherlands Nursery Stock Association shall each appoint three members and three deputy members.

The members and deputy members of the Arbitration Tribunal shall be elected for a term of four years and may be re-elected immediately thereafter.

Article 3

The Boards of the Association of Plant Traders and the Netherlands Nursery Stock Association shall, by agreement, appoint the chairman, who must be a Master of Law. The secretary, the deputy chairman and the deputy secretary shall also be appointed by the Boards of the aforementioned organisations, by agreement.

The chairman, the secretary, the deputy chairman and the deputy secretary shall each be appointed for a term of one year and may be reappointed immediately thereafter.

The secretariat of the Netherlands Nursery Stock Arbitration Tribunal is established at Jan van Nassaustraet 50, 2596 BV The Hague in the Netherlands.

Article 4

In addition to the members of the Arbitration Tribunal, advisers shall be appointed. These advisers shall be experts in the field of arboriculture, of whom the Arbitration Tribunal can request advice. The advisers shall be appointed by the Arbitration Tribunal.

Article 5

The party requesting an award of the Arbitration Tribunal in a dispute shall notify the secretariat of the Arbitration Tribunal of this in writing.

Each request for arbitration must contain:

- a. the names and addresses of both parties
- b. a detailed statement of the facts on which the applicant bases its claim
- c. a clear description of what the applicant claims.

All documents relating to the dispute, such as bills of lading, order confirmations and correspondence, must be attached to the request, which must be signed by the applicant.

If the dispute has already been submitted to and handled by the Boskoop Nursery Stock Arbitration Tribunal, the award of that Arbitration Tribunal must be submitted.

A case is pending on the date on which the secretary receives the written notice, as referred to in paragraph 1.

Article 6

Following receipt of the request for arbitration or the submission of a counterclaim, the secretary shall determine the amount that the applicant or the other party that filed a counterclaim must pay as an advance and, if necessary, as an additional advance in order to mitigate the expected arbitration costs, within a term to be fixed by the secretary.

In the absence of payment within the term set, the request for arbitration or the counterclaim filed will be deemed to have been withdrawn.

Article 7

Immediately following the receipt of the documents referred to in the preceding Article, the secretary shall send a copy of these to the other party and shall give that other party an opportunity to file a counterclaim within three weeks.

Article 8

If the chairman, after consulting the secretary, takes the view that no special expertise in the field of arboriculture is required for the settlement of the dispute, he may hear the dispute as a sole arbitrator.

in the presence of the secretary, after the parties have been given an opportunity to explain the case orally.

A party found to be partially or entirely in the wrong may appeal the award of the chairman, via a written appeal, describing the grounds, filed with the Three-Arbitrator Section of the Arbitration Tribunal within two weeks of receiving notice of the award.

Article 9

The Three-Arbitrator Section of the Arbitration Tribunal consists of the chairman or deputy chairman and two members. These members are appointed by the chairman on a case-by-case basis. If the chairman considers it necessary, in view of the nature of the dispute, he may rule for a particular dispute that the Three-Arbitrator Section of the Arbitration Tribunal shall consist of the chairman and four members. These members will also be appointed by the chairman on a case-by-case basis. If any of the members are absent, the chairman shall designate deputy members if necessary.

Article 10

If the chairman takes the view that special expertise in the field of arboriculture is required, after consulting the secretary, he shall designate two advisers to contribute an advisory report on the dispute. If the advisers cannot reach agreement on the advisory report to be provided, they may request a third advisor to issue the advisory report together with them, in which case the advisory report will be drawn up in accordance with the views of the majority.

The parties will be notified of the advisory report. If the parties do not notify the secretary by registered mail within two weeks of receiving notice of the advisory report that they have objections to this advisory report, the chairman shall grant an award in observance of the advisory report.

Article 11

If objections are filed by one or more of the parties against the advisory report referred to in the preceding Article, or if it has already been made evident by other means that one or both of the parties do not agree with the advisory report, the chairman shall refer further handling of the dispute to the Three-Arbitrator Section of the Arbitration Tribunal, which will give the parties an opportunity to explain their views orally.

Article 12

The secretary will notify both parties in writing, in a timely manner, of the location and time at which the hearing will take place for the handling of the dispute.

Article 13

The parties may attend the hearing in person or represented by an authorised representative, authorised in writing, and may explain their claim or defence there orally. The claim may be amended during the hearing unless the defending party's defence would be seriously harmed by this. The Arbitration Tribunal may decide that, before a hearing is conducted, the parties will be given an opportunity to submit a written reply and rejoinder.

The parties may engage the support of counsel.

The parties are required to provide the Arbitration Tribunal with all the required data and information and, if the Arbitration Tribunal requires this, to appear in person.

Article 14

If the claimant, despite having been given a proper opportunity for this, fails to submit its claim or to explain it properly, without submitting any well-founded reasons for this, the Arbitration Tribunal may rule that the proceedings should be discontinued.

If the defendant, despite having been given a proper opportunity for this, fails to conduct its defence, without submitting any well-founded reasons for this, the Arbitration Tribunal may grant an award immediately.

The claim will be awarded in the award referred to in the preceding paragraph, unless the Arbitration Tribunal finds it to be unlawful or unfounded. Before granting its award, the Arbitration Tribunal may require the claimant to present evidence for one or more of its statements.

Article 15

An arbitrator or a secretary assigned to the Arbitration Tribunal may be rejected if reasonable doubts exist regarding their impartiality or independence.

The rejecting party notifies the arbitrator or secretary in question, the Arbitration Tribunal and its counterparty of the rejection, stating the reasons. The Arbitration Tribunal may suspend the proceedings from the date on which the notice of rejection is received.

If a rejected arbitrator or secretary does not resign within two weeks of the date of the receipt of the notice, the district court will rule on the validity of the rejection at the request of either party. If no such request is filed within four weeks of the date on which the notice of rejection is received, the right of rejection lapses and the proceedings, if they have been suspended, shall be resumed from the point reached at that time.

If the rejected arbitrator resigns or the district court finds in favour of the rejection, the arbitrator shall be replaced by another arbitrator, in compliance with the provisions of Article 2 or 3.

If the rejected secretary resigns or the district court finds in favour of the rejection, the arbitrator shall be replaced by another secretary, in compliance with the provisions of Article 3.

If the arbitrator or secretary concerned or one or both of the parties are domiciled or actually reside outside the Netherlands, the terms referred to in paragraph 3 are six and eight weeks respectively.

If, as a result of rejection, neither the chairman nor the deputy chairman are able to act, the Boards of the Association of Plant Traders and the Netherlands Nursery Stock Association shall appoint another chairman by agreement.

If, as a result of rejection, neither the secretary nor the deputy secretary are able to act, the Boards of the Association of Plant Traders and the Netherlands Nursery Stock Association shall appoint another secretary by agreement.

Article 16

The determination of the date on which the award will be issued is reserved for the Arbitration Tribunal. The Arbitration Tribunal shall make its award as good men acting reasonably. If the dispute has already been submitted to and handled by the Boskoop Nursery Stock Arbitration Tribunal, such evidence may be derived from an award of this Arbitration Tribunal as the Netherlands Nursery Stock Arbitration Tribunal sees fit, partly on the grounds of the findings of the Netherlands Arbitration Tribunal in the handling of the dispute.

Article 17

The Arbitration Tribunal is authorised to consult experts or hear witnesses, officially or at the request of one of the parties. The Arbitration Tribunal may assign the hearing of such experts or witnesses to one or more of its members, who will hear the witness or expert in the presence of the secretary. A fee for loss of time may be awarded to witnesses and experts called, and travel and accommodation expenses may be reimbursed.

By agreement with the secretary, at the request of one of the parties or otherwise, the chairman may also invite one or more members of the Arbitration Tribunal to urgently inform himself or herself of the nature of the dispute, at the location where such is deemed to be necessary, if the possibility arises that the accuracy of the complaint could not or could no longer be adequately assessed at a later date. The member or members concerned shall present his/her/their findings in a report, stating their reasons.

Article 18

The defending party has the right to make a counterclaim against the plaintiff in a defence statement, to be submitted no later than the first hearing of the Arbitration Tribunal. The Arbitration Tribunal shall decide whether this counterclaim will be heard together with the hearing of the original claim.

Article 19

In general, the costs of hearing a dispute are borne by the party found to be in the wrong. If the parties are both found to be in the wrong to some extent, the Arbitration Tribunal may divide the costs between them.

Article 20

In its award, the Arbitration Tribunal shall assess the amount of the arbitration costs up to the filing of the award with the registry. If the Arbitration Tribunal finds that terms for this exist, the necessary travel and other expenses of the party to which the award is granted, the costs of legal aid, and the

costs for witnesses and for calling witnesses shall be determined, all in accordance with the budget of the Arbitration Tribunal.

If and in as far as the costs of the Arbitration Tribunal are charged to the party other than the party that paid the advance arbitration costs, that party will be ordered in the award to pay those costs to the party that paid the advance.

The party required to reimburse the other party for costs, in accordance with the provisions of paragraph 1, shall be ordered in the award to pay these to the other party.