

# Exoticals BV – The Netherlands

Exoticals B.V. with its registered office at Hogeweg 37 in (5301 LJ) Zaltbommel according to its articles of association, as well as its legal successors and affiliated companies, hereinafter to be referred to as 'Exoticals B.V.', has laid down the following General Terms and Conditions of Sale:

## Article 1 Definitions

1. In these General Terms and Conditions of Sale, the following terms are used in the following meanings, unless explicitly stated otherwise or if the context proves otherwise in these General Terms and Conditions of Sale, the following terms are used in the following meanings, unless explicitly stated otherwise or if the context proves otherwise:

- a. The Other Party: any legal person or natural person who acts in the exercise of his profession or his business entering into an agreement with Exoticals B.V., or to which Exoticals B.V. makes a special offer and/or gives a quote, as well as their representative(s), authorized agent(s), legal successor(s) and heirs;
- b. Agreement: all Agreements realized between Exoticals B.V. and the Other Party and all modifications or additions thereto as well as all (legal) acts performed in preparation and in implementation of such an Agreement;
- c. Product(s): the Products that Exoticals B.V. supplies.

## Article 2 General

1. These General Terms and Conditions of Sale will apply to all quotes given and special offers made by Exoticals B.V. and all Agreements concluded and orders accepted by Exoticals B.V.. The General Terms and Conditions of Sale thus apply to all (legal) acts (including omissions) of Exoticals B.V. and its relevant Other Party.
2. For the implementation of that stipulated in the Agreement, the Other Party gives Exoticals B.V. permission to make use of third parties who are not the employees of Exoticals B.V.. The General Terms and Conditions of Sale also apply to legal acts carried out by these third parties in connection with the fulfilment of obligations to which Exoticals B.V. is subject pursuant to the Agreement.
3. Deviations from and/or additions to any provision in these General Terms and Conditions of Sale will only be binding for Exoticals B.V. if these deviations and/or additions have been agreed on explicitly between Exoticals B.V. and the Other Party, without reservation and in writing or through e-mail. Any deviations and/or additions agreed on will only apply to the Agreement concerned.

4. The applicability of any purchase or other conditions of the Other Party is explicitly rejected.
5. In the event that following the intervention of a judicial authority, any provision of these General Terms and Conditions of Sale appears to be null and void, solely the provision concerned will cease to apply. All other provisions will continue to apply without prejudice. The invalid or voided provisions will be replaced by Exoticals B.V., taking into account as far as possible the purpose and intent of the original provisions.
6. If Exoticals B.V. does not always demand strict compliance with these General Terms and Conditions of Sale, this does not mean that its provisions do not apply, or that Exoticals B.V. would in any way lose the right to in other cases desire strict compliance with the provisions of these General Terms and Conditions of Sale.

### Article 3 Offers and prices

1. All amounts stated in quotations, offers, Agreements and orders are stated in euros, unless the parties have agreed otherwise in writing or via e-mail. Furthermore, all amounts mentioned are exclusive of sales tax.
2. Exoticals B.V. reserves the right to adjust her prices from time to time.
3. All offers made by Exoticals B.V. are without obligation.
4. Exoticals B.V. retains the right to refuse orders without giving any reason.
5. Exoticals B.V. is not obliged to keep to an offer and/or an agreement for a specified price if this price is based on a misprint and/or a writing error.
6. Offers, quotations and prices do not automatically apply to future orders.
7. Exoticals B.V. is entitled at all times to determine that certain Products will only be delivered in certain minimum quantities.
8. All images, dimensions, colours, weights, etc. of the offered Products included on the website, in offers or brochures of Exoticals B.V. are only approximate and cannot give rise to compensation and/or dissolution.

### Article 4 Agreement

1. The Agreement is concluded at the time that the Other Party has placed an order with Exoticals B.V. by telephone or e-mail.
2. After the conclusion of the Agreement, Exoticals B.V. will send a confirmation of the order from the Other Party via the e-mail.
3. If after the Agreement has been realized the parties agree on further and/or additional agreements or modifications, these will only be binding if and insofar as these agreements have been laid down in writing or via e-mail. In this case too, the written record can consist of the invoice and/or purchase order.

### Article 5 Cancellation of the Agreement

1. The Other Party can only cancel the Agreement if this takes place in writing or via e-mail prior to the commencement of the implementation of the Agreement. With due observance of that stipulated hereinafter, in the event of a cancellation, all preparatory expenses incurred by Exoticals B.V. will be charged to the Other Party at all times.

2. In the event that the Agreement is cancelled within 72 hours prior to the time of delivery agreed on, in addition to the preparatory expenses, the Other Party will owe compensation set at 50% of the price agreed. If the Agreement is cancelled later than 24 hours prior to the time of delivery, the Other Party will owe the full price agreed.

3. In the event that the Agreement is cancelled, regardless of the date on which the cancellation takes place, the Other Party will be obliged to compensate the costs that Exoticals B.V. must pay third parties arising from and in connection with the cancelled Agreement.

## Article 6 Obligations of the Other Party

1. The Other Party shall ensure that all data, of which Exoticals B.V. indicates that these are necessary or of which the Counterparty should reasonably understand that these are necessary for the performance of the Agreement, are provided in a timely, complete and correct manner to Exoticals B.V..

2. If the information provided by the Other Party is incomplete and/or incorrect, this will be entirely at the expense and risk of the Other Party.

3. The Other Party is obliged to inform Exoticals B.V. without delay of facts and circumstances that may be of importance in connection with the performance of the Agreement.

4. For compliance with all legal and other applicable regulations that apply in the country where the Other Party is established in connection with the possession, storage, transport and reselling, in any way whatsoever, of the Products, only the Other Party responsible.

5. The Other Party shall indemnify Exoticals B.V. against any claims from third parties that suffer damage in connection with the execution of the agreement and which is attributable to the Other Party.

6. Exoticals B.V. assumes that the Other Party will fulfil all its legal obligations.

## Article 7 Delivery

1. The delivery time agreed is not a strict deadline unless the parties have explicitly agreed otherwise.

2. Delays in delivery – insofar as these are within reason, will not give the Other Party the right to terminate the Agreement or to any compensation.

3. In the event that a delivery period agreed with the Other Party is exceeded as a result of an event that is in fact outside the control of Exoticals B.V. and cannot be attributed to and/or allowed to be attributed to it, as described in article 12.2 of these General Terms and Conditions of Sale, this period shall automatically be extended by the period during which it was exceeded as a result of such an event.

4. Barring notice to the contrary given by the Other Party, that delivered by Exoticals B.V. must comply with that agreed on by the parties both in terms of number and weight as well as in terms of requirements prescribed by public- and private law. The parties explicitly agree on presumptive evidence with regard hereto.
5. The Parties agree whether the Other Party or a third party engaged by it collects the order from Exoticals B.V. or that Exoticals B.V. delivers the order to the delivery address specified by the Other Party.
6. If the Other Party collects the order from Exoticals B.V. or has it collected, the risk of the Products transfers to the Other Party at the moment the order leaves the Exoticals B.V. warehouse.
7. If Exoticals B.V. delivers the order, the risk of the Products will pass to the Other Party at the time the order is delivered to the delivery address specified by the Other Party.
8. Exoticals B.V. is subject to arising from the agreement entitled to demand sufficient security with regard to the Other Party's fulfilment of its payment obligations, before fulfilling the obligations of the agreement.
9. In the event that the Other Party still has an obligation to pay Exoticals B.V. any sum, especially if invoices sent by Exoticals B.V. are still partly or fully due, Exoticals B.V. will be entitled to suspend the obligation to deliver until the Other Party has met all its obligations.

## Article 8 Acceptance and complaints

1. Immediately when delivery of the Products by Exoticals B.V. take place, Products must be inspected and verified by the Other Party. The inspection and verification must be carried out in the presence of the driver. The Other Party must verify whether the Products delivered comply with that stipulated in the Agreement, namely:
  - a. whether the correct Products have been delivered correctly;
  - b. whether the Products delivered comply with the quality requirements made and agreed with regard thereto, or in other words, the requirements that may be made in connection with normal use and/or commercial purposes;
  - c. whether the Products delivered comply with that agreed on by the parties in terms of quantity (number, amount, weight). If a difference is established by the Other Party that is less than 10%, the Other Party will be obliged to fully accept the Products delivered, such for a pro rata reduction of the price agreed.
2. In the event the Other Party picks up the order at Exoticals B.V. or has it collected (delivery ex warehouse), the Other Party must inspect the Products delivered in the warehouse of Exoticals B.V..
3. Any defects and objections not related to circumstances set out in paragraph 1, sub c of this article must be reported to Exoticals B.V. in writing immediately after having been established, but no later than eight hours after delivery. If Exoticals B.V. does not receive a complaint forthwith the delivery of the Products, the Products will be deemed to be delivered in conformity with that stipulated in the Agreement and without any defects.
4. As soon as possible after having been established, any complaints concerning defects that are not immediately visible must be communicated to Exoticals B.V. in writing or via e-mail to enable Exoticals B.V. to investigate the justness of the

complaints concerned on the spot. The Other Party must enable Exoticals B.V. to verify that the complaints of the Other Party are justified. In the event that Exoticals B.V. has not received a written complaint from the Other Party within eight hours of the delivery, the defect and/or the fault will not be deemed to have been present at the time of the delivery, but the parties will take it for granted that this defect and/or this fault arose after delivery.

5. That stipulated in this article will apply without prejudice in the event that the Products delivered by Exoticals B.V. for the Other Party are delivered to a third party. The Other Party can thus at no time argue against Exoticals B.V. that it had not inspected the Products delivered in view that these Products were stored with a third party elsewhere.

6. If the Other Party proves that the delivered order was (partially) defective at the time of delivery, then Exoticals B.V. will, at its discretion, resell the order (in part) or (partly) credit the invoice for the relevant order. The liability of Exoticals B.V. is at all times limited to that which is included in Article 11 of these General Terms and Conditions of Sale.

7. A lack of a Product does not give the Other Party the right to refuse the entire order of which the Product is part.

8. Trade-related deviations in colour, quality, shape, weight, etc. in the delivered Products are not eligible for advertising.

9. Complaints do not suspend the payment obligation of the Other Party.

## Article 9 Invoicing and payments

1. Invoicing will take place immediately after the order has left the Exoticals B.V. warehouse.

2. Unless parties have deviated from the agreement, Other Party must pay the price agreed on after receiving the invoice related to the delivery without a reduction or claiming compensation within 30 days as of the date of invoice.

3. Setting off of the sums invoiced by Exoticals B.V. by the Other Party against a counterclaim put forward by the Other Party is not permitted, nor the suspension of payment by the Other Party in connection with a counterclaim is permitted, unless agreed on with Exoticals B.V. otherwise.

4. In the event that the term of payment is exceeded, the Other Party will owe default interest of 1% per month, without prejudicing the other rights of Exoticals B.V. such as the right to compensation for extrajudicial costs and commercial interest.

5. In the event that the term of payment is exceeded, without prior notice of default, the Other Party will owe statutory commercial interest on the outstanding sum. Insofar as it has been established at law that the Buyer does not owe statutory commercial interest, it will owe Exoticals B.V. the statutory interest concerned.

6. In the event that the Other Party even after been put in default by Exoticals B.V., the Other Party fails to pay the outstanding sums to Exoticals B.V., in addition to the total sum due consisting of the outstanding sums increased by the interest payable, it will also be obliged to pay compensation for extrajudicial collection costs. The sum of the extrajudicial collection costs is set at 15% of the principal sum due with a minimum of € 100,-.

7. Payment made by the Other Party will first be applied to settle all interests and

costs payable and subsequently for those invoices that have been outstanding for the longest periods. This will also be the case if the Other Party states that the payment relates to a later invoice.

## Article 10 Retention of title

1. Exoticals B.V. will remain ownership of the Products delivered up to the moment of full payment of all claims of Exoticals B.V. to the Other Party on the basis of agreements concluded between them, including interests and costs.
2. The Other Party will only be authorized to resell Products delivered by Exoticals B.V. that are subject to retention of title, as set out in paragraph 1 of this article, if reselling is one of the Other Party's normal business activities.
3. In the event that the Other Party fails to observe its obligations, or if there is a well founded fear at Exoticals B.V. that the Other Party is not capable of fulfilling its obligations flowing from the Agreement, or if there is a suspicion that the Other Party does not wish to fulfil the obligations to which it is subject, Exoticals B.V. will be entitled to take back the Products it has delivered, subject to retention of title mentioned in paragraph 1 of this article, from the Other Party or from a third party keeping these Products for the Other Party or to cause these Products to be taken back. The Other Party will be obliged to cooperate with such action carried out by Exoticals B.V..
4. In the event that third parties wish to establish or assert a right on the Products delivered by Exoticals B.V. under retention of title, the Other Party must notify Exoticals B.V. hereof by return of post. The Other Party must moreover point out to the third party concerned the fact that the Products in question were delivered under retention of title. The Other Party must provide the third party with the Agreement concluded between the parties from which it is apparent that a retention of title was claimed with regard to the Products delivered.
5. The Other Party is obliged to cooperate with all measures that Exoticals B.V. wishes to undertake to protect its property rights with regards to Products it has delivered.

## Article 11 Liability, risk and expiration

1. In the event that the Other Party has Products in possession delivered by Exoticals B.V. which are the property of Exoticals B.V. (including packaging) and/or which are subject to retention of title as referred to in Article 10 of these General Terms and Conditions of Sale, Other Party is liable for any damage caused as of the time from which Products are delivered up to the time that Products are returned, or the time at which the ownership of these Products is transferred.
2. In the event that Other Party has Products in possession that are the property of Exoticals B.V. (including packaging) and/or which are subject to retention of title as mentioned in Article 10 of these General Terms and Conditions of Sale, the Other Party will be liable for any loss suffered by Exoticals B.V. as a result of the damage to, the loss of or the destruction of these Products, which loss arose in the period

between the time at which Exoticals B.V. delivered the Products until the time at which the Products were returned or until the time at which the ownership of the Products was passed.

3. In the event that as a result of circumstances attributable to the Other Party Exoticals B.V. wishes to make use of its retention of title but nevertheless suffers a loss, the Other Party will be liable for the loss suffered by Exoticals B.V..

4. In the event that in the implementation of the Agreement, the Other Party has Products in possession (including packaging) which are property of Exoticals B.V. and/or subject to retention of title as referred to in Article 10 of these General Terms and Conditions of Sale and in the event of theft, loss or damage to the Products supplied to it by Exoticals B.V., the Other Party will be obliged to notify Exoticals B.V. hereof immediately. The Other Party must immediately report theft or acts of war to the police of the municipality where the theft and/or the act of war took place. The Other Party must provide Exoticals B.V. with a copy of such a report.

5. Exoticals B.V. cannot be held to compensate for any damage that is a direct or indirect consequence of:

a. an event, which is in fact beyond its control and thus cannot be attributed to it and/or let it be attributed, as described, inter alia, in Article 12.2 of these General Terms and Conditions of Sale;

b. any act or negligence on the part of the customer, his subordinates or other persons who have been employed by or on behalf of the customer.

6. Exoticals B.V. is not liable for any damage caused by incorrect or incompetent storage by the Other Party of the delivered Products or by removing/changing the packaging of the Products.

7. If the Other Party or a third party to whom the Other Party has delivered the Products delivered by Exoticals B.V. carries out a recall or has it carried out, Exoticals B.V. can only be held liable for (part of) the associated costs, if i) it is established that Exoticals B.V. is liable for the circumstance leading to the recall, and ii) Exoticals B.V. has been consulted and has had a say before the recall has been carried out, and iii) it is established that the Other Party will a reasonably competent and reasonably competent colleague has behaved and has tried to keep the costs associated with the recall as limited as possible.

8. Exoticals B.V. is never obliged to pay compensation as a result of consequential damage. Consequential damages are in any case considered: lost turnover, lost profits, lost savings, Production damage, labour costs, transport costs, trading loss, business interruption, stagnation damage, delay damage, reputational damage, environmental damage, fines imposed and indirect damage, irrespective of their origin.

9. In the event that Exoticals B.V. is liable for any damage, all liability of Exoticals B.V. will be limited to the sum paid out under the public liability insurance of Exoticals B.V., increased by the own risk under this insurance policy. If for any reason whatsoever no sum is paid out pursuant to this insurance, all liability will be limited to the sum of the invoice corresponding to the Agreement on which the Other Party's claim is based, on the understanding that all liability will be limited to the amount that the Other Party has paid for the part of the Agreement to which the liability relates, with a maximum of € 40,000.

10. Claims and other rights, for whatever reason, by the Other Party against Exoticals B.V. expire in any case after the expiry of 1 year from the moment when a fact arises

and the Other Party can put claims forward or invoke their rights against Exoticals B.V..

## Article 12 Force majeure

1. In the event of force majeure, Exoticals B.V. will be entitled either to suspend the implementation of the Agreement or to fully or partly terminate the Agreement without the Other Party being able to claim any compensation vis-à-vis Exoticals B.V..

2. Force majeure of Exoticals B.V. should be understood to mean:

- a. strikes held by the employees of Exoticals B.V. or third parties called in by Exoticals B.V. in connection with the implementation of the Agreement;
- b. illness of employees of Exoticals B.V. or third parties called in by Exoticals B.V. in connection with the implementation of the Agreement;
- c. measures taken and/or prohibitions issued by the Dutch government and/or a foreign government by which Exoticals B.V. is bound;
- d. unforeseen and unpredictable traffic impediments;
- e. accident(s) with a means of transport employed in connection with the implementation of the Agreement as well as unforeseen technical defects in these means of transport;
- f. (attributable) failure to perform by the suppliers of Exoticals B.V.;
- g. theft of Products required for the implementation of the Agreement;
- h. war, riots, threat of war and terrorism;
- i. errors in electricity and internet supply;
- j. as well as all other unforeseen circumstances that prevent Exoticals B.V. from implementing the Agreement properly and on time and that are not for the account and risk of Exoticals B.V..

3. In the event that on the commencement of the force majeure, Exoticals B.V. has already partly met its obligations or can only partly meet its obligations, it will be entitled to send out separate invoices for that supplied and/or the part supplied. The Other Party will then be obliged to pay the invoice concerned as if a separate Agreement was concerned.

4. All agreements related to the sale of agrarian Products are subject to a good harvest. If as a result of a disappointing harvest in terms of the quantity and/or quality of the agrarian Products concerned there are fewer Products available than could have been expected within reason on concluding the Agreement, also as a result of Products having been declared unfit by the authorized bodies, Exoticals B.V. will have the right to reduce the quantity it sells correspondingly. On reducing the quantity supplied, Exoticals B.V. will fully comply with its obligations to deliver. Exoticals B.V. will then not be obliged to supply substitute agrarian Products, neither will it be liable for any loss suffered whatsoever.

## Article 13 Default and termination

1. In the event that the Other Party fails to comply, fails to comply properly or fails to comply on time with any obligation arising for the Other Party from the Agreement



concluded with Exoticals B.V. and/or the law, including the obligation to pay on time as included in Article 9 of these General Terms and Conditions of Sale, the Other Party will be in default de jure and Exoticals B.V. will be entitled to suspend the implementation of the Agreement and/or to fully or partly terminate the Agreement and any directly related Agreements without Exoticals B.V. being obliged to pay any compensation and without prejudicing the further rights of Exoticals B.V..

2. In the event of the (provisional) suspension of payment or the bankruptcy of the Other Party or the closing down or the winding-up of the business of the Other Party, all Agreements with the Other Party will be terminated by operation of law, unless Exoticals B.V. notifies the Other Party within a reasonable term that it requires the observance of (part of) the Agreement(s), in which case without giving notice of default, Exoticals B.V. will be entitled to suspend the implementation of the Agreement(s) concerned until sufficient security has been given with regard to payment, without prejudicing the further rights of Exoticals B.V..

3. Exoticals B.V. will have the right to terminate the Agreement in the event of permanent force majeure of the Other Party. The Other Party will then compensate all costs incurred and to be incurred by Exoticals B.V..

4. Furthermore, Exoticals B.V. is entitled to terminate the Agreement if circumstances arise which are of such a nature that compliance with the Agreement is impossible or can no longer be required according to standards of reasonableness and fairness, or if circumstances arise which are of such a nature unchanged maintenance of the Agreement cannot reasonably be expected.

5. In each of the cases mentioned in paragraphs 1, 2 and 3 of this article, all claims of Exoticals B.V. vis-à-vis the Other Party will be immediately due and payable and the Other Party will be obliged to immediately return leased Products or Products for which payment has not yet been received.

6. In the event of bankruptcy or suspension of payment, the Other Party must notify Exoticals B.V. hereof immediately.

## Article 14 Packaging

1. If a rental system applies to the packaging, the costs for the packaging will be charged to the Other Party. If the Other Party returns the packaging clean and undamaged to Exoticals B.V., then Exoticals B.V. credits the costs for the packaging..

2. If the return of packaging will take place via transport means of Exoticals B.V., the Other Party must ensure that the packaging is sorted and ready for transport..

## Article 15 Industrial and intellectual property rights

1. Exoticals B.V. explicitly reserves any intellectual and/or industrial property rights (trademarks) with regard to the Products it supplies.

2. The Other Party is not permitted to infringe on the intellectual and/or industrial property rights of a third party using the Products supplied by Exoticals B.V.. The Other Party indemnifies Exoticals B.V. against any claims of third parties on the basis of an infringement of intellectual and/or industrial property rights by means of

Products delivered by Exoticals B.V. that take place after Exoticals B.V. has delivered the Products to the Other Party.

3. The Other Party must respect the intellectual property rights, including trade name and trademark rights, of Exoticals B.V. at all time.

## Article 16 Applicable law

1. The legal relationship between Exoticals B.V. and the Other Party is governed by Dutch law.

## Article 17 Disputes

1. Any disputes deriving from an order, a quote, an offer or an Agreement to which these General Terms and Conditions of Sale apply, including conflicts related to these General Terms and Conditions of Sale, will be exclusively by the competent court in the district where Exoticals B.V. has its registered office, on the understanding that this choice of forum will not affect the right of Exoticals B.V. to settle a dispute by means of arbitration or a binding opinion.

2. In derogation of that stipulated in paragraph 1 of this article, the parties can agree in writing that they will allow the settlement of the dispute to be settled by the competent court in another district.