

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF PLANTOSYS NEDERLAND B.V. AND PLANTOSYS GMBH**

VERSION OF 1 FEBRUARY 2019, FILED WITH THE REGISTRY OF THE ZUTPHEN VENUE OF THE GELDERLAND DISTRICT COURT ON APRIL 16th 2019 UNDER NUMBER 12/2019.

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**1. Identity of the Seller**

- PlantoSys Nederland B.V.  
Trading under the name: PlantoSys  
Registered office and visiting address:  
Aalsvoort 105 in (7241 MB) Lochem  
(Netherlands)  
Telephone number: +31 6 49 33 49 30  
Reachable: Monday to Friday from 07.30  
a.m. to 4.30 p.m.  
Email: info@plantosys.nl  
Chamber of Commerce number: 08218773  
VAT identification number:  
NL821997555.B.01
- PlantoSys GmbH  
Trading under the name: PlantoSys  
Registered office and visiting address:  
Hanns-Martin-Schleyer-Strasse 21 in  
(77656) Offenburg (Germany)  
Telephone number: +49 178 533 68 85 / +49  
781 47 44 86 51  
Reachable: Monday to Friday from 07.30  
a.m. to 4.30 p.m.  
Email: christian.berg@plantosys.de  
Chamber of Commerce number: HRB718191  
VAT identification number: DE318119846

**2. General**

- 2.1. These General Terms and Conditions apply to all Agreements, offers and quotations under which the Seller undertakes to sell and deliver Products to a legal entity or natural person.
- 2.2. The stipulations in these General Terms and Conditions have also been made for the benefit of directors and employees of the Seller and any assisting third persons involved in the performance of the Agreement.
- 2.3. The Seller hereby expressly rejects the applicability of the Buyer's general terms and conditions in advance.
- 2.4. The Seller is entitled to amend these General Terms and Conditions. The Buyer will be deemed to have accepted any amendment of the General terms and Conditions if it has not notified the Seller of its objections in Writing within seven days of the Written notification of the amendments by the Seller.
- 2.5. If and insofar as the Agreement contains provisions that are contrary to these General Terms and Conditions, the provisions of the Agreement will prevail.
- 2.6. If and insofar as these General Terms and Conditions have been translated into a language other than Dutch, the Dutch text will always prevail in the event of any differences.

**3. Definitions**

**Handover** means that a Product is placed in the possession or under the actual control of the Buyer by taking receipt thereof;

**Buyer** means any legal entity or natural person who has entered into an Agreement with the Seller or who intends to do so;

**Delivery** means that the Product is made available to the Buyer, regardless of whether the Buyer takes receipt of the Product at the time when it is made available, at the address stated in Article 6.3 of these General Terms and Conditions;

**Agreement** means the Written purchase agreement whereby the Seller undertakes to provide a Product and the Buyer undertakes to pay a cash price for it;

**Product** means any movable property this is offered, sold and delivered by the Seller;

**Written** and **in Writing** means in writing, by email, via the Seller's website or by any other electronic means agreed between the Buyer and the Seller whereby messages are stored and can be made readable within a reasonable period of time;

**Seller** means the Dutch private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) PlantoSys Nederland B.V. and/or the German private limited liability company

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(*Gesellschaft mit beschränkter Haftung*) PlantoSys  
GmbH.

**4. Conclusion and content of the Agreement**

- 4.1. All offers and quotations of the Seller are without obligation and can be revoked by the Seller at any time, even after the offer has been accepted by the Buyer.
- 4.2. The Agreement between the Buyer and the Seller is concluded either by the signing and returning by the Buyer of the quotation sent by the Seller to the Buyer or by the Written confirmation by the Seller of the order placed by the Buyer.
- 4.3. If the order – as it was intended by the Buyer – differs from the Written confirmation thereof by the Seller, the Buyer will be bound to the Seller's Written confirmation, unless the Buyer notifies the Seller in Writing within eight days after the date of the Seller's confirmation that the Seller's confirmation is not in accordance with the order and the Seller proves that this was knowable to the Seller.
- 4.4. The Seller reserves the right to refuse orders.

**5. Prices**

- 5.1. All offered and agreed prices are exclusive of VAT. Unless agreed otherwise between the Buyer and the Seller, transportation, dispatch and/or postage costs, export and import duties, customs clearance fees, taxes, etc., will be borne by the Buyer.
- 5.2. If prices have been set before or upon the conclusion of the Agreement and any changes occur in factors affecting the cost price, such as in purchase prices, import or export duties, wages, taxes, levies or the exchange rate of the euro against foreign currencies, after the conclusion of the Agreement but before the delivery of the Product, the Seller may increase the prices by taking into account the changed amounts.
- 5.3. If the prices have not been set before or upon the conclusion of the Agreement, the prices to be charged by the Seller and payable by the Buyer are the prices applied by the Seller on the day of the delivery.

**6. Delivery**

- 6.1. An agreed delivery period always qualifies as a target date and not as a term to be observed on penalty of forfeiture of rights.
- 6.2. The Seller is entitled to deliver the order in parts or to wait until the entire order is ready for Delivery.
- 6.3. Unless agreed otherwise, Delivery will be made under the delivery condition Ex Works

("EXW"), as referred to in the Incoterms 2010, at the following address: Aalsvoort 105 in (7241 MB) Lochem (Netherlands). This means, among other things, that the Seller is not obliged to dispatch the Product or to load the vehicle that collects the Product and that the Buyer will bear all the risks of damage to or loss of the Product from the moment of Delivery, as defined in Article 3 of these General Terms and Conditions, even if the Seller dispatches the Product to the Buyer at the Buyer's request.

**7. Packaging and transportation**

- 7.1. The costs of packaging the Product will be borne by the Seller.
- 7.2. The costs of the transportation or dispatch and any insurance during the transportation or dispatch will be borne by the Buyer

**8. Complaints**

- 8.1. The Buyer is obliged to check upon or immediately after the Handover of the Product whether the Product that has been handed over is in accordance with the Agreement and to check in particular its soundness, integrity and completeness.
- 8.2. If the Buyer discovers any defects and/or shortcomings during the check referred to in Article 8.1, the Buyer must report these to the Seller in Writing within eight days after the Handover. If this report is not made within this period, any claim of the Buyer against the Seller in respect of these shortcomings or defects will have expired.

**9. Retention of title**

- 9.1. The Seller reserves the right to retain title to all Products it has delivered or is still to deliver to the Buyer under any Agreement until the purchase price for all these Products under any Agreement has been paid in full. If the Seller has performed or will perform work for the Buyer that is payable by the Buyer under any such Agreement(s), the aforementioned retention of title will apply until the Buyer has also fully paid the amounts due under these claims of the Seller. The retention of title also applies to any claims the Seller may acquire against the Buyer on account of a failure on the part of the Buyer in its performance any of its obligations towards the Buyer under the aforementioned Agreement(s).
- 9.2. The Buyer is obliged to store the Products delivered under retention of title with due care and as recognisable property of the Seller. The Buyer is obliged to insure the Products

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- against fire, explosion and water damage and theft for the duration of its retention of title and, at the Seller's first request, to provide the Seller with a copy of the relevant insurance policies and proof of payment of the premium due.
- 9.3. If the Buyer fails to properly perform its payment obligations towards the Seller or if the Seller has good reason to fear that the Buyer will fail to properly perform those obligations, the Seller will be entitled to repossess the Products delivered under retention of title on its own authority and with no liability whatsoever arising towards the Buyer. The Buyer hereby in advance grants the Seller and its employees permission to enter the Buyer's premises and buildings in order to repossess the Products. This applies without prejudice to the Seller's right to compensation for damage or losses incurred, including loss of profit and the interest accrued, and its right to dissolve the Agreement, without any further notice of default, by means of a Written notification.
- 10. Invoicing and payment**
- 10.1. The Seller is entitled to invoice after each Delivery or partial delivery, as referred to in Article 6.2 of these General Terms and Conditions.
- 10.2. The Buyer is obliged to pay the invoiced amount within 14 days after the invoice date without any deduction, discount, suspension or settlement. This payment term is a term to be observed on penalty of forfeiture of rights.
- 10.3. The charged price is immediately due and payable if the Buyer files for bankruptcy or is declared bankrupt, or applies for or obtains a (preliminary or definitive) suspension of payment order, or if the Buyer is declared to be subject to the debt rescheduling scheme under the Natural Persons Debt Rescheduling Act, if all or part of the Buyer's goods are attached, if the Buyer dies or is dissolved, if the Buyer is placed under guardianship or administration, or if after the conclusion of the Agreement the Seller becomes aware of other circumstances that give the Seller good reason to fear that the Buyer will not perform its obligations.
- 10.4. The Buyer will be in default by the mere expiry of the payment term, without any notice of default being required.
- 10.5. As soon as the payment term has expired, the Buyer will owe interest of 1% per month on the principal amount due including VAT, as well as compensation for the out-of-court collection costs, the latter amounting to at least 15% of the principal amount due including VAT, subject to a minimum of EUR 200.00.
- 10.6. The Seller is at all times entitled to require the Buyer to furnish security for the performance of its (payment) obligations. The Seller is at all times entitled to suspend the performance of its obligations arising from the Agreement until the security required by the Seller has been furnished by the Buyer.
- 11. Warranty and complaints**
- 11.1. The Seller warrants the shelf life of the delivered Product until the expiry date, as stated on the Product packaging, provided the Product is stored in a dark and dry place at a temperature between +5°C and +30°C.
- 11.2. In the event of a breach of the warranty as referred to in Article 11.1, the Seller's liability will be limited to, at the Seller's option, replacing or repairing the relevant Product free of charge or refunding the price charged for it.
- 11.3. Complaints concerning a delivered Product do not prejudice the Buyer's obligations in respect of previous deliveries or deliveries still to be made and do not entitle the Buyer to suspend its payment of amounts due under claims of the Seller.
- 12. Force majeure**
- 12.1. If the Seller is prevented from performing its obligations under the Agreement or from preparing for this as a result of circumstances that it cannot reasonably influence, this constitutes force majeure on the part of the Seller. Force majeure is in any case understood to include: (i) any failure of the Seller's suppliers to deliver on time, (ii) defects in goods, equipment, software or materials of third parties used by the Seller, (iii) government measures, (iv) a power outage, (v) war, (vi) a sit-down strike (vii) a strike, (viii) general transportation problems and (ix) the unavailability of one or more of the Seller's employees for any reason whatsoever.
- 12.2. The agreed delivery period will be extended by the period during which the Seller is prevented from performing its obligations due to force majeure.
- 12.3. If the delivery period is delayed by more than three months due to force majeure, both the Seller and the Buyer will be entitled to dissolve the Agreement for the part that has not been performed.

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**13. Intellectual property rights**

- 13.1. The Seller's intellectual property rights to everything the Seller provides to the Buyer in the context of the performance of the Agreement, including in any case drawings, images, calculations, designs, processes and models, will continue to rest with the Seller and may only be used by the Buyer for the performance of the Agreement. After the Agreement has ended, the relevant documents and information will be returned to the Seller at the Seller's first request.
- 13.2. If intellectual property rights arise during the performance of the Agreement, any such intellectual property rights, including copyrights, will rest with the Seller. If and insofar as any such intellectual property rights would come to rest with the Buyer pursuant to the law, the Buyer hereby in advance transfers these intellectual property rights to the Seller and the Buyer will lend its cooperation to this transfer where necessary and furthermore hereby in advance grants the Seller a power of attorney by means of which the Seller can take all actions that are necessary to ensure that the intellectual property rights will come to rest with the Seller. To the extent permitted by law, the Buyer hereby waives any moral rights that continue to rest with the Buyer.
- 13.3. If the Seller grants the Buyer a right of use, this will always be on the basis of a non-exclusive and non-transferable licence, which will be limited to the agreed use.
- 13.4. In the event of any breach of Articles 13.1 and/or 13.2, the Buyer will owe to the Seller a penalty of EUR 50,000.00 for each breach, without any notice of default being required, and without prejudice to the Seller's right to claim full compensation, including interest accrued and related costs incurred. A paid or due penalty will not be deducted from any compensation, including interest accrued and related costs incurred, that is due. The Buyer and the Seller hereby explicitly agree to deviate from the provisions in Section 6:92, paragraph 2, of the Dutch Civil Code.

**14. Liability and indemnification**

- 14.1. The Seller expressly excludes any liability and/or strict liability for direct damage or losses, indirect damage or losses, consequential damage or losses, trading losses, loss of profits, missed savings, reduced goodwill, damage or losses due to business stagnation, data mutilation or data loss, damage to crops and all other forms of direct and/or indirect damage or losses caused by the Seller and/or its subordinates

and/or assisting third persons engaged by the Seller and/or by its Products and/or due to advice given by the Seller in the context of the sale of its Products, unless the damage or losses are due to intent or wilful recklessness.

- 14.2. In the event that the exclusion of liability in Article 14.1 does not hold up, the compensation will be limited to at most the invoice amount (excluding VAT) under the Agreement from which the liability arises, or at least to that part of the invoice to which the liability pertains. The compensation for damage or losses will in any case be limited to the amount paid out by the Seller's liability insurance for the relevant matter, plus the amount of the deductible that is to be borne by the Buyer under the applicable insurance agreement with respect to the relevant matter.
- 14.3. The Buyer will at the Seller's first request fully indemnify the Seller in respect of all claims of third parties against the Seller relating to any facts for which liability has been excluded in these General Terms and Conditions.

**15. Privacy**

- 15.1. If during the performance of the Agreement, any personal data as referred to in the General Data Protection Regulation are processed by the Seller or by the Buyer, the Seller and the Buyer will – if this is required by the General Data Protection Regulation – conclude a Written data processing agreement that complies with the provisions in the General Data Protection Regulation.
- 15.2. The Buyer indemnifies the Seller against any administrative sanctions, remedial sanctions and/or punitive sanctions imposed on the Seller in respect of processing carried out by the Seller in the context of the performance of the Agreement.

**16. Dissolution**

The Agreement may be dissolved by the Seller with immediate effect by giving Written notice to the Buyer if:

- a) the Buyer is declared bankrupt;
- b) the Buyer applies for or is granted a (preliminary or definitive) suspension of payments order;
- c) the Buyer is declared to be subject to the debt rescheduling scheme under the Natural Persons Debt rescheduling Act;
- d) all or part of the Buyer's goods are attached;
- e) the Buyer dies;
- f) the Buyer is dissolved;
- g) the Buyer is placed under guardianship or administration;

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h) after the Agreement has been concluded, the Seller becomes aware of other circumstances that give the Seller good reason to fear that the Buyer will not perform its obligations;  
all this without prejudice to the Seller's right to claim compensation from the Buyer.

and more specifically the Zutphen venue of the Gelderland District Court.

**17. Transferability of rights and obligations**

- 17.1. The Buyer cannot transfer to a third party any claims it has against the Seller, regardless of the basis on which these claims rest. Such claims are expressly non-transferable. This clause will have the effect under property law as referred to in Section 3:83, paragraph 2, of the Dutch Civil Code.
- 17.2. The Buyer may not transfer any obligation under the Agreement and/or these General Terms and Conditions to any third party without the Seller's prior Written permission.

**18. (Full or partial) nullity or annulability**

If a provision in these General Terms and Conditions is null or annulable, this will not render the whole of the General Terms and Conditions null or annulable, nor will this render any other provision thereof (fully or partially) null or annulable. If any provision of these General Terms and Conditions is null or annulable (and subsequently annulled), the Seller will replace it with a valid provision that as closely as possible approximates the purport of the null or annulled provision.

**19. Expiry of rights, governing law and forum selection**

- 19.1. If and insofar as no provisions to the contrary are stipulated in these General Terms and Conditions, any and all rights of claim of the Buyer against the Seller will in case expire one year after the day on which the Agreement to which the claim pertains was concluded, except if the relevant claims are brought before the competent court within this term.
- 19.2. All legal relationships between the Seller and the Buyer are exclusively governed by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) is explicitly excluded.
- 19.3. Any and all disputes that may arise between the Seller and the Buyer as a result of relationships between the Seller and the Buyer that are governed by these General Terms and Conditions will exclusively be brought before the competent Dutch court,