

GENERAL TERMS OF DELIVERY DL Flowers BV

Clause 1: General

1. These general terms apply to any offers and quotations made by DL Flowers BV, hereinafter referred to as "D.L. Flowers BV", and to agreements concluded between DL Flowers BV and the buyer, and to the execution of such agreements.
2. Special conditions, which deviate from DL Flowers BV's general terms, are only binding if they have been agreed upon in writing.
3. Terms stated and/or employed by the buyer are not applicable unless and in so far as they are confirmed in writing by D.L. Flowers BV.

Clause 2: Offers, quotations and concluding an agreement

1. Offers and quotations made by DL Flowers BV are always without engagement.
2. An agreement is concluded at the moment of the express acceptance of the order by DL Flowers BV in a manner which is customary in the trade.
3. Unless special quality standards are expressly specified by the buyer, DL Flowers BV can meet the requirements with the usual trade quality.
4. Each agreement is concluded under the suspensive condition that the buyer, solely in the judgement of D.L. Flowers BV, is considered to be sufficiently credit-worthy. DL Flowers BV is also entitled, during or after entering into the agreement, and before fulfilling any (further) obligations, to demand an assurance from the buyer that both payment and other obligations will be fulfilled. Costs involved in the provision of such assurances are at the expense of the buyer.
5. If it is impossible to deliver the ordered type, DL Flowers BV has the right to deliver a type which is as similar as possible, or to cancel the order if the ordered type cannot be delivered or the buyer does not accept an alternative type.

Clause 3: Quality

1. The products to be supplied should meet the customary standards of quality and test specifications applicable to the products concerned.
2. Products destined for export should meet any government requirements which are applicable in the importing country with respect to the floricultural products concerned. The buyer is obliged to investigate the existence of any government requirements made of floricultural products.

Clause 4: Prices

1. In general, the prices are fixed upon the acceptance of the order and are based on the current market prices, and, unless has been stated otherwise in writing, are exclusive of VAT, packing costs, import duties, other taxes and levies, insurance, costs of quality controls (in so far as these are required beyond the quality certificates issued by the auction).
2. Agreed prices are binding, unless price increases have to be introduced as a result of conditions independent of the will of D.L. Flowers BV, such as an increase in customs and/or excise duties, increases in transport costs from the delivery address specified by the supplier, official increases in supplies prices, changes in exchange rates etc., in so far as these increases could not reasonably have been anticipated by D.L. Flowers BV. The changed price reported to the buyer by DL Flowers BV is binding on both parties, if the buyer is notified of this by DL Flowers BV with the supporting reasons. Price fluctuations resulting from compulsory government regulations, such as an increase in VAT, are always passed on.
3. Costs arising from additions to and/or changes in the agreement are at the expense of the buyer.

Clause 5: Time of delivery

1. Stated times of delivery are approximate. The times of delivery are specified in the expectation that delivery will not be hindered. A small, or depending on the circumstances, reasonable delay in the time of delivery cannot be blamed on D.L. Flowers BV. DL Flowers BV is only in default for a delay in the time of delivery after written notification has been served by recorded delivery.
2. Times of delivery only commence from the moment, or are postponed until the moment, that all the necessary information to be supplied by the buyer, for the proper execution of the agreement, is in the possession of D.L. Flowers BV.

Clause 6: Delivery and risk transfer

1. Delivery, unless otherwise agreed upon or stated, is free of charge to the buyer.
2. Where delivery is free of charge, the risk with respect to the products to be delivered is transferred to the buyer at the moment of delivery.
3. If the buyer has not taken up the ordered products at the agreed time and place, any loss in quality, if any, resulting from their storage is at the buyer's risk. The products ordered are at his disposal, stored at his expense and risk. If, however, the buyer fails to take delivery after the expiration of a limited storage period, which may be regarded as reasonable in view of the type of product, and the risk of loss of quality and/or decay of the products leaves no other option, the order is deemed to have been cancelled by the buyer. In that case DL Flowers BV is entitled to sell the products in question. The defaulting buyer is obliged to accept the cost of the difference in price, if any, caused by such a sale, as well as all further costs and damages incurred on the part of D.L. Flowers BV.
4. DL Flowers BV at all times reserves the right to deliver goods C.O.D., after having informed the buyer of this. DL Flowers BV also reserves the right to refuse to fulfil orders if the buyer has failed to pay for previous deliveries within the term of payment agreed upon. DL Flowers BV is not liable for any damage or loss incurred by the buyer as a result of non-delivery. The buyer must be informed in good time that this right is being exercised.

Clause 7: Transport

1. Transport and forwarding must take place in an efficient manner.
2. DL Flowers BV chooses the most customary method of transport and forwarding.

3. Any specific requirements the buyer has with respect to the transport/forwarding, are only carried out if the buyer has stated that he will accept the extra costs.
4. If forwarding is by D.L. Flowers BV's own means of transport, he is liable for damage sustained up to the buyer's acceptance of the products.
5. Contrary to the provision under 4, D.L. Flowers BV, when calling in a forwarding agent, is only liable for damage sustained up to the forwarding agent's acceptance of the products.

Clause 8: Packing

1. Packing will take place in a manner customary in the trade and is determined by DL Flowers BV in accordance with trade practice, unless agreed otherwise.
2. Packing and packaging used more than once (cartons, boxes, containers, stacking trolleys etc.), unless otherwise agreed, remain the property of DL Flowers BV and should be returned. In the absence of follow-up deliveries any costs incurred for return transport can be charged to the buyer separately. If the materials are returned in an undamaged condition within 30 days after the date of the invoice, the costs charged can be credited, possibly after deduction of an agreed amount for their use.
3. DL Flowers BV is entitled to charge a fee, which will appear on the invoice, for durable materials. If DL Flowers BV charges such a fee, this will be credited, possibly with the deduction of an agreed amount for use, after they are returned in an undamaged condition.
4. Any specific requirements the buyer has with respect to packing are only carried out if the buyer has declared that he will bear the extra costs of this.
5. With regard to durable packing materials, as meant in this article, which have been loaned to the buyer, DL Flowers BV reserves the right, if the buyer fails to return the materials in question, to charge the materials to the buyer in any case and to recover from him any further damage resulting from the buyer's default.

Clause 9: Retention of title

1. D.L. Flowers BV, to obtain greater security of payment of the purchase price of all the products sold by him, and in so far as the nature of the delivered products makes this possible, reserves his title, until the moment that the sum owed, including any interest and costs, has been paid in full. Transfer of the purchased, not yet paid for, products are deemed to be on loan for nothing.
2. DL Flowers BV has the right to reclaim these products and take possession of them, if the negligent buyer does not fulfil his obligations, if he goes into liquidation, applies for or has been granted suspension of payment, is declared bankrupt or the products are seized, or loses control of his own capital in any other way.
3. The buyer, as long as he has not fulfilled his obligation to pay, is prohibited from all acts of disposal with respect to the sold and delivered products, with the exception of the right to sell the products within the context of normal business activities.
4. In the event of an infringement of the content of this article, the total sum owed by the buyer is claimable in full, without prejudice to all of D.L. Flowers BV 's other claims.

-Clause 10: Complaints

1. Complaints concerning visible flaws, including flaws with respect to quality, quantity, type and length, should be reported to DL Flowers BV immediately after they have been detected, or in any case within 24 hours of receipt. Complaints made by telephone should be confirmed by the buyer in writing within three days of receipt of the products. Moreover, a note of the complaint should be made by the buyer or receiver of the goods on the relevant transport documents, in order to confirm that the complaint existed at the time of delivery of the products. The buyer should store the products, with reference to which a complaint has been made, carefully and in such a way that loss of quality is avoided.
2. The complaint should at least contain:
 - a. detailed and accurate description of the flaw;
 - b. a statement of any further facts, from which it is possible to deduce that the products supplied and the products rejected by the buyer are identical.
3. Complaints concerning part of the products supplied cannot be a cause for rejecting the entire consignment.
4. Complaints concerning invoices should also be submitted in writing and within a maximum of 3 (three) days after the invoice date.
5. After expiry of the terms mentioned in this paragraph, the buyer is deemed to have approved the products delivered, or the invoice.
6. For products delivered by third parties, if applicable, the terms of complaint employed by these third parties will be applied.
7. Where complaints are accepted by DL Flowers BV is only obliged to replace the products in question or to credit the net price charged on the invoice for these products, such as the choice of DL Flowers BV and within a reasonable time.
8. The buyer will under no circumstances be able to make a claim against DL Flowers BV after the buyer has processed a part of the delivered goods or used it, or delivered it on to third parties.
9. With respect to complaints, each part delivery is considered as a separate delivery.
10. Any return shipment of delivered products can only be made carriage paid, at the buyer's risk and after written permission for return shipment is given by D.L. Flowers BV.
11. Return shipment must be made immediately after permission is granted. The buyer should provide careful packing, storage and forwarding.
12. Permission for return shipment does not imply an acceptance of the complaint by D.L. Flowers .

Clause 11: Payment

1. Payment, unless has been agreed or determined otherwise, should be without the deduction of any discount, in net cash, cheque, or by bank transfer on delivery.
2. DL Flowers BV is entitled in case of unpaid cheques to charge the buyer all costs involved with a minimum amount of € 25 (twenty-five Euro).
3. The buyer is in default simply by exceeding the agreed term of payment, without any notification being required for this.

4. Payment should first be made in settlement of any claims which are still unpaid and the costs associated with them, including interest.
5. If any of the terms of payment prescribed in the conditions or separately agreed is exceeded, the buyer, from the moment that he is in default, will be charged a delay interest of 1.5% per month in addition to what he owes, without prior notification, whereby a part of a month will be equated with a whole month.
6. The sum owed by the buyer is claimable immediately and without any notification in the event of the buyer's definite bankruptcy, suspension of payment and receivership, the death of the buyer, attachment under the buyer, liquidation, the loss of control of his capital or alienation of the buyer's business and if the buyer is in default of the punctual fulfilment of any obligation towards D.L. Flowers .
7. DL Flowers BV retains the right to invoice, per partial delivery, orders which are fulfilled in instalments.

8. Clause 12: Liability

1. Compensation paid by DL Flowers BV for any damage which may be suffered by the buyer shall, subject to coercive legal regulations, be no higher than the invoice value of the delivered goods to which the invoice refers and is, in any case, restricted to a maximum of the sum for which DL Flowers BV is insured.
2. Complete or partial failure of the cultivation or complete or partial decay during storage, for whatever reason, releases DL Flowers BV from his further obligations, unless such can be attributed to D.L. Flowers BV's intent or gross negligence. In that case DL Flowers BV is liable to make a replacement delivery.
3. This agreement is concluded with the reservation of force majeure. DL Flowers BV is not liable for a shortcoming in performance if this shortcoming cannot be attributed to him in accordance with the law, an act in law or current opinions in social intercourse. A shortcoming in performance cannot be attributed to DL Flowers BV in the event of diseases and plagues, failed harvest, growth defects, exposure damage, war, impending war, strikes, fire, extreme weather conditions, government regulations and other circumstances which are beyond D.L. Flowers BV's direct sphere of influence.
4. If, as the result of a circumstance as meant in the last paragraph, delivery cannot be made in accordance with the agreement, DL Flowers BV must report this to the buyer by telephone as quickly as possible and then confirm this in writing. Further execution of the agreement will then take place after mutual consultation. In those cases where it is possible, the time of delivery will automatically be extended for a reasonable period. In other cases the agreement can be cancelled, wholly or partly, without legal intervention and without being liable to any compensation, by sending a registered letter to the buyer.
5. If the situation of force majeure occurs while the agreement has been partially completed, DL Flowers BV is entitled to claim payment from the buyer for the deliveries which have already been made.
6. For all products delivered by DL Flowers BV applies that they are solely for decorative purposes and not for internal use. The products concerned may in case of misapplication, consumption, contact and/or over-sensitiveness cause harmful consequences to man and/or animal.

Clause 13: Cancellation

1. If the buyer fails in any way whatsoever in the fulfilment of the agreement in question or a previously realized agreement, he will already be in default without any notification being required. Without prejudice to the provisions of the Civil Code DL Flowers BV will, in this case, also have the right to postpone fulfilment of the concluded agreement, or to consider this as wholly or partly cancelled without legal intervention.
2. That stated in the last paragraph is also applicable in the event of bankruptcy or suspension of payment or receivership of the buyer or the closing down of his business.

Clause 14: Disputes

1. All disputes arising between the buyer and DL Flowers BV or between DL Flowers BV and a third party who is executing orders for DL Flowers BV on behalf of a buyer on account of the delivery of goods or the performance of services, including disputes concerning the interpretation of these terms, will be adjudged by the competent judge, in the judicial district in which D.L. Flowers BV's business is statutorily established.
2. With respect to disputes concerning translations of these terms, the Dutch original shall be binding.

Clause 15: Legal and other costs

All costs which the seller incurs from exercising rights, legal or extra judicial, arising from the sales agreement and associated agreements, are at the expense of the buyer. The costs which the seller has to incur in the recovery of invoices not paid by the buyer amount to at least 15% of the invoice sum, such with a minimum amount of € 250 (two-hundred and fifty Euro).