



## BIOBEST GROUP NV GENERAL TERMS AND CONDITIONS OF SALE

### Article 1: Definitions

In these general conditions of sale, the terms and expressions used hereunder have the following meaning:

- 1.1 **Buyer:** the natural person or legal entity whose order for the Products is accepted by the Company;
- 1.2 **Company or Biobest:** Biobest Group NV, with its registered office in Belgium at 2260 Westerlo – Oevel, Ilse Velden 18 and with company number 0893.948.337, and its Affiliates;
- 1.3 **Contract:** any agreement for the purchase and sale of Products and/or Services from Biobest to the Buyer which result from a Purchase Order submitted to and accepted by Biobest.
- 1.4 **General Conditions:** these General Terms and Conditions of Sale;
- 1.5 **Parties:** the Company and the Buyer;
- 1.6 **Products or Goods:** any Products which the Company is to supply or has supplied to the Buyer;
- 1.7 **Purchase Order:** the Buyer's written or electronic order for Products or Services, including any order that the Buyer places online through the Biobest website or transmits via email or facsimile;
- 1.8 **Services:** advice given by Biobest related or not to the sale of the Products.

### Article 2: Applicability

- 2.1 All negotiations between Biobest and the Buyer shall be subject to the General Conditions. This includes all the quotations, notifications, agreements of purchase and sale and activities performed by Biobest. These General Conditions are also applicable to all Services rendered by Biobest. No additional or alternative terms or conditions or alteration to these General Conditions proposed by the Buyer contained or referred to in a Purchase Order or other form submitted to Biobest shall be deemed to apply unless expressly accepted in writing by Biobest.
- 2.2 The Buyer shall be deemed to have accepted these General Conditions by the earlier submission of a Purchase Order to Biobest or accepting Products or Services from Biobest.
- 2.3 A duly executed agreement between the Parties shall overrule the General Conditions for those items for which it explicitly defines different terms and conditions. For all other items, the General Conditions shall continue to apply.
- 2.4 The General Conditions shall supersede any other general conditions of the counterpart. The general conditions of the other Party shall only apply if accepted in writing by Biobest.

### Article 3: Offers

- 3.1 The Buyer agrees that Biobest's provision of a price quotation, price list or any other information shall not be considered an offer by Biobest to sell Products and/or Services. Price quotations issued by Biobest will have a validity of 30 days. Only a Purchase Order submitted by the Buyer shall constitute an offer to contract subject to these General Conditions, however, a Purchase Order shall not be deemed a Contract unless and until the earlier date upon which:
  - a. written confirmation is provided by Biobest,
  - b. or, Biobest proceeds with the fulfilment of the Purchase Order.
- 3.2 Biobest reserves the right to make any changes in the specifications of the Products or Services, without notice to the Buyer, which are required in order to conform to any statutory or other legal requirements or which do not materially affect the performance of the relevant Products or Services.



- 3.3 No order which the Company has accepted may be cancelled, modified or rescheduled by the Buyer except with the prior and written agreement of the Company. Biobest will have the right to be indemnified against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages and expenses incurred by Biobest as a result of a cancellation, subject to a minimum of 5% until a maximum of 100% of the total value of a cancelled Purchase Order (which amount the Buyer agrees represents a genuine pre-estimate of Biobest's loss). Biobest will calculate the amount of the indemnification and communicate it to the Buyer as soon as possible.
- 3.4 In any case, Purchase Order cannot be modified or cancelled on the date of packing.

#### **Article 4: Price**

- 4.1 The prices agreed by the Parties in the contract are fixed and irrevocable, unless the Contract mentions the circumstances that can result in a price change and determines the manner of effecting such a price change.
- 4.2 The prices are in EUROS. All prices are exclusive of the cost of transport and delivery, as well as applicable value added tax (VAT), sales, use, consumption, gross sales tax (GST) and other taxes (other than taxes based upon Biobest's net income) for which the Buyer shall be additionally liable for paying to Biobest. The Buyer shall make all payments to Biobest without reduction for any withholding taxes, which shall be the Buyer's sole responsibility. All taxes shall be paid by the Buyer to Biobest unless the Buyer provides Biobest with a valid certificate of exemption acceptable to the appropriate taxing authority. Prices exclude any import duties and similar charge that Biobest by law or statute may charge or collect upon in accordance with such laws or statutes.

#### **Article 5: Transport, delivery and delivery dates**

- 5.1. The Company fulfils its obligation to deliver Products when it has made the Goods available at the Company's premises (i.e. factory, warehouse, etc.) to the Buyer in accordance with Incoterm Ex Works (EXW), except if otherwise stated in the Contract.
- 5.2. Any dates quoted for delivery of the Products are approximate and indicative only and Biobest shall not be liable for any delay in delivery of the Products however caused. Time for delivery shall not be an essential element of any Contract unless previously agreed in writing by the Parties. Any Products may be delivered by Biobest in advance of the quoted delivery date.
- 5.3. The quantity of any consignment of Goods as recorded by the Company or its contractor upon despatch from the Company's or its contractor's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.4. Any small and/or insignificant differences in quantities and/or other similar information will not be considered as shortcomings.
- 5.5. The Buyer agrees to accept partial delivery of Products ordered unless otherwise mutually agreed by the Parties in writing. In this case, each delivery shall constitute a separate Contract. Failure by Biobest to deliver any one or more of the Products or any claim by the Buyer in respect of any one or more Products shall not entitle the Buyer to cancel the Contract.
- 5.6. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's or its contractor's negligence) unless written notice is given to the carrier and the Company within 14 days of the date when the Goods would have been received in the ordinary course of events.
- 5.7. Any liability of the Company for Goods not made available by the Company shall be limited to replacing the Goods within a reasonable time or issuing a credit note against any invoice raised for such Goods.

#### **Article 6: Ownership and risk**

- 6.1. Risk of damage to and loss of the Goods shall pass to the Buyer upon delivery in accordance with Incoterm Ex Works (EXW).
- 6.2. Both legal and equitable title to and ownership of the Goods shall not pass to the Buyer until the Company has received in full all sums due to it in respect of (i) the Goods; and (ii) all other sums which are or which become due to the Company from the Buyer on any account.



#### **Article 7: Warning**

- 7.1. The Buyer shall be aware that the trading in and the application of the Products requires a high level of monitoring and expertise. Consequently, the Buyer shall adhere to the instructions, labels, advice and manuals prepared by Biobest as regards to transport, placement, handling and feeding of the Products in order to give the Products the best chance to succeed in their purposed use. Biobest shall reserve the right to amend these instructions, advice and manuals as it deems necessary. The Buyer understands that the use of some pesticides can be detrimental to some of the Products of Biobest. In case of doubt on the compatibility of pesticides with the Products of Biobest, the Buyer should refer to their usual Biobest contact.
- 7.2. The Buyer declares to be compliant with all legislation valid in his Country related to the handling, storage and application of the Products of Biobest. Furthermore, the Buyer declares to not use the Products for any illegal, unauthorized purpose or in violation of any law of the local jurisdiction, including but not limited to any intellectual property laws.
- 7.3. Products that require official authorizations as plant protection products (e.g. under the Reg. EU 1107/2009 in the European Union and similar legislations in other territories) shall be used only by parties in possession of a valid permit for the use of such Products. The Buyer shall be responsible and vigilant of providing Biobest's Products, either through sale or direct application on the crop, only to parties in possession of valid permits for the use of the Products.
- 7.4. The Buyer undertakes to resell the Products only in their original packaging and to refrain from repacking, fractionating or otherwise alter the original features of the Product. The Buyer commits himself to transmit to his own clients, all instructions, directions, literature, which he received from Biobest.
- 7.5. The Buyer shall refrain from reverse engineering any Products or Product parts. This shall include rearing or the cultivation of any living organism for purposes other than the intended one.
- 7.6. Since the results of pollination and fertilisation could be dependent on numerous environmental and technical circumstances that are not under the control of Biobest, Biobest does not guarantee the final result of the operations in which its Products/Services are being used.
- 7.7. In consideration that the results of biological control depend on various environmental and technical parameters that are not under the control of Biobest, Biobest does not guarantee the final result of the operations in which its Products/Services are being used.

#### **Article 8: Quality and approval**

- 8.1. Biobest guarantees that the quality of each of its Products and Services is in line with the specifications of the label on the packaging.
- 8.2. All Goods must be thoroughly inspected on arrival with respect to quantity and quality, on the basis of apparent defect, and before use. Between the time of arrival of the Goods and the time they are put into use, the Products must be carefully stored in such a way that no damage can occur to them, in compliance with the instructions provided by Biobest and written on the labels and the packaging of the Products.
- 8.3. The Company shall not be liable for a breach of the warranty in Condition 8.1 unless:
  - 8.3.1. In the case of visible defects: (i) the Buyer notifies the Company before noon the day following the receipt and gives written notice of the damage or defect to the Company within 48 hours of the date of delivery and (ii) either the Company is given a reasonable opportunity after receiving the notice for examining such Goods or the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business (at the Company's expense) for such examination to take place there. If the Buyer does not give written notice to the Company that the Goods are rejected within 48 hours of the date of delivery, the Buyer shall be deemed to have accepted the Goods.
  - 8.3.2. In the case of non-visible defects (e.g. poor viability of living Products): the Buyer gives written notice of the damage or defect to the Company within 5 days from the date of discovery of such damage or defect,
- 8.4. If the Goods have been delivered in a damaged or defective condition, the Company shall at its option replace such Goods (or the damaged or defective part) or refund the price of such Goods at the pro-rata Contract rate. If the Company so requests, the Buyer shall (at the Company's expense) return to the Company those Goods which are damaged or defective.



- 8.5. If at any time total demand for Goods shall for any reason exceed the Company's total available supply through its normal sourcing arrangements the Goods to be supplied under the Contract shall be such quantity as the Company shall in its sole discretion allocate to be supplied under the Contract, and the Company shall not be in breach of the Contract, negligent or otherwise liable to the Buyer if such quantity is less than that ordered by the Buyer.

#### **Article 9: Invoices and terms of payment**

- 9.1. Unless otherwise agreed in writing, all invoices are due on the date of the invoice, in the currency of the invoice. The system of payment shall not involve any costs for Biobest. All payments are to be made in full without deduction in respect of any right of set-off or counterclaim.
- 9.2. If the Buyer fails to make any payment under any Contract when due Biobest shall be entitled to take any or all of the following courses of action:
- 9.2.1. By notice, suspend or terminate any Contract or any part thereof, without liability, stop any Products in transit or Services
- 9.2.2. Charge the Buyer, without further notice, interest on any unpaid amount past due, at the rate of 1% per month until full payment is made. For clarity, a part of a month shall be treated as a full month for the purpose of calculating interest; ten percent of the total amount past due, with a minimum amount of 150 €, will be added to cover recovery costs; irrespective of the right to claim additional damages.
- 9.2.3. Set-off any amounts due against any credit note, balance or other liability issued by Biobest to the Buyer.

#### **Article 10: Exclusion and limitation of liability**

- 10.1. THE FOLLOWING PROVISIONS AND CONDITIONS 10.2 TO 10.5 SET OUT THE ENTIRE LIABILITY OF THE COMPANY (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ITS AFFILIATES, EMPLOYEES, AGENTS AND SUB-CONTRACTORS) TO THE BUYER IN RESPECT OF ANY BREACH OF THESE CONDITIONS OR ARISING UNDER OR IN CONNECTION WITH A CONTRACT.
- 10.2. ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE OR LAWS ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.
- 10.3. Nothing in these Conditions excludes or limits liability for death or personal injury caused for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability, or for fraud or fraudulent misrepresentation.
- 10.4. Subject to Conditions 10.2 and 10.3:
- 10.4.1. the Company's total liability in contract, tort, misrepresentation, or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract value net of VAT; and
- 10.4.2. the Company shall not be liable for any indirect, consequential, incidental or special loss or damage, costs, expenses (whether or not the Company has been advised of the possibility of such loss, damages, costs or expenses), or any claims for consequential compensation, howsoever caused (including without limitation caused by the negligence of the Company or its employees, agents or sub-contractors), which arise out of or in connection with the Contract;
- 10.4.3. the Company shall not be liable to the Buyer for any loss of profit, loss of business, loss of business opportunity, loss of revenue, depletion of goodwill howsoever caused (including without limitation caused by the negligence of the Company or its employees, agents or sub-contractors), which arises out of or in connection with the Contract.
- 10.5. The Buyer shall hold harmless and indemnify Biobest against any and all claims of third parties for damages which have been caused by or are otherwise connected with any Goods delivered by Biobest, including, without limitation, claims made against Biobest in its capacity as producer of the Goods pursuant to product liability, unless such damage is caused by breach of contract, or willful misconduct on the part of the Company.
- 10.6. BIOBEST DISCLAIMS ESPECIALLY ALL RESPONSIBILITY FOR DAMAGE CAUSED BY BUMBLEBEES OR BIOLOGICAL AGENTS OR ANY OTHER PRODUCTS COMMERCIALISED BY BIOBEST TO PEOPLE, ANIMALS, PLANTS OR OBJECTS IN AND/OR OUTSIDE THE



GLASSHOUSES, THE PLANTS AND/OR CROP AREAS IF APPROPRIATE PRECAUTION AND MEASURES ARE NOT TAKEN ACCORDING TO BIOBEST ADVICE AND USUAL CAUTION. THE BUYER COMMITS TO INFORM ITS EMPLOYEES, AGENTS, CONTRACTORS, ETC. THAT BUMBLEBEE STINGS AND OR OTHER BIOLOGICAL AGENTS STINGS CAN CAUSE SERIOUS CONSEQUENCES TO PERSONS OR ANIMALS THAT ARE SENSITIVE TO THEM.

- 10.7. Biobest disclaims any responsibility for any use of any of its Products if used differently to the instructions as indicated on the label of the Products or in any written informative material provided by Biobest. In case of doubts on the use of Biobest's Products, the Buyer agrees to always seek the advice of Biobest before using the Products.

#### **Article 11: Confidential information**

- 11.1. The Buyer agrees that any Contracts, and all Product related information including pricing and descriptions which are provided by Biobest to the Buyer, regardless of the form in which it is provided, are considered confidential information of Biobest ('Confidential Information').
- 11.2. The Buyer shall hold such Confidential Information in strict confidence and not use or disclose such Confidential Information to any third party except as required by law. The Buyer further agrees to limit access to such Confidential Information to those of its employees who have a need to know and are subject to written obligations of confidentiality at least as protective of the Confidential Information as these General Conditions.
- 11.3. Biobest agrees to hold, in strict confidence, and not disclose to a third party any sensitive information provided by the Buyer which is marked as confidential, proprietary or using similar terms.
- 11.4. After termination of the legal relationship this obligation to respect confidentiality continues to apply for five years.

#### **Article 12: Intellectual property**

- 12.1. All patents, designs, trademarks, service marks, copyrights and other industrial or intellectual property rights of the Company of whatever nature in respect of the Goods, their packaging or other material supplied with the Goods shall remain the absolute property of and vested in the Company. Nothing contained herein shall be deemed to grant any right or title to such intellectual property to the Buyer.
- 12.2. All of the trademarks, service marks and logos displayed on the Goods and any referenced document or website (the "Trademarks") are registered and unregistered trademarks of Biobest, or third parties who have licensed their trademarks to Biobest. The Buyer shall not reproduce, display or otherwise use any Trademarks without the Company's prior written permission. Unless agreed otherwise in writing, the Buyer is not permitted to use Trademarks, signs and other marks used by the Company, to distinguish its products from those of other businesses, with the exception of trading the Goods in their original packaging on which trademarks, signs and other indications have been applied by the Company. If the Goods are resold, this provision shall also be imposed upon the Buyer's own buyer and to any subsequent buyers.
- 12.3. The Buyer shall not change or remove any Trademarks (including, without limitation, corporate or trade names and labels, any bag tag, or any indicia of any intellectual property right of any nature whatsoever belonging to the Company), from the packaging of the Goods, unless expressly agreed upon by the Company or otherwise permitted by law.
- 12.4. The Buyer hereby acknowledges that any marketing by it of Goods where a label, batch number, bag tag, or sell-by date has been removed, erased or altered, in contravention of clause 12 represents a serious breach of these General Conditions. In such a case, the Buyer shall bear all legal, financial and judicial consequences which may arise therefrom, at its sole expense and risk.
- 12.5. The Buyer shall refrain from any use of the Products different than the use meant to be as indicated on the label, on the packaging or on the written informative material provided by Biobest. In particular, the Buyer shall refrain from any use of the Products meant to copy their production process or to reproduce the Products. This includes, but is not limited to, rearing bumblebees or other beneficial arthropods for reproductive purposes, cultivating microorganisms contained in some of the Products, or reverse engineering the Products containing non-living active ingredients and other materials.



### Article 13. Termination

- 13.1. If: (i) the Buyer enters into or makes any application to Court in respect of, or calls or convenes any meeting for the approval of, any composition, compromise, moratorium, scheme or other similar arrangement with its creditors, (ii) a Court appoint an administrator (iii) the Buyer enters into liquidation (whether voluntary or compulsory), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer, (iv) any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, (v) the Buyer ceases or threatens to cease to carry on trading, (vii) any analogous event to those listed above (“Events of Insolvency”, the said Events of Insolvency being within the meaning of EC Regulation 1346/2000 on Insolvency Proceedings) occurs in any jurisdiction, (viii) the Company has at any time reasonable grounds to believe that, on the balance of probabilities, any of the Events of Insolvency is about to occur within 30 days, (ix) the Buyer fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or (x) the Buyer encumbers or in any way charges any of the Goods prior to ownership passing to the Buyer, then:
- 13.1.1. (without prejudice to any other rights or remedies of the Company) the Company shall have the right by written notice to immediately terminate any Contract then in force.

### Article 14: Applicable law and settlement of disputes

- 14.1. Belgian law applies exclusively to the Contract and to all possible legal relations that may arise from it, without regard to the Belgian conflict of laws provisions. The application of the Vienna Convention on the Sale of Goods is excluded.
- 14.2. Both parties agree to seek an amicable settlement of any disputes that may arise out of this Contract. If these attempts fail, they shall have recourse to the authority as described under Art. 14.3.
- 14.3. The Enterprise Courts in the place of the registered offices of Biobest are the sole competent courts.

### Article 15: General

- 15.1. **Severability.** If any provision of the Contract, or part thereof, is declared void, this will not have any effect on the remaining provisions, or parts thereof, of the Contract. Both parties will in such case replace the provision(s) or parts thereof which were declared void by a new provision(s) or part thereof which will be as similar as possible to the original meaning of the parties and of the Contract.
- 15.2. **Data collection.** Biobest may collect, store and use Buyer data, including personal data, for the purpose of facilitating its marketing and sale of the Products, and Buyer hereby is informed to such collection, storage during the Contract and five years after and use of Buyer data by Biobest for these purposes, and on basis of the legitimate interest of the Company. Notwithstanding the foregoing, Biobest commits not to share personal data with third parties, except to its IT provider, without Buyer's prior consent. Buyer further is aware of the use of such data for communicating Product and promotional information to Buyer via email or other electronic means unless Buyer notifies Biobest in writing that it does not wish to receive such promotional information. The Buyer has the right to access and correct the data which concern him. In case of misuse of the personal data, the Buyer may contact Biobest or lodge a complaint to the Belgian Data Protection Authority.
- 15.3. **Waiver.** Failure of Biobest to enforce any provision of these General Conditions or a Contract shall not be deemed a waiver of the right to thereafter enforce that or any other provision of these General Conditions or a Contract.
- 15.4. **Force majeure.** Biobest shall not be liable to Buyer or be deemed in breach of these General Conditions or any Contract by reason of delay or failure to perform if such delay or failure to perform was caused by Force Majeure. In the event of a Force Majeure event:
- 15.4.1. Biobest shall, as soon as commercially practicable, notify Buyer of such Force Majeure event provided Biobest shall incur no liability for its failure to give such notice;
- 15.4.2. Biobest's duty to perform shall be suspended for the duration of the Force Majeure event;



- 15.4.3. The time of Biobest's performance shall be extended by a period equal to the duration of said Force Majeure event.
- 15.4.4. In the event a Force Majeure event should continue for more than ninety (90) days either party may, by written notice to the other, cancel a Contract insofar as Products remain undelivered under said Contract. Upon such cancellation, Biobest shall have no obligation to deliver and Buyer will have no obligation to accept delivery of or pay for the undelivered Products, but the Contract shall remain in full force and effect regarding all Products delivered prior to the date of cancellation.