



## Trading conditions

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General terms and  
conditions of sale and  
delivery Ebben Nurseries



**EBBEN**  
*trees since 1862*

# Contents

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## Trading conditions

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**Ebben Nurseries** is a family business that has conveyed a clear vision on the experience of greenery since the first generation:

- Innovation in colour, shape, texture and application with a focus on the species' natural growth habit.
- Presentation of a healthy and wide range of plants.
- Project-based approach to all your orders.
- Sustainable cultivation with the minimum possible impact on the environment, meaning our trees are strong and resilient.



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**A****Definitions**

1. Client: Any natural or legal person who purchases goods from the supplier or concludes or wishes to conclude an agreement with the supplier for the supply of goods.
2. Supplier: Ebben Nurseries B.V., with registered offices in Cuijk at Beerseweg 45.
3. Quote: An offer to enter into a transaction.
4. Order: The written acceptance of a quote by the client.
5. These terms and conditions do not apply to the provision of services by the supplier.

**B****Applicability**

1. These general terms and conditions apply to all agreements with and deliveries provided by the supplier. Any conflicting, differing and/or additional (general) terms and conditions held by the client shall not apply to the supplier; including if the supplier is aware of such terms and conditions, unless and insofar as the supplier has accepted their applicability in writing.
2. Where these general terms and conditions have also been drawn up in a language other than Dutch, the Dutch text shall always be definitive in the case of differences.
3. In these terms and conditions, 'written' is understood to mean: by letter, fax or electronically.

**C****Quotes and conclusion of agreements**

1. All quotes made by the supplier are obligation-free, even if these include an acceptance deadline, subject to interim sales and growth.
2. An agreement first comes into effect when the supplier has confirmed the order in writing and any payment security agreed, including an irrevocable (confirmed) 'letter of credit' has been accepted by the supplier in writing. Any agreement is concluded by the supplier under the resolutive condition that the client is found to be sufficiently creditworthy for financial fulfilment of the agreement, at the sole discretion of the supplier's credit insurer.
3. Any additional agreements or changes made at a later date as well as verbal assurances by the supplier's staff or on behalf of the supplier by its agents or other representatives working for the supplier, become binding for the supplier only once they are confirmed by the supplier in writing.
4. Plant names shall be described according to the List of Names of Woody Plants and List of Names of Perennials, International Standard ENA 2005-2010, ISBN 90-76960-02-X.

**D****Prices**

1. All prices for goods shall be established in the agreed currency, excluding VAT.
2. If, after the order confirmation but before delivery of the products, one or more of the factors determining the cost price change, the supplier retains the right to adjust the agreed prices accordingly.
3. The costs relating to transport, packaging, insurance and checking by the Dutch Plant Protection Service and/or Naktuinbouw shall be borne by the client. All duties and/or taxes that are payable or will be payable due to the agreement concluded between the supplier and client, directly or indirectly, shall be borne solely and completely by the client and may not be deducted from sums owing to the supplier.
4. If the supplier and clients agree that the price will be established in a currency other than Euro, the Euro exchange rate on the date of the order shall be applicable.

**E****Payment**

1. Unless parties have agreed otherwise in writing, payment for the goods sold by the supplier should take place within 30 days of the invoice date in the agreed currency.
2. The date on which the supplier receives the payment shall be considered the payment date. In the case of payment through the bank, the date of payment shall be considered the day on which the supplier's account is credited.
3. The client shall not be entitled to any deduction, suspension of payment or discount on the basis of an alleged defective delivery, because the delivery is not yet complete or due to any other claim made by the client and all calls for settlement are also expressly excluded, unless otherwise agreed.

4. If the payment term is exceeded, the client shall be considered in default from the end of the payment term onwards. The supplier shall be entitled to charge the statutory interest rate for commercial transactions from the payment-term end date and all recovery costs shall also be payable by the client, both judicial and extrajudicial, the latter being set at at least 15% of the amount to be recovered, with a minimum amount of 250 Euro. Extrajudicial costs shall be understood to mean all costs of summons and notice of default in addition to the fees and disbursements for the party the supplier commissions with the recovery. If bankruptcy is requested for the client, the client shall be liable for the bankruptcy request as well as the main sum and extrajudicial costs applied to this as well as the contractual interest applied to this.
5. If an order is carried out in parts, the supplier shall be entitled to demand payment for the partial deliveries, before carrying out the remaining partial deliveries.
6. No liberating payment can be made to individuals employed by the supplier, unless they have been given explicit authorisation.
7. Upon or after concluding the agreement, before carrying out (further) work, the supplier shall be entitled to demand security from the client that the payment and other obligations under this agreement will be met. The supplier shall be entitled to demand payment from the client pro forma. Refusal by the client to provide the required security, shall give the supplier the right to suspend its obligations and eventually to fully or partially terminate the contract without notice or judicial intervention and without prejudicing the supplier's right to compensation for any damage incurred by the supplier.
8. The supplier shall have the right, notwithstanding the intended destination of the client's payments, to first use payments to settle older debts. If costs and interest have already been incurred, the costs, followed by the interest and only then the main sum shall be settled using the payment.

## F

### Delivery

1. Unless otherwise agreed in writing, all deliveries will be carried out Free Carrier, Cuijk, the Netherlands (FCA, Incoterms 2013). If the supplier and client have agreed delivery on the basis of Delivered at Place, (DAP, Incoterms 2013) in writing, the following options are possible:
  - DAP:** plants are transported to the agreed location by the supplier on the basis of full loads. Unloading etc. must be carried out by the receiver (the customer and/or responsible party).
  - DAP in combination:** if the quantity of goods ordered by the client is judged by the supplier to be less than a full load, the relevant delivery can only be organised as part of a combination consignment. This means that the planning of the delivery date and time is less flexible and will be determined by the supplier.
  - DAP unloaded:** for deliveries in the Netherlands and Belgium, the supplier will unload the goods directly adjacent to the freight vehicle, in a place accessible for this freight vehicle. The client is obliged to assist with the unloading.
  - DAP unloaded into planting hole:** for deliveries in the Netherlands and Belgium, the supplier will unload the goods into the planting hole. The planting hole must have been prepared in advance by the client and must be accessible for the truck-mounted crane. The goods will not be planted in the planting hole, but simply unloaded. The straightening, securing, filling etc. should then be carried out by the client.
  - N.B.** In all cases, the driver is responsible for the goods reaching the unloading location without sustaining damage. The driver is therefore the person who will assess whether the unloading location is accessible.
2. Deliveries in which the supplier is responsible for transportation of the goods, take place through full loads. If the clients only requests partial delivery of the orders, resulting in a partial load, the supplier shall be entitled to charge on any additional costs incurred due to this to the client. Orders that are not full load will be delivered when the combination possibilities are suitable, in the supplier's opinion.
3. In deliveries provided by the supplier, the client shall ensure professional unloading, unless expressly agreed otherwise.
4. If the supplier is responsible for the unloading, the maximum unloading time for a full load will be three hours, unless expressly agreed otherwise. The unloading time for partial deliveries will be calculated according to loaded square metres. If this unloading time is exceeded or extra unloading addresses are added, the supplier shall be entitled to charge for the extra unloading/waiting hours at cost price. These extra hours shall be charged by each hour started.
5. Packaging materials shall be charged on to the client in accordance with the price as published by the Stichting Hulpmaterialen. The client can return the packaging material during the same planting season, clean and in good condition, after which the supplier will refund a fixed sum to the client.
6. Equipment delivered along with the goods by the supplier, such as straps, chains etc. shall be charged to the client and will only be credited if it is returned to the supplier within one month of delivery, at the client's cost and risk and in good condition.
7. Although the stated delivery time will be observed wherever possible, this delivery time is approximate and can never be considered a final deadline. The supplier shall not be considered to be in breach of its delivery time obligation until the client provides written notice of this breach, the client has provided the supplier with another opportunity to make the delivery within a reasonable period and the supplier has failed to respond to this.
8. The agreed delivery time shall begin once the agreement has been concluded, in accordance with Article C.2.
9. The supplier shall not be liable for damage incurred as a result of an overdue delivery, if and insofar as this overdue delivery can be attributed to conditions not at the supplier's cost and risk, including failure to perform (on time) by its own suppliers.
10. Failure by the client to comply (on time) with any payment obligations, shall suspend the supplier's delivery obligation.
11. If no delivery times have been agreed and the delivery takes place on call, the supplier shall be entitled to carry out autumn deliveries before 15 December and spring deliveries before 1 April of the year in question.

12. Trees with bare roots must be delivered before 15 April, trees with wire root balls must be delivered before 30 April and pot and container plants must be delivered before 15 May. Variations must be communicated in writing. In the case of deliveries on demand, the supplier shall always have the right to deliver root-ball and pot plants after 15 May.  
For agreements concluded after 15 May, the supplier shall be entitled to deliver within 14 days.
13. In the case of a request to postpone a spring delivery to the following autumn, all costs incurred to make this possible shall be payable by the client. The client shall also be charged a minimum of 50% of the invoice amount at this time.
14. The supplier retains the right to deliver the goods in parts, in which case the (payment) terms and conditions described in Article E also apply to each partial delivery.
15. Orders of plants shall be delivered in consultation with the client and/or the implementing landscaper of contractor. Deliveries shall be carried out weather permitting. The supplier shall of course avoid periods of very high or very low temperatures.  
Extreme weather conditions can cause serious damage to some plants, including goods that have been sold and confirmed but not yet delivered. In such circumstances, the supplier shall be exempted from the delivery obligation.

## G

### Force Majeure

1. In the event of force majeure, such as crop failure, phytosanitary restrictions, viruses, natural disasters, strike action, fire and import and export restrictions or other conditions that make fulfilment or timely fulfilment of the contract by the supplier impossible, the supplier shall have the right to choose, without judicial intervention and without being liable to pay any compensation, on immediate written notice, to completely or partially terminate the contract or to suspend fulfilment of the agreement until such time as the situation of force majeure has come to an end.
2. If the agreement has already been partially fulfilled by the supplier, the client shall pay the purchase price of the goods delivered.
3. Where the suspension period (in accordance with Article G.1.) is longer than four weeks, the client shall be entitled to terminate the contract, insofar as the supplier has not yet fulfilled this, after the client has proposed a reasonable deadline in writing and the supplier has failed to respond to this. In such a case, the client shall never be entitled to any form of (damage) compensation.

## H

### Complaints

1. The client shall be obliged to inspect all goods for visible and/or immediately observable defects on delivery. All defects that can be noticed by normal sensory perception or a simple sample can therefore be detected. The client is also obliged to check whether the goods delivered are in accordance with the order on other points. By failing to observe the inspection obligation, the client shall lose the right to any claim against the contractor.
2. If the delivery differs from the agreement in terms of number, quantity and weight by less than 10%, the client shall be obliged to accept the delivered goods despite this. The supplier shall be entitled to deliver comparable and/or equivalent species in place of species that cannot be delivered, including higher or lower thickness and/or sizes, at the corresponding higher or lower price. Such a delivery shall not be considered defective.
3. Complaints relating to quality of the goods delivered must be submitted in writing and within eight calendar days of the delivery. Complaints submitted incorrectly will not be processed. Once this period has been exceeded, the client shall be deemed to have approved the delivery and complaints will no longer be considered. The date of the postmark, fax or email shall determine whether or not a complaint was submitted in time.
4. The complaint should include a description of the defect and the supplier must be given the opportunity to investigate the complaint at the first opportunity.  
The client should allow the supplier to have an inspection of the goods concerned carried out by an expert or independent inspection body. If the expert finds the complaint to be well founded, the costs of the inspection shall be borne by the supplier. If it is found to be unfounded, the costs shall be borne by the client.
5. The right to complain expires one month after written notification by the supplier that the complaint is inadmissible, unless the client has submitted a written objection to this rejection. In such a case, the supplier shall be obliged to expressly notify the client of the consequences of failure to respond.
6. The right to complain can only be exercised by the supplier's direct contracting partner. The right to complain is non-transferable.
7. Any right to complain shall lapse if the client has not handled the rejected goods with the necessary care in the period that they are on the client's site.
8. If the client has submitted a complaint in good time and the supplier has recognised this complaint, the supplier shall be obliged only to deliver the missing goods, replace the delivered goods or return a proportionate amount of the purchase price, based on the supplier's own choice. For replacement deliveries, the supplier must be provided with a reasonable period.
9. Submitting a complaint shall not suspend the client's payment obligation, unless the supplier expressly consents to such a suspension.
10. The return of the goods shall be at the cost and risk of the client and can only take place following prior written permission from the supplier.

**I****Liability**

1. The client shall be obliged, where necessary, to inform its customers of the correct handling of the products supplied and particularly to notify them of any hazards linked to the goods, such as poisonous goods and intolerance upon ingestion of goods and/or parts of goods.
2. The client indemnifies the supplier of any form of third-party liability if damage is incurred as a result of the client not observing the obligations established in Article I.1.
3. The supplier shall never be liable for the regrowth and/or blossom of the goods delivered or the unsuccessful settling or growth of the goods delivered, unless otherwise agreed in writing. It is always the responsibility of the client to evaluate whether the conditions, including climatological, are suitable for the goods.
4. Except for statutory liability on the basis of mandatory legal provisions and except in the case of wilful misconduct or negligence, the supplier shall never be liable for any damage incurred by the client. Liability for indirect damage, consequential loss, immaterial damage, trading loss, environmental damage, interruption of business, loss of profit or any damage resulting from third-party liability, is also expressly excluded.
5. If and insofar as, despite the provisions of Article I.4, the supplier does hold any liability, on any grounds, the liability shall be limited to an amount equal to the net invoice value of the goods concerned, with the proviso that the supplier shall be liable at most and exclusively for a maximum amount of € 20,000 per incidence of damage.
6. The client indemnifies the supplier against all third-party damage claims for which the supplier is not liable under these terms and conditions.

**J****Cancellation**

1. The supplier shall have the right to cancel an order if, at the time of delivery, the client has not yet met their previous payment obligations in relation to the supplier or other creditors. The supplier can also make use of this right if the information regarding the client's creditworthiness is considered by the supplier to be insufficient. The client cannot derive any rights from such cancellations and the client shall never be able to hold the supplier liable.
2. Cancellation of an order by the client is in principle not possible. If a client nevertheless cancels or partially cancels an order, for any reason, the supplier shall only be obliged to accept this if the goods have not yet been provided to the transportation company for delivery and on the condition that the client pays a cancellation fee, equal to at least 50% of the invoice value of the cancelled goods plus VAT. The supplier shall also be entitled to charge all costs incurred up to that point and to be incurred (including costs of preparation, care, storage and so on), notwithstanding the supplier's right to compensation for loss of profit and other damage.
3. The client shall be obliged to purchase the goods sold as soon as these are made available to the client. If the client refuses to purchase these, the supplier shall be entitled to sell these goods elsewhere and the client shall be liable for the difference in price as well as any additional resulting costs for the supplier, including storage costs.

**K****Retention of ownership**

1. Ownership of the goods delivered by the supplier shall not transfer to the client until integral payment of all amounts invoiced by the supplier including any interest, fines and costs as well as all claims of failure to fulfil the client's obligations resulting from these or other terms and conditions. Provision of a cheque or another commercial paper does not count as payment here.
2. The supplier shall be entitled to take the goods delivered back immediately if the client fails in any way to meet their (payment) obligations. In this case the client shall be obliged to provide the supplier with access to the client's site and buildings.
3. The client should store the goods to which the retention of ownership applies separately to the other goods, in order to be able to distinguish the supplier's goods.
4. As long as the retention of ownership continues to apply to the goods, the client may not transfer, charge, pledge or otherwise place these in the control of third parties outside the framework of the client's normal business activities. The client shall also not be permitted to transfer the goods within the framework of its normal business activities if the client has requested a suspension of payment or the client has been declared bankrupt.

**L****Termination and suspension**

1. In the event that the client does not fulfil the obligations resulting from the agreement concluded, does not fulfil these on time or does not fulfil these properly, or if there is a legitimate fear of this, including in the event of a request for suspension of payment, bankruptcy or liquidation of the client's business as well as in the event of the client's death or, if the client is a company, the termination or dissolution of the client, or if a change is made to the type of company or the management of the company, or if activities are added to the company,

the supplier shall have the right, without notice of default and without judicial intervention, to suspend the agreement with a reasonable period or to terminate the agreement without any obligation to pay compensation.

2. The money owed to the supplier with respect to the part of the agreement already completed, as well as damages resulting from the suspension or termination, including loss of profit, shall be due immediately.

## M

### Intellectual property rights

1. The supplier reserves all rights in the area of intellectual property in connection with the goods delivered by the supplier.
2. In those cases in which the catalogue used by the supplier or the agreement concluded by the parties states that a variety is subject to breeder's protection or design protection, which is indicated by the ® symbol after the name of the variety, the client shall be bound by all obligations relating to this law. Violation of this provision shall lead to the client being liable for all damage incurred by the supplier and third parties as a result of this.

## N

### Conflict with statutory provisions

1. If any provisions of these General Terms and Conditions of Sale and Delivery are not applicable or in conflict with public policy or the law, only the provision in question shall be considered invalid, and all other provisions shall remain in full force.  
The supplier retains the right to amend the contested provision to make this legally valid.

## O

### Competent court/applicable law

1. All disputes, including those seen as such by only one of the parties, shall be subject to the judgement of the competent court in the area in which the supplier has its registered offices, without prejudice to the authority of the supplier to submit the dispute to another competent court if desired.
2. The provisions of Article O.1 shall not affect the rights of the supplier to obtain a judgement through arbitration by the International Chamber of Commerce in accordance with the Arbitration Regulations of the International Chamber of Commerce, through a single arbitrator. The arbitration location shall be Amsterdam, the Netherlands. The arbitration procedure shall be carried out in English.
3. All offers and quotes made by the supplier as well as all agreements concluded between the client and supplier shall be subject exclusively to Dutch law.
4. Applicability of the Vienna Sales Convention (CISG) is excluded.

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Ebben Nurseries in Cuijk has been a grower of environmentally-friendly and sustainable cultivated plants for green projects in (semi) public and private spaces since 1862. Ebben specialises in multi-stem trees, climbing trees, avenue and park trees, distinctive trees and solitary shrubs. Via Ebben Exclusive the company also supplies plants for creating stylish and atmospheric private and corporate gardens. Ebben Inspyrium is a venue for events within and outside of the sector and includes an auditorium and 1400 m<sup>2</sup> of roof gardens with large multi-stems and native and exotic types of fruit. Inspyrium underlines the role of Ebben as a knowledge partner and contributes towards achieving a broad view of every imaginable use of greenery in public spaces.

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