

LTO Nederland General International Terms and Conditions of Sale and Delivery for tree nursery products, plants (including perennials), shrubs and summer flowers

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In the event of contrariety between the Dutch and translated versions of the text, the Dutch version will prevail.

Table of Contents

Table of Contents	
Art. 1 Definitions.....	2
Art. 2 Applicability	2
Art. 3 Prices and Offers	2
Art. 4 Harvest and sale proviso	3
Art. 5 Delivery and transport	3
Art. 6 Packing/trolleys/pallets/packaging	4
Art. 7 Payment	4
Art. 8 Force majeure	5
Art. 9 Complaints	6
Art. 10 Liability	7
Art. 11 Transfer and retention of title, security.....	7
Art. 12 Intellectual property (including plant breeders' rights, trademark rights and patent rights)....	7
Art. 13 Dispute resolution and applicable law	7
Art. 14 Concluding provision	7
Appendix 1: Example of plant description form/plant profile	8

Art. 1 Definitions

1. The 'seller' is defined as: the natural person or legal entity whose business it is to supply the products referred to in Article 1(4), and to conclude transactions in relation to these products in the broadest sense, including the purchase and sale of products, the rental and/or sale of the products it has cultivated within its own business, as referred to in Article 1(4).
2. The 'purchaser' is defined as: the natural person or legal entity with whom the seller has entered into any agreement in relation to the products referred to in Article 1(4).
3. 'Gross market value' is defined as: the market value agreed excluding containers, transport and labelling, or agreed otherwise and including licencing fees (where applicable).
4. 'Tree nursery products' are defined as: all products cultivated within the tree nursery and perennial plants sector, including plants and shrubs intended for cultivation as cut flowers, as well as cut flower and ornamental foliage products.
5. 'Working days' are defined as: Mondays to Fridays inclusive, excepting statutory holidays and days off.
6. 'Call-off purchase agreement' is defined as: an agreement formed during the growing season without an explicit delivery date. The growing season runs from 1 July to 30 June.

Art. 2 Applicability

1. These terms and conditions may only be applied by sellers which are members of LTO's tree, perennial plants and summer flowers' professional groups, or which are directly connected with a business or company which is an LTO Nederland member.
2. These terms and conditions apply to all quotations and offers made by the seller, as well as any agreements it has entered into or sales and deliveries it has agreed to. Any general terms and conditions of the purchaser of any kind whatsoever are therefore **not** applicable, unless agreed expressly otherwise in writing.
3. Provisions deviating from those of these purchasing terms and conditions must be agreed expressly and set out in writing. Where they do not replace the provisions of these purchasing terms and conditions, they are considered to supplement these terms and conditions.
4. A copy of these purchasing terms and conditions will be presented by the seller to the purchaser, or the seller will refer the purchaser to them while providing a written statement that these terms and conditions may be downloaded from the seller's website.

Art. 3 Prices and Offers

1. All quotations and/or offers are non-binding, while stocks last, unless otherwise agreed.
2. The agreement is concluded once the offer or quotation has been accepted by the purchaser in writing, unless the seller raises a written objection thereto within five days of the purchaser's confirmation having been sent.
3. Where an agreement is entered into through the intervention of agents, intermediaries, resellers, etc., this agreement takes effect from the moment that it has been confirmed by the seller in writing.
4. The agreement is accompanied by a provisional description of plants, and potentially a photograph, or form/ plant profile (see appendix 1), in which the seller sets out the average quality of the batch to be supplied and describes the upper and lower limits.

5. Acceptance will only have taken place once the price and terms and conditions agreed have been stated by the purchaser in writing (fax/email with read receipt).
6. The prices agreed between the parties are ex nursery, and exclusive of the applicable VAT, transport and container costs, import duty, photo labels, price labels and additional costs due to changes in legislation or increased inspection charges. The seller reserves the right to charge for these unforeseen expenses during the agreement and the delivery, unless expressly agreed otherwise in writing.
7. Where nothing to the contrary is indicated, the prices stated are in euros. Should the prices be agreed in any currency other than euros, the exchange rate of the euro on the date of the order confirmation applies.
8. In case of cancellation of an agreement by the purchaser, that party must immediately pay the seller 25% of the gross market value of the products to be supplied, plus VAT, as compensation for cancellation. All agreements entered into in a growing season are considered to have been cancelled when not delivered by 30 June of the growing season in question, unless otherwise agreed.
9. Should, as a consequence of the cancellation referred to in Article 3(8), the products be traded for a lower price or appear to be unsaleable and where the damage to the seller is more than 25% of the gross market value, the purchaser is liable for additional damage, consisting of differences in price and other damage suffered by the seller.

Art. 4 Harvest and sale proviso

1. Orders of products for which material which is not fully grown at the time of purchase must be purchased from the purchaser are accepted by the seller subject to the normal breeding average for good plant material of good appearance.
2. The complete or partial failure to breed or harvest products, or their partial perishing while in storage for any reason whatsoever, releases the seller from its obligation to supply and from its further obligations, except where the result of the seller's wilful misconduct or gross negligence.
3. All sales contracts for tree nursery products are made subject to those products being harvested, regardless of whether the seller or third parties have cultivated the products. When fewer products are available as a result of a disappointing harvest in terms of the quantity and/or quality of the products, including those rejected by bodies competent to do so, then it may reasonably be expected that, on entering into the contract, the seller has the right to reduce the quantities it has sold by that number. In supplying the quantity reduced in the aforesaid manner, the seller is meeting in full its delivery obligations. In such an event, the seller is not obliged to deliver substitute products, and nor is it liable for any damage of any kind whatsoever.
4. The seller is entitled, but not obliged, to provide a replacement delivery by agreement with the purchaser for additional varieties and/or other sizes. This delivery must take place under the same conditions as those originally agreed. Should the purchaser fail to accept another variety, it has the right to cancel the order for this specific variety. Should the order for the non-deliverable variety comprise part of a more extensive agreement, then the cancellation in question applies only to this non-deliverable variety, while the rest of the agreement remains in effect. Should the supply of another variety be agreed, the purchaser has no right to compensation or termination of the agreement.

Art. 5 Delivery and transport

1. When use is made of a plant profile, the seller submits a definitive plant profile (including photograph) 3 to 4 weeks prior to delivery. The profile conveys the average quality of the party (appendix 1). In all other cases, the usual trading standards for the tree nursery sector apply.

2. Unless otherwise agreed, delivery takes place ex the seller's company or ex another address provided by the seller. At the actual moment of delivery, all risks pertaining to the products supplied and any rights and obligations associated therewith are transferred to the purchaser.
3. Products supplied are living goods, whose quality may be impaired or even lost completely as a result of incorrect treatment. Once the products have left the business premises of the seller or of a company designated by it, the seller no longer has any insight into or influence over the manner in which the products are treated. Therefore, the seller carries no responsibility or risk whatsoever for this.
4. Prior to and/or during shipment of the products, the purchaser is obliged to inspect and verify them and their packaging at the seller's business premises or those of a cultivation company designated by the seller, in terms of their number, quality, size, weight and disease. Where plants are checked on arrival with the purchaser, any complaints in relation thereto must be submitted in writing within 5 working days, and the purchaser must demonstrate the seller's negligence incontrovertibly.
5. Deviations in the plant material supplied in terms of its colour and size are permitted up to a maximum of 5% of the quantities supplied. Deviations of over 5% result in a right to complain in respect of the quantities over said 5% threshold. Those of the products supplied which meet only the minimum applicable quality requirements will function as a reference point here.
6. If the seller so wishes, the contractually agreed delivery date will be determined in consultation with the buyer shortly before the planned delivery date. However, this will not be done at such short notice that the seller cannot reasonably be expected to implement it.
7. Should sale take place on a call-off basis, the purchaser and the seller will agree on a provisional delivery period. The purchaser will subsequently provide notification of its desired actual delivery date at the earliest possible stage.
8. Delivery dates provided are not considered strict deadlines. Should a delivery date be agreed, the seller will do everything within its power to keep to this delivery date. Should the seller be unable to deliver on the day or within the period agreed, it will inform the purchaser of this as soon as possible. The parties will set a new delivery day in joint consultation. This new delivery day will immediately be considered the agreed delivery date.
9. Should the purchaser receive the products ordered prior to the agreed delivery date or period referred to in paragraph 2, any risk arising from this will be the purchaser's entirely.
10. Should the purchaser take delivery of the products ordered or wish to do so later than the date agreed, all risks, including that of potential loss of quality due to longer storage, will be entirely the purchaser's from the agreed delivery date onwards. The purchaser expressly indemnifies the grower/seller in relation hereto for all liability, except in case of wilful misconduct or gross negligence on the part of the grower/seller.
11. Any additional costs arising from early or later reception of the products such as referred to in paragraphs 9 and 10 of this article are at the purchaser's expense.
12. If, following expiry of a limited storage period which may be considered reasonable in view of the product type, the purchaser has not collected the products and the risk of loss of quality and/or perishing thereof leaves the seller with no alternative, the order will be deemed to have been cancelled by the purchaser. In such cases, the purchaser is obliged to pay for any damage suffered by the seller as a consequence hereof.

Art. 6 Packing/trolleys/pallets/packaging

1. Single use packaging is charged at prices in line with the market and will not be taken back.
2. All packing and packaging, with the exception of single-use packaging, will remain the property of the seller.
3. The seller is entitled to charge the purchaser for multiple-use packaging and/or sustainable materials at an agreed price, or at the standard price where none has been agreed. Such items will be stated specifically on the invoice.
4. The purchaser must immediately exchange trolleys, pallets, pallet boxes, crates and other types of multiple-use packaging in good condition and under the proper hygienic conditions during delivery, at its own expense. Should it be agreed that the seller is to collect the packing and/or packaging itself, the purchaser must ensure that packaging and packing material remain in good condition and under the proper hygienic conditions, such that the seller may reuse them. The seller is entitled to include a deposit charge where multiple-use packaging is not exchanged immediately on delivery for any reason whatsoever.
5. The purchaser may not keep the packaging, packing material, roll containers and/or CC containers for its own use or that of third parties where the purchaser has not acquired ownership of these.

In case of loss of or damage to CC containers, roll containers, multiple-use packing, pallets, etc., the purchaser is obliged to pay the seller for any repairs, costs of replacement and/or additional rental costs. This is to be done at the container exchange's rates. The seller's accounts will provide conclusive evidence of the quantity of containers supplied by the seller which are in the purchaser's possession.

Art. 7 Payment

1. The seller is entitled to demand an advance on the invoice amount from the purchaser.
2. Unless agreed otherwise in writing, the payment by the purchaser will be completed within 30 days of the invoice date. After this deadline has expired, Dutch statutory interest will be owed on a monthly basis over the entire invoice amount. The amount of the interest is stated on the site of the Dutch central government (*Rijksoverheid*) <https://www.rijksoverheid.nl/onderwerpen/schulden/vraag-en-antwoord/hoopte-wettelijke-rente> Should the purchaser be in default, the seller is also entitled to charge the exchange rate loss caused as a result.
3. The purchaser is not entitled to deduct any amounts from the purchase price to be paid due to any counterclaims it may bring.
4. The seller is entitled at all times to set off any claims it has in respect of debtors against its payment obligations towards such debtors.
5. Payments must be made via deposit or transfer to the bank account specified by the seller, within the term set for this purpose referred to in Article 7(2).
6. Payments must be made in euros, unless indicated otherwise on the invoice. Should the prices be agreed in any currency other than euros, the exchange rate of the euro on the date of the order confirmation applies.
7. If the purchaser is in default or should it fail to perform any of its obligations in another way, then all reasonable costs incurred in obtaining a settlement either in or out of court are at its own expense.
8. The seller reserves the right not to implement orders or agreements, or no longer to do so, if the purchaser has failed to pay for previous deliveries, or alternatively has failed to meet its obligations towards the seller in any way, or if such failure appears imminent. The purchaser is obliged to pay for any damage suffered by the seller as a consequence of this. The seller is not liable for any damage suffered by the purchaser as a consequence of the failure to carry out orders.

9. All products supplied in the implementation of this agreement remain the property of the seller until the payment price and any related charges have been paid in full and the seller no longer has any other claims in respect of the purchaser. Should such information exist about the purchaser after the conclusion of the agreement that payment of the purchase price is not in the seller's opinion guaranteed, the seller may suspend its obligations and demand payment security from the purchaser. The purchaser is then obliged to provide the seller, on the latter's request, within 24 hours and at its own expense, with a bank guarantee which is acceptable to the seller. If the purchaser continues to fail to meet its obligations, the seller is entitled to terminate the sales contract and to demand full compensation.

10. The seller is entitled to take back the goods sold immediately, if the purchaser fails to meet its payment obligations entirely. The purchaser is obliged to provide the seller with access to the goods supplied in which retention of title is vested, with a view to repossessing these goods in good condition. Where any retention of title is vested in the goods supplied, the purchaser may not dispose of, encumber, pledge or otherwise withdraw these from the seller. This also applies to suspension of payment or the purchaser's being put into liquidation.

11. Should the goods supplied by the seller no longer be in their original form and/or lack their original packing, or if they have been processed into other products, an undisclosed pledge to the benefit of the seller in relation to those goods is established which will remain in place until everything which the seller claims from the purchaser for any reason whatsoever has been paid in full.

12. Any purchaser whose registered office is in a country other than the Netherlands will notify the seller in writing of its correct tax or VAT identification number. Furthermore, the purchaser will provide the seller with all details and documents the seller requires to prove that the products have been delivered in an EU member state other than the Netherlands. The purchaser indemnifies the seller for all claims arising from and all disadvantageous consequences of any failure on the purchaser's part to fully comply with the provisions of this paragraph. In case of delivery within the Netherlands, the seller reserves the right to add the rate of VAT applicable to the delivery concerned to the price owed by the purchaser.

Art. 8 Force Majeure

1. Force majeure is defined as: all circumstances falling outside the seller's direct sphere of influence as a result of which performance of the agreement may no longer reasonably be expected. This includes war, mobilisation, revolution, rioting, strikes, fire, extreme weather events or government measures and diseases and plagues on the one hand, and defects in the materials supplied to the seller on the other.

2. In case of force majeure, the seller is entitled to suspend the performance of its contracts for the duration of the force majeure. Should the duration or seriousness of the force majeure so necessitate - with such left to the fair and reasonable judgement of the seller - without judicial intervention, the seller is entitled to consider the sales contract, to the extent to which it has not yet been implemented, to have been terminated, and the seller is not obliged to pay compensation.

3. The seller may terminate the agreement without right to compensation if the force majeure situation continues for longer than one month or the prospect exists of the force majeure situation lasting longer than a month.

4. Should the seller be unable to perform the agreement as a consequence of force majeure, the seller must inform the purchaser of the circumstances as quickly as possible in writing.

5. Force majeure experienced by suppliers to the seller, including growers, is considered force majeure on the part of the seller.

6. In case of unforeseen circumstances on the part of one of the parties whose seriousness is such that, taking into account the requirements of reasonableness and fairness, the other party may not expect the agreement

concluded to remain unamended, the former party will inform the latter party in writing concerning the unforeseen circumstances and the parties will discuss the amendment or full or partial termination of the agreement.

7. Should the parties fail to agree on amendment or termination within 10 days of written notification of the circumstances in question, either of the parties may bring the issue to the court competent to resolve disputes under article 13.

Art. 9 Complaints

1. a. Upon inspection, at the latest before or during the loading of the first means of transport, at the seller's company or the cultivation company to be designated by the seller, the buyer must submit the pertinent complaints in writing or by fax or email, on penalty of forfeiture of all rights, and the shipment must be suspended. Should the purchaser accept the goods delivered without complaint, the seller is deemed to have met its delivery obligations and the purchaser's right to lodge a complaint regarding the delivery expires, with the exception of the provisions of Article 9(2) (hidden defects).

b. Where checks are made subsequent to arrival, the provisions of Article 5(4) apply. "Prior to and/or during shipment of the products, the purchaser is obliged to inspect and verify them and their packaging at the seller's business premises or those of a cultivation company designated by the seller, in terms of their number, quality, size, weight and disease. Where plants are checked on arrival with the purchaser, any complaints in relation thereto must be submitted in writing within 5 working days, and the purchaser must demonstrate the seller's negligence incontrovertibly."

By failing to perform the duty of verification, the purchaser loses any potential damage or other claims in respect of the seller.

2. Where hidden defects are concerned, at the risk of forfeiting all its rights, the purchaser must lodge any complaints in writing within 24 hours of their discovery, in the absence of which the seller is deemed to have met its delivery obligations.

3. a. Where, in case an inspector is present on behalf of the purchaser during loading, the seller fails to accept the complaint in writing within 2 hours, or to respond to it within the same period, at the risk of forfeiting all its rights, the purchaser must urgently - and in any case within the 2 subsequent hours - request by fax and/or email an independent assessment from an independent expert, inspection body or the Dutch Institute for Agricultural Law, *Stichting Instituut voor Agrarisch Recht*. At the time of the drafting of these terms and conditions, the Institute's address was: PO Box 245, 6700 AE Wageningen, tel. no. 0317-424181, fax 0317-424313 and e-mail: info@iar.nl.

b. Where the purchaser carries out checks on the arrival of the goods at the delivery address, in case of complaint, the seller must be notified in writing within one working day, and an independent expert or inspection body must be allowed, following due consultation, to draw up an independent and binding report. Should the purchaser fail to request assessment in a timely manner, the seller is deemed to have met its delivery obligations.

c. Should the rejection of the goods prove justified, the costs of the expert report are at the seller's expense and should it prove unjustified, at the purchaser's expense. The costs in question must in any case be advanced by the purchaser.

4. Complaints must include at least the following:

- a detailed and accurate description of the defect;

and in the event a defect is detected after arrival at the purchaser, also:

- the storage location of the product to which the complaint applies;
- a statement of facts, on the basis of which it may be established that the product(s) supplied by the seller and rejected by the purchaser are the same.

5. a. The seller is not responsible for blossom, fruit-formation or regrowth, or for latent infections or the presence, apparent or otherwise, of pathogens, animal organisms or weeds. The seller is also not responsible for the residues of plant protection products deemed undesirable by the purchaser, which were not applied during cultivation.

b. The seller registers the plant protection products it has used in its own records.

The purchaser has the right to inspect these records, if the seller is suspected of improper use of plant protection products.

6. Complaints concerning a portion of the products delivered may not be a reason for the purchaser's rejection of the entire delivery.

7. The expression of a complaint does not result in suspension of the purchaser's payment obligation, regardless of whether the complaint is potentially justified.

Art. 10 Liability

1. Except in case of wilful misconduct or gross negligence on the part of the seller itself, all liability on the part of the seller for damage to the purchaser is excluded. In no case is the purchaser entitled to compensation higher than the invoice amount for the delivered products to which the damage pertains.

2. The purchaser indemnifies the seller for all third-party costs and damage in relation to the products delivered, including consequential damage, direct trading loss, loss of profits, recall costs, etc.

3. The seller is not liable for damage due to force majeure as referred to in Article 8.

4. All liability in relation to failure on the part of the seller to meet delivery deadlines is hereby excluded, unless the agreed delivery date is exceeded by more than seven days, as referred to in Article 5. When the delivery date is exceeded by more than seven days, the seller must be given written notice of default in which the purchaser must set the seller a reasonable period in which to meet its overdue payment obligations.

5. Compensation following a complaint may only be made if the complaint has been submitted in accordance with Article 9, has proven justified and the seller has been culpable or intentionally negligent. Moreover, the compensation will apply only to that portion of the products delivered to which the complaint applies.

Art. 11 Transfer and retention of title, security

1. Subject to the provisions of paragraph 2 of this article, ownership of the products is transferred to the purchaser from the moment of delivery according to the terms of article 5 of these general terms and conditions.

2. All products supplied or as yet to be supplied and any products created as a result of these, regardless of which stage of the growing process they are at, remain the exclusive property of the seller, until all claims the seller has or has yet to acquire in respect of the purchaser, including in any case the claims referred to in section 92(2) of Book 3 of the Dutch Civil Code, have been paid in full.
3. However, the seller is entitled to demand security from the purchaser prior to entering into the agreement in relation to the payment or other obligations arising from this agreement. Refusal on the part of the purchaser to provide this security entitles the seller to terminate the obligations arising under the agreement fully or partially.
4. So long as ownership of the products has not been transferred to the purchaser, it may not pledge the products or grant third parties any other rights in respect thereof, except those arising within the normal course of its business operations. At the seller's first request, the purchaser undertakes to cooperate in the establishment of a pledge on the receivables that the purchaser obtains or will acquire from his customers as a result of onward delivery.
5. The purchaser is obliged to store the products delivered subject to retention of title with due care and as having recognisably originated with the seller.
6. The seller is entitled to take back the products delivered subject to retention of title which remain in the purchaser's possession if the purchaser is in default on its payment obligations or is experiencing or threatened with payment difficulties. The purchaser will grant the seller free access to its sites and/or buildings at all times with a view to the inspection of the products and/or exercise of the seller's rights.
7. Should the seller experience reasonable doubt concerning the purchaser's ability to pay, the seller is authorised to postpone the provision of its services until the purchaser has provided security for the payment. Should the purchaser fail to provide security for payment within fourteen days of a demand thereto, the seller is entitled to terminate the agreement. In such cases, the purchaser is liable for any costs incurred by the seller.

Art. 12 Intellectual property (including plant breeders' rights, trademark rights and patent rights).

1. The purchaser must meet all its obligations arising from intellectual property rights, such as plant breeders' rights, trademark rights and patent rights.
2. Should the seller breach the intellectual property rights of third parties in supplying the products (or threaten to do so), then the seller is entitled to suspend or terminate implementation of the agreement as it sees fit. In such an event, the seller may never be liable for compensation in respect of the purchaser.
3. The product may only be sold by the purchaser under the variety name in question, and potentially also its brand name.

4. Source and plant material of varieties which are protected under a plant breeders' right applied for or granted in the Netherlands and/or any other country or under a perpetual contract clause, may not be used for the further propagation of the variety. Furthermore, illegally propagated source and plant material may not be:

- processed for the purpose of propagation;
- brought into circulation,
- further trafficked,
- exported,
- imported,

or maintained in stock for the purpose of any of these activities.

5. The seller is entitled to enter the purchaser's business premises or the property and or storage spaces under its management at which the plant material supplied by the seller is located, with the purpose of inspecting or assessing that material. The seller will notify the purchaser of its visit in a timely manner.

6. The purchaser is obliged to provide every assistance the seller requires, including cooperation in the collection of evidence, should the seller become embroiled in legal proceedings in relation to plant breeders' or other intellectual property rights.

7. The purchaser grants its approval to wholesalers, auctions, importers and/or exporters to provide information to the holder of the plant breeders' rights and/or its representative concerning the quantity of harvested product of the varieties of the plant breeders' rights holder which the purchaser trades in.

Art. 13 Dispute resolution and applicable law

1. All disputes with respect to, or arising from, the agreements concluded between the seller and the purchaser (including those which are only regarded as disputes by one of the parties) to which these general terms and conditions apply, may be decided by the competent Dutch court in the district in which the seller has its registered office. In addition, the seller is entitled at all times to bring legal proceedings against the purchaser at the court competent to deal with such matters under the applicable international convention.

2. However, in case of a dispute in relation to or arising from the agreements concluded between the seller and the purchaser to which these general terms and conditions apply, the parties must first attempt to find a solution in joint consultation, or by means of mediation, before submitting this dispute to the arbitration panel or the civil courts.

Art. 14 Concluding provisions

If and insofar as any part or provision of these general terms and conditions is found to be in conflict with any mandatory provision of national or international law, it will be deemed not to have been agreed and the remaining provisions of these general terms and conditions will continue to be binding for the parties. The parties will then consult with one another on a new provision which satisfies the intentions of both parties to the greatest possible extent.

Appendix 1: Example of plant description form

Plant description form/plant profile			
Number of supplier	-	Plant name	_____
Name of supplier	-	Article number	_____
agreement	-	Date of	_____
Call-off date(s)	-	Quantity ordered	_____
....	-	Unit ordered; number of crates / CC /	_____
....	-	_____
Delivery description			
Plant description (example)	Special characteristics/requirements (example)	Standard characteristics/requirements (example)	Comments
Type of pot	plastic, round, black	Undamaged and clean pot. Completely earth-filled.	Plant photograph with <u>name</u>
Pot size	2 litre, height 14 cm		
Minimum plant height	45 cm from the pot edge		
Maximum plant height	55 cm from the pot edge		
Minimum plant diameter	20 cm		
Maximum plant diameter	25 cm		
Plants, number/pot	1, grown in the pot	Good root system/moist soil/no diseases	
Number of flowers / umbels			
Number of buds showing colour	maximum number of slightly open flowers		
Number of buds not showing colour			
Colour assortment in crate; uni/mix	uni		
colour assortment species names and proportions	50% precox Zeelandia, 50% cytius scoparius Boskoop Ruby		
Plant form	branching out from below, bushy, no brown flecks, grown in the pot	Uniform assortment across the entire batch	
Condition of plant		No damage/no spray residue/no decay/no mould infestation/no bugs	
Plant packing	individual	No tempex	
Group in: tray/box		No tempex	
Transport unit/container		wrap with foil with small holes (for air), sealed above with adhesive tape	Supplier
Label type: hanging/inserted/sticker	MB/PRA photo-hanging label (alternative: MB/PRA certification strip with growers' label) plus price indication DIN-A4 standing	BC stack height: 2	Exporter
			Grower