



## CONDITIONS OF SALE

### 1 GENERAL

- 1.1 Any Contract between SAPO and a Buyer is subject to these terms and conditions.
- 1.2 These conditions replace any other terms or conditions as contained in any other agreement or document between SAPO and the Buyer.
- 1.3 The Buyer acknowledges and agrees that:
  - 1.3.1 the Plant Material consist of living organisms and are highly perishable, volatile and degradable;
  - 1.3.2 accordingly, the handling, storage, transport and cultivation of the Plant Material requires a high degree of skill and the Buyer warrants and undertakes to SAPO that it, and any transporter and/ or cold storage facility acting on its behalf, possesses the necessary skills for these purposes;
  - 1.3.3 recommendations for the handling, storage, transport and cultivation of the Plant Material are available on the SAPO website at [www.saplant.co.za](http://www.saplant.co.za); it is the responsibility of the Buyer to act in accordance with these recommendations and, as these recommendations cannot be exhaustive and take account of all circumstances, the Buyer will obtain the necessary advice from an expert

- in circumstances not dealt with in the recommendations and/or in unusual cases;
- 1.3.4 while SAPO sells only Plant Material which are compliant with the Deciduous Fruit Certification Scheme, the certification of the Plant Material gives no absolute guarantee against all forms of disease or infection, and/ or the saleability, quantity or quality of the harvest produced from the certified Plant Material in question;
- 1.3.5 it is possible that the Deciduous Fruit Certification Scheme will change the disease or infection status of the Plant Material after certification and after delivery to the Buyer; nevertheless, the Buyer accepts the certification of the Plant Material as indicated on the delivery note and label.

### 2 QUOTATIONS

- 2.1 Any quotation given by SAPO is not an offer by SAPO to sell Plant Material to the Buyer but constitutes an invitation by SAPO to the Buyer to place an Order.
- 2.2 SAPO may recall any quotation at any given time.
- 2.3 SAPO may accept or reject in whole or in part any Order placed by the Buyer.

- 2.4 Each Order accepted by SAPO shall constitute a separate agreement between the parties on the terms and conditions specified therein.

### 3 ORDERS

- 3.1 The Buyer is obliged to forward all Orders in writing to SAPO. Notwithstanding the aforesaid, SAPO is entitled to accept in its sole discretion oral Orders, and in such circumstances the information contained in any document reflecting the Buyer's Order instructions shall serve as prima facie proof of such Order and the Buyer's instructions relating thereto.
- 3.2 Any quantity of Plant Material allocated and any time frame or delivery date mentioned will only serve as an estimate, and SAPO will not be held accountable for any deviation to the quantities or delivery date. SAPO will not be responsible for any damages or compensation, and the Buyer will not be entitled to cancel the Contract, subject to 3.6, if SAPO is not able to deliver the relevant quantities on the delivery date as mentioned.
- 3.3 SAPO undertakes to communicate any deviation in specifications, as set with ordering of Plant

Material from SAPO, continuously throughout the year.

- 3.4 The Plant Material is prepared by a grower of the Buyer's choice and supplied to SAPO for sale to the Buyer. SAPO is accordingly acting purely as a broker between, or agent of, the grower and/or the Buyer, as the case may be.
- 3.5 Should the size of the Plant Material not correspond with the required specification of the Buyer, due to circumstances out of the control of SAPO or the grower including but not limited to drought, excessive rainfall, hail, diseases, heatwaves and/or any failure or delay of any nature by the Buyer or third party growers of Plant Material, the Buyer will not be entitled to cancel the Contract, subject to 3.6, but SAPO will apply a price adjustment in accordance to the prevailing standard prices as determined annually by SAPO. SAPO undertakes to inform the producer in writing by 30 April of every year if the specifications and number of trees as per any particular Contract could not be supplied.
- 3.6 The Buyer may only cancel a Contract to the extent that it is entitled to do so under the Act (and provided that the Contract in question is not exempt from the provisions of the Act as a result of the exemption provisions of Section 4 of the Act).
- 3.7 Should a Contract be validly cancelled, SAPO shall be entitled to charge a cancellation fee determined in accordance with the provisions of the Act.

#### **4 PRICE AND TERMS OF PAYMENT**

- 4.1 Orders are accepted by SAPO on the basis that the fees/prices charged for the relevant Plant Material and royalties payable in respect thereof will be those as set out in SAPO's prevailing price list in force and effect on the date when the Contract comes into existence. The Buyer, on request, may obtain

a copy of SAPO's prevailing price list from SAPO. SAPO reserves the right to amend the price list from time to time and without notice to the Buyer.

- 4.2 All sales shall be on a cash basis and delivery will only take place against receipt of the cash payment by SAPO. The provision of credit to the Buyer shall remain within SAPO's discretion and shall only take place in accordance with a credit agreement in a form acceptable to SAPO and duly signed by the Buyer.
- 4.3 Payments to SAPO may be made by means of cash / bank guaranteed cheque or electronic transfer.
- 4.4 Without prejudice of any of SAPO's other rights or remedies, interest will be charged on any outstanding amount after 30 (THIRTY) days of statement at a rate of 2% above prime rate, as calculated from time to time on overdraft accounts by ABSA.
- 4.5 Unless otherwise specified, all prices exclude VAT and any other taxes and levies, which are for the account of the Buyer.
- 4.6 The Customer shall be obliged to pay to SAPO in addition to the said purchase price-
- 4.6.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force and effect after the date the Contract comes into existence;
- 4.6.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of SAPO;
- 4.6.3 any expenses and costs arising as a result of or during the period of any delay caused by the Buyer, avoiding SAPO to deliver the Plant Material to the Buyer (or the Buyer not collecting the Plant Material), including, but not limited to, the cost of storage of any Plant Material.
- 4.7 Payments will be made to SAPO without any deductions.
- 4.8 The costs of delivery of any Plant Material are not included in the prices and the Buyer will be

responsible for any transport costs that may have been incurred by SAPO, acting as an agent on behalf of the Buyer, in delivering the Plant Material to the Buyer.

- 4.9 The Buyer may under no circumstances hold back any payment due to SAPO. The Buyer may not play off any amount due by SAPO to the Buyer against any amount that may be due by the Buyer to SAPO. No payment to SAPO will be withheld on the basis of an alleged counterclaim against SAPO.

#### **5 DEPOSIT**

The deposit on the Plant Material, as specified on SAPO's order confirmation, if applicable, will be payable on demand but in any event prior to delivery of the Plant Material to the Buyer.

#### **6 SUPPLY**

- 6.1 Notwithstanding supply, ownership of Plant Material will remain with SAPO until the full purchase price has been paid to SAPO by the Buyer.
- 6.2 The risk of damages, loss or theft of Plant Material will be transferred to the Buyer upon collection of the Plant Material in question by the Buyer or the Buyer's appointed transporter from SAPO's premises.
- 6.3 The Buyer is responsible for checking the Plant Material ordered at delivery and for signing the delivery note as proof that there was no shortfall.
- 6.4 SAPO reserves the right to suspend supply should the Buyer violate any obligation in terms of these terms and conditions.

#### **7 NO WARRANTIES AND LIMITATION OF LIABILITY**

- 7.1 SAPO gives no warranty, guarantee and/or undertaking of any nature in regard to Plant Material and/or the harvest produced therefrom (including but not limited to in regard to the certification, quality, quantity, disease/infection status and/or planting readiness thereof)

and SAPO shall not be liable for any consequential damages, save to the extent SAPO is required to do so or is liable in terms of Section 55, 56 and/or 61 of the Act;

- 7.2 Given the nature of Plant Material, SAPO requires that any complaint about quality problems or incorrect administrative processes of Plant Material be reported in writing to SAPO within 14 (FOURTEEN) days after delivery in the case of tree fruit plant material, and within 48 (FORTY-EIGHT) hours after delivery of vine plant material, but in any event prior to planting of the Plant Material in question. After submission of such objection, the Buyer has to make the Plant Material available to SAPO for the necessary investigation.

## **8 INSURANCE OF PLANT MATERIAL**

The Buyer is responsible to arrange and pay for any insurance of any kind that may be required by the Buyer.

## **9 JURISDICTION, DOMICILIUM AND COSTS**

- 9.1 This agreement is managed by and in accordance with the Statutes of South Africa.
- 9.2 In addition to any forum having jurisdiction under the Act in relation to any dispute arising out of this agreement, each party hereby consents, in terms of Section 45 of the Magistrates' Court Act, 1944, to the non-exclusive jurisdiction of any Magistrate's Court having

jurisdiction in terms of Section 28 of that Act, notwithstanding the fact that the value of the claim or the matter in dispute might otherwise exceed the jurisdiction of the Magistrate's Court

- 9.3 Both parties choose as their domicilium citandi et executandi the addresses as set out in Client Information Sheet completed by the Buyer.
- 9.4 The domicilium of any of the parties may be changed to another address within the Republic of South Africa by means of a written notice by such party as from date of receipt or deemed receipt of such notice by the latter.

## **10 GENERAL**

- 10.1 These terms and conditions may be amended in whole or in part by SAPO, provided it gives notice thereof to the Buyer.
- 10.2 This agreement has no fixed term, and SAPO shall not be obliged to accept any order for Plant Material placed by the Buyer and the Buyer shall not be obliged to place any orders for Plant Material with SAPO, particularly if any amendment is not acceptable to the Buyer.

## **11 INTERPRETATION**

The headings of the clauses herein are for the purpose of convenience and reference only and shall not be used in the interpretation, nor amplify the terms of these terms and conditions or any clause hereof. Unless contrary intention

clearly appears, wording importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons include legal entities and vice versa.

The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- "the Act"** – the Consumer Protection Act, No 68 of 2008;
- "Buyer"** – the purchaser of the Plant Material or any person or entity ordering Plant Material from SAPO as referred to in an Order;
- "the Contract"** – the agreement for the sale and purchase of Plant Material which comes into existence upon SAPO's acceptance of an Order, which acceptance needs not be communicated to the Buyer, and which Contract will be governed by the terms of the Contract Documents;
- "Contract Documents"** – these terms and conditions and SAPO's quotation and/or order confirmation (if applicable);
- "Order"** – the placing of an order by the Buyer for the purchase Plant Material from SAPO, whether same is conveyed to SAPO in writing or orally.
- "Plant Material"** – trees, bud wood/propagation material and/or related plant material to be supplied by SAPO to the Buyer in the quantities as set out in a Contract; "SAPO" – SAPO Trust IT278/99.

