

# GENERAL TERMS AND CONDITIONS

## 1. Definitions

In these General Terms and Conditions ("Terms and Conditions") the following terms shall have the following meanings:

**Vendor:**  
RootBarrier B.V., registered in the Trade Register under number 39086383, as well as all companies and undertakings associated with it.

**Customer:**  
Every natural or legal person with whom/which the Vendor enters into an Agreement or negotiates about the conclusion of an Agreement.

**Order:**  
Every order to Vendor by Customer;

**Agreement:**  
Every Agreement concluded between the Vendor and the Customer, every change therein or supplement thereto, as well as all (legal) acts performed in the preparation and execution of such Agreement.

**Products:**  
All matters which are the subject of an Agreement.

## 2. Applicability

2.1 These Terms and Conditions shall form part of all Agreements and shall apply to all acts and legal acts by the Vendor and the Customer related therewith.

2.2 Unless the nature or specific contents of a provision of these Terms and Conditions so opposes, the provisions of these Terms and Conditions shall also apply to Agreements in which the Vendor does not act in its capacity as Vendor.

2.3 The applicability of any general or specific Terms and Conditions or stipulations of the customer is hereby expressly rejected by the Vendor.

## 3. Offers, conclusion of Agreements and statements and specifications of Products

3.1 An offer or (price) quotation shall not be binding on the Vendor and shall only be an invitation to place an Order.

3.2 An Agreement shall be concluded only if and insofar as an Order is accepted by the Vendor in writing or if an Order is executed by the Vendor.

3.3 All statements by the Vendor of figures, measurements, weights and/or other specifications of the Products are carefully made. However, the Vendor cannot guarantee that no variations will occur. Any samples, drawings or models demonstrated or supplied are merely indications of the Products concerned.

3.4 If the Products delivered vary from the statements by the Vendor or from the samples, drawings or models to such a degree, that the Customer cannot reasonably be required to purchase these, the Customer shall have the right to terminate the Agreement, however only insofar as such termination is reasonably necessary.

## 4. Changes and supplements

Any changes in and supplements to any provision of an Agreement and/or the Terms and Conditions shall apply only if they have been recorded in writing by the Vendor and they shall relate only to the Agreement concerned.

## 5. Prices

5.1 All prices of the Vendor shall be expressed in Euro's or another currency, if stated, and shall be exclusive of VAT unless expressly stated otherwise, the cost of packaging and sending shall be for the Customer's account, as well as any import and export duties and excise duties and all other levies or taxes imposed or charged in respect of the Products and their transport.

5.2 The prices shall be based on the circumstances in effect for the Vendor at the time of conclusion of the Agreement, such as exchange rates, purchase prices, freight tariffs, import and export duties, excise duties, levies and taxes imposed on the Vendor, either directly or indirectly, or charged to the Vendor by third parties. If there is a change in these circumstances after conclusion of the Agreement but prior to delivery, the Vendor shall have the right to charge to the customer the cost resulting therefrom.

## 6. Payment

6.1 The Customer shall pay to the Vendor the amounts invoiced, in the currency specified in the invoice, within 30 days of invoice. All payments shall be made into a giro or bank account to be designated

by the Vendor or at the Vendor's office, such as the Vendor's option. If payment is made at the Vendor's office, this shall be done in cash or with guaranteed giro or bank cheques.

6.2 All amounts invoiced to the Customer shall be paid without any discount, deduction or set-off. Moreover, the Customer shall not have the right to suspend any obligation of payment toward the Vendor.

6.3 If the Vendor at any time has reasonable doubts about the Customer's creditworthiness, the Vendor shall have the right, before making any (more) performance, to demand of the Customer that the purchase price is paid in advance or that proper security is provided by the Customer up to the amounts which the Vendor, whether or not due, can or will claim from the Customer under the Agreement, such as the Vendor's option.

6.4 The Customer shall be in default by the mere expiry of a payment date. As of that date the Customer shall pay interest on arrears in respect of all amounts which have not been paid by the last day of the term of payment, which interest shall equal the statutory interest then in effect in the Netherlands increased by 5%.

6.5 If the Customer is in default vis-à-vis the Vendor, it shall be required to fully compensate to the Vendor the legal and out-of-court cost. The out-of-court cost to be compensated by the Customer shall be at least 2% of the amount still unpaid, with a minimum of €225, - to be increased by the VAT due on this amount.

6.6 If the Vendor addresses any reminders or other requests for payment to the Customer after its default, this shall not affect the provisions of 6.4 and 6.5.

## 7. Reservation of title

7.1 Notwithstanding the actual delivery, title to the Products shall not pass to the Customer until the Customer has paid in full all the amounts it owes or may owe the Vendor under any Agreement.

7.2 Prior to the passing of the title to the Products to the Customer, the Customer shall not be entitled to lease the Products or give other parties the use thereof, to pledge the same as security or to encumber the Products in any other way. The Customer shall be entitled only to sell or deliver the Products, whose title is held by the Vendor, to third parties insofar as such is necessary in the normal course of the Customer's business.

7.3 If and as long as title to the Products still remains in the hands of Vendor, the Customer shall forthwith inform the Vendor in the event that the goods are (if there is risk of the products being) placed under an attachment or if other claims are made in respect of (any part of) the Products. Moreover, at the Vendor's first request, the Customer shall inform the Vendor of the whereabouts of the Products, title to which is held by the Vendor.

7.4 In the event of an attachment, (provisional) suspension of payments or compulsory liquidation, the Customer shall immediately draw the attention of the bailiff levying the attachment, the official receiver or the liquidator to the (ownership) rights of the Vendor. The Customer warrants that attachment on the Products will be lifted immediately.

7.5 As soon as the Vendor has expressed its wish to this effect, the Customer undertakes to create a pledge as referred to in Section 3:237 of the Netherlands Civil Code to the benefit of the Vendor on Products delivered, title to which has passed to the Customer as a result of payment and which are still in the Customer's possession (whether or not in processed or treated form) by way of additional security of claims, other than those specified in Section 3:92 subsection 2 of the Netherlands Civil Code, which claims the Vendor may have on the Customer on whatever account.

7.6 The Customer undertakes not to transfer or pledge to third parties claims acquired vis-à-vis its buyer without the Vendor's prior approval in writing. Moreover, as soon as the Vendor expresses the wish, the Customer undertakes to grant to the Vendor a first pledge on such claims as referred to in Section 3:239 of the Netherlands Civil Code by way of additional security of its claims on the Customer on whatever account.

## 8. Packaging material

8.1 Any durable lining and packaging material shall remain the property of the Vendor.

8.2 If the Customer does not return the lining and packaging material which is the Vendor, the Vendor shall have the right to charge the cost of replacement to the Customer.

9.	<b>Term of delivery</b>	days after arrival of the Products, while stating the number of the box or bag, and while submitting the documents of evidence.
9.1	A term of delivery stated by the Vendor shall be based on the circumstances in effect for the Vendor at the time of conclusion of the Agreement and, insofar as conditional on performance by third parties, on the information supplied to the Vendor by such third parties. This term of delivery shall be observed by the Vendor as much as possible.	12.3 Slight variations in quality, colour, weight, measurements, finish, packaging and/or specification of the Products shall not be regarded as defects, unless they substantially decrease the usability of the Products (or the Products of which they form part).
9.2	If the Vendor requires data or aids for the execution of the Agreement which must be provided by the Customer, the term of delivery cannot commence any sooner than on the date that all required data or aids are in the Vendor's possession.	12.4 Upon the discovery of any defect, the Customer shall be required to immediately cease the use, treatment, processing and/or installation of the Products concerned and moreover shall do or omit anything within reason to prevent any (further) damage.
9.3	In the event the term of delivery is exceeded, the Customer shall not be entitled to any damages in this respect, nor shall the Customer have the right to terminate the Agreement, unless the delivery term is exceeded to such an extent that it cannot be reasonably expected of the Customer that it leaves the pertinent part of the Agreement intact. In that event the Customer shall have the right to terminate the Agreement insofar as such is strictly necessary.	12.5 The Customer shall give all the assistance required, among other things by giving the Vendor the opportunity to (cause someone to) investigate the conditions under which the Products were used, treated, processed and/or installed.
9.4	The Vendor shall at all times have the right to deliver in portions.	12.6 If the Customer does not cooperate or if investigation is not (no longer) possible, the complaint will not be considered and the Customer shall have no right of action in this respect.
10.	<b>Delivery and risk</b>	12.7 The Customer shall not be allowed to return the Products of its own accord before the Vendor has agreed thereto. If the Customer makes a complaint in time, correctly and justly, the costs incurred in returning the Products shall be for the account of the Vendor, insofar as such costs are reasonable.
10.1	If thus stated in the offer or order confirmation, the delivery of the Products, the provisions regarding the costs of the delivery and the passing of the risk shall be in accordance with generally accepted trading principles, such as EXW, CPT, FOB, CIF and CFR and in all such cases the Incoterms of the International Chamber of Commerce in Paris as they may read at any time shall be applicable thereto.	<b>13. Liability and indemnification</b>
10.2	If the conditions referred to above in the preceding paragraph were not agreed on, the delivery and the passing of the risk in the Products shall always be affected in the place and at the moment when the Products are ready for transport to the Customer. The Vendor shall notify the Customer as soon as possible of this time and place and the Customer shall take delivery of the Products as soon as possible, but no later than within five working days after such notice.	13.1 Except in the event of wilfulness or gross negligence on the part of the Vendor, the Vendor's liability towards the Customer on any grounds whatsoever shall be limited to the net purchase price of the Products in respect of which the Vendor's contractual and statutory liability has arisen.
10.3	If the Customer fails to take delivery of the Products or fails to do so within the agreed time, such failure shall constitute an event of default by the Customer, without prior notice of default being required. In that case the Vendor shall be entitled to store the Products at the risk and for the account of the Customer or to sell the Products to a third party. The Customer shall remain liable for payment of the purchase price, increased by interest and costs (by way of damages), possibly minus the net proceeds of the sale to such third party.	13.2 Except in the event of wilfulness or gross negligence on the part of the Vendor, or if liability arises from Title 3 Chapter 3 of Book 6 of the Netherlands Civil Code, the Vendor shall in no event be liable for any other direct or indirect damage or loss on the part of the Customer or any third party, including indirect loss, intangible loss, consequential loss and environmental damage.
11.	<b>Force Majeure</b>	13.3 Except in the event of wilfulness or gross negligence on the part of the Vendor, the Customer shall indemnify the Vendor and hold it harmless from and against all claims of any third parties whatsoever, in respect of compensation of losses, costs or interest related to the Products or resulting from the use of the Products.
11.1	If the Vendor cannot perform its obligations towards the Customer on account of non-attributable failure (force majeure), these obligations shall be suspended for the duration of the event of force majeure.	<b>14. Intellectual property</b>
11.2	If the event of force majeure has continued for two months, both parties shall from that moment on have the right to cancel the whole or any part of the Agreement in writing, insofar as the event of force majeure so justifies.	14.1 The Customer shall not acquire any intellectual property rights in respect of the Products as a result of the Agreement. 14.2 The Vendor warrants and represents that to its best knowledge the Products do not infringe any intellectual property rights of third parties effective in the Netherlands. In the event of claims by third parties in respect of the infringement of such rights, Vendor can if necessary replace or change the Product concerned or terminate the Agreement in full or in part. The Customer shall only have the right to terminate the Agreement insofar as it cannot reasonably be expected of the Customer that the Agreement is maintained.
11.3	In the event of force majeure the Customer shall not be entitled to any compensation or damages, not even if Vendor should profit by the event of force majeure.	14.3 The Customer shall immediately notify the Vendor of any claim by a third party in respect of infringement of intellectual property rights regarding the Products. In the event of such a claim only the Vendor shall be entitled to raise a defence against such claim, also on behalf of the Customer, or to take legal action against that third party or to reach a settlement. The Customer shall refrain from all such measures insofar as this can reasonably be expected of the Customer.
11.4	Force majeure shall mean any event beyond the control of the Vendor which prevents it from fulfilling all or any of its obligations to the Customer or by reason of which it cannot reasonably be required of the Vendor that it fulfils its obligations, regardless of whether such event was foreseeable at the time when the Agreement was made. These events shall include: strikes, standstills, stagnation or other problems in the production by the Vendor or its suppliers and/or in its own transport or in the transport provided by a third party and/or measures of any government institution, as well as the absence of any licence to be obtained from the government.	<b>15. Other obligations of the Customer</b>
11.5	The Vendor shall notify the Customer as soon as possible of any (imminent) event of force majeure.	15.1 The Customer warrants that the Products are stored in a location suitable to this end. 15.2 The Customer shall always supply the Vendor in good time with all data required to perform the Vendor's activities and warrants that these data are correct and complete.
12.	<b>Inspection and complaints</b>	15.3 The Customer shall ensure that nothing on the Customer's part interferes with performance within the agreed terms, including terms of delivery, purchase and installation.
12.1	The Customer shall be required to carefully inspect (or cause the inspection of) the Products immediately upon their arrival at the place of destination or, whichever is the earlier, upon receipt by the Customer or by another person acting on the Customer's instruction. Complaints shall be filed with the Vendor within eight days after arrival of the Products in writing, while stating the number of the box or bag, and while submitting the documents of evidence.	<b>16. Default/termination</b>
12.2	Defects which could not reasonably have been discovered within the period specified in paragraph 1 must be reported to the Vendor in writing immediately upon being discovered and no later than thirty	16.1 If the Customer fails to fulfil any of the obligations arising for the Customer from any Agreement or fails to do so correctly or within the agreed time, the Customer shall be in default without any notice of default being required, and the Vendor shall be entitled: - to suspend performance of all Agreements until performance has been sufficiently secured; and/or - to terminate such Agreement in whole or in part.

- 16.2 In the event of compulsory liquidation, (provisional) suspension of payments, the discontinuation or the winding-up of the Customer's business, all Agreements with the Customer shall be terminated by operation of the law, unless the Vendor informs the Customer within a reasonable period of time that it demands payment of (part of) the Agreement(s). In the latter event the Vendor shall be entitled without any notice of default being required to suspend performance of the Agreement(s) until performance has been sufficiently secured.
- 16.3 The provisions of 16.1 and 16.2 shall not affect the Vendor's other rights under the law.
- 16.4 Upon the occurrence of any of the events referred to above in 16.1 or 16.2, all the Vendor's claims on the Customer shall be immediately payable in full and the Vendor shall have the right to take back the Products, title to which it has reserved and to this end to gain access to the Customer's sites and premises.

**17. Transfer of rights and obligations**

The Vendor shall be permitted to transfer any rights resulting from any Agreement to third parties. The Customer shall only have the right to do so after the Vendor's prior written approval. In the event obligations of the Vendor are transferred, the Vendor shall inform the Customer in advance and the Customer shall have the right to terminate the Agreement for the future as of the date on which the transfer will be made.

**18. Agreements to do work or render services**

- 18.1 In the event the Order concerns an order to treat or process goods to be delivered to the Vendor by the Customer, the Customer shall insure (have insured) these goods sufficiently in the Vendor's opinion. To this end the Customer shall submit to the Vendor upon its first request proof of such insurance. In all events the risk in the goods delivered for treatment or processing shall remain with the Customer.
- 18.2 Upon delivery of the goods as referred to in the preceding paragraph the Customer shall create a pledge on these goods for the benefit of the Vendor by way of additional security for any amounts payable now and in the future by the Customer to the Vendor on whatever account. Insofar as a result of the treatment or processing of said goods new goods come into being, the Customer shall now create a pledge as referred to in the preceding sentence on such new goods for the benefit of the Vendor.

**19. Applicable law, competent court**

- 19.1 These Terms and Conditions as well as the Agreement shall be governed by Dutch law.
- 19.2 The applicability of the Vienna Sales Convention 1980 (CISG) shall be excluded.
- 19.3 Insofar as not prescribed otherwise by provisions of peremptory law, all disputes which may arise in connection with the Agreement or these Terms and Conditions shall be submitted to the judgement of the competent court in Amsterdam, provided that the Vendor shall have the right to file claims, whether or not at the same time, against the Customer before other judicial tribunals which are competent to hear and decide on such claims.

These General Terms and Conditions were deposited on 01.11.2012 with the Chamber of Commerce under number 39086383.