

# General terms & conditions of Delphy BV

Delphy BV (hereinafter referred to as "DELPHY") has its registered office in Wageningen, The Netherlands, and its principal place of business in 6708 PV Wageningen (The Netherlands), Agro Business Park 65 (Postal address: PO Box 7001, 6700 CA Wageningen, The Netherlands).

DELPHY gives advice and renders services daily to companies, government and organizations in any possible way. This operational, techno-economical, strategic and organizational consultancy, information and guidance to companies in the agricultural and horticultural sector, small and medium-sized businesses, organizations, government and other companies is given both by telephone and in writing, and also during company visits.

As DELPHY attaches much importance to good advice and guidance, DELPHY thinks it is also important to have clear "rules of the game". Both for DELPHY and for you. These rules of game are indicated hereafter in the General Terms and Conditions of DELPHY as registered with the Chamber of Commerce for Central Gelderland in Arnhem, The Netherlands.

## 1. General

- a. These terms and conditions apply to all offers and quotations and all agreements concluded with DELPHY with respect to services, like for example advice, information, research and sale of movable property by DELPHY. These conditions also apply to all (legal) actions preceding or in implementation of quotations, offers and / or agreements.
- b. These conditions also apply to all agreements with Delphy, for which execution DELPHY makes use of third-party services.
- c. Stipulations deviating from these terms and conditions are only valid if these have explicitly been agreed upon in writing by all parties.

## 2. Offer/order

- a. All offers and/or quotations are without engagement, unless it has been stipulated explicitly that they are irrevocable, and - unless expressly otherwise stipulated - they are valid for a period of fourteen days, counted from the date of the offer and/or quotation.
- b. Agreements can only be concluded by written acceptance by DELPHY of an order, or by execution of the order by DELPHY.
- c. The scope of the activities covered by an agreement is determined by the offer, including the changes that are inserted later on by mutual agreement.

## 3. Prices

- a. The prices given by DELPHY are exclusive of the value added tax (VAT) and other government taxes.
- b. The prices published by DELPHY in catalogues or in any other form, are not binding for DELPHY. After concluding the agreement, DELPHY is entitled to raise the agreed prices in case of, among other things, interim price increases and/or surcharges on freight, customs tariffs, prices of goods and/or raw materials, taxes, wages or social security charges, depreciation of the Dutch currency and/or appreciation of foreign currency, and any other government measures that make prices rise.
- c. In case of an increase of net prices, the customer is entitled to cancel the agreement, provided that he shall give notice in writing to DELPHY within fourteen days after having been informed about the increase of net prices. In case of cancellation of the agreement, the customer has no right to compensation.

## 4. Execution of the agreement

- a. The agreement shall be executed within the (estimated) period that has been determined in consultation with the customer and that is mentioned in the offer, unless this turns out not to be reasonably feasible. If the deadline threatens to be exceeded, DELPHY shall discuss this as soon as possible with the customer. However, DELPHY shall never be in default de jure by just exceeding the deadline.
- b. By concluding a contract agreement DELPHY only binds itself to carry out the ordered activities, seeking to achieve a useful result for the customer.
- c. With respect to the application of crop protection and fertilization advice, DELPHY bases its advice on the applicable statutory provisions (statutory user instructions, fertilizer regulations, etc.). The user instructions (doses, application techniques, etc.), given both orally and in writing, are based on extensive tests. DELPHY advises its customers to the best of its ability and applies today's relevant know how, which also implies that DELPHY cannot vouch for the unknown harmful consequences of the advised use of crop protectors or fertilizers arisen at the time that advice was given.
- d. In the event of DELPHY selling movable property, DELPHY will not provide any guarantee other than described in the offer, without prejudice to any guarantee given by the producer that can solely be claimed against the manufacturer. DELPHY will solely carry out additional work following approval of the customer, after which the costs of additional work may be charged to the customer.
- e. With respect to confidential information of the customer provided to DELPHY in the framework of execution of the agreement, DELPHY shall observe secrecy, in that sense that DELPHY shall never publish these data in a way that they can be directly traced to the customer. A further obligation to observe secrecy shall expressly apply if this has been explicitly agreed upon in writing.
- f. Research results shall be disclosed anonymously, unless upon written request of the customer secrecy has been agreed, the period of secrecy not exceeding one year counted from delivery date/invoice date.
- g. Any obligation for DELPHY to observe secrecy, does not apply to the extent that DELPHY would then act contrary to its legal tasks and obligations.

## 5. Obligations and responsibility of the customer

- a. In case of inspection of samples, the customer is responsible for the selection and representativeness of the samples and he is also responsible for timely delivery of the samples to DELPHY.

- b. In case of advice by DELPHY with respect to the use of crop protectors or fertilization, the actual application or use and storage are not controlled by DELPHY. This implies that the responsibility for correct execution of the given advice fully rests with the customer.
- c. The customer accepts that there is a real possibility of misinterpretation of the questions or advice in case of telephone advice, and that the risk of misinterpretation of the question or misinterpretation of the advice will be at his expense.

## 6. Delivery, risk and ownership

- a. Movables will be delivered from the business location of the DELPHY branch with which a contract is concluded and at the moment of delivery the risk of these goods passes on to the customer.
- b. In case of delivery of movables, DELPHY remains the owner of all goods delivered to the customer until the purchase price of all goods has been paid in full.
- c. Copyright and all other intellectual or industrial property rights of given advice and information remain exclusively vested in DELPHY.

## 7. Payment

- a. Payment shall be made within fourteen days of the date of invoice. DELPHY will send an itemized invoice to the customer.
- b. Invoices for once-only and/or occasional deliveries will be paid by direct debit, for which the customer gives a direct debit authorization to DELPHY by filling out and signing the corresponding part of the order confirmation.
- c. If the customer does not agree with direct debit of the invoice amount, handling expenses and costs of collection are payable in addition to the invoice amount.
- d. If no fixed price has been specified in the order confirmation or agreement, then it has common ground for the parties that the amount payable will be determined by DELPHY on basis of subsequent calculation according to DELPHY's usual rates and methods.
- e. DELPHY is entitled to send invoices at regular intervals. DELPHY may at all times require payments in advance, even if this is not included in the order confirmation or agreement.
- f. In case of overdue payment, the statutory interest is payable from due date and so are all costs incurred with respect to the collection, without notice of default being required.
- g. In case of payment, the other party does not have recourse to compensation, deduction or deferment.
- h. In the event of the customer cancelling an appointment for a company visit and suchlike, which had been agreed between DELPHY and the customer, and in the event that this cancellation is made less than 24 hours in advance of the time of appointment, the customer shall pay 50% of the hourly rate. The customer will receive an invoice for this.

## 8. Liability

- a. DELPHY is only liable for the damages that are directly caused by a failure in the execution of its obligations imputable to DELPHY. If DELPHY is liable for direct damage to the customer in virtue of the contractual liability referred to in the previous sentence and/or in virtue of any other matter, it is liable to a maximum amount of € 11,500.-- or to at most the amount that the customer is obliged to pay in virtue of the agreement if this amount is higher. This direct damage also includes the damage that the customer sustains due to application or use of the result of the activities of DELPHY; however it does not include any lost profits of the customer as a consequence of the activities of DELPHY.
- b. DELPHY is not liable for damages of any kind, if the information provided by or on behalf of the client was incorrect or incomplete.
- c. Under no circumstance the liability of DELPHY shall exceed the amount that is paid in virtue of the business liability insurance taken out by DELPHY.
- d. The customer indemnifies DELPHY and/or the persons employed for the execution of the agreement against all claims from third parties in virtue of the damage sustained by these third parties due to the application or use of the activities of DELPHY by the customer or another person whom the customer has provided with the results of the activities, unless in case of gross negligence and/or intention of DELPHY and/or the persons called in by DELPHY for the execution of the agreement.

## 9. Complaints

- a. The customer cannot appeal against the fact that the deliverable does not comply with the agreement if he/she has not given notice in writing to DELPHY within the reasonable period after he/she has discovered or reasonably should have discovered that the deliverable is not in accordance with the agreement.
- b. Complaints with respect to invoices, externally visible defects of the deliverable and reasonably detectable inaccuracies in case of advice or deviations from the assignment, should be submitted with DELPHY in writing within four weeks of the date of invoice, in default whereof any appeal against these shortcomings and/or inaccuracies becomes expires.

## 10. Dissolution

DELPHY shall be entitled to dissolve the agreement and shall have the right to claim damages from the customer, if the customer fails imputably, if he/she applies for a moratorium on payments, if he/she is declared bankrupt, if the customer dies, or - in case of a legal person - if this legal person is dissolved, or if the company of the customer is liquidated.

## 11. Applicable law and competent court

Only Dutch law applies to the agreements concluded with DELPHY. All disputes will in the first instance be settled by the competent court in Utrecht (The Netherlands), unless DELPHY gives preference to the court in the place where the customer has his registered office or domicile, or unless imperative law prescribes otherwise.

