

GENERAL TERMS AND CONDITIONS OF CITROGOLD (PTY) LTD:

1. Every order for plant material from Citrogold, or for a license to buy plant materials from any of Citrogold's licensed Nurseries (in either event referred to as an Order or a Sale) is subject to these terms and conditions.

1.1. In the event of any contradiction between any verbal agreement and these terms and conditions, these terms and conditions will always prevail.

1.2. In the event of any contradiction between any written agreement and these terms and conditions, these terms and conditions of the specific written agreement will always prevail.

2. It is specifically recorded, that unless stated otherwise in writing on the Order or Sale documentation, that the plant material ordered or hereby sold, is subject to Intellectual Property Rights, and specifically Plant Breeder's Rights, whether registered or unregistered. In ordering or acquiring plant material from Citrogold or from a Citrogold licensed Nursery, the plant material is sold subject to the applicable Intellectual Property Rights.

3. Citrogold gives no express, implied or tacit guarantee of any kind regarding the quality or other characteristics of the plant material Ordered by or Sold to the Grower.

4. The plant material is sold "as is" and Citrogold will not be liable for any hidden or visible (latent or patent) defects or disease of the plant material, nor for any resultant damage, directly, indirectly, or consequential, which might be caused by, or result from, any defects or disease in the plant material.

5. In respect of certain plant material protected by either one or more of commercial contract, trademark or Intellectual Property law the Grower undertakes:

5.1. To pay all premiums and royalties in respect of such plant material

5.2. To establish all such plant material in orchards within the borders of the Republic of South Africa

5.3. Not to produce, or allow or facilitate to be produced, further plants from such plant material

5.4. Not to sell, donate or in any other way dispose of propagation material of such plant material.

6. Citrogold will also not be liable for any verbal or written representation made by any employee or other person or consultant acting on behalf of Citrogold with regard to the plant material, or any damage or loss of any kind suffered arising from the quantity, use or yield of the plant material, or any representation made in this regard.

7. Without prejudice to the conditions of clause 4 and 6, should there be any alleged defect or disease in respect of the plant material, the purchaser is required to submit a written complaint to Citrogold regarding any alleged defect or disease within 14 (fourteen) days after receipt or delivery of the plant material, or within 14 (fourteen) days of the first manifestations of the alleged defect or disease. Provided such a complaint has been submitted, and provided that the Grower makes the plant material available to Citrogold for the necessary investigations, Citrogold may, at its sole and unfettered discretion, substitute, or allow the substitution of the defective plant material, and then subject to the Grower's license in respect of the said plant material and such further conditions as Citrogold may require.

8. Notwithstanding anything contained in this agreement, Citrogold's liability in respect of any Order or Sale will never exceed the substitution of plant material.

9. Any quotation given by Citrogold or a licensed Nursery is not an offer by Citrogold to sell plant material to the Grower. Citrogold may recall such quotation at any given time before Citrogold has confirmed the order.
10. The delivery date and the quantity of plant material in respect of any Order or Sale of plant material is an estimate only. Citrogold will not be liable for delay in delivery, or change of the quantity of the Order or Sale.
11. Citrogold retains the right to make the necessary enquiries and investigations to establish the Grower's creditworthiness at any time.
12. Unless and until credit terms have been agreed in writing, plant material will be supplied on a cash on delivery basis only.
13. The Grower is responsible for all transport costs, including any transport costs that might be incurred by Citrogold in respect of the delivery of plant material to the Grower or in respect of the delivery of any substituted plant material.
14. The Grower may under no circumstances withhold or set-off any payment owed to Citrogold for any reason whatsoever.
15. Citrogold is entitled to amend plant material prices, royalties and levies, if applicable, on 30 days written notice, and specifically reserves the right to review the royalties at any time on shorter notice if there are strong exchange rate fluctuations.
16. Despite delivery and or payment in full of the goods or plant material, Citrogold will retain ownership of all Intellectual Property Rights in respect of the goods and plant material. Despite delivery, no license in respect of the Intellectual Property Rights in the plant material or which license would otherwise be established in terms of the Order or Sale, will be effective until the purchase price has been paid in full by the Grower to Citrogold.
17. The risk of damage, loss, or theft of goods transfers to the Grower at the time of dispatch of an Order or Sale, and the Grower must arrange the necessary insurance regarding the transportation and plantings of the plant material.
18. The Grower is responsible for examining the Order or Sale upon delivery and acceptance of the Order or Sale will be deemed to be confirmation that the Order or Sale was received in good condition and there were no shortages. The onus rests with the Grower to prove that any goods or plant material was not delivered as per the delivery documents.
19. Citrogold reserves the right to suspend delivery, should the Grower be in breach of any of the terms and conditions of this agreement or the terms of any Order or Sale agreement to which these terms apply.
20. The undersigned, undertakes, in his/her personal capacity, and as a Shareholder, Member, Owner or Partner, as co-principal debtor in solidum (jointly and individually):
 - 20.1. for the payment of the full amount due and payable to Citrogold from time to time;

20.2. for the proper and prompt compliance by the Grower for all obligations against Citrogold in terms of this agreement.

21. Dispute Resolution Provisions:

21.1. The parties agree that any dispute arising out of or relating to any Order or Sale, these terms and conditions, any interpretation, rectification, breach, termination or cancellation shall be resolved in accordance with the following tiered approach to dispute resolution:

21.1.1. The senior management of the parties shall attempt to resolve the dispute by means of good faith face to face negotiations at a time and a place to be agreed to;

21.1.2. Should this fail, the parties shall seek settlement of that dispute by mediation in accordance with the mediation procedures of ACDS (Stellenbosch), which Procedure is deemed to be incorporated by reference into this clause.

21.1.3. If the dispute is not settled by mediation within 30 days of the commencement of the mediation, which will be commenced by a written notice to that effect to the other party and to ACDS, the dispute shall be referred to and finally resolved by arbitration under the expedited rules of the Association of Arbitrators, which Rules are deemed to be incorporated by reference into this clause.

21.1.4. The mediation and the arbitration, if applicable, shall be held in Stellenbosch.

21.1.5. While the parties will not commence any normal legal proceedings pending the procedures set out above, nothing herein contained shall be deemed to prevent or prohibit any party from applying to the appropriate court for urgent relief, pending the resolution of the matter in terms of the procedures set out above.

21.1.6. The provisions of this clause will continue to be binding on the parties notwithstanding any termination or cancellation of the agreement.

22. Force Majeure. If the performance of any part of this Agreement by either party, or of any obligation under this Agreement, is prevented, restricted, interfered with, or delayed by reason of any cause beyond the reasonable control of the party liable to perform, unless conclusive evidence to the contrary is provided, the party so affected shall, on giving written notice to the other party, be excused from such performance to the extent of such prevention, restriction, interference, or delay, provided that the affected party shall use its reasonable best efforts to avoid or remove such causes of non-performance and shall continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the parties shall discuss what, if any, modification of the terms of this Agreement may be required to arrive to an equitable solution.

23. This agreement is subject to the laws of the Republic of South Africa.

24. The Grower herewith subjects himself to the jurisdiction of the Magistrate's Court with regard to any action or matter which may stem from this agreement or the cancellation thereof, with the proviso that Citrogold reserves the right to have any such action or matter adjudicated in the High Court.

25. Should Citrogold take any legal action at all against the Grower in terms of this agreement, be it with or without cancellation of this contract, the Grower will also be liable to Citrogold for any legal costs incurred as between attorney and own client, including cost of recovery, as well as any costs incurred for tracking down the Grower.

26. The Grower chooses, as his domicilium citandi et executandi the addresses as given in the Order or Sale documents, failing which, the delivery address of any Plant Material.

27. The domicilium of either parties may be changed to another address within the Republic of South Africa only written notice by such a party to the other party.

28. The Order and Sale documents, together with these terms and conditions, forms the complete agreement between the parties and no variation or cancellation of this contract is valid unless in writing and signed by both parties.

29. In the event that any one clause in this Agreement is found to be void and not enforceable it shall be severed from this Agreement and the rest of the Agreement shall continue to be of force and effect.

30. The signatory to any Order or Sale also warrants that he/she is specifically authorised to enter into this agreement.

31. Where foreign exchange transactions are involved with any Sale documents, Citrogold will use the spot buying rate of the relevant foreign currency to determine the corresponding Rand value for the transaction.

32. Citrogold reserves the right to update these terms and conditions from time to time, and the onus will be on the Grower or any other party to familiarise themselves from time to time with these terms and conditions, and in any event, before placing any new orders for plant material from time to time.

LAST UPDATED: 23 July 2010