

# nOPHADRAIN<sup>®</sup>

SMART GREEN ROOF SYSTEMS

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

NOPHADRAIN BV  
(20-06-2016)



## **1. General**

1.1 The following terms and conditions apply exclusively to our sales. Other conditions of the buyer in reference to its terms and conditions of sale and/or purchasing conditions are hereby excluded.

## **2. Offers**

2.1 Our quotations are without obligation and are not binding. Orders/requisitions are valid only if we have confirmed them in writing. The same applies to additions, amendments, and ancillary agreements. Oral agreements are not valid in any case.

## **3. Warranty – product liability – complaints**

3.1. The seller warrants that the products are free from defects at the time of delivery and comply with the specifications as published in its documents (subject to misprints).

3.2. If a product is defective or does not comply with the specifications, the seller shall replace the product at its own expense. Liability is limited to the replacement of the product, while the warranty is limited to the delivery of goods free from defects. The seller is not liable for any consequential damage.

3.3. The buyer must inform the seller in writing, by registered letter, within eight days of becoming aware of the defect. If this is not done, the right to replacement of the goods ceases to exist.

3.4. The seller does not warrant that the goods are fit for the purpose that the buyer wishes to use them for, not even if this purpose was communicated to the seller, unless the parties have agreed otherwise in writing.

## **4. Prices**

4.1. Prices exclude VAT, transport, and packaging costs, net from Kerkrade. Invoices must be paid within 14 days of the invoice date. The buyer is not entitled to deduct any amount in respect of a counterclaim that it has instituted.

4.2. If the buyer does not punctually comply with its payment obligations and also fails to comply with a notice of default with a one-week deadline, the seller is entitled to either demand specific performance of the agreement or to consider the purchase agreement terminated without judicial intervention. If the seller demands specific performance, the buyer is liable, in addition to the purchase price, for the losses due to the delay of taking late delivery and lost interest. If the seller opts for termination, the buyer is liable for the damage and interest suffered by the seller, including loss of profits, transport costs, and all costs arising from the notice of default.

4.3. If the seller takes legal action because of the buyer's breach of contract, both the judicial and extrajudicial costs are payable by the buyer. These extrajudicial costs amount to 15 % of the invoice amount, subject to a minimum of EUR 1,500.00.

## **5. Deliveries and delivery period**

5.1. Delivery dates are binding only if these have been expressly agreed and confirmed by the seller in writing. The term 'expected' is normally used when stipulating a delivery date in order to indicate the non-binding time factor. A fixed delivery date exists only when the term 'guaranteed' is added. If a 'guaranteed delivery date' is not met, the buyer is entitled to cancel the transaction, but may not lay claim to compensation unless there has been gross negligence. A time on a guaranteed delivery date is given only as an estimate and cannot be guaranteed. No rights can be derived from it.

5.2. Deliveries to building sites are made on condition there are usable roads. Unloading and the associated risks are at the client's expense. Waiting times in excess of 30 minutes may be charged separately. Unless expressly agreed otherwise, the buyer is responsible for unloading.

5.3. If partial deliveries apply, the buyer must confirm the call for the partial delivery in writing at least two working days before the required delivery date. Nophadrain always confirms the entire order first and then confirms calls for partial deliveries with a 'call confirmation'.

## **6. Force majeure**

6.1. The delivery period referred to in Article 5 is to be extended by the period during which the seller is prevented from complying with its obligations by force majeure.

6.2. Force majeure on the side of the seller exists if the seller, after entering into the purchase agreement, is prevented from complying with its obligations under this agreement or from preparing for them as a result of war, a threat of war, civil war, riots, wilful damage, fire, water damage, floods, strikes, factory/office sit-ins, lock-outs, import and export barriers, government measures, machine defects, power cuts, all both in the business of the seller and at third parties, from which the seller must purchase all or part of the required raw and other materials, as well as during storage or transport by the seller itself or otherwise, as well as for all other reasons that arise through no fault of or beyond control of the seller.

6.3. If the delivery is delayed for more than two months due to force majeure, both the seller and the buyer are entitled to consider the agreement terminated. In that case, the seller is entitled only to reimbursement of the costs it has incurred.

## **7. Compliance and transport**

7.1. Our delivery obligation is fulfilled as soon as the goods are handed to the carrier. From this moment, all risks are for the client.

7.2. Transport is at the client's risk in any case. Insurance is arranged only after the client gives a specific instruction for this purpose and is at the client's expense.

7.3. If delivery is not taken of the ordered goods, the supplier is entitled to demand fixed compensation of 40 % of the value of the goods insofar as they have not yet been delivered. Once delivered, goods are not taken back.

## **8. Taking delivery**

8.1. The client must prove manifest defects, damage caused during transport, insured quantities, and incorrect deliveries. If the client does not do so, delivery of the goods is deemed to have been taken in accordance with the order. Rejected goods may not be incorporated or processed.

## **9. Retention of ownership**

9.1. As long as the buyer has not paid the full purchase price and any additional costs, or provided security for that purpose, the seller retains ownership of the goods. In that case, ownership passes to the buyer as soon as the buyer has fulfilled all its obligations towards the seller.

9.2. If the seller has obvious misgivings about the buyer's ability to pay, it may postpone the delivery of the goods until the buyer has provided security for the payment. The buyer is liable for any damage suffered by the seller because of this delayed delivery.

## **10. Termination**

10.1. Notwithstanding the provisions of Article 9, the purchase agreement is terminated, without judicial intervention, after a written statement when the buyer is declared bankrupt or put into liquidation, petitions for a provisional moratorium on the payment of debts, if the court grants a request of the seller for the application of statutory debt management scheme for natural persons, or if the buyer loses the power to dispose of its assets or part thereof because of attachment, a guardianship order or otherwise, unless the receiver/guardian or administrator acknowledges the obligations arising from this agreement as an estate debt.

10.2. Termination results in the parties' claims against each other becoming immediately due and payable. The buyer is liable for the damage suffered by the seller, including loss of profits and transport costs.

## **11. Applicable law**

11.1. Dutch law applies exclusively to all rights, obligations, offers, orders, and agreements to which these Terms and Conditions apply, as well as to these Terms and Conditions.

11.2. All disputes between the parties are to be submitted exclusively to the competent court in the Netherlands.

## **12. Cancellation of a placed order**

12.1. Nophadrain charges 50 % of the order amount if an order that has already been placed, but not yet delivered to the client, is cancelled.

**Additional General Terms and Conditions of Sale and Delivery (20-06-2016)  
For green roof substrates and self-binding gravel**

The exact delivery address and contact person at the building site with his/her telephone number must be stated on the order. The required hose length and maximum blowing height must be indicated if silo trucks are used for delivery. Depending on the substrate to be delivered, a blowing length of  $\pm 100$  m in case of a height difference of 20 m is achievable.

**1. Positioning of the hoses**

1.1. The client must attend to the positioning and dismantling of the hoses and to distributing the material over the roof surface (two to three employees are generally needed – two for operating and three for laying out the hoses). The driver stays with the vehicle and operates the compressor.

1.2. The hoses must be laid out without kinks. Delays caused by improper positioning are at the expense of the client. The vehicles have around 60 m of transport hose, which can be increased in exceptional cases. However, every meter also means more blowing time – 10 m extra hose means at least one hour of additional blowing time.

**2. Measurements of the silo truck**

2.1 The silo trucks ( $\pm 27$  m<sup>3</sup>) have the following approximate measurements in running condition: 16 x 2.50 x 3.95 m (L x W x H). The maximum height in tilting/unloading position is 14 m. Overhead wires, electric conduits, trees and similar objects must be taken into account when positioning the trucks.

2.2. In order to make a 180 ° turn, the vehicle needs a rotation circle of around 40 m. The loading/unloading area must be level (practically horizontal) and suitable for vehicles weighing up to 40 tonnes. Note that no overnight parking of vehicles in the loading/unloading area is allowed.

**3. Moving the silo truck**

3.1. The silo truck can no longer be moved once it is in the tilting position. Partial unloading and then moving the silo truck is not possible.

**4. Emissions**

4.1. Water can be added during unloading in order to reduce any dust formation. A connected water hose with a GEKA coupling must be available for this purpose.

**5. Settlement**

5.1. The loose documentation carried by the driver must be completed accurately and signed by the client or its authorized representative. The basis for settlement is the bulk weight of the material in its loaded state ex factory in t/m<sup>3</sup>, as stated on the weighing slip. The specific weight of the supplied material can be determined by dividing the listed weight (m<sup>3</sup>) by the total weight that's listed on the weighing receipt. Volume changes due to transport, setting, loss during pouring, and reduction of the particle size during transport and installation are for the client's account.

5.2. The maximum deviation of the supplied materials compared to the ordered amount is 10 %. Any upward or downward cost arising thereunder will be charged to the buyer / customer.

5.3. The price includes the operation of the compressor by the driver and waiting/connecting/blowing time of three hours. Every hour that commences after these three hours is charged separately (at approximately EUR 100.00 an hour).

**6. General**

6.1. The silo trucks are equipped with a mobile telephone. Any problems are reported to us as soon as possible.



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