

LICENCE AGREEMENT ON PROPAGATION OF VARIETIES

The following Contracting Parties:

Výzkumný ústav Silva Taroucy pro krajinu a okrasné zahradnictví, v. v. i.

(in English: The Silva Tarouca Research Institute for Landscape and Ornamental Gardening, v. v. i.)
with its registered address at Květnové náměstí 391, Průhonice, 252 43, Czech Republic
represented by doc. RNDr. Ivan Suchara, CSc., managing director
Company ID No.: 00027073
VAT No.: CZ00027073
Telephone: +420 296528256
Banking details: IBAN: CZ09 0300 0000 0000 0068 5425
(hereinafter referred to as the "VÚKOZ")

and

Gospodarstwo Szkółkarskie Anna Cieplucha-Kowalska

with its registered address at Ul. Górna 50, 95-050 Konstancin Żółkiewski, PL 731 197 40 21, Poland
represented by Anna Cieplucha - Kowalska
Company ID No.: 320446596
VAT No.: PL7311974021
Telephone: +48 42 2111800
Banking details: PL38 1750 0012 0000 0000 2361 6785
(hereinafter referred to as the "GSAC-K")

in accordance with the provisions of Art. 19 (2) of Act No. 408/2000 Coll., on the Protection of Plant Variety Rights and the amendment to Act No. 92/1996 Coll., on Plant Varieties, Seed and Planting Materials of Cultivated Plants, as amended, (the Act on the Protection of Plant Variety Rights)

enter into this

Licence Agreement on Propagation of Varieties
(hereinafter referred to as the "Agreement")

1. Introductory provisions

- 1.1. VÚKOZ's scope of activities includes, *inter alia*, research of breeding methods and their application when new varieties of flowers and ornamental woody plants are bred as well as research of effective methods of propagation and cultivation of woody plants, perennials, balcony flowers and other plants that are subsequently used for market production of ornamental plants.
- 1.2. VÚKOZ is the holder of Plant Breeders' Rights in the Czech Republic (hereinafter also referred to as the "PBR") as regards, *inter alia*, varieties where this fact is explicitly stated in Annex No. 1 of this Agreement. Annex No. 1 of this Agreement constitutes an integral part of this Agreement.
- 1.3. GSAC-K is, *inter alia*, a producer of nursery materials, e.g. plants of rhododendrons and azaleas for sale.
- 1.4. The subject-matter of this Agreement is the provision of licence concerning production, marketing and sale of (I.) selected varieties of rhododendrons and azaleas bred in and owned by the VÚKOZ, listed in Annex No. 1 of this Agreement, for which the VÚKOZ has applied for PBR and also (II.) varieties of rhododendrons and azaleas bred in and owned by the VÚKOZ, listed in Annex No. 1 of this Agreement, for which the VÚKOZ has not applied for PBR (hereinafter jointly also referred to as the "Varieties").

2. Subject-matter of the Agreement

- 2.1. With this Agreement, the VÚKOZ undertakes to provide exclusive or non-exclusive licence to GSAC-K to production, marketing and sale of the Varieties bred in the VÚKOZ in Průhonice, the Czech Republic. The list of the Varieties and the fact whether an exclusive or non-exclusive licence is provided for each variety is defined in Annex No. 1.
- 2.2. The licence provided under this Agreement is limited for all European countries and Russia.
- 2.3. GSAC-K undertakes to pay to the VÚKOZ a fee for every piece of rhododendron or azalea for which licence is provided under this Agreement sold to any of the countries defined in Article 2.2. hereof. The amount of the fee defined herein is defined in Annex No. 1 of this Agreement.
- 2.4. GSAC-K undertakes to exert maximum effort when protecting the Varieties with exclusive licence in order to eliminate their illegal propagation and dissemination in the market.

3. Community Plant Variety Rights

- 3.1. Upon a written agreement concluded between the VÚKOZ and GSAC-K entered into after the testing period, but no later than 3 years after entering into this Agreement, GSAC-K is entitled to apply with the relevant authority for Community Plant Variety Rights for the Varieties for which exclusive licence under this Agreement is provided.
- 3.2. GSAC-K undertakes not to allow a third party to apply with the relevant authority for PBR until the Community Plant Variety Rights are granted as specified in Art. 3.1. hereof, or in 3 years after entering into this Agreement if no agreement between VÚKOZ and GSAC-K as specified in Art. 3.1. hereof is entered into.
- 3.3. In case that the VÚKOZ and GSAC-K fail to conclude a written agreement on the fact that GSAC-K is entitled to apply with the relevant authority for Community Plant Variety Rights within the meaning of Art. 3.1. hereof before the commencement of sale of the Varieties for which exclusive licence is provided under this Agreement, or in 3 years after this Agreement is entered into if no written agreement within the meaning of Art. 3.1. hereof is entered into, the exclusive licence automatically changes into a non-exclusive licence. In such a case the VÚKOZ is entitled to use the PBR for these Varieties of rhododendrons and azaleas in any way whatsoever without any restrictions.
- 3.4. As long as this Agreement is in effect and even after Community Plant Variety Rights are granted to GSAC-K under Art. 3.1. hereof, the VÚKOZ remains to be the owner of the Varieties. For the entire time defined in the previous sentence of this Article, the VÚKOZ is entitled to continue propagating and selling the plants of Varieties provided with exclusive licence as a local product in the Czech Republic, the maximum number of each of the Varieties being 500 pcs a year.

4. Fees for rhododendrons and azaleas sold

- 4.1. GSAC-K undertakes to inform the VÚKOZ in writing about the number of all Varieties of rhododendrons and azaleas grown for which licence is provided under this Agreement as well as about the total sum of fees within the meaning of Art. 2.3. hereof for the period as of 1st December of the year that precedes the issue of such information until 30th November of the year in which the written information is submitted to the VÚKOZ. GSAC-K undertakes to submit the written information to the VÚKOZ by 31st December at the latest.
- 4.2. On the basis of the written information submitted by GSAC-K, the VÚKOZ shall charge the total of the fees it is entitled to for the relevant period as specified in the previous article and shall issue a relevant invoice.

5. Other provisions

- 5.1. The VÚKOZ undertakes to provide GSAC-K, upon a written request of GSAC-K, with basic information about the Varieties and their photographs. Such information and materials may be used by GSAC-K for marketing purposes.

- 5.2. The VÚKOZ undertakes to deliver to GSAC-K mother plant material of the Varieties as specified in written orders sent by GSAC-K. GSAC-K undertakes to pay the price for the mother plant material for the Varieties specified on the invoice issued by the VÚKOZ.
- 5.3. GSAC-K undertakes to sell the Varieties labelled with the following text translated into the relevant languages: "This variety was bred in The Silva Tarouca Research Institute for Landscape and Ornamental Gardening, v. v. i., Průhonice, the Czech Republic".
- 5.4. GSAC-K undertakes not to deliver the Varieties to any other countries but those specified in Art. 2.2. hereof.
- 5.5. This Agreement or any right or duty under this Agreement may not be transferred or assigned without previous written consent of the VÚKOZ.
- 5.6. No Contracting Party is entitled to offset unilaterally any claims it has or may have towards the other Contracting Party. In the case that any of the Contracting Parties offsets a claim, contrary to this provision, such conduct towards the other Contracting Party is considered invalid.

6. Validity and Force of this Agreement

- 6.1. This Agreement comes into force and effect when signed by both Contracting Parties.
- 6.2. This Agreement is entered into for the period of five years as of the sale of the first piece of rhododendron or azalea of the Varieties for which licence is provided to GSAC-K under this Agreement in the case of the varieties which are not covered by the PBR in Poland or the EU and in the case of the varieties which are covered by the PBR in Poland or the EU for the entire time when the PBR are valid.
- 6.3. Any of the Contracting Parties may withdraw from this Agreement in writing without stating a reason. The Agreement expires after the notice period of twelve (12) months that starts on the day following the day when the other Contracting Party receives the notice of withdrawal.
- 6.4. Withdrawing from the Agreement does not have any impact on mutual performance under this Agreement that has been duly provided and accepted.

7. Final provisions

- 7.1. Rights and duties of the Contracting Parties under this Agreement are governed by the laws of the Czech Republic. Any disputes arising under this Agreement shall be decided by the courts of the Czech Republic in accordance with the relevant legislation of the Czech Republic, the relevant court is the locally relevant general court of the VÚKOZ. GSAC-K acknowledges that VÚKOZ will publish this Agreement in accordance with the provisions of Art. 2 (1) e), Act No. 340/2015 Coll., in accordance with Art. 5 of the same Act in the Contract Register (*Registr smluv, in Czech*) and agrees with this publication.
- 7.2. This Agreement is executed in two counterparts, one for each Contracting Party.
- 7.3. This Agreement may only be changed in the form of numbered amendments signed by both Contracting Parties. A written agreement signed by both Contracting Parties may extend the subject-matter of this Agreement by adding further varieties of rhododendrons, azaleas or any other plants for which a licence will be provided under this Agreement. A written agreement, as specified in the previous sentence, shall contain the name of the variety for which a new licence will be provided, the amount of fee for 1 pc sold, status of the PBR and information whether an exclusive or non-exclusive licence is provided for the variety. A written amendment signed by both Contracting Parties may extend the territory covered under this Agreement.
- 7.4. Should any of the provisions of this Agreement prove to be or become invalid, unenforceable, trivial or ineffective, such invalidity, unenforceability, triviality or ineffectiveness shall not affect the other provisions of this Agreement. The Contracting Parties undertake to replace any invalid, unenforceable, trivial or ineffective provisions with valid, enforceable and effective provisions with the same or similar legal and business meaning, or to enter into a new Agreement.

- 7.5. Annex No. 1: List of varieties with the relevant fees for their propagation, existence of the PBR, type of licence (exclusive or non-exclusive) and the amount of relevant fees. The Annex constitutes an integral part of this Agreement.
- 7.6. The Contracting Parties hereby declare to have read the Agreement and they agree with the provisions specified herein.

IN WITNESS WHEREOF

(Signed in),2017

(Signed in),2017

Annex No. 1

List of varieties with the relevant fees for their propagation, existence of the PBR, type of licence (exclusive or non-exclusive) and the amount of relevant fees.

Variety name	PBR in the Czech Republic	Exclusive / non-exclusive licence	Fee for each plant sold
Bečov	yes	non-exclusive	
Bezděz	-	non-exclusive	
Bouzov	-	non-exclusive	
Děvín	yes (pending)	exclusive	
Karlštejn	yes	non-exclusive	
Klenová	yes	non-exclusive	
Kokořín	-	non-exclusive	
Kotnov	yes	non-exclusive	
Krakovec	yes	non-exclusive	
Lipnice	yes	non-exclusive	
Orlík	-	non-exclusive	
Sovinec	yes	non-exclusive	
Střekov	yes	non-exclusive	
Švihov	yes	non-exclusive	
Vranov	yes (pending)	exclusive	