

# GENERAL TERMS AND CONDITIONS FLORAHOLLAND CONNECT

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The present terms and conditions apply to the use of the services of FloraHolland Connect in addition to the Auction Regulations.

These terms and conditions have been laid down by the FloraHolland Cooperative Board during its meeting held on 4 November 2009 after consultation with VGB and a representative of the Group Trade Committee and may only be amended by the FloraHolland Cooperative Board. Amendments shall only come into effect after consultation with the same parties and after they have been made public appropriately.

All defined words and terms start with a Capital Letter and have been ordered alphabetically in Section 9 (Definitions) of the Auction Regulations unless otherwise defined in these terms and conditions.

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## Definitions:

In these terms and conditions the following definitions are used:

- FloraHolland Connect           The intermediary organisation of FloraHolland that may or may not be represented by employees appointed for this purpose;
- FloraHolland Connect employee   An employee who works for FloraHolland charged with providing intermediary services;
  
- FOB/FCA                   Free On Board/Free Carrier, as described in Incoterms 2000;
- Buyer                     The (legal) entity who is registered as such at FloraHolland and, therefore, has the opportunity of buying and settling Products through FloraHolland and who on the day that Products must be delivered by the Seller, has not been excluded by FloraHolland with regard to this;
  
- Sample                    One or more samples of a Product with regard to which an intermediation request or instruction has been issued and regarding which the samples are (or should be) representative of that Product;
  
- Delivery Location        The location agreed between the Buyer and the Seller for the delivery of Products. This may mean the following: The supply building of a FloraHolland Site, the box room of the Buyer or another Site of the Buyer or a Site of the Seller (ex garden) and/or another agreed Delivery Location where Products must be delivered by the Seller on the agreed delivery date and on which the Buyer must have received the Products;
  
- (In) Writing             A message on paper sent by post, fax, telegram or personally and/or a message sent by e-mail;
  
- The Seller                The (legal) entity who is registered as such and/or as a 'supplier' at FloraHolland and, therefore, has the opportunity of selling and settling Products through FloraHolland;

## **Article 1           Applicable terms and conditions**

1. If Products are sold in a different way than through the auction system of the Clock involving a Seller and a Buyer registered at FloraHolland and (shall) be processed through FloraHolland, the present terms and conditions shall apply in addition to the Auction Regulations.  
The present terms and conditions, furthermore, apply equally to the Clock Service Transactions provided that FloraHolland Connect does not act as the intermediary organisation within this context but that the Clock Department of the relevant Site has this role.  
These terms and conditions apply to both the legal relationship between the Buyer and Seller and the legal relationship between FloraHolland and the Buyer/Seller.
2. If a Buyer and Seller have agreed additional or different terms and conditions amongst themselves with regard to the legal relationship between this Buyer and Seller, FloraHolland shall not be obliged to abide to their application unless FloraHolland has granted permission in Writing with regard to the relevant terms and conditions.
3. Only the present terms and conditions apply to the legal relationship between FloraHolland and the Buyer/Seller and no personal General Terms and Conditions of the Buyer and/or Seller shall apply unless this has been agreed with FloraHolland in Writing.

## **Article 2           Nature of the services**

1. FloraHolland provides intermediary services when realising a Purchase Agreement between the Seller and Buyer with regard to active intermediary services.

2. Passive intermediary services, in principle, concern services such as the collection and/or settlement and any logistics activities with regard to a Purchase Agreement that has been realised by the Seller and Buyer themselves. FloraHolland Connect shall be entitled not to process Complaints with regard to passives intermediary services.

### **Article 3 Requests for intermediation, withdrawal, amendment and information provision**

1. A request for active intermediary services must be directed to FloraHolland Connect. Specifications (such as type, dimensions and quality) of the Products to be sold and/or to be bought and the quantity currently available and/or requested must be specified when requesting intermediation. A minimum price may be specified with regard to a request for intermediation for a sale. A maximum price may be specified with regard to a request for intermediation for a purchase. FloraHolland Connect is bound by both prices.
2. FloraHolland Connect shall be entitled not to process a request for intermediation. FloraHolland Connect may fully or partially return a request for intermediation that has been accepted for processing (hereinafter to be referred to as the "intermediation order") on the sole ground that there are reasons for doing this.
3. An intermediation order may be amended or withdrawn by the customer in Writing unless it was issued for a specific time and not free of obligation. The amendment or retraction shall become effective once the working day has ended after the day on which it was reported. The customer shall continue to be bound to the obligations that arose before this time.
4. FloraHolland Connect shall be entitled to split an intermediation order based on business criteria that are contained therein such as: quantities, varieties, qualities, Grades and dimensions.
5. An intermediation order commits FloraHolland Connect to make every effort to realise the agreement between the Seller and Buyer. For the success thereof and for the content and execution, FloraHolland cannot be held liable in any way.
6. FloraHolland Connect shall be entitled to issue information from intermediation orders of Sellers to Buyers registered with FloraHolland Connect for the intermediary services. FloraHolland Connect shall also be entitled to issue information from the intermediation orders of the Buyers to Sellers registered with FloraHolland Connect. The receiver of the information issued by FloraHolland Connect shall not be entitled to issue this information to Third Parties unless for selling through FloraHolland Connect.

### **Article 4 Sample**

1. The Seller may also make available to FloraHolland Connect a Sample with regard to an intermediary order; the related costs are fully at the expense of the customer. The Sample must be representative for all Products of the offered Lot. FloraHolland Connect is only bound to provide a normal care and storage of the Sample up to a date that will not be past a date to be determined by FloraHolland Connect.
2. FloraHolland Connect shall be entitled to make available (a part of) the Sample to someone who is considering to buy the offered Lot as a whole or in part.
3. The Buyer is deemed to have seen the offered Products and/or Sample.

### **Article 5 Option**

1. By concluding an option, a first right to Buy is established on part or the whole of the Lot of Products offered for sale through FloraHolland Connect.
2. a. The option agreement has a maximum validity period of 48 hours to be counted from the moment when the agreement is realised with the exception of any hours that occur in the weekend and/or on days that are recognised as public holidays by the Dutch government. This agreement can be concluded verbally through FloraHolland Connect. If possible, this shall subsequently be confirmed in Writing by FloraHolland Connect.  
b. In deviation to the provisions made under a. , an option agreement in Writing may be concluded by the parties with a validity period of more than 48 hours after having obtained approval from FloraHolland Connect.
3. The quantity, type, dimensions and quality of the Products offered for sale must be described as accurately as possible as well as the name and the Customer Number of the Buyer and Seller and the period of the agreement in the option agreement concluded in Writing.
4. FloraHolland Connect is entitled to refuse an option. An option will then only be issued if FloraHolland Connect deems there is a reasonable probability that the option shall be converted in a Purchase Agreement.
5. FloraHolland cannot be held liable for damage that has arisen due to an act or omission on the side of the Buyer or the Seller with regard to an option agreement.

### **Article 6 Purchase agreement**

1. A Purchase Agreement can be realised verbally or in Writing. When a Purchase Agreement is realised, then it shall apply as concluded between the Buyer and the Seller.
2. The Seller shall deliver the Products he or she has grown unless the Buyer knew or could have known that the Products were also or would be grown by Third Parties. If the Seller cannot prove that the Buyer was aware of this, the Buyer shall be entitled to submit a Complaint in agreement with Article 9 of these terms and conditions.
3. The Buyer and the Seller shall ensure that a Purchase Agreement contains the following: Their names including Customer Numbers and a description of the Products, the quality, the delivery dates, the price, the quantity, the Packaging and any Sample to be issued. The agreed dates and times are strict deadlines unless otherwise expressly agreed.
4. If the content of a verbal agreement is registered in a database by the broker, the Buyer and the Seller shall subject themselves to what the data in the database indicate regarding this with regard to the content of the agreement. FloraHolland Connect shall issue the Buyer and the Seller Written confirmation upon request with regard to active intermediary services.

#### **Article 7 Payment security issues (bankruptcy, moratorium)**

1. The Buyer and/or Seller shall issue (or must issue) an unconditional bank guarantee or, in the opinion of FloraHolland Connect, replacement security for a sum of at most the amount of the agreed Purchase Price within a period specified by FloraHolland Connect at its first request. If the aforementioned security has not been issued, has not been issued in time and/or is insufficient in the opinion of FloraHolland, FloraHolland shall be entitled to retract its surety agreement towards the Seller for Products still to be delivered and the Buyer/Seller may terminate the agreement through a notice of default in Writing to the party who is in default.
2. If and when the Buyer or Seller is declared bankrupt or has applied for a moratorium, a Purchase Agreement shall be deemed to have been terminated without judicial intervention and with immediate effect unless there is sufficient security or sufficient security is made available as referred to in the previous paragraph.

#### **Article 8 Plurality of Sellers and/or Buyers**

If two or more persons act jointly as the Buyer(s) and/or Seller(s), both are jointly and severally liable for the whole for the fulfilment of the obligations that arise from the agreement including with regard to FloraHolland and/or jointly and severally entitled to receive that which the parties have been allocated based on the agreement as a whole unless otherwise expressly agreed.

#### **Article 9 Complaint procedure**

1. Complaint of the Buyer (term, submission method)
  - a. Complaints with regard to a delivery to be expected or a delivery that has (not) taken place or has taken place but not in accordance with the agreed specifications must be submitted to the Seller and FloraHolland Connect by the Buyer as soon as possible in Writing offering reasons. This must be done on the delivery day at the latest and never after the Products have left the Delivery Location. The division of Products that do and do not comply with the agreement is not allowed without the intervention of FloraHolland Connect.
  - b. If the Buyer did not have a reasonable opportunity to complain on the delivery day in view of the time of the delivery in the opinion of FloraHolland Connect, a Complaint can still be submitted up to the next working day at 10 a.m. at the latest.
  - c. If a Complaint in Writing has not been received within the aforementioned period, the delivery shall be considered sound unless a concealed defect is involved. The aforementioned period shall only start after arrival and clearance of the Products in the Netherlands with regard to FOB/FCA.
  - d. If a defect cannot be discovered with regard to the Product in all reasonableness when delivery takes place, a concealed defect is involved. Complaints due to a concealed defect must be submitted in Writing to the Seller and FloraHolland Connect within two working days after the defect could be observed in all reasonableness at the risk of forfeiting all rights.
2. Complaint of the Seller (term, submission method)
  - a. Complaints with regard to an (untimely or incomplete) purchase of Products must be submitted to the Buyer and FloraHolland Connect as soon as possible in Writing and providing reasons. On the agreed delivery date at the latest.
  - b. If the Seller did not have a reasonable opportunity to complain on the delivery day in the opinion of FloraHolland, a Complaint can still be submitted to the Buyer and FloraHolland Connect up to the next working day at 10 a.m. at the latest.
  - c. If a Complaint has not been submitted within the aforementioned period, the purchase shall be considered sound unless the Buyer had created the impression that the part that was not purchased would be purchased anyway on another date; one thing and another at the discretion of FloraHolland. A Complaint can, in this case, be submitted to the Buyer and

FloraHolland Connect in Writing providing reasons within two working days after the Seller could have understood in all reasonableness that the remainder of the Lot would not be purchased at the risk of forfeiting all rights.

3. FloraHolland Connect Investigation

- a. FloraHolland Connect shall investigate the Complaint and shall inform the Buyer and Seller in Writing about its findings. These findings have the power of a non-binding opinion. FloraHolland cannot be held liable for the content of this opinion.
- b. FloraHolland Connect may demand for the investigation that the products regarding which a Complaint has been submitted be brought to a FloraHolland Site in their original Packaging and still showing the data of the involved Seller. If this is not possible, the Buyer must ensure that a counter inquiry is made possible by an expert appointed by the Seller at the Buyer's expense. The transport and investigation costs specified above may ultimately be at the expense of the party who failed.
- c. If the Buyer/Seller cannot accept the findings, he or she must inform FloraHolland Connect and the other party as soon as possible. FloraHolland Connect may set a period for this. If FloraHolland Connect has not set a period, four weeks shall apply. Should a timely challenge not be forthcoming, the findings shall come into effect as an additional agreement between the parties.
- d. If both parties have accepted the FloraHolland Connect findings and the total amount in damages (compensation) is not more than € 5,000, FloraHolland Connect shall be entitled to have the financial settlement of this run through its administrative systems.

4. Consequences of a justifiable Complaint

- a. If a Complaint of the Buyer as referred to above is deemed valid and an appeal to force majeure of the Seller fails, the Purchase Agreement shall be partially terminated by operation of law. The terminated part concerns the defective or the not delivered number of Products. That which has already been performed to fulfil the terminated part, must, in this case, be returned.  
In addition to termination, the Buyer shall be entitled to receive compensation for at most 12% over the agreed Purchase Price for the terminated part unless otherwise agreed. When determining the estimate of the damages, the costs incurred to replace the Products that were not delivered due to termination that have arisen from a Purchase Agreement with a Third Party may only be claimed if this replacement agreement has been realised after consultation with the Seller and FloraHolland Connect.  
If returning the Products is not a realistic option in view of the circumstances, the Buyer shall only be entitled to compensation consisting of at most the Purchase price for that part of the agreement.
- b. If a Complaint of the Seller as referred to above is valid and an appeal to force majeure of the Buyer fails, the Buyer must pay the agreed Purchase Price for the Products not purchased by the Buyer as determined in advance and the fixed compensation.
- c. Should the Buyer/Seller act in bad faith, the level related to the compensation shall not be restricted.

5. If and insofar the Buyer and the Seller have a dispute regarding a Purchase Agreement concluded through FloraHolland Connect that does not concern a Complaint as referred to in Article 9 paragraphs 1 and 2, either party may also approach the Arbitration Board as referred to in Article 11 provided that this has been agreed by the parties concerned but not before the party concerned has tried to solve this dispute with the assistance of FloraHolland Connect. FloraHolland Connect shall never be held liable for recommendations issued within the framework of finding a solution as referred to above.

**Article 10 Force majeure**

1. The Seller shall only be entitled to an appeal based on force majeure in case of circumstances not to be expected in all reasonableness such as fire, measures taken by the government, extreme weather conditions or faulty propagation material (insofar the use thereof was prescribed by the Buyer), if these circumstances fall outside the immediate influence of the Seller, cannot be blamed on the Seller or should not be at his or her expense and fulfilling the agreement can no longer be expected in all reasonableness in view of the circumstances.
2. The Buyer shall only be entitled to appeal on force majeure in case of circumstances not to be expected in all reasonableness such as fire, measures taken by the government or an organised road blockade if these circumstances fall outside the immediate influence of the Buyer, cannot be blamed on the Buyer or should not be at his or her expense and fulfilling the agreement can no longer be expected in all reasonableness in view of the circumstances.
3. If the aforementioned circumstances continue, the Seller/Buyer must inform the other party and FloraHolland Connect as soon as possible in Writing providing reasons. In that case, the delivery/purchase obligation shall be suspended unless this cannot be demanded in all

reasonableness in view of the circumstances. In the last case or if the suspension has lasted more than two working days, the Buyer and/or Seller may terminate the Purchase Agreement by notifying the other party in Writing. The terminated part concerns the Products not delivered and/or not purchased due to force majeure. That which has already been performed to fulfil the terminated part, must in this case be returned. A right to compensation does not apply.

**Article 11 Arbitration**

1. If the Buyer/Seller cannot agree to the findings of FloraHolland Connect, he or she must report this as soon as possible to FloraHolland Connect. FloraHolland Connect may set a period for this. Should a timely challenge not be forthcoming, the findings shall come into effect as an additional agreement between the parties.
2. If arbitration has been agreed, a dispute between the Buyer and the Seller can be submitted by or on behalf of the Buyer/Seller to the arbitration board appointed by the VBN and the VGB within three months after the date of the findings of FloraHolland Connect. The address of the administrative office is the following: PO Box 220, 2670 AE Naaldwijk. The dispute about the question whether a Complaint is or is not valid shall be settled in this case in accordance with the regulations of this arbitration board.