

# ALGEMENE VOORWAARDEN FLORAHOLLAND IMPORT

## General Terms and Conditions of FloraHolland Import

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The terms and conditions at hand apply to services rendered by FloraHolland Import, and are an addition to the Auction Regulations.

These conditions have been determined by FloraHolland's Management during their meeting on 4 November 2009, in consultation with VGB and representatives of the Concern Trade Commission and may only be amended by FloraHolland's Management. Any changes will only take effect after due consultation with all the same parties concerned and only after having been adequately announced.

All definitions start with a capital letter and are listed in alphabetical order in Chapter 9 (Definitions) of the Auction Regulations, unless otherwise stated in these terms and conditions.

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### Introduction

The purpose of these conditions is to clarify the terms for cross-border supplies, especially, but not limited to, the border of the European Community.

### Definitions

The following terms will be defined in these General Terms and Conditions of FloraHolland Import as follows:

- **Contract Supplier** a Supplier that is not a member or guest member of FloraHolland;
- **DDP** Delivered Duty Paid as described in the Incoterms 2000;
- **Import Agent** the person that arranges the import of floricultural Products and provides the necessary instructions for this purpose to third parties. This may be in his/its own name and/or under the instructions of a third party;
- **Import Handling** the department of FloraHolland that acts as the Import Processor;
- **Import Processor** the person that physically receives the floricultural Products from Suppliers and then handles and gets them ready for sale. This may but need not be under the instructions of a third party;
- **Phytosanitary Certificate** health certificate for plants and plant Products drawn up by or on behalf of an official plant protection service in the country of origin or provenance, from which it is evident that the shipment is free of harmful organisms and complies with the phytosanitary regulations of the European Community;
- **Supplier** the producer and/or Import Agent/Processor that purchases services from FloraHolland in order to distribute/sell his/its Products, from origin not Dutch, among customers registered at FloraHolland.

### Article 1 Applicability

These general terms and conditions of FloraHolland Import apply -as a supplement to the auction regulations- to every service rendered by FloraHolland to Supplier, through the mere request and/or use of these services by Supplier. These terms and conditions form part of all requests, offers and agreements between FloraHolland and Supplier, even if no specific reference is made hereto and excluding general conditions of other parties, unless explicitly agreed otherwise in writing.

### Article 2 Registration

1. If Supplier or his representative has completed the application procedure of FloraHolland and FloraHolland has approved the application, FloraHolland shall keep that form and connected documents in the file with an administration number allocated to Supplier. The content of the documents, as well as the accompanying schedules, is deemed to form part of the agreement under which FloraHolland provides services.
2. Supplier must be in possession of a valid export permit and assume personal responsibility for the necessary export requirements, unless otherwise explicitly agreed upon.
3. The Products must originate from the location(s) specified in the application form, unless otherwise explicitly agreed upon. Supplier shall be obliged to inform FloraHolland immediately (by e-mail) of any changes in the location(s) of origin. The right country of origin is important for the tax facilities within and outside of Europe for the wholesale, growers and importers. The

country code is automatically combined with the location mentioned in the application form. A Supplier, who has Products from origin out of different countries, can choose for the country code 'unknown'. FloraHolland does not add additional charges for that choice. Instead Supplier can ask for different country-codes. In last mentioned situation a Supplier will receive an administration number per country and will be charged for the normal costs per administration (sub)number.

4. If several individuals and/or legal entities are authorized to trade in the Products concerned, and if the cultivation forms part of a business that belongs to several individuals and/or legal entities, all the individuals and/or legal entities must sign the application form and agreement for approval. The individual, who acts, guarantees to be authorized to bind the entity.
5. Supplier shall notify FloraHolland if his/its business is transferred to a third-party or if major changes are introduced in the area and Production. If he/she has failed to do so, this can't be invoked to FloraHolland.

### **Article 3 Description of the Service**

By registering, Supplier may, in principal, make use of many services that FloraHolland offers its Suppliers, under the applicable conditions and at the prevailing tariffs for that purpose. Some services may however only be accessible to members.

FloraHolland shall endeavor to provide the contracted services under the agreed conditions. Supplier delivers his Products DDP to FloraHolland unless otherwise explicitly agreed on.

### **Article 4 Applicable Rules**

1. Supplier warrants that the Products comply with European and Dutch laws and regulations of governmental and semi-governmental institutions, as well as with the supply and other regulations of the trade organization.
2. The auction regulations apply to all obligations between FloraHolland and Supplier(s). In addition to the auction regulations, the articles of association of Coöperatieve Bloemenveiling FloraHolland U.A. moreover apply to a Supplier who has also become a member of FloraHolland.
3. If Supplier makes use of the Import Handling service, the general terms and conditions of Import Handling will also apply.
4. If Supplier makes use of the intermediary service, FloraHolland Connect, Connect's general terms and conditions of intermediary services will also apply.
5. If Supplier makes use of FloraHolland's auction trolleys (via an agent or otherwise), the general terms and conditions for auction trolleys will also apply.
6. Supplier warrants that he/it has taken knowledge of the aforementioned documents. For special or additional services, additional provisions might be applicable. The articles of association, auction regulations and general terms and conditions, including these general terms and conditions of FloraHolland Import, are published on the website, [www.floraholland.com](http://www.floraholland.com), via the link, 'general terms' located at the right hand bottom corner of the home page. The supply regulations are published on [www.floraholland.com](http://www.floraholland.com), via the link, supplying → auction → link through to the VBN website located on the left hand side of the page. The aforementioned documents will be sent free of charge at Supplier's request.

### **Article 5 Tariffs**

Supplier shall be obliged to pay for the services performed by FloraHolland and for any use of specific facilities according to the prevailing tariffs. This will include the following in each case:

- registration fee: an annual contribution equal to the contribution for members;
- the commission: a percentage of the Product sales for members, plus a surcharge for non-members. This percentage may usually be adjusted once a year. The amount of the surcharge depends on the relationship type and the commission category in which FloraHolland places Supplier. Classification is based on the attractiveness of the Product and/or Supplier's level of commitment towards FloraHolland;
- the levies: amounts that may or may not be adjusted once a year for each sales location/instrument by FloraHolland's Cooperative Board or Management Board on the basis of the underlying costs;
- the liquidity or comparable contribution for (applicant)members or Suppliers, as determined each year by FloraHolland's General Members' Meeting.  
The aforementioned tariffs can be found on the website, [www.floraholland.com](http://www.floraholland.com), via the link, supplying → auction → choose the branch from the drop-down list on the right of the page → FloraHolland rates.
- other applicable FloraHolland standard and non-standard tariffs (e.g. for specific Products and services of the Import Handling, logistics department and Connect).  
The tariffs for the logistics department can be found on FloraHolland's website, [www.floraholland.com](http://www.floraholland.com), via the link, supplying → logistics → choose the branch from the drop-down list on the right of the page → tariffs and packaging price list.

The tariffs for the Connect department can be found on FloraHolland's website, [www.floraholland.com](http://www.floraholland.com), via the link, supplying → intermediary services → choose the branch from the drop-down list on the right of the page → FloraHolland rates.

- reasonable administration costs for the financial services referred to in Article 12.

#### **Article 6            Obligation to Settle via FloraHolland**

1. In principle, Suppliers who are also members are obliged to settle all ornamental plants and flowers cultivated or put together at their business in whole or in part by or on instruction of FloraHolland (i.e. 100%) as mentioned in the Articles of association.
2. Supplies by non-members must comply in terms of volume with that which is stated in the inventory form and/or a separate agreement. At least 80% of the supplied Products must be of A1 Quality.
3. If Supplier auctions Products via the clock, sales by auction must take place at least three days in the week during the season of the Products concerned.

#### **Article 7            Import Agent/Processor**

1. These terms and conditions apply mutatis mutandis to the Import Agent/Processor. Supplier guarantees to FloraHolland that his/its chosen Import Agent/Processor has agreed to the applicability of these terms and conditions.
2. If the Import Agent/Processor -in his own name or otherwise- enters into agreements with FloraHolland on behalf of Supplier, Supplier and the Import Agent/Processor will be jointly and severally liable for the performance thereof. If the Supplier wants to use the collection service of FloraHolland, article 12 is applicable.

#### **Article 8            VAT**

1. Supplier may only use FloraHolland's VAT number when the Import Handling is performed fully by FloraHolland and agreed in writing (which makes express provision for the use of FloraHolland's VAT number and the VAT reverse charge authorization under Article 23 of the Dutch Turnover Tax Act) by FloraHolland.
2. The Import Agent/Processor is obliged on account of the VAT return and payment to sign an annual declaration, prepared by FloraHolland each year for this purpose, regarding the capacity in which he acts.
3. The user of FloraHolland's VAT number and the Import Agent/Processor, referred to in sub-article 2, warrant that they will provide the correct information and indemnify FloraHolland against claims from the tax and/or customs authorities.

#### **Article 9            Notice of Termination and Duration of the Agreement**

Supplier and/or FloraHolland may, except in case of membership, terminate supply and/or the provision of services by means of a written notice signed by the authorized person, given four weeks in advance, without being liable towards each other for compensation and repayments. This does not affect the obligations of (financial) agreements, the fact that outstanding amounts must still be paid and deliveries agreed via FloraHolland Connect must still be carried out even after termination.

#### **Article 10           Obligation to Inform and Sales Declaration**

1. To facilitate proper administration, Supplier is obliged to provide information as required by or on behalf of the Management Board and/or the Cooperative Board, which may include:
  - the legal form;
  - the nature and structure of the business;
  - the size of the business;
  - the Product details and the expected supply (regularity), both with regard to the type and to the quantity and quality of the Products.Supplier shall further be obliged to immediately report any change in the information he/it has provided.
2. If FloraHolland reasonably suspects that Supplier is in breach of his/its obligations, Supplier shall cooperate fully with all relevant requests from FloraHolland for the purpose of investigating whether he/it has complied with the established arrangements. In this regard, Supplier will provide information about his/its business and, if required, make a statement regarding his/its sales in any year (sales declaration). It must be possible from the supplied declaration to determine the sales recorded in the business operated by Supplier. Supplier shall furthermore provide its accounting records, particularly with regard to its Production, sales and export data for the period under investigation. If FloraHolland's Management Board finds cause in this sales declaration, or in the refusal to provide a sales declaration, it will be entitled to have Supplier's

accounting records audited by an accountant or auditor. This might also happen in every case in which Supplier relies on force majeure with regard to discrepancies in numbers.

3. FloraHolland shall treat the aforementioned information confidentially and only use it for its own administration. FloraHolland will only be liable for the costs of such an audit if it is evident that Supplier is not to blame in any way.

#### **Article 11 Breach**

1. If Supplier acts contrary to the aforementioned provisions, FloraHolland will be entitled to place that Supplier in the category in which it should have been placed on the basis of its demonstrated supply pattern with retro-active effect.  
FloraHolland will furthermore be entitled to impose a levy on Supplier. The levy is an amount calculated according to the maximum percentage of the auction commission fee for Contract Suppliers on FloraHolland's lost sales. Supplier shall be obliged to pay an imposed levy on FloraHolland's demand and in the manner stipulated in the demand. (A different rule applies to members in accordance with the articles of association).
2. FloraHolland is entitled to suspend or terminate the further provision of services in the event of Supplier's breach or reasonably suspected breach.

#### **Article 12 Deduction, set-off and Settlement of Third-Party Claims**

1. If Supplier wants to authorize his (import) agent/processor, logistical provider or other third-party to collect their invoice by deduction at the auction proceeds, FloraHolland is willing to cooperate. For this purpose a standard collection-agreement of FloraHolland can be used. If Supplier wants to withdraw the aforementioned authorization for future costs of an (import) agent/processor or carrier, he is obliged to report the withdrawal immediately to the related (import) agent/processor or carrier and to FloraHolland at the same time. FloraHolland will exert oneself to follow as soon as possible as mentioned in the standard collection-agreement.
2. FloraHolland is authorized to deduct third-party claims related to the supplies of Supplier - such as from phytosanitary inspectors [Quality Control Bureau for Vegetables and Fruit (KCB) and the Plant Protection Service (PD)], tax authorities, customs authorities and the Product Board for Horticulture (PT-levy) - from the auction proceeds. FloraHolland is entitled to withhold a guarantee deposit if necessary for the payment of such third-party claims.
3. For all financial services of FloraHolland the following provisions will apply in each case:
  - all FloraHolland's claims against Supplier will rank above third-party claims against Supplier upon settlement;
  - FloraHolland is entitled to refuse or suspend the settlement of third-party claims against Supplier, for instance if Supplier's balance at FloraHolland is insufficient;
  - Supplier shall ensure that the relevant third-parties are aware of the provisions of this article;
  - any disputes between Supplier and third-parties relating to an invoice must be resolved by those parties themselves; if payment to the third-party took place before FloraHolland became aware of the dispute after receiving a written notice appointed to the Import Department, Supplier will not hold FloraHolland liable; Supplier shall address any objections with regard to invoicing directly to the third-party; if requested, FloraHolland shall endeavor to assist Supplier with any information in this regard;
  - FloraHolland is not liable for the content of the invoices of the third-parties concerned.
4. FloraHolland is further entitled to perform or have acts performed, which it deems essential relating to the Products supplied by Supplier, in the name of and at the expense and risk of Supplier. Among others, these acts relate to:
  - selecting, sorting and, if necessary, destroying the Products supplied by Supplier, in so far as Supplier has not entrusted this to another party;
  - completing electronic and other consignment notes regarding the Products supplied by Supplier, in so far as Supplier has not entrusted this to another party;
  - giving instructions to third-parties with regard to the performance of delivery contracts (e.g. instructions to carriers);
  - dealing with customers' complaints relating to Products purchased from Supplier (Clock and Connect).

FloraHolland shall endeavor to exercise the appropriate care when performing or having the aforementioned acts performed.

#### **Article 13 Authorization**

On demand, Supplier shall furnish FloraHolland with a debit order to collect outstanding amounts due by Supplier to FloraHolland. In this regard, Supplier waives its right to reverse or have such collection transactions reversed (no reverse entry clause).

#### **Article 14 Liability and Indemnity**

1. FloraHolland is not liable for any damage, unless such is caused intentionally or through gross negligence. In the event of unintentional errors that may be regarded as grossly negligent, the liability of FloraHolland and its employees is limited to that which Supplier paid FloraHolland as its tariff for that related service concerned during the preceding twelve months. FloraHolland will never be liable for indirect damage, such as wasted profits.
2. Supplier indemnifies FloraHolland against any third-party claims relating to Products delivered by Supplier.

#### **Article 15 Intellectual Property Rights and Payment of Royalties**

1. In cases where intellectual property rights vest in floricultural Products, anywhere in the world, Supplier warrants towards FloraHolland that he/it has paid the associated royalties or that the party from whom he/it has obtained the Products (basic material) has done so.
2. FloraHolland will not be liable for the legal consequences arising from intellectual property rights, such as growers' rights, unless its own actions are intentional or grossly negligent.
3. Supplier shall warn FloraHolland in writing if royalties are due on floricultural Products when they are imported into the Netherlands, although no such royalties were due on those floricultural Products in the country of Production.
4. Supplier will indemnify FloraHolland against claims from third parties based on irregular use of (trade) name, trademark or Product name including the packaging and is obliged to organize a settlement with those parties.

#### **Article 16 Environment and Health**

1. FloraHolland may give Supplier instructions regarding the method of packaging of floricultural Products. Supplier warrants that he/it will not use the prescribed packaging for purposes other than the supply of floricultural Products to FloraHolland. FloraHolland may charge costs of separation (such as paper and cardboard) and transport upon supply.
2. Supplier warrants that the harvested Products, which are traded via FloraHolland, comply with Dutch environmental regulations. Supplier shall also ensure that international standards with regard to child labor and working conditions are observed.
3. Supplier warrants that the floricultural Products do not contain any residue of pesticides or pre-treatment substances that are harmful to the environment or health or that are not allowed in respect to EU regulations.

#### **Article 17 Phytosanitary and Customs Control**

1. Supplier warrants that floricultural Products that he/it supplies are free of harmful organisms and comply with the requirements in the latest version of Council Directive 2000/29/EC.
2. Floricultural Products that originate from a third country and are listed in Annex V, Part B, Section I (latest version) of Council Directive 2000/29/EC, must be subject in the country of origin to a plant protection examination before they may be brought into the European Community. When floricultural Products are shipped, they must be accompanied at all times by a Phytosanitary Certificate issued by the competent service for plant protection in the country of origin.
3. Supplier warrants that the floricultural Products will be accompanied at the time of shipment by a valid certificate of origin and other required customs documents.
4. Supplier is obliged to keep a copy of the export documents and proof of origin and to present these on demand after shipment during the statutory period.

#### **Article 18 Amendments**

FloraHolland will be entitled to amend the General Terms and Conditions and applicable regulations, as referred to in Article 4, and to declare these amended documents, including these general terms and conditions of import, applicable to existing agreements. The latest version of the aforementioned documents will be published on the FloraHolland website at all times. Supplier will be advised of amendments indirectly via a publication (such as the newsletter) and directly via e-mail or fax. The aforementioned documents will be sent free of charge on request.

#### **Article 19 Disputes**

1. The relationship between Supplier and FloraHolland is subject to Dutch law unless otherwise explicitly agreed upon.
2. Disputes between FloraHolland and Supplier will be resolved as far as possible by agreement.
3. Unless otherwise agreed, disputes between Supplier and FloraHolland may only be submitted to the competent court of the judicial district of Amsterdam (The Netherlands).

**Article 20          Domicile**

Supplier's domicile is the address furnished to FloraHolland in the application form. Documents sent to that address by FloraHolland will be deemed to have been received by Supplier. FloraHolland's registered office is in Aalsmeer and that is where it is domiciled.