

General Terms and Conditions - Data and Telecommunication Services 2016

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**Article 1. Applicability**

- 1.1 Supplemental to the Auction Regulations of Royal FloraHolland, these General Terms and Conditions apply to all engagements, including requests, quotations and Agreements, with regard to the delivery of data and telecommunication Services by Royal FloraHolland.
- 1.2 Conditions of User or of the industry organization with which User is affiliated, however described, are not applicable, unless agreed otherwise in writing.

**Article 2. Conclusion of Agreement**

- 2.1. Quotations and offers of Royal FloraHolland are without engagement until mutual acceptance has taken place, unless expressly agreed otherwise.
- 2.2. An Agreement is formed as soon as a request or other form signed by the applicant/customer/User is confirmed in writing by Royal FloraHolland or the Service is delivered by Royal FloraHolland as a result of this request.
- 2.3 Entering into an Agreement with Royal FloraHolland shall not yet give User the right to Service in conformity with that Agreement by all offices of Royal FloraHolland. The service and/or the name of the Service may vary per office.

**Article 3. Duration**

- 3.1 The Agreement has been entered into for an indefinite period of time, unless expressly agreed otherwise.
- 3.2 Notwithstanding Article 13, an Agreement that is entered into for a definite period of time shall tacitly be renewed for an indefinite period after expiry of the aforementioned period of time, unless expressly agreed otherwise.
- 3.3 An Agreement for an indefinite period of time may, with due observance of and without prejudice to Article 13, be terminated with a notice period of one full calendar month, unless expressly agreed otherwise.

**Article 4. Delivery Time**

- 4.1. Delivery times agreed with Royal FloraHolland serve as indications and not as strict deadlines.

**Article 5. Use**

- 5.1. User may only use the Service with corresponding Peripherals or Facilities in accordance with the Agreement and guarantee all use – with or without his/her consent – that is made of this Service.
- 5.2. User is prohibited from repairing, modifying or moving the Peripherals or Facilities or from giving any third party an instruction thereto, unless Royal FloraHolland has given User its prior written consent thereto.
- 5.3 Telephone routing methods such as Carrier Select and Carrier Pre Select (CPS) are not available, or rather, not permitted, as the network that Royal FloraHolland employs is not suitable for their use.

**Article 6 Maintenance, Malfunctions And Service**

- 6.1. Maintenance of the Peripherals and the Facilities corresponding with the Service of

Royal FloraHolland may only be carried out by or on the instructions of Royal FloraHolland. For the purpose of maintenance, Royal FloraHolland may temporarily interrupt the Service in whole or in part.

Royal FloraHolland shall keep this interruption to a minimum and, where necessary, communicate this in a timely manner – taking the circumstances of the case into consideration – unless this is not reasonably possible.

6.2. If a malfunction occurs in the functioning of the Service, User shall report the malfunction to Royal FloraHolland as quickly as possible.

6.3. Royal FloraHolland will make every effort to provide an undisturbed service. From a technical standpoint, however, it is impossible to prevent each malfunction or restriction of the service.

Malfunctions or restrictions of the service shall be remedied by Royal FloraHolland, to the extent reasonable, as quickly as possible. A temporary malfunction or restriction of less than 24 hours shall not be a reason to reduce the agreed price for the service. For each malfunction caused by Royal FloraHolland and lasting more than 24 hours, User shall receive a discount of 25% on the usage-independent subscription fee of the relevant service in the relevant month. The total discount per month shall never amount to 100% of the usage-independent subscription fee of the relevant month.

6.4. If the malfunction or restriction is a result of unauthorized or improper use on the part of User, the costs that Royal FloraHolland incurs as a result of the malfunction shall be borne by User.

6.5. If a service level (such as calculations and deadlines) is referred to in the Services catalog or other forms of communication, this shall not mean anything other than a best-efforts obligation and an indication on the part of Royal FloraHolland.

## **Article 7. Ownership and Protection of Facilities**

7.1. The Agreement is not intended for any transfer of ownership of Peripherals and Facilities that Royal FloraHolland makes available for the service. Likewise, the Agreement is not intended for the transfer of intellectual property rights that are exercised within the context of the execution of the Agreement.

7.2. If third parties desire to assert rights with regard to the aforesaid Peripherals and Facilities at an agreed location or to take measures such as seizure, User must immediately inform them of the rights of Royal FloraHolland. User must immediately notify Royal FloraHolland thereof.

7.3. User is not entitled to make modifications or have modifications made to Peripherals and Facilities or to move them or have them moved without the written consent of Royal FloraHolland.

## **Article 8 Liability**

- 8.1. Royal FloraHolland is only liable for direct damage that is the immediate result of its intentional acts/omissions or willful recklessness, unless a situation qualifies as statutory liability that cannot be excluded.
- 8.2. Solely for explanatory purposes and without prejudice to the above stipulation and, therefore, non-exhaustive, Royal FloraHolland is not liable for:
- indirect damage and/or loss, including lost income, unless bodily injury exists;
  - consequences of fire, theft, collapse, loss and vandalism;
  - legal consequences ensuing from product liability or intellectual property rights;
  - recommendations and communications issued by employees of Royal FloraHolland;
  - the consequences of disruptions in the energy supply and in the data/telecommunication infrastructure (including software) or in the conditioning and auction equipment.
- 8.3. If Royal FloraHolland is liable, the liability shall at all times be limited to the amount that its insurance company pays out in the relevant case and otherwise up to a maximum of €500,000 per event.
- 8.4. Royal FloraHolland is not liable for the services of third parties and any subcontractors whose services it has engaged.

## **Article 9 Payment**

- 9.1. User owes the monthly, usage-independent Fee prior to each calendar month in which the Service is rendered, unless expressly agreed otherwise.
- 9.2. User owes an agreed one-off Fee as from the moment of execution/availability by Royal FloraHolland, unless expressly agreed otherwise.
- 9.3. If Royal FloraHolland is unable to proceed with the agreed service due to circumstances attributable to User, User shall owe the usage-independent and one-off Fee(s) as from the moment of availability by Royal FloraHolland.
- 9.4. User immediately owes the usage-dependent Fees for the settlement of communication traffic as from the agreed date or on such earlier date as the Service is in fact purchased.
- 9.5. Royal FloraHolland is authorized to refuse the application for a Service for reasons of its own. The criteria for admission stated in the communication resources are merely an indication.  
Royal FloraHolland shall in principle only provide Services to a User that fulfils and continues to fulfill the financial requirements referred to in Article 11 of the Auction Regulations (such as a bank with an unlimited non-reverse entry statement or another form of surety). By entering into the Agreement, User authorizes Royal FloraHolland to collect and/or set off owed amounts via its corporate direct debit. In addition, if User is not registered as a buyer with Royal FloraHolland, the financial provisions of Article 11 from the Auction Regulations of Royal FloraHolland shall apply as if User were a buyer.
- 9.6. As long as User has not fulfilled all his/her payment obligations vis-à-vis Royal FloraHolland, for any reason whatsoever, Royal FloraHolland shall be entitled to suspend the service without prejudice to its right to terminate the Agreement prematurely.

## **Article 10 Prices**

- 10.1. Prices are in Euros and exclusive of VAT.
- 10.2. Royal FloraHolland is entitled to adjust its prices/fees in accordance with the development of the Statistics Netherlands index for the business services sector.
- 10.3. Royal FloraHolland is entitled to increase the prices/fees by more than the indexation, if it announces this increase 30 days prior to introduction. In that case, User shall have the right to terminate the Agreement, prematurely or not, in conformity with Article 12.4 below and without prejudice to Article 13.

#### **Article 11 Inspection of Databases**

- 11.1. By using the Service, User grants Royal FloraHolland his/her consent to make known to third parties his/her name and address details, telephone, fax and administration number for the promotion of the trade in floriculture products. Royal FloraHolland is authorized to inspect databases solely for the purpose of verifying the obligations ensuing from the Agreement. User shall render his/her assistance to these verifications and/or checks.

#### **Article 12 Amendments**

- 12.1. Royal FloraHolland is entitled to unilaterally amend the Service and/or Services catalogue, including the technical and functional characteristics and the rates of the Service. In the execution of the aforesaid amendments, Royal FloraHolland shall endeavor not to interrupt the agreed service.
- 12.2. Royal FloraHolland also retains the right to unilaterally amend these General Terms and Conditions.  
Amendments also apply to previously concluded Agreements with due observance of the provisions below.
- 12.3. Amendments to the Service and/or Services catalogue and/or the General Terms and Conditions that have consequences for User with whom an Agreement has previously been concluded shall be made known to User in an appropriate manner. The amendments shall take effect 30 (thirty) days after the announcement or on a later date stated in the announcement.
- 12.4. If User with whom an Agreement has already been concluded cannot concur with an amendment as referred to in Article 12.3, he/she shall have the right to terminate the Agreement in writing prior to the date on which the amendment takes effect without prejudice to Article 13. The termination must take place by registered letter.

#### **Article 13 (Early) Termination of Agreement**

- 13.1. The agreement for an indefinite period may be terminated by informing the other party of such in writing with due observance of a minimum notice period of one full calendar month, unless expressly agreed otherwise.
- 13.2. Royal FloraHolland shall at all times be entitled to terminate the Service, with due observance of an announcement period of at least one month, if it is of the opinion that technical or commercial reasons compel it thereto. If reasonably possible, Royal FloraHolland shall offer thereby one or more options for replacing the service.
- 13.3. Each other party shall be entitled to terminate the Agreement prematurely or otherwise, in writing, in whole or in part, without judicial intervention and with immediate effect, if the other party:
  - a. has applied for a moratorium;

- b. has applied for bankruptcy or insolvency or is declared bankrupt or insolvent;
- c. transfers, liquidates or discontinues its business in whole or in part.

Royal FloraHolland shall also be entitled to terminate the Agreement prematurely or otherwise, in writing, in whole or in part, without judicial intervention and with immediate effect, if:

- d. User has been denied full or partial access to the site of Royal FloraHolland;
- e. the business relationship between Royal FloraHolland and User is changing or has changed radically;

- f. User has cooperated directly or indirectly in prejudicing Royal FloraHolland;
- g. payment of amounts owed to Royal FloraHolland is not, not promptly or only partially made despite demand thereto having been made.

User is also entitled to terminate the Agreement prematurely or not, in writing, in whole or in part and without judicial intervention, if:

- h. an amendment as referred to in Article 12.3 is announced, with due observance of Article 12.4;
- i. a reported malfunction or restriction of the Service lasting longer than one hour and attributable to Royal FloraHolland takes place for the fifth time in a period of three successive months;
- j. a reported malfunction or restriction of the Service lasting longer than 24 hours and attributable to Royal FloraHolland takes place for the fifth time in a period of 12 consecutive months;

13.4. In the event of the early termination of an Agreement for a definite period, User shall immediately owe Royal FloraHolland a penalty. This penalty is equal to the total of the usage-independent Fee that would have been owed on the remaining period of the agreed definite period, if the agreement had not been terminated prematurely. This penalty is not due if the agreement is terminated in conformity with Articles 13.3; 13.4 e, i, j. The penalty is also not due if the agreement is terminated in conformity with the Article 13.4 h, provided the relevant amendment as referred to in Article 12.4 entails a substantial increase for User.

#### **Article 14 Agreement Takeover**

- 14.1. User is not entitled to transfer the rights and obligations ensuing from the Agreement to a third party without the prior written consent of Royal FloraHolland.

#### **Article 15 Quotation Costs**

- 15.1. Royal FloraHolland is entitled to charge User for costs incurred in connection with the issue of quotations.

### **Article 16 Invalidity**

16.1. In respect of provisions that are null and void or are voided or have lost their legal validity in another manner, parties shall enter into mutual consultations for the purpose of making alternative arrangements, whereby parties shall strive to maintain the purport of the Agreement.

### **Article 17 Applicable Law And Disputes**

17.1. The Agreement is subject to Dutch law.

17.2. Disputes which may arise from the Agreement shall be resolved exclusively by the competent court in Amsterdam. However, if the dispute is part of other disputes between parties, the court which is competent to rule on those other disputes shall be deemed competent as well.

### **Article 18 Definitions**

General Terms and Conditions: The present General Terms and Conditions for the Data and Telecommunication Services of Royal FloraHolland.

User: The person who has concluded an Agreement with Royal FloraHolland or obtains a Service relating to data and telecommunication from Royal FloraHolland.

Service: Service or contracting of work by Royal FloraHolland or an office thereof relating to data and telecommunication.

Services catalog: The Data and Telecommunication Services Catalogue of Royal FloraHolland or information issued by Royal FloraHolland in another manner relating to Services regarding data and telecommunication.

Royal FloraHolland: The cooperative with exclusion of liability under Dutch law Coöperatieve Bloemenvailing FloraHolland U.A., having its registered office in Aalsmeer, the Netherlands.

Agreement: The written, recorded agreements between Royal FloraHolland and User or an instruction given or application form signed by User relating to the supply of Services, which has been accepted/executed by Royal FloraHolland.

Peripherals: Devices, as stated in the Data and Telecommunication Services Catalog of Royal FloraHolland, that are intended to be connected directly or indirectly to a network connection point for the purpose of transmitting, processing or receiving information.

Fee: The rate and/or price announced by Royal FloraHolland for the relevant Service.

Facilities: All items, such as software and connections, that have been installed at User by Royal FloraHolland in connection with the Service.

*Royal FloraHolland has done her utmost best to translate the Dutch version of these conditions in English. However if there are differences the Dutch version is binding.*