

## **Conditions of the Intermediary Office**

### **Definitions**

In these conditions the following terms have the following meaning:

- **FloraHolland Connect:** The Intermediary Office of FloraHolland, represented by functionaries so appointed;
- **Intermediary:** A functionary in the employ of FloraHolland, who is instructed to act as an intermediary;
- **Buyer/Seller:** The person who has presented a request or assignment to the Intermediary Office for intermediary services relating to the purchase or sale of products;
- **Sample:** One or more specimens of a product with regard to which a request or assignment for intermediary services has been presented, which specimens are (meant to be) representative of that product;
- **In writing:** A message on paper sent by e-mail/fax/post/telegram or handed over in person;
- **Auction:** Coöperatieve Bloemenveiling FloraHolland U.A.

### **Article 1 Applicability of conditions**

1. These conditions apply if ornamental plants and flowers are sold between a Seller and Buyer accountholder registered with the Auction, other than via the Clock Auction System, and are or will be settled via the Auction. This is in addition to the general part of the Auction Regulations. These conditions apply both to the legal relationship between the Buyer and the Seller and to the legal relationship between the Auction and the Buyer/Seller.
2. If the Buyer and the Seller have agreed additional or deviating conditions in relation to their legal relationship, the Auction is not bound to apply such additional or deviating conditions.
3. The legal relationship between the Auction and the Buyer/Seller is exclusively governed by these conditions and no general conditions of the Buyer and/or the Seller will apply, unless the contrary has been agreed with the Auction's written consent.

### **Article 2 Nature of the service**

1. Active intermediary services means that the Auction provides intermediary services for and with the closing of sales agreements between Sellers and Buyers.
2. Passive intermediary services relate, in principle, to services (such as collection or settlement of payments and any logistics actions) with regard to sales agreements which were made by Sellers and Buyers themselves. FloraHolland Connect is entitled not to take complaints relating to passive intermediary services into consideration.

### **Article 3 Intermediary services assignment, revocation, change and information provision**

1. An assignment for active intermediary services must be directed to FloraHolland Connect. Specifications (such as type, dimensions and quality) of the products to be sold or purchased and the quantities available or demanded at that time must be specified in an assignment for intermediary services. A minimum price can be specified with an assignment for intermediary services relating to sales. A maximum price can be specified with an assignment for intermediary services relating to purchases. The Intermediary Office is bound by both prices.
2. FloraHolland Connect is entitled not to take an intermediary services assignment into consideration. FloraHolland Connect can return an intermediary services assignment which has been taken into

consideration, hereafter called the 'intermediary services assignment', in whole or in part on the mere ground that it believes there are reasons for such.

3. The principal can change or revoke an intermediary services assignment in writing, unless it was given for a specific time. The change or revocation will become effective after the end of the normal working day after the day on which notice was given of the change or revocation. The principal remains bound by obligations which previously arose.
4. FloraHolland Connect is entitled to split up an intermediary services assignment on the basis of commercial criteria set out therein such as: quantities, varieties, qualities, categories and dimensions.
5. An intermediary services assignment entails an obligation of best endeavours on the part of the FloraHolland Connect with regard to the making of the agreement between the Seller and the Buyer. The Auction has no responsibility nor any liability for the succeeding thereof or for the contents and performance thereof.

#### **Article 4 Sample**

1. In the event of an intermediary services assignment the Seller can also give the Intermediary Office a sample; the costs thereof are fully at the principal's expense; the sample must be representative of all products of the offered lot. FloraHolland Connect is only bound to see to normal care for and storage of the sample for no longer than a date specified by FloraHolland Connect.
2. FloraHolland Connect is entitled to give (a part of) the sample to a person who is considering buying the offered lot in whole or in part.
3. Every buyer is deemed to have seen the offered products or the sample.

#### **Article 5 Option**

1. By agreeing an option, a preferential right is granted on a part or the whole of the lot of products offered for sale via FloraHolland Connect.
2. a. The option agreement can be made verbally via FloraHolland Connect with a maximum term of validity of 48 hours, to be counted as of the making of the agreement.  
b. After approval of FloraHolland Connect the parties can make a written option agreement with a term of validity of more than 48 hours.
3. The written option agreement must set out the quantity, type, dimensions, price and quality of the products offered for sale as accurately as possible, as well as the name and the administration number of the Buyer and the Seller and the duration of the agreement.
4. FloraHolland Connect is entitled to refuse a request for an option. An option will only be granted if FloraHolland Connect believes there is a reasonable chance that the option will be converted into a sales agreement.
5. The Auction is not liable for damage caused by an action or omission of the Buyer or the Seller with regard to an option agreement.

#### **Article 6 Sales agreement**

1. A sales agreement can be made verbally or in writing. If a sales agreement is made, it will be deemed to have been made between the Buyer and the Seller.
2. The Seller will supply the products he has cultivated himself, unless the Buyer was or could have been aware that the products were or could have been cultivated by third parties.
3. The Buyer and the Seller will see to it that a sales agreement contains the following details: their names with administration numbers and a description of the products, the quality, the delivery dates, the price, the quantity, the tray, any samples given. The agreed dates and times are firm dates, unless explicitly otherwise agreed.

4. If the intermediary registers the contents of a verbal agreement in a file, the Buyer and the Seller will be bound by the contents in the file. In the event of active intermediary services, FloraHolland Connect will provide the Buyer and the Seller a written confirmation upon request.

#### **Article 7 Giving of payment security (bankruptcy, moratorium)**

1. On FloraHolland Connect's first request the Buyer will, within a term specified by FloraHolland Connect, give an unconditional bank guarantee or what FloraHolland Connect deems replacement security for a maximum amount of the agreed purchase price.  
If in the opinion of the Auction the above-mentioned security has not been given, has not been given in time and/or is not adequate, the Auction is entitled to withdraw its guarantees vis-à-vis the Seller for products still to be supplied and the Buyer/Seller can dissolve the agreement by written notice to the defaulting party.
2. If and as soon as the Buyer or Seller is declared bankrupt or has petitioned for a moratorium on payment, a sales agreement - without judicial intervention and with immediate effect - will be deemed to be dissolved, unless adequate security has been or is given as referred to in 7.1.

#### **Article 8 Plurality of sellers and/or buyers**

If two or more persons jointly act as buyer(s) and/or seller(s), each of them is severally liable in full for the performance of the obligations which ensue - including vis-à-vis FloraHolland - from the agreement and is severally fully entitled to receive what the relevant parties are entitled to on the basis of the agreement, unless explicitly otherwise agreed.

#### **Article 9 Complaints procedure**

##### **a. Complaints of the Buyer (term, method of lodging)**

1. The Buyer must lodge complaints relating to a delivery as quickly as possible in writing, setting out the grounds of the complaint, with the Seller and with FloraHolland Connect. Complaints must be lodged at latest on the agreed delivery day and never after the products have left the delivery location. The splitting up of products which do and do not comply with the agreement is not permitted without the intervention of FloraHolland Connect.
2. If the Buyer, in view of the time of the delivery, in the opinion of the Auction did not have a reasonable opportunity to lodge a complaint on the day of delivery, a complaint can be lodged at latest up to 10 a.m. on the following working day.
3. If no written complaint is received within the above-mentioned term, the delivery will be deemed to be in good order, unless there is a hidden defect.
4. If the Buyer could not reasonably discover a defect in the product at the time of delivery, this is a hidden defect. Complaints relating to a hidden defect must be lodged with the Seller and the FloraHolland Connect in writing, setting out the grounds of the complaint, within two working days after the defect could reasonably be discovered; failure to do so will result in loss of the right to complain.

##### **b. Investigation by FloraHolland Connect**

1. FloraHolland Connect will investigate the complaint and will inform the Buyer and the Seller of its findings in writing. These findings have the force of a non-binding advisory opinion. The Auction is not liable for the contents of this advisory opinion.
2. On behalf of the investigation FloraHolland Connect can demand that the products about which the complaint is lodged are brought to the Auction in the original packing, with the details of the relevant Seller. If this is not possible, the Buyer will, at his expense, enable a counter-investigation

by an expert appointed by the Seller. The above-mentioned investigation costs can in the end be at the expense of the party held to be in the wrong.

3. If the Buyer/Seller cannot agree to the findings, he must give FloraHolland Connect and the other party (Buyer/Seller) written notice thereof as soon as possible. FloraHolland Connect can make this subject to a time limit. In the event of failure to dispute the findings in due time, the findings will form an additional agreement between the parties.
- c. Consequences of a justified complaint
1. If a complaint of the Buyer as referred to above is held to be valid and a claim of force majeure on the part of the Seller is not successful, the sale contract will be legally dissolved (in part). The dissolved part relates to the faulty or undelivered number of products. The consideration already given with regard to the dissolved part must in such case be returned.  
In addition to the dissolution the Buyer is entitled to compensation of a maximum of 12% over the agreed purchase price for the dissolved part, unless otherwise agreed. When estimating the damage, the costs made to replace the products not supplied due to dissolution, which costs ensue from a sales contract with a third party, will only be included if this replacement contract is made after consultation with the seller and FloraHolland Connect.  
If, in view of the circumstances, return of the products is not a real option, the Buyer is only entitled to compensation consisting of repayment of a maximum of the purchase price for that part of the contract.
  2. In the event of bad faith on the part of the Buyer/Seller the amount of the compensation is not limited.

#### **Article 10 Force majeure**

1. The Seller is only entitled to claim force majeure in the event of reasonably unexpected circumstances such as fire, government measures, extreme weather influences or faulty base material, if these circumstances are beyond the Seller's direct control, are not attributable to the Seller or are not (or should not be) at the Seller's expense and it would be unreasonable to demand performance of the contract in view of the circumstances.
2. The Buyer is only entitled to claim force majeure in the event of reasonably unexpected circumstances such as fire, government measures or an organised road blockade, if these circumstances are beyond the Buyer's direct control, are not attributable to the Buyer or are not (or should not be) at the Buyer's expense and it would be unreasonable to demand performance of the contract in view of the circumstances.
3. If the above-mentioned circumstances arise, the Seller/Buyer must give the other party and FloraHolland Connect written notice thereof as soon as possible, setting out the grounds of the claim. In such case the delivery/acceptance obligation is suspended, unless this, in view of the circumstances, cannot reasonably be demanded. In the latter case or if the suspension has lasted more than two working days, the Buyer and/or the Seller can dissolve the sales contract by giving the other party written notice thereof. The dissolved part relates to force majeure of the number of products not delivered or not accepted. The consideration already given to perform the dissolved part must be returned in such case. In such case there is no right to compensation.

#### **Article 11 Arbitration**

If arbitration has been agreed upon, a dispute between the Buyer and the Seller can be presented by or on behalf of the Buyer/Seller within 3 months after the date of the challenge of the findings mentioned in Art. 9b. section 3, with exclusion of the civil court, to the arbitration committee appointed by the Vereniging van Bloemenveilingen in Nederland (VBN) and the Vereniging van Groothandelaren in Bloemkwekerijproducten (VGB), the secretariat of which is based at: Postbus 9324, 2300 PH Leiden.

A dispute regarding whether or not a complaint is valid, will be adjudicated in accordance with the regulations of this arbitration committee.

### **Transition scheme**

The Auction Regulations as these applied in 2007 at FloraHolland and Bloemenveiling Aalsmeer remain in effect with regard to the customers registered for those auctions and said locations until they are replaced by new Auction Regulations for the entire FloraHolland cooperation which was established after the merger, with the exception of the provisions on intermediary services.

With regard to Aalsmeer, Chapter 6 of the VBA auction regulations is cancelled, which is replaced by the above-mentioned conditions as of 1 January 2008.

The Auction Regulations of FloraHolland remain in effect with regard to all auction locations of FloraHolland with the exception of the Aalsmeer location, with the exception of the Regulations on Intermediary Services (Chapter 4). The Regulations on Intermediary Services are replaced as of 1 January 2008 by the above-mentioned conditions, unless otherwise indicated on the Reference Table.