

GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES AND THE DELIVERY OF GOODS 2012

OF:

Flower Watch Kenya Limited and shall apply to any agreement entered into with any company associated, affiliated or related to Flower Watch Kenya Limited hereinafter referred to as: the User

Article 1 Definitions

1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

The User: the User of the general terms and conditions, the Private Company with limited liability FlowerWatch B.V., also acting under the names FlowerWatch and PlantWatch.

The Client: Any person or entity that has been contracted by the User to supply goods and services or to whom the User is supplying services.

Agreement: the agreement concerning the provision of services.

Article 2 General

1. The present terms and conditions shall apply to each and every offer, tender and agreement between the User and the Client, to which the User has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.

2. The present terms and conditions shall also apply to all agreements with the User, which entail performance of obligations under those agreements by third parties.

3. Any deviations from the present general terms and conditions shall only be valid provided they have been explicitly agreed upon in writing.

4. The application of the Client's possible terms of trade or other conditions is explicitly rejected unless the User accepts to the application of those terms in writing.

5. If one or more stipulations in these general terms and conditions should be null and void or declared null and void, then the other stipulations of the present general terms and conditions shall remain fully applicable. The case ensuing, the User and the Client shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original terms and conditions shall be applied as far as possible.

7. Only the director(s) of the User or its authorized representatives is / are competent to represent and commit the User in legal agreements. Agreements or promises made by other employees of the User other than its director(s) or authorized employees shall bind the User upon providing a written consent by a director. Agreements or promises made by third parties, engaged by the User shall not bind the User.

Article 3 Offers and Acceptance

1. All offers made to the User shall be deemed to be free of any obligation until the offer is accepted by the User.

2. Offers made to the User shall be free of obligation and they shall be valid for a period of 30 days, unless indicated otherwise by the User. The User shall only be bound by the offers if the acceptance thereof is confirmed in writing by the opposite party within 30 days, unless indicated otherwise.

3. The prices given in above-mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of the other expenses that may be incurred within the scope of the agreement, including shipment and administration costs, unless the User indicates otherwise.

4. If the Client accepts an offer made by the User subject to a variation of the offer, the User shall not be bound by the variation and there shall be no contract, unless the User indicates otherwise. If the User agrees with the changes to the terms of acceptance, the User is entitled to adjust the price previously agreed upon with reasonableness and fairness.

5. A compound quotation shall not oblige the User to execute part of the assignment against a corresponding part of the given quotation.

6. Offers and tenders shall not apply automatically to future assignments.

Article 4 Performance of the Agreement

1. The User shall perform its obligations under this agreement to the best of its ability.

2. If and in so far required for the proper performance of the agreement, the User shall have the right to have certain work done by third parties.

3. The Client shall see to it that the User shall be provided in due time with all data or information which the User may require or which is necessary for the performance of the Agreement. If the User has not

been provided in due time with the data or information necessary to the execution of the agreement, the User shall have the right to suspend the execution of the agreement and / or to charge the Client for the additional costs resulting from the delay at reasonable rates.

4. The User shall not be liable for damage of whatever nature caused by the fact that the User worked on the basis of incorrect and / or incomplete data or information provided by the Client, unless the User should have been aware of said incorrectness or incompleteness.

5. If parties have agreed that the agreement will be performed in stages, the User may suspend the performance of the work to be performed in subsequent stages until the Client has approved in writing the results of the work done in the preceding stage.

6. If the User or third parties engaged by the User within the scope of the agreement carry out work at the Client's site or at a site designated by the Client, the Client shall allow access by the said employees to all facilities required by the said employees at no extra cost.

7. The Client shall indemnify the User against claims filed by third parties who may sustain damage attributable to the Client in connection with the performance of the Agreement.

Article 5 Changes to the agreement

1. If it is apparent during the performance of the agreement that the work to be done needs to be changed or supplemented in order to ensure proper performance of this agreement, parties shall mutually consent to the variation of the agreement accordingly in reasonable time.

2. If parties agree that if the agreement is changed or supplemented, this may affect the time of completion of the execution. The User shall inform the Client thereof as soon as possible.

3. Should the change or supplement to the agreement have any financial and / or qualitative consequences, the User shall inform the Client thereof in advance.

4. If a fixed fee has been agreed upon then the User shall indicate the degree to which the change or supplement to the agreement will result in an increase or decrease of the agreed fee.

5. Provided that the User shall not be able to charge additional costs if the change or supplement is the result of circumstances attributable to the User.

Article 6 Duration of the Contract; Term of Execution

1. The agreement between the User and the Client shall be entered into for such period of time as the parties will have explicitly agreed in writing.

2. If a term has been agreed to complete certain work within the term of the agreement, then this term shall never be a term to be observed on penalty of forfeiture of rights. If the term of execution is exceeded, the Client must consequently declare the User in default in writing.

Article 7 Fee

1. Parties may agree upon a fixed fee when entering into the agreement.

2. If no fixed fee has been agreed upon, the fee shall be determined on the basis of the number of hours actually spent on the work. The fee shall be calculated in accordance with the User's usual hourly rates, valid for the period in which the work is being done, unless a deviating hourly rate has been agreed upon.

3. The fee and a possible cost estimate shall be exclusive of VAT.

4. With respect to agreements with a duration of more than three months, the fees owed shall be charged periodically.

5. If the User and the Client agree upon a fixed fee or an hourly rate, the User shall nevertheless be entitled to increase this fee or rate.

6. The User shall be allowed to charge on price increases, if changes in price have occurred between the time of offer and the time of delivery with respect to, among others, salaries and wages or if such increase is as a result of changes in law.

7. The User shall furthermore be able to increase the fee when it is shown during the performance of the work that the volume or scope of work initially agreed upon or expected when the contract was concluded, was underestimated to such a degree, and this through no fault of the User, that the User cannot be expected in reasonableness to do the work agreed upon for the fee initially agreed upon. In that case the User shall notify the Client of his intention to increase the fee or the hourly rate, whereby the User shall communicate the volume of said increase and the date on which it shall take effect.

Article 8 Payment

1. Payment must be made within 14 days from the date of invoice, in a way to be indicated by the User and in the currency stated in the invoice. Contestation of the amount of invoice shall not suspend the fulfillment of the payment obligation

2. An invoice has only been paid if the User has received the amount in full. In case of part-payment by a foreign Client who is allowed to withhold tax, an invoice shall be deemed to be paid if the User has received a Withholding Tax Certificate for the amount that has not been remitted.

3. If a foreign Client obtains a 'Withholding Tax Certificate' on the basis of an invoice, the User is proprietor from the moment of delivery of that Withholding Tax Certificate to the Client. The Client must transmit the Withholding Tax Certificate as soon as possible to the User.

4. If the Client fails to fulfill his payment obligation within the term of 14 days, then the Client shall be in default and will be liable to an interest charge of 1% per month on the outstanding fee. The interest on the amount due and payable shall be calculated as from the day the Client is in default until the moment he has paid the amount in full.

5. The User's claims against the Client shall become due on demand

in the event that the Client's company is wound up, attached, declared bankrupt, or if a suspension of payment is granted.

6. The User shall be entitled to apply any payments made by the Client to offset the User's costs first, subsequently to reduce unpaid interest and finally to reduce the principal sum. The User shall have the right, without any effect to the validity or ranking of its claim, to refuse an offer for payment, if the Client designates a different sequence of attribution. Similarly, the User shall be entitled to refuse full payment of the principal sum, without any effect to the validity or ranking of its claim, if the said payment does not include the interest still due, the current interest and the costs.

Article 9 Retention of Title

1. All goods delivered by the User, including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain the User's property until the Client has fulfilled all of his obligations under all agreements concluded with the User.

2. The Client shall not be authorised to pledge or encumber in any way the goods and any other property belonging to the User.

3. If third parties seize goods or other property delivered belonging to the User or wish to establish or assert a right to them, the Client shall inform the User thereof as soon as can reasonably be expected and take any action necessary to stop the seizure of the goods and other property or reclaim them on behalf of the User.

4. The Client shall undertake to insure the goods delivered subject to retention of title and to keep them insured against damage caused by fire, explosion and water as well as against theft and make this insurance policy available for inspection on demand.

5. Goods delivered by the User falling under the retention of title by virtue of the stipulations under sub-article 1 of the present article, may only be sold on within the framework of normal business activities and must never be used as a means of payment.

6. In the event that the User wishes to exercise its ownership rights mentioned in the present article, the Client shall give the User or third parties to be appointed by the User unconditional and irrevocable permission to access all sites and locations where the User's property might be found and to reclaim this property.

Article 10 Collection Charges

1. If the Client fails to fulfill his obligations (in due time) or defaults on them, then all reasonable costs incurred shall be borne by the Client. If the Client remains in default of payment within a set time period, he will be immediately liable to a fine of 3% on the amount due at that moment provided that the minimum fine payable will be €50.

2. If the User demonstrates that he has incurred additional expenses, which were necessary, the User shall be reimbursed for those expenses.

3. Any legal costs incurred shall be borne by the Client.

4. The Client shall owe interest over the collection charges of 1% per month. The interest over the collection charges is due and payable and will be calculated as from the moment that the collection charges are spent until the moment that the Client has paid the amount of collection charges in full.

Article 11 Inspection & Complaints

1. The Client must report to the User in writing of complaints about the work done by the User within 8 days following their detection, but no later than within 14 days following completion of the work concerned. The report must sufficient information, so that the User is in a position to address the issues raised adequately.

2. If complaints in the report are valid, the User shall continue to perform its obligations under the agreement unless the nature of the complaint or injury to the Client is such that the User cannot proceed.

3. If it is no longer possible or useful to perform the obligations under the agreement, the User shall only be liable under the provisions of article 15 of these general terms and conditions.

Article 12 Termination

1. Both parties shall be entitled to terminate the agreement at any time upon giving 21 days notice in writing.

2. If the agreement is terminated prematurely by the Client, the User shall be entitled to compensation for the loss of capacity utilisation to be demonstrated caused by said premature termination, unless the termination is arising from negligence by the User. The Client shall furthermore be held in that event to pay the invoice for the work done until the date of termination. The preliminary results of the work done as at the date of termination shall belong to the Client subject to the User's approval.

3. If the agreement is terminated prematurely by the User, the User shall co-operate with the Client to ensure that the work still to be done shall be transferred to third parties, unless the termination is based on facts and circumstances which can be attributed to the Client.

4. If the transfer of the work still to be done entails the User incurring extra costs, such costs shall be charged to the Client.

Article 13 Suspension and Dissolution

1. The User shall be authorised to suspend its performance of the obligations under the agreement or to terminate the agreement, in the event that:

(a) The Client does not perform its obligations wholly or partially in accordance with the agreement

(b) where after the agreement has been signed, the User learns of circumstances giving good ground to apprehend that the Client will not fulfill his obligations.

(c) if upon request the Client fails to furnish security or furnishes insufficient security to guarantee the fulfilment of his obligations under the agreement.

2. The User shall also be authorised to terminate the agreement (if circumstances arise of such a nature that fulfilment of the obligations becomes impossible).

3. If the agreement is terminated, the User's claims against the Client shall be forthwith be due and payable. If the User suspends fulfilment of his obligations, he shall retain his rights under the law and the agreement.

4. The User shall always retain the right to claim damages.

Article 14 Return of Goods for use by the Client

1. If the User has delivered goods to the Client's possession during and in connection with the execution of the agreement, the Client shall be required to return the delivered goods within 14 days in their original state, free of defects. If the Client fails to fulfil this obligation, the Client will be liable to compensate the User for the goods and any other I resulting costs arising out of failure to deliver the goods.

2. If, for any reason whatsoever, the Client fails to fulfil the obligation mentioned under sub-article 1 even after being warned to do so, the User shall be entitled to recover the resulting damage and costs, including replacement costs, from the Client.

3. Nevertheless, in case of one or more data loggers, that the User has put at the Client's disposal, is lost, an amount of €50, per lost data logger will be charged to the Client.

Article 15 Liability

1. The liability of the User to the Client shall be limited to damage that would be a foreseeable consequence of the failure to perform its obligations. The User shall not be liable for any indirect damage to the Client, including consequential damage, loss of profit, lost savings, company damage, loss of goodwill, loss of orders, stagnation or delay of the production process, damage to other goods than the goods delivered by the User, and damage of third parties.

2. If the User is liable for direct damage, then said liability shall be limited to the higher of the maximum of amount invoiced to the Client, or compensation received from the User's insurer for injury caused to the Client.

3. In the event of an agreement between the User and the Client with a duration of more than 6 months, the User's liability described in sub-article 2 above shall be limited to the fees payable for the first six months of that agreement.

4. Direct damage shall include:

(a) the reasonable costs incurred to investigate the cause and extent of the damage as provided for in these terms and conditions

(b) the reasonable costs incurred in order to rectify the User's faulty performance, unless such faulty performance cannot be attributed to the User;

(c) reasonable costs incurred to prevent or limit the damage, in so far the Client demonstrates that said costs have led to the mitigation or reduction of direct damage as provided for in these general terms and conditions.

5. The limitations of liability for direct damage contained in these terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of the User or his employees, agents or servants.

6. The User is not liable for damage of the Client, if the Client has breached article 11(1) of these general terms and conditions. The User is also not liable for damage of the Client if the Client has not given the User the opportunity to rectify the work and/or repair the damage suffered by the Client.

Article 16 Indemnity

1. The Client shall indemnify the User against claims brought by third parties regarding intellectual property rights on material or data provided by the Client, which shall be used for and during the execution of the agreement.

2. If the Client provides the User with information carriers, electronic files or software etc., the former shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

Article 17 Transfer of Risk

1. The risk in any goods under the agreement, shall be transferred to the Client the moment said goods are contractually and/or actually delivered to the Client and therefore fall into the power of the Client or of third parties to be appointed by the Client.

Article 18 Force Majeure

1. Parties shall not be required to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.

2. In addition to the provisions of the law and court decisions in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which the User cannot have any influence but which prevents the User from fulfilling his obligations. Industrial action at the User's company shall also be understood to be a circumstance of force majeure.

3. The User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfillment of the obligation(s) impossible, commences after the point in time on which the User should have fulfilled his obligation.

4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfillment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.

5. In so far as the User has already partially performed his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfil them and in so far as separate value can be attributed to

the part already fulfilled or still to be fulfilled respectively, the User shall be entitled to submit a separate invoice of the part already fulfilled or still to be fulfilled respectively. The Client shall be held to pay this statement of expenses as if it were a separate agreement.

Article 19 Confidentiality

1. Both parties shall not disclose any confidential information they have received within the scope of the agreement with each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the information is confidential in nature.

2. If a statutory provision or a judicial decision compels the User to convey confidential information to third parties designated by law or by the court and the User cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, the User shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the termination of the agreement on the ground of any damage resulting from said circumstance.

Article 20 Intellectual Property and Copyrights

1. Without prejudice to the other stipulations of the present general terms and conditions, the User shall reserve the rights and powers to which the User is entitled under the copyright laws

2. All documents, such as reports, advice, agreements, designs, sketches, drawings, software, etc., provided by the User, shall be used by the Client exclusively and must not be reproduced, made public or brought to the notice of third parties by the Client without prior consent from the User, unless the nature of the documents provided dictates otherwise.

3. The User is not liable for changes in written, electronic and/or digital documents which are drafted by the User, if the changes are made by the Client or by third parties to whom the Client supplied these documents authorized or unauthorized.

4. The User shall reserve the right to use the knowledge gained out of the execution of the work for other purposes, in so far no confidential information shall be disclosed to third parties when doing so.

5. The Client shall not be entitled to use, purchase or sell or working or producing according to a design or production method, which is an invention owned by the User, whether or not in connection with the execution of an agreement between parties, except for a written consent by the User.

Article 21 Samples and Models

1. If a sample or model has been given to the Client, there shall be no agreement that the bulk will correspond with the sample unless the parties agree explicitly.

Article 22 Non-employment of the opposite party's personnel

1. Throughout the duration of the agreement and for one year following termination thereof, the Client shall not in any way, hire or employ in any other way, be it directly or indirectly, staff of the User or of third parties whom the User has engaged to execute the present agreement and who are (were) involved

in the execution of the agreement, without prior proper consultation on this matter, all this in accordance with the requirements of reasonableness and fairness.

2. During the currency of the agreement and for one year after termination thereof, the Client shall not, in any way, employ the staff of the User or of third parties whom the User has engaged to perform the present agreement to perform activities for a competitor of the User or start an enterprise by which the User suffers damage.

Article 23 Disputes

1. The Court in Kenya shall have exclusive jurisdiction to hear any disputes under these general terms and conditions.

2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

Article 24 Applicable Law

1. Kenyan law shall apply to each and every agreement between the User and the Client.

Article 25 Changes to the Terms and Conditions

In case of any subsequent agreements between the User and the Client, these general terms and conditions will also apply. If these general terms and conditions are amended, the amended version will apply.