

UNITED FLOWER AUCTION LIMITED
TERMS OF TRADE FOR SALES OF PERISHABLE GOODS

1. Terms of Contract

These terms of contract between UNITED FLOWER AUCTION LIMITED (the "Company") and the Buyer signing this agreement (the "Buyer") shall apply to all orders for flowers, plants, and other perishable horticulture products ("Goods") accepted by the Company from the Buyer. In the case of any interpretation, conflict, or dispute these terms and conditions shall prevail and take precedent over any document or oral message from the Buyer. Where the Company fails to enforce any term of condition under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right.

2. Acceptance of Orders

2.1 The description given of the Goods in any estimate or written or published form or quotation will be a description by grade by the grower of the Goods as Grade One, Grade Two or Ungraded and the Buyer shall accept that only Grade One category Goods are warranted by the Company on behalf of the grower under the claims conditions. Any Goods not graded by the grower will be sold as Ungraded Goods.

2.2 The description of the Goods is by way of identification only to assist the Buyer and the use of such information shall not constitute an offer by the Company to the Buyer or sale by description and binding on the Company.

2.3 The Buyer shall agree that the description of the Goods and any sample or batch sampling or other acceptance procedure nominated by the Company shall be representative of the Goods as to merchandisable quality and the Buyer further agrees not to make any claim against the Company that Goods do not meet the Buyer's requirements with regard to the completion of the order.

2.4 The Buyer shall make an offer to the Company based upon the description by grade of the Goods and listed price or auction price and will be declared as a sale by description and binding on the Company only upon acceptance of the order by the Company. The Company may change or withdraw any description or price or any other consideration before the Company accepts an offer from the Buyer. Acceptance by the Company shall be by a Tax Invoice arranged by the Company.

2.5 No order accepted by the Company shall be cancelled without the consent of the Company and in such cases the Buyer will be liable to pay the Company for all costs and expenses incurred by the Company in fulfilling the order to the date of cancellation; and if the Goods cannot be cancelled from the grower or re-sold by the Company, the Buyer will be held liable for the cost of the Goods in total.

3. Price

3.1 The Company shall publish a price list which shall also be the brokered price ruling at the time of the order or the price shall be the price accepted by the Buyer at auction in which case the price and minimum order quantity decisions of the auctioneer shall be final and binding on the Buyer. The price shall exclude Goods and Services Tax and the cost of delivery and insurance and any other industry fees or levies.

4. Payment

4.1 Payment shall be cash with order or by direct debit or by credit card remittance (which shall incur an additional 1.9% service fee) or other terms as may be determined by the Company and payment is to be in full without deduction or setoff according to the terms set out in the invoice.

4.2 If payment is not made in full by due date, the Company is entitled to charge the Buyer interest on the unpaid overdue balance at the rate of 1.5% per month and cumulative per month above the current rate charged by the Company's bank calculated from the due date of payment down to the actual date of payment, and the Company may at its option suspend further sales under this contract or any other contract between the Company and the Buyer until the overdue amount is paid in full.

4.3 If at any time the Company reasonably deems the credit of the Buyer to be unsatisfactory, it may require a deposit against future orders and/or suspend performance of its obligations under this contract or any other contract between the Company and the Buyer until security is provided to the satisfaction of the Company and the Company may further require the Buyer to pay all costs incurred as a result of suspension and re-commencement of the supply of Goods including legal and debt collection costs.

4.4 UFA will charge and the Buyer will pay to UFA all costs, industry levies, charges, and other fees plus GST thereon that may apply to product purchase.

5. Delivery and Risk

5.1 The Company shall make the Goods available at its site and the uplifting of the Goods by the Buyer or the delivery of the Goods to a courier on behalf of the Buyer shall constitute delivery. If the Buyer fails to take delivery of the Goods within the same day that the Goods have been purchased by the Buyer the Company has the right to charge the Buyer for costs of storage or transport to the Buyers premises or both and if the Goods have perished or deteriorated between the time of purchase and the time of delivery to charge the Buyer for the full cost of the Goods.

5.2 Risk in the Goods shall pass to the Buyer upon purchase of the Goods by the Buyer and regardless that the Goods may still be at the premises of the Company and before the Buyer uplifts the Goods, or the Goods may be in the care of a courier on behalf of the Buyer and the Company will not be responsible for any loss or damage or deterioration to the Buyer's Goods or for any part of the Goods that may be missing arising in any way from delays in delivery.

6. Warranty and Guarantees

- 6.1** The Company warrants that it will supply the Goods as the description defined in the grading method and the Buyer agrees that the Buyer will be solely responsible for the fitness of the Goods and for merchandisable quality for the purposes intended by the Buyer and the Buyer further agrees that it will not hold the Company liable in any manner for any mistake or negligence by the Buyer in this regard.
- 6.2** The Company will at its option replace Goods that are damaged or defective that are graded as Grade One Goods provided that:
- (a) the Buyer notifies the Company within 24 hours of purchasing the Goods that the Goods are damaged or defective: and
 - (b) the Company is given reasonable opportunity to investigate the claim
 - (c) the Buyer returns the Goods to the Company within 24 hours if the Company requests.
- 6.3** The Buyer shall agree that Goods sold as Grade Two or Ungraded Goods are sold without warranty and on a non-refundable and non-replacement basis.
- 6.4** The Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Purchaser or any other person arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the contract including delays in the delivery of Goods or from any cancellation of the contract or from negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors.
- 6.5** The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lock, act of God, fire, governmental regulations or directions, or reasons force majeure caused beyond the Company's reasonable control. The occurrence of such an event shall not give the Buyer a right of cancellation of any contract.
- 6.6** Notwithstanding anything herein before contained in this section 6 or contained elsewhere in the contract the liability of the Company in respect of all claims for loss, damage or injury arising from breach of any of the Company's obligations arising under or in connection with the contract, from any cancellation of this contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors shall be linked at the Company's option, to replacement of the Goods or the price of the Goods for Grade One Goods only.

7. Grounds for Termination by the Company

- 7.1** This Agreement may be terminated by the Company immediately on written notice to the Buyer, if an Event of Default of payments due to the Company by the Buyer occurs, and default shall also mean if the Buyer:
- (a) Fails to comply with any warrant conditions of the Goods issued by the Company.
 - (b) Shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors.
 - (c) Where the Buyer is a Company do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Company or if a Receiver is appointed in respect of all or any assets of the Company.

No release from obligations. Terminations of this agreement shall not relieve the Buyer of its obligations to pay all money owed by it to the Company on any account whatsoever, including interest on overdue amounts which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement shall not relieve the Buyer from liability arising from any antecedent breach of the terms of this agreement.

Immediate Steps Upon Termination. Upon the termination of this agreement for any reason, all rights of the Buyer granted by this agreement shall terminate and the Buyer will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this agreement.

8. Consumer Guarantees Act 1993

- 8.1** Nothing in these terms is intended to have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act where the Buyer acquires the Goods in a business to business situation and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.
- 8.2** The Buyer shall not, give or make any undertaking, assertion or representation in relation to the Goods including the grading of the Goods to any other person or company without the prior approval in writing of the Company, and the Buyer shall indemnify the Company against any liability or cost incurred by the Company as a result of any breach by the Buyer of this provision.

9. Applicable Law, Dispute and Arbitration

In the event of any dispute between the Company and the Buyer arising out of this Agreement, the substantive laws of New Zealand shall apply and such dispute shall be referred to an arbitrator who has experience in the perishable goods market to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996 and any amendments thereof.

10 The Privacy Act 1993

10.1 The Buyer acknowledges that:

10.1.1 Personal information collected or held by the Company (whether contained in this document or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:

10.1.1.1 Administering, whether directly or indirectly, the Company's contracts and enforcing the Company's rights thereunder;

10.1.1.2 Marketing goods and services provided by the Company;

10.1.1.3 Ascertaining at any time the Customer's creditworthiness and obtaining at any time credit reports, character references or credit statements;

10.1.1.4 Enabling the Company to notify any credit agency of any application for credit or default on any obligation of the Customer to the Company enabling the Company to provide such personal information to any credit agency so such credit agency can maintain effective accounting records;

10.1.1.5 Enabling the Customer to communicate with the Company for any purpose;

10.1.1.6 Such personal information is collected by and will be held by the Company whose address is PO Box 5238, Wellesley St, Auckland, New Zealand.

10.2 The Customer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Company.

10.3 The Customer authorises the Company to obtain at any time from any person or entity, any information the Company may require to process and/or accept any application for credit the Customer may make to the Company or to perform or complete any of the other purposes for which the Customer has provided personal information to the Company. The Customer authorises any such person to release to the Company any personal information that person holds concerning the Customer.

10.4 For the purposes of the preceding clauses the term "the Company" includes any financier or discounter of the Company's contract with the customer or any related company of the Company. The term "related company" has the meaning given it by the Companies Act 1993 or replacement legislation.

11. Personal Guarantee:

In consideration of the company at my/our express request (as I/We doth/do hereby admit and acknowledge) granting to ("the customer") credit pursuant to the foregoing terms of trade I/We Being director(s) / partner(s) / proprietor(s) of the customer do hereby covenant and agree with the company granting to the Customer a credit facility on terms and conditions negotiated between the Company and the Customer.

I/We personally guarantee the payment to the Company on demand of all sums of money owed by the Customer to the Company pursuant to the credit facility and also liquidated damages and expenses and legal costs incurred by the Company in relation to the credit facility.

I/We as Guarantor acknowledge that I am/We are principal debtors and accordingly the Company may proceed against me/us for recovery of monies whether or not it has first proceeded against the Customer. If there is more than one person comprising the Guarantor then we acknowledge that we guarantee jointly and severally the obligations of the Customer to you.

I/We acknowledge that no indulgence, granting of time, waiver or forbearance to sue or any other concession relieves me/us from liability herein.

The Customer and the Guarantor each hereby authorize the Company to make whatever credit reference enquiries it considers justified from my/our financial and other sources and to provide credit references relating to the Customer and/or the Guarantor if/when requested by the Company of third parties.

IN WITNESS the Guarantors have signed this Deed on the date set out below.

DATED this Day of 200.....

.....
Customer (Signature)

.....
Print Name

1
Guarantor (Signature)

Print Name

2
Guarantor (Signature)

Print Name

3
Guarantor (Signature)

Print Name

.....
Witness (Signature)

.....
Print Name

.....

.....
Witness Address