

UNITED FLOWER AUCTION LIMITED
TERMS OF TRADE FOR PERISHABLE GOODS SOLD ON BEHALF OF THE GROWER

1. Terms of Contract

These terms of contract between UNITED FLOWER AUCTION LIMITED (the "Company") and the Grower of the Goods or Supplier of the Goods signing this agreement (the "Grower") shall apply to all orders for flowers, plants, vegetables and other perishable horticulture products ("Goods") accepted by the Company from the Grower. 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 Grower. 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 by Company

- 2.1** The supply of Goods by the Grower to the Company premises for sale by the Company to buyers on behalf of the grower, shall constitute an order.
- 2.2** The description of the Goods given by the Grower in any written or published or verbal form shall be a description by grade as Grade One, Grade Two or Ungraded Goods and the Grower shall warrant that the description by grade by any sample or batch sampling or other acceptance procedure required by the Company shall be representative of the Goods as to merchandisable quality.
- 2.3** The Company has the right to alter the description of the Goods by grade if it reasonably finds that the acceptance procedure is not representative of the Goods and the Grower shall accept that the Company is acting in the best interests of the Grower in satisfying the buyer of the Goods and completing a sale.
- 2.4** The Grower shall agree that the Company shall only warrant Goods graded as Grade One to the buyer on behalf of the Grower and the Grower shall further agree that unsold Goods graded as Grade Two or Ungraded may at the discretion of the Company be destroyed if these Goods are not sold or are damaged or deteriorate or for plant deaths unless the Grower uplifts the Goods within 24 hours of notification by the Company.
- 2.5** The Grower shall agree that any Goods supplied to the Company for sale or auction on behalf of the Grower that have not been graded may be classified as Ungraded Goods by the Company.
- 2.6** The Company at its discretion will accept Goods from the Grower for sale to buyers on behalf of the Grower and such method of sale may be under the Company's price list, which may also be the brokered price or at auction meaning at average auction price on the day less any adjustment to the auctioned price to allow for damaged Goods or by variation of these methods of sale relating to the Goods and the Grower shall agree to be bound by the sales method of the Company decided for each order.
- 2.7** Where the Grower agrees to sell the Goods to the Company at a fixed price no order accepted by the Company shall be cancelled without the consent of the Company and in such cases the Grower will be liable to pay the Company for all costs and expenses incurred by the Company in fulfilling sales committed to buyers on behalf of the Grower to the date of cancellation.

3. Price

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

4. Payment

- 4.1** Payment shall be within (21) twenty-one days of the sale of the Goods on behalf of the Grower or other terms as may be agreed by the Company and payment is to be in full less commissions, handling and administration fees, and any industry fees or levies according to the terms set out in the invoice and less any adjustment to the auctioned price that may be required to allow for damaged goods.
- 4.2** The Company at its discretion may assist the Grower by advancing monies due to the Grower from buyers and the Grower shall at all times recognise and agree that such monetary advances are the property of the Company until the buyer pays the Company in full on behalf of the Grower. If at any time the buyer defaults on payment the Grower shall return any monies advanced by the Company back to the Company within three (3) days of written request, OR the Grower shall allow the Company to deduct any advances from future amounts due to the Grower.

5. Delivery and Risk

- 5.1** The Grower shall make the Goods available at the Company's premises and the uplifting of the Goods by the buyer shall constitute delivery to the buyer from the Grower. Proof of delivery will be the buyer generated invoice arranged by the Company. 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 and remit the price of the Goods less commission or brokerage, handling and administration fees to the Grower.

5.2 Risk in the Goods shall always remain with the Grower and regardless that the Goods may still be at the premises of the Company and before the buyer purchases the Goods, and the Company will not be liable for any loss or damage or deterioration to the Goods or for missing Goods.

5.3 Risk in the Goods shall pass from the Grower 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, and the buyer will be responsible for any loss or damage or deterioration to the Goods or for any part of the Goods that may be missing arising in any way from delays in delivery by the buyer uplifting the Goods. The Company will enforce these conditions on behalf of the Grower.

6. Grower Warranty and Guarantees

6.1 The Grower warrants that it will supply the Goods as the description defined in the grading method and the Grower agrees that the Grower will be solely responsible for the fitness of the Goods and for merchandisable quality for the purposes intended by the Grower and the Grower further agrees that it will not hold the Company liable in any manner for any mistake or negligence by the Grower in this regard.

6.2 The Grower will replace Goods that are damaged or defective that are graded as Grade One Goods provided that:

- (a) the Company notifies the Grower within 24 hours of selling the Goods to a buyer on behalf of the Grower that the Goods are damaged or defective: and
- (b) the Company investigates the claim on behalf of the Grower

6.3 The Grower will allow the Company to make any adjustment to the auctioned price of the Goods where the Grower short-supplies a declared quantity of Goods or includes damaged Goods in the declared quantity. The price adjustment shall be in proportion of the short-delivered or damaged Goods to the declared quantity of the Goods.

6.4 The Grower shall agree that Goods sold by the Company on behalf of the Grower as Grade Two or Ungraded Goods are sold without warranty and on a non-refundable basis and the Company may dispose of damaged or defective or deteriorated Goods on behalf of the Grower and that the Grower shall not receive payment for such Goods.

6.5 The Grower may at its discretion uplift any unsold Goods, or damaged or defective or deteriorated Goods from the premises of the Company within 24 hours of notification by the Company as an alternative to the Company disposing of the Goods on behalf of the Grower, provided that at all times the Grower fulfils all orders for Goods that have been committed for sale.

6.6 The Grower will not hold the Company liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Grower 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 sale or delivery of Goods on behalf of the Grower 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 contracts.

6.7 The Grower will not hold the Company liable for any breach or failure to perform any of the obligations of the Company 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 Grower a right of cancellation of any contract.

7. Grounds for Termination by the Parties

7.1 This Agreement may be terminated by either party immediately on written notice to the other party, if an Event of Default of payments due to one party by the other party occurs, and default shall also mean if a party:

- (a) Fails to comply with the warrant conditions relating to the Goods.
- (b) Shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors.
- (c) Where a party 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 either party of its obligations to pay all money owed by it to the other party on any account whatsoever, 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 any party 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 either party granted by this agreement shall terminate.

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 one party acquires the Goods from the other party 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 Grower 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, meaning that the Company shall represent the Grower to a buyer of the Goods and the Grower shall indemnify the Company against any liability or cost incurred by the Company as a result of any breach by the Grower of this provision.

9. Applicable Law Dispute and Arbitration

In the event of any dispute between the Company and the Grower 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. Guarantor

Where the Grower is a company, the person(s) referred to as guarantor(s) in this Agreement shall personally guarantee the obligations of the Grower.

FOR COMPANY:

UNITED FLOWER AUCTION LIMITED

FOR GROWER:

**AS GUARANTOR FOR GROWER:
(Directors)**

DATE:
