



**FLORAMAX**  
FLOWER AUCTIONS

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**STANDARD TERMS AND CONDITIONS OF  
TRADE**

**RELATING TO BUYERS**

## **INTRODUCTION**

This document sets out the terms and conditions on which Floramax (the flower division of Turners & Growers Fresh Limited) ("Floramax") will sell Product to Buyers (each as defined below), which together with any documents, additional terms or statements referred to herein, will form Floramax's terms and conditions of trade with Buyers ("Terms and Conditions").

These Terms and Conditions come into effect on 1 May 2005 and will replace all existing terms and conditions between Floramax and any Buyer and will apply to all Floramax business units where those units are contracting with Buyers, unless otherwise expressly consented to in writing by Floramax.

Floramax is a merchant having operations located principally in Auckland, Wellington and Christchurch. In the course of its business it:

- a) sells Product on consignment on behalf of Suppliers to Buyers (hereinafter referred to as "sales on consignment");
- b) purchases Product from Suppliers as principal and sells such Product on to Buyers (hereinafter referred to as "trade sale");
- c) hires out Container Equipment; and
- d) transports Product; and
- e) provides administration services through the Floramax Account Administration System.

## **1.0 DEFINITIONS**

**1.1** In these Terms and Conditions the following words bear the following meanings:

- "Business Day" means any day on which registered banks in New Zealand are open for general banking business in Auckland, excluding bank branches that choose to offer service on a weekend day.
- "Buyer" means the purchaser of Product from a Supplier via Floramax auction or trade markets, including any Commissioned Buyers, from time to time.
- "Buyer Account Application Form" means the form completed by the Buyer to activate a buying account through which the Buyer may purchase Products from Floramax, which must include a direct debit authority, personal guarantees and GST registration, where appropriate.
- "Carrier Agent" means any carrier contracted by the Buyer to transport Product from Floramax to a designated destination.
- "Container Equipment" means hire buckets or other types of container that are returnable and officially approved by Floramax.
- "Customer Services" means the Customer Services business unit at Floramax whose contact number is 0508 800 100 as updated from time to time.

- “Commissioned Buyers” means a Buyer who purchases Product on behalf of a group of Buyers.
- “Floramax Account Administration System” means the administration accounts and/or IT system operated by Floramax.
- “Floramax Limited Business Day” means the days of the week that a Floramax site is open for business over a 24 hour period, which may vary from site to site.
- “Force Majeure” means any circumstances or events beyond the reasonable control of Floramax, including without limitation any acts of God, or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargos, riot or civil disturbance, lock out, strikes or other labour disputes or industrial actions.
- “Fruit Case Company” means the Fruit Case Company, a division of T&G and any person authorised by it to act on its behalf.
- “GST” means goods and services tax pursuant to the Goods and Services Act 1985.
- “Key Aligned Wholesaler” means a stand-alone business operating within the Floramax premises.
- “Key Aligned Wholesaler Account Application Form” means the form completed by a Key Aligned Wholesaler to activate an account through which a Supplier supplies Products to a Key Aligned Wholesaler or a Key Aligned Wholesaler supplies Products to one of its customers, which must include a direct debit authority and GST registration numbers where appropriate.
- “Product” means flowers and/or floral items and/or associated items.
- “Supplier” means the producer/vendor of Product on whose behalf Floramax sells Product as sales on consignment or Floramax, where Floramax sells a Product on its own behalf.
- “Statement Date” means the date on which Floramax sends to the Buyer an invoice/statement setting out the Product purchased by the Buyer since the previous statement date.
- “T&G” means Turners & Growers Fresh Limited and any person authorised by it to act on its behalf.
- “TAG Specifications” means the current Floramax TAG Quality Assurance system and all amendments thereto published on the Floramax website [www.turnersandgrowers.com](http://www.turnersandgrowers.com) from time to time.

**1.2** In these Terms and Conditions the singular will include the plural and reference to a “party” or the “parties” will mean each of Floramax or the Buyer or Floramax and the Buyer together.

## **2.0 ACCEPTANCE OF TERMS AND CONDITIONS**

**2.1** Floramax will not be obliged to sell any Product to a Buyer, unless that Buyer has completed and executed an approved Buyer Account Application Form and any other related documents and become an authorised account holder.

**2.2** The Buyer acknowledges and agrees that:

- a) any purchase of Product by the Buyer from Floramax; and/or
- b) the completion and execution of any Buyer Account Application Form by the Buyer,

will be deemed to be an acceptance of these Terms and Conditions by the Buyer from the time when such purchase or execution took place.

**2.3.** Floramax may alter these Terms and Conditions by giving notice of those alteration(s) to the Buyer and any subsequent dealing by the Buyer with Floramax will be deemed to be acceptance of the alteration(s) to these Terms and Conditions.

## **3.0 CONSIGNMENT/TRADING**

**3.1** T & G generally sell as an agent and intermediary to effect the sale on consignment of a Supplier's Product to the Buyer. In these circumstances T & G will not be liable to the Buyer as a principal for any failure to supply, delay in supply, failure in quality or quantity or otherwise.

## **4.0 PRICE**

**4.1** Unless otherwise expressly agreed by Floramax in writing pursuant to clause 4.2, all applicable prices, fees, levies, charges and taxes will be in accordance with Floramax's then current list for the same at the time a contract is made between the Supplier and Floramax and as updated from time to time. Floramax's current price list and any associated fees, levies, charges or taxes is subject to alteration without notice. Floramax may charge the Buyer any applicable handling fees in accordance with the terms set out on Floramax's website or available from Floramax's offices from time to time.

**4.2** Floramax may, at the Buyer's request, give a written quotation for the Product. Where Floramax elects to give a written quotation, that quotation:

- a) is an offer and Floramax must receive the Buyer's acceptance of it before any contract for the sale and purchase of that Product arises between Floramax and the Buyer;
- b) may be withdrawn by Floramax at any time prior to receipt of acceptance;
- c) will lapse if acceptance is not received within two (2) Business Days of its date, unless Floramax agree to an extension of the offer period; and
- d) will, if accepted, govern the base price of the Product in respect of that contract and any additional associated fees, levies, charges or taxes will be charged separately.

**4.3** Floramax will charge the Buyer and the Buyer will pay to Floramax any usage or deposit payable in relation to the Container Equipment in which Product is purchased.

**4.4** The Buyer will pay to Floramax such usage or deposit fees as may be charged by Floramax from time to time for Container Equipment hire and use, in addition to the price of the Product and any associated fees, levies, charges or taxes and any GST thereon in accordance with clause 7 of these Terms and Conditions, or in accordance with any other terms that may be extended to the Buyer by Floramax from time to time.

## **5.0 DELIVERY AND RISK**

**5.1** Without prejudice to any express terms that may be agreed between the parties from time to time, delivery of the Product will be deemed to occur when the Product is either:

- a) collected from Floramax's premises by the Buyer, its employee, or Carrier Agent; or
- b) where Floramax (or an associated entity) has agreed to deliver the Product to the Buyer, when the Product is delivered to the agreed delivery point,

whichever occurs first.

**5.2** Upon delivery:

- a) the Buyer will be entitled to possession of the Product; and
- b) risk in the Product will pass to the Buyer.

**5.3** If the Buyer has failed to take delivery of the Product from Floramax's site on the day of the sale and delivery of such Product, then Floramax will be entitled, by notice to the Buyer, to treat the contract for that Product as repudiated by the Buyer. Floramax may, at its option and without prejudice to its rights and remedies in respect of such repudiation, sell the Product and retain the proceeds of the sale.

**5.4** If Product is left at a Floramax site by a Buyer for 24 hours or more, either with or without Floramax's agreement, then Floramax will be under no liability or responsibility to the Buyer whether as bailee or otherwise for the Product, or any loss or deterioration thereof, whether or not any loss or damage in respect of that Product is caused by the negligence of Floramax or its agent(s) or employees.

## **6.0 PAYMENT AND TITLE**

**6.1** Unless otherwise agreed in writing, the Buyer will pay to Floramax by direct debit on the Monday following the Statement Date the full price for all Product and for Container Equipment deposits and hire fees, together with all applicable taxes, levies, site, handling and picking fees and any other fees and charges which may be set out in any invoice from Floramax.

- 6.2** Where Floramax extends credit to a Buyer, that credit may be withdrawn without prior notice in respect of any overdue account and will be reinstated by Floramax in its sole discretion, if and when all outstanding amounts are paid by the Buyer.
- 6.3** Where the Buyer pays for Product or Container Equipment deposit and hire fees (where applicable) and for any associated taxes, fees, levies, costs and charges on credit payment terms, the Buyer will be deemed to do so on the credit payment terms and conditions set out in the Buyer's Account Application Form or on such other terms as may be agreed in writing with the Buyer from time to time.
- 6.4** If payment is not made in full by the due date, Floramax is entitled to charge the Buyer a late payment fee on the unpaid overdue balance from the due date for payment at the rate of 15% p.a. on the overdue balance, plus any GST thereon, compounding weekly on the unpaid balance owing on the first day of each week until payment in full is received by Floramax. Such late payment fee may be raised by Floramax without notice, at Floramax's discretion.
- 6.5** Until Floramax receives payment in full of the purchase price of the Product (including all applicable taxes, fees, charges, costs and levies) and all other amounts owing to Floramax from the Buyer and notwithstanding any other Provision in these Terms and Conditions, title in the Product will not pass to the Buyer but will remain with the Supplier (or Floramax, in the event of a trade sale) and:
- a) Floramax will hold the Product as bailee for the Buyer or Floramax, as the case may be; and
  - b) unless otherwise notified in writing, Floramax is authorised to sell the Product in the ordinary course of business, without notice to the Buyer; and
  - c) the Buyer irrevocably authorises Floramax or Floramax's employees or agents to enter the Buyer's premises to search for and remove any Product that is Floramax's property, without being liable in any way to the Buyer. The Buyer agrees to indemnify Floramax against all costs of claims from any person in relation to Floramax's exercise of its rights under this clause.
- 6.6** Notwithstanding clause 6.5 above, all payments will become due and payable to Floramax in the event that:
- a) a receiver is appointed over any of the Buyer's assets or undertaking;
  - b) a liquidator is appointed or the Buyer goes into voluntary liquidation;
  - c) the Buyer makes or attempts to make an arrangement or composition with creditors; or
  - d) the Buyer becomes insolvent within the meaning of the Insolvency Act 1967 or the Companies Act 1993, or commits any act of bankruptcy.
- 6.7** The Buyer will reimburse Floramax for all costs and expenses incurred by Floramax (including legal costs calculated on a solicitor and client basis and

late payment penalties) in recovering or attempting to recover payment from the Buyer.

**6.8** Where money is owed to the Buyer by the Fruit Case Company by way of Container Equipment deposit return or otherwise, the Buyer irrevocably authorises the Fruit Case Company to pay such money to Floramax, as a reduction of any amount that the Buyer may owe to Floramax from time to time.

**6.9** If Floramax is owed any money by the Buyer, has incurred any cost, expense or has any claim against the Buyer, or any contingent liability arising out of a breach by the Buyer of these Terms and Conditions ("**Liability**") and such Liability remains outstanding for more than ten (10) Business Days from when it fell due or was incurred, then the Buyer authorises Floramax to set off such Liability from any sum owed to the Buyer by Floramax or any trading division or affiliated company of Turners & Growers Fresh Limited and its successors in title, from time to time.

## **7.0 SECURITY INTERESTS**

**7.1** Where Floramax extend the Buyer any credit, the Buyer agrees to grant to Floramax, if Floramax so require at any time, a security interest in all Product supplied by Floramax to the Buyer from time to time. To protect Floramax's security interest, the Buyer agrees to allow Floramax to register a financing statement under the New Zealand Personal Property Securities Act 1999 ("PPSA").

**7.2** The Buyer must, upon Floramax's request, promptly give Floramax all assistance and information as may be necessary to register Floramax's security interest.

**7.3** The Buyer must pay to Floramax promptly on request all of Floramax's costs in registering the security interest and the costs of enforcing or attempting to enforce Floramax's rights under these Terms and Conditions and the security interest.

**7.4** In respect of registration in New Zealand (where applicable), the Buyer agrees that sections 114(a), 121, 131 of the PPSA will not apply to the security interests created by these Terms and Conditions and the Buyer waives its right to receive a verification statement under section 148 of the PPSA.

## **8.0 RETURNED PRODUCT**

**8.1** Where a Buyer has any query in relation to their account or the Product purchased from Floramax, their first point of contact should be Floramax's Customer Services.

**8.2** If a Buyer believes it has a valid reason to return to Floramax any Product purchased from Floramax, **then the Buyer must notify the main local Floramax reception office in Auckland, Wellington or Christchurch, as appropriate of its intention to return the Product and its reason for doing so within three (3) hours** of delivery taking place in accordance with clause 5.1 of these Terms and Conditions.

- 8.3** If the Buyer's place of business is within a 100 km radius of Floramax's site, then the Buyer must procure that any Product it intends to return to Floramax is back on a Floramax site **within 24 hours** of the time at which the Buyer notified Floramax of its intention to return the Product. If the Buyer's place of business is more than 100km away from said site, the Buyer must procure that any Product it intends to return to Floramax is back on a Floramax site **within 48 hours** of the time at which the Buyer notified Floramax of its intention to return the Product.
- 8.4** Floramax will not consider any claim for returned Product made by the Buyer unless the original dispatch docket for the return and Product accompanies the Product in question and the Buyer has otherwise strictly complied with all the procedures for returned Product set out in these Terms and Conditions or as otherwise notified to the Buyer from time to time. The Buyer's failure to comply with these obligations will absolve Floramax of all liability in respect of such returned Product.
- 8.5** Floramax may conduct a TAG quality assurance inspection prior to making any decision on the validity of the Buyer's claim.
- 8.6** If Floramax, at its sole discretion, deems the Buyer's claim to be valid, Floramax's liability for any such returned Products will, in all circumstances, be limited to crediting the Buyer with the invoice value of the returned Products in question. Beyond giving such credit, Floramax will have no further liability whether in tort, contract or otherwise to the Buyer for any loss, damage, cost or expense arising from any returned Product and in particular, Floramax will not be obliged to supply any replacement product to the Buyer.

## **9.0 SHORT SUPPLY**

- 9.1** Where the Buyer claims it has not received the quantity of Product it purchased from Floramax, it will notify Floramax prior to uplifting the Product or leaving Floramax's premises (whichever is earlier) of its claim.
- 9.2** Floramax will not consider any claim for short supply made by the Buyer, unless the original daily purchases docket for the relevant Product accompanies the Buyer's notification to Floramax and the Buyer has otherwise strictly complied with all the procedures for making such a claim set out in these Terms and Conditions or as otherwise notified to the Buyer from time to time. The Buyer's failure to comply with these obligations will absolve Floramax from all liability in respect of such short supply or of any obligation to deal with that claim.
- 9.3** If Floramax, at its sole discretion, deems the Buyer's claim to be valid, Floramax's liability for any short supply will, in all circumstances, be limited to crediting the Buyer for the difference between the amount of Product charged for and the amount of Product actually supplied. Beyond giving such credit, Floramax will have no further liability whether in tort, contract or otherwise to the Buyer for any loss, damage, cost or expense arising from the short supply and, in particular, Floramax will not be obliged to supply any additional Product to the Buyer to make up for the shortfall in question.

## **10.0 UNACCEPTABLE PRACTICES**

- 10.1** The Buyer may not add or remove Product to or from the Container Equipment in which it is sold, nor change or tamper with applicable line

numbers on Floramax's premises. The Buyer will not remove any Product or Container Equipment from Floramax's premises without completing any and all of the prescribed operating requirements for those premises, as notified to the Buyer from time to time. Any Buyer found to be in breach of the correct operating procedures for removing Product from a Floramax site may be prosecuted in a court of law.

**10.2 Floramax reserves the right to bar any person who is in breach of these Terms and Conditions at any time from any of its premises and may choose to issue any such person with a restraining trespass notice.**

## **11.0 USE OF FORK HOIST OR OTHER EQUIPMENT**

**11.1** Where a Buyer or Buyer's agent has express written authority from a Floramax representative to use a fork hoist, mobile container moving devices or other equipment owned by or in the care of Floramax ("Equipment"), such authority will be conditional on the Buyer providing that only qualified and certified operators operate such Equipment at all times.

**11.2** The Buyer will indemnify Floramax against all claims against Floramax and all loss, damage, expense, cost or penalties suffered by Floramax as a result of the Buyer's use of the Equipment, together with all costs incurred by Floramax (including legal costs calculated on a solicitor and client basis) in dealing with any such action, unless the Buyer establishes that the relevant loss was caused by Floramax's failure to properly maintain the Equipment in question.

**11.3** The Buyer will indemnify Floramax for any loss, claim, or cost or damage to, or loss of Product as a result of the Buyers or Buyer's agents' moving Product with the Equipment or of Floramax's staff moving Product with Floramax's Equipment on the Buyer's behalf, in instances where the load of Product is deemed by Floramax (in its absolute discretion) to have been unsafely or incorrectly packaged by the Buyer, the Buyer's employee or the Buyer's agent.

**11.4** If the Buyer or Buyer's employee or agent causes any damage to privately owned vehicles at any Floramax site and/or to Floramax property, plant, buildings or staff while using the Equipment, then the Buyer will indemnify Floramax against all resultant losses, damages, claims or penalties suffered by Floramax, together with all costs and expenses incurred by Floramax (including legal costs calculated on a solicitor and client basis) arising from any such damage.

## **12.0 CONSUMER PROTECTION LEGISLATION**

**12.1** Where a Buyer purchases or holds itself out as purchasing Product or hiring Container Equipment from Floramax for business purposes, the guarantees and provisions contained in the Consumer Guarantees Act 1993 and all amendments thereto and otherwise applicable to such purchase or hire are expressly excluded by Floramax and will not apply to any dealings between Floramax and the Buyer.

**12.2** Where a Buyer purchases or holds itself out as purchasing Product or hiring Container Equipment from Floramax for business purposes and subject to the Buyer's right to return Product in accordance with clause 8, Product is sold to

the Buyer strictly on terms that the Buyer has satisfied itself of its suitability for its purposes.

### **13.0 LIMITATION OF LIABILITY AND INDEMNITY**

**13.1** Floramax's entire liability to the Buyer is limited to the invoice price of the particular Product supplied by Floramax to which the Buyer's claim relates, or to direct damages, whichever is less. All warranties, conditions and other terms implied by statute or common law and any express terms, representations, warranties or undertakings made by Floramax that are not expressed in writing are, to the fullest extent permitted by law, expressly excluded from these Terms and Conditions.

**13.2** Except where the Buyer is a "Consumer" for the purposes of the Consumer Guarantees Act 1993 and subject to clause 13.1, without limitation, Floramax will not be liable for:

- a) any delay in delivery;
- b) loss or damage in transit;
- c) loss or damage caused by any event or circumstance that is beyond the reasonable control of Floramax; or
- d) any loss of profits, loss of business, product liability, or indirect or consequential loss or damage, howsoever arising.

**13.3** Floramax may, at its sole discretion:

- a) replace any returned Product, if Floramax is satisfied that such Product does not meet the minimum TAG Specification accorded to them; or
- b) refund by way of credit to the Buyer the invoice price for such Product.

**13.4** Floramax will not be liable for any returned Product or short supply under any circumstances if the Buyer has not:

- a) notified Floramax of its claim in respect of such Product as soon as the Buyer became aware of the same and, in any event, within the times prescribed in these Terms and Conditions; and
- b) included with its notice full details of the Product that is the subject matter of the claim, the basis of the alleged claim and all the documents in the Buyer's possession or control that are associated with the order and delivery of those Products, including the original dispatch docket for such Product; and
- c) reasonably assisted Floramax with investigating the Buyer's claim.

**13.5** The Buyer will fully and completely indemnify Floramax against any and all claims, proceedings, costs, expenses, losses, damages and liability (including legal fees calculated on a solicitor and client basis) arising out of, connected with or resulting from a breach by the Buyer of its obligations under these Terms and Conditions.

## **14.0 FORCE MAJEURE**

**14.1** Floramax will not be liable for any delay or failure to perform its obligations under these Terms and Conditions by reason of any Force Majeure. Any suspension of performance by reason of this clause will be limited to the period during which the Force Majeure exists.

**15.2** Floramax may terminate the performance of its obligations in respect of the particular dispatch or order of Products to which the Force Majeure relates, immediately by giving notice to the Buyer if the delay arising directly out of Force Majeure continues for more than five (5) consecutive Business Days.

## **15.0 ALTERNATIVE DISPUTE RESOLUTION**

**15.1** In the event of any dispute arising between the parties in relation to these Terms and Conditions (including the validity, breach or termination of them) the parties will, without prejudice to any other right or entitlement they may have pursuant to these Terms and Conditions or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted will be as agreed between the parties or as selected by the President of LEADR (Lawyers Engaged in Alternative Dispute Resolution - New Zealand Chapter).

**15.2** In the event the dispute is not resolved by such agreement within fourteen (14) Business Days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration. The arbitrator will be agreed between the parties within ten (10) Business Days of written notice of referral by the referring party to the other or, failing agreement, appointed by the President of the Auckland District Law Society from time to time or its successor organisation. In either case, the arbitrator will not be a person who has participated in an informal dispute resolution procedure in respect of the dispute. The arbitration shall be in English, shall take place in New Zealand and shall be conducted in accordance with the Arbitration Act 1996, unless the parties agree otherwise.

**15.3** Notwithstanding anything in this clause or the Arbitration Act 1996, Floramax may commence court proceedings in relation to any dispute where Floramax seek urgent interlocutory relief.

## **16.0 PRIVACY ACT**

**16.1** Floramax will hold any personal information that it receives from the Buyer for the purposes of its own marketing and Product development, account administration and credit purposes. The Buyer agrees that Floramax may ask for and disclose personal information about the Buyer to any person named by the Buyer as a credit reference in connection with the Buyer's account, and to any person in circumstances reasonably deemed necessary by Floramax in order to protect Floramax interests in respect of its relationship with the Buyer.

## **17.0 FLORAMAX AUCTION TERMS**

### **17.1 ELECTRONIC AUCTION RULES**

- (a) All lot or lots shall be taken with all faults and errors in description.
- (b) TAG 1 Product will be sold with the corresponding Suppliers' guarantee; however such Product will be subject to Section 9 of these Terms and Conditions. TAG 2 Product will not be sold with a Suppliers' guarantee.
- (c) Any Buyer, having been allocated their personally coded Buyer Key will become a legal buyer in the auction. Keys must be returned to the Admin Office at the relevant Floramax site at the completion of the sale. Floramax reserves the right to withhold a Buyer Key from any person not officially authorised by the Buyer of that Buyer key.
- (d) The Auctioneer will determine the upset price for any line.
- (e) Any Buyer pushing the keypad and as such stopping the sale by making a purchase has accepted the terms on which the Product is being sold and purchased and consequently, will be fully liable to Floramax for payments associated with this purchase from that point onwards.
- (f) Disputes can be relayed during the auction to the Auctioneer, however the Auctioneer will not be in any way liable to:
  - (i) accept the dispute there and then; nor
  - (ii) reverse the purchase.
- (g) The Floramax Selling System is anonymous and as such FloraMax is not obliged to divulge the identity of any Buyer to any third party under any circumstances.

### **17.2 VERBAL AUCTION RULES**

- (a) All lot or lots shall be taken with all faults and errors in description.
- (b) TAG 1 Product will be sold with the corresponding Suppliers' guarantee, however such Product will be subject to Section 9 of the Terms and Conditions. TAG 2 Product will not be sold with a Suppliers' guarantee.
- (c) The highest bidder shall be declared the purchaser, and if any dispute should arise between two or more bidders, the lot shall be put up again, providing the Auctioneer cannot determine which of the two or more bidders was the last, best bidder. There shall be no fictitious bidding, the vendor having the right to one bid only. Such a bid, if given, shall be the [upset] price. The Purchaser takes all lot or lots with all faults and errors in description, and such lot or lots shall be at the risk of the purchaser from the fall of the hammer.
- (d) The Auctioneer must declare his interest in buying, and state that he/she is buying on behalf of an absent Buyer. The Auctioneer may not hold an order for a Buyer who is present in the sale.

- (e) A bidder may buy for himself or herself and one other who is present and any others who are not present at the sale. The Auctioneer will use his discretion to stop ring-buying. The top bidder may buy for others not present at the sale. However, the Auctioneer has the right to consider the second **highest** bidder. The top bidder must buy a minimum of one of the line, and has the option of taking the whole line. The second **highest** bidder must buy a minimum of one, unless the top bidder takes the lot. Non-bidders have no rights. They may buy at the Auctioneer's discretion.
- (f) Commissioned buyers may buy for others in accordance with 17.2(e) (above) but the Auctioneer will use his discretion in allowing this. Commissioned Buyers will not split balances on the sale. Hold sheets must be used. Floor buyers may not appear on hold sheets.

### **17.3 EMERGENCY PLAN**

In emergencies or in circumstances where Floramax deems it to be necessary to provide an effective sales process, Floramax reserves the right for operational reasons, to substitute the standard procedure with an alternative method of sale.

### **18.0 GENERAL CONDITIONS**

- 18.1 Entire Agreement:** These Terms and Conditions and any documents or materials referred to in them, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of these Terms and Conditions. The Buyer acknowledges that in entering into these Terms and Conditions, it does not rely on and will not have any remedy in respect of any statement, representation, warranty, undertaking or understanding (whether or not negligently made by any person other than as expressly set out in these Terms and Conditions).
- 18.2 Prevalence:** These Terms and Conditions will prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer and purporting to have contractual effect.
- 18.3 Non-waiver:** Where Floramax fails to enforce any of these Terms and Conditions or fails in any way to exercise its rights under them, Floramax will not be deemed to have waived those rights with respect to any subsequent breach of any Term or Condition or right.
- 18.4 Severability:** If any clause or part of a clause of these Terms and Conditions is held to be invalid or unenforceable for whatever reason, the remaining provisions will remain in full force and effect.
- 18.5 Governing Law:** These Terms and Conditions will be governed by and interpreted in accordance with the laws of New Zealand and both Floramax and the Buyer agree to submit to the exclusive jurisdiction of the courts of New Zealand.

<b>TERMS AND CONDITIONS APPLYING TO PURCHASES FROM KEY ALIGNED WHOLESALERS</b>
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**19.0 GENERAL**

- 19.1** Where a Key Aligned Wholesaler uses the Floramax Account Administration System to process information in respect of arrangements between that Key Aligned Wholesaler and a Supplier, or between that Key Aligned Wholesaler and one of its customers, clause 19 of these terms and conditions sets out the rules in relation to the use of the Floramax Account Administration System.
- 19.2** Where money is owed to a Supplier by a Key Aligned Wholesaler, that Key Aligned Wholesaler authorises Floramax to transfer any money received into that Key Aligned Wholesaler's account from a customer of that Key Aligned Wholesaler to the relevant Supplier, provided that the Key Aligned Wholesaler has:
- (a) notified Floramax that such money is owed; and
  - (b) provided Floramax with all the information and/or documentary evidence that may be required to effect such a transfer.
- 19.3** Each Key Aligned Wholesaler authorises Floramax to debit its account for the amount of any operational expense including, but not limited to, freight, packaging, container charges and any other applicable fees from time to time.

**RELATIONSHIP BETWEEN KEY ALIGNED WHOLESALER AND ITS CUSTOMERS**

- 19.4** Nothing in this Agreement constitutes any relationship between a customer of a Key Aligned Wholesaler and Floramax and no Key Aligned Wholesaler will represent to any of its customers that such a relationship exists. Key Aligned Wholesalers will not represent that these terms and conditions apply to the relationship between a Key Aligned Wholesaler and one of its customers.
- 19.5** Each Key Aligned Wholesaler represents and warrants to Floramax that all account details, authorities to debit accounts of customers of Key Aligned Wholesalers, buy/sell authorities and all other banking authorities of any nature provided for entry into the Floramax Account Administration System, are and will at all times remain correct.
- 19.6** Each Key Aligned Wholesaler represents and warrants to Floramax that where customer information is provided for entry into the Floramax Account Administration System, the customer to whom that information relates has consented to the use of the Floramax Account Administration System to process that information.
- 19.7** Floramax is not liable for any loss that results from the failure of a Key Aligned Wholesaler to provide correct account information in respect of a customer of a Key Aligned Wholesaler.

**19.8** Floramax will be under no liability to a Key Aligned Wholesaler or a customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to any agreement between a Key Aligned Wholesaler and one of its customers.

**19.9** Floramax is not in any way liable to any customer of a Key Aligned Wholesaler for any actions which are in any way attributable to a Key Aligned Wholesaler.

## **QUALITY**

**19.10** Quality problems with Product shall be dealt with between the relevant Key Aligned Wholesaler and its customer, or between a Supplier and a Key Aligned Wholesaler as the case may be, and Floramax shall have no obligation to intervene in or resolve any such dispute. Floramax is not in any way liable in respect of any dispute between a Key Aligned Wholesaler and one of its customers, or between a Supplier and a Key Aligned Wholesaler regarding quality of Product.

## **INDEMNITY**

**19.11** The Key Aligned Wholesaler will at all times indemnify and hold harmless Floramax and its officers, employees and agents (“those indemnified”) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by a Key Aligned Wholesaler of its obligations under an agreement with one of its customers or an agreement between a Supplier and a Key Aligned Wholesaler; or
- (b) any wilful, unlawful or negligent act or omission of a Key Aligned Wholesaler.