



FLORAMAX[™]
FLOWER AUCTIONS

**STANDARD TERMS AND CONDITIONS OF
TRADE**

RELATING TO SUPPLIERS

INTRODUCTION

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

These Terms and Conditions will come into full effect and operation in 1 May 2005 and will replace all existing terms and conditions between Floramax and any Supplier and will apply to all Floramax business units (except for the Exports Division) where those business units are contracting with Suppliers, unless otherwise expressly consented to in writing by Floramax.

Floramax is a merchant having operations located throughout New Zealand. In the course of its business it:

- a) sells Product on consignment on Suppliers' behalf to Buyers (hereinafter referred to as "sales on consignment"); and
- b) purchases Product from Suppliers as principal and sells such Product on to Buyers (hereinafter referred to as "trade sales");
- c) hires out Container Equipment;
- 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 and expressions have 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 the Supplier via the Floramax auction or trade markets, including any Commissioned Buyers, from time to time.
- "Carrier Agent" means any carrier contracted by the Supplier to transport Product from Floramax to a designated destination.
- "Container Equipment" means all hire buckets or other types of container that are returnable and officially approved by Floramax.
- "Commissioned Buyer" means a Buyer who purchases Product on behalf of a group of Buyers.
- "Customer Services" means the Customer Services business unit at Floramax whose contact number is 0508 800 100 as updated from time to time.

- “Floramax Account Administration System” means the administration accounts and/or IT system operated by Floramax.
- “Food Safety Practices” means Floramax’s programme to provide safe food items and meet the requirements of the NZ Food Safety Authority for exemption from the Food Regulations 1974, as may be notified to the Buyer and updated from time to time.
- “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.
- “GST” means Goods and Services Tax pursuant to the Goods and Service Tax 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, plants, floricultural products and/or associated items.
- “Quality Assurance Programme” means an industry approved certified quality assurance programme acceptable to Floramax.
- “Statement Date” means the date on which Floramax sends to the Supplier an invoice/statement, setting out the Product supplied by the Supplier since the last statement date and any other associated transactions for which the Supplier owes Floramax any moneys.
- “Supplier” means the producer/vendor of Product on whose behalf Floramax purchases in a trade sale, or whose Product Floramax sells on consignment, acting as agent for such grower or vendor.
- “Supplier Account Application Form” means the form completed by the Supplier to activate a supply account through which the Supplier can supply Products to Floramax, which must include a direct debit authority, quality assurance information guarantees and GST registration numbers, where appropriate.
- “TAG Specifications” means the current Floramax TAG Quality System specifications and all amendments thereto published by Floramax on the Turners and Growers web site www.turnersandgrowers.com.

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

2.0 ACCEPTANCE OF TERMS AND CONDITIONS

2.1 Unless otherwise agreed in writing and at Floramax's discretion, Floramax will not purchase any Product from a Supplier nor sell any Product on a Supplier's behalf unless that Supplier has completed and executed an approved Supplier Account Application Form and all other related documents and become an authorised account holder.

2.2 The Supplier acknowledges and agrees that:

- a) any supply of Product by the Supplier to Floramax; and/or
- b) any sale of Product by Floramax on consignment, on the Supplier's behalf; and/or
- c) the completion and execution of any Supplier Account Application Form by the Supplier,

will be deemed to be an acceptance of these Terms and Conditions by the Supplier from the time when such supply, sale or execution took place.

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

3.0 CONSIGNMENT/TRADING

3.1 Unless Floramax clearly indicates that it is purchasing Product on its own behalf as a trade sale, then on each occasion that Floramax deals with a Supplier, Floramax does so as agent and intermediary to effect the purchase on consignment of a Supplier's Product for a Buyer and Floramax will not be liable to the Supplier as principal for the purchase price of the Product, nor for any failure by the Buyer to perform its obligations.

3.2 Notwithstanding clause 3.1, the Supplier authorises Floramax to purchase any of the Supplier's Products sold on consignment through Floramax's markets, as principal, without notice to the Supplier. In this event, the Supplier will remain liable to Floramax for the commission and other charges payable in respect of such purchase as if the Buyer of the Supplier's Product were a third party. Floramax will not be liable to account to the Supplier for any profits or losses Floramax may make upon any resale of such Product purchased by Floramax as principal.

4.0 PRICE

4.1 Except in the instance of a trade sale, the Supplier may not set any reserve price or other term(s) as a condition of Floramax's sale of the Product.

4.2 Where Floramax sells Product on consignment, it acts only as an agent for the Supplier and will not be liable to the Supplier for the purchase price as principal. In the event Floramax advises the Supplier of the price that Floramax expect to be achieved for Product, such price is indicative only. It is not intended that that Supplier will rely upon the same and Floramax will not be liable if the Product fails to sell at that indicated price or at all.

5.0 DELIVERY, TITLE AND RISK

5.1 The Supplier will, at its cost and risk, arrange for the delivery of the Product to Floramax's premises or to such other place as Floramax may direct.

5.2 Where Floramax is acting as principal and purchases the Product from a Supplier as a trade sale, title in the Product will pass to Floramax at the time Floramax agrees to purchase the Product. The risk in that Product will pass to Floramax at the time Floramax takes delivery of the Product, provided always that the Product complies in all respects with the terms under which it is sold, including any TAG warranty. If the Product does not comply with the terms under which it is sold, including any TAG warranty, then the risk in the Product will remain with the Supplier at all times.

5.3 Where Floramax is acting as agent for the Supplier effecting a sale on consignment to a Buyer, title in the Product will remain with the Supplier until Floramax has been paid in full for such Product. The risk in the Product will pass upon delivery, which 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 in writing to deliver the Product, when the Product is delivered to the agreed delivery point (unless otherwise agreed in writing),

whichever occurs first.

5.4 Floramax will not be liable for any non-delivery of Product or late collection by a Carrier Agent from a Supplier.

5.5 The Supplier will procure that the Product is safely and properly packaged at all times, labelled and fully described in writing in all documents relating to transportation of the Product and at all times complies with any applicable TAG warranty for that Product and any other terms on which the Product is sold, from time to time.

6.0 ADVICE NOTE

6.1 The Supplier will procure that all Product supplied to Floramax will be labelled in accordance with the relevant TAG Specifications and will be accompanied by a Floramax Supplier advice note and container card in a form acceptable to Floramax, which will accurately record the minimum following details:

- a) the name and physical address of the Supplier;
- b) Floramax Supplier code;
- c) the date of supply;
- d) Product type, variety, and either count size or weight;
- e) the grade standard of the Product being TAG 1, 2, or 3 as defined for the particular Product type in the relevant TAG Specifications, if such Product is required by Floramax current specifications to be graded;

- f) the quantity of each type of Product;
- g) the quantity of each type of container;
- h) the Supplier's reference number;
- i) any special delivery location; and
- j) whether the Product is to be sold on consignment or has been sold as a trade sale.

6.2 Floramax reserves the right to reject any Product that is not accompanied with the information set out in clause 6.1 above.

7.0 WARRANTIES

7.1 The Supplier warrants to Floramax and for the benefit of the Buyer that, at the time of purchase of any Product and for a reasonable period thereafter given the type of Product:

- a) all Product will meet the minimum quality standards set out in the TAG Specifications in respect of the grade that has been allocated to that Product by the Supplier on the Supplier's advice note ("the TAG warranty");
- b) all Product supplied to Floramax is graded in accordance with the relevant grading system for that particular Product type in the TAG Specifications;
- c) each container of Product is clearly marked with a Floramax container notice, setting out all of the information required on the said card;
- d) all Product is in the minimum bundle or container lots relevant to that Product and is packaged in accordance with Floramax's TAG packing terms (as published on www.turnersandgrowers.com and as amended from time to time) and any industry-wide safety handling programme requirements notified to the Supplier from time to time; and
- e) all Product is received at Floramax's auction sites within the receiving hours posted at such sites.

7.2 Floramax reserves the right not to accept for sale on consignment or purchase by trade sale any Product that it determines (in its sole discretion) does not meet any of the requirements set out in clause 7.1 above. Floramax's decision in this matter will be conclusive and notified to the Supplier accordingly.

7.3 Where any Product does not meet the minimum requirements set out in clause 7.1, Floramax may, at its sole discretion, re-grade a Product's TAG Specification grading (as defined for that particular Product type in the relevant TAG Specifications) and sell that Product under the new grade without prejudice to any rights or remedies Floramax may have in respect of the Product. Floramax will not be liable to the Supplier for any loss or damage to the Supplier arising from such regrading.

7.4 In addition to Floramax's rights under clause 7.3, Floramax, at its option, may:

- a) return the Product to the Supplier at the Supplier's risk and expense; or

- b) store the Product ready for collection by the Supplier within 24 hours of any notice of rejection by Floramax to the Supplier at the Supplier's risk and expense; or
- c) dispose of the Product, without compensation to the Supplier,

where such Product does not meet the minimum requirements set out in clause 7.1, without prejudice to any other rights or remedies Floramax may have. Floramax's costs incurred in performing any such acts will be deducted from any amounts owed to the Supplier by Floramax in respect of any such Product.

7.5 If Floramax is required to credit a Buyer with any sums as a result of the failure of any of the Supplier's Product to meet the minimum requirements set out in clause 5.1 above, then the Supplier irrevocably authorises Floramax to deduct an amount equal to the sums credited to the Buyer from any amounts that Floramax may owe the Supplier from any sale on consignment of that Product, without prejudice to any other rights or remedies Floramax may have.

8.0 BREACH OF WARRANTY

8.1 In the event that a Buyer claims that a Supplier is in breach of the TAG warranty in respect of any particular Product, then a quality assessor approved by Floramax will decide whether the Product meets the TAG Warranty. Such assessor will be selected from a list of approved assessors, available on request from Floramax. If that assessor concludes that the Product in question does not meet the TAG warranty, then Floramax will credit the Buyer's account with a sum up to the invoiced amount for the Product and the Supplier will indemnify Floramax in accordance with clause 8.3.

8.2 Floramax will not be obliged to sell any Product on consignment for, or purchase by trade sale any Product from, any Supplier who has breached its TAG warranty in respect of any Product on more than one (1) occasion and Floramax is entitled to refuse to sell on consignment or purchase by trade sale any Product at any time without giving any reason.

8.3 The Supplier will indemnify Floramax and keep Floramax harmless against all claims made against Floramax and loss, damage, cost (including legal costs calculated on a solicitor and client basis) or expense suffered or incurred by Floramax resulting from any claim or potential claim in connection with any breach of warranty, including, but not limited to, those set out in clause 7.1 of these Terms and Conditions.

8.4 The Supplier acknowledges that this clause 8 is for the benefit of the Buyer who, notwithstanding that it is not a party to these Terms and Conditions, may enforce this clause 8 as if it were a party to these Terms and Conditions by virtue of section 4 of the Contracts (Privity) Act 1982.

9.0 RETURNABLE CONTAINER EQUIPMENT

9.1 Floramax will be entitled to reject any Product that is not supplied in Container Equipment without liability to the Supplier and without prejudice to any other rights or remedies available to Floramax in respect of such Product.

9.2 The Supplier acknowledges and agrees that the Supplier has no title in the Container Equipment and that absolute title and ownership in the Container Equipment will at all

times remain with the container equipment supplier, whether that Supplier is Floramax or an appointed third party.

10.0 USE OF FORK HOISTS OR OTHER EQUIPMENT

- 10.1** Where a Supplier or Supplier's agent has express written authority from a Floramax representative to use a fork hoist mobile container moving device or other equipment owned by or in the care of Floramax ("Equipment"), such authority will be conditional on the Supplier providing that only qualified and certified operators operate such Equipment at all times.
- 10.2** The Supplier will indemnify Floramax against all claims against Floramax and all loss, damage, expense, cost or penalties suffered by Floramax as a result of the Supplier'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 Supplier establishes that the relevant loss was caused by Floramax's failure to properly maintain the Equipment in question.
- 10.3** The Supplier will indemnify Floramax for any loss, claim, or cost or damage to, or loss of Product as a result of Suppliers or Suppliers' agents' moving Product with the Equipment or of Floramax's staff moving product with Floramax's Equipment on the Supplier'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 Supplier, the Supplier's employee or the Supplier's agent.
- 10.4** If the Supplier or Supplier's employee or agent causes damage to privately owned vehicles at any Floramax site, and/or to Floramax property, plant, buildings or injury to staff while using the Equipment, then the Supplier will indemnify Floramax against all resultant claims against Floramax and any loss (including consequential loss), damage, cost, expense or penalties suffered by Floramax, together with all costs incurred by Floramax (including legal costs calculated on a solicitor and client basis) in dealing with any claim made or action taken by Floramax with respect to such loss or damage.

11.0 LIMITATION OF LIABILITY AND INDEMNITY

- 11.1** Floramax's liability to the Supplier is limited to whichever is the least of:
- a) the commission payable in relation to the particular Product to which the Buyer's claim relates, where Floramax is acting as a Suppliers' agent in relation to a sale on consignment; or
 - b) to the invoice price for the particular Product to which the Suppliers' claim relates, where Floramax sells Product as principal on a trade sale; or
 - c) in either case, to direct loss or damage.
- 11.2** 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 made in writing are, to the fullest extent permitted by law, expressly excluded from these Terms and Conditions.
- 11.3** The Supplier will fully and completely indemnify Floramax and keep Floramax harmless against any claims, proceedings, costs, expenses, losses, damages and liability (including legal fees on a solicitor and client basis) arising out of, connected

with or resulting from a breach by the Supplier of its obligations under these Terms and Conditions.

12.0 FORCE MAJEURE

12.1 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.

12.2 Floramax may terminate the performance of its obligations in respect of the particular dispatch or order of Product to which the Force Majeure relates, immediately by giving notice to the Buyer if the delay arising directly out of Force Majeure precluding that other entity from complying with its obligations under the Contract continues for more than five (5) consecutive Business Days.

12.3 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.

13.0 ALTERNATIVE DISPUTE RESOLUTION

13.1 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).

13.2 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.

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

14.0 PRIVACY ACT

14.1 Floramax will hold any personal information that it receives from the Supplier for the purposes of its own marketing and Product development, account administration and credit purposes. The Supplier agrees that Floramax may ask for and disclose personal information about the Supplier to any person named by the Supplier as a credit reference in connection with the Suppliers' 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 Supplier.

15.0 INFORMATION

15.1 Information or further details related to auction rules, TAG related details and emergency procedures are available on request from the main Floramax Auckland reception, or from Customer Services.

16.0 GENERAL CONDITIONS

16.1 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 Supplier 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).

16.2 Prevalence: These Terms and Conditions will prevail over any terms and conditions contained in any order or offer made by the Supplier or any document used by the Supplier and purporting to have contractual effect.

16.3 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.

16.4 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.

16.5 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 Supplier agree to submit to the exclusive jurisdiction of the courts of New Zealand.

TERMS AND CONDITIONS APPLYING TO CONSIGNMENT SALES

17.0 COMMISSION AND PAYMENT

17.1 Floramax will pay the Supplier any undisputed Supplier Return (as defined in clause 17.2 below) within five (5) Business Days of the end of each of Floramax's fourteen (14) day accounting cycles in respect of the Product sold on consignment by Floramax.

17.2 The Supplier Return will be an amount equal to:

- a) the sales revenue (excluding GST) received and retained by Floramax from sales of the Supplier's Product on consignment; less
- b) Floramax's commission for the Product, which will be calculated in accordance with Floramax's then current rates as notified to the Supplier or available from Floramax from time to time; less
- c) any associated costs, including, without limitation any transport, freight, hire equipment charges, insurance or other costs, site, handling and freight forwarding fees, taxes and late payment fees; less
- d) any industry levies paid, payable or deductible by Floramax in respect of the Product and/or the Supplier.

17.3 Where Floramax extends credit to a Supplier, that credit may be withdrawn without prior notice in respect of any overdue account and will only be reinstated by Floramax in its sole discretion, if and when all outstanding amounts are paid by the Supplier.

17.4 If Floramax is owed any money by the Supplier, has incurred any cost, expense or has any claim against the Supplier, or any contingent liability arising out of a breach by the Supplier 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 Supplier authorises Floramax to set off such Liability from any sum owed to the Supplier by Floramax or any trading division or affiliated company of Turner's & Growers Fresh Limited and its successors in title, from time to time.

TERMS AND CONDITIONS APPLYING TO TRADE SALES

18.0 PAYMENT

18.1 Floramax will pay the Supplier the agreed price for Product within twenty-one (21) days of the date of receipt by Floramax of a valid tax invoice with respect of that Product.

18.2 The Supplier authorises Floramax to deduct from the agreed price all freight/transport charges (unless otherwise agreed), taxes, costs, compensation, late payment fees, deposit and hire charges payable in respect of Container Equipment where applicable and any other charges owed by the Supplier to Floramax, together with any other moneys that may be owing to Floramax by the Supplier.

TERMS AND CONDITIONS APPLYING TO PURCHASES FROM KEY ALIGNED WHOLESALERS OR SALES TO KEY ALIGNED WHOLESALERS BY SUPPLIERS

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 expenses, including, but not limited to, freight, packaging, container charges, and any other applicable fees from time to time.

RELATIONSHIP BETWEEN SUPPLIER AND KEY ALIGNED WHOLESALER

- 19.4** Floramax will not process information through the Floramax Account Administration System provided to it in respect of an arrangement between a Key Aligned Wholesaler and a Supplier unless the Key Aligned Wholesaler has completed and executed a Key Aligned Wholesaler Account Application Form and all other related documents and become an authorised Key Aligned Wholesaler account holder.
- 19.5** Where Floramax processes information through the Floramax Account Administration System in respect of an arrangement between a Key Aligned Wholesaler and a Supplier, the Key Aligned Wholesaler is responsible for providing the relevant paperwork to Floramax. Floramax is not liable to a Supplier for any failure by a Key Aligned Wholesaler to provide Floramax with the necessary paperwork.
- 19.6** Floramax will be under no liability to a Supplier or a Key Aligned Wholesaler 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 Supplier and a Key Aligned Wholesaler.
- 19.7** Floramax is not in any way liable to any Supplier for any actions which are in any way attributable to a Key Aligned Wholesaler.

QUALITY

- 19.8** 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

19.9 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.