

General Terms and Conditions Commercial Services

Article 1 Applicability

1. These Commercial Services General Terms and Conditions (hereinafter referred to as: "General Terms and Conditions") apply to the services and service provision offered and/or provided by or from the Commercial Services department of Coöperatie Royal FloraHolland U.A. (hereinafter referred to as: "Royal FloraHolland") as agreed with the supplier, customer or third party registered with Royal FloraHolland as user of the service provision (hereinafter referred to as: the "User"). Furthermore, the provisions of the Royal FloraHolland Auction Regulations apply insofar as these General Terms and Conditions and/or in the quotation or agreement with regard to the service concerned do not explicitly deviate from this.
2. Where these General Terms and Conditions refer to the User, members of a Product Committee of Royal FloraHolland (FPC) or a joint venture shall also be understood to mean individual members or participants of the FPC or joint venture.
3. Applicability of the User's own general terms and conditions is explicitly excluded.
4. Royal FloraHolland reserves the right to amend these General Terms and Conditions. Changes are announced to the User by means of a direct electronic message and take effect after they have been announced.
5. Insofar as is not provided otherwise elsewhere in these General Terms and Conditions, deviations are only possible if set down in writing.
6. If any provision of these General Terms and Conditions or the agreement proves to be non-binding for any reason whatsoever, this will not affect the validity of the other provisions.

Article 2 Performance of services

1. Royal FloraHolland will perform its services fully, correctly, on time and to the best of its ability and Royal FloraHolland is free to offer and provide this service or service provision to other users, including other suppliers and/or customers.
2. The User is obliged to do all that which is reasonably required or desirable in order to enable timely and correct delivery by Royal FloraHolland, in particular by providing complete, reliable and clear information, data and materials, or by having them provided.
3. The agreement to perform the services provided by Royal FloraHolland to the User is a contract for services pursuant to Book 7, Section 400 of the Dutch Civil Code. Any and all claims or intentions to create an employment relationship/working relationship (pursuant to Book 7, Section 610 ff. of the Dutch Civil Code) between the User and Royal FloraHolland, and/or third parties hired by Royal FloraHolland, are explicitly excluded both during the term of the agreement as well as following termination thereof.
4. Unless the User has the explicit written consent of Royal FloraHolland, the User is prohibited from:
 - offering an employment relationship to an employee of Royal FloraHolland and/or
 - inciting an employee of Royal FloraHolland to terminate his/her employment with Royal FloraHolland; and/or
 - hiring an employee of Royal Flora Holland in any way whatsoever outside his/her employment relationship with Royal FloraHolland to perform work or services for the User, whether or not for payment.

Article 3 **Term and Termination**

1. The agreement for the use of the service provision or service in question comes into effect on the date that the quotation or agreement is signed by the User or on the date on which Royal FloraHolland commences the performance of the work and/or the service. The Agreement including the service and everything that the service entails, including work, consultancy hours, etc., ends by operation of law after the User has paid the Royal FloraHolland in full for the service(s) provided or if the User has paid the Royal FloraHolland in full prior to the execution of the service(s), shall end by operation of law after the User has paid Royal FloraHolland the full amount owed in respect of the service (provision), or, if the User has paid the full amount prior to the execution of the service, after completion of the service by Royal FloraHolland to the User, or if the User has paid Royal FloraHolland the full amount prior to the execution of the service after the service has been completed by Royal FloraHolland to the User, or if a term has been agreed for the duration of the agreed term, without any form of notice of termination being required.
2. Royal FloraHolland is entitled to terminate the services or the agreement concluded for that purpose (in whole or in part) immediately without requiring judicial intervention, without further notice of default and without being obligated to pay any compensation for damages, without prejudice to any further rights accruing to FloraHolland, in the event:
 - a) The User fails to comply, or fails to comply on time or does not properly comply with one or more of its contractual obligations and is in default, and/or it can be reasonably expected that the User will not (or will not be able to) comply properly and/or on time;
 - b) an insolvency, suspension of payments or debt management plan is applied for by the User or is declared applicable;
 - c) the User's business is shut down or liquidated;
 - d) the User acts or fails to act towards Royal FloraHolland in a way that is in violation of the law, any government regulations and/or any provision of these General Terms and Conditions;
 - e) circumstances arise such that continuation of the services and/or the agreement can no longer reasonably be expected of Royal FloraHolland.
3. If the services are terminated as described in the previous sections of this article, Royal FloraHolland retains the right to compensation for costs incurred, obligations entered into and/or compensation for damages it has suffered or will suffer due to the consequences of termination and/or attributable non-performance by the User.
4. Obligations between Royal FloraHolland and the User as set down in these General Terms and Conditions which, according to their nature, are also intended to continue after the termination of the services and/or the agreement, will remain in full force.

Article 4 **Costs & payment**

1. For the use of the service or service provision, the User owes Royal FloraHolland user fees that are stated on a quotation, agreement or tariff table that Royal FloraHolland provides to the User. The user fees are exclusive of VAT and exclusive of any additional costs, including travel costs and/or costs for the use of software and/or programs that are under management or that are the property of third parties.
2. By signing this quotation or agreement or by the commencement of the performance of the service, the User authorises Royal FloraHolland to charge all amounts owing and/or future amounts owed by the User arising from these General Terms and Conditions and/or services to its company's Royal FloraHolland grower number, and takes responsibility for the financial settlement thereof.
3. The User must pay the amounts owed to Royal FloraHolland, or have them paid, as soon as possible, but in any case no later than 14 (fourteen) days after the payment collection date or invoice date.

4. If the User wishes to make use of more than the services agreed in the quotation or agreement, Royal FloraHolland is entitled to charge the User any (additional) costs this would entail.
5. Royal FloraHolland is entitled to change the user fees annually, in addition to the annual indexation as intended in article 4.6. Any change to these use fees will be communicated to the User by Royal FloraHolland in an adequate manner prior to their entry into force. If the user fees are increased, then the User shall be entitled to terminate their subscription, as intended in article 8.1, effective from the said increase.
6. Royal FloraHolland reserves the right to index and increase the prices of the services annually on 1 January, the latter by a percentage that equals the index figure of the Consumer Price Index (CPI) for total expenditure, reference date June, of the previous calendar year, published by Statistics Netherlands (CBS). Royal FloraHolland shall communicate a change in fees to the User in an adequate manner prior to the relevant implementation.
7. Without prejudice to the other provisions of these General Terms and Conditions, Royal FloraHolland is entitled at all times to suspend performance of its work in the context of these service provisions and/or other services provided by Royal FloraHolland if the User does not comply with its obligations vis-à-vis Royal FloraHolland, or does not comply properly or on time.

Article 5 Intellectual property rights & confidentiality

1. The data and/or other information compiled and processed by Royal FloraHolland by virtue of the services provided to the User remain the property of Royal FloraHolland, unless otherwise agreed between Royal FloraHolland and the User in writing. By using this service or service provision, the User acknowledges Royal FloraHolland's intellectual property rights to the service and to the information associated with this service.
2. Royal FloraHolland grants the User a non-exclusive, non-transferable licence for the use of this compiled and processed information and/or data that are provided to the User under the service for the duration of the relevant service or service provision.
3. The User shall treat as confidential all information and/or data as set down in Article 5 sections 1 and 2 of these General Terms and Conditions, and shall use this information solely in accordance with the purpose of this service, and shall give no third parties access to the service nor to the information in whole or in part except with the prior written consent of Royal FloraHolland in this respect and/or unless the relevant information has already been made or has become publicly accessible by Royal FloraHolland itself or in some other way.
4. The User's own (company) information and/or data supplied by the User to Royal FloraHolland for the services remain the property of the User. Royal FloraHolland shall treat the User's information as confidential and use it solely in accordance with the relevant services, and shall not pass the information on to third parties except with the prior explicit written consent of the User, and/or unless the relevant information has been made publicly available by the User itself or has become publicly available in some other way.
5. Without prejudice to the provisions of Article 5 (4) of these General Terms and Conditions, Royal FloraHolland is at all times entitled, and Royal FloraHolland reserves the right at all times, to utilise the User's information, details and/or data in processed and/or anonymised form for its own internal commercial purposes. By signing the quotation or agreement, the User grants Royal FloraHolland permission or a non-exclusive, non-transferable licence free of charge for the use as mentioned above, insofar as necessary.

6. The User is not permitted to use Royal FloraHolland's intellectual property rights, including the (brand) name and/or house style of Royal FloraHolland (other than those referred to in this article) in any way whatsoever, except with the explicit written consent of Royal FloraHolland.
7. The User guarantees Royal FloraHolland that, insofar as the User supplies visual material (photos, films, fragments), logos or ornamental plants and flowers, or other goods, that these will not violate any third-party rights, including intellectual property rights, in any way whatsoever, or otherwise be unlawful vis-à-vis third parties, and the User indemnifies Royal FloraHolland for any third-party liabilities in such a case and for all damages that might arise therefrom.

Article 6 Liability

1. Royal FloraHolland is not liable for any damage arising from and/or relating to the execution of services under these General Terms and Conditions, the quotation or agreement with the User, commencement of services, except for direct damages that are the direct consequence of deliberate intent or wilful recklessness on the part of (an employee of) Royal FloraHolland. In the event that an error attributable to a Royal FloraHolland employee can be deemed to fall under deliberate intent or wilful recklessness, Royal FloraHolland's liability and that of its employees will be limited to the amount invoiced for the service in question.
2. Royal FloraHolland is not liable for any damages resulting from claims from third parties regarding intellectual property rights. The User indemnifies Royal FloraHolland against claims of third parties in connection therewith.
3. Recommendations and instructions given by employees of Royal FloraHolland are without obligation. The User cannot derive any right from them in respect of Royal FloraHolland. Liability for this in respect of the User and/or third parties is excluded. The User indemnifies Royal FloraHolland against claims of third parties in connection therewith.
4. The User must provide for adequate insurance of their liability, as this may derive from the conclusion of this service or activities and/or services to be performed under the authority of the User in this respect. If so requested, the User shall make the relevant policy (policies) available for review.

Article 7 Applicable law & disputes

1. Dutch law is exclusively applicable to (quotation or agreement to perform) the services, these General Terms and Conditions and the relationship between Royal FloraHolland and the User. The applicability of the Vienna Sales Convention (CISG) is explicitly excluded by Royal FloraHolland and the User.
2. Any disputes that arise between Royal FloraHolland and the User relating to or arising from the use of the service and/or these General Terms and Conditions that cannot be resolved in proper consultation or by amicable agreement will be settled by the competent court in Amsterdam.

Article 8 Specific conditions

1. The Foldercheck (*Folder Check*), Afzetadvies Pro (*Sales Advice Pro*), Veredelaars Dashboard (*Breeder Dashboard*) and Strategisch Marktinzicht (*Strategic Market Insight*) services can only be purchased for a minimum term of one (1) year; the said term commences at the moment of acceptance, as intended in article 3.1 of these General Terms and Conditions. The Folder Check, Breeder Dashboard and Sales Advice Pro services shall automatically be renewed by one (1) year and Strategic Market Insight by six (6) months, unless Royal FloraHolland receives a written notice of termination from the User two (2) months prior to the expiry of the term of the service. The User can first terminate after the first year of purchase of the Folder Check, Sales Advice Pro, and Strategic Market Insight service.
2. The services mentioned above in article 8.1 shall be collected from the User by monthly debit in conformity with the conditions as intended in article 4 of these General Terms and Conditions.
3. The Trade Support service is charged per unit as specified in the tariff table. The Trade Support service ends at the moment no supply is offered to Royal FloraHolland for entry on behalf of the User. The User shall follow the instructions of Royal FloraHolland regarding access to the user account and access to additional applications.