

SALE OF BULBS: VENDORS' CONDITIONS

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1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Contract.

1.1 Definitions:

Agent	Spalding Auction Limited a company registered in England and Wales with registered company number [NUMBER] and whose registered address is at Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 3YR;
Bulbs	shall mean plant bulbs;
Buyer	means the person, firm or company who buys any Bulbs;
Commission	a sum equal to twelve 12% of the Sale Price;
Conditions	means the terms and conditions contained in this document;
Force Majeure Event	an event or circumstance beyond a party's reasonable control.
Official Entry Form	the form to be completed by the Vendor, as referred to in clause 6.1 which is to accompany any Bulbs submitted to the Agent for sale;
Plant Passport	the documentation required in order to move plants as stipulated by the Animal & Plant Health Agency (or its successors or assigns) from time to time;
Proceeds of Sale	the amount payable by the Agent to the Vendor as calculated in accordance with clause 11;
Registration	the registration process as referred to in clause 5;
Sale	the day on which the Bulbs are sold by the Agent;
Sale Period	the 'spring season' and the 'autumn seasons' as advised by the Agent from time to time;
Sale Price	the fixed price at which the Bulbs are sold by the Agent;

VAT	means Value Added Tax or any equivalent or replacement tax;
VAT Registration Form	the VAT Registration Form required to be completed by the Vendor as referred to in clause 5.1.2;
Vendor	means the person, firm or company who appoints the Agent pursuant to these Conditions;
Vendor Application Form	the form to be completed by the Vendor as referred to in clause 5.1.1;
Vendor Number	the unique number assigned to each Vendor in accordance with clause 5.2.

1.2 Except where the context otherwise requires: words denoting the singular include the plural and vice versa; words denoting one gender include all genders; and words denoting persons include corporations.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **CONDITIONS OF SALE**

2.1 All Vendors are deemed to submit Bulbs for sale to the Agent on the understanding that they have read and understood these Conditions which have been made available as follows:

2.1.1 on the Agent's website: www.spaldingauction.co.uk

2.1.2 displayed in the Agent's premises; and

2.1.3 issued at Registration.

2.2 On Registration by the Vendor, a contract which shall be subject to these Conditions shall exist between the Vendor and the Agent.

2.3 These Conditions apply to the contract to the exclusion of any other terms that the Vendor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. **APPOINTMENT**

3.1 The Vendor appoints the Agent as its agent, and the Agent accepts the appointment, on the following terms:

3.1.1 the Agent is authorised by the Vendor to negotiate and sign or otherwise conclude contracts for the sale of Bulbs in the name of and on behalf of the Vendor, without prior reference to the Vendor, but only on the Agent's standard terms and conditions of sale;

3.1.2 to hold stocks of the Bulbs owned by the Vendor, on behalf of the Vendor;

3.1.3 to issue invoices on behalf of the Vendor relating to the supply of the Bulbs;

3.1.4 to terminate any contract between the Vendor and the Buyer for the purchase of Bulbs if the Buyer:

3.1.4.1 fails to pay any amount due under the contract on the due date for payment; or

3.1.4.2 commits a material breach of the contract; and

3.1.5 to collect payment from the Buyer for the supply of the Bulbs on behalf of the Vendor.

3.2 For the purpose of this clause 2.3, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Agent would otherwise derive from a substantial portion of the contract.

4. **AGENT'S OBLIGATIONS**

4.1 In all dealings with the Bulbs the Agent shall describe itself as agent of the Vendor.

4.2 To issue invoices on behalf of the Vendor to Buyers (in a form suitable for value added tax or other sales tax purposes) in respect of the sale of Bulbs under these Conditions, and to receive payment for the same.

5. **REGISTRATION**

5.1 Prior to submitting any Bulbs for sale to the Agent, a Vendor must complete the following forms:

5.1.1 Vendor Application Form; and

5.1.2 VAT Registration Form

5.2 On receipt of the forms referred to in clause 5.1, the Agent shall provide the Vendor with a Vendor Number which must be stated on all paperwork which accompanies Bulbs submitted for sale to the Agent.

6. **VENDOR'S OBLIGATIONS**

6.1 The Vendor shall complete an Official Entry Form in respect of each batch of Bulbs submitted to the Agent for sale.

6.2 In respect of Daffodil and Narcissi Bulbs, the Vendor must declare whether they have been sterilised or "ex-forced" on the Official Entry Form.

6.3 Bulbs submitted to the Agent must be clearly labelled with:

6.3.1 the Vendor Number;

6.3.2 Bulb variety;

6.3.3 Bulb count or weight;

6.3.4 a delivery note; and

6.3.5 where applicable, the relevant details relating to a Plant Passport.

6.4 The Agent may, in its absolute discretion, describe any Lot in any way they consider appropriate.

6.5 Should the Agent rely on and use the description of Bulbs provided by the Vendor, the Agent shall not in any way be responsible or liable for any misdescription of the Vendor's goods or any claim by a Buyer which may, as a result of such misdescription, arise.

6.6 Bulbs must be packed and graded in accordance with the Agent's requirements from time to time.

7. **VENDOR'S WARRANTY**

7.1 The Vendor at all times warrants and represents that:

- 7.1.1 all Bulbs submitted for sale are free from all pests and disease which, without prejudice to the forgoing, shall include Xylella Fastidiosa;
- 7.1.2 all Bulbs submitted for sale are free from all liens, charges and encumbrances;
- 7.1.3 it has complied with the provisions of all regulations from time to time in force relating to plant health and disease and pest control;
- 7.1.4 it has complied with all relevant regulation as to quality, size, grading, labelling and Plant Passports from time to time;
- 7.1.5 all Bulbs are accurately described; and
- 7.1.6 all information provided in respect of the Bulbs is accurate in all material respects.

8. **SALE OF BULBS**

- 8.1 The Sale Price of the Bulbs shall be set by the Vendor which the Vendor may change, on notice, to the Agent from time to time.
- 8.2 Bulbs sold by weight will be sold according to their weight at grading, not at the time of Sale.
- 8.3 The Agent shall not become the owner of any Bulbs nor of any other goods delivered from the Vendor to the Agent.
- 8.4 Risk in the Bulbs shall remain with the Vendor until sale to a Buyer, at which point the Bulbs shall be at the risk of the Buyer.

9. **INDEMNITY**

- 9.1 The Vendor shall keep the Agent indemnified against, and covenant to pay the Agent, a sum equal to all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Agent resulting from:
 - 9.1.1 the Vendor's failure to comply with the terms of clause 6; and/or.
 - 9.1.2 the Vendor's breach of the warranties contained in clause 6.6.

10. **UNSOLD BULBS**

10.1 Subject to clause 10.2 if any Bulbs are unsold at the end of the Sale Period are to be removed, by the Vendor, from the Agent's premises within twenty-four (24) hours of notification of non-sale by the Agent. If the Vendor is unable to remove the Bulbs, they shall be liable to reimburse all resulting reasonably incurred costs of the Agent which shall include, but not be limited to, the costs of storage, insurance and/or transport.

10.2 The Vendor may, in its absolute discretion, request that any unsold bulbs (as referred to in clause 10.1) are submitted for sale at auction which take place at the Agent's premises from time to time. Submission of Bulbs to an auction shall be subject to the auction terms and conditions in force from time to time and which shall be provided by the Agent to the Vendor on request.

11. **COMMISSION AND PAYMENT OF PROCEEDS OF SALE**

11.1 On sale of the Bulbs, and in accordance with this clause, the Agent shall pay to the Vendor the Proceeds of Sale which shall be the Sale Price from which will be deducted:

11.1.1 the Commission; and

11.1.2 if applicable, VAT.

11.2 Payment of the Proceeds of Sale shall (unless otherwise advised) either be paid:

11.2.1 by BACS on the Monday or Tuesday two weeks following the Sale; or

11.2.2 by cash, which shall be available for collection from the Agent's premises on the Friday following the sale and between the times of 1.00pm and 4.00pm.

11.3 The Agent shall, in addition to any other right or remedy available to it, have a lien over the Sale Price and any property of the Vendor held by the Agent, for the Commission and all other fees, costs and expenses charges under or in connection with this contract.

12. **TERMINATION**

12.1 Without limiting its other rights or remedies, the Agent may terminate the contract with immediate effect by giving notice to the Vendor if the Vendor:

- 12.1.1 fails to pay any amount due under the contract on the due date for payment; or
 - 12.1.2 commits a material breach of the contract.
- 12.2 For the purpose of this clause 12, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Agent would otherwise derive from a substantial portion of the contract.
- 12.3 On termination of the contract for any reason the Vendor shall immediately pay to the Agent all of the Agent's outstanding unpaid invoices and interest.
- 12.4 Termination of the contract shall not affect any of the Agent's rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the contract that existed at or before the date of termination.
- 12.5 Any provision of the contract that expressly or by implication is intended to come in to or continue in force on or after termination shall remain in full force and effect.

13. **LIMITATION OF LIABILITY**

- 13.1 This clause 13 sets out the entire financial liability of the Agent (including any liability for the acts or omissions of its respective employees, agents and subcontractors) for:
- 13.1.1 any breach of these Conditions however arising;
 - 13.1.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
- 13.2 Nothing in these Conditions shall limit or exclude the Agent liability for:
- 13.2.1 death or personal injury resulting from negligence;
 - 13.2.2 fraud or fraudulent misrepresentation; or
 - 13.2.3 any other liability which cannot be excluded or limited by applicable law.
- 13.3 Without prejudice to clause 13.2, the Agent shall not under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 13.3.1 loss of profit;

- 13.3.2 loss of goodwill;
- 13.3.3 loss of business;
- 13.3.4 loss of business opportunity;
- 13.3.5 loss of anticipated saving; or
- 13.3.6 special, indirect or consequential damage,

suffered by any other party that arises under or in connection with these Conditions.

- 13.4 Without prejudice to clause 13.2 or clause 13.3, the Agent total liability for all other losses arising under or in connection with these Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the Sale Price.

14. **NOTICES**

- 14.1 Any notice given to a party under or in connection with this Contract shall be in writing and shall be:

- 14.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- 14.1.2 sent by email to:

- 14.1.2.1 the Agent at MikeKnight@spaldingauction.co.uk

- 14.1.2.2 to the Vendor at the address set out in the Vendor Application Form.

- 14.2 Any notice shall be deemed to have been received:

- 14.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- 14.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service.

- 14.2.3 if sent by email, at 9.00 am on the next working day after transmission.

14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. **FORCE MAJEURE**

15.1 The Agent shall not be in breach of the contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from a Force Majeure Event.

16. **COMPLAINTS HANDLING PROCEDURE**

16.1 All complaints should initially be made in writing and addressed to the General Manager, Spalding Auction, Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 37R.

16.2 If the Agent is unable to satisfactorily resolve the Vendor's complaint, the Vendor may refer it to the Royal Institute of Chartered Surveyors Dispute Resolution Service, contact details for which are available from the Agent on request.

17. **GENERAL**

17.1 A person who is not a party to a contractual relationship under these Conditions shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

17.2 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17.3 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.4 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

17.5 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

17.6 Nothing in these Conditions shall limit or exclude liability for fraud.

- 17.7 No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.8 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 17.9 Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.
- 17.10 This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.11 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.