

TERMS AND CONDITIONS

March 1st 2023

FlowerWatch B.V. – Chamber of Commerce no. 28099165

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PART 1: GENERAL TERMS AND CONDITIONS

1. Definitions

- 1.1. For the purposes of these Terms and Conditions (hereinafter referred to as: “**Terms**”), the following terms shall have the following meaning:
- i. “**Affiliate**” means, in relation to either Party, a company which controls, is controlled by, or is under common control with that Party. For purposes of this definition, “control” means possession, directly or indirectly, of at least fifty percent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation), or the power to direct or cause the direction of the management or policies of an entity whether through ownership of securities, by contract or otherwise.
 - ii. “**Agreement**” means the oral and/or written agreement made between Parties.
 - iii. “**Client**” means the person or company whose order for the products and/or services is accepted by FlowerWatch and/or has entered into any Agreement with FlowerWatch.
 - iv. “**Change of Control**” means the event that a legal entity not being the Client or a Client’s Affiliate, acquires or otherwise becomes able to control Client.
 - v. “**Confidential Information**” means all information, in any form, including but not limited to oral, written or electronic form, which relates to either Party and/or its Affiliates and which is provided, disclosed or made accessible to the other Party and/or its Affiliate(s) prior to and during the term of any Agreement and that is designated as confidential information, or that by the circumstance surrounding the disclosure or by the nature of the information, must be considered to be confidential.
 - vi. “**Database**” means the online platform containing data collected and analysed by FlowerWatch and made available by FlowerWatch via the internet in electronic form, whether or not against payment, as well as any additional products or services linked thereto.
 - vii. “**FlowerWatch**” means FlowerWatch B.V., FlowerWatch Consulting B.V., and any and all of their Affiliates
 - viii. “**Force Majeure**” means any event beyond the reasonable control of either Party or any of its Affiliates and/or subcontractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, Acts of God, Governmental orders or restrictions, war, threat of war, war-like condition, revolution, riot, looting, strike or lockout, flood, plague or other epidemics and/or pandemics.
 - ix. “**Insolvency Event**” means, in relation to the Client, any of the following circumstances: (i) if it is unable to pay its debts as they fall due or is declared bankrupt, (ii) if it ceases or threatens to cease carrying on all or substantially all of its business, otherwise than for the purposes of a solvent reconstruction or amalgamation, (iii) if any liquidator, receiver, administrator, custodian, trustee or administrative receiver is appointed over the whole or

any material part of its undertaking, property or assets, (iv) if an order is made or resolution is passed for its winding up, otherwise than for the purposes of a solvent reconstruction or amalgamation, (v) if it applies for other measures of protection against its creditors under applicable bankruptcy or insolvency laws or (vi) if any event analogous to any of the foregoing occurs in any jurisdiction in which any of its assets are situated.

- x. **"Intellectual Property Rights"** means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, Trademarks, Results, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, publicity, database rights and similar rights of any type, including any applications, continuations or other registrations with respect to any of the foregoing, under the laws or regulations of any foreign or domestic governmental, regulatory or judicial authority.
- xi. **"License"** means the explicitly written, non-exclusive, non-transferrable, and limited right granted by FlowerWatch to Client, to use the Trademark(s), for the purposes and under the conditions set forth in these Terms and/or any specific Agreement between Parties.
- xii. **"Party"** means FlowerWatch or Client individually and **"Parties"** means FlowerWatch and Client together.
- xiii. **"Results"** means the outcome of any data analysis, measurements, testing and/or inspections services, and/or any other performance by FlowerWatch.
- xiv. **"Trademark(s)"** means FlowerWatch's registered trademark "FlowerWatch" and/or "FLOWERWATCH" and/or any other trademark, service mark, tradename and or any other commercial mark or brand used by FlowerWatch in its normal day to day business operations.

2. General

- 2.1 These Terms set forth the general conditions applicable to each and every offer, tender and/or Agreement between Parties including those Agreements which will be executed by third parties on behalf of either Party, even in the event that such offer, tender and/or Agreement does not include a reference to these Terms. Unless agreed otherwise in writing, these Terms are for the benefit of all FlowerWatch Affiliates. The applicability of Client's terms and conditions and/or any other conditions regarding any relationship between Parties is explicitly rejected and excluded.
- 2.2 In case of conflict between these Terms and any offer, tender and/or Agreement, these Terms will prevail, unless explicitly states in writing otherwise.
- 2.3 Possible deviations from these Terms shall only be valid when they have been explicitly agreed upon in writing. However, FlowerWatch has the right to review these Terms from time to time and to publish such on its website(s). The most recent published version of these Terms shall apply.
- 2.4 If any part of these Terms and/or any Agreement shall be found by a court of competent jurisdiction or other competent authority to be invalid, illegal or otherwise unenforceable, the same shall not affect the remainder of these Terms and/or any Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law, but such part shall be deemed modified to the extent necessary in the court's opinion to render such part enforceable, and the rights and obligations of Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of Parties in these Terms and/or Agreement.
- 2.5 Only the director(s) of FlowerWatch is/are competent to represent and bind FlowerWatch in and outside of court. Agreements, offers, stipulations, and/or promises made by employees of FlowerWatch and/or by third parties engaged by FlowerWatch only bind FlowerWatch after written consent thereof of a competent director of FlowerWatch.

3. Offers and tenders

- 3.1 Unless specifically indicated otherwise in writing, all offers made by FlowerWatch are not binding and valid for a period of fourteen (14) days after the offer has been made.

- 3.2 Notwithstanding the foregoing, an offer accepted by Client can be rejected by FlowerWatch during two (2) days after the date of acceptance by Client. In such event, no Agreement between Parties has come into being.
- 3.3 If and to the extent the acceptance of the offer by Client deviates from FlowerWatch's latest offer, FlowerWatch shall not be bound by such acceptance unless FlowerWatch explicitly indicates in writing otherwise. If deviations are made in regard to the goods and/or service to be provided by FlowerWatch, FlowerWatch is entitled to adjust and/or amend the price(s) stated in the deviated acceptance with reasonableness and fairness.
- 3.4 In case of tacit renewal of any Agreement FlowerWatch reserves the right to adjust and/or amend the price(s) unilaterally.
- 3.5 An offer containing a compiled quotation shall not oblige FlowerWatch to execute part of the offer and/or assignment or perform part of the work against the corresponding part of the given quotation.
- 3.6 Prices estimated in any offer, tender or quotation in the past shall not automatically apply to any similar offer, tender, quotation, assignments and/or performances in the future.
- 3.7 If a sample or model has been shown or given to Client, such has been by way of indication only, unless Parties agree explicitly that the goods and/or product to be delivered shall correspond with it.
- 3.8 In the event of an assignment concerning immovable property, the surface area or other measurements and indications given shall also be assumed to be merely indicative without any obligation to have the goods and/or product to be delivered correspond with it.

4. Execution of the Agreement

- 4.1 FlowerWatch shall execute the Agreement to the best of its ability and according to the standards of good workmanship, as much as and to the furthest extent possible. However, FlowerWatch does not guarantee any specific outcome regarding the performance of work under any Agreement.
- 4.2 If and to the extent required for the proper execution of the Agreement, FlowerWatch shall have the right to have parts of the Agreement executed by third parties.
- 4.3 Client will provide FlowerWatch in a timely manner with all data and/or (other) information necessary or which Client in all reasonableness must understand to be necessary for the execution of the Agreement. If FlowerWatch has not been provided with such data and/or information in a timely manner, FlowerWatch shall have the right to suspend the execution of the Agreement its part and/or charge Client for the additional costs resulting from the delay at the rates generally invoiced by FlowerWatch. Client warrants, represents, and guarantees said data and/or information is correct, complete and reliable, also in the event such data and/or information has been obtained from third parties.
- 4.4 FlowerWatch shall not be liable for any and all damage of whatever nature resulting out of the use and/or based on data and/or (other) information provided by Client, which was incorrect, incomplete and/or unreliable.
- 4.5 If and to the extent Parties have agreed that the Agreement will be executed in phases/stages, FlowerWatch can suspend the execution of its part(s) pertaining to a following phase/stage until Client has approved in writing the results of the phase/stage prior to such.
- 4.6 If and to the extent Parties have agreed upon performance of certain work within a specific term, this term shall never be a qualified as a final term or to be observed on penalty of forfeiture of rights. If the agreed upon term is exceeded, FlowerWatch will not be in default, unless Client has formally notified FlowerWatch thereof in writing.
- 4.7 If FlowerWatch and/or third parties engaged by FlowerWatch in the execution of the Agreement perform work at Client's premises or at a site designated by Client, Client shall provide FlowerWatch and/or third parties engaged by FlowerWatch, including their employees, with all

facilities required to execute the Agreement, free of charge and in all reasonableness and fairness.

- 4.8 Client shall indemnify and hold harmless FlowerWatch and/or third parties engaged by FlowerWatch against any and all possible claims by third parties who may sustain damage related to the execution of the Agreement, except in case of an intentional act or gross misconduct on the part of FlowerWatch and/or third parties engaged by FlowerWatch.

5. Changes to the Agreement

- 5.1 If and to the extent during the execution of the Agreement it becomes apparent that the work to be performed by either Party needs to be changed and/or supplemented in order to ensure its proper execution, Parties shall timely and after mutual consultation amend the Agreement accordingly. These Terms also apply to the amended Agreement and the changed and/or supplemented work.
- 5.2 If and to the extent the Agreement needs to be amended, the term of the Agreement and/or any dates agreed upon regarding the fulfilment of obligations and/or completion of the execution may be subject to change. This shall never constitute FlowerWatch to be in default.
- 5.3 Should the amendment of the Agreement have any financial and/or qualitative consequences, FlowerWatch shall inform Client thereof in advance.
- 5.4 If a fixed fee or fixed price has been agreed upon, FlowerWatch shall indicate the degree to which the amendment to the Agreement will result in an increase of the amounts to be charged. However, FlowerWatch shall not charge Client any increase or additional costs based on the amendment of the Agreement, if and to the extent such increase or additional costs are a direct result of any circumstance attributable to FlowerWatch.

6. Fees and costs

- 6.1 Parties can agree upon a fixed fee to be paid by Client to FlowerWatch. If no fixed fee has been agreed upon, the fee to be paid by Client to FlowerWatch shall be determined on the basis of the number of hours/days actually spent on the work. The fee shall be calculated in accordance with FlowerWatch's usual hourly/daily rates, applicable within the period in which the work is performed, unless a deviating hourly/daily rate has been agreed upon.
- 6.2 Unless FlowerWatch has indicated in writing otherwise, all fees and costs estimated in all offers and tenders and/or agreed upon are in Euros, exclusive of VAT and other government levies and all other possible expenses related to the execution of the Agreement, including but not limited to shipment, forwarding and administration costs. If the execution of the Agreement is subject to a Withholding tax or any other (similar) tax that cannot be set off in the Netherlands, the agreed upon fee is understood to be a net price. In such a case, Client will have to pay any and all amounts of said tax, unless FlowerWatch has indicated in writing otherwise.
- 6.3 FlowerWatch is entitled to increase the agreed upon fee or hourly/daily rate from time to time. FlowerWatch is furthermore allowed to charge any price increase with respect but not limited to the cost of supply, transportation, storage, salaries and wages as well as based on changes in applicable laws and regulations.
- 6.4 FlowerWatch can furthermore increase the agreed upon fee and/or hourly/daily rate when during the performance of the work it becomes apparent that the volume of work initially agreed upon or expected when the Agreement was concluded, was underestimated to such a degree that FlowerWatch cannot be expected in reasonableness and fairness to perform the work agreed upon for the fixed fee and/or hourly/daily rate initially agreed upon. In such an event, FlowerWatch shall notify Client of its intention to increase the fee and/or hourly/daily rate, whereby FlowerWatch shall communicate the volume of said increase and the date on which it shall take effect.

6.5 If and to the extent FlowerWatch demonstrates that it has incurred higher expenses, which were made in all reasonableness and fairness, said expenses are to be reimbursed and compensated by Client as well.

7. Payment

7.1 Payment of any and all invoices must be made within fourteen (14) days from the date of the relevant invoice, in a way and in the currency as stated in the invoice. Client does not have any right of suspension, deduction, or setting off any amount against any (alleged) claim against and/or any (disputed) invoice of FlowerWatch.

7.2 An invoice will be deemed paid only if and to the extent:

- i. FlowerWatch has received the amount in full; or
- ii. in case 'Withholding tax' or any other (similar) tax is applicable and these taxes are deductible in the Netherlands, FlowerWatch has received the full amount after such deduction of taxes and, pertaining to the amounts deducted, FlowerWatch has received documents that are accepted by the Dutch tax authorities ('Withholding Tax Certificate' or similar document).

7.3 If and to the extent Client obtains a 'Withholding Tax Certificate' (or similar document) based on the invoice from FlowerWatch, such 'Withholding Tax Certificate' (or similar documents) is the sole property of FlowerWatch from the moment of delivery thereof to Client. Client is obliged to provide the possession thereof to FlowerWatch as soon as possible.

7.4 If Client fails to fulfil his payment obligation within the term of fourteen (14) days, Client shall be in default by operation of law. In such an event, Client shall owe an interest of 1% (in words: one percent) per month on the overdue and payable amount, calculated as from the day Client is in default until the moment the amount is paid in full.

7.5 In case of an Insolvency Event in relation to Client, FlowerWatch's claims against Client shall become immediately due and payable from the moment such Insolvency Event occurs.

7.6 Payments made by Client will first be attributed to reduce the costs, subsequently to reduce the interest due and payable and finally to reduce the principal sum and the accumulating interest thereon. FlowerWatch shall have the right, without becoming in default, to refuse an offer for payment, if Client designates a different sequence of attribution. FlowerWatch shall be entitled to refuse full payment of the principal sum, without becoming in default, if said payment does not include all interest and the costs.

8. Collection Charges

8.1 If Client fails to fulfil his obligations within the agreed upon term or is in defaults thereof, then all reasonable costs incurred regarding the extrajudicial collection shall be borne by Client. If Client after given notice of default remains in default of payment within the set time period, Client forfeits an immediately payable fine of 15% (in words: fifteen percent) of the amount due and payable at that moment, with a minimum of € 250.00 (in words: two-hundred-and-fifty euros).

8.2 All judicial and legal costs incurred shall equally be borne by Client.

8.3 Client shall owe interest on the collection charges of 1% (in words: one percent) per month, unless the statutory interest rate is higher, in which case the statutory interest rate shall apply. The interest on the collection charges is due and payable and will be calculated as from the moment that the collection charges are made until the moment that Client has paid the amount of collection charges in full.

9. Retention of Title

9.1 If and to the extent the Agreement between Parties requires FlowerWatch to deliver any goods and/or products to Client, including but not limited to designs, sketches, drawings, films, software, (electronic) files, etc., such goods and/or products shall remain FlowerWatch's sole

property until Client has fulfilled all of his obligations under all Agreements concluded with FlowerWatch.

- 9.2 Client shall not be authorised to pledge or encumber in any way the goods and/or products falling under FlowerWatch's retention of title.
- 9.3 If third parties seize any goods and/or products delivered by FlowerWatch subject to retention of title or wish to establish or assert a right thereto, Client shall be held and obligated to inform FlowerWatch thereof as soon as can reasonably be expected.
- 9.4 Client shall undertake to insure the goods and/or products delivered by FlowerWatch subject to retention of title and to keep them insured against damage caused by but not limited to fire, explosion and water as well as against theft and to make this insurance policy available for inspection by FlowerWatch on first request.
- 9.5 Goods and/or products delivered by FlowerWatch subject to retention of title, may only be resold by Client within the framework of normal business activities and must never be used as instrument of payment by Client.
- 9.6 In the event FlowerWatch wishes to exercise its ownership rights mentioned in this Article 9, Client shall give FlowerWatch and/or third parties appointed by FlowerWatch, now and for then, unconditional and irrevocable permission to access all Client's sites and locations where FlowerWatch's property might be found and to repossess these goods and/or products.
- 9.7 The risk of loss of, or damage to the goods and/or products are transferred to Client the moment said goods and/or products are delivered to Client and therefore fall into the power of Client or of third parties to be appointed by Client.

10. Inspection and complaints

- 10.1 Client must notify FlowerWatch in writing of complaints about the work performed by FlowerWatch within fourteen (14) days following performance and/or completion of the work concerned. Complaints regarding goods and/or products delivered must be notified within five (5) days after discovery and no later than one (1) month after the date of delivery. The notice of default must be in writing and must give a detailed description of the (alleged) shortcoming, in order for FlowerWatch to respond adequately. If FlowerWatch has not received a complaint within these terms, both the work performed and the delivery of goods and/or products, as well as the respective invoices are deemed to have been accepted by Client.
- 10.2 If a complaint proves to be well-founded, FlowerWatch shall yet perform the work as agreed upon, unless such has become non-temporarily impossible or demonstrably useless to Client. Client must notify FlowerWatch in writing if and to the extent such is the case.
- 10.3 If it is no longer possible or useful to perform the work, FlowerWatch shall only be liable within the limits of Article 14 of these Terms.

11. Non-performance and shortcomings

- 11.1 In the event of a non-performance, shortcoming or failure of fulfilment of any obligation pursuant to these Terms and/or any Agreement by Client, Client will be automatically in default without further notice or summons.
- 11.2 Client shall fully compensate FlowerWatch for all damages, both direct damages and indirect damages, of any sorts, such as but not limited to damages as a result of delay, consequential damage, and loss of profit, to goods or persons of FlowerWatch and/or its Affiliates as well as their staff or customers, as a result of such non-performance and/or failure of fulfilment of Client's obligations pursuant to these Terms and/or any Agreement and/or any unlawful act by Client and/or its Affiliates, their staff or third parties hired by Client and/or its Affiliate in the performance of any obligation pursuant to these Terms and/or any Agreement.

12. Duration, suspension, and termination

- 12.1 The Agreement between Parties is entered into for an indefinite period of time, unless the nature of the Agreement dictates otherwise or if Parties have explicitly agreed otherwise in writing. Any Agreement may only be terminated to the extent that this is provided for within these Terms and/or the relevant Agreement.
- 12.2 FlowerWatch has the right to immediately suspend the fulfilment of its obligations under this Agreement or to wholly or partly dissolve and/or terminate this Agreement, without notification or judicial intervention, in the event that:
- i. Client does not (fully) fulfil his obligations under this Agreement after being in default therewith, within a reasonable term;
 - ii. after the Agreement has been concluded, FlowerWatch learns of circumstances giving good ground to fear that Client will not fulfil his obligations under this Agreement;
 - iii. Client was requested to furnish security to guarantee the fulfilment of his obligations under this Agreement and such security is not provided or insufficient;
 - iv. an Insolvency Event in relation to the Client occurs;
 - v. circumstances of such a nature arise, such as but not limited to Change of Control, that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the Agreement can no longer be demanded in all reasonableness.
- 12.3 Both Parties are entitled to terminate the Agreement at all times by registered mail, observing a notice period of three (3) month, stating the reasons for termination.
- 12.4 If and to the extent the Agreement is terminated prematurely by Client, FlowerWatch shall be entitled to compensation of non-cancellable costs and/or loss of profit caused by said premature termination, unless the termination is based on facts and circumstances which can be attributed to FlowerWatch. Furthermore, Client shall be held to pay the expenses for the work performed and/or goods and/or products ordered up to the moment of termination. The preliminary results of work performed up to termination shall be made available to Client subject to payment of all costs, fees and/or expenses due to date.
- 12.5 If and to the extent the Agreement is terminated prematurely by FlowerWatch, FlowerWatch shall see to it in conjunction with Client that the work yet to be performed will be transferred to a third party, unless the termination is based on facts and circumstances which can be attributed to Client. The costs and/or expenses directly in relation with the transfer of the work yet to be performed will be borne by FlowerWatch.
- 12.6 If and to the extent the Agreement is terminated for whatever reason, FlowerWatch's claims against Client shall be forthwith due and payable. If FlowerWatch suspends the fulfilment of its obligations under this Agreement, FlowerWatch shall retain its rights under the law and the Agreement.
- 12.7 FlowerWatch shall always retain the right to claim damages.

13. Return of goods and/or products

- 13.1 If and to the extent certain goods and/or products were put into use by FlowerWatch and/or any third party engaged by FlowerWatch in the performance of its work at Client's location and/or any other location designated by Client, Client shall be held to return these goods and/or products in their original state as much as possible, free of defects and in their entirety, within fourteen (14) days from completion of the execution or termination of the Agreement.
- 13.2 If, for any reason whatsoever, Client is in default with the fulfilment of the obligation as stated above, and after receiving notice thereof, Client will be held to compensate FlowerWatch any and all damage and/or costs resulting thereof, including but not limited to replacement costs.

14. Liability

- 14.1 If and to the extent FlowerWatch is liable for any and all (forms of) damages, such liability of FlowerWatch towards Client is limited to direct damages as a direct result of an attributable shortcoming of FlowerWatch.
- 14.2 Direct damage is exclusively understood to mean all damage consisting of:
- i. damage caused directly to material goods and/or products (property damage);
 - ii. reasonable and demonstrable costs to compel FlowerWatch to (again) properly comply with this Agreement and all obligations arising therefrom;
 - iii. reasonable and demonstrable costs to determine the cause and extent of the damage insofar as they relate to the direct damage as referred to in these Terms; and
 - iv. reasonable and demonstrable costs incurred by Client to prevent or limit the direct damage as referred to in these Terms.
- 14.3 FlowerWatch's liability for direct damage is limited to the amount paid out according to FlowerWatch's liability insurance policy for the event in question, plus any deductible to be borne by FlowerWatch under the insurance policy. If, for whatever reason, the liability insurance company does not pay out, FlowerWatch's liability is limited to the total amount invoiced to Client for the work performed to which the liability relates.
- 14.4 In the event work is performed over a period of time in excess of three (3) months, the total amount of FlowerWatch's liability shall, contrary to the stipulations above, furthermore, be limited to the total amount invoiced in the three (3) months prior to the work performed to which the liability relates.
- 14.5 FlowerWatch is never liable for:
- i. any indirect damage of Client or third parties, including but not limited to consequential damage, loss of profit, lost savings, company damage, loss of goodwill, loss of orders, stagnation or delay of the production process, damage to other goods and/or products than the goods and/or products delivered and/or put to use by FlowerWatch, lesion damage and/or damage of third parties, all in the broadest sense;
 - ii. damage or loss of data during transport or forwarding by mail, regardless of whether the transport or forwarding is executed by or in name of Client, FlowerWatch, and/or any third party;
 - iii. damages as a result of the use of incorrect, incomplete, and/or unreliable information, received from Client as stated in Article 4.4 of these Terms.
- 14.6 FlowerWatch is not liable for any and all damage if and to the extent Client has not notified FlowerWatch of complaints in compliance with Article 10 of these Terms. Nor is FlowerWatch liable for any and all damages if and to the extent Client has not given FlowerWatch a reasonable term to correct any complaint by Client.
- 14.7 The limitations of liability for direct damage contained in these Terms shall not apply if the damage is due to an intentional act or gross misconduct on the part of FlowerWatch.

15. Indemnification

- 15.1 Client indemnifies and hold FlowerWatch harmless against any and all claims brought by or on behalf of any third party resulting from undisputed fault of the client. Furthermore, Client indemnifies and hold FlowerWatch harmless against all costs and damages occurred, resulting out of any act or omission attributable to Client and/or any third party engaged by Client.
- 15.2 In case any change in law or regulations prohibits the execution of the Agreement by Client, Client will compensate FlowerWatch accordingly and will indemnify and hold FlowerWatch harmless against any and all costs and/or damages resulting thereof.
- 15.3 Client indemnifies and holds FlowerWatch harmless against claims filed by third parties concerning intellectual property rights on material or data provided by or on behalf of Client to FlowerWatch, which shall be used for and during the execution of the Agreement.

- 15.4 If Client provides FlowerWatch with information carriers, electronic files or software etc., the Client shall guarantee that said information carriers, electronic files or software are free of viruses and defects
- 15.5 FlowerWatch shall notify Client promptly of the existence and the contents of claims in the meaning of this Article, to the extent known to FlowerWatch, and shall allow Client to handle and settle the claim, including making out-of-court settlements. FlowerWatch shall grant Client all reasonable assistance and supply all information that may reasonably be required to defend against such claims.

16. Force Majeure

- 16.1 Neither Party shall be liable for any delays or failures in performance of any obligation under these Terms and/or any Agreement, in whole or in part, (excluding payment of moneys due) to the extent that such delay or non-performance is due to Force Majeure.
- 16.2 The Party claiming the Force Majeure shall promptly notify the other Party in writing of the reasons for the delay or failure (and the likely duration) and shall take all reasonable steps to overcome the delay or failure. If that Party has met the conditions above, its performance of any affected obligation under these Terms and/or any Agreement shall be suspended for the period that the Force Majeure continues, and the Party shall have an extension of time for performance equal to the period of delay or failure, but that Party shall continue to perform all other obligations which are not prevented by the Force Majeure.
- 16.3 FlowerWatch shall also be entitled to invoke Force Majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which FlowerWatch should have fulfilled its obligation.
- 16.4 As regards such delay or failure:
- i. any costs arising from the delay or failure shall be borne by the Party incurring those costs;
 - ii. the other Party may, if the delay or failure continues for more than two (2) continuous months and such delay or failure prevents such Party from substantially performing all material obligations, terminate the relevant Agreement with immediate effect on giving written notice to the Party claiming the Force Majeure and neither Party shall be liable to the other for such termination; and
 - iii. the Party claiming Force Majeure shall take all reasonable steps to bring the circumstances to a close or to find a solution whereby the obligations under these Terms and/or any Agreement may be performed despite the Force Majeure.
- 16.5 Insofar FlowerWatch has already partially fulfilled its obligations resulting from any Agreement at the moment the circumstance of Force Majeure commenced or shall be able to fulfil them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, FlowerWatch shall be entitled to submit a separate statement of expenses of the part already fulfilled or still to be fulfilled respectively. Client shall be held to pay this statement of expenses as if it were a separate agreement.

17. Intellectual Property

- 17.1 Without prejudice to the other stipulations of these Terms and/or any Agreement, FlowerWatch reserves the rights and shall stay owner of all its Intellectual Property Rights. Parties recognize that no Intellectual Property Rights are transferred under these Terms and/or any Agreement, unless explicitly agreed upon otherwise.
- 17.2 All documents, knowledge, information, and data, such as but not limited to reports, advices, agreements, designs, sketches, drawings, software, etc., developed by FlowerWatch and/or provided by FlowerWatch to Client and/or its Affiliates are subject to FlowerWatch's Intellectual Property Rights and are to be used by Client and/or its respective Affiliate exclusively and must

not be altered, reproduced, made public or brought to the notice of third parties by Client and/or its Affiliates without prior written consent from FlowerWatch, unless the nature of the documents provided dictates otherwise.

- 17.3 FlowerWatch is not liable for changes in written, electronic and/or digital documents which are drafted by FlowerWatch, if and to the extent the changes are made by Client and/or its Affiliates or by third parties to whom Client and/or its Affiliates supplied these documents, whether authorized or unauthorized.
- 17.4 FlowerWatch reserves the right to use all documents, knowledge, information, and data gained during the performance of any Agreement, including but not limited to the knowledge, information and data developed and collected during measurements, testing and inspections services as referred to in Part 2 of these Terms, for other purposes in the furtherance of its business.
- 17.5 Client is never entitled to use, purchase or sell any product and/or invention designed by FlowerWatch, or to work or produce according to a working or production method designed by FlowerWatch, whether or not in connection with the execution of any Agreement between Parties, unless Client has obtained prior written consent from FlowerWatch.

18. Confidentiality

- 18.1 Except as otherwise provided hereunder, all Confidential Information communicated by one Party to the other or learned or obtained by one Party to any Agreement and related to the other Party, whether before or after the effective date of said Agreement, shall be kept in confidence and shall be used only for the purpose of these Terms and/or the relevant Agreement. No such Confidential Information, including without limitation the provisions of these Terms and/or any Agreement and including any personal data of FlowerWatch's or FlowerWatch Affiliates' employees, shall be disclosed by the recipient Party, its agents, sub-contractors, or employees, without the prior written consent of the other Party except:
- i. as may be necessary to comply with laws, statutes and regulations, provided that the Party obligated to provide the Confidential Information shall notify the other Party timely upfront to allow such other Party to take all necessary steps to prevent disclosure; or
 - ii. to the extent such Confidential Information is known to the public otherwise than by a breach of the provisions of this Article; or
 - iii. to the extent such Confidential Information has been in the possession of the recipient Party prior to the disclosure thereof by the disclosing Party as demonstrated by the recipient Party by written evidence; or
 - iv. to the extent information which in content is equal to the Confidential Information has been independently developed by the recipient Party without using any Confidential Information of the disclosing Party as demonstrated by the recipient Party by written evidence; or
 - v. to the extent such Confidential Information has been received from a third party without a duty of confidence; or
 - vi. to the professional advisers of the recipient Party in connection with the interpretation or operation of these Terms and/or any Agreement or any dispute arising therefrom, provided that the recipient Party has obtained an undertaking in writing from such professional advisers to keep such information confidential and use the same only for the purposes of these Terms and/or any Agreement.
- 18.2 The provisions of this Article shall survive expiration or termination of any Agreement perpetually, regardless of the reason of such termination or expiration.
- 18.3 With respect to the FlowerWatch Confidential Information in whatever form, or on whatever kind of data medium, Client undertakes as follows:
- i. to take all reasonable steps to ensure safe preservation or storage;

- ii. not to use the FlowerWatch Confidential Information for any purpose other than that agreed upon between the Parties;
 - iii. not to keep possession of such FlowerWatch Confidential Information any longer than is reasonably necessary for performance of the Agreement and to place such FlowerWatch Confidential Information, including any copies which may have been made, at the disposal of FlowerWatch immediately in full performance of the aforesaid obligations, or to destroy such copies (at the option of FlowerWatch);
 - iv. not to have the agreed obligations carried out by persons and entities whom FlowerWatch reasonably believes not to be trustworthy; and
 - v. to cooperate with inspections by or on behalf of FlowerWatch regarding the protection and use of such FlowerWatch Confidential Information.
- 18.4 Further, Client and/or its Affiliates shall ensure that its staff members and the staff members of any third parties (including, without limitation, subcontractors and employees of such subcontractors) working for or engaged by Client and/or its Affiliate are informed of the confidentiality obligations set forth in these Terms and that Client represents and warrants that such persons shall comply with them precisely.

19. Independent contractor and non-employment

- 19.1 For the purposes of these Terms and/or any Agreement performed hereunder, Client acts as an independent contractor and shall have no right, power or authority whatsoever to create any obligation, express or implied, on behalf of FlowerWatch and shall have no authority to represent FlowerWatch as an agent except as may be specifically authorized by FlowerWatch on each and every occasion. The applicability of these Terms and/or any Agreement does not constitute a partnership or joint venture between Parties. During the term of any Agreement, or at any other time, should the term, 'partner', 'partnership' or 'joint venture' be used to describe any Agreement, Parties undertake to make it clear to all third parties that these terms refer only to the spirit of co-operation between Parties hereto and do not expressly or impliedly create a partnership in the legal sense of the word.
- 19.2 Throughout the duration of any Agreement and for a period of one (1) year following the expiration or termination thereof, Client shall not in any way, hire or employ in any other way, be it directly or indirectly, staff and/or employees of FlowerWatch, its Affiliate(s) and/or any third party who FlowerWatch and/or its Affiliate(s) have engaged in the performance of the relevant Agreement, nor shall Client, in any way, have such staff and/or employees execute activities for a competitor of FlowerWatch and/or its Affiliate, or start an enterprise by which FlowerWatch and/or its Affiliate(s) suffer damage.

20. Miscellaneous

- 20.1 All public announcements by Client relating to these Terms and/or any Agreement or its subject matter, including but not limited to promotional marketing material shall be coordinated with and approved by FlowerWatch prior to release. Such an obligation does not refer to any announcement intended solely for internal distribution by Parties, or any disclosure required by legal, accounting or regulatory requirements. Each Party agrees that it shall not without the other Party's prior written consent use the name, trade names and/or trademarks of the other Party.
- 20.2 Any notices required to be given under these Terms and/or any Agreement shall be in writing and shall be posted by registered mail, return receipt requested, to the relevant address as provided by either Party. Notices may be given by email but are only considered valid under these Terms and/or any Agreement, if the content thereof is confirmed by registered mail, return receipt requested, within two (2) weeks after the email has been sent.

20.3 Either Party shall be responsible for keeping the addresses provided up to date. If a Party fails to do so the consequences for any notices that are not received shall be for such failing Party's account.

21. Entire agreement and waiver

21.1 Any Agreement, and any attachments thereto, alongside these Terms constitute the entire agreement between Parties concerning the subject matter thereof and supersede any and all communications, representations and arrangements whether written or oral.

21.2 These Terms and/or any Agreement shall be binding on Parties and their respective successors and assignees. Client may not assign any Agreement, or any of the rights, claims, benefits or obligations under these Terms and/or any Agreement, without the prior written consent of FlowerWatch, which consent shall not be unreasonably withheld or delayed.

21.3 No failure, delay or indulgence on the part of FlowerWatch in exercising any power or right conferred upon FlowerWatch hereunder, shall operate as a waiver of such power or right, and no single or partial exercise of any such power or right shall restrict or preclude FlowerWatch exercising such power or right from any further exercise thereof nor shall it preclude the exercise by FlowerWatch of any other power or right hereunder. Any of the provisions of these Terms and/or any Agreement on the side of FlowerWatch, may be waived only with the written consent of FlowerWatch waiving the relevant term or condition. The waiver of any right herein contained by FlowerWatch shall not be construed as a waiver of the same right at a future date or as a waiver of any other right herein contained.

21.4 If and insofar these Terms do not stipulate otherwise, all claims and any other rights of Client towards FlowerWatch in relation to the performance of any Agreement by FlowerWatch lapse after one (1) year after the moment at which Client was known or reasonably had to be known with the source of such a claim or right.

22. Governing law, jurisdiction and dispute resolution

22.1 These Terms and/or any Agreement shall be governed by and interpreted in accordance with the laws of The Netherlands, without reference to its rules of conflict of laws.

22.2 With respect to any dispute arising out of or relating to these Terms and/or any Agreement, either Party may escalate such dispute in accordance with the following principles:

22.3 The first level of escalation shall be the appointed contract manager of either Party. The meeting between those representatives shall take place within two (2) weeks after the request was submitted.

22.4 For disputes that have not been resolved within thirty (30) days after the dispute has been submitted thereto, the dispute shall be submitted to the relevant members of the boards of management of either Party, who may agree and utilize other alternative dispute resolution procedures such as minitrial or mediation.

22.5 If the dispute remains unresolved two (2) months after it has been submitted to the relevant board members, the escalation procedure shall be deemed to be unsuccessful and, unless Parties agreed otherwise, either Party may submit the dispute to the competent courts in The Hague, The Netherlands, which shall have exclusive jurisdiction.

22.6 Either Party shall at all times be entitled to initiate provisional measures in accordance with the laws of The Netherlands.

22.7 In case of disputes with regard to the interpretation and purpose of these Terms and/or any Agreement, the translated text thereof in Dutch prevails.

PART 2: SPECIFIC TERMS AND CONDITIONS

23. General

- 23.1 In addition to Part 1 of these Terms, the following provisions will apply in respect to any offer, tender and/or Agreement regarding the performance of specific services by FlowerWatch.
- 23.2 In case of conflict between Part 1 and Part 2 of these Terms, the latter will prevail.

24. Consulting and advisory services

- 24.1 If and to the extent the Agreement between Parties requires FlowerWatch to provide consulting and/or advisory services to Client, the provisions of this Article 24 will apply.
- 24.2 FlowerWatch will provide the consulting and/or advisory services as agreed upon and perform the work and deliver the deliverables no later than the agreed upon deadline(s) as set out in the Agreement.
- 24.3 Client reserves the right to request any reports (progress, financial or otherwise additional to those required under the Agreement), which could be considered to be reasonably required to evidence satisfactory performance under the Agreement.
- 24.4 FlowerWatch shall not subcontract the work to be performed to third parties without the prior written consent of Client. However, FlowerWatch may under its own responsibility use the services of others provided such services are of an auxiliary or clerical nature.
- 24.5 FlowerWatch shall carry out its duties in an expert and diligent manner and to the best of its ability. FlowerWatch shall promptly and faithfully comply with all lawful and reasonable requests which may be made by Client.
- 24.6 FlowerWatch shall give written or oral advice or information regarding the execution of the Agreement as and when required by Client.

25. Data analysis

- 25.1 If and when FlowerWatch provides data analysis services, FlowerWatch shall base its analysis on the information received from Client and/or information obtained by FlowerWatch. Client is responsible for the quality of the information provided to FlowerWatch.
- 25.2 FlowerWatch will perform the data analysis as agreed upon in the Agreement and will use the information received from Client in such regard solely for the performance of such analysis. FlowerWatch shall provide Client the agreed report of such analysis. Client shall not make any claims of reliance on such report and the report is provided "as is". The Results of the report shall be kept confidential.
- 25.3 The data received and/or obtained by FlowerWatch shall be stored and added to FlowerWatch's database for future reference and FlowerWatch' services, while the confidentiality of the Results of the analysis shall be maintained. The database shall be property of FlowerWatch.

26. License to use Trademark

- 26.1 FlowerWatch has developed quality standards for all phases within the supply chain in its industry. These quality standards are based on years of knowledge gained and supported by scientific research and have been developed for all types of Clients within the supply chain.
- 26.2 If and to the extent Client conducts its normal business operations in compliance with these quality standards, FlowerWatch may grant Client a written License to use the Trademark(s) in order to state that Client lives up to these quality standards. Client will be granted the right to wear the "FlowerWatch Approved" logo for marketing purposes and social media expressions from the moment the License is granted and for the duration thereof.

- 26.3 Depending on the phase within the supply chain in which Client operates, FlowerWatch and/or a third party appointed by FlowerWatch may conduct measurement, testing and/or inspection services, including but not limited to (a combination of):
- i. Audits
 - ii. Education
 - iii. Vase life tests
 - iv. Use of the software (Quality Database) and reporting (Power BI)
 - v. Advice, such as performance consultation and possibilities for process and logistics optimization
- 26.4 The purpose and conditions under which Client is authorized to use the Trademark(s) pursuant to this Article 26 is set out in the Agreement between Parties. However, the License is personal and non-transferable and is bound by the term stated in the Agreement.
- 26.5 If and to the extent Client acts in violation of this Article 26 and/or the Agreement, Client shall owe FlowerWatch an immediately due and payable penalty of €1,000.00 (in words: one thousand Euro) for each time, or each day or part of a day, such at the discretion of FlowerWatch, that Client acts in violation of this Article 20 and/or the Agreement.
- 26.6 The provisions of Article 26.5 above are without prejudice to FlowerWatch's right to claim other legal remedies and (damage) compensations.

27. Audits

- 27.1 In furtherance of Article 26.3.i above, during the term of the Agreement, FlowerWatch is entitled to (have) investigate(d) compliance with these Terms and/or any Agreement concluded between Parties.
- 27.2 FlowerWatch will perform the audit (or have it performed) at least once per year, after a prior written notification to Client, as well as at least once per year without prior written notification to Client. If and to the extent possible, any such audit will follow Client's reasonable security requirements and will not interfere unreasonably with Client's normal business activities.
- 27.3 Client undertakes to provide FlowerWatch, or the third party commissioned by FlowerWatch, with the requested information for the audit within a reasonable period to be determined by FlowerWatch, in order for FlowerWatch, or the third party, to form an opinion on Client's compliance with these Terms and/or any Agreement.
- 27.4 The findings in respect of the performed audit will be discussed and evaluated by the Parties and, where applicable and to extent reasonable, implemented accordingly as the case may be. However, FlowerWatch reserves the right to immediately revoke any License granted to Client as stated in Article 26 above.
- 27.5 The costs, fees and expenses associated with the audit, including reasonable internal costs incurred by FlowerWatch, are entirely at the expense of FlowerWatch, unless the audit shows that there is a shortcoming attributable to Client in the fulfilment of its obligations under these Terms and/or any Agreement.
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