



# BYLAWS

## January 2017

**Coöperatieve Nederlandse Bloembollencentrale (U.A.)**

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## **Chapter 1      General**

### **1.      Definitions**

The capitalised terms used in these Bylaws have the meaning given to them in the definition list here below.

Intermediation	The formation of agreements between Clients where the CNB acts as an intermediary.
Payment Date	The date set based on these Bylaws on which the Client must have complied with its financial obligations to the CNB.
Flower bulbs	Dry flower bulbs and flower bulbs standing in fields, tubers, tissue culture thereof and other related items.
Nursery products	Woody crops, supplied in their entirety or as top grafted cuttings, unrooted cuttings or bud eyes, material coming from tissue cultures, as well as perennial plants and water plants, all in a living condition.
The CNB	The co-operative Coöperatieve Nederlandse Bloembollencentrale U.A., registered at Lisse or, if certain work is carried out by another entity or legal person affiliated with it, this entity or legal person.
Contract cultivation agreement	An agreement in which the one making the contract provides cultivation material to the contracting party, which is cultivated by the contracting party for a payment fixed in advance and of which the proceeds after digging and lifting are made available to the one making the contract.
Creditor	A Client who pursuant to a Three Party Agreement concluded by the CNB has a claim against the CNB, or if the agreement does not fall under the Rules for apportioning the costs, directly against the relevant Debtor.

Debtor	A Client who pursuant to a Three Party Agreement concluded by the CNB has a debt to the CNB, or if the agreement does not fall under the Rules for apportioning the costs, directly to the relevant Creditor.
Payment forwarding	Forwarding payments, which the CNB has received for a Client pursuant to an agreement which does not fall under the rules for apportioning the costs.
Three Party Agreement	An Agreement in which the CNB concludes an agreement with two or more Clients to act as Intermediary or hold an Auction in which the Client/Creditor does not have a claim against the Client/Debtor but against the CNB and the CNB has its own independent claim against the Client/Debtor.
Goods	Movable property (such as Flower Bulbs, Nursery products and materials), real property and proprietary rights (such as breeders rights).
Green Auction	Public sale of crops standing in the field.
Trading Bylaws	Trading Bylaws for the Flower Bulb Trade.
HBN terms and conditions	Trading Conditions for Nurseries in the Netherlands.
Delivery note	A statement of the goods delivered drawn up by the Client in writing or electronically.
Apportionment basis	The total amount pursuant to a Three Party Agreement that has not been paid to the CNB on a Payment Date.
Apportionment scheme	The provision whereby the risk of non-payment is distributed and where it is established which percentage shall be deducted from the Payments to all Clients, who pursuant to a Three Party Agreement have a claim against the CNB on the same Payment Date.
Order	Expression of will from the Client to the CNB to carry out certain work.

Client	A natural person or legal person who has given notice that it wishes the CNB to act as an Intermediary or to carry out other work.
Lease agreement	An agreement between Clients in which real property with an agricultural destination is given in use to carry out agriculture for payment of a lease payment.
Portal	The secure section of the CNB website where the Client can view and download data relevant to him.
Bylaws	The CNB Bylaws.
The Arbitration Court for Nurseries	The Dutch Arbitration Court for Nurseries in The Hague.
The Arbitration Tribunal for the Flower Bulb Trade	The Dutch Arbitration Tribunal for the Flower Bulb Trade in Hillegom.
Written Confirmation	Written Confirmation of an agreement drawn up by the CNB and to be sent by post, fax or electronically.
Rates	Commission, cost surcharges, hourly rates, advisory rates, brokerage surcharges, store- and transshipment surcharges and other payments which the CNB charges to Clients.
Payments	Payments made by the CNB fifteen days after the Payment Date of the claims of Clients/Creditors who are parties to a Three Party Agreement.
Auction	A sale organised by the CNB, whether or not electronically, in which Goods are delivered in the name of and by the Client.

## **2. Applicability**

- 2.1 These Bylaws contain the conditions that apply to the provision of services by the cooperative Coöperatieve Nederlandse Bloembollen Centrale U.A. at Lisse and the entities or legal persons affiliated with it ('the CNB') to parties in the cultivation and ornamental market.

- 2.2 The CNB only accepts Orders from parties who accept the applicability of these Bylaws. Using the CNB's services implies acceptance of the applicability of these Bylaws.
- 2.3 The Client's general and other terms and conditions shall not apply unless explicitly agreed otherwise in writing.
- 2.4 The provisions of these Bylaws regulating the legal relationship between the CNB and the Client apply to all Orders to the CNB, the work carried out by it and the agreements formed by its Intermediary Services. These Bylaws shall only not apply if agreed explicitly and in writing.
- 2.5 The Trading Bylaws shall apply to all Orders to the CNB, the work carried out by it and agreements formed by its Intermediary Services, in so far as these refer to the trade in or cultivation of Flower Bulbs, and the HBN Terms and Conditions shall apply to the trade in or cultivation of Nursery Products, unless CNB and Clients have declared other terms and conditions applicable, notwithstanding the provisions in article 2.4.
- 2.6 Copies of the CNB Bylaws, the Trading Bylaws and the HBN Terms and Conditions and any other applicable terms and conditions can be consulted on and downloaded from the website [www.cnb.nl/reglementen](http://www.cnb.nl/reglementen).

### **3. Orders to the CNB**

- 3.1 An Order to the CNB is not required to take any specific form and falls under the working of Book 7, Title 7, Section 1 of the Dutch Civil Code.
- 3.2 An Order can include mediating in the formation of an agreement, organising an Auction or carrying out work.
- 3.3 An Order to mediate in any case means that the CNB, with the exclusion of the Client, may conclude agreements with third parties.
- 3.4 An Order to mediate also entails that the CNB, solely to prevent the Apportionment scheme being applied, in the event of failure by a Client to furnish adequate security in a timely manner, may cancel an agreement, suspend it or take further measures in respect of this agreement.
- 3.5 If an Order is given by individuals or legal persons acting together, whether or not in their capacity of director and these cooperating persons after giving the Order convert their activities into a new entity, then the cooperating persons remain jointly and severally liable for the obligations taken over or ratified by this new entity.

- 3.6 Those who have bound themselves jointly toward the CNB are all fully jointly and severally liable for the entirety of the obligations entered into by them toward the CNB and third parties insofar as the latter has any rights pursuant to an agreement concluded due to the CNB's Intermediary services.
- 3.7 Anyone giving an Order to the CNB as a representative of a third party warrants to the CNB his representational authority and as well as the represented person is jointly and severally liable for the obligations to the CNB and the other Client.
- 3.8 An Order accepted by the CNB may be split upon performance, both as to species and as to quantities.
- 3.9 Without stating reasons and without any liability the CNB is entitled to refuse Orders.
- 3.10 An Order shall terminate by:
- written or oral cancellation by the CNB taking the provisions of these Bylaws into account;
  - written cancellation by the Client taking the provisions of these Bylaws into account;
  - the absence of permission from the management board of the CNB as a condition precedent for the formation of agreements;
  - fulfilment of the Order.

#### **4. Performance of the Order**

- 4.1 Offers from the CNB are free of obligation unless otherwise indicated in writing.
- 4.2 The CNB makes its best efforts in the performance of the Order given to it. The ensuing obligations for the CNB have the nature of a best efforts obligation.
- 4.3 On acceptance of an Order to act as an Intermediary or hold an Auction, the CNB does not guarantee that the agreement that the Order for Intermediary Services or Auction purports to shall be formed.
- 4.4 If the CNB carries out an Order for Mediation or Auction an agreement shall only be formed once the management board of the CNB has granted its approval. Such approval is deemed to have been granted if the CNB management board fails to provide the Clients with written notice, within ten days after the date stated on the confirmation drawn up in writing by the CNB, that no agreement has been formed.

## **5. Termination of the Order**

- 5.1 The Client may fully or partially cancel an Order. Upon resort to this possibility the Order with regard to the non-cancelled portion shall remain in effect between the CNB and its Client. All legal acts of the CNB undertaken in the fulfilment of an Order prior to its receipt of the written cancellation shall fully bind the cancelling Client.
- 5.2 Termination by the Client shall always take place in writing stating reasons and clearly indicating the date on which termination shall take effect. A termination date cannot be earlier than the date of receipt of the notice of termination by the CNB.
- 5.3 Termination does not concern the part of an agreement concluded by Mediation of the CNB insofar as this has already been carried out on the day on which this termination takes effect.
- 5.4 On termination by the Client he still owes the Rates that the CNB could have charged if as part of an Order an agreement to be concluded or work to be carried out had been carried out in full. If the Order is terminated pursuant to circumstances that can be attributed to the Client, the terminating party, due to the mere fact of termination, owes the CNB an immediately payable penalty in the amount of 5% of the value in money of the terminated Order, without prejudice to the right of the CNB and/or third parties to claim full damages.
- 5.5 The CNB is entitled to terminate an Order with immediate effect if the Client is declared bankrupt, granted moratorium of payments, whether or not provisional, the Debt Management (Natural Persons) Act is declared applicable to him or attachment is levied under the CNB against the Client in question without this attachment being lifted within six weeks of being levied.

## **6. Confirming an Agreement**

- 6.1 The CNB shall draw up Written Confirmation of each agreement.
- 6.2 A Written Confirmation shall include at least:
- the date on which the Confirmation was drawn up;
  - the names and addresses of the parties to the agreement;
  - notifications of the Bylaws, conditions and any special conditions that apply to the agreement;
  - the nature of the agreement;
  - the performances to be carried out;
  - conditions for delivery and payment;



- any provisions that may possibly vary from the Trading Bylaws or the HBN Terms and Conditions or other terms and conditions declared applicable.
- 6.3 The parties shall be given a copy of the Written Confirmation or it shall be sent digitally. Parties also have the option via the Portal to compose and download periodic overviews of the Written Confirmations as drawn up and sent by virtue of Articles 6.1 and 6.2 of these Bylaws.
- 6.4 Written Confirmations sent by normal post are deemed to have been received by the addressee three days after they are sent according to the records of the CNB unless the addressee can make it plausible that it did not receive the Written Confirmation.
- 6.4 Written Confirmations sent by electronic mail are deemed to have been received by the addressee one day after they are sent according to the records of the CNB unless the addressee can make it plausible that it did not receive the Written Confirmation.
- 6.6 A party who does not receive a Written Confirmation must contact the CNB within ten days of entering into the oral agreement with the CNB and request it to send the Written Confirmation in question.
- 6.7 In the event that a party is of the opinion that the content of the Written Confirmation is not correct, he must give written notice of the error he has found within ten days after the date of the Written Confirmation, clearly stating what, in his opinion, the Written Confirmation should have contained. Upon the agreement of the CNB and the other parties the incorrect Written Confirmation shall be corrected. In the absence of timely request for rectification or upon failure of the other parties to agree to rectification, the content of the original Written Confirmation is deemed to be correct.
- 6.8 If at the sole discretion of the CNB there is a case of an apparent mistake in the Written Confirmation, the CNB is entitled to replace it with a corrected version at any time and send it to parties, which corrected version shall be binding for parties in accordance with the provisions of Article 6.7.

## **7. Client's Obligations**

- 7.1 The Clients shall guarantee to the CNB and to each other the agreed quality, species, quantity, size and weight of the goods offered for sale or which shall be offered for sale by them in the scope of an agreement mediated by the CNB or by way of an Auction organised by the CNB. They shall also inform the CNB and each other in full and correctly whether the goods are protected by breeders rights or any other intellectual property rights.

7.2 A Client who is a seller or contract cultivator is required within eight days of actual delivery to report in writing to the CNB that actual delivery of the Goods has taken place, accurately reporting the delivered quantities, species, weights and sizes.

## **8. Suspension, Set Off and Transfer**

8.1 Any right of the Client to invoke suspension or set off towards the CNB is excluded.

8.2 If the Client does not make the notification referred to in Article 7.2 or not on time, the CNB is entitled to suspend the right to Payment of the relevant Client until fifteen days after the first Payment Date referred to in Article 15.2 of these Bylaws, following the Payment Date that would have originally applied.

8.3 The Client's claims against the CNB are deemed to form one whole of all rights and obligations that it has or enters into for any reason towards the CNB. the CNB is entitled to set off the claims as evidenced by its records with the debts evidenced by its records, even if its claims and debts are due on different Payment Dates.

8.4 Transfer and/or encumbrance of existing and future claims against the CNB cannot take place otherwise than if the CNB consents and by retaining all its setoff and other rights which ensue from these Bylaws or any further agreements made.

## **9. Rates**

9.1 The Rates charged by the CNB shall be published in one or more media and on the website [www.cnb.nl](http://www.cnb.nl). Changes to Rates shall be reported at least fourteen days before they take effect according to the abovementioned publication. The most recently published Rates apply to all Orders given to the CNB unless otherwise agreed in writing.

9.2 If in the performance of an agreement a difference arises between the amount ultimately to be paid by the Client and the amount agreed on in the agreement, the Client owes the Rate as agreed on in the agreement, unless the amount to be paid is higher than the agreed amount. In that case, the Client owes the Rate over the amount to be paid.

9.3 All Rates charged by the CNB are set exclusive of turnover tax.

## **10. Payment**

10.1 Payments can only be made for discharge to the CNB who is the only person entitled to grant discharge.

- 10.2 For a Three Party Agreement, in the event of direct payment made by Clients to each other, the CNB shall not discharge the Client/Debtor. the CNB has and retains in that case its right to hold the Client/Debtor liable.
- 10.3 If payment can be attributed to two or more claims than the CNB is exclusively entitled to determine which claim the payment can be attributed to. If the CNB does not use the aforementioned indication the payments in the first place shall apply to pay penalties, expenses and interest, subsequently to pay the Rate, and finally to the payment of other debts, whereby the oldest debt shall be deemed to be the first to be paid (to which payments are credited).
- 10.4 With regard to Orders made by two or more individuals or legal persons acting together, the CNB is entitled, at its own choice, to complete the orders, to send and pay invoices (setoff included hereunder) to each of the cooperating persons for a part or to one of them for the full amount, in which cases of settlement and payment the CNB shall have complied with and properly discharged all its obligations as to all Clients.
- 10.5 In the absence of payment on the applicable Payment Dates according to Article 15.2 of these Bylaws, concerning the amount owed to the CNB, without a notice of default being required, there is a case of default and the statutory commercial interest shall be owed on the non-paid part of the amount owed according to Section 119a of Book 6 of the Dutch Civil Code. Additionally the Client in default shall owe the CNB an immediately due penalty of 15% over the non-paid part of the owed amount.
- 10.6 If the CNB deems it necessary to use legal aid for the collection of its claim, the actual costs incurred thereof (including those for legal aid) are payable by the Client/other party.
- 10.7 If the CNB deems it necessary in the scope of a correct financial settlement to present any dispute between the Clients to a judicial or arbitral tribunal, the CNB shall charge all actually incurred costs (including those for legal aid) to the Client, who pursuant to a judicial decision that has become final was found to be in the wrong.

## **11. Evidentiary value of records and information provided electronically**

- 11.1 The CNB's records, including invoices, account summaries, contracts (of sale), Delivery notes and other documents generated by it for Clients, showing the rights and obligations of the Clients to the CNB or third parties, apply as full evidence, without prejudice to written evidence to the contrary from the Client, received by the CNB within eight days of sending the confirmation.

- 11.2 The information referred to in Article 11.1 is made available by the CNB via the website on its Portal (unless the Client has requested in writing that information is made available by post) and the following provisions shall apply.
- 11.3 On registration, the Client shall provide the CNB with his personal data and choose a user name and password for access.
- 11.4 The CNB shall confirm the registration by e-mail to the Client at the e-mail address that he has indicated. The CNB is also entitled to refuse or terminate registration without having to give reasons. The Client guarantees the accuracy and completeness of the personal data provided on registration and is required in the event of any change to notify the CNB immediately in writing. The CNB shall include the personal data in its own records which the Client has given consent to by registering.
- 11.5 The Client is and remains liable for damage for all those actions carried out after receiving access to the website via his user name and/or password, including misuse thereof. The Client whose user name and/or password was misused, indemnifies the CNB for claims of third parties who have suffered damage as a result of the misuse.
- 11.6 In supplementation to Article 12.5, the CNB excludes all liability, with the exception of intent or gross negligence, for direct and indirect damage ensuing from the use of the website. More in particular that applies for damage caused by:
- technical interruptions, temporary or otherwise, which prevent the functioning of and access to the website in part or in full, including by but not limited to the non-function as a result of viruses or errors in software or hardware as used at the CNB as well as at other Clients;
  - incorrect entry of the specifications of the offered Goods;
  - stating incorrect, incomplete or out-dated information;
  - incorrect or unlawful use of the website by a prospective party or a third-party.

## **12. Liability and Indemnification**

- 12.1 The CNB is not liable for damage as a result of its Intermediary services and other work or on any grounds at all, except in the case of intentionally or grossly negligent conduct.
- 12.2 In any case, the CNB's liability is limited to the amount covered by insurance taken out to cover this liability.
- 12.3 The CNB is not liable for damage, caused because an order to act as an Intermediary was not carried out or not carried out on time.

- 12.4 At all times the Clients bear the risk of rotting, damage and/or destruction of goods entrusted or to be entrusted to them by the CNB in the scope of an Order.
- 12.5 the CNB does not guarantee the accuracy of the written or electronic data provided by the Client and is not liable for the consequence of electronic inaccuracies, incorrect processing of data, incorrect representation of data on the website, unavailability of the website and damage to data as a result of malfunctions and/or external influences.
- 12.6 A liability claim must be preceded by a complaint filed directly with the management board of the CNB. The complaint in question must be filed immediately, in writing and stating reasons, subject to lapse of liability. The right to claim liability and any damages lapse if a liability claim is not made in writing within a month after the timely written notification of the complaint.
- 12.7 The liability exclusion as referred to here above is also stipulated on behalf of the management board, directors and employees of the CNB.
- 12.8 The Client indemnifies the CNB for any liability on any grounds also for all other claims which the other relevant Clients and third parties, including government bodies and institutions (including explicitly the obligations to pay taxes and levies which are owed by or pursuant to the law), might have against the CNB. In the event that the CNB is addressed in respect of claims for which the Client has an indemnification obligation pursuant to these provisions, the Client, at the CNB's first request, is required to furnish security that is suitable and adequate in the CNB's final opinion.

### **13. Turnover tax**

- 13.1 The Client is obligated to provide to the CNB in a timely manner the information required for the administrative processing and calculation of the turnover tax. the CNB itself owes no turnover tax by virtue of the agreements concluded for its Client and it merely provides the invoices, including turnover tax for the Client.
- 13.2 Clients shall guarantee the accuracy and completeness of the information they provide to the CNB which is necessary for the administrative calculation of the turnover tax to be paid or reclaimed and guarantee that these data shall be made available to the CNB in due time.
- 13.3 If the CNB pays out turnover tax, such payment shall occur exclusively as an advance, on behalf of the Client liable to pay turnover tax.
- 13.4 The Client gives the CNB an irrevocable mandate and authorization to claim back erroneously paid turnover tax from the Tax and Customs Administration.

## **Chapter 2 Apportionment**

### **14. Spreading risk and non-payment**

- 14.1 As a rule, Intermediary services and Auction by the CNB are based on a Three Party Agreement so that the risk that one or more Clients cannot comply with their financial obligations to the CNB on a certain Payment Date is borne by all Clients who are Creditors of the CNB on that same Payment Date. The allocation of this joint risk takes place by way of Apportionment scheme to be applied by the CNB.
- 14.2 If there is no Three Party Agreement as referred to in Article 15 of these Bylaws, then the payment risk is not borne jointly by applying the Rules for apportioning the costs but the Client/Creditor bears the risk if the Client/Debtor involved in the agreement concluded by the CNB does not pay.
- 14.3 If the CNB establishes that it has not received part of what it should have been paid pursuant to a Three Party Agreement on a certain Payment Date this unpaid claim shall not be discharged. the CNB does not share in this risk and is not liable towards third parties for non-payment by Clients/Debtors.
- 14.4 There is a case of non-payment in the meaning of these Bylaws if part of the amount owed to the CNB on a Payment Date pursuant to a Three Party Agreement has not been received or has not been received in a timely manner.

### **15. Three Party Agreement**

- 15.1 The CNB has its own independent right to claim payment pursuant to a Three Party Agreement.
- 15.2 Anything that the CNB has to claim from Clients pursuant to agreements formed, such as purchase prices or amounts pursuant to other types of agreements, Rates, penalties, expenses and interest must be paid no later than the following Payment Dates according to the following schedule:

If actual delivery of Flower Bulbs, Nursery products, materials and other Goods (except insofar as these Goods are excluded from the Rules for apportioning the costs) has taken place:

from June 1 through August 14

for Flower Bulbs on the first following November 1, subject to the proviso that at least 85% of the amount owed must be paid as a due advance payment on September 15 of the current calendar year or if parties have agreed on the first following September 15 and for Nursery products, materials and other Goods (except insofar as the Goods should be excluded from the Rules for apportioning the costs) on the first following September 15.

from August 15 through September 30 on the first following November 1;

from October 1 through December 14 on the first following January 15;

from December 15 through January 31 on the first following March 1;

from February 1 through March 31 on the first following May 1;

from April 1 through May 31 on the first following July 1.

- 15.3 If a Payment Date has been agreed that does not depend on the time of actual delivery and the pertaining Payment Dates as referred to in Article 15.2, there is no right to the Rules for apportioning the costs, except for the exceptions referred to in 15.5 and 15.6.
- 15.4 In the case as referred to in article 15.3 Clients grant the CNB by formation of the agreement the order and a private irrevocable authorization to collect amounts on behalf of the Clients and to Forward them.
- 15.5 The Payment Date for an Auction shall be separately established by the CNB per auction but for a Green Auction in any case on September 15 of the current calendar year.
- 15.6 Claims pursuant to a Contract Cultivation Agreement are only subject to the Rules for apportioning the costs if the agreement sets forth that the amount to be paid by the one making the contract shall be paid in several instalments, of which the last instalment may not exceed the previous instalments together and these previous instalments were prior to the harvest date.
- 15.7 If a Contract Cultivation Agreement complies with the conditions of payment referred to here above in Article 15.6 of several instalments and a maximum size of the last instalment, the Rules on apportioning the costs only apply on the Payment Date on which the last instalment should have been paid and the Rules in question refer to the entire originally agreed contract cultivation payment.

## **16. Payments**

16.1 Fifteen days after a Payment Date referred to in Article 15.2 the Clients who are Creditor pursuant to a Three Party Agreement receive a claim for Payment against the CNB. The joint claim of the aforementioned Clients is equivalent to the total amount that the CNB should receive from the Clients who are also involved in a Three Party Agreement on the same Payment Date.

## **17. Applying the Rules for apportioning the costs**

17.1 If in the CNB's opinion it is certain that in relation to non-payment on a Payment Date that it is or shall be necessary to apportion the costs then the financial settlement of the claim of the relevant Clients shall be carried out in the manner as determined here below.

17.2 The CNB shall notify Clients who are eligible for this as soon as possible of the fact that Apportionment scheme must take place and which percentage shall be apportioned. This notification can also be made if Payment of claims on a Payment Date has already been made. In the latter case, costs shall be apportioned in arrears.

17.3 The total amount owed pursuant to a Three Party Agreement to the CNB and not received by the CNB on a Payment Date as referred to in Article 15.2 of these Bylaws shall be apportioned over all Clients who on that same Payment Date have a claim to Payment against the CNB as meant in Article 16.1 of these Bylaws. The Apportionment scheme shall take place prior to deduction of costs and exclusive of VAT.

17.4 Claims of Clients who have failed in their obligations to the CNB and obligations that do not ensue from a Three Party Agreement shall not be considered in the determination of the Apportionment basis.

17.5 For the calculation of the Apportionment basis, Clients involved in apportioning the costs cannot invoke set-off or suspension of a claim towards the CNB or another Client.

17.6 For any appeal to the Apportionment scheme after suspension of Payment in the meaning of Article 8.2, only the applicable Payment Date after suspension and not the original Payment Date is decisive.

17.7 If Apportionment scheme has taken place the CNB shall have the formation and financial settlement thereof controlled by its registered accountant, who shall record the result of his investigation in a written report.



## **18. Authority to prevent the Apportionment scheme being applied**

18.1 If the Client does not comply with any obligation pursuant to these Bylaws or imposed on him by further agreements, the CNB is entitled to claim everything owed by the Client for whatever reason immediately and in full and the Client in question is immediately in default without notice of default being required.

18.2 If there is a case of default in the meaning of Article 18.1 of these Bylaws or there is a good reason to fear that the Client shall not comply with its obligations to the CNB, the Client in question, in order to prevent the Rules on apportioning the costs being applied, is required at the CNB's first request:

- to allow access to all relevant financial documents such as, but not limited to, financing agreements, annual documents and liquidity forecasts and/or;
- at the CNB's sole discretion to furnish adequate, suitable and any additional security for the proper compliance with his obligations, the costs of which shall be payable by the Client in question.

18.3 If there is a case of default in the meaning of Article 18.1 of these Bylaws or there is a good reason to fear that the Client shall not comply with or shall not be able to comply with his obligations to the CNB, the CNB is also entitled to cancel the Three Party Agreement by way of a written declaration or even to substitute the Client in default or impending default by way of a debt takeover, without payment of any compensation being required to the Clients involved in the agreement that is cancelled or taken over.

18.4 If there is a case of cancellation of an agreement as described in the previous paragraph, the CNB has the sole right to form a new agreement at its own discretion with regard to the Goods involved in this cancelled agreement or part thereof.

18.5 In the event of debt takeover, the CNB takes over the rights and obligations of the Client in default whereas the other Client involved in the same agreement is required to now comply with all obligations that he had to the original Client to the CNB.

## **19. Retention of title and delivery subject to conditions**

19.1 If an agreement was formed pursuant to an Order given to the CNB, the Client who must deliver pursuant to this agreement shall expressly retain the title to the Goods and the delivery of the Goods shall only take place under the condition that the CNB's claim, including any expenses, penalties and interest has been paid in full to the CNB.

- 19.2 Until the abovementioned condition of payment to the CNB has been fulfilled, the risk of any decrease in the value of the goods, plant disease or destruction, as well as the risk of damage in the broadest sense of the word, shall be for the account of the Client to which, after the fulfilment of the condition of payment, transfer of the goods involved shall take place.
- 19.3 As long as the title to the actual delivered Goods has not transferred to the Client he may not dispose of, encumber or grant any rights to a third party on these Goods.
- 19.4 An Order to the CNB also entails an irrevocable mandate and authorization to take all measures and legal measures immediately to claim back Goods that the CNB has not received payment for on the Payment Dates referred to in Article 15.2 of these Bylaws. The Client is required to furnish full cooperation to the CNB to take these measures and at the CNB's first request to invoke the retention of title towards the Client, who has not met or will not meet its payment obligations to the CNB.
- 19.5 If the Client fails in his obligations towards the CNB or there is good reason to fear that he shall fail in his obligations, the other Client involved in this agreement shall be entitled to repossess the Goods actually delivered subject to his retention of title. After repossession of these Goods, the Client who has failed towards the CNB shall be credited by the CNB for the applicable market value of the repossessed Goods less the costs in connection with the repossession. In the event of a non-observed agreement the crediting referred to in the previous sentence shall never exceed the originally stipulated purchase price.
- 19.6 If the CNB pursuant to the provisions of Article 16 of these Bylaws has made payment, the Order to the CNB also entails an irrevocable mandate and authorization to resell the Goods repossessed on the basis of retention of title and to apply the proceeds thereof against the amount that the CNB has already paid out.

### **Chapter 3 Auctioning**

#### **20. General**

- 20.1 The delivery of the Goods by the Client until the Auction takes place at the buyers risk with the exclusion of any guarantee and liability.
- 20.2 The Clients are required to make all information needed for the organisation of the Auction available prior to a date to be set by the CNB.
- 20.3 In the order for an Auction the Client can indicate a minimum price which price shall be deemed as a target price by the CNB. the CNB is entitled to derogate from this price.

- 20.4 The CNB is always entitled to refuse the offered Goods without stating reasons.
- 20.5 The CNB is entitled to exclude parties from an Auction without stating reasons.
- 20.6 The Goods to be auctioned are included insofar as possible in a catalogue with a lot number. the CNB is entitled to combine or split two or more lot numbers.
- 20.7 The Auction takes place by bidding and Dutch auction or one of both.
- 20.8 Bidding by Dutch auction takes place by calling out the word "mine" when the amount is called by the auctioneer.
- 20.9 Each bid binds the bidder in person, is unconditional, irrevocable and without any reserve.
- 20.10 The CNB, without giving reasons, is entitled to refuse a bid or a Dutch auction, not to award it and not to affix lot numbers and to leave items unsold.
- 20.11 If at the auctioneer's sole discretion uncertainty has arisen with regard to the allocation, for example due to errors by the auctioneers, no agreement shall be formed and the lot numbers in question shall be auctioned again.
- 20.12 If several parties make the highest bid simultaneously then the auction will continue amongst them until sold to the highest bidder.
- 20.13 In the event that a buyer can show immediately and to the satisfaction of the auctioneer that he was mistaken as to the bid or Dutch auction, the auctioneer can cancel the agreement formed and bring the lot number to auction once more.
- 20.14 After the highest bid the auctioneer is entitled to deliberate and then to decide on the award.

## **21. Green Auctions**

- 21.1 In addition to paragraph 20, the following provisions apply for Auctions of crops standing in the fields.
- 21.2 Clients are required to afford their unconditional and full cooperation for a Green Auction at the times determined by the CNB. They are also required to allow the CNB's people and the parties to the Auction access to the plots where the crops are.

- 21.3 The sold crops are for account and risk of the purchaser from the time of award. Until digging the Client is likewise required to keep the sold crops as a good cultivator and to ensure that timely digging and lifting takes place according to the nature of the crops.
- 21.4 The title to the sold crops transfers at the time of digging and lifting without prejudice to the provisions of Article 19 of these Bylaws.
- 21.5 The digging and lifting shall be carried out on the days determined by the purchaser under supervision of the CNB.
- 21.6 If the purchaser remains in default with regard to any obligation, without notice of default being required he is immediately in default and the CNB is entitled to have the crops dug and lifted for account and risk of the purchaser and to store them without prejudice to the purchaser's obligation to pay the purchase price.
- 21.7 Any right to complaints is excluded in Green Auctions.

#### **Chapter 4 Disputes**

##### **22. Disputes between Clients**

- 22.1 Disputes with regard to the quality of the Goods are disputes that must be resolved by the Clients involved themselves. the CNB endeavours to reach an amicable solution for a dispute. In connection to this endeavour the Clients are required to furnish cooperation to the CNB in the event of possible complaints or other problems that occur in the performance of an agreement.
- 22.2 For disputes between Clients in relation to a Three Party Agreement concluded by the CNB, Payment by the CNB can be suspended until a judicial or arbitral decision has definitively decided on the dispute or the Clients involved have reached a settlement agreement and the CNB has been notified of the content thereof in writing.

##### **23. Jurisdiction of Arbitration Tribunal for the Flower Bulb Trade**

- 23.1 Disputes with regard to the trade in or cultivation of Flower Bulbs ensuing from agreements formed by the CNB between the CNB and a Client or between Clients mutually shall be resolved by the Dutch Arbitration Tribunal for the Flower Bulb Trade and if necessary subject to the conditions as described in the Trade Bylaws.

## **24. Jurisdiction of Dutch Arbitration Court for Nurseries**

24.1 Disputes with regard to the trade in or cultivation of Nursery products related to agreements formed by the CNB shall, to the exclusion of the civil court, be resolved by the Dutch Arbitration Court for Nurseries. On agreements with regard to the trade in or cultivation of Nursery products the HBN conditions are applicable without prejudice to the provisions of Article 2.4 of these Bylaws. The jurisdiction of the Boskoop Arbitration Court for Nurseries is excluded.

## **25. Jurisdiction of the District Court of The Hague**

25.1 If the abovementioned Arbitration Tribunals do not have jurisdiction, the District Court of The Hague has exclusive jurisdiction to hear the dispute in question.

## **Chapter 5 Other**

26. If Lease Agreements are formed where the CNB has acted as Intermediary or Broker, the Clients are required to fulfil the lease requirements prescribed by law. If the Lease Agreements do not comply with any requirement prescribed by law then the CNB is not liable for the ensuing damage. Claims from the abovementioned Lease Agreements fall outside the Rules for apportioning the costs.

27. If through the brokerage and Intermediary services of the CNB license agreements or agreements regarding goods protected by an intellectual property right (such as breeders rights) are concluded, the Clients are required to pay not only the purchase sums but also the license fees in the manner as described in Article 10.1 of these Bylaws. Likewise claims from these agreements fall outside the Rules for apportioning the costs.

28. If a provision of these Bylaws is null or void in the opinion of the authorised court in the legal relationship between the CNB and a Client or in the legal relationship between the Clients mutually, the other provisions of these Bylaws shall remain fully in force and parties shall consult to agree on replacement provisions, in which the purport and intent of the null or void provision shall be considered insofar as possible.

29. Clients observe the necessary due care towards each other and are not permitted to provide individual transaction and/or personal data to third parties in any way, unless required by law or after prior written consent from the CNB as well as the other Clients involved in the agreement.

## **Chapter 6 Final Provisions**

30. Dutch law shall govern these Bylaws as well as all legal relationships to which these Bylaws apply.
31. These Bylaws enter into force effective the twenty-fifth of January 2017. By the entry into force of these Bylaws all previous Bylaws lapse, notwithstanding their validity for agreements concluded prior to the twenty-fifth of January 2017.
32. These Bylaws, the HBN Terms and Conditions, and any other applicable terms and conditions are accessible and available on the website [www.cnb.nl/reglementen](http://www.cnb.nl/reglementen).

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