



# REGULATIONS 1 JUNE 2019



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# Part I General

## Article 1. DEFINITIONS

The capitalised terms used in these Regulations shall have the meaning assigned to them in the definition list below.

1.1.	Intermediation	Working as an intermediary for wages in the creation of one or more agreements between Clients.
1.2.	Payment Date	The date determined in accordance with these Regulations on which a Customer must have fulfilled its financial obligation(s) to CNB.
1.3.	Flower Bulbs	Dry flower bulbs and flower bulbs standing in the field, tubers, tissue culture thereof and related items.
1.4.	Nursery Products	Ligneous plants, delivered in their entirety or as grafts, unrooted cuttings or oclutions, tissue culture, as well as perennials and water plants, all in a living state.
1.5.	BW	Dutch Civil Code.
1.6.	CNB	The Coöperatieve Nederlandse Bloembollencentrale (U.A.) cooperative, with its registered office in Lisse.
1.7.	Contracting Party	Any natural or legal person or combination thereof that is party to a Three-Party or Two-Party agreement, with the exception of CNB.
1.8.	Contract Cultivation Agreement.	An agreement whereby the client provides the contractor with propagating material and which, for a predetermined fee, (a) is cultivated by the contractor and the products cultivated with the provided propagating material, together with the remaining provided propagating material, shall be made available and transferred to the client after the harvest; or (b) is processed by the contractor and after processing, the processed material shall be made available and transferred to the client.
1.9.	Creditor	A Contracting Party that has a claim on CNB under a Three-Party Agreement or - in the case of a Two-Party Agreement - directly on its relevant Debtor.
1.10.	Debtor	A Contracting Party that has a debt with CNB under a Three-Party Agreement or - in the case of a Two-Party Agreement - directly with its relevant Creditor.
1.11.	Third-Party Clause	A clause created for the benefit of CNB within the meaning of Article 253 paragraph 1, Book 6 of the Dutch Civil Code on the basis of which CNB, as a third party to the exclusion of the Creditor, has a direct claim on the Debtor and whereby CNB has the rights and powers as set out in these Regulations.
1.12.	Payment Forwarding	Forwarding payment of sums of money CNB has received in the name and for the account of a Creditor on the basis of a Two-Party Agreement.
1.13.	Three-Party Agreement	An agreement between two Clients within the meaning of article 6.1, where the rights and powers as described in these Regulations are conferred upon CNB.
1.14.	Goods	Movable property (such as Flower Bulbs, Nursery Products and materials), immovable property and property rights (such as cultivation and plant breeders' rights).
1.15.	Green Auction	Public sale of crops standing in the field, which are sold by auction, Dutch auction or both, or through the brokerage of CNB, in the name of and by the Client.
1.16.	Customer	Client and/or Contracting Party and/or Buyer.
1.17.	Buyer	A party that buys crops standing in the field at a Green Auction organised by CNB.
1.18.	My CNB	The secure section of the CNB website where the Customer can view and download data relating to the Customer.
1.19.	Apportioned Amount	The amount that is deducted by CNB from the claim of the Creditor in the context of the Apportionment Scheme.
1.20.	Apportionment	Scheme The scheme whereby the risk of Default with respect to a specific Payment Date is divided among the collective Creditors who, pursuant to a Three-Party Agreement, receive a claim on CNB after the relevant Payment Date.
1.21.	Original Claim	The claim on CNB of each individual Creditor on the basis of a Three-Party Agreement, from which is not deducted the amount this Creditor as a Debtor owes CNB on the same Payment Date, prior to the application of the Apportionment Scheme.
1.22.	Assignment	An agreement within the meaning of Article 400 paragraph 1, Book 7 of the Dutch Civil Code in the context of which CNB and the Client have agreed that CNB shall perform certain

		activities such as but not limited to (i) Intermediation, (ii) the organisation of a Green Auction or (iii) the Settlement.
1.23.	Client	A party that has instructed CNB to perform work for it on the basis of an Assignment.
1.24.	Lease	An agreement within the meaning of Article 311, Book 7 of the Dutch Civil Code, under which one party, the lessor, undertakes to provide the other party, the lessee, with an immovable property or part thereof for agricultural activities and the lessee undertakes to pay a compensation.
1.25.	Regulations	The CNB Regulations.
1.26.	Written/In Writing	Text that has been presented or sent by fax, post or digitally.
1.27.	Two-Party Agreement	An agreement between two Contracting Parties within the meaning of article 6.2, under which the Creditor has a direct claim on the Debtor and under which the rights and powers as described in these Regulations are conferred upon CNB.
1.28.	Fees	Commissions, overhead charges, hourly rates, consultancy rates, brokerage fees, surcharges, transfer fees and surcharges and other fees charged by CNB to Clients.
1.29.	Payment	Payment by CNB of the claims of Creditors who are party to a Three-Party Agreement.
1.30.	Settlement	The administrative and/or financial settlement by CNB of Three-Party or Two-Party agreements within the scope of an Assignment, including but not limited to (i) the recording of Three-Party and Two-Party agreements concluded, (ii) the collection of amounts owed by Debtors and (iii) Payment Forwarding or Payment of amounts due to Creditors.
1.31.	Default	The situation in which a Customer fails to pay what it owes CNB, or fails to do so in full or on time, on a Payment Date.

## Article 2. APPLICABILITY

- 2.1 These Regulations contain the conditions that apply to all:
- (a) work to be performed by CNB within the scope of an Assignment;
  - (b) agreements that have been concluded through Intermediation of CNB;
  - (c) agreements within the meaning of article 3.2 in which the parties explicitly declare these Regulations applicable and which have been accepted by CNB; unless expressly agreed otherwise in writing.
- 2.2 CNB only accepts Assignments if these Regulations apply to the Assignment. Use of services of CNB constitutes acceptance of the applicability of these Regulations. The applicability of the (general) terms and conditions of the Customer(s) is excluded, unless expressly agreed otherwise in writing.
- 2.3 The Regulations can be consulted on and downloaded from the website [www.cnb.nl/reglementen](http://www.cnb.nl/reglementen).

## Article 3. ASSIGNMENT TO CNB

- 3.1 If an Assignment for Intermediation or Green Auction results in an agreement, this shall be a Three-Party or Two-Party Agreement as referred to in article 6.
- 3.2 An Assignment that is limited to Settlement, relates to a Three-Party or Two-Party Agreement concluded by a Client and communicated to CNB. If the Assignment for Settlement relates to a Three-Party Agreement, CNB must accept the Third-Party Clause in accordance with article 7.2.
- 3.3 An Assignment for Intermediation or Green Auction also implies that CNB may conclude agreements with third parties to the exclusion of the Client.
- 3.4 An Assignment for Intermediation, an Assignment for Green Auction and an Assignment that is limited to Settlement shall also imply that CNB:
- (a) takes care of the Settlement;
  - (b) has the irrevocable private mandate and power of attorney to:
    - (i) immediately take all (legal) measures to reclaim Goods that have not been paid to CNB on the Payment Dates referred to in article 14.2 of these Regulations, including the exercise of the retention of title on behalf of the Client with respect to the Contracting Party that has not fulfilled or will not fulfil its payment obligations. The Client is obliged to cooperate fully with CNB in implementing these measures;
    - (ii) to resell the Goods repossessed on the basis of a retention of title and to set off the proceeds thereof against the amount that CNB has already paid out to the Contracting Parties;
    - (iii) to reclaim turnover tax from the Customs and Tax Administration that has been advanced to the Customer but has not been received;
    - (iv) to accept the amounts owed within the scope of this agreement on behalf of the Contracting Parties who are party to a Two-Party Agreement and to arrange Payment Forwarding in accordance with

article 15.3 .

- (c) has the power of attorney to independently submit disputes between the Contracting Parties relating to a Three-Party or Two Party Agreement to an arbitration tribunal or a court of law.
- 3.5 If an Assignment is issued by natural or legal persons that collaborate and those collaborating persons continue their activities in a new entity after the Assignment has been issued, the original persons who collaborate shall remain jointly and severally liable for the obligations that have been acquired or ratified by the new entity.
- 3.6 Those who have jointly committed themselves to CNB shall each be fully (severally) liable for the obligations they have entered into towards CNB and third parties to the extent that these third parties have any rights under an agreement concluded by CNB (article 3.1) or accepted by CNB (Article 3.2).
- 3.7 The person who, as representative of a Client, issues an Assignment to CNB shall be responsible towards CNB for his power of representation and, in addition to the person represented, shall be jointly and severally liable for the performance of obligations towards CNB and the other Client.
- 3.8 An Assignment ends by:
- (a) Written or oral notice of termination by CNB with due observance of the provisions of these Regulations;
  - (b) Written notice of termination by the Client with due observance of the provisions of these Regulations;
  - (c) completion of the work which was the purpose of the Assignment.
- 3.9 CNB shall be entitled to refuse an Assignment without giving reasons and without any liability.
- 3.10 Quotations of CNB are always non-binding, unless otherwise specified in writing.

#### **Article 4. PERFORMANCE OF THE ASSIGNMENT**

- 4.1 CNB shall make every effort to perform the Assignment it has been given to the best of its knowledge and ability. The obligations of CNB arising from this shall have the nature of best efforts obligations. If the purpose of the Assignment is Intermediation or Green Auction, CNB does not warrant that the intended agreement will be concluded.
- 4.2 The performance of an Assignment accepted by CNB may be split by CNB, both with respect to the types of Goods and the quantities.
- 4.3 CNB shall be authorised to complete Assignments issued by two or more cooperating natural or legal persons and the resulting Three-Party and Two Party Agreements at its own discretion. In addition, CNB shall be authorised to send and pay statements (including settlement) to each of the cooperating persons in respect of a part or to one of them in respect of the whole. In these cases of settlement and payment CNB shall have fulfilled all its obligations and shall have been fully discharged towards all the Contracting Parties separately.
- 4.4 The Customer shall owe CNB Fees for the performance of the Assignment.

#### **Article 5. CANCELLATION OF THE ASSIGNMENT**

- 5.1 The Client or CNB may cancel an Assignment in whole or in part at any time. If this option is exercised, the Assignment shall remain in force between CNB and its Client in respect of the part not cancelled. All (legal) acts of CNB in connection with the performance of an Assignment, before it has received a Written notice of termination, shall fully bind the cancelling Client.
- 5.2 Notice of termination by the Client shall always be given In Writing, stating the date on which such termination takes effect. A termination date may not lie before the date of receipt of the notice of termination by CNB.
- 5.3 Notice of termination does not concern the part of an agreement concluded by Brokerage by CNB, insofar as it has already been performed on the day on which that notice of termination takes effect.
- 5.4 In the event of termination by the Client, the Client shall continue to owe the Fees CNB could have charged if the Assignment had been performed in full.

#### **Article 6. THREE-PARTY AND TWO-PARTY AGREEMENTS**

- 6.1 Three-Party Agreements shall be considered agreements that contain a Third-Party Clause for the benefit of CNB and:
- (a) for which a Payment Date has been agreed which depends on the moment of actual delivery in accordance with article 14.3; or
  - (b) that are the result of a Green Auction; or
  - (c) a Contract Cultivation Agreement; or
  - (d) of which CNB has explicitly confirmed in writing that it concerns a Three-Party Agreement.
- 6.2 Two-Party Agreements are deemed to be agreements:
- (a) for which a Payment Date has been agreed which does not depend on the moment of actual delivery in

- accordance with article 14.3; or
  - (b) which are an Agricultural Lease, Lease, Tenancy Agreement, Collection or Licence Agreement; or
  - (c) that relate to the marketing of cultivation rights; or
  - (d) for which CNB has explicitly confirmed In Writing that it concerns a Two-Party Agreement;
  - (e) which do not fall under any of the definitions in article 6.1 .
- 6.3 A Three-Party or Two-Party agreement that is the result of an Assignment issued to CNB is concluded at the moment that CNB confirms the agreement in accordance with Article 7.
- 6.4 If the Assignment is limited to Settlement, a Three-Party or Two-Party Agreement shall be concluded for the purposes of these Regulations after CNB has confirmed receipt of the agreement concluded by the Client in accordance with Article 7. CNB shall only confirm an agreement referred to in the preceding sentence if these Regulations have been declared applicable to this agreement and the agreement also meets the requirements of these Regulations.
- 6.5 For reasons of its own, the management of CNB may dissolve the Three-Party or Two-Party Agreement within ten (10) days of the date stated on the confirmation as referred to in Article 7 by means of a Written notification addressed to the relevant Contracting Parties.
- 6.6 All additional costs, such as but not limited to storage costs, cooling costs, the costs of acquiring packaging and selection costs, which relate to an individual Three-Party or Two-Party agreement, may be invoiced and netted by CNB together with the relevant Three-Party or Two-Party agreement.

## Article 7. CONFIRMATION OF AGREEMENTS

- 7.1 CNB shall draw up a Written confirmation of each Three-Party or Two-Party Agreement.
- 7.2 In the case of a Three-Party Agreement, the Written confirmation referred to in paragraph 1 shall constitute acceptance by CNB of the Third-Party Clause created for the benefit of CNB.
- 7.3 A Written confirmation shall at least include:
- (a) the date on which the confirmation was prepared;
  - (b) the names and addresses of the parties to the agreement;
  - (c) a statement of the regulations, terms and conditions and any special conditions applicable to the agreement;
  - (d) the nature of the agreement;
  - (e) the services to be provided;
  - (f) conditions for delivery and payment.
- 7.4 The Written confirmation shall be provided to the Contracting Parties. The Contracting Parties also have the option of viewing and downloading Written confirmations and summaries thereof through My CNB.
- 7.5 Written confirmations shall be deemed to have been received by the Contracting Party within five (5) days after:
- (a) the relevant Contracting Parties have reached agreement on the agreement to be concluded after Intermediation by CNB; or
  - (b) CNB has been informed of the Three-Party or Two-Party Agreement concluded without the involvement of CNB in the event that the Assignment to CNB is limited to Settlement.
- 7.6 A Contracting Party that has not received a Written confirmation shall contact CNB and request it to still send the relevant Written confirmation.
- 7.7 If a Contracting Party is of the opinion that the content of the Written confirmation is not correct, it must give notice of the inaccuracy observed within ten (10) days of the date of the Written confirmation, stating the suggested content of the Written confirmation, in its opinion. Following approval by CNB and the other Contracting Party/Parties, the incorrect Written confirmation shall be corrected. In the absence of a timely requested rectification or in the absence of agreement, the content of the original Written confirmation shall be deemed to be correct.
- 7.8 If, in the sole judgment of CNB, the Written confirmation contains an apparent error, CNB shall always be entitled to prepare a rectification and to send it to the Contracting Parties, which rectification shall be binding on the Contracting Parties.

## Article 8. OBLIGATIONS OF THE CUSTOMER

- 8.1 The Contracting Parties warrant the agreed quality, authenticity of species, purity, quantity, size and weight of the Goods that they have marketed or will market within the scope of a Three-Party or Two-Party Agreement, both towards CNB and towards each other. They shall also inform CNB and each other correctly and fully as to whether the Goods are protected by plant breeders' rights or any other intellectual property right and as to whether the Goods are subject to limited rights or seizures, or other (alleged) claims by third parties.
- 8.2 A Contracting Party that is a seller or a contractor shall be obliged to notify CNB In Writing within ten (10) days after actual delivery that actual delivery of the Goods has taken place, providing details of the quantities, types, weights and sizes delivered.
- 8.3 If Lease Agreements have been concluded through the brokerage services of CNB, the Contracting Parties must fulfil the

statutory (lease) requirements. In the event that the Lease Agreement does not comply with any statutory requirement, CNB shall not be liable for any resulting damage.

- 8.4 A Customer shall be in default by operation of law without notice of default being required if the Customer does not comply, does not fully comply or does not comply on time with any (payment) obligation under these Regulations and/or under an agreement to which these Regulations apply.
- 8.5 At all times, Customers warrant to CNB the accuracy of the data supplied by them, including but not limited to the information CNB needs to perform the Assignment.

## **Article 9. SUSPENSION, SET-OFF AND TRANSFER**

- 9.1 Any right of the Customer to invoke suspension or set-off vis-à-vis CNB is excluded.
- 9.2 If a Contracting Party fails to make the notification of actual delivery described in article 8.2 or does so too late, CNB shall have the right:
- (a) to suspend Payment or Payment Forwarding to the relevant Contracting Party until fifteen (15) days after the next Payment Date referred to in Clause 14.2 following the notification of the actual delivery; and/or
  - (b) cancel the acceptance of the Third-Party Clause with respect to the Third-Party Agreement referred to in article 7.2 and convert the Agreement into a Two-Party Agreement;
- CNB shall inform the Contracting Parties of this decision in writing within ten (10) days of the notification of actual delivery.
- 9.3 In the event of disputes between the Contracting Parties on the basis of a Three-Party or Two-Party Agreement - including disputes as to whether such an agreement has been concluded - Payment and Payment Forwarding may be suspended by CNB until a final decision on the dispute has been made by arbitration award or by the court or until a final decision has been made on the dispute as to whether the relevant Contracting Parties have concluded a settlement agreement in this regard and have notified CNB thereof in writing.
- 9.4 Suspension of Payment or Payment Forwarding by CNB shall not release the Debtor from its obligation to pay the claim to CNB on time.
- 9.5 The Customer's claims on CNB and CNB's claims on the Customer shall be deemed to constitute all rights and obligations the Customer has or assumes towards CNB for whatever reason.
- 9.6 In each case, CNB shall be entitled to set off the claims that appear from its records against the debts that appear from its records, even if claims and debts are due and payable on different Payment Dates, fall into separate assets or arise from different legal relationships.
- 9.7 The transfer and/or encumbrance of existing and future claims on CNB may only take place with the Written consent of CNB and with the enforcement of all its (set-off) rights ensuing from these Regulations or any subsequent agreements.

## **Article 10. FEES**

- 10.1 The Fees charged by CNB for its work are published in one or more media, including in any case the website [www.cnb.nl](http://www.cnb.nl).
- 10.2 Changes to Fees shall be published in the manner described in article 10.1 at least fourteen (14) days prior to their entry into force.
- 10.3 The most recently published Fees shall apply to every Assignment given to CNB, unless otherwise agreed in writing.
- 10.4 All Fees charged by CNB are stated exclusive of turnover tax.
- 10.5 CNB shall be entitled to charge a Fee on the agreed turnover. If, in the performance of a Three-Party or Two-Party Agreement, a difference arises between the turnover stated on that agreement and the actual turnover, the Client shall continue to owe the Fee calculated on the basis of the turnover stated on the agreement. If the actual turnover is higher than the turnover stated on the agreement, the Client shall owe the Fee calculated on the basis of the actual turnover.

## **Article 11. EVIDENTIAL VALUE ADMINISTRATION AND THE PROVISION OF WRITTEN INFORMATION**

- 11.1 CNB's records, including invoices, (account) statements, (purchase) agreements, delivery notes and other documents generated by CNB on behalf of Customers showing the rights and obligations of Customers towards CNB and/or third parties, constitute complete and conclusive evidence, subject to Written evidence to the contrary from the Customer, to be received by CNB within ten (10) days of the date on which the Written confirmation is sent.
- 11.2 The information referred to in article 11.1 is provided by CNB through My CNB (unless the Customer has requested In Writing to receive such information exclusively by post) and the following provisions shall apply in this respect:
- (a) Upon registration, the Customer provides CNB with his personal data and chooses a username and password to access My CNB;

- (b) CNB confirms the registration in writing to the Customer. At all times, CNB shall be entitled to refuse or terminate registration without giving reasons;
- (c) CNB shall include the personal data in records it keeps for which the Customer has given permission by means of the registration. CNB shall include information on the protection of personal data on its website;
- (d) The Customer guarantees and warrants both the accuracy and completeness of the personal data provided with the registration and is obliged to immediately inform CNB in writing in the event of any changes.

## Article 12. LIABILITY AND INDEMNITY

- 12.1 Except in the case of intent or gross negligence, CNB shall not be liable for damage resulting from:
- (a) any shortcoming, wrongful act or on any other basis whatsoever in the performance of an Assignment given to CNB;
  - (b) exercising the powers provided for in these Regulations with respect to the Assignment;
  - (c) (temporary) technical failures that prevent the operation of and access to My CNB in whole or in part, including but not limited to, failure as a result of viruses or malfunctions in software or hardware, both in use at CNB (or its vicarious agents) and its Customers;
  - (d) incorrect specification or processing of data, including but not limited to the specifications of the Goods offered;
  - (e) the provision of incorrect, incomplete or out-of-date information;
  - (f) incorrect or unlawful use of My CNB, including but not limited to misuse of password and/or username by third parties; or
  - (g) damage to data as a result of external failures and/or influences.
- 12.2 Without prejudice to the provisions of article 12.1 the liability of CNB shall in any case be limited to the amount CNB will receive under an insurance policy effected to cover the said liability.
- 12.3 The liability of CNB shall in any case lapse if the Customer has not held CNB liable In Writing for the incident resulting in damage within a period of six (6) months after it became known or reasonably should have become known.
- 12.4 The exclusion of liability provided for in this article is also stipulated for the benefit of the management, directors and employees of CNB, as well as third parties engaged by CNB for the performance of the Assignment.
- 12.5 Customers shall at all times bear the risk of the deterioration, damage and/or destruction of Goods entrusted or to be entrusted to CNB by them within the scope of an Assignment.
- 12.6 Notwithstanding the provisions of article 12.1:
- (a) the Customer is and shall remain liable to CNB for damage with respect to all acts performed after accessing My CNB by means of its username and/or password, including misuse thereof;
  - (b) the Customer shall indemnify CNB:
    - (i) against claims by third parties who have suffered damage as a result of misuse of its username and/or password;
    - (ii) against any liability on any basis whatsoever for all claims the other relevant Customers or third parties (including government agencies and institutions) may have on CNB (expressly including obligations to pay taxes and levies that are owed under or pursuant to the law).

In the event that CNB is held liable with respect to claims for which the Customer is under an obligation to indemnify pursuant to this provision, the Customer shall be obliged, at the first request of CNB, to furnish security that is, in the sole judgment of CNB, appropriate and sufficient.

## Article 13. TURNOVER TAX

- 13.1 Customers are obliged to provide CNB with the information necessary for the administrative processing and calculation of the turnover tax. CNB shall not owe any turnover tax pursuant to Three-Party or Two-Party Agreements to which these Regulations apply. In the context of the Settlement, CNB provides the invoicing for Customers solely inclusive of any turnover tax.
- 13.2 Customers guarantee the accuracy and completeness of the information they provide to CNB, which is required to determine the turnover tax to be paid or reclaimed by them and warrant that this information is provided to CNB.
- 13.3 Payments by CNB for the payment of turnover tax shall always be made as an advance for the benefit of the relevant Customer.
- 13.4 If it is (subsequently) established that the Customer provides incorrect and/or incomplete information and/or documentation, or is not in possession of documents to guarantee correct VAT treatment of the relevant transaction, under no circumstances shall CNB be liable for the damage suffered by the Customer or for any additional VAT (including related fines and interest) the Tax and Customs Administration imposes on the Customer.

# PART II DIRECT DEBIT, PAYMENT AND APPORTIONMENT OF COSTS

## Article 14. PAYMENT DATES AND PAYMENT

- 14.1 All claims CNB has on its Customers in its own name or by virtue of a power of attorney, such as but not limited to purchase prices, fees, penalty amounts, costs and interest, shall be paid to CNB no later than on the agreed Payment Date.
- 14.2 CNB applies the following six (6) standard Payment Dates each year:
- (a) 15 September;
  - (b) 1 November;
  - (c) 15 January;
  - (d) 1 March;
  - (e) 1 May;
  - (f) 1 July;
- 14.3 Under a Three-Party or Two-Party Agreement relating to movable property such as Flower Bulbs, Nursery Products, materials and other Goods, whereby the Payment Date depends on the moment of actual delivery, the amounts due must be paid no later than on the next Payment Dates.
- In case of actual delivery of Flower Bulbs in the period:
- (a) from 1 June up to and including 14 August: on 1 November next, whereby 85% of the amount due must be paid as a payable advance on 15 September next; or in full on 15 September next, if agreed by the parties;
  - (b) from 15 August up to and including 30 September: on 1 November next;
  - (c) from 1 October up to and including 14 December: on 15 January next;
  - (d) from 15 December up to and including 31 January: on 1 March next;
  - (e) from 1 February up to and including 31 March: on 1 May next;
  - (f) from 1 April up to and including 31 May: on 1 July next;
- in the event of the actual delivery of Nursery Products, materials and other Goods in the period:
- (g) from 1 June up to and including 14 August: on 15 September next;
  - (h) from 15 August up to and including 30 September: on 1 November next;
  - (i) from 1 October up to and including 14 December: on 15 January next;
  - (j) from 15 December up to and including 31 January: on 1 March next;
  - (k) from 1 February up to and including 31 March: on 1 May next;
  - (l) from 1 April up to and including 31 May: on 1 July next.
- 14.4 If a Payment Date has been agreed that is not dependent on actual delivery as referred to in article 14.3, the Payment Date shall be stated in the Three-Party or Two-Party Agreement, being a Payment Date as referred to in article 14.2.
- 14.5 With the prior consent of CNB, the Contracting Parties shall be authorised to agree on a Payment Date derogating from article 14.2 or article 14.3 .
- 14.6 Payments may only be made in full discharge of liability to CNB, which shall be solely entitled to grant discharge.
- 14.7 In the event of direct payment by the Contracting Parties to each other, they shall not be discharged vis-à-vis CNB. In that case CNB shall have and retain a right of claim on the relevant party.
- 14.8 If payment can be allocated to two or more claims, CNB shall be solely entitled to designate the claim to which the payment will be allocated. If CNB does not designate a claim, payments shall first be applied to the payment of fines, costs and interest, then to the payment of the Fee, next to the payment of Three-Party Agreements, then to the payment of Two-Party Agreements and finally to the payment of other debts.
- 14.9 CNB's claim relates to the full amount it is owed under a Three-Party or Two-Party Agreement, including the Fees it charges, any penalty amounts, interest and costs.
- 14.10 A Customer who is in default within the meaning of article 8.4 :
- (a) shall owe the statutory commercial interest due on the unpaid (part of the) amount due to CNB, in accordance with Article 119a, Book 6 of the Dutch Civil Code; and
  - (b) shall owe an immediately penalty of 15% (fifteen per cent) on the unpaid (part of the) amount referred to in subparagraph (a).

## Article 15. RIGHT OF ACTION AND RISK SPREADING

- 15.1 Fifteen (15) days after a Payment Date, Contracting Parties that are Creditors pursuant to a Three-Party Agreement acquire a claim for Payment on CNB. The sum of these claims of the Contracting Parties referred to in this paragraph is

- equal to the total amount CNB must receive on the same Payment Date from the Contracting Parties that are a party to a Three-Party Agreement.
- 15.2 The risk of Default shall be borne jointly by all the Contracting Parties that are Creditors of CNB on one Payment Date pursuant to a Three-Party Agreement. Spreading this risk takes place by means of the Apportionment Scheme.
- 15.3 Fifteen (15) days after a Payment Date, a Contracting Party that is a Creditor pursuant to a Two-Party Agreement acquires a claim for Payment Forwarding on CNB. The amount of the claim shall be limited to the amount CNB has actually received from the other party of the Contracting Party.
- 15.4 In the case of a Two-Party Agreement, the collection risk shall not be borne jointly by the Contracting Parties through the applicability of the Apportionment Scheme, but each Contracting Party shall individually bear the risk of Default.
- 15.5 CNB does not share the risk of Default and shall not be liable to Creditors for Default by Debtors.

## **Article 16. APPLICABILITY APPORTIONMENT SCHEME**

- 16.1 If, in the sole judgment of CNB, it is established that application of the Apportionment Scheme is or will become necessary with respect to a specific Payment Date, the financial settlement of the claims on CNB of the relevant Creditors as referred to in articles 15.1 and 15.2 shall take place in the manner as provided for in this article.
- 16.2 CNB shall inform the relevant Creditors as soon as possible that an Apportionment Scheme with respect to a specific Payment Date shall apply. This notice may also be given if Payment of claims on a Payment Date has already been effected. In the latter case, an Apportionment Scheme shall apply afterwards.
- 16.3 The Apportionment Scheme is applied as follows:
- (a) On the basis of the amount not received under Three-Party Agreements, CNB determines the total amount to be apportioned;
  - (b) For each individual Creditor, the Apportioned Amount is determined by dividing the total amount that is apportioned as referred to in subparagraph (a) among the collective Creditors on the basis of a Three-Party Agreement. This apportionment shall be in proportion to the amount of the Original Claim of each individual Creditor;
  - (c) For each Creditor involved in the Apportionment Scheme, the Apportioned Amount shall be deducted from the Original Claim. Subsequently, in accordance with article 9.6, CNB determines the total amount each Contracting Party involved in the Apportionment Scheme shall receive from or owe CNB after application of the Apportionment Scheme.
- 16.4 As a consequence of the provisions of article 16.3 (c) , application of the Apportionment Scheme shall result in a reduction by operation of law of the Original Claim a Creditor involved in the apportionment has on CNB, by an amount equal to the Apportioned Amount applicable to the relevant Creditor.
- 16.5 Any costs associated with the implementation of the Apportionment Scheme shall be for the account of all Creditors involved in the apportionment of costs. The costs shall be divided among these Creditors in proportion to the amount of the Original Claim of each individual Creditor.
- 16.6 CNB shall inform each Contracting Party concerned of the applicable Apportioned Amount and their share in the costs as referred to in article 16.5.
- 16.7 For the application of the Apportionment Scheme with respect to a Contracting Party after suspension of the Payment within the meaning of article 9.2 under (a) , only the Payment Date following suspension shall be decisive and not the originally agreed Payment Date.
- 16.8 When applying the Apportionment Scheme, CNB shall have the financial settlement thereof checked by a chartered accountant to be appointed by CNB, who shall record the result of his investigation in a Written report.

## **Article 17. POWERS OF CNB**

- 17.1 CNB will be entitled with respect to a defaulting Customer, within the meaning of article 8.4, to demand immediate and full payment of all claims CNB has on this Customer for whatever reason.
- 17.2 In the event of default within the meaning of article 8.4 or if there are good grounds to fear that a Customer will not (be able to) perform his obligations towards CNB, or will not do so on time or in full, the Customer in question shall, at the first request of CNB:
- (a) allow inspection of all relevant financial documents such as, but not limited to, financing agreements, annual report and accounts and liquidity forecasts; and/or
  - (b) provide sufficient, adequate (additional) security for the proper performance of its obligations, in the sole judgment of CNB, the costs of which shall be for the account of the relevant Customer.
- 17.3 In the event of default within the meaning of article 8.4, the Customer does not comply with the request of CNB pursuant to article 17.2 or CNB has good reason to fear that the Customer will not (be able to) perform its obligations towards CNB,

or will not do so on time or in full, CNB shall also be entitled:

- (a) to suspend its obligations; and/or
- (b) to enter into further arrangements between the parties; and/or
- (c) terminate the Three-Party Agreement by means of a Written statement; and/or
- (d) to take the place of the defaulting Customer by taking over the contract, without being obliged to pay any compensation to the other Customer who is party to the dissolved or acquired agreement.

- 17.4 The Customer who is in default as referred to in article 8.4 shall be liable towards CNB and its other party for all damage directly or indirectly resulting from the default.
- 17.5 If CNB opts for termination as referred to in article 17.3 (c) , it shall have the right, at its discretion, to conclude a new agreement between the Customer and a third party with respect to the Goods (or a part thereof) involved in the termination.
- 17.6 If CNB opts for a contract takeover as referred to in article 17.3 sub (d) , it shall take over the rights and obligations of the defaulting Customer, whereby these Regulations shall be considered the statutory deed pursuant to Article 159 (1), Book 6 of the Dutch Civil Code between CNB and the defaulting Customer. In that case, the other Customer that is party to the same agreement shall hereby give its irrevocable consent for the contract to be taken over by awarding the assignment in accordance with Article 159 paragraph 1, Book 6 of the Dutch Civil Code in conjunction with Article 156 paragraph 1 of the Dutch Civil Code. That Customer shall then continue to be obliged to fulfil all its obligations it had in respect of the defaulting Customer towards CNB.
- 17.7 If CNB deems it necessary to engage legal assistance in the collection of its claim, the actual costs thereof (including the costs of legal assistance) shall be borne by the party that is in default towards CNB within the meaning of article 8.4.
- 17.8 If, for the purpose of a proper Settlement, CNB has submitted any dispute between Customers to a (arbitration) tribunal for settlement, CNB shall be entitled to charge all the costs actually incurred (including those of legal assistance) to that Customer who has been found to be in the wrong by virtue of an irrevocable arbitration award or court decision.

## **Article 18. RETENTION OF TITLE AND DELIVERY UNDER CONDITIONS**

- 18.1 If a Three-Party or Two-Party Agreement covering the sale or purchase of Goods or Contract Cultivation has been concluded to which these Regulations apply, the Contracting Party required to deliver Goods pursuant to that Agreement shall expressly retain title thereof. The transfer of the Goods shall only take place under the condition that the claim of CNB to be paid in respect of this, including any costs, penalty and interest, has been paid in full.
- 18.2 The risk of depreciation, illness or destruction of the Goods to be delivered, as well as the risk of damage thereto in the broadest sense of the word, shall be borne by the Contracting Party to whom ownership is transferred as a result of compliance with the condition of payment until the condition of payment to CNB referred to in article 18.1 has been met.
- 18.3 As long as ownership of the Goods actually delivered has not been transferred to the Contracting Party, it may not alienate, encumber or grant any right to those Goods to or on behalf of a third party. Furthermore, the Contracting Party shall be obliged to store the Goods in such a manner that ownership cannot be lost due to confusion.
- 18.4 If a Contracting Party fails CNB or the other Contracting Party, respectively, or if CNB or the other Contracting Party has good reason to fear that the first-mentioned Contracting Party will fail in its obligations, the other Contracting Party or CNB, as the case may be, shall be entitled to reclaim the Goods actually delivered subject to retention of title. After repossession of these Goods, the first-mentioned defaulting Contracting Party shall be credited by CNB or the other Contracting Party, as the case may be, for the market value of the repossessed Goods on the date on which they were repossessed, less the costs incurred in connection with the said repossession. In the event of non-fulfilment of an agreement, the crediting referred to in the previous sentence shall never be higher than the originally stipulated purchase price.

# PART III GREEN AUCTION

## Article 19. PROCEDURE

- 19.1 Sale of the crops shall be carried out by the Client by means of a Green Auction as it stands, therefore excluding any guarantee, liability and right of complaint.
- 19.2 The Green Auction Client shall be obliged to unconditionally and fully cooperate in the performance of the Green Auction at the times to be determined by CNB. It shall also be obliged to admit the employees of CNB and the candidates for the Green Auction to the parcels where the crops to be auctioned are located.
- 19.3 In the case of an Assignment for a Green Auction, the Client may specify a minimum price, which price CNB shall regard as a target price. CNB shall be entitled to deviate from this price.
- 19.4 CNB shall be entitled to exclude candidates from participating in a Green Auction without giving reasons.
- 19.5 The crops to be auctioned are included in a catalogue under a lot number, to the extent possible. CNB shall be entitled to combine or split two or more lot numbers.
- 19.6 Auctioning takes place by auction and Dutch auction or one of these, at the discretion of the auctioneer appointed by CNB.
- 19.7 Each bid binds the bidder in person, is unconditional, irrevocable and without any reservation.
- 19.8 Bidding by Dutch auction takes place by calling the word 'mine' when the amount is called by the auctioneer appointed by CNB.
- 19.9 After the highest bid has been made, the auctioneer has the right to first consider and then to make a decision about the award.
- 19.10 CNB shall be entitled, without giving reasons, to refuse a bid or descending bid, not to award it and not to fetch lot numbers and to leave them unsold.
- 19.11 If, in the sole opinion of the auctioneer, uncertainty has arisen about awarding, for example in the event of mistakes by the auctioneer, no agreement is concluded and the relevant lot numbers can be put up for auction again.
- 19.12 If more than one party submits the highest bid at the same time, an additional auction shall be held immediately between them.
- 19.13 If a bidder can immediately and exclusively demonstrate to the auctioneer's satisfaction that he has bid or bought by mistake, the auctioneer may destroy the contract and put the relevant lot number up for auction again.

## Article 20. PERFORMANCE

- 20.1 The crops sold in the context of a Green Auction shall be at the expense and risk of the Buyer from the moment they are awarded. However, the Green Auction Client shall be obliged to keep the sold crops as befits a good grower and to take care of them until after harvesting, which must take place in good time, depending on the nature of the crops.
- 20.2 Ownership of the crops sold as part of a Green Auction shall be transferred to the Buyer at the time they are lifted.
- 20.3 Lifting shall take place on the days to be determined by the Buyer, possibly under the supervision of CNB.
- 20.4 If the Buyer is in default within the meaning of article 8.4, CNB shall be entitled to have the crops lifted and stored at the expense and risk of the Buyer, without prejudice to the Buyer's obligation to pay the purchase price, increased by all costs that are the direct or indirect consequence of the Buyer's failure.

# PART IV DISPUTES, CHOICE OF FORUM AND CHOICE OF LAW

## Article 21. DISPUTES BETWEEN CONTRACTING PARTIES REGARDING QUALITY

- 21.1 Disputes relating to the quality of the Goods shall be settled between the Contracting Parties.
- 21.2 With respect to disputes within the meaning of article 21.1, CNB shall endeavour to achieve an amicable solution. In connection with this endeavour, the Contracting Parties shall be obliged to immediately notify CNB of any complaints or other problems that occur or are likely to occur during the performance of an agreement.

## Article 22. CHOICE OF FORUM

- 22.1 Disputes relating to trade in, or cultivation of Flower Bulbs that are based on Three-Party or Two-Party Agreements - including disputes as to whether such an agreement has been concluded and/or as to whether an Agreement for Services has been concluded with CNB and/or as to whether CNB has properly complied with that Agreement for Services - shall be settled by the Arbitration Tribunal for the Flower Bulb Trade to the exclusion of the civil court.
- 22.2 Disputes relating to the trade in or the cultivation of Nursery Products that are based on Three-Party or Two-Party Agreements shall, to the exclusion of the civil court, be settled by the Dutch Arbitration Tribunal for Nurseries. The competence of the Boskoops Arbitration Tribunal for Nurseries is excluded.
- 22.3 The provisions of articles 22.1 and 22.2 shall not prejudice the fact that CNB is always authorised to summon a Client or Contracting Party to appear before the court that is competent to hear the dispute on the basis of the law or an international treaty.

## Article 23. CHOICE OF LAW

These Regulations, as well as all legal relationships to which these Regulations apply, are governed by Dutch law to the exclusion of the Vienna Sales Convention.

# PART V MISCELLANEOUS

## Article 24. FINAL PROVISIONS

- 24.1 The headings above the articles of these Regulations have no independent meaning and do not affect the interpretation of the provisions of these Regulations.
- 24.2 If, in the opinion of an arbitration tribunal or a court, a provision of these Regulations is null and void or subject to annulment with respect to the legal relationship between CNB and a Client or the legal relationship between the Contracting Parties themselves, the other provisions of these Regulations shall remain in full force and the parties shall agree on replacement provisions, taking into account, as much as possible, the purpose and purport of the provision(s) that are nullified or annulled.
- 24.3 Customers shall exercise due care towards both CNB and each other and shall not be entitled to provide individual transaction and/or personal data to third parties in any form whatsoever, unless this is required by law or after prior written consent from both CNB and the other Customer(s) that is a party or are parties to the agreement(s).
- 24.4 If these Regulations have been translated into one or more foreign languages, the Dutch version of these Regulations shall prevail.
- 24.5 These Regulations will enter into force on 1 June 2019. By the entry into force of these Regulations, all previous regulations - without prejudice to their applicability to agreements concluded before 1 June 2019 - have become null and void.

