

GENERAL LICENSING TERMS AND CONDITIONS FOR THE PRODUCTION AND MARKETING OF CUT FLOWER ROSES



Article 1 - Applicability

1.1. These General Licensing Terms and Conditions for the production and marketing of cut flower roses apply to the Licence Agreement between the company existing and incorporated under the laws of Kenya Interplant Roses (East Africa) Ltd. (hereinafter: Licensor) and the Licensee (as indicated in the Licence Agreement).

1.2. The company existing and incorporated under the laws of The Netherlands Interplant Roses B.V. established in Harmelen, The Netherlands is the owner of several intellectual property rights (including but not limited to national and community plant variety and trademark rights) relating to the rose varieties bred by it. Licensor has been authorized by Interplant Roses B.V. to inter alia propagate, sell, import and export such rose varieties and is authorized to sublicense such (intellectual property) rights to third parties.

1.3. Applicability of any (purchase) conditions of Licensee is explicitly rejected by Licensor.

1.4. Any differing stipulations and oral agreements are only applicable between the parties after they have been laid down in writing.

Article 2 – Definitions

The terms used in these General Licensing Terms and Conditions are defined as follows:

"Licence Agreement": the Licence Agreement between Licensor and the Licensee (as indicated in the Licence Agreement) and any document referred to, completed or to be completed in accordance with its provisions;

"Plant Material": plant material from the Licensor's rose variety/varieties as specified in the Licence Agreement, used solely for the purpose of growing rose plants and delivered to Licensee by Licensor or by third parties with the authorization of Licensor;

"Product(s)": cut flower roses grown out of the Propagation Material or Plant Material;

"Product Activities": the growing, marketing, sale and/or distribution of Products;

"Propagation Material": plant material from the Licensor's rose variety/varieties specified in the Licence Agreement, used for propagation purposes and delivered to Licensee by Licensor or by third parties with the authorization of Licensor;

"Trade Mark(s)": Licensor's word mark(s) and/or logo(s) registered as a trade mark in the European Union and/or the European Economic Area and any other (national) trade mark, registration or application belonging to Licensor.

Article 3 – Term

The Licence Agreement shall enter into force on the date of planting of the Propagation Material and/or Plant Material by Licensee and shall remain in force as long as the plants are in production with Licensee, unless terminated earlier by Licensor in accordance with the provisions of Article 9 of these General Licensing Terms and Conditions.

Article 4 – License

4.1 On the terms and conditions set out in the Licence Agreement and these General Licensing Terms and Conditions, Licensor grants to Licensee a non-exclusive and non-transferable right and license for the term of the Licence Agreement to:

- a) purchase Licensor's Propagation Material and/or Plant Material from suppliers authorized by Licensor;
- b) to use the Propagation Material for growing Products solely at its facility as indicated in the Licence Agreement;
- c) to distribute, and sell the Products; and
- d) to market the Products using Licensor's Trade Mark(s) in accordance with Article 6.

4.2. Licensee may only perform the acts as set out in Article 4.1. under c) and d) after receipt by Interplant of all payments due under the Licence Agreement.

4.3. Licensee is not permitted to sub-license any of the rights granted to it under the Licence Agreement or under these General Licensing Terms and Conditions to any third party without Licensor's prior written consent.

4.4 Licensee shall not employ subcontractors for the execution of any of its rights and obligations under these General Licensing Terms and Conditions without prior written consent of Licensor.

4.5 For every time that Licensee does not perform any obligation resulting from him from this agreement he will forfeit to Licensor without any notice of default or court intervention being required – an immediately claimable penalty sum of EURO 10,000.- and for any day that such failure continues a penalty of EURO 1,000.- per day, as well as for any individual breach/failure, without prejudice to the right of Licensor to claim full compensation from Licensee of the damage which it incurs or will incur as a result of such failure.

Article 5 – Payment and Inspection

5.1 Licensee shall pay the royalties in accordance with the agreed payment schedule as set out in the Licence Agreement. All payments will be made to Licensor, in the offices of Licensor or by payment or deposit into a bank account as indicated in the Licence Agreement are as to be specified by Licensor.

5.2 Licensee is not authorised to deduct any sum by reason of a counterclaim alleged by him from the sums due by him. If Licensee uses the right of suspension of his payment obligation, Licensee shall provide security of payment beforehand until clarity has been obtained on the legitimacy of the complaint filed by Licensor.

5.3 If Licensee does not timely meet any payment obligations, he will be considered to be in default by law. In that case Licensor is entitled to charge an interest of 2% a month as from the day that Licensee has failed to meet

his payment obligation referred to in paragraph 1, whereat part of the month will be counted as a full month. In the event that Licensee is in default, Licensor is also entitled to charge the currency exchange loss resulting from this.

5.4 If payment should be effected through the engagement by Licensor of third parties, the resulting costs will be for the account of Licensee at a minimum of 15% of the invoice sum or the actual collecting costs.

5.5 Licensee will at all times keep accurate records of a) the quantity of Products grown and sold by it and b) the names and addresses of the customers of the Products. Upon Licensor's first request, Licensee will furnish such information to Licensor.

5.6 Licensee shall permit Licensor or its representative at Licensor's expense during normal business hours to inspect and view Licensee's facilities and places of business and its records in relation to the quantity of Products grown and sold by it and the addresses and names of the customers of the Products.

5.7 Licensee grants permission to wholesalers, auctions, importers and/or exporters to furnish information to Licensor and/or its representative concerning the amounts of Products sold by it. Furthermore, Licensee grants permission to auctions to furnish information to Licensor and/or its representative concerning the amounts of Products or other plant materials sold by it through the auction under the code "other" ("overig").

5.8 In case of refusal, expiry, invalidation or revocation of any intellectual property right (including trademark, plant variety rights and copyrights) regarding any variety or other product of Licensor, Licensee shall not be entitled to refund of any sums or royalties already paid to Licensor, or to reimbursement of any other form of damages.

Article 6 – Intellectual property rights and EDVs

6.1 Licensee agrees and acknowledges that, subject to the licence granted by Licensor to Licensee under these General Licensing Terms and Conditions, title to all the intellectual property rights in the Trade Marks, the Propagation Material, the Plant Material and the Products will be the property of and will vest and remain vested in Interplant Roses B.V., Licensor, or in any other affiliated company at all times.

6.2 The Trade Marks shall only be used by Licensee in relation to its own Product Activities. Licensee shall use the Trade Mark(s) in accordance with these General Licensing Terms and Conditions and shall comply with all reasonable directions issued by Licensor from time to time regarding the manner of use of the Trade Mark(s).

6.3 Licensee undertakes not to do or permit to be done any act which would or might jeopardize or invalidate any registration of the Trade Mark(s) nor to do any act which might assist or give rise to an application to remove a registered Trade Mark from a register or which might prejudice the right or title of Licensor to a Trade Mark.

6.4 Licensee shall not use or register any trademark, company name, domain name or variety designation which is identical or confusingly similar to, or which incorporates any Trade Mark, variety denomination or trade name owned by or licensed to Licensor anywhere in the world.

6.5 EDV's: If Licensee finds, observes or discovers an Essentially Derived Variety (EDV), such as but not limited to any mutation or sport in the variety, he shall immediately notify Licensor thereof by registered letter without delay. New mutations derived from the mutations shall also be regarded as an EDV of the variety.

6.6 At the written request of Licensor, Licensee shall immediately provide Licensor with sufficient material from the mutant without delay, for testing purposes.

6.7 If the mutation or sport shall be deemed to be a new variety Licensee shall require, also if this does not already result from the applicable plant variety regulations, the prior authorisation of Licensor for the following acts in respect of constituents of the mutation or harvested material of the mutation: (a) production or reproduction, (b) conditioning for the purpose of propagation, (c) offering for sale, (d) selling or other marketing, (e) importing to and/or exporting; (f) stocking for any of the purposes mentioned above.

6.8 Also if this does not already result from the applicable plant variety regulations Licensee needs the authorisation of Licensor for the acts as described in Article 6.7 in relation to varieties which are not clearly distinct from one of the protected varieties from Licensor.

6.9 Licensee will immediately inform Licensor in case any (alleged) infringement is found of the intellectual property rights (such as trademark, plant variety rights, patent rights and copyrights) of Licensor or any legal entities/natural persons associated with it. Licensee will leave the handling of the infringement, including any court proceedings or settlement of the matter, fully to Licensor. Furthermore, at the first request of Licensor Licensee will cooperate fully, in reasonableness, in the handling of the case and by providing all related relevant documentation and information upon first request of Licensor.

Article 7- Propagation Material and Plant Material

7.1 Licensee is not licensed to give away, sell or otherwise trade with Propagation Material, Plant Material or other Licensor plant material for propagation purposes, except as expressly permitted in writing by Licensor.

7.2 Licensee will use the Propagation Material and/or Plant Material received from Licensor or its licensed propagators exclusively for growing and selling Products. Nothing contained in these General Licensing Terms and Conditions shall be deemed to grant Licensee or any third party the right to utilize the Propagation Material and/or the Plant Material or the Products for any breeding or research activity except as expressly permitted by Licensor by prior written approval.

7.3 Licensee shall, if so requested by Licensor, deliver as soon as reasonably possible to Licensor (or a third party specified by Licensor) Propagation Material or Plant Material of the variety / varieties to which these General Licensing Terms and Conditions pertains. Licensor shall pay to Licensee the local current auction price for said material.

Article 8 - Liability and Indemnification

8.1 Any information, specifications and representations regarding Licensor's varieties and the related Propagation Material and/or Plant Materials are based on optimised cultivation circumstances at Licensor in the Netherlands. Licensee acknowledges that actual breeding results achieved with the Licensor varieties may be influenced by cultivation, handling and treatment and environmental factors (such as temperature, moisture, wind, fertility and diseases).

8.2 Licensee shall be liable for and shall indemnify Licensor against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by Licensor directly or indirectly arising out of any dispute or contractual, tortious or other claims or proceedings brought against Licensor by a third party claiming relief against Licensor related to any Product Activities by Licensee or the use of the Trade Mark(s) by Licensee, except in so far as any such claims may arise from any breach of the Licence Agreement by Licensor.

8.3 Licensee acknowledges that the propagating material of the variety, either supplied by Licensor or not, concerns natural products the characteristics of which are not all known. Licensee cannot expect that (plant) material of its varieties is satisfactory under all and any (growing) conditions.

8.4 Licensee accepts that he exercises the rights granted to him under this agreement and relating to the plant material of the variety entirely at his own risk. Licensor does not warrant or guarantee growth and bloom of (plant material of) the variety. Licensee agrees that Licensor cannot be held liable by him for:

(a) any damages relating in any manner to any choices of Licensee in respect of a variety, propagating material, means used for growing (including also rootstocks or other means and mediums, natural or not) and/or the growing / propagation method used;

(b) reduced yield or any other damage resulting from or relating to disappointing growth and/or bloom of the variety, both in respect of the quality and quantity of plant material of the variety, also if the defects described above are the result of diseases, disorders, somaclonal variations, reversions or any deviations whatsoever;

(c) damage which might come about for the Licensee due to any unfavorable variety characteristics unknown so far which do not present themselves but after some time during growth;

(d) damage which might come about for the Licensee if in his plantings several plants occur that differ from the variety.

8.5 The overall liability of Licensor vis-à-vis the Licensee by reason of non-imputable failure in the performance of any obligations resulting from the Licence Agreement, or for any reason whatsoever, is limited in any event to compensation of damage to the maximum of the price stipulated for the Licence Agreement (excluding VAT). Any liability of Licensor for indirect damage, consequential damage, loss of profit, saving loss, loss of goodwill, damage due to stagnation of business, damage resulting from harm to or loss of plant material is excluded.

Article 9 - Termination

9.1 Licensor is entitled to unilaterally cancel or prematurely (partially) dissolve the Licence Agreement in writing, without court intervention and taking effect immediately, in the following events:

- a) Licensee does not, not fully, not timely or not duly meet one or more of his obligations under the Licence Agreement and these General Licensing Terms and Conditions vis-à-vis Licensor, despite written notice of default with a reasonable term for compliance;
- b) Licensee infringes (or threatens to infringe) any intellectual property right of Licensor or any other (sister) companies of affiliates belonging to the Interplant group of companies;
- c) Licensee has acquired without prior written permission of Licensor, Plant Material of a Licensor variety from a not duly authorized third party;
- d) Licensee has made available Propagating Material or mutants of a Licensor variety in any manner to third parties without prior written authorization given by Licensor;
- e) Licensee has applied for suspension of payment or is granted suspension of payment, or bankruptcy of Licensee is applied for, or Licensee is declared bankrupt;
- f) Licensee dies or his company is dissolved or discontinued, or if the director-major shareholder of the legal entity dies;
- g) voluntary and/or compulsory sale of the company of Licensee, or the shares in the company of Licensee is decided.

9.2 Upon termination of the Licence Agreement for any reason whatsoever, Licensee is committed vis-à-vis Licensor:

- a) to destroy the Plant Material of the varieties in its possession at the first written request of Licensor;
- b) to stop selling, marketing or propagating any Plant Material of Licensor's varieties;
- c) to stop using in any way the Trade Marks, company names, domain names, variety denominations or any other commercial designations of Licensor or the companies associated with it;
- d) to immediately pay all the licence fees still owed in respect of the Varieties and to perform also any other outstanding or running obligations under the agreement without delay.

Article 10 - Governing law and jurisdiction

10.1 This Licence Agreement and any matter arising from or in connection with it shall be governed by and construed with in accordance with the laws of The Netherlands.

10.2 The competent court in The Hague has exclusive jurisdiction to hear any dispute, including in summary proceedings, relating to any claim or matter arising from or in connection with the Licence Agreement and/or any of these General Licensing Terms and Conditions.

Article 11 - Miscellaneous

11.1 Licensee shall not assign to third parties any part of its rights and benefits under the Licence Agreement without the prior written consent of Licensor.

11.2 This Licence Agreement creates no relationship of joint ventures, partners, associates, principal and agent, or employer and employee, and both Parties are acting as independent contractors.

11.3 No change to any provision of the Licence Agreement or these General Licensing Terms and Conditions shall be valid or binding, unless it is in writing and signed by duly authorized representatives of both Parties.

11.4 If any part of these General Licensing Terms and Conditions are declared null and void or is subject to annulment, the rest of said terms and conditions shall remain valid and shall retain full effect. For any clause found void or subject to annulment, the Parties shall cooperate to conclude a replacement agreement or to modify these General Licensing Terms and Conditions in a manner as closely as possible to the Parties' original intentions.