

FREIGHT FORWARDER TERMS AND CONDITIONS

1. General

1.1 Terms and Conditions: These T&Cs (hereinafter referred to as "Terms and Conditions") govern all purchase orders placed by DM Flowers (hereinafter referred to as "the Company") with any international freight forwarders provided or entity (hereinafter referred to as "the Freight Forwarder"). These Terms and Conditions constitute a legally binding agreement between the Company and the Freight Forwarder. By accepting an order with the Company, the Freight Forwarder agrees to these Terms and Conditions in their entirety.

1.2 Precedence of Company's Terms and Conditions: In the event that the Freight Forwarder or the quotation/sales order/agreement is subject to separate terms and conditions, whether specified by the the Freight Forwarder or any third party, the Terms and Conditions presented on the Company's website shall always prevail. These Terms and Conditions constitute the primary and overarching agreement between the Company and the Customer in all matters related to quotations, orders, quality assurance, delivery, and any other transaction. Any conflicting or supplementary terms and conditions, whether attached to a Freight Forwarder's order or provided by any third party, shall be considered subordinate to these Terms and Conditions, and the provisions within these Terms and Conditions shall take precedence.

2. Definitions

2.1 "Services" means the airfreight forwarding services provided by the Freight Forwarder to the Company, including but not limited to the transportation, handling, and delivery of fresh cut flowers from designated pickup points to selected airports, and subsequent air transportation to designated destinations.

2.2 "Pickup Points" means the locations, including The Company's farms, designated by the Company where fresh cut flowers are to be collected for transportation as part of the Services.

2.3 "Destinations" means the airports and other designated points of delivery where fresh cut flowers are to be delivered by the Freight Forwarder as part of the Services.

2.4 "Parties" means the Company and the Freight Forwarder collectively and individually, as the context may require.

2.5 "Applicable Laws" means all relevant and applicable laws, regulations, statutes, rules, orders, and governmental requirements, including but not limited to any laws or regulations governing the import and export of perishable goods.

2.6 "Force Majeure" means any event or circumstance beyond the reasonable control of a Party, including but not limited to acts of God, strikes, labour disputes, civil commotions, wars, insurrections, government actions, pandemics, natural disasters, and any other events that could not have been reasonably foreseen or prevented.

2.7 "Third Parties" means any entity, individual, or organization other than the Company and the Freight Forwarder.

2.8 "Intellectual Property" means patents, trademarks, trade names, service marks, copyrights, trade secrets, and any other intellectual property rights or proprietary information, whether registered or unregistered.

2.9 "Written Notice" means any communication or notice sent in writing, which may include but is not limited to letters, faxes, emails, or other written forms of communication.

2.10 "Assign" means to transfer or delegate rights, responsibilities, or obligations to a third party in accordance with the terms of these T&Cs.

2.11 "In Writing" means any information or communication transmitted in a permanent form, including printed or digital documents, but excluding oral communication.

3. Scope of Services

3.1 Provision of Services: Subject to the terms and conditions set forth herein, the Freight Forwarder hereby agrees to provide airfreight forwarding services to the Company for the transportation of fresh cut flowers (the "Services"). The scope of the Services includes, but is not limited to, the following:

3.1.1 Collection and Acceptance of Fresh Cut Flowers: the Freight Forwarder shall be responsible for collecting fresh cut flowers, including those cultivated by the Company's farms, from designated pickup points (the "Pickup Points") as specified by the Company. The Freight Forwarder shall exercise due care and diligence in the acceptance and handling of the fresh cut flowers.

3.1.2 Air Transportation: The Freight Forwarder shall make arrangements for the air transportation of the fresh cut flowers from the Pickup Points to designated airports (the "Destinations") as designated by The Company. The Freight forwarder shall use commercially reasonable efforts to ensure that the fresh cut flowers are transported efficiently and safely.

3.1.3 Handling and Inspection: The Freight Forwarder shall ensure proper handling and inspection of the fresh cut flowers during the transportation process to maintain their freshness and quality. This shall include, but is not limited to, temperature control, loading and unloading procedures, and compliance with industry and Australian standards.

3.1.4 Timely Delivery: The Freight Forwarder shall make commercially reasonable efforts to ensure the timely and secure delivery of the fresh cut flowers to the designated Destinations as specified by the Company. Any delays or deviations from agreed-upon schedules shall be promptly communicated to The Company.

3.1.5 Compliance with Applicable Laws: the Freight Forwarder shall ensure that the Services are provided in compliance with all Applicable Laws, including those governing the import and export of perishable goods. This shall include obtaining any necessary permits, licenses, and authorizations.

3.1.6 Quality Assurance: the Freight Forwarder shall implement quality assurance measures to preserve the freshness and quality of the fresh cut flowers during transportation. Such measures may include maintaining suitable temperature conditions and employing industry best practices to prevent spoilage, wilting, or other forms of degradation.

3.1.7 Unloading at Destinations: The Freight Forwarder shall be responsible for unloading the goods from the truck or vehicle upon their arrival at the Destinations.

3.1.9 Fumigation: Fumigation of the fresh cut flowers shall be required by the Freight Forwarder at their facility. the Freight Forwarder shall be responsible for ensuring that all cut flowers are free from pests and other bacteria after the fumigation process. Furthermore, the Freight Forwarder shall take all necessary precautions to ensure that the quality, aspect, and vase life of the fresh cut flowers are not adversely affected by the fumigation process. the Freight Forwarder's fumigation procedures shall comply with the requirements set forth by the Australian Department of Agriculture, Fisheries, and

the Forestry (DAFF) and the Biosecurity Import Conditions System (BICON) to ensure the flowers meet the necessary biosecurity and quality standards.

3.2 Modification of Services: The Parties acknowledge that modifications to the Services, including any changes in Pickup Points, Destinations, or any other aspect of the Services, may be agreed upon in writing through an amendment to these T&Cs. Such amendments shall be executed with the formalities required by these T&Cs.

3.3 Limitation of Services: The Services provided by the Freight Forwarder are limited to the transportation, handling, and delivery of fresh cut flowers as specified herein. Any additional services not expressly provided for in these T&Cs shall be subject to separate negotiation and agreement between the Parties.

3.4 Third-Party Services: the Freight Forwarder may, at its sole discretion, engage third-party service providers to facilitate the provision of the Services. In such cases, the Freight Forwarder shall remain responsible for the performance of the Services as stipulated in these T&Cs and shall ensure that any third-party service providers comply with the terms herein.

3.5 Subcontracting: the Freight Forwarder may subcontract any portion of the Services to qualified subcontractors. However, the Freight Forwarder shall remain liable for the performance of the subcontracted Services in accordance with the terms of these T&Cs.

4. Obligations

4.1 Obligations of the Freight Forwarder:

4.1.1 Service Provision: the Freight Forwarder shall provide airfreight forwarding and related logistical services, as outlined in Section 3. Scope of Services, with the highest degree of care, skill, and professionalism, consistent with industry standards and practices.

4.1.2 Compliance: the Freight Forwarder shall comply with all applicable laws, regulations, and industry standards governing the provision of airfreight services, including but not limited to Australian biosecurity regulations, customs requirements, and quality standards.

4.1.3 Quality Assurance: the Freight Forwarder shall ensure the quality, freshness, and integrity of the fresh cut flowers during transportation, handling, and storage. the Freight Forwarder shall take all necessary precautions to prevent damage, spoilage, or contamination of the fresh cut flowers while in its custody.

4.1.4 Fumigation and Compliance: the Freight Forwarder shall be responsible for fumigating the fresh cut flowers, as necessary, to meet the biosecurity and quality requirements set forth by the Australian Department of Agriculture, Fisheries, and the Forestry (DAFF) and the Biosecurity Import Conditions System (BICON). the Freight Forwarder shall ensure that the fumigation process is executed in a manner that does not affect the quality, aspect, or vase life of the fresh cut flowers and that it complies with all relevant regulatory requirements.

4.1.5 Timely Delivery: the Freight Forwarder shall ensure that the fresh cut flowers are delivered within the agreed-upon timeframes and schedules. the Freight Forwarder shall promptly notify The Company in the event of any delays or deviations from the agreed schedule, providing an explanation and proposed remedies.

4.1.6 Property and Documentation: the Freight Forwarder shall take custody of and maintain all fresh cut flowers, property, and documentation delivered by The Company for the purposes of airfreight forwarding. the Freight Forwarder shall ensure the safekeeping of such property and documents, taking all necessary precautions to prevent loss, damage, or unauthorized access.

4.1.7 Confidentiality: the Freight Forwarder shall maintain the confidentiality of all information and documentation provided by The Company, including but not limited to shipping manifests, quality reports, pricing, and any other proprietary or confidential information. the Freight Forwarder shall not disclose or use such information for any purpose other than the provision of services under these T&Cs.

5. Pricing and Payment Terms

5.1 Pricing:

5.1.1 Service Fees: The Company shall pay the Freight Forwarder for the provision of airfreight forwarding services in accordance with the pricing schedule outlined in Exhibit A, attached hereto (the "Pricing Schedule"). The Pricing Schedule shall not be updated by the Freight Forwarder without prior written notice to The Company.

5.1.2 Additional Charges: the Freight Forwarder shall provide a detailed explanation, including itemized invoices, of any additional charges incurred for specific services, expedited shipping, or special handling. These charges shall be reasonable and subject to approval by The Company before invoicing.

5.2 Payment Terms:

5.2.1 Invoicing: the Freight Forwarder shall promptly invoice The Company for the services provided in accordance with the terms set forth in the Pricing Schedule. Invoices shall be sent to The Company in electronic format to the email address specified by The Company for billing purposes.

5.2.2 Late Payments: In the event of late payment by The Company, the Freight Forwarder shall notify The Company promptly. The Company shall not be liable for interest on the outstanding amount.

5.2.3 Disputed Invoices: The Company may dispute any portion of an invoice. In such cases, The Company shall provide written notice to the Freight Forwarder within 5 business days from the date of the invoice, specifying the grounds for the dispute and the amount in dispute. The Parties shall work together in good faith to resolve any disputes promptly.

5.2.4 Set-Off: The Company reserves the right to set off any amounts owed under these T&Cs against any amounts that may be due from the Freight Forwarder to The Company under any other agreement or arrangement.

5.3 Currency and Taxes:

5.3.1 Currency: All amounts payable under these T&Cs shall be in [Insert Currency]. the Freight Forwarder is responsible for any foreign exchange fees or costs associated with payments made in a different currency than the currency of the invoice.

5.3.2 Taxes: the Freight Forwarder shall be responsible for any taxes, duties, or similar charges imposed by applicable tax authorities in connection with the payment of invoices under these T&Cs.

5.4 Records and Audit: the Freight Forwarder shall maintain accurate records of all invoices and payments for a period of 2 years. The Company, or its authorized representative, shall have the right to inspect and audit the Freight Forwarder's records related to invoices and payments upon written request, with reasonable notice to the Freight Forwarder.

6. Quality and Inspection

6.1 Quality Standards:

6.1.1 Compliance: the Freight Forwarder shall ensure that all cut flowers shipped on behalf of The Company are compliant with the quality and regulatory standards set forth by the Australian Department of Agriculture, Fisheries, and the Forestry (DAFF) and BICON requirements. Any failure to meet these standards shall be considered a breach of these T&Cs.

6.1.2 Damage Prevention: the Freight Forwarder shall take all necessary precautions and measures to prevent any damage, deterioration, or alteration to the quality, aspect, or vase life of the cut flowers during the transportation, handling, and fumigation process. the Freight Forwarder shall be liable for any damages or losses incurred by The Company resulting from a failure to meet these standards.

6.2 Inspection Process:

6.2.1 Inspection by the Freight Forwarder: the Freight Forwarder shall inspect all cut flowers upon receipt at their facility. Any discrepancies, damages, or discrepancies with the quality standards shall be documented and promptly reported to The Company. the Freight Forwarder shall notify The Company within 24 hours of any issues identified during the inspection.

6.2.2 Inspection by The Company: The Company shall have the right to inspect the cut flowers at the Freight Forwarder's facility at its discretion and shall provide the Freight Forwarder with reasonable notice before conducting such inspections.

6.2.3 Rejection and Replacement: In the event that the cut flowers are found to be damaged or do not meet the quality standards after the fumigation process, The Company reserves the right to reject the shipment. the Freight Forwarder shall be responsible for the replacement of the rejected cut flowers in a timely manner at no additional cost to The Company.

6.3 Fumigation:

6.3.1 Fumigation Process: the Freight Forwarder shall be responsible for the fumigation of cut flowers at its facility to ensure that all cut flowers are free from pests, bacteria, or any other harmful substances. The fumigation process shall not affect the quality, aspect, or vase life of the cut flowers.

6.3.3 Compliance with DAFF and BICON: the Freight Forwarder shall strictly adhere to the fumigation process requirements specified by the Australian Department of Agriculture, Fisheries, and the Forestry (DAFF) and BICON. Any deviations or non-compliance shall be considered a breach of these T&Cs. If there is a variance from the guidance provided by the Australian Department of Agriculture, Fisheries, and the Forestry (DAFF) concerning the fumigation process, the Freight Forwarder shall bear full responsibility to ensure that any alternative fumigation method, including variations in temperature, exposure duration, or the choice of fumigant, does not lead to any complications during customs inspections of flowers and accompanying documentation.

6.3.4 Timing of Fumigation: The Company shall ensure that cut flowers are delivered to the Freight Forwarder's facility at least one day before the intended shipping date to allow for the fumigation process. The Company acknowledges that timely delivery is critical to meet regulatory requirements and quality standards.

6.3.5 Combining Low Quantity Boxes: In the event that the quantity of flower boxes provided by The Company is low and does not warrant a full fumigation cycle, the Freight Forwarder may combine these boxes with those from other clients. In such cases, The Company shall be charged based on a percentage of the occupied space within the fumigation container, thereby avoiding payment for a full cycle.

6.3.6 Fumigation Cycle Parameters: The fumigation cycle shall adhere to the following parameters:

- The fumigation cycle should not exceed 24 hours.
- The fumigation chamber temperature shall be maintained at 2.5 degrees Celsius if phosphine gas is being used as fumigant.
- Loading of boxes into the fumigation container should take no more than 30 minutes.
- Exposure to the fumigant shall not exceed 24 hours.
- Aeration, to remove the fumigant, shall take no more than 30 minutes.
- Offloading boxes from the fumigation chamber should be completed within 30 minutes.

6.3.7 Phosphine Gas Dosage: the Freight Forwarder shall ensure that the dosage of phosphine gas utilized during the fumigation process is no less or more than 2000 parts per million (ppm). The temperature during fumigation shall not exceed 2.5 degrees Celsius. the Freight Forwarder shall also ensure that the use of phosphine gas does not affect the fresh weight loss (FWL), vase life, flower head diameter, or the efficiency of eliminating pests.

6.3.8 Documentation and Reports: the Freight Forwarder shall timely provide The Company with all necessary artifacts related to the fumigation process, including photographic evidence, documentation, checklists, and reports. These artifacts shall be provided as part of the service and shall not incur additional costs to The Company.

6.4 Non-Compliance: In the event of non-compliance with the handling processes, or fumigation process, the Freight Forwarder shall be liable for any resulting damages or losses incurred by The Company, including any additional costs associated with replacing the damaged cut flowers.

7. Packaging and Handling

7.1 Packaging Standards:

7.1.1 Compliance: the Freight Forwarder shall ensure that all cut flowers are packaged in a manner that complies with industry standards and any applicable regulations. Any deviations from these standards that result in damage to the cut flowers shall be considered a breach of these T&Cs.

7.1.2 Damage Prevention: the Freight Forwarder shall take all necessary precautions to prevent any damage, loss, or alteration to the cut flowers during packaging, handling, and transportation. the Freight Forwarder shall be liable for any damages or losses incurred by The Company resulting from a failure to meet these standards.

7.1.3 Cooling Chain: the Freight Forwarder shall ensure that the cooling chain is not compromised during the handling and transportation of cut flowers from the Freight Forwarder's facility until their arrival in Australia. Any breach of the cooling chain that impacts the quality and freshness of the cut flowers shall be considered a breach of these T&Cs.

7.1.4 Fragile Handling: the Freight Forwarder shall treat all flower boxes as fragile items. In cases where flower boxes are consolidated with other items not pertaining to The Company' orders, the Freight Forwarder shall ensure that these boxes are designated as non-stackable to prevent potential damages when airfreighting The Company' boxes with other goods from different clients.

7.2 Handling and Transportation:

7.2.1 Care and Caution: the Freight Forwarder shall exercise the utmost care and caution when handling and transporting the cut flowers to prevent damage or deterioration. Any negligence or

mishandling that leads to damages shall be the Freight Forwarder's responsibility, and they shall be liable for any resulting losses incurred by The Company.

7.2.2 Temperature Control: the Freight Forwarder shall maintain proper temperature conditions during transportation to ensure that the cut flowers arrive at their destination in the same condition as when they left the facility. Deviations from the specified temperature conditions that impact the quality and freshness of the cut flowers shall be considered a breach of these T&Cs.

7.3 Inspection Process:

7.3.1 Inspection by the Freight Forwarder: the Freight Forwarder shall inspect all cut flowers upon receipt at their facility to identify any damage, discrepancies, or quality issues. the Freight Forwarder shall promptly report any such issues to The Company within [Insert Number] hours of receipt.

7.3.2 Inspection by The Company: The Company shall have the right to conduct inspections of the cut flowers at the Freight Forwarder's facility at its discretion.

7.3.3 Rejection and Replacement: In the event that the cut flowers are found to be damaged, in non-compliance with packaging standards, or affected during handling and transportation, The Company reserves the right to reject the shipment. the Freight Forwarder shall be responsible for the timely replacement of the rejected cut flowers at no additional cost to The Company.

7.4 Non-Compliance: Any failure by the Freight Forwarder to comply with the packaging and handling standards, resulting in damage, deterioration, or losses, shall render the Freight Forwarder liable for any consequential damages or losses incurred by The Company.

8. Transportation and Delivery

8.1 Shipment Responsibility:

8.1.1 Carrier Responsibility: the Freight Forwarder shall act as the carrier responsible for the transportation of cut flowers from the point of origin to the destination specified by The Company in Australia.

8.1.2 Prompt Delivery: the Freight Forwarder shall transport and deliver the cut flowers promptly and in accordance with the delivery schedule agreed upon between the parties. the Freight Forwarder shall notify The Company of any delays in delivery as soon as they become aware of such delays.

8.2 Transportation Standards:

8.2.1 Compliance: the Freight Forwarder shall adhere to all Australian transportation standards, regulations, and industry best practices applicable to the transportation of perishable goods, including but not limited to cut flowers.

8.2.2 Temperature Control: the Freight Forwarder shall maintain appropriate temperature conditions throughout the transportation process to ensure that the cut flowers remain in optimal condition. Any deviation from the specified temperature conditions that impacts the quality and freshness of the cut flowers shall be considered a breach of these T&Cs.

8.3 Delivery Process:

8.3.1 Delivery Inspection: The Company reserves the right to inspect the cut flowers upon delivery and may refuse acceptance of the shipment if the cut flowers are found to be in non-compliance with the terms and conditions of these T&Cs or if they are damaged or of substandard quality.

8.3.3 Rejection and Replacement: In the event that the cut flowers are found to be damaged, in non-compliance with transportation standards, or of inferior quality, The Company reserves the right to reject the shipment. The Freight Forwarder shall be responsible for the timely replacement of the rejected cut flowers at no additional cost to The Company.

8.4 Documentation Submission:

8.4.1 Timely Documentation Submission: the Freight Forwarder shall be responsible for promptly submitting all required documentation upon the dispatch of goods from Kenya to the Department of Agriculture, Fisheries, and Forestry (DAFF) and to The Company' Australian clearance forwarder at the Australian airport. This submission shall be completed proactively to ensure that all necessary documentation is available in advance of the arrival of the goods.

8.4.2 Communication with The Company: the Freight Forwarder shall keep The Company informed through electronic communication at all times during the documentation submission process. Any delays or issues related to the submission of required documents shall be promptly communicated to The Company.

8.4.3 Document Review and Submission: The documents to be reviewed and submitted by the Freight Forwarder may include but are not limited to the Certificate of Origin, Airway Bill, Packing Slips, Phytosanitary requirements, and any other documentation necessary for compliance with Australian regulations and requirements.

8.4.4 Notification of Import: Notification of the import must be provided to the Department of Agriculture, Fisheries and Forestry (DAFF) for all imported goods other than goods imported as accompanied baggage or goods imported via the mail and not prescribed under the Customs Act 1901, or where other exceptions specified in the Biosecurity Regulation 2016 apply. Notification must be provided in accordance with section 120 of the Biosecurity Act 2015 and Part 1 of Chapter 2 of the Biosecurity Regulation 2016. Please refer to 'Sending your goods to Australia' on the Department of Agriculture, Fisheries and Forestry website.

8.4.5 Provision of required documentation: All required documentation accompanies each consignment. Required documentation must be presented to the Department of Agriculture, Fisheries and Forestry (DAFF) for assessment. Airfreight or mail shipments shall have all required

documentation securely attached to the outside of the package, and clearly marked "Attention Department of Agriculture, Fisheries and Forestry" Documentation may include the permit (or permit number), government certification and invoice. The Freight Forwarder shall ensure that the product description on the permit does not vary from the identifying documentation provided, as the goods will not be released from biosecurity control unless evidence is provided to the biosecurity officer that the permit covers the goods in the consignment.

8.4.6 Compliance and Accuracy: the Freight Forwarder shall ensure that all submitted documentation is accurate, complete, and in compliance with the regulations and requirements of both Kenyan and Australian authorities. As far as Australia is concerned, any documentation provided must comply with the Department of Agriculture, Fisheries and Forestry's minimum documentation requirements policy.

8.4.7 Liability: Any failure by the Freight Forwarder to submit required documentation in a timely and accurate manner, resulting in issues related to customs clearance or other regulatory matters, shall render the Freight Forwarder liable for any consequential damages or losses incurred by The Company.

8.4.8 Non-commodity cargo clearance: In addition to the conditions for the goods being imported, non-commodity biosecurity risks are assessed including container cleanliness, packaging and destination concerns, and may be subject to inspection and treatment on arrival. Please refer to the Non-Commodity Cargo Clearance BICON case for further information. As such, the Freight Forwarder shall comply with any inspection and treatment requirements related to non-commodity biosecurity risks as determined by relevant authorities,

8.5 Non-Compliance: Any failure by the Freight Forwarder to comply with the transportation and delivery standards, resulting in damage, deterioration, or losses, shall render the Freight Forwarder liable for any consequential damages or losses incurred by The Company.

9. Risk and Insurance

9.1 Risk Allocation:

9.1.1 Risk of Loss: The risk of loss or damage to the cut flowers shall be borne by the Freight Forwarder until the cut flowers are delivered to the agreed-upon destination. Any loss or damage that occurs during transportation or delivery shall be the responsibility of the Freight Forwarder.

9.1.2 Notification of Loss or Damage: In the event of loss or damage, the Freight Forwarder shall promptly notify The Company of the loss or damage, providing all necessary details and supporting documentation.

9.2 Insurance Requirements:

9.2.1 Insurance Coverage: the Freight Forwarder shall maintain adequate insurance coverage to protect against the risk of loss or damage to the cut flowers during transportation and delivery. The insurance coverage shall include, but not be limited to, coverage for the full value of the cut flowers, transportation-related risks, and any other risks associated with the services provided by the Freight Forwarder.

9.2.2 Proof of Insurance: the Freight Forwarder shall provide The Company with proof of insurance coverage upon request. The proof of insurance shall include policy details, coverage limits, and contact information for the insurance provider.

9.2.3 Compliance with Insurance Obligations: the Freight Forwarder shall ensure that the insurance coverage remains in force and complies with all applicable legal and regulatory requirements throughout the term of these T&Cs.

9.3 Liability for Uninsured Losses:

9.3.1 Liability for Uninsured Losses: In the event of loss or damage to the cut flowers and if the Freight Forwarder is found to be without adequate insurance coverage to address such losses, the Freight Forwarder shall be held liable for any consequential damages or losses incurred by The Company as a result of the uninsured loss.

9.4 Limitation of Liability:

9.4.1 Maximum Liability: the Freight Forwarder's liability for any loss or damage to the cut flowers, whether insured or uninsured, shall not be limited to the actual value of the cut flowers or the maximum coverage amount provided by their insurance policy, whichever is less. the Freight Forwarder shall also be liable for any consequential, indirect, or special damages incurred by The Company, including but not limited to lost profits, business interruptions, or economic losses.

9.5 Inspection and Verification:

9.5.1 Verification of Insurance: The Company reserves the right to verify the adequacy and validity of the Freight Forwarder's insurance coverage and may request proof of insurance at any time during the term of these T&Cs.

9.5.2 Compliance with Legal Requirements: the Freight Forwarder shall ensure that its insurance coverage complies with all applicable legal requirements and regulations, including those imposed by relevant authorities in Kenya and Australia.

9.5.3 Additional Insured Status: Upon The Company' request, the Freight Forwarder shall include The Company as an additional insured party on their insurance policy, with respect to the transportation and delivery of the cut flowers.

9.6 Changes in Insurance Coverage:

9.6.1 Notification of Changes: the Freight Forwarder shall promptly notify The Company of any changes in their insurance coverage, including changes in coverage limits, policy cancellations, or modifications that may affect the protection of the cut flowers.

9.6.2 Continuation of Coverage: In the event of changes in insurance coverage, the Freight Forwarder shall take all necessary steps to ensure that coverage remains adequate and uninterrupted throughout the term of these T&Cs.

9.7 Subrogation:

9.7.1 Subrogation Waiver: the Freight Forwarder shall waive any rights of subrogation against The Company for losses covered by the Freight Forwarder's insurance policies. This waiver shall be in writing and shall be provided to The Company upon request.

9.8 Legal and Regulatory Compliance:

9.8.1 Compliance with Legal and Regulatory Requirements: the Freight Forwarder shall comply with all legal and regulatory requirements related to the insurance coverage, including those imposed by relevant authorities in Kenya and Australia.

9.9 Liability of Parties

9.9.1 Strict Liability: The liability of the Freight Forwarder under these T&Cs shall be strict and shall not be limited by any other provision of these T&Cs, including any limitation of liability clauses.

9.9.2 No Liability for Acts of God: Neither party shall be liable for acts of God, natural disasters, or events beyond their reasonable control that may affect the transportation and delivery of the cut flowers.

10. Compliance with Laws and Regulations

10.1 General Compliance Obligations:

10.1.1 Legal and Regulatory Compliance: the Freight Forwarder shall comply with all applicable laws, regulations, and requirements imposed by the authorities in Kenya and Australia throughout the performance of the services under these T&Cs. This includes, but is not limited to, compliance with customs, phytosanitary, and biosecurity requirements.

10.1.2 Permits and Licenses: the Freight Forwarder shall obtain and maintain all necessary permits, licenses, and approvals required to perform the services, and shall provide The Company with copies of such permits upon request.

10.2 Compliance with Phytosanitary and Biosecurity Requirements:

10.2.1 Phytosanitary and Biosecurity Compliance: the Freight Forwarder shall ensure that all cut flowers are in compliance with the phytosanitary and biosecurity requirements of both Kenya and Australia, including those established by the Australian Department of Agriculture, Fisheries, and the Forestry (DAFF).

10.2.2 Inspection and Documentation: the Freight Forwarder shall cooperate with all inspections and verifications required by relevant authorities, providing all necessary documentation and information for compliance purposes.

10.3 Notification of Non-Compliance:

10.3.1 Notification of Non-Compliance: In the event that the Freight Forwarder becomes aware of any actual or potential non-compliance with laws and regulations, including phytosanitary and biosecurity requirements, the Freight Forwarder shall promptly notify The Company in writing and provide details of the non-compliance.

10.3.2 Corrective Action: the Freight Forwarder shall take immediate corrective action to address any non-compliance issues and mitigate the impact of such non-compliance on The Company.

10.4 Non-Commodity Cargo Clearance:

10.4.1 Non-Commodity Biosecurity Risks: the Freight Forwarder shall be aware that non-commodity biosecurity risks, including container cleanliness, packaging, and destination concerns, may be assessed by relevant authorities and may be subject to inspection and treatment on arrival. the Freight Forwarder shall cooperate with any such inspections and treatments as required.

10.4.2 Coordination with Authorities: the Freight Forwarder shall coordinate with relevant authorities to ensure that any non-commodity biosecurity risks are adequately addressed and do not impede the clearance and delivery of the cut flowers.

10.5 Accountability for Non-Compliance:

10.5.1 Accountability for Non-Compliance: In the event that non-compliance with laws and regulations, including phytosanitary and biosecurity requirements, results in financial or legal consequences for The Company, the Freight Forwarder shall be held accountable for such consequences and shall indemnify and hold harmless The Company from any losses, damages, or expenses incurred as a result of the non-compliance.

10.5.2 Indemnification: the Freight Forwarder's indemnification obligation shall include, but not be limited to, any fines, penalties, legal fees, and costs associated with non-compliance with laws and regulations.

10.6 Audits and Inspections:

10.6.1 Audit Rights: The Company reserves the right to conduct audits or inspections of the Freight Forwarder's operations and records to ensure compliance with the provisions of these T&Cs.

10.6.2 Cooperation: the Freight Forwarder shall fully cooperate with any audits or inspections conducted by The Company and shall provide all necessary access, documentation, and information required for such audits or inspections.

10.6.3 Corrective Action: In the event that audits or inspections reveal non-compliance with laws and regulations, the Freight Forwarder shall take immediate corrective action to address the identified issues and prevent future non-compliance.

10.7 Accountability for Legal and Regulatory Violations:

10.7.1 Legal and Regulatory Violations: In the event that the Freight Forwarder is found to have violated any laws or regulations related to the services provided under these T&Cs, the Freight Forwarder shall be solely responsible for any legal consequences, fines, penalties, or legal actions arising from such violations.

10.7.2 Legal Expenses: the Freight Forwarder shall indemnify and hold harmless The Company from any legal expenses, fines, or penalties resulting from legal and regulatory violations committed by the Freight Forwarder.

11. Intellectual Property

11.1 Ownership of Intellectual Property:

11.1.1 The Company' Ownership: All intellectual property rights, including but not limited to trademarks, trade names, logos, designs, and any other proprietary intellectual property associated with The Company, shall remain the exclusive property of The Company.

11.1.2 No Transfer of Ownership: These T&Cs does not grant the Freight Forwarder any ownership rights or licenses to use The Company' intellectual property, and the Freight Forwarder shall not use The Company' intellectual property without the express written consent of The Company.

11.2 Use of Intellectual Property:

11.2.1 Authorized Use: the Freight Forwarder shall only use The Company' intellectual property as explicitly authorized and directed by The Company for the sole purpose of fulfilling its obligations under these T&Cs.

11.2.2 No Modification: the Freight Forwarder shall not modify, alter, or use The Company' intellectual property in any manner that may dilute, tarnish, or damage the reputation or goodwill associated with The Company.

11.3 Protection of Intellectual Property:

11.3.1 Duty of Care: the Freight Forwarder shall exercise the utmost care and diligence to protect The Company' intellectual property from any unauthorized use, disclosure, or infringement.

11.3.2 Reporting Unauthorized Use: In the event that the Freight Forwarder becomes aware of any unauthorized use or infringement of The Company' intellectual property, the Freight Forwarder shall promptly notify The Company in writing, providing details of such unauthorized use.

11.4 Non-Disclosure and Confidentiality:

11.4.1 Non-Disclosure Obligation: the Freight Forwarder shall maintain the confidentiality of all proprietary information, trade secrets, and any confidential information disclosed by The Company during the course of these T&Cs. the Freight Forwarder shall not disclose such information to any third party without the express written consent of The Company.

11.4.2 Non-Use Obligation: the Freight Forwarder shall not use any confidential information provided by The Company for any purpose other than the performance of the services under these T&Cs.

11.4.3 Return of Information: Upon the termination or expiration of these T&Cs, the Freight Forwarder shall promptly return to The Company all confidential information, and shall not retain any copies or records of such information.

11.5 Consequences of Violation:

11.5.1 Violation of Intellectual Property Rights: In the event that the Freight Forwarder violates The Company' intellectual property rights, including unauthorized use, modification, or infringement, the Freight Forwarder shall be held liable for any resulting damages, losses, and legal expenses incurred by The Company.

11.5.2 Violation of Non-Disclosure Obligations: In the event that the Freight Forwarder breaches its obligations regarding non-disclosure and confidentiality, the Freight Forwarder shall be solely responsible for any legal consequences and losses incurred by The Company, including but not limited to legal fees, damages, and injunctive relief.

11.6 Survival of Obligations:

11.6.1 Survival of Intellectual Property Obligations: The obligations outlined in this section, including the protection of The Company' intellectual property and non-disclosure obligations, shall survive the termination or expiration of these T&Cs.

12. Confidentiality

12.1 Definition of Confidential Information:

12.1.1 Definition: In the context of this Agreement, "Confidential Information" shall include, but is not limited to, all non-public information, data, documents, business strategies, trade secrets, customer lists, pricing information, and any proprietary information belonging to the Company.

12.2 Confidentiality Obligations:

12.2.1 Strict Obligation: The Freight Forwarder acknowledges and agrees that it shall have a strict and ongoing duty to keep all Confidential Information confidential.

12.2.2 Non-Disclosure: The Freight Forwarder shall not, at any time, disclose, use, or permit the disclosure or use of any Confidential Information, except as required in the performance of its obligations under these T&Cs.

12.3 Use for Performance:

12.3.1 Authorized Use: The Freight Forwarder may use the Confidential Information solely for the purpose of fulfilling its obligations under the Company's purchase orders. Any other use is expressly prohibited without the prior written consent of the Company.

12.4 Protection of Confidential Information:

12.4.1 Duty of Care: The Freight Forwarder shall exercise due care and diligence to protect the Confidential Information from any unauthorized use, disclosure, or access.

12.4.2 Unauthorized Access: The Freight Forwarder shall promptly notify the Company in writing if it becomes aware of any unauthorized access, use, or disclosure of Confidential Information.

12.5 Return of Information:

12.5.1 Return of Confidential Information: Upon the termination of services, the Freight Forwarder shall promptly return to the Company all Confidential Information, and shall not retain any copies or records of such information.

12.6 Consequences of Violation:

12.6.1 Violation of Confidentiality Obligations: In the event that the Freight Forwarder violates its obligations regarding confidentiality, including unauthorized disclosure, use, or access to Confidential Information, the Freight Forwarder shall be held liable for any resulting damages, losses, and legal expenses incurred by the Company.

12.6.2 Injunctive Relief: The Company reserves the right to seek injunctive relief to prevent the unauthorized disclosure or use of Confidential Information, in addition to any other legal remedies.

12.7 Survival of Obligations:

12.7.1 Survival of Confidentiality Obligations: The obligations outlined in this section, including the protection of Confidential Information, shall survive the termination or expiration of services.

13. Indemnification and Liability

13.1 Indemnification:

13.1.1 Indemnification by the Freight Forwarder: The Freight Forwarder (hereinafter referred to as "the Freight Forwarder") shall indemnify and hold harmless the Company (hereinafter referred to as "the Company") from and against any and all claims, demands, losses, liabilities, damages, costs, and expenses, including reasonable legal fees, arising out of or in connection with any breach of this Agreement, negligence, wilful misconduct, or any other act or omission by the Freight Forwarder or its employees, agents, or representatives.

13.2 Exclusions:

13.2.1 No Liability for Force Majeure: Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure is due to a force majeure event, including but not limited to acts of God, war, strikes, civil unrest, natural disasters, government actions, or any other event beyond the control of the parties.

13.3 Survival:

13.3.1 Survival of Indemnification Obligations: The obligations outlined in this section, including indemnification, shall survive the termination or expiration of the services provided by the Freight Forwarder.

13.4 Written Notices: All notices, communications, requests, or demands under these Terms and Conditions, including any modifications or amendments, shall be in writing. Such written notices may be delivered by personal delivery, registered mail, or reputable courier service.

13.5 Recipient's Address: Notices to the Company shall be addressed to the Company's principal place of business, as specified in the Company's official correspondence or invoices, or to any other address as the Company may specify in writing.

13.6 Customer's Address: Notices to the Customer shall be addressed to the address provided by the Customer in their order or any other address subsequently provided in writing.

13.7 Effective Date: Notices shall be deemed effective upon actual receipt, as evidenced by a confirmation of receipt from the receiving party. If the notice is sent by registered mail, it shall be deemed received on the date of delivery, as indicated on the postal receipt.

13.8 Electronic Notices: The parties may agree to accept notices via electronic communication, such as email or facsimile. Any electronic notices shall be considered effective when they are transmitted, provided that the sender has confirmation of successful transmission.

13.9 Notice of Change: In the event of a change of address or contact information, the sending party shall promptly notify the receiving party of such changes in writing. Until such notice is provided, the most recent contact information on record shall be used for sending notices.

13.10 Notice Delivery Receipt: If a party sends a notice but does not receive confirmation of receipt within a reasonable period, it shall take reasonable steps to verify that the notice has been delivered to the intended recipient.

13.11 Language of Notices: Unless otherwise agreed by the parties, all notices shall be written in the language of these Terms and Conditions, which is the official language of the jurisdiction specified as the governing law.

14. Dispute Resolution

14.1 Negotiation and Resolution:

14.1.1 Good Faith Negotiation: In the event of any dispute or claim arising under or in connection with these T&Cs, both the Company and the Freight Forwarder (collectively referred to as "the Parties") shall use their best efforts to resolve such dispute or claim amicably through good faith negotiation.

14.1.2 Escalation: If the Parties are unable to resolve the dispute or claim through negotiation within thirty (30) days of the dispute or claim's first notification, the Parties shall escalate the matter to their respective senior management for further discussion and resolution.

14.2 Mediation:

14.2.1 Mediation Process: If the dispute remains unresolved after the negotiation and escalation steps, the Parties agree to engage in non-binding mediation. Mediation shall be conducted by a mutually agreed-upon mediator or, in the absence of agreement, by a mediator appointed by a competent authority.

14.2.2 Costs: The costs of the mediation, including the mediator's fees and any related expenses, shall be shared equally by the Parties, unless otherwise agreed.

14.2.3 Confidentiality: All communications, whether oral or written, made during the mediation process shall be confidential and without prejudice to the rights of the Parties in any future legal proceedings.

14.3 Arbitration:

14.3.1 Arbitration Process: If mediation does not result in a resolution, the Parties agree that any dispute, claim, or controversy arising out of or relating to this Agreement shall be resolved by arbitration in accordance with the rules of a recognized arbitral institution as mutually agreed upon by the Parties.

14.3.2 Arbitration Award: The decision of the arbitrator(s) shall be final and binding upon the Parties and may be entered and enforced in any court of competent jurisdiction.

14.3.3 Costs: The costs of the arbitration, including the arbitrator(s)' fees and any related expenses, shall be borne by the Party against whom the arbitration award is rendered, unless the award specifies otherwise.

14.4 Injunctive Relief:

14.4.1 Injunctive Relief: Notwithstanding the dispute resolution procedures outlined in this section, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction to prevent or address an immediate or irreparable harm.

14.5 Governing Law and Jurisdiction:

14.5.1 Governing Law: These T&Cs shall be governed by and construed in accordance with the laws of the jurisdiction in which the Company is based, without regard to its conflict of laws principles.

14.5.2 Jurisdiction: Any legal actions, suits, or proceedings arising out of or relating to these T&Cs shall be instituted exclusively in the federal or state courts located in the jurisdiction in which the Company is based.

14.6 Waiver of Jury Trial

14.6.1 Jury Trial Waiver: To the fullest extent permitted by applicable law, the Parties hereby irrevocably and unconditionally waive their respective rights to a trial by jury in any legal action or proceeding relating to this Agreement.

15. Termination or Cancellation

15.1 Termination by the Company: The Company reserves the right to terminate or suspend any agreement or order with the Freight Forwarder if the Freight Forwarder breaches these Terms and Conditions, fails to provide quality services, engages in fraudulent activities, or if the Company has a reasonable basis to believe that the Freight Forwarder's actions may cause harm or financial loss to the Company.

15.2 Termination by the Customer: The Freight Forwarder may request the termination or cancellation of an order. Such requests should be submitted in writing to the Company. The acceptance of such requests is at the sole discretion of the Company. In cases where the Company accepts a cancellation request, the Freight Forwarder may be subject to fees or charges as determined by the Company to cover costs incurred up to the point of cancellation.

15.3 Force Majeure: In cases of force majeure events, the Company may be entitled to terminate or suspend an agreement or order. In such cases, the Company will make reasonable efforts to notify the Freight Forwarder as soon as practicable.

15.4 Effect of Termination: Upon termination or cancellation of an agreement or order, the Company shall have the right to recover any outstanding payments, fees, or charges owed by the Freight Forwarder. The Freight Forwarder acknowledges that the Company is not liable for any losses or damages resulting from such termination or cancellation, except as expressly provided in these Terms and Conditions.

15.5 Return of Funds: In the event of a termination or cancellation, the Freight Forwarder will make reasonable efforts to return any unused funds to the Company within a reasonable timeframe. Any fees or charges incurred as a result of the termination or cancellation may be deducted from the funds to be returned to the Company.

15.6 Pending Obligations: Termination or cancellation of an order or agreement does not relieve the Freight Forwarder of any pending obligations, including but not limited to payment for delivered or partially prepared flowers, or compliance with any applicable laws or regulations.

15.7 No Waiver of Rights: The termination or cancellation of an order or agreement by the Freight Forwarder does not constitute a waiver of its rights to enforce these Terms and Conditions or seek remedies for any breaches or liabilities.

16. Modification and Waiver

16.1 Written Modifications: These Terms and Conditions may be modified, amended, or altered only by a written agreement executed by both the Freight Forwarder and an authorized representative of the Company. The written agreement must expressly state the modifications and the intention to amend these terms. No oral modifications shall be valid or enforceable.

16.2 Waiver of Rights (Company's Right): The failure of the Company to exercise any right or enforce any provision of these Terms and Conditions shall not constitute a waiver of such right or provision. Any waiver by the Company must be in writing and signed by an authorized representative. The waiver of any right or provision in a specific instance shall not imply a waiver of such right or provision in future instances.

16.3 No Implied Waivers: No act or course of conduct by the Company shall constitute a waiver of any right or provision unless explicitly stated in writing. The Company's rights under these Terms and Conditions are cumulative and may be exercised at any time and in any order.

16.4 Continued Performance: The continued performance of any obligations by the Freight Forwarder shall not constitute a waiver of any rights or claims the Company may have under these Terms and Conditions. The Freight Forwarder is not relieved of its obligations under these terms by the Company's acceptance of performance.

16.5 Interpretation and Effect: This section shall be interpreted in accordance with the principle that any waiver or modification must be clear and unequivocal. Any ambiguity or uncertainty regarding a waiver or modification shall be construed against the party asserting the waiver or modification.

16.6 No Reliance on Oral Agreements: The parties acknowledge that no oral agreements or representations, whether made before or after the execution of these Terms and Conditions, shall modify or waive any provision herein unless reduced to writing and executed according to these T&Cs.

16.7 No Prejudice to Rights: The exercise or non-exercise of any right or remedy by the Company shall not prejudice or affect its other rights or remedies. The Company retains the full right to enforce these Terms and Conditions to the fullest extent of the law.

By accepting an order with DM Flowers, the Freight Forwarder acknowledges that they have read, understood, and agreed to these Terms and Conditions in their entirety.