

Terms and Conditions for the Purchase of Goods

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

Business Day means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in Wales;

Customer means Four Crosses Nursery Ltd registered in England and Wales with Company Registration Number 04734858 whose registered office is at Elms Field, Domgay Road, Four Crosses, Llanymynech, Powys SY22 6SL

Conditions means the Customer's terms and conditions of purchase set out in this document;

Confidential Information means any commercial, financial or technical information, information relating to the Goods which has been disclosed pursuant to the Contract;

Contract means the agreement between the Supplier and the Customer for the sale and purchase of Goods incorporating these Conditions and the Order;

Control means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;

Data Protection Legislation The UK Data Protection Legislation (and for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU 2016/679) and any other directly applicable European Union regulation relating to privacy.

Data Protection Policy The Customers Data Protection Policy;

Force Majeure means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers workforce;

Goods	means the plants and other nursery stock and sundries as set out in the Order which are to be supplied by the Supplier to the Customer;
Location	means the address for delivery of the Goods as set out in the Order;
Mandatory Policies	the Customers Horticultural Disease Policy;
Order	means the Customer's order for the Goods from the Supplier as set out in the Customer's order form;
Price	has the meaning given in clause 3.1;
Supplier	means the person who sells the Goods to the Customer and whose details are set out in the Order;
Specification	means the description or specification of the Goods and their packaging set out or referred to in the Order;
<u>UK Data Protection Legislation</u>	<u>any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.</u>
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns
- 1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 a reference to a gender includes each other gender;
- 1.2.6 words in the singular include the plural and vice versa;
- 1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall

not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form.

1.2.9 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and

1.2.10 a reference to legislation includes all subordinate legislation made from time to time under that legislation.

2 Application of these Conditions

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Customer otherwise agrees in writing.

2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer.

2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Goods subject to these Conditions.

2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. An Order shall lapse unless accepted by the Supplier before the expiry of 7 days after the date of the Order. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.

2.6 Acceptance of an Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which the Customer reasonably considers is consistent with acceptance of the Order.

3 Price

3.1 The price for the Goods shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by the Customer before the date the Order is made (**Price**). No increase in the Price may be made after the Order is placed.

3.2 The Price includes all packaging, delivery and unloading of the Goods.

4 Payment

4.1 The Supplier shall invoice the Customer for the Goods no sooner than completion of delivery of the Goods or, if later, the Customer's acceptance of the Goods.

- 4.2 The Customer shall pay each validly submitted invoice in accordance with the timescales agreed between the Supplier and the Customer before the date of the Order. In the absence of any such agreement, the Customer shall pay each validly submitted invoice of the Supplier within 30 days of receipt.
- 4.3 Time of payment is not of the essence. Where sums due under the Contract are not paid in full by the due date, to compensate the Supplier for all loss from the Customer's breach, the Customer shall pay on the sum overdue interest (before and after judgment) on a daily basis until payment in full at the rate of 2 per cent per annum above the base rate of Barclays Bank Plc. The Supplier acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 VAT shall be charged by the Supplier and paid by the Customer at the then applicable rate.

5 Cancellation

- 5.1 The Customer shall have the right to cancel the Order for the Goods or for any part of the Goods which have not yet been delivered to the Customer.
- 5.2 In relation to any Order cancelled or part-cancelled under clause 5.1, the Customer shall only be responsible for paying for that part of the price which relates to the Goods which at the time of cancellation have been delivered to the Customer.

6 Delivery

- 6.1 The Goods shall either be:
- 6.1.1 delivered by the Supplier to the Location on the date(s) specified in the Order; or
 - 6.1.2 made available for collection by the Customer at the Location on the date(s) specified in the Order
- 6.2 The Goods shall be deemed delivered by the Supplier:
- 6.2.1 If delivered in accordance with clause 6.1.1 on completion of unloading of the Goods at the Location; or
 - 6.2.2 If delivered in accordance with clause 6.1.2 once the Goods have been loaded in the Customer's carrier;
- 6.3 The Goods shall not be delivered by instalments unless otherwise agreed in writing by the Customer.
- 6.4 Each delivery of the Goods (whether the Goods are delivered by the Supplier or collected by the Customer) shall be accompanied by a delivery note stating:
- 6.4.1 the date of the Order;
 - 6.4.2 the relevant Customer and Supplier details;
 - 6.4.3 the product numbers and type and quantity of Goods in the consignment;
 - 6.4.4 any special handling and other requests; and

- 6.4.5 whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.
- 6.5 Time of delivery is of the essence. If the Supplier fails to deliver any of the Goods or fails to make them available for collection by the date specified in the Order, the Customer shall (without prejudice to its other rights and remedies) be entitled at the Customer's sole discretion:
- 6.5.1 to terminate the Contract in whole or in part;
- 6.5.2 to purchase the same or similar Goods from a supplier other than the Supplier;
- 6.5.3 to recover from the Supplier all costs and losses resulting to the Customer, including the amount by which the price payable by the Customer to acquire those Goods from another supplier exceeds the price payable under the Contract and any loss of profit; and
- 6.5.4 all or any of the foregoing.
- 6.6 If the Customer fails to accept delivery or fails to collect the Goods on the date or within the period set out in the Order, the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay reasonable storage charges at the Supplier's then applicable rate.

7 Acceptance, rejection and inspection

- 7.1 The Customer shall not have accepted, or be deemed to have accepted, the Goods until the Acceptance Conditions are fulfilled.
- 7.2 The '**Acceptance Conditions**' are that:
- 7.2.1 the Goods have been delivered to or at the Location; and
- 7.2.2 the Customer has notified the Supplier in writing that the Goods have been delivered in full compliance with the terms and conditions of the Contract.
- 7.3 The Customer shall be entitled to reject any Goods which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Goods or any payment made in respect thereof, shall not constitute a waiver of any of the Customer's rights and remedies, including its right to reject. If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.4 Any rejected Goods may be returned to the Supplier by the Customer at the Supplier's cost and risk. The Supplier shall pay to the Customer a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 7.5 The Customer may inspect and test the Goods during manufacture or processing prior to despatch, and the Supplier shall provide the Customer with all facilities reasonably required.

7.6 Any inspection or testing of the Goods shall not be deemed to be acceptance of the Goods or a waiver of any of the Customer's rights and remedies, including its right to reject.

7.7 The rights of the Customer in this clause 7 are without prejudice to the Customer's rights under clause 9.

8 Title and risk

8.1 Risk in the Goods shall pass to the Customer on delivery and when the Customer has accepted the Goods as conforming in every respect with the Contract in accordance with clause 7.2.

8.2 Title to the Goods shall pass to the Customer on the sooner of: (a) payment by the Customer for the Goods; or (b) delivery of the Goods to the Customer.

8.3 The passing of title shall not prejudice any other of the Customer's rights and remedies, including its right to reject.

8.4 The Supplier and no other person shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which has vested in the Customer or any specifications or materials of the Customer, and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.

8.5 The Supplier warrants and represents that it:

8.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Customer; and

8.5.2 shall hold such title and right to enable it to ensure that the Customer shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

9 Warranty

9.1 The Supplier warrants and represents that on delivery and for a period of 3 months from delivery (the **Warranty Period**), the Goods shall:

9.1.1 conform to any description and to the Specification;

9.1.2 be free from defects and disease;

9.1.3 comply with all applicable laws, standards and best industry practice;

9.1.4 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

9.1.5 be fit for purpose and any purpose held out by the Supplier and set out in the Order and as otherwise required to meet the Customer's needs.

9.2 The Supplier warrants and represents that it understands the Customer's business and needs.

9.3 The Supplier shall, without prejudice to the Customer's other rights and remedies, replace or refund the price of any defective or diseased Goods provided that the

Customer serves a written notice on Supplier within the Warranty Period that some or all of the Goods do not comply with clause 9.1.

9.4 The provisions of these Conditions shall apply to any Goods have been replaced with effect from delivery of the replaced Goods.

9.5 The Customer's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in sections 13 to 15 of the Sale of Goods Act 1979.

9.6 The Customer shall be entitled to exercise its rights under this clause 9 regardless of whether the Goods have been accepted under the Acceptance Conditions and notwithstanding that the Goods were not rejected following their initial inspection under clause 7.3

10 Indemnity and insurance

10.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses which the Customer may suffer or incur directly or indirectly from the Supplier's breach of any of the Supplier's obligations under the Contract.

10.2 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom insuring the Goods and any of the Customer's materials in the Supplier's possession against the usual risks, including accident, horticultural diseases, fire and theft, for their full replacement value until the risk in them passes to the Customer, and insuring against all other risks that a prudent supplier should consider reasonable. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Customer the benefit of such insurance.

11 Limitation of liability

11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.

11.2 The parties agree that the limitations in this clause 12 are reasonable given each of the party's respective commercial positions and their ability to obtain insurance in respect of the risks arising under or in connection with the Contract.

11.3 Subject to clauses 11.6 and 11.7, the Customer's total liability shall not exceed the sum of price paid for the Goods.

11.4 Subject to clauses 11.6 and 11.7, the Customer shall not be liable for consequential, indirect or special losses.

11.5 Subject to clauses 11.6 and 11.7, the Customer shall not be liable for any of the following (whether direct or indirect):

11.5.1 loss of profit;

- 11.5.2 loss of data;
 - 11.5.3 loss of use;
 - 11.5.4 loss of production;
 - 11.5.5 loss of contract;
 - 11.5.6 loss of opportunity;
 - 11.5.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 11.5.8 harm to reputation or loss of goodwill.
- 11.6 The limitations of liability set out in clauses 11.2 to 11.5 shall not apply in respect of any indemnities given by either party under the Contract.
- 11.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.7.1 death or personal injury caused by negligence;
 - 11.7.2 fraud or fraudulent misrepresentation;
 - 11.7.3 any other losses which cannot be excluded or limited by applicable law;

12 Data Protection Policy

12.1 This clause must be read and construed together with the Supplier's Data Protection Policy.

12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause **Error! Reference source not found.**, together with the Supplier's Data Protection Policy are in addition to, and do not relieve, remove or replace a party's obligations under the Data Protection Legislation.

12.3 In this clause 12, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

12.4 It is acknowledged that for the purposes of the Data Protection Legislation the Customer is the data controller and the Supplier is the data processor. The Supplier's Data Protection Policy sets out the scope, nature and purpose of processing of personal data by us, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation).

~~12.1~~12.5 All personal information collected by the Supplier is processed strictly in accordance with our Data Protection Policy which ensures full compliance with the General Data Protection Regulations ((EU) 2016/679). A copy of the Data Protection Policy is attached.

12.6 Without prejudice to the generality of this clause, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.

12.7 The Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

12.7.1 process that personal data only on the written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

12.7.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

12.7.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

12.7.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

12.7.5 assist the Customer, at the Customer's cost, in responding to any request from the Supplier in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

12.7.6 notify the Customer without undue delay on becoming aware of a personal data breach;

12.7.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and

12.7.8 maintain complete and accurate records and information to demonstrate its compliance with this policy.

12.8 For the purposes of this policy it is assumed that the Customer does not consent to the Supplier appointing any third party processor of Personal Data under this agreement.

12.9 Either party may, at any time on not less than 30 days' notice, revise or request a revision this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

13 Confidentiality and announcements

13.1 The Supplier shall keep confidential all Confidential Information of the Customer and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

13.1.1 any information which was in the public domain at the date of the Contract;

13.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

13.1.3 any information which is independently developed by the Supplier without using information supplied by the Customer; or

13.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

13.2 This clause shall remain in force in perpetuity.

13.3 The Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

14 Force Majeure

14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

14.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

14.1.2 uses best endeavours to minimise the effects of that event.

14.2 If, due to Force Majeure, a party:

14.2.1 is or shall be unable to perform a material obligation; or

14.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or total of more than 30 days in any consecutive period of 60 days;

the other party may, within 30 days, terminate the Contract on immediate notice the parties shall, within 30 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

15 Termination

15.1 The Customer may terminate the Contract or any other contract which it has with the Supplier at any time by giving notice in writing to the Supplier if:

15.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;

15.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;

15.1.3 the Supplier has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Customer has given notification that the payment is overdue; or

15.1.4 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

15.2 The Customer may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:

15.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

15.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Customer reasonably believes that to be the case;

15.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

15.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

15.2.5 has a resolution passed for its winding up;

15.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

15.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;

15.2.8 has a freezing order made against it;

15.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title those items;

15.2.10 is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.9 in any jurisdiction;

15.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

15.3 The Customer may terminate the Contract any time by giving not less than 14 days notice in writing to the Supplier if the Supplier undergoes a change of Control.

15.4 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 15, it shall immediately notify the Customer in writing.

15.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Customer at any time up to the date of termination.

16 Dispute resolution

16.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 16.

16.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

16.3 The parties shall use all reasonable endeavours to reach a negotiated resolution.

16.4 The specific format for the resolution of the dispute under clause 16.3 shall be left to the reasonable discretion of the parties.

16.5 If the dispute has not been resolved within 28 days then unless the Supplier and Customer agree otherwise, the matter shall be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

16.6 Until the parties have completed the steps referred to in clauses 16.3 and 16.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

17 Notices

17.1 Any notice or other communication given by a party under these Conditions shall:

17.1.1 be in writing and in English;

- 17.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 17.1.3 be sent to the relevant party at the address set out in the Contract
- 17.2 Notices may be given, and are deemed received:
 - 17.2.1 by hand: on receipt of a signature at the time of delivery;
 - 17.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
 - 17.2.3 by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
 - 17.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
 - 17.2.5 by email on receipt of a delivery email from the correct address.
- 17.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 17.1 and shall be effective:
 - 17.3.1 on the date specified in the notice as being the date of such change; or
 - 17.3.2 if no date is so specified, 3 Business Days after the notice is deemed to be received.
- 17.4 This clause 16 does not apply to notices given in legal proceedings or arbitration.

18 Cumulative remedies

The rights and remedies provided in the Contract for the Customer only are cumulative and not exclusive of any rights and remedies provided by law.

19 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Supplier's obligations only.

20 Further assurance

The Supplier shall at the request of the Customer, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

21 Entire agreement

- 21.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 21.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any

representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

21.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

22 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, the Customer.

23 Assignment

23.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Customer's prior written consent.

23.2 Notwithstanding clause 23.1, the Supplier may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Customer prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Supplier acknowledges and agrees that any act or omission of its Affiliate in relation to the Supplier's rights or obligations under the Contract shall be deemed to be an act or omission of the Supplier itself.

24 Set off

24.1 The Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Customer has with the Supplier.

24.2 The Supplier shall pay all sums that it owes to the Customer under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

25 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

26 Equitable relief

The Supplier recognises that any breach or threatened breach of the Contract may cause the Customer irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Customer, the Supplier acknowledges and agrees that the Customer is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

27 Severance

- 27.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 27.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

28 Waiver

- 28.1 No failure, delay or omission by the Customer in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 28.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Customer shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Customer.
- 28.3 A waiver of any term, provision, condition or breach of the Contract by the Customer shall only be effective if given in writing and signed by the Customer, and then only in the instance and for the purpose for which it is given.

29 Compliance with Mandatory Policies

- 29.1 The Supplier represents and warrants that the terms of the Customers Mandatory Policies have been fully complied with.
- 29.2 If requested by the Customer, the Supplier shall provide to the Customer with evidence demonstrating compliance with the Customers Mandatory Policies.
- 29.3 In the event that the Supplier fails to comply or is unable to provide evidence of compliance with the Customers Mandatory Policies, the Supplier shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with any action, demand or claim that arises either directly or indirectly as a result of the Suppliers failure to comply with the Customers Mandatory Policies.

30 Compliance with law

The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

31 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

32 Costs and expenses

The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

33 Third party rights

33.1 Except as expressly provided for in clause 33.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

33.2 Any Affiliate of the Customer shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

34 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

35 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).