

Terms and Conditions for the Supply of Goods

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Administrative Charge	shall mean the higher of £15.00 plus VAT or 1% or the Price.
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;
Conditions	means the Supplier's terms and conditions of sale set out in this document;
Confidential Information	means any information relating to the Supplier or the Goods which is disclosed to the Customer 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;
Customer	means the person who purchases the Goods from the Supplier and whose details are set out in the Order;
<u>Data Protection Legislation</u>	<u>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 Regulations ((EU 2016/679) and any other directly applicable European Union regulation to privacy</u>
Data Protection Policy	The Suppliers Data Protection Policy
Delivery	means the date on which delivery / collection occurs in accordance with clause 7.3.

Delivery Note	means the delivery note provided to the Customer on delivery / collection of the Goods which the Customer signs to acknowledge acceptance of the Goods.
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including but not limited to 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 including strikes or other industrial disputes involving the Supplier's or its suppliers workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
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 Suppliers Horticultural Diseases Policy and Data Protection Policy.
Order	means an order for the Goods from the Supplier placed by the Customer;
Price	has the meaning given in clause 3.1;
Specification	means the specification of the Goods and their packaging set out or referred to in the Order;
Supplier	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;
<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 Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier 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 Supplier.
- 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. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier until withdrawn by the Customer giving notice to the Supplier after the expiry of 10 Business Days from the date on which the Customer submitted the Order.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
- 2.7.1 the Supplier's written acceptance of the Order; or
- 2.7.2 the Supplier dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Goods and are incapable of being accepted by the Customer.
- 2.10 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.

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**).
- 3.2 The Prices are exclusive of:
- 3.2.1 packaging, delivery, and insurance which shall be charged in addition at the Supplier's standard rates, and
- 3.2.2 VAT (or equivalent sales tax).
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

3.4 The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 10% of the Prices in effect immediately prior to the increase.

3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods which exceeds 10% and which is due to any factor beyond the control of the Supplier.

4 Payment

4.1 The Supplier shall invoice the Customer for the Goods at any time.

4.2 The Customer shall pay all invoices:

4.2.1 in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice; and

4.2.2 to the bank account nominated by the Supplier; or

4.2.3 by credit card or debit card (not American Express). Where the Customer makes payments by credit cards the Supplier may charge a 1.5% surcharge of the payment which will be added at the time of payment; or

4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Barclays Bank from time to time in force;

4.3.2 the Supplier may issue a penalty charge of 10% of the total invoice unpaid on the due date; and

4.3.3 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Cancellation

6.1 The Customer shall have the right (subject to paying the Supplier the Administrative Charge) to cancel the Order for the Goods or for any part of the Goods which have not yet been delivered to the Customer.

6.2 In relation to any Order cancelled or part-cancelled under clause 6.1, the Customer shall pay for:

6.2.1 that part of the price which relates to the Goods which at the time of cancellation have been:

- (a) delivered, are in transit or are ready for delivery to the Customer;
- (b) commissioned for delivery;
- (c) manufactured or planted; and

6.2.2 the costs of materials which the Supplier has purchased to fulfil the Order for the Goods which cannot be used for other orders or be returned to the Supplier's supplier of those materials for a refund.

7 Delivery

7.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order.

7.2 An Order shall specify whether the Goods are to be:

7.2.1 delivered by the Supplier, or by a carrier appointed by the Supplier, to the Location on the date specified in the Order; or

7.2.2 made available for collection by the Customer at the Supplier's, or carrier's, premises set out in the Order (as the case may be). The Customer shall collect the Goods within the period specified in the Order.

7.3 The Goods shall be deemed delivered:

7.3.1 if delivered by the Supplier under clause 7.2.1, once the Customer accepts the Goods by signing the Delivery Note; or

7.3.2 if delivered by a carrier under clause 7.2.1, once the Customer accepts the Goods by signing the Delivery Note; or

7.3.3 if collected by the Customer under clause 7.2.2, when the Supplier makes the Goods available for collection at the Supplier's, or carrier's, premises (as the case may be).

7.4 The Customer shall not be entitled to reject any delivery of Goods on the basis that an incorrect volume of Goods has been supplied provided the volumes are within the tolerances (if any) set out in the Order.

7.5 The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

7.6 Delivery of the Goods shall be accompanied by a Delivery Note which shall include the following information:

7.6.1 the date of the Order;

7.6.2 the product numbers, type and quantity of Goods in the consignment; and

7.6.3 any special handling and storage instructions;

7.7 The Customer shall ensure that upon taking delivery of the Goods in accordance with clause 7.2.1 or upon collecting the Goods in accordance with clause 7.2.2 that the

Goods are inspected for quality purposes and to ensure that they conform in all material respects with the Order and the warranty given by the Supplier in accordance with clause 10.2. The Customer shall confirm acceptance of the Goods by signing the Delivery Note.

- 7.8 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are approximate only.
- 7.9 Unless the parties agree otherwise, packaging material is to be promptly returned to the Supplier at the Customer's expense.
- 7.10 The Supplier shall not be liable for any delay in or failure of delivery caused by:
- 7.10.1 the Customer's failure to (i) make the Location available; (ii) prepare the Location as required for delivery; or (iii) provide the Supplier with adequate instructions for delivery;
 - 7.10.2 the Customer's failure to collect the Goods from the Supplier's premises; or
 - 7.10.3 Force Majeure.
- 7.11 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all costs and expenses incurred by the Supplier in doing so.
- 7.12 If the Customer has not taken delivery of or collected the Goods on the day of delivery, the Supplier may (but is under no obligation) resell or otherwise dispose of the Goods. The Supplier shall:
- 7.12.1 deduct storage charges at the Supplier's then-applicable rate and reasonable costs of resale; and
 - 7.12.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

8 Risk

Risk in the Goods shall pass to the Customer on Delivery.

9 Title

- 9.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 9.2 Until title to the Goods has passed to the Customer, the Customer shall:
- 9.2.1 hold the Goods as bailee for the Supplier;
 - 9.2.2 store the Goods separately from all other material in the Customer's possession;

- 9.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 9.2.4 insure the Goods from the date of Delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
 - 9.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
 - 9.2.6 not remove or alter any mark on or packaging of the Goods;
 - 9.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 16.1.1 to 16.1.4 or 16.2.1; and
 - 9.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 9.3 Notwithstanding clause 9.2, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 16.1.1 to 16.1.4 or 16.2.1 has occurred or is likely to occur.
- 9.4 If the Customer resells the Goods in accordance with clause 9.3, title to the Goods shall pass to the Customer immediately prior to the resale.
- 9.5 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 16.1.1 to 16.1.4 or 16.2.1 the Supplier may:
- 9.5.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - 9.5.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

10 Warranty

- 10.1 The Goods which the Supplier supplies are a natural product which is subject to variation. As a result, any descriptions or illustrations contained in any of the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract and have no contractual force.
- 10.2 The Supplier warrants that the Goods shall, on Delivery::
- 10.2.1 conform in all material respects to the Order and Specification; and

- 10.2.2 be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 10.3 The Supplier shall, at its option, repair, replace, or refund the Price of, any Goods that do not comply with clause 10.2, provided that the Customer:
- 10.3.1 serves a written notice on Supplier within 5 Business Days. The Supplier will only be obliged to consider any such request in the event that the Customer endorsed their concerns with the quality of the Goods within the Delivery Note;:
- 10.3.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the storage conditions to which the Goods had been put prior to the defect arising;
- 10.3.3 gives the Supplier a reasonable opportunity to examine the defective Goods; and
- 10.3.4 returns the defective Goods to the Supplier at the Supplier's expense.
- 10.4 The provisions of these Conditions, including the warranties set out in clause 10.2, shall apply to any Goods that are replaced with effect from Delivery of the replaced Goods.
- 10.5 The Supplier shall not be liable for any failure of the Goods to comply with clause 10.2:
- 10.5.1 where such failure arises by reason of the Customer's wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
- 10.5.2 where the Goods fail due to weather or other conditions occurring after delivery or collection of the Goods;
- 10.5.3 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
- 10.5.4 to the extent caused by the Supplier following any specification or requirement of the Customer in relation to the Goods;
- 10.5.5 where the Customer sells or plants any of the Goods after notifying the Supplier that they do not comply with clause 10.2.
- 10.6 Except as set out in this clause 10:
- 10.6.1 the Supplier gives no warranties and makes no representations in relation to the Goods; and
- 10.6.2 shall have no liability for their failure to comply with the warranty in clause 10.2,
- and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

11 Indemnity and insurance

- 11.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
- 11.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

12 Limitation of liability

- 12.1 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 12.
- 12.2 The Supplier at all times operates strict compliance with their Mandatory Policies and the Customer acknowledges and accepts that the Supplier accepts no liability for any losses which are incurred either as a direct or indirect result of matters to which the Mandatory Policies relate.
- 12.3 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.
- 12.4 Subject to clauses 12.7 and 12.8, the Supplier's total liability shall not exceed the price paid for the Goods pursuant to clause 3.1.
- 12.5 Subject to clauses 12.7 and 12.8, the Supplier shall not be liable for consequential, indirect or special losses.
- 12.6 Subject to clauses 12.7 and 12.8, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 12.6.1 loss of profit;
 - 12.6.2 loss of use;
 - 12.6.3 loss of production;
 - 12.6.4 loss of contract;
 - 12.6.5 loss of opportunity;
 - 12.6.6 loss of savings, discount or rebate (whether actual or anticipated);
 - 12.6.7 harm to reputation or loss of goodwill.
- 12.7 The limitations of liability set out in clauses 12.2 to 12.6 shall not apply in respect of any indemnities given by either party under the Contract.

12.8 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

12.8.1 death or personal injury caused by negligence;

12.8.2 fraud or fraudulent misrepresentation;

12.8.3 any other losses which cannot be excluded or limited by applicable law;

13 Confidentiality and announcements

13.1 The Customer shall keep confidential all Confidential Information of the Supplier 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; or

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

13.2 This clause 13 shall remain in force in perpetuity.

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

14 Data Protection Policy

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

14.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 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.

14.3 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.

14.4 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).

14.5 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.

14.6 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.

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

14.7.1 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;

14.7.2 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);

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

14.7.4 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;

14.7.5 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;

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

14.7.7 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

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

14.8 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.

~~14.1~~14.9 Either party may, at any time on not less than 30 days' notice, revise or request a revision this clause 14 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).

15 Force Majeure

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

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

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

15.2 If, due to Force Majeure, a party:

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

15.2.2 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.

16 Termination

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

16.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;

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

- 16.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
 - 16.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 16.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 16.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 16.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
 - 16.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 16.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 16.2.5 has a resolution passed for its winding up;
 - 16.2.6 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;
 - 16.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 16.2.8 has a freezing order made against it;
 - 16.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 16.2.10 is subject to any events or circumstances analogous to those in clauses 16.2.1 to 16.2.9 in any jurisdiction;
- 16.3 The Supplier may terminate the Contract any time by giving not less than 14 days notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 16.4 The right of the Supplier to terminate the Contract pursuant to clause 16.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.

16.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 16, it shall immediately notify the Supplier in writing.

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

17 Dispute resolution

17.1 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 17.

17.2 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.

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

17.4 The specific format for the resolution of the dispute under clause 17.3 shall be left to the reasonable discretion of the parties.

17.5 If the dispute has not been resolved within 28 days then the matter shall be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

17.6 Until the parties have completed the steps referred to in clauses 17.3 and 17.5, 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.

18 Notices

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

18.1.1 be in writing and in English;

18.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

18.1.3 be sent to the relevant party at the address set out in the Contract

18.2 Notices may be given, and are deemed received:

18.2.1 by hand: on receipt of a signature at the time of delivery;

18.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;

18.2.3 by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and

18.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and

18.2.5 by email on receipt of a delivery email from the correct address.

18.3 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 18.1 and shall be effective:

18.3.1 on the date specified in the notice as being the date of such change; or

18.3.2 if no date is so specified, 3 Business Days after the notice is deemed to be received.

18.4 This clause 18 does not apply to notices given in legal proceedings or arbitration.

19 Cumulative remedies

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

20 Time

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

21 Further assurance

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

22 Entire agreement

22.1 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.

22.2 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.

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

23 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 Supplier.

24 Assignment

- 24.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.
- 24.2 Notwithstanding clause 24.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

25 Set off

- 25.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 25.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

26 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.

27 Equitable relief

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

28 Severance

- 28.1 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.
- 28.2 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.

29 Waiver

- 29.1 No failure, delay or omission by the Supplier 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.
- 29.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 29.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

30 Compliance with law

The Customer 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. The Customer shall further comply with the Mandatory Policies.

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 Customer 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 Supplier 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).

THE SCHEDULE

Date:

Supplier: [insert full registered company name and trading name (if any) and registered number, place of registration, VAT number, registered or supervisory body]

Name:

Address: [registered office address]

Contact:

Customer

Name: [insert full registered company name and trading name (if any) and registered number, place of registration]

Address: [registered office address]

Contact:

Location:

Goods

Reference	Goods	Description	Price

Delivery dates/periods:

The Customer has read and accepts the Order and Contract subject to the Conditions [above OR overleaf].

Signed by or on behalf of the

Customer.....Date.....201[]

Name.....Position.....

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Signed by or on behalf of the

Supplier.....Date.....201[]

Name.....Position.....

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