



## Terms and Conditions of Sale (May 2021)

(Terms & Conditions under which Johnsons of Whixley Ltd will sell to a Buyer)

### 1 Interpretation

1.1 In these Conditions the following definitions apply:

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;

**Buyer** means the person who agrees to purchase the Goods from the Seller;

**Conditions** means the conditions of sale set out in this document as amended from time to time by the Seller;

**Contract** means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating these Conditions;

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation the UK** means Data Protection Legislation and any other legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

**Delivery Date** means the date stated in the Order for delivery of the Goods or if not the date on which the Goods are delivered to or collected by the Buyer;

**Delivery Location** means the address for delivery of the Goods as set out in the Order;

**Description** means the description of the Goods set out in the Order;

**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) Acts of God, flood, fire, lightning, earthquake, windstorm or other natural disaster; epidemic, pathogenic infection/contamination or pandemic; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; compliance with any law or governmental order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party), strike, lockout or accidental damage; and/or postal or other strikes or similar industrial action. boycott or; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract, except any party's failure to pay shall not be an event of Force Majeure in any event;

**Goods** means the nursery stock Plants and associated sundries included in an Order;

**Order** means an order of any type (orally or in writing) from the Buyer for Goods from the Seller;

**Parties** means the Buyer and the Seller as defined in these conditions;

**Seller** means Johnsons of Whixley Limited (company number 00616324) of The Nurseries, Whixley, York, North Yorkshire, YO26 8AQ; (Company Registration 616324; EORI GB 168 967 593 000; VAT GB 168 967 593);

**Specification** means that as described in the order;

**UK Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**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;

**Writing** includes facsimile or email transmission and 'Written' shall be construed accordingly.

1.2 Unless the context otherwise requires:

1.2.1 references to the Contract include these Conditions and the Order;

1.2.2 references to persons include individuals, unincorporated bodies, government entities, companies and organisations;

1.2.3 clause headings do not affect their interpretation; and

1.2.4 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## **2 Application of these terms and conditions**

2.1 These Conditions apply to and form part of the Contract. They supersede any previously issued terms of sale.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Order or any other document will form part of the Contract.

2.3 No variation of a Contract will be binding unless expressly agreed in writing by the Seller.

2.4 Each Order by the Buyer to the Seller will be deemed to be an offer to purchase Goods and subject to these Conditions.

2.5 The Seller reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.

2.6 Any estimate by the Seller for the supply of Goods will be an invitation to treat (and shall not be an offer) by the Seller to supply Goods on the terms of the estimate or at all;

2.7 Any estimate is valid for 30 days from the date of issue.

2.8 Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

## **3 Basis of Sales**

3.1 The Seller will only accept orders from persons who:

3.1.1 are bona fide horticultural businesses; or

3.1.2 have an open or ongoing account with the Seller; or

3.1.3 are official purchasers on behalf of a local authority or other organisation; or

3.1.4 are purchasing Goods in person from the Seller's Plant Centre.

3.2 The Seller shall sell and the Buyer shall purchase the Goods in accordance with a Contract formed only when the Seller informs the Buyer that the Seller accepts an Order.

3.3 The Buyer agrees, accepts, and acknowledges that the Seller is unable to give any specific or specialist advice regarding the suitability of the Plants for planting.

3.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods whether given orally or set out in the Buyer Charter or other documentation provided by the Seller, is given in good faith as a guide only and does not form part of the Contract.

3.5 The Buyer acknowledges that plants are a living organism and may suffer as a result of incorrect treatment and therefore The Seller cannot be held responsible or liable for any damage that Plants may suffer as a result of incorrect treatment.

3.6 In the event that the Buyer does require specific advice on this point then independent and specialist advice should be sought.

3.7 The Seller reserves the right (without any liability) to:

3.7.1 substitute any type or species of Plant specified in the Order for any reason including whether such Plant is available, based on availability and the Buyer's requirements, in terms of timely delivery, if the variation or substitution does not materially affect the characteristics of the Goods, and the substituted Plants are of a quality equal or superior to those originally specified; or

3.7.2 cancel the whole or any part of an Order if suitable Plants are not available at the Delivery Date.

3.8 The Goods supplied will be labelled as deemed appropriate by the Seller unless the Buyer's requirements for labels are set out in the Order.

## **4 Price**

4.1 The price for the Goods will be as set out in the Order or if not will be calculated in accordance with the Seller's standard prices in force on the date of the Contract.

4.2 The price for the Goods:

4.2.1 does not include delivery which may be charged in addition unless the Goods are collected by the Buyer, and

4.2.2 does not include VAT which will be charged in addition at the then applicable rate.

4.3 if charged the cost of delivery will be the amount stated on the Order; or

4.3.1 if none is stated the cost to the Seller of delivery by carrier; or

- 4.3.2 if delivery is by the Seller's vehicles such cost, up to the actual cost of delivery, as the Seller considers appropriate;
- 4.4 If at the request of the Buyer the Seller makes a site visit in connection with any Order then, unless the visit is to inspect Plants which are not in accordance with the Order, the Seller shall be entitled to charge in full for all costs incurred in connection with the visit.
- 4.5 The Seller reserves the right to increase the price for any undelivered Goods:
  - 4.5.1 by giving 3 working days' written notice to the Buyer, such increase to take effect in respect of any relevant Goods delivered after the expiry of such notice; or
  - 4.5.2 with immediate effect by giving written notice to the Buyer, where such increase arises as a consequence of any increase in the cost to the Seller of supplying the relevant Goods which is due to any factor beyond the control of the Seller.
- 4.6 If the Buyer does not agree with any increase in the price notified in accordance with clause 4.5 then the Buyer may terminate the Contract in respect of any undelivered Goods by giving the Seller 14 days' notice, such notice to expire no earlier than the date on which the price increase was due to take effect provided always that the Buyer shall accept delivery of and shall, where applicable pay the increased price for any Goods referred to in clause 4.5.1 in respect of which the Seller had at or prior to the time of receiving such notice entered into an irrevocable commitment to purchase or subcontract from any third party.
- 4.6.1 The Seller reserves the right to unilaterally increase any prices for the Goods at any time upon giving notice to the Customer to reflect any increase in costs that the Seller may have incurred as a result of providing the Goods as a result of the withdrawal of the United Kingdom from the European Union.

## **5 Delivery**

- 5.1 On or about the Delivery Date the Goods will be:
  - 5.1.1 delivered by or for the Seller to the Delivery Location; or
  - 5.1.2 made available for collection by the Buyer or the Buyer's representative at the Seller's premises provided that no Goods shall be removed from the Seller's premises unless they have been paid for in full or if there is a current credit agreement in place between the Buyer and the Seller.
- 5.2 Unless stated otherwise on the Order the Goods may be delivered in articulated lorries. It is the Buyer's responsibility to:
  - 5.2.1 ensure that the delivery vehicles can access the Delivery Location;
  - 5.2.2 provide suitable staff and equipment for offloading the Goods;
  - 5.2.3 provide the Seller with adequate instructions for delivery of the Goods; and
  - 5.2.4 offload the goods from the delivery vehicle
- 5.3 The Goods will be deemed delivered:
  - 5.3.1 if delivered by or for the Seller under clause 5.1.1, on arrival at the Delivery Location or as close to the Delivery Location as it is practicable for the delivery vehicle to approach; or
  - 5.3.2 if collected by the Buyer or Buyer's representative under clause 5.1.2, on completion of loading onto the Buyer's or the buyer's representative's vehicle.
- 5.4 If the Buyer asks the Seller to delay delivery while it locates suitable equipment or staff:
  - 5.4.1 the Seller shall be under no obligation to agree to the request;
  - 5.4.2 if the Seller does agree then the Seller may charge the Buyer waiting time at the rate of £50 per hour after the first hour following first arrival of the delivery vehicle.
- 5.5 The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.
- 5.6 If the Seller delivers up to and including 5% more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, the Seller shall make a pro rata adjustment to the invoice for the Goods.
- 5.7 The Seller will use its reasonable endeavours to deliver or make the Goods available for collection on the Delivery Date but such dates are approximate only, and time of delivery or availability for collection is not of the essence.
- 5.8 If the Buyer fails to take or accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods:
  - 5.8.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Seller notified the Buyer that the Goods were ready; and
  - 5.8.2 the Seller shall store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).

5.9 If ten Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable costs, invoice the Buyer for the Goods not taken.

## **6 Delivery stillages**

6.1 All crates, pallets and stillages used to supply the Goods remain the property of the Seller.

6.2 The Buyer must empty the crates, pallets and stillages and make them available in the same condition as when delivered for collection by the Seller no later than 5 Days after delivery or collection.

6.3 If the Buyer does not comply with clause 6.2 the Seller will charge the Buyer:

6.3.1 £30 for each wooden crate or pallet;

6.3.2 £300 for metal stillages (or £25 per day if less); and

6.3.3 £25 for each crate, pallet or stillage that is not empty when collected by the Seller.

## **7 Cancellation**

7.1 The Buyer may cancel the whole or part of an Order in writing at any time up to the Delivery Date.

7.2 If the Buyer fails to accept delivery of the Goods or to collect the Goods within 30 days of their being made available the Seller may cancel the Contract. See clause 5 above.

7.3 If the Buyer or the Seller cancel the whole or part of an Order in accordance with clause 7.1 or 7.2 the Seller may dispose of the Goods and invoice the Buyer for liquidated damages calculated as follows:

7.3.1 if Goods have been purchased by the Seller specifically for that Order: the whole of the Price;

7.3.2 in the case of other Plants produced by the Seller:

(a) if the Delivery Date is between 1<sup>st</sup> January and 28<sup>th</sup> February: 50% of the sale price of the Plants;

(b) if the Delivery Date is between 1<sup>st</sup> March and 30<sup>th</sup> September: 100% of the sale price of the Plants; and

(c) if the Delivery Date is between 1<sup>st</sup> October and 31<sup>st</sup> December: 30% of the sale price of the Plants;

(d) if no Delivery Date is stated in the Order: 100% of the sale price of the Plants;

7.3.3 in the case of associated items: 50% of the sale price of the associated items.

## **8 Payment**

8.1 The Seller shall issue invoices:

8.1.1 for the Goods when the Goods have been delivered or collected or deemed to have been delivered or collected;

8.1.2 for stillages etc. If not made available for collection at any time after the period for collection by the Seller has expired.

8.2 The Buyer will pay all invoices in full, without deduction or set-off, in cleared funds within the period from the date of each invoice specified in the account opening form supplied to the Buyer or if none on the date of the invoice.

8.3 Payment may be made by:

8.3.1 bank transfer to the Seller's nominated bank account as specified in the invoice; or

8.3.2 credit card or debit card (not American Express). Where the Buyer makes payments by credit card the Seller may charge a surcharge of 2% of the payment, which will be added at the time of payment; or

8.3.3 cheque provided the Buyer has an active account with the Seller but not otherwise; or

8.3.4 Cash.

8.4 Time of payment is of the essence.

8.5 where sums due are not paid in full by the due date the Seller may, without limiting its other rights, charge:

(a) a credit surcharge of 10% for the total of all invoices not paid in full on the due date;

(b) interest on the outstanding sums at 2% a year above the base rate of HSBC Bank from time to time in force. Interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment; and

(c) if a cheque does not clear on presentation or a credit card payment is countermanded the Seller may make an administration charge.

8.6 Sums due under clause 8.5 may be invoiced at any time and are payable within 7 days of the date of the invoice.

## **9 Title and risk**

9.1 Risk in the Goods will pass to the Buyer when they are deemed delivered or collected under clause 5.

9.2 Title to the Goods will pass to the Buyer upon the Seller receiving payment in full for the Goods.

## **10 Warranty**

- 10.1 The Buyer acknowledges, understands, and agrees that Plants are natural products and subject to variation in growth, appearance, grading and survival rates and may be subject to or carry diseases, infections and pathogens. It is of great importance therefore that the Buyer understands these risks and takes its own appropriate preventative measures and ensures that it has taken appropriate advice guidance and assistance in respect of the particular Plants to allow the best possible outcomes for the Plants. The storage conditions and the environment and general treatment of the Plants are also of significant importance and the Buyer acknowledges that the Seller cannot provide any Warranties in respect of the Plants thriving in any particular circumstances. The Plants may also be subject to latent or other diseases that are not apparent to the Seller in respect of the Plants and therefore the Seller cannot have any responsibility or liability in this regard either.
- 10.2 Any descriptions, illustrations, specifications, figures as to performance, drawings, and particulars of weight and dimensions submitted by the Seller or contained in the Seller's catalogues, price lists or elsewhere represent a general concept of the Goods and do not form part of the Contract due to the nature of the Goods.
- 10.3 Subject to Clause 10.1 the Seller warrants that on delivery or collection the Goods will:
- 10.3.1 conform in all material respects to their description and any relevant specification as may be varied from time to time as set out in the Order; and
- 10.3.2 be of satisfactory quality within the meaning of the Sale of Goods Act 1979, as amended.
- 10.4 The Seller will, at its option, replace or refund the price of defective Goods, provided that:
- 10.4.1 the Buyer informs the Seller in writing within 5 Business Days after delivery that some or all of the Goods do not comply with the Order;
- 10.4.2 the Buyer gives the Seller a reasonable opportunity to examine the defective Goods;
- 10.4.3 the Buyer provides any photographic evidence that the Seller may require upon request.
- 10.4.4 if the Seller so requests the Buyer allows the Seller to collect the defective Goods from the Delivery Location at the Seller's expense.
- 10.5 These Conditions will apply to any Goods replaced under clause 10.4.
- 10.6 The Seller will have no liability to the Buyer as there is no breach of clause 10.3 if:
- 10.6.1 Plants fail by reason of weather or other conditions occurring after delivery or collection of the Goods;
- 10.6.2 the Goods are not suitable for any particular purpose or under any specific conditions unless that purpose or those conditions are set out in the Order;
- 10.6.3 Plants fail due to the Buyer not handling the Plants correctly or in accordance with any verbal instruction or to the standards set by the Committee on Plant Supply and Establishment Code of Practice for Plant handling;
- 10.6.4 Plants fail due to the Buyer's failure to comply with any applicable standard or accepted good practice in regard to: (i) transport, storage, planting or care of the Goods, or (ii) good practice in relation to the transport, storage, Planting or care of the Goods;
- 10.6.5 Plants fail due to the Seller following any special requirement of the Buyer in relation to the Goods; or
- 10.6.6 the Buyer Plants or otherwise uses any of the Goods after notifying the Seller that they do not comply with the Order and the Buyer acknowledges that due to the nature of living Plants the Seller cannot control outcomes once the Plants leave its nursery and the Buyer understand, acknowledges and agrees to this and will purchase Plants on this basis and at their own risk.
- 10.7 Except as set out in this clause 10 or in the Order the Seller:
- 10.7.1 gives no warranty in relation to the Goods;
- 10.7.2 will be under no liability for the Buyer's failure to comply with any of its obligations in these conditions.
- 10.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.9 Without prejudice to the generality of this clause liability for errors in labels will be limited to replacement of the labels and the Seller will not be responsible for applying the replacement labels to the relevant Goods.

## **11 Obligations of the Buyer**

- 11.1 The Buyer will:
- 11.1.1 place all Orders on these Conditions and ensure that the contents of any Order are complete and accurate; and
- 11.1.2 co-operate fully with the Seller in relation to delivery or collection of the Goods.

## **12 Data protection**

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 12, Applicable Laws means (for so long as and to the extent that they apply to the Seller) 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.

- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the controller and the Seller is the processor.
- 12.3 Without prejudice to the generality of clause 12.1, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Seller for the duration and purposes of the Contract.
- 12.4 Without prejudice to the generality of clause 12.1, the Seller shall, in relation to any personal data processed in connection with the performance by the Seller of its obligations under the Contract:
- 12.4.1 process that personal data only on the documented written instructions of the Buyer unless the Seller is required by Applicable Laws to otherwise process that personal data. Where the Seller is relying on Applicable Laws as the basis for processing personal data, the Seller shall promptly notify the Buyer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Seller from so notifying the Buyer;
- 12.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Buyer, 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);
- 12.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 12.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
- (a) the Buyer or the Seller has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (c) the Seller 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 Seller complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the personal data;
- 12.4.5 assist the Buyer, at the Buyer's cost, in responding to any request from a data subject and 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;
- 12.4.6 notify the Buyer without undue delay on becoming aware of a personal data breach;
- 12.4.7 at the written direction of the Buyer, delete or return personal data and copies thereof to the Buyer on termination of the Contract unless required by Applicable Law to store the personal data; and
- 12.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for audits by the Buyer or the Buyer's designated auditor and immediately inform the Buyer if, in the opinion of the Seller, an instruction infringes the Data Protection Legislation.
- 12.5 The Buyer consents to the Seller appointing a third-party processor of personal data under the Contract for example a credit reference agency. The Seller confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which the Seller undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Buyer and the Seller, the Seller shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 12
- 12.6 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 13. Limitation of liability: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- 13.2.1 death or personal injury caused by negligence;
- 13.2.2 fraud or fraudulent misrepresentation; and
- 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 13.3 Subject to clause 13.4, the Seller's total liability to the Buyer shall not exceed the total charges which means all sums paid by the Buyer which are payable under the Contract in respect of Plants actually supplied by the Seller, whether or not invoiced to the Buyer.
- 13.4 This clause 13.4 sets out specific heads of excluded loss
- 13.4.1 Subject to clause 13.4, the types of loss listed in clause 13.4.2 are wholly excluded by the parties.
- 13.4.2 The following types of loss are wholly excluded:
  - (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 13.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 This clause 13 shall survive termination of the Contract

#### **14 Force Majeure**

- 14.1 The Seller shall not be liable for any failure or delay in performance of any obligations under the Contract with the Buyer due to an event of Force Majeure provided that;
  - 14.1.1 the Seller promptly notifies the Buyer of the nature and extent of the Force Majeure event causing its failure or delay in performance; and
  - 14.1.2 uses reasonable endeavors to minimise the effects of that event.
- 14.2 If, due to an event of Force Majeure, the Buyer or the Seller:
  - 14.2.1 is or will 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 30 days then the other party may terminate the Contract on immediate written notice.

#### **15 Termination**

- 15.1 The Contract may be terminated forthwith at any time by the Seller on written notice to the Buyer if:
  - 15.1.1 the Buyer commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or if capable of remedy is not remedied within 7 days of written notice to do so;
  - 15.1.2 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;
  - 15.1.3 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction or (c) makes an application to court for protection from its creditors generally;
  - 15.1.4 the Buyer passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other than solely in relation to a solvent amalgamation or reconstruction;
  - 15.1.5 a receiver or administrative receiver may be or is appointed in relation to the Buyer or any of its assets;
  - 15.1.6 any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within 14 days;
  - 15.1.7 the Buyer takes or suffers any action similar to any of the above in any jurisdiction;
  - 15.1.8 there is a material change in the management, ownership or control of the Buyer;
  - 15.1.9 the Buyer suspends trading, ceases to carry on business, or threatens to do either;
  - 15.1.10 the Buyer, (being an individual) dies or ceases to be capable of managing his own affairs; or
  - 15.1.11 the Buyer is subject to an event of Force Majeure as defined in these Terms.
- 15.2 In addition to its rights under clause 15.1 the Seller may terminate the Contract at any time immediately on written notice to the Buyer if the Buyer has failed to pay any amount due under the Contract within 3 Business Days of the due date.
- 15.3 On termination of the Contract for any reason:
  - 15.3.1 the Buyer will immediately pay all invoices of the Seller then outstanding and not disputed in good faith;
  - 15.3.2 the Seller will, within 5 Business Days, invoice the Buyer for all Goods delivered or collected but not yet invoiced and the Buyer will pay such invoice within a further 5 Business Days (unless the invoice is disputed in good faith);

- 15.3.3 Buyer will allow the Seller to collect any stillages or any other any materials (including information) of the Seller then in its possession or control; if it fails to do so, the Seller may enter onto any premises owned by or under the control of the Buyer and take possession of them; and may charge the appropriate value of any non-returned stillages or any other materials; and
- 15.3.4 the accrued rights and liabilities of the parties will not be affected.

**16 Time**

Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions, the Order or otherwise in the Contract.

**17 Assignment and other dealings**

- 17.1.1 The Seller may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 17.1.2 The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Seller.

**18 Severability**

If any part of the Contract is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Contract and the remaining provisions of the Contract will otherwise remain in full force.

**19 Notices**

Notices under the Contract will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:

- 19.1 by first-class post: two Business Days after posting;
- 19.2 by hand: on delivery;
- 19.3 by e-mail: on receipt of a delivery or read receipt mail from the correct address.

**20 Waiver**

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

**21 Rights of Third Parties**

The Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**22 Priority**

In the event of conflict, the terms of the Order prevail over those of these Conditions.

**23 Entire Agreement**

The Contract constitutes the entire agreement between the parties in relation to its subject matter and supersedes and extinguishes all previous agreements. No other terms apply. Nothing in this clause shall exclude or limit liability for fraud.

**24 Succession**

The Contract will bind and benefit each party's successors and personal representatives.

**25 Variation.**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**26 Governing Law & Jurisdiction**

- 26.1 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.
- 26.2 The parties irrevocably agree that the courts of England shall have non-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).