

PLANT RAISERS LIMITED

TERMS & CONDITIONS OF SALE (2015 EDITION)

The Customer's attention is particularly drawn to the provisions of clauses 3 and 12.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Contract: the contract between the Supplier and the Customer for the supply of Produce and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Produce and/or Services from the Supplier.

Deliverables: the deliverables (excluding Produce) set out in the Order Confirmation (if any).

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 14.1.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Produce and/or Services, whether given to the Supplier in person, in writing or verbally.

Order Confirmation: the written confirmation of Order issued by the Supplier, whether by post, email or other means.

Produce: the plants (or any part of them) set out in the Order Confirmation to be grown and supplied by the Supplier.

Produce Specification: the description or specification(s) for the Produce set out in the Order Confirmation.

Services: any services, including any Deliverables, set out in the Order Confirmation to be supplied by the Supplier to the Customer (if any).

Service Specification: the description or specification for the Services (if any) set out in the Order Confirmation.

Supplier: Plant Raisers Limited, registered in England and Wales with company number 05265628; registered office address: Thorpe Road, Howden, East Yorkshire DN14 7PB.

Supplier Materials: has the meaning set out in clause 8.1(e).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. **BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Produce and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier has issued an Order Confirmation to the Customer, and the Customer has signed and returned this to the Supplier, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 A Contract cannot be cancelled by the Customer once the Produce is sown (and the anticipated sowing date is usually shown in the Order Confirmation). The Supplier shall accept cancellation of any Contract by the Supplier up to the time of sowing, subject to payment by the Customer to the Supplier of an amount equal to 20% of the total Contract value (excluding VAT) in respect of administration and other costs incurred by the Supplier.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Produce or illustrations or descriptions of the Services contained

in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Produce described in them. They shall not form part of the Contract or have any contractual force.

- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.8 All of these Conditions shall apply to the supply of both Produce and Services except where application to one or the other is specified.

3. PRODUCE SPECIFICATION & SPECIFIC PRODUCE EXCLUSIONS

- 3.1 The Produce are described in the applicable Produce Specification. The Supplier reserves the right to amend any Produce Specification if required by any applicable statutory or regulatory requirements.
- 3.2 The Customer must inspect and satisfy itself as to the actual quality and size/specification (including conformity with applicable Produce Specification) of all Produce supplied before taking delivery, and shall not rely upon the skill or judgement of the Supplier as to such requirements.
- 3.3 To the extent that Produce is cultivated in accordance with a Produce Specification supplied by the Customer, or at the Customer's request any treatment (whether chemical or otherwise) is applied to Produce, then the Supplier's responsibility shall be limited to carrying out such instructions given by the Customer (or where applicable the relevant treatment manufacturer in question) this shall be entirely at the Customer's risk, and:
 - (a) the Supplier accepts no responsibility whatsoever for the effectiveness or the results of the foregoing (including any failure of the Produce to meet desired quality or size/specification) or for any associated loss or damage to the Produce or the Customer; and
 - (b) the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier by any third party;

which (in any such case) arises out of or in connection with the Supplier carrying out such instructions. This clause 3.3 shall survive termination of the Contract.

- 3.4 The Customer acknowledges that:-

- (a) the Supplier is a grower and not a seed producer or supplier, and that the Customer is or has been responsible for the selection of the seed (notwithstanding any recommendation made by the Supplier) which the Supplier purchases or acquires (from the Customer or otherwise) in connection with the Contract and from which the Produce is to be cultivated and grown; and
- (b) the relevant seed producer or supplier may or will have limited (under its standard or other conditions of supply) its liability and/or any warranties to the Supplier and any other third party in relation to disease in the seeds; and
- (c) the Supplier is or has been unable to insure against such risks of disease and/or loss of yield on reasonable commercial terms, or at all.

Accordingly the Supplier shall have no liability to the Customer whatsoever in respect of any loss or damage to the Customer resulting from bacteria, virus, viroid, pest, pathogen or other disease of any nature present in such seed, or any other defect in it (whether in varietal, purity or otherwise).

3.5 The Supplier will take all reasonable steps to ensure that germination of Produce is successful, but the Customer acknowledges that the germination rates of Produce cannot be guaranteed, and final Produce numbers can be affected by diseased or defective seed, or poor seed quality. The Supplier (in consultation with the seed supplier where appropriate) will sow more than the required number of Produce for the Contract to try to ensure there are sufficient quantities of Produce at the time of delivery. Accordingly it is acknowledged as follows:

- (a) the Supplier accepts no liability for failure to supply the exact quantity (or any minimum number) of Produce agreed with the Customer; and
- (b) the Customer shall not be entitled to reject the Produce as a result of the Supplier delivering more or less than the quantity of Produce agreed with the Customer.

4. DELIVERY OF PRODUCE

4.1 The Supplier shall ensure that each delivery of the Produce is accompanied by a delivery note which shows the relevant Customer and Supplier reference numbers, the type and quantity of the Produce (including the batch number of the Produce, where applicable) and the number of returnable trays/pallets and Danish trolleys used, where applicable.

4.2 The Supplier (or its delivery agents) shall deliver the Produce to the location set out in the Supplier's Order Confirmation or such other location as the parties may agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Produce are ready. Delivery of the Produce shall be completed on arrival at the Delivery Location. Where the Produce is to be collected by the Customer (or its agents) from the Supplier's premises, the Delivery Location shall be the Supplier's own address.

- 4.3 The Customer must provide sufficient personnel and equipment (including a forklift truck where required) for unloading/loading any vehicle delivering or collecting Produce or collecting returnable trays/pallets.
- 4.4 Unless otherwise stated in the Supplier's Order Confirmation, the costs of delivery by the Supplier to the Delivery Location are included in the stated price. Without prejudice to the other provisions of this clause 4, the Supplier may however charge the Customer additional charges for delivery in the following circumstances:
- (a) if the Customer fails to provide the Supplier with adequate delivery instructions, or alters any delivery schedule agreed or proposed by the Supplier, relating to Produce; and/or
 - (b) a demurrage charge may be charged if the Supplier's (or its delivery agent's) vehicles delivering Produce are detained by the Customer for longer than the time allocated for unloading on delivery (and the rate at which demurrage charges will be charged, and the unloading time allocated will be shown in the Order Confirmation or otherwise notified in writing by the Supplier).
- 4.5 Any dates quoted for delivery of the Produce are approximate only, and unless otherwise agreed in writing the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Produce that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with accurate or adequate delivery instructions (or other instructions relevant to the supply of the Produce), or which are otherwise caused by compliance with the Customer's instructions.
- 4.6 If the Supplier fails to deliver the Produce, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement produce of a similar description and quality in the cheapest market available, less the price of the Produce. The Supplier shall have no liability for any failure to deliver the Produce to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with accurate or adequate delivery instructions (or other instructions relevant to the supply of the Produce), or which are otherwise caused by compliance with the Customer's instructions.
- 4.7 If the Customer fails to accept or take delivery of the Produce within 48 hours of the Supplier notifying the Customer that the Produce are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Produce:
- (a) delivery of the Produce shall be deemed to have been completed at 9.00am on the third day following the day on which the Supplier notified the Customer that the Produce was ready; and
 - (b) the Supplier shall (if it is able to do so) store the Produce until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); or

- (c) if the Supplier is unable properly to store the Produce, the Supplier reserves the right (upon notice to the Customer) to deliver the Produce to the Customer and the Customer will be obliged to take delivery without further delay.
- 4.8 If 72 hours after the Supplier notified the Customer that the Produce were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Produce and charge the Customer for any resulting shortfall below the Contract price of the Produce, together with reasonable storage and selling costs.
- 4.9 Any delay in delivery or defect in an instalment of Produce under a Contract shall not entitle the Customer to cancel any other instalment.
- 4.10 Produce may be supplied by the Supplier in returnable plastic trays, and may be carried on returnable pallets. It is the responsibility of the Customer to return these trays and pallets at its own cost to the Supplier's nursery within 7 days of the date of collection (where the Customer collects the Produce from the Supplier) or by making the trays and pallets available for collection by the Supplier within 7 days of the date of delivery (if the Supplier delivers Produce to the Customer). Produce may be supplied on Danish Trolleys that must be returned to the Supplier at the time of delivery or collection, or exchanged with others (where permitted by the Supplier) of the same make/type and quality, unless otherwise agreed in writing.
- 4.11 The Supplier reserves the right to charge the Customer the cost of repair and/or replacement of the trolleys, trays or pallets not returned, or which are returned damaged.

5. STANDARD OF PRODUCE

- 5.1 The Supplier shall use reasonable endeavours to ensure that on delivery the Produce supplied is in satisfactory condition and free of pests and disease.
- 5.2 Subject to clause 5.3, if:
 - (a) the Customer gives notice in writing to the Supplier within 48 hours of delivery that some or all of the Produce does not comply with clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of inspecting such Produce; and
 - (c) the Customer (if asked to do so by the Supplier) arranges to return such Produce to the Supplier's place of business,

the Supplier shall, at its option, either replace the affected Produce, or refund (or credit) the price of the affected Produce in full. The Supplier shall not be liable for pest or disease which manifests itself in Produce more than 48 hours following the time of delivery.
- 5.3 The Supplier shall not be liable for the Produce' failure to comply with clause 5.1 if:

- (a) the Customer does not notify the Supplier, or if the Supplier is unable to inspect the Produce, in accordance with clause 5.2;
- (b) the failure arose as a result of the Supplier using any seeds, growing medium or other material specified or supplied by the Customer, or by following any specification or directions from the Customer;
- (c) the failure falls within usual or expected industry limits or tolerances;
- (d) the failure is caused by wilful damage, negligence, or abnormal conditions for which the Supplier is not responsible; or
- (e) the failure is caused because the Customer failed to follow good industry practice following delivery, including with regard to the growing protocols adopted;
- (f) the failure is caused by any other action or omission of the Customer, its consultants, agents or employees.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Produce' failure to comply with clause 5.1.

5.5 The terms of these Conditions shall apply to any replacement Produce supplied by the Supplier under clause 5.2.

6. TITLE AND RISK

The ownership and risk in the Produce shall pass to the Customer on completion of delivery or collection (as the case may be) of the Produce.

7. SUPPLY OF SERVICES

7.1 The Supplier shall provide any Services which are included in the Order Confirmation to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services which agreed in writing by the Supplier, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier shall have the right to make any changes to the Services (including the Service Specification) which are necessary to comply with any applicable law, regulatory or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order Confirmation (including the Produce Specification and any Services Specification) are complete and accurate, and then sign and return the same to the Supplier;
- (b) co-operate with the Supplier in all matters relating to the Contract;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require, and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Produce or Services are to be supplied;
- (e) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to (or collected by) the Supplier or its agents, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (f) make payment in accordance with clause 9.

8.2 If the Supplier's performance of any of its obligations is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services or delivery of any Produce until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price for Produce and any Services shall be the price set out in the Order Confirmation. The Customer will also be responsible for paying any other amounts specified in the Order Confirmation when it pays for the Produce/Services.

9.2 The Supplier reserves the right to increase the price of the Produce or any Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost to the Supplier that is due to:

- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in (or additional) labour, materials and other production or processing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Produce ordered, or the Produce Specification or Service Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

9.3 The Supplier shall invoice the Customer on or at any time after completion of delivery.

9.4 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 21 days of the date of the invoice (unless any other payment terms are specified in the Order Confirmation); and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Produce at the same time as payment is due for the supply of the Services or Produce.

9.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 As between the Customer and the Supplier, unless otherwise agreed in writing all Intellectual Property Rights in or arising out of or in connection with the Produce and any Services shall be owned by the Supplier.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on

the Supplier (or the Customer) obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

10.3 All Supplier Materials are the exclusive property of the Supplier.

11. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. LIMITATIONS OF LIABILITY: *THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE*

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall be limited as follows:

- (i) in respect of accidental loss of or damage to the material property of the Customer (but excluding data, electronic systems, software and firmware), to an amount not exceeding £5,000,000 (five million pounds); and
- (ii) in respect of all other losses not falling within the scope of clause 12.2(b)(i), to an amount not exceeding the Contract price.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or

enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(a)13.1(b) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date(s) for payment.

13.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further Produce production and deliveries under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13.4 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and, in respect of Produce/Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for

their safe keeping and will not use them for any purpose not connected with this Contract;

- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15. GENERAL

15.1 Assignment and other dealings

Neither the Supplier nor the Customer shall without the prior written consent of the other (such consent not to be unreasonably withheld) assign, transfer, mortgage, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 Notices

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

15.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 Waiver A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 No partnership or agency Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.6 Third parties A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.7 Variation Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

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

15.9 Jurisdiction Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).