

Terms and conditions of sales

These Conditions modify and restrict certain obligations implied by law and limit the extent of liability for breach of contract and/or negligence. They should be carefully considered and any explanation necessary sought before proceeding to order.

IMPORTANT: THE SELLER LIMITS ITS LIABILITY IN THIS WAY SO THAT GOODS CAN BE SUPPLIED AT A REASONABLE COST. IF LIABILITY WERE NOT SO LIMITED THEN THE PRICE CHARGED WOULD NECESSARILY INCREASE TO COVER THE COST OF UNDERTAKING AND INSURING AGAINST UNLIMITED LIABILITY. THE BUYER IN OFFERING TO BUY UNDER THESE CONDITIONS ACKNOWLEDGES THESE FACTS AND THAT ACCORDINGLY THE LIMITATIONS ON LIABILITY ARE FAIR AND REASONABLE.

Where the goods are sold under a consumer sale (as defined by the Unfair Contract Terms Act 1977) the statutory rights of the Buyer are not affected by these Conditions.

Nothing in these Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for death or personal injury caused by reason of the negligence of the Seller or of its servants, employees or agents.

1 INTERPRETATION

1.1 In these Conditions:

„Buyer“ means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

„Conditions“ means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

„Contract“ means the contract for the purchase and sale of the Goods

„Finished Goods“ means completed Goods which require no additional processing or manufacturing to be sold to the Buyer

„Goods“ means the goods including Seeds and Plants (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions

„Plants“ means all plants including seedlings and cuttings

„Seeds“ means plant seeds

„Seller“ means FLORENSIS FLOWER SEEDS (UK) LIMITED) a private limited company registered in England with number 06948413 and whose registered office is at Milton Road, West Adderbury, Banbury, Oxfordshire, OX17 3EY

„Shelf Life“ means the use-by date by which the Goods must have been used as specified by the Seller

„Working Day“ means any day excluding Saturdays, Sundays and bank holidays

„Writing“ means letter, facsimile transmission or electronic mail

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time and references in these Conditions to the singular include the plural, and vice versa as appropriate.

1.3 The headings in these Conditions are for convenience only and shall not affect the interpretation of these Conditions.

2 BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Seller or any written quotation of the Seller which is accepted by the Buyer subject in either case to these Conditions in conjunction with terms for discount and financial settlement mentioned in the Seller's catalogue which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer. In case of any conflict these Conditions shall prevail.

2.2 Nothing in the Seller's catalogue or in any document of which these Conditions form part shall constitute any offer to sell and the Seller reserves the right to refuse any offer constituted by an order or otherwise.

2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.5 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, husbandry, application or use of the Goods including but not limited to any advice or recommendations contained in the Seller's cultural information leaflets or on the Seller's website is provided for general guidance only and is followed or acted upon entirely at the Buyer's own risk, the Seller shall not be liable for any such advice or recommendation.

2.6 Any typographical, clerical or other similar error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller) or the Seller's quotation (if accepted by the Buyer).

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.6 Notwithstanding that a sample of the Goods be exhibited to and inspected by the Buyer, such sample is so exhibited or inspected solely to enable the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample, and subject to the normal variation between the bulk and sample accepted by the trade.

3.7 Without prejudice to the generality of the foregoing any particular purpose for which the Buyer proposes to use the Goods shall be deemed not to be known by or have been made known to the Seller unless specifically recorded in a schedule signed by one of the Seller's directors. The Buyer hereby acknowledges that any purpose stated in such schedule shall be deemed to have been specified by the Buyer.

3.8 In the event of market shortages the Seller may apportion available supplies at its discretion, and, in particular:

3.8.1 The sale of imported Seed is subject to availability from the Seller's usual supplier and if such Seed is not available from the Seller's usual supplier or from any other sources at a price no greater than that usually contracted for by the Seller with its usual supplier, the Seller may treat the Buyer's order as cancelled without liability to either party.

3.8.2 Orders for Plants are accepted subject to Plants being available from the Seller's own stock at the time delivery is due. The Seller may substitute what in the Seller's opinion is the nearest equivalent of any variety not available unless the Buyer specifically prohibits this.

3.9 The Seller shall not be liable for any variations in the quantities or specifications of any Goods or substitution of any materials, so long as the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials are of a quality equal or superior to those originally specified.

4 PRICE OF GOODS

4.1 The price of the Goods shall be the price listed in the Seller's published catalogue or price list current at the date of acceptance of the order unless the Seller has quoted a special price for the Goods. All prices specially quoted are valid for 30 (thirty) days only or until earlier acceptance by the Buyer (except in the case of the Seller's special promotion of particular Goods, when prices specially quoted shall be valid for the time stated in the promotion) after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any

factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of production, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions).

4.3 Except as otherwise stated in the Seller's current published catalogue or under the terms of any quotation and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller including the cost of delivery to a single address of the Buyer within the United Kingdom. Where the Seller agrees to deliver the Goods outside the United Kingdom, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax or other tax or duty, which the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

4.6 The price of any Plant variety which becomes the subject of a grant of plant breeder's rights under the Plant Varieties and Seeds Act 1964 (as amended) or other similar legislation or directives will be adjusted to include the cost of any royalty payable to the owner of the rights. If, in the case of a variety which is already the subject of plant breeder's rights, there is any change in the rate of royalty the price will be adjusted accordingly. The Seller may show the cost of the royalty separately on its invoice.

5 TERMS OF PAYMENT

5.1 Subject to any special terms stipulated in the Seller's catalogue or agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods or (as the case may be) notified the Buyer that the Goods are ready for collection.

5.2 Subject to 5.1 the Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) upon the date of receipt of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 Any early settlement discount offered by the Seller to the Buyer shall be conditional upon strict adherence to the terms of early settlement of the price of the Goods.

5.4 If the Buyer fails to make payment in full on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.4.1 cancel the Contract or suspend any further deliveries to the Buyer; and

5.4.2 demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer; and

5.4.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.4 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 1.5% (one and a half per cent) per month or any part thereof until payment in full is made.

6 DELIVERY

6.1 Delivery of the Goods shall be made by the Seller carriage free within mainland United Kingdom and Isle of Wight, except where minimum trays per delivery week ordered are not met, minimum order quantities are stated on each our current order forms, by the Seller delivering the Goods to a single address of the Buyer. Where Goods are supplied for export Condition 12 shall apply.

6.2 Any dates quoted for delivery of the Goods are approximate only and Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless expressly agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 5 (five) per cent more or 5 (five) per cent less than the quantity ordered and the quantity so delivered shall be deemed to be the quantity ordered save that the price of the Goods so delivered shall be adjusted pro rata to take account of the change from the quantity ordered.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions or adequate access to his premises so that the Seller is prevented from making delivery at the time stated for delivery (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of transport and storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable transport insurance, storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7 RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods;

7.1.2 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and of all other sums then due and payable by the Buyer to the Seller.

7.3 Until the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time (or, if earlier, up to the time that an event occurs which causes Condition 13 to apply) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up to the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods, at the Buyer's expense.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owed by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8 WARRANTIES AND LIABILITY

8.1 The Seller guarantees to the Buyer that where any valid claim in respect of any of the Goods (See Condition 2.5 above) which is based on:

8.1.1 any defect in the quality or condition of the Goods; or

8.1.2 their failure to meet specification; or

8.1.3 incomplete or non-delivery

is notified to the Seller in accordance with these Conditions, the Seller shall: at its option either

(a) replace or where possible repair the Goods or the part thereof in question free of charge; or

(b) refund to the Buyer the price of the Goods or the part thereof in question,

the Seller shall have no further liability to the Buyer.

8.2 The above guarantee is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect arising from adverse weather conditions, fair wear and tear, wilful damage, negligence of the Buyer or its servants or agents, abnormal working conditions, poor storage, poor husbandry, failure to follow the Seller's instructions (whether oral or in Writing), use of the Goods after expiry of the Shelf Life, misuse or mistreatment of the Goods without the Seller's approval;

8.2.2 the Seller shall be limited to liability as stated in 8.1.3 (b) for any allegedly defective goods.

8.2.3 where any treatment (chemical or other and including pelleting) is applied to Seeds or Plants by the Seller at the Buyer's request the Seller shall not be liable for such treatment where carried out in accordance with the instructions given by the Buyer or by the manufacturer of the means of treatment. If so desired by the Seller the purity and germination percentages of such Seeds or the performance of such Plants shall be deemed to be based on tests made before any such treatment.

8.2.4 any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the terms of the Contract shall (whether or not delivery is refused by the Buyer) be notified to the Seller within the following time limits, which the Buyer and the Seller agree afford the Buyer a reasonable opportunity for examining the Goods (time for notification in each of the following Conditions being of the essence of the Contract):

Type of Goods	Notification period where the defect or failure was apparent on reasonable inspection	Notification period where the defect or failure was not apparent on reasonable inspection
Seeds	as soon as possible and in any event before the end of the next Working Day after the date of delivery	as soon as possible and in any event before the end of the next Working Day after discovery of the defect or failure provided that such notice shall be given not later than 1 (one) month after sowing or 2 (two) months after the date of delivery whichever shall be earlier;
Type of Goods	Notification period where the defect or failure was apparent on reasonable inspection	Notification period where the defect or failure was not apparent on reasonable inspection
Plants	as soon as possible and in any event before the end of the next Working Day after the date of delivery;	as soon as possible and in any event before the end of the next Working Day after discovery of the defect or failure provided that such notice shall be given not
later than 1 (one) month after the date of delivery;		
Finished Goods	as soon as possible and in any event before the end of the next Working Day after the date of delivery;	as soon as possible and in any event before the end of the next Working Day after discovery of the defect or failure provided that such notice shall be given not
later than 14 (fourteen) days after the date of delivery;		
Other Goods	as soon as possible and in any event within 7 (seven) days after the date of delivery	as soon as possible and in any event within 7 (seven) days after discovery of the defect or failure provided that such notice shall be given not later than 12 (twelve) months after the date of delivery;

8.2.5 any claim that any Goods have been delivered damaged or are not of the correct quantity shall be notified by the Buyer to the Seller as soon as possible and in any event not later than the end of next Working Day after their delivery.

8.2.6 the provisions of 12.4 shall apply in the case of export sales.

8.2.7 Notwithstanding Condition 16 notice under this Condition 8 may be made by telephone but shall in any event be confirmed in Writing within 7 (seven) days.

8.3 If delivery is not refused, and the Buyer does not notify the Seller in accordance with these Conditions, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.4 Except where the Buyer deals as a consumer, the Seller's liability under this Condition 8 shall be to the exclusion of all other liability to the Buyer whether contractual, tortious or otherwise for defects in the Goods or for any loss or damage to or caused by the Goods, and except in each case where the Buyer deals as a Consumer:

8.4.1 all other conditions, warranties, stipulations, representations or other statements whatsoever concerning the Goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties or conditions regarding the fitness for purpose, performance, use, nature or merchantable or satisfactory quality of the Goods, whether express or implied, by statute, at common law or otherwise howsoever; and

8.4.2 save in respect of death or personal injury resulting from the negligence of the Seller in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any loss of profit, business, contracts, revenue, or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever, including in the case of Seeds or Plants, loss of resultant crop or any effect of pest or disease.

8.5 The Buyer shall employ all due care and diligence in the handling, storage and sale of the Goods sold by this Contract and shall indemnify the Seller against any damages, loss, expense or costs suffered by the Seller arising from a claim made against the Seller by any third party in connection with such Goods.

9 INTELLECTUAL PROPERTY INDEMNITY

If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark, plant breeder's rights or other industrial or intellectual property rights of any other person, the Seller shall not be liable to indemnify or compensate the Buyer against any loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, unless:

9.1 such claim arises solely as a result of the Buyer's proper use in accordance with all applicable statute and other law of such rights where they were expressly granted to the Buyer by the Seller by this Contract;

9.2 the Seller is given full control of any proceedings or negotiations in connection with any such claim;

9.3 the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;

9.4 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

9.5 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

9.6 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

9.7 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Condition.

10 PROTECTION OF THE SELLER'S INTELLECTUAL PROPERTY

10.1 The Buyer, subject as hereinafter provided, shall be responsible for keeping and procuring to be kept secret and confidential all information (hereinafter referred to as „the Know-How“) supplied by the Seller of a secret or confidential nature provided that the Seller shall first have given notice in Writing to the Buyer of the secret or confidential nature of such information before so supplying it.

10.2 The obligations under Condition 10.1 shall cease within six months of the publication by the Seller or any third party of information comprising or being part of the Know-How to the extent of such publication, or of agreement by the Seller that such information or part thereof is in the public domain.

10.3 The Buyer shall comply in all respects with the requirements of the Plant Varieties and Seeds Act 1964 (as amended) in so far as they relate to the protection of the Seller's, or the Seller's licensor of plant breeder's rights in Seeds and Plants sold to the Buyer by this Contract and shall indemnify the Seller against any loss, damages, costs or expenses incurred by the Seller arising from any non compliance with such requirements.

10.4 Without prejudice to the generality of 10.3 the Buyer shall:

10.4.1 not in any way effect multiplication or propagation of Goods purchased from the Seller in contravention of the requirements of the Plant Varieties and Seeds Act 1964 as amended; and

10.4.2 not dispose of Plants or Seeds or parts thereof in contravention thereof; and

10.4.3 clearly make known on sale or advertisements for sale of the Goods that commercial propagation or multiplication thereof is only allowed with the Seller's consent.

10.5 The Seller and his authorised representatives shall be entitled upon reasonable notice to the Buyer to enter upon the Buyer's premises or other premises where the Goods may be held to

inspect the Buyer's stock of the Goods and the Buyer shall provide all assistance reasonably required by the Seller, including information concerning the Goods, which the Seller may reasonably require for verification of the Buyer's performance of his obligations contained in these Conditions provided that the Seller will keep confidential information of a confidential nature of the Buyer thereby obtained.

10.6 In the event that the Buyer shall be in breach of the provisions of 10.3 or 10.4 hereof, the Buyer will pay to the Seller the sum of 40 pence in respect of each individual instance of propagation carried out in breach thereof, without prejudice to the entitlement of the Seller to pursue all other remedies, including further damages or losses, expenses or costs incurred by the Seller as a result of the said breaches and any other remedies available to the Seller.

10.7 The Buyer shall forthwith notify the Seller of any infringement of such rights mentioned in Condition 10.3 and 10.4 which shall come to the attention of the Buyer, and at the request and expense of the Seller shall render the Seller all reasonable assistance for the purpose of proceedings or negotiations with such infringer.

11 CONTRACTS FOR WORK

If the Contract is for and includes work to be done by the Seller whether of installation planting or otherwise then unless the Contract otherwise provides the following additional provisions apply thereto:

11.1 The Seller shall be obliged to carry out such work only during normal working hours. If the Buyer requests that overtime be worked and the Seller agrees thereto such overtime shall be paid by the Buyer at the Seller's usual overtime rates.

11.2 If the work is to be carried out at the Buyer's premises or on the Buyer's request at the premises of any other person then the Buyer shall undertake to provide or to procure the provision of:

11.2.1 proper and safe storage and protection of all Goods, tools, plant, equipment and materials on site; and

11.2.2 free and safe access to the site and to the place at which the work is to be carried out; and

11.2.3 all facilities and services necessary to enable such work to be carried out safely and expeditiously; and

11.2.4 all builders' work, foundations, cutting away and making good required and the ready availability of all appropriate plant and equipment

11.3 The Buyer shall pay the Seller the amount of any expense incurred by the Seller by reason of any breach by the Buyer of the Buyer's undertakings in Condition 11.2 above (but without prejudice to the Seller's rights to recover further damages therefor) and a certificate of the Seller's auditors certifying such amounts shall be conclusive and binding upon the Buyer and the Seller.

12 EXPORT TERMS

12.1 Where Goods are supplied for export from the United Kingdom, the provisions of this Condition 12 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

12.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties or taxes thereon.

12.3 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered by the Seller and the Buyer shall be responsible for the cost of carriage and insurance.

12.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

12.5 Payment of all amounts due to the Seller shall be made before shipment from the seller.

13 INSOLVENCY OF BUYER

13.1 This Condition applies if:

13.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

13.1.2 an encumbrancer takes possession or a receiver, administrator receiver or administrator is appointed of any of the property or assets of the Buyer; or

13.1.3 the Buyer ceases or threatens to cease to carry on business; or

13.1.4 there is a material adverse change in the financial condition or creditworthiness of the Buyer; or

13.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

13.2 If this Condition 13 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14 LIEN

The Seller retains a general lien on any of the Buyer's equipment or materials in its possession for any unpaid balance the Buyer may owe to the Seller. The Seller shall be entitled to sell such equipment or materials in the event that payment is not made in full within 28 (twenty eight) days of notice given to the Buyer by the Seller of its exercise of the lien. The proceeds of sale may be taken by the Seller for reimbursement of the expense of exercise of the lien and the sale, and payment of the said balance, and the Seller shall account for any surplus.

15 FORCE MAJEURE

Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure was due to any cause beyond its reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond a party's reasonable control:

15.1 Act of God, explosion, flood, tempest, fire or accident;

15.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

15.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

15.4 import or export regulations or embargoes;

15.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

15.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

15.7 power failure or breakdown in machinery.

16 GENERAL

16.1 Any notice to be served under this Agreement must be in Writing and must be sent to the intended recipient either:

16.1.1 by prepaid first class post (when it will be deemed served at noon on the first Working Day after it was posted); or

16.1.2 by facsimile or electronic mail between the hours of 9.00 a.m. and 3.00 p.m. on a Working Day, (when it will be deemed served two hours after it was transmitted); or

16.1.3 by personal delivery (when it will be deemed served when it is delivered).

16.1.4 The address for service of notices shall be the party's address as shown in this Agreement or as subsequently notified in Writing.

16.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.3 If any part of any clause or sub-clause of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other clauses or sub-clauses of these Conditions and the remainder of the clause or sub-clause in question shall not be affected thereby.

16.4 The Contract shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.