

DELFLAND NURSERIES LIMITED

STANDARD TERMS AND CONDITIONS OF SALE

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.4.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: **DELFLAND NURSERIES LIMITED** (registered in England under company number 1885606) whose registered office is at Delfland Nurseries Benwick Road Doddington March Cambridgeshire England PE15 0TU.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any plants or other goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless

expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.8 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. DESCRIPTION AND BUYERS SEEDS

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company'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 and this is not a sale by sample. The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company 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 Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).
- 3.4 Any specific growing requirements of the Buyer will only be met if agreed before the designated sowing date by the Company. Such agreement to be confirmed in writing or by electronic communication by a Director of the Company.
- 3.5 If any process chemical or otherwise is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim whatsoever or arising from the infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- 3.6 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.7 Any Goods supplied may be only used for final production and may not be used or disposed of in any other way without the prior written agreement of the Company. If permission for resale is granted the Goods must be sold on under the relevant variety name or trade name.
- 3.8 The Company with the consent of the Buyer (such consent not be unreasonably withheld or delayed) reserves the right to supply the Buyer with Goods other than those ordered by the Buyer and where it does so the Company warrants that the Goods actually supplied shall be suitable to fulfil the specification and purpose of the Goods originally ordered and will not result in any increase in price.
- 3.9 Where by agreement with the Company the Buyer provides seeds for the purpose of the Contract the Buyer warrants that such seed shall at the time of delivery to the Company comply with the Vegetable Seed (England) Regulations (2002) (as amended) and shall be of the species and type agreed.
- 3.10 The Buyer warrants that seeds supplied by itself are fit for the purpose shall be free of pest and disease and the Buyer has not relied upon the judgement of the Company.
- 3.11 The Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with any claim arising as a result of the Buyer failing to comply with the warranty set out in clause 3.10.
- 3.12 Seeds supplied by the Buyer shall become the property of the Company upon receipt but shall only be used for the purposes of the Contract.

- 3.13 If for reasons outside the control of the Company the germination and/or the subsequent growth rate from seeds supplied by the Buyer is such that the Company is unable to deliver the quantity of Goods subject to the Contract the Buyer shall nevertheless take delivery of the Goods in accordance with clause 4 above and pay the full price in accordance with the Contract notwithstanding any shortfall.
- 3.14 If for reasons outside the control of the Company the germination and/or the subsequent growth rate from seeds supplied by the Company is lower than what is reasonably to be expected the Buyer will take delivery of such Goods as the Company can make available and the Buyer will pay for such Goods pro rata to the price.

4. DELIVERY AND CANCELLATION AND CONTAINERS

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
- 4.2 The Buyer shall take delivery of the Goods within 48 hours of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. The Goods may be delivered by the Company to the Buyer in advance of the quoted delivery date provided reasonable notice of early delivery has been given to the Buyer.
- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days.
- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered;
 - (c) the Company may store the Goods until actual delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;
 - (d) sell the Goods at the best price readily obtainable and (after deducting all reasonable 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; or

- (e) dispose of the Goods and charge the Buyer for the reasonable costs of disposal if it is not reasonably practicable to find another buyer.

4.6 The Buyer shall be responsible for providing all labour and machinery at the place of delivery of the Goods or collection of the Containers which is necessary to load or unload the vehicle delivering the Goods or collecting the Containers.

4.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or 25% less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.10 Subject to the provisions of condition 4.11 below, no order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4.11 Where the Buyer has ordered online, Goods offered for sale online, then the Buyer may cancel his order provided that he does so at least 7 days prior to the expected date of delivery of the Goods in question. In these circumstances the provisions of condition 4.10 will not apply.

4.12 The Buyer will at its own cost and risk make available for collection by the Company within:

- (a) Two days following delivery of Goods grown in glasshouses, polythene tunnels or other protected structures; or
- (b) Seven days following delivery of all Goods not grown in accordance with clause 4.12.(a)

all containers, boxes, trays, sleeves, pallets, modules, stillages and trolleys ("the Containers") in which the Goods were delivered in a clean and undamaged condition and free from contamination provided that if any plant or other debris is found in the Containers the Company reserves the right to charge the Buyer for costs incurred by the Company for the removal and disposal of such plant or other debris and any necessary cleaning and sterilisation of the Containers.

- 4.13 The Company may charge the Buyer for all costs and expenses incurred as a result of a delivery vehicle waiting at the place of delivery in excess of 1 hour from the time of arrival to the time of unloading or loading of the Goods or Containers.
- 4.14 The Buyer must inspect and be satisfied as to the quality and fitness for purpose (including freedom from pests and/or disease) of all Goods before taking delivery and the Buyer shall not rely upon the skill or judgement of the Company.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the grant-ing of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (c) the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax but (unless otherwise agreed) inclusive of all costs or charges in relation to packaging, loading, unloading, carriage and insurance.

8. PAYMENT

8.1 Subject to condition 8.5 and to to any special terms agreed in writing between the Buyer and the Company, the Company 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 Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

8.2 The Buyer shall pay the price of the Goods in pounds sterling (unless otherwise agreed in writing) within 30 days of the date of the Company's invoice, and the Company shall be entitled to recover the price, 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.

8.3 Time for payment shall be of the essence.

8.4 No payment shall be deemed to have been received until the Company has received cleared funds.

8.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.7 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. QUALITY

- 9.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification/description at the time of delivery.
- 9.2 The above warranty is given by the Company subject to the following conditions:
- (a) the Company shall be under no liability in respect of any defect in the Goods arising from any requirement or specification supplied by the Buyer;
 - (b) provided the Buyer has given permission for the Company to deviate from the Company's standard growing procedures the Company shall be under no liability in respect of any defect in the Goods arising from any departure from the Company's standard growing procedure;
 - (c) the Company shall be under no liability in respect of any defect arising from wilful damage, negligence, abnormal conditions, or failure to follow the Company's instructions (whether oral or in writing);
 - (d) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - (e) the above warranty does not extend to, materials, plants, seed or equipment not grown or manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or grower to the Company;
 - (f) the Buyer shall carefully examine the Goods on receipt.
- 9.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods, their failure to correspond with specification or short delivery shall (whether or not delivery is refused by the Buyer) be notified to the Company within 48 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company 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.
- 9.4 The Company will comply with best practice as laid down from time to time by a Code of Practice for minimising the risks of contracting and/or spreading thick root of cucumber and pathogenic organisms of cucumbers, tomatoes, peppers and aubergines propagated in rockwool blocks (a copy of which the Buyer has received and acknowledges as best practice in the propagating industry) and where any Goods are not included in the Code of Practice the Company will take all reasonable steps up to the time of delivery to minimise the risk of the Goods being defective because of pest or disease and the Buyer (or his authorised representative) may on reasonable notice and during the normal working hours of the Company and in accordance with the Company's current hygiene precautions for visitors inspect the Goods but no warranty is given by the Company that the Goods will be free from pest or disease since such pest or disease may result from circumstances outside the reasonable control of the Company.

- 9.5 Subject as expressly provided in these Conditions and except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 as amended and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1)) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.6 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 9.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to inspect such Goods and to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), or a credit note of equivalent value but the Company shall have no further liability to the Buyer.
- 9.8 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 9.9 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

10. LIMITATION OF LIABILITY

- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Company shall not be liable to the Buyer for any loss of profit, loss of business or depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. ASSIGNMENT

- 11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. GENERAL

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14. INTELLECTUAL PROPERTY INDEMNITY

- 14.1 If any claim is made against the Company that the Goods infringe or that their use or resale or use by the Buyer infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the production of the Goods by the Company (but excluding Goods supplied to the specification provided by the Buyer) the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with the claim, or paid or agreed to be paid by the Company in settlement of the claim.

15. ADR

- 15.1 The Buyer and the Company will attempt in good faith to resolve any dispute or claim arising out of or relating to these Conditions promptly through negotiations but
- (a) if the matter is not resolved through negotiation between the parties within 14 days of the dispute arising the Buyer and the Company will attempt in good faith to resolve the dispute through negotiation conducted by an independent horticultural consultant whose appointment shall be agreed between the parties and whose costs shall be borne equally between the parties but, failing

such agreement or if the dispute is not resolved within 30 days following such appointment the Buyer and the Company may commence the Alternative Dispute Resolution ("ADR") procedure described below;

- (b) the Buyer and the Company will attempt in good faith to resolve the dispute or claim through an ADR procedure as recommended to the parties by the Centre for Dispute Resolution;
- (c) if the matter has not been resolved by an ADR procedure within 60 days of the initiation of such procedure, or if either party will not participate in an ADR procedure, the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996.

16. COMMUNICATIONS

16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid post or sent by fax or email:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

16.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if sent by pre-paid second class post, four days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (c) if delivered by hand, on the day of delivery; or
- (d) if sent by fax or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

16.3 Communications addressed to the Company shall be marked for the attention of Jill Vaughan.