

# JOHN HALL (FERTILISERS) LIMITED

## GENERAL CONDITIONS OF SALE

### March 2012 Edition

*The Customer's attention is drawn to the limitations of liability contained in this Agreement and in particular to the provisions of clause 13 below. The Customer's attention is also drawn to the provisions of clause 17.1 which require the Customer to examine the Goods promptly after delivery.*

#### 1. DEFINITIONS

In these Conditions:

1.1 "**Company**" means John Hall (Fertilisers) Ltd referred to at the beginning of the Sales Order Confirmation and if none then John Hall ( Fertilisers) Ltd (registered in England under number 0627260) whose registered office is at Owen Street, Coalville, Leicestershire, LE67 3DE, also trading as Thomas Elliott Fertilisers.

1.2 "**Customer**" means any person or persons, firm or firms, company or companies, authority or authorities, business or businesses who shall order or buy the Goods.

1.3 "**Contract**" means the particular individual contract for the supply of the Goods and any ancillary services by the Company to the Customer.

1.4 "**Goods**" means the goods or materials supplied or sold by the Company to the Customer as specified in the sales order confirmation.

1.5 "**Intellectual Property**" means patents, registered and unregistered trademarks, registered designs, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, confidential information, business names, brand names, copyright and rights in the nature of copyright and design rights and get up, know how, domain names, inventions, service marks, and database rights and like rights wherever situated in the world.

1.6 "**Order**" means an order placed for the Goods.

1.7 "**Safety Legislation**" means the Health and Safety at Work Act 1974 etc. the Consumer Protection Act 1987 and all regulations thereunder the General Product Safety Regulations 1994 and all other legislation from time to time (including subordinate legislation and European Union and European Economic Area legislation to the effect that it has direct effect in Member States) imposing legal requirements with respect to the safety of goods the handling transportation storage or disposal of goods or goods incorporating the Goods and the health and safety of the users of the Goods.

1.8 "**Special Conditions**" means such additional terms agreed from time to time in writing between the Company to the Customer which shall form part of the Contract.

1.9 "**Time of Delivery**" means when the Goods are removed from the transporting vehicle.

1.10 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

1.11 To the extent of any conflict between these Conditions and the Special Conditions, the Special Conditions shall prevail.

1.12 Reference to any Clause is to a clause of these Conditions.

1.13 In this document and in any Special Conditions:

1.13.1 the headings are for convenience only and shall not affect the interpretation of this document or those Special Conditions;

1.13.2 the use of the plural shall include the singular and the use of the singular shall include the plural;

1.13.3 references to the masculine, feminine or neuter genders shall include each and every gender.

#### 2. APPLICABILITY OF TERMS

2.1 Unless otherwise expressly agreed in writing by the Company every Contract shall incorporate and be governed in all respects by these Conditions and any Special Conditions which shall prevail over any contractual provisions proffered by the Customer in any correspondence, Order or other documentation which shall have no application to the Contract unless otherwise agreed in writing by the Company.

The Customer agrees that no actions taken by the Company shall be interpreted as the Company accepting any contractual provisions proffered by the Customer.

2.2 The Company's quotation is not to be taken as an offer and no Contract shall take effect unless and until acknowledged by the Company by written acceptance.

2.3 The Company will accept no responsibility whatsoever for any error or omission in the transmission of the Customer's Order.

2.4 An Order may not be cancelled or varied after acceptance without the written consent of the Company. Such cancellation or variation shall be subject to such reasonable charges as may be appropriate.

2.5 These Conditions shall apply to any services that the Company supplies which are ancillary to the supply of the Goods to the maximum extent feasible.

#### 3. PUBLICATIONS AND REPRESENTATIONS

3.1 All descriptions, illustrations and information contained in (i) the Company's catalogues, price lists, advertising matter and other publications and (ii) labels attached or affixed to the Company's containers and packaging or any other collateral item relating to the Goods shall be regarded as approximate only and are to present merely a general idea of the goods described in them and shall not form part of the Contract or be deemed to import any warranty relating to the Goods unless and to the extent that the contrary is expressly agreed in writing by the Company.

3.2 Each of the parties acknowledges that it is not entering into the Contract in reliance upon any representation, warranty, collateral contract or other assurance (except those set out in the Contract and the documents referred to in it) made by or on behalf of any other party before the execution of the Contract. Each of the parties waives all rights and remedies which, but for this clause, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause 3.2 shall limit or exclude any liability for fraud.

#### 4. PRICES

4.1 Save as otherwise agreed in writing by the Company or as indicated in any Special Conditions, the price of the Goods will be that prevailing at the Time of Delivery and shall exclude transportation, insurance and container charges which shall be charged separately (if applicable) and shown separately on the Company's invoice unless the

order meets carriage-paid order terms, details of which are obtainable from the Company on request. Where retail prices are shown, these are 'recommended maximum retail prices'.

4.2 Save as expressly stated otherwise by the Company in writing, prices are quoted by the Company exclusive of VAT, which the Company shall add at the appropriate prevailing rate.

4.3 The Company shall notify the Customer of any increase in the price of the Goods. The Customer may terminate this Contract by giving notice to the Company promptly after receipt of any such notice. Where the Customer does not terminate this Contract promptly after receipt of any such notice and in any event twenty four (24) hours before the time that the Goods are scheduled to leave the Company's premises, the Customer shall be bound to accept the delivery of the Goods at the new price.

#### **5. RESERVATION OF TITLE – RISK AND PROPERTY**

5.1 Risk of damage to or loss of the Goods shall pass to the Customer at the Time of Delivery.

5.2 Notwithstanding clause (5.1) above and the passing of risk in the Goods, or any other provision of these Conditions, the Goods remain the sole and absolute property of the Company as legal and equitable owner until such time as the Company has received in cash or cleared funds payment of any sums due under the Contract together with any sums due to the Company under any other arrangement, contract or Contract with the Company.

5.3 Until such time as the title in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the Goods in the ordinary course of its business. The right for the Customer to resell or use the Goods in the ordinary course of its business or otherwise, shall immediately cease if the Customer is the subject of any of the events set out in Clause 12.1.1, 12.1.2, 12.1.3 or 12.1.4 or 12.1.5 or the Contract is terminated by notice from the Company under the remaining provisions of Clause 12.

5.4 Until such time as the title in the Goods passes to the Customer (and provided the Goods are still in separate identifiable existence and have not been resold) the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored, or where they are reasonably thought to be stored, and repossess the Goods.

5.5 The Customer 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 Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

#### **6. PAYMENT**

6.1 The Company shall be entitled to submit an invoice to the Customer at any time on or after the Time of Delivery.

6.2 The Customer shall pay the Company's invoice in full by the last day of the month following the month in which the invoice is issued by the Company (unless otherwise indicated on the invoice) and time of payment shall be of the essence of the Contract.

6.3 Where any invoice is overdue all other invoices rendered shall be deemed to be due and payable forthwith, notwithstanding the date indicated on the invoice.

6.4 The Company reserves the right to withhold further deliveries until the overdue amount is paid in full.

6.5 The Company shall be entitled to charge the Customer interest on any sums paid late under a Contract from the due date until the date of payment. Such interest shall be calculated on a daily basis at the rate of five per cent (5%) above the base lending rate of Bank of England from time to time prevailing, as well after as before any judgment.

6.6 Notwithstanding the provisions of Clauses 6.1 and 6.2 the Company reserves the right (in the Company's absolute discretion) to require payment in full for the Goods on or before the Time of Delivery or otherwise to change any credit facility from time to time given to the Customer.

6.7 The Customer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim unless both the validity and the amount thereof have been admitted by the Company in writing.

#### **7. DELIVERY**

7.1 Where the Company agrees or states a specified delivery date, the Company shall use reasonable endeavours to deliver on or before the relevant date, but the Company shall be under no obligation to do so.

7.2 The Company shall not be obliged to make delivery at any specified time.

7.3 Time shall not be of the essence with respect to any of the Company's obligations arising under the Contract.

7.4 The Company shall not be liable in respect of any loss incurred by the Customer arising from any delay in delivery of the Goods or performance of any service.

7.5 If, for any reason, the Customer purports to accept only a proportion of the Goods supplied, the Customer shall be deemed to have accepted the whole of the Goods. The Customer will thereafter not be entitled to reject the remainder of the Goods.

7.6 Where the Goods are handed to a carrier for carriage to the Customer or to a United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Customer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.

7.7 The Customer agrees that section 32(3) of the Sale of Goods Act 1979 shall not apply to Products sent by the Company.

7.8 If the Customer becomes subject to any of the events listed in Clause 12, then without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Company without incurring any liability to the Customer.

#### **8. DELIVERY BY INSTALMENTS**

8.1 The Company shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between the Company and the Customer.

8.2 Any failure, suspension or delay by the Company in respect of any part-delivery of the Goods or the discovery of any defect in any of the Goods so delivered shall not entitle the Customer to cancel the remainder of the Contract and shall not affect the obligations of the Customer in respect of the remainder of the Goods or the remainder of the Contract.

#### **9. SUITABILITY OF STORAGE AND OFFLOADING FACILITIES**

The Company reserves the right at any time to refuse to make delivery of the Goods if in its sole opinion the storage and offloading facilities proposed by the Customer are inadequate or unsuitable. Where the Goods are delivered by

the Company such delivery shall in no way constitute a commitment or representation by the Company as to the adequacy or suitability of the Customer's storage or offloading facilities. The Customer shall at all times be solely responsible and liable to ensure that the Customer's storage and offloading facilities are adequate and suitable.

#### **10. FAILURE TO ACCEPT DELIVERY WHEN TENDERED**

10.1 Where any delay in delivery of the Goods is caused by the Customer, the Company shall be entitled to charge the Customer all proper costs arising out of such delay including without limitation the cost of returning the Goods to the Company's premises, of storing the Goods and of re-delivering the Goods. This provision is without prejudice to any other right, which the Company may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the Contract.

10.2 Notwithstanding Clause 10.1 above, and subject to any contrary provision that the Company may agree to in writing, the Customer shall be entitled to re-schedule on not more than one occasion delivery of the Goods by giving the Company reasonable notice so to do.

#### **11. FORCE MAJEURE AND HARDSHIP**

11.1 In this Clause 11, "**Force Majeure Event**" means an event beyond the reasonable control of the party claiming the benefit of the Clause (including its subcontractors) including, without limitation, act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of the Clause), failure by any statutory undertaker, utility company, local authority or like body to provide services, any failure, shortage of power, fuel, raw material, Goods bought from third parties or transport, and any act or omission of any third party to the extent that performance of any obligation of the party claiming the benefit of the Clause relies thereon.

11.2 Neither party shall be under any liability to the other party in respect of any failure to perform or delay in performing any of its contractual obligations to the other party (other than an obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract. The party seeking to take advantage of this Clause 11 shall:

11.2.1 give the other party notice as soon as reasonably practicable of the said Force Majeure Event; and

11.2.2 use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the said failure or delay.

#### **12. TERMINATION**

12.1 If:

12.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or has an administrator or administrative receiver appointed over the whole or any part of its assets; or

12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

12.1.3 the Customer ceases, or threatens to cease, to carry on business; or

12.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; or

12.1.5 any event takes place in any jurisdiction other than England which is analogous to any of the above under this Clause 12.1; or

12.1.6 the Customer is in breach of any material provision of this Contract and fails to remedy such breach within thirty (30) days of a notice from the Company indicating the breach and requiring the Customer to remedy the same.

12.2 Where Clause 12.1 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer.

12.3 Where Clause 12.1 applies 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.

12.4 If the Customer defaults in any of his obligations to the Company or commits any breach of the terms of any contract entered into by the Company, then the Company shall have the right to terminate without notice any agreement, orders or obligations and invoice the Customer for any work performed and expenses incurred including loss of profit.

#### **13. CONDITIONS OF SUPPLY AND WARRANTIES AND LIMIT OF RESPONSIBILITY**

13.1 The following provisions in this Clause 13 set out the Company's entire liability (including any liability for the acts and omissions of its employees, agents or subcontractors) to the Customer in respect of:

13.1.1 a breach of the Company's contractual obligations; or breach of statutory duty;

13.1.2 a tortious act or omission for which the Company is liable;

13.1.3 an action arising out of a misrepresentation made by or on behalf of the Company arising in connection with the performance or contemplated performance of this Contract or out of an act done or omission made as a consequence of the entry into by the Company of this Contract.

13.2 The Company's only responsibility shall be to deliver Goods in accordance with the relevant Company specification or any formal written specification referred to in the relevant Order. If the Customer wishes an alternative specification the Customer must raise that issue prior to the Contract being entered into.

13.3 The Company shall be responsible for ensuring that the Goods when supplied are in accordance with the specification as set out in Clause 13.2. The Company shall not be obliged to undertake any tests not relating to the specification.

13.4 Where the Goods are pre-packaged goods that are sold on by the Company in the same packaging as they are bought by the Company, then in place of Clauses 13.2 and 13.3 above, the Company's only obligation shall be to use its reasonable endeavours to pass on to the Customer the warranties given to the Company by the seller of the Goods to the Company. Such undertaking to assist is given by the Company and accepted by the Customer instead of and expressly excludes any other guarantee, conditions or warranty as to quality of fitness for any purpose whether statutory or otherwise.

13.5 The Company may by giving written notice to the Customer vary the specification of the Goods at any time.

13.6 Save as expressly provided in these Conditions or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise howsoever arising are excluded to the fullest extent

permitted by law. The Customer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular purpose and the Customer acknowledges that it is relying solely on the Customer's own skill and judgment and not the Company's in determining such suitability. The Company warrants that the Goods will comply with the specification as set out in Clause 13.2 above. If no specification has previously been supplied to the Customer, a specification will be supplied to the Customer on request and the Company warrants that the Goods will comply with that specification.

13.7 The Company warrants that it will at the Company's choice either repair or replace any goods which are accepted by the Company as being defective or not in accordance with the contract or any express description or representation given or made by or on behalf of the Company in respect of the Goods within a period of six months from despatch of such Goods from the Company's works (the 'Warranty Period') save that this warranty shall not apply where the defect or default is attributable to defective material supplied by third parties where the Customer's only remedy will be against that third party.

13.8 The Customer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any claim in respect of the Goods or services or any workmanship in relation to them (whether or not involving negligence on the part of the Company) shall in all cases be limited to repair or replacement as aforesaid.

13.9 All Goods manufactured by the Company are supplied by the Company in good faith as suitable for the purposes indicated on the labels and in our literature. However, as the Company cannot exercise control outside the course of manufacture over their storage, handling, mixing other products or use of which may affect the performance of the Goods, all conditions and warranties, whether statutory or otherwise, as to their quality of fitness for any purpose are excluded and the Company shall not be liable to the Customer for any damage, injury, failure in performance, consequential loss (whether for loss of profit or otherwise), costs or expenses which arise out of or in connection with their storage, handling, mixing or use, except as expressly provided in these conditions.

13.10 Without prejudice to any other provisions of these conditions, if the Company is found to be liable for any loss or damage of whatever nature arising out of or in connection with the provision of or purported provision of or failure in provision of the Goods for services covered by the contract such liability shall be limited to the payment by the Company by way of damages of a sum not exceeding a maximum of £2,500 or the total contract price, whichever is the lesser in respect of any claim.

13.11 Save as provided in these Conditions, the Company shall not, in any circumstances, be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, or any direct, indirect or consequential loss arising under or in connection with the Contract, deliberate or otherwise by the Company, its employees agents or sub-contractors. Liability is not excluded in respect of any fraudulent act or omission.

13.12 The exclusion of liability referred to in this Clause 13 does not apply so as to exclude or limit the Company's liability for:

13.12.1 death or personal injury resulting from the negligence of the Company, its servants or agents; or

13.12.2 damage for which the Company is liable to the Customer under Part I of the Consumer Protection Act 1987;

13.12.3 breach of the Company's implied undertaking as to title to the Goods contained in Section 12 of the Sale Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982. save that nothing in this Clause 13 shall confer a right or remedy upon the Customer to which the Customer would not otherwise be entitled.

13.13 The exclusions from and limitations of liability set out in this Clause 13 shall be considered severably. The validity or unenforceability of any one paragraph or sub-paragraph of this Clause 13 shall not affect the validity or enforceability of any other part of this Clause 13.

13.14 The provisions of this Clause 13 shall survive the termination of the whole or a Part of this Contract.

#### **14. SAMPLES**

Except where the Goods are specifically ordered in writing against samples supplied by the Company and the Order expressly refers to those samples, any and all samples supplied by the Company are supplied for information only. Where the Customer requires an additional warranty that the Goods comply with such a sample, the Customer must communicate the same to the Company prior to the Company's acceptance of the Order by written acknowledgement. The written acceptance shall refer to any additional warranty (in the form of an additional specification) to which the Company may agree. The Company does not give any further warranty about compliance of the Goods with any sample other than in respect of the specification contained in the written acceptance.

#### **15. CONTAINERS AND PALLETS**

15.1 This Clause 15 shall only apply where containers or pallets belonging to the Company are used in connection with the delivery of the Goods.

15.2 The value of all chargeable containers or pallets used in connection with the delivery of the Goods will be shown as a separate item on the Company's sales invoice for the Goods and shall be paid for in full by the Customer when payment for the Goods is due.

#### **16. INTELLECTUAL PROPERTY**

16.1 The Customer shall indemnify the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trademarks, copyright, design right or other Intellectual Property Right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Customer.

16.2 Unless otherwise agreed in writing with the Company:

16.2.1 The Company shall retain the exclusive property and reserve the copyright in all documents supplied or produced to the Customer in connection with the Contract;

16.2.2 all Intellectual Property Rights in or relating to the Goods shall (subject to any existing rights of any third party in any design or invention incorporated or used in the design of the Goods) be the exclusive property of the Company and neither the Customer nor any agent, contractor or other person authorised by the Customer shall at any time make any unauthorised use of those Intellectual Property Rights.

#### **17. CLAIMS**

17.1 The Customer shall inspect the Goods at the Time of Delivery and shall note on the carrier's delivery note any damage to the Goods. The Customer shall give to the Company and the carrier in writing before the end of the next working day after the Time of Delivery notice of any claim for any defect, shortage, damage or loss to the Goods whilst in transit. If the Customer fails to do so, the Goods shall be conclusively presumed to have been received and

accepted by the Customer without any claim for any defect, shortage, damage or loss. Non-delivery of a consignment must be notified to the Company's Head Office within three days of receipt of invoice. Telephone notification must be confirmed in writing. Signatures endorsed 'unexamined' or 'unchecked' have no legal significance and will not be accepted by the Company or the carriers as a basis of claim.

17.2 Subject to the provisions of Clause 13 in the event of a valid claim for defect, loss, damage, or non-compliance with the Contract or non-delivery the Company undertakes at its option either to repair, reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, loss, damage or non-compliance.

17.3 The provisions of this Clause 17 shall only apply where any claim for any defect, shortage, damage or loss to the Goods is apparent on visual inspection.

#### **18. HEALTH AND SAFETY AT WORK**

18.1 Where required by law, the Company and the Customer will supply safety data sheets and other information regarding the health and safety attributes of the Goods including (without limitation) those required under REACH.

18.2 In this Clause 18.2, an **"Unexpected Defect"** means a defect in the Goods other than a failure by the Goods to meet the specification indicated in the written acknowledgement of the Order.

The Customer will comply with health and safety legislation. In particular but without limitation, the Customer shall fully and effectually indemnify the Company against any costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of:

18.2.1 an Unexpected Defect in the Goods

18.2.2 a failure to use the Goods in accordance with the health and safety legislation or with the information regarding the health and safety attributes of the Goods supplied by or on behalf of the Company (whether such failure is on the part of the Customer's employees, contractors or agents, or a third party to whom the Customer has supplied the Goods).

18.2.3 a failure to comply with the Customer's obligations under REACH

18.3 The Customer undertakes to ensure that all information provided or made available by the Company to the Customer concerning the use, handling, processing, storage or transportation of the Goods (hereinafter the **"Use of the Goods"**), including without limitation all information concerning any risks to health or safety to which the Use of the Goods may give rise and any conditions necessary to ensure that the Use of the Goods will be without risks to health, shall be brought to the attention of all employees of the Customer and others involved in the Use of the Goods. The Customer undertakes further to impose a similar requirement upon any third party to whom the Goods are sold or supplied.

18.4 The Customer shall promptly inform the Company of any incident of which the Customer becomes aware in which the Use of the Goods has or may have given rise to risks to the health or safety of any person.

#### **19. EXPORT SALES**

19.1 The provisions of this Clause 19 shall apply only where the written acceptance of the Order indicates that an Incoterm applies to the Contract.

19.2 The sale of the Goods is subject to the Incoterm (if any) stated in the written acceptance of the Order.

19.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties on them.

19.4 Unless otherwise agreed in writing, the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

19.5 Where the Company has agreed to invoice for the Goods in a currency other than sterling the Company may at any time prior to delivery revise the price of the Goods to take account of any variation in exchange rates.

#### **20. ENTIRE AGREEMENT**

The Contract (together with all the other documents to be entered into pursuant to it) sets out the entire agreement and understanding between the parties relating to the matters contemplated by the Contract, and all conditions, terms and warranties, whether express or implied, are excluded if they are not expressly set out in the Contract.

#### **21. ASSIGNABILITY**

The Customer shall not be entitled to assign the benefit or burden of the whole or any part of any Contract without the prior written consent of the Company. The Company may subcontract the performance of its obligations as it sees fit, provided always that the Company shall remain responsible for the acts and omissions of its subcontractors.

#### **22. WAIVER**

Save in respect of a waiver granted in writing, the failure of the Company at any time to enforce a provision of this Contract shall not be deemed a waiver of such provision or of any other provision of this Contract or of the Company's right thereafter to enforce that or any other provision of this Contract.

#### **23. SEVERABILITY**

If a provision in this Contract is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason:

23.1 such unenforceability shall not affect the rest of this Contract; and

23.2 the parties shall in good faith amend and if necessary novate this Contract to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same comply with the laws of that jurisdiction.

#### **24. STATUS**

Nothing in these Conditions shall create any joint venture, agency or partnership between the Company and the Customer.

#### **25. VARIATIONS**

All variations to any Contract or to these Conditions must be made in writing and be signed by both parties and in the case of the Company by a director as shown on the Company's records at Companies House. Each party shall at its own cost do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably requested of it by the other party to implement the Contract.

#### **26. THIRD PARTY RIGHTS**

The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Contract and this Contract shall not confer any right on a Third Party under that Act or otherwise.

#### **27. PROPER LAW**

Every Contract to which these Conditions apply shall be construed and take effect in accordance with the laws of

England and the parties hereby accept the exclusive jurisdiction of the English Courts.