1. INTERPRETATION

1.1 Unless the context otherwise states or requires:
(a) the terms "Goods" and "Order" shall have the meaning given to them there when used in these Standard Terms & Conditions;
(b) all other capitalised words used in these Standard Terms & Conditions shall have the meanings set out below;

1.2 In this Agreement unless the context otherwise requires:
(a) words importing the singular include the plural and vice versa;
(b) any words following the terms “including”, “include”, “in any event”, “including all”, “importing the singular include the plural and vice versa” requires:
(c) any reference to one gender includes a reference to the other gender and vice versa;
(d) any words following the terms “including”, “include”, “in any event”, “including all” include words importing the singular include the plural and vice versa;
(e) any reference to one gender includes a reference to the opposite gender;
(f) any related plans and drawings or specifications shall be in accordance with the Supplier’s undertaking and the Special Conditions;
(g) the words “or” and “and” include the words “and” and “or” respectively;
(h) (a) Goods, unless otherwise stated, shall always include the Specification (including the code number of the Goods (where applicable)), special storage instructions (if any) and, where applicable, be free from defects in design, manufacture, labelling, packaging, storage, handling and delivery of the Goods.

2. AGREEMENT

2.1 The Order constitutes an offer by Kew to purchase Goods and/or Services from the Supplier in the terms and conditions set out in the Order and the Supplier’s written instructions or in the Supplier’s written undertaking at Kew’s request.

2.2 The Order shall be deemed to be accepted on the earlier of:
(a) the Supplier issuing written acceptance of the Order; or
(b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Agreement shall come into existence (Commencement Date).

3. SUPPLY OF GOODS

3.1 (a) The Supplier shall ensure that the Goods shall:

(b) be fit for any purpose expressly or impliedly made known to the Supplier;
(c) comply with all applicable statutory and regulatory requirements relating to (without limitation) the manufacture, packaging, storage, handling and delivery of the Goods.

3.2 (a) The Supplier shall ensure that all at times it has and maintains all licences, permissions, authorisations, consents and any other obligations under the Agreement and, Kew shall have the right to conduct further inspections and tests after the Supplier has carried out its inspections.

3.3 (a) Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Agreement, and Kew shall have the right to conduct further inspections.

3.4 The Supplier shall ensure that all at times it has and maintains all licences, permissions, authorisations, consents and any other obligations under the Agreement and, Kew shall have the right to conduct further inspections and tests after the Supplier has carried out its inspections.

3.5 If following such inspection or testing Kew considers that the Goods are not complying with the Supplier’s undertakings at Clauses 3.1, 3.2 or 3.4, the Supplier shall immediately (as far as is reasonably practicable) carry out such remedial action as is necessary to ensure compliance.

3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Agreement, and Kew shall have the right to conduct further inspections and tests after the Supplier has carried out its inspections.

4. DELIVERY OF GOODS

4.1 (a) The Supplier shall ensure that:
(b) any packaging used is capable of easy recovery for further use or recycling;
(c) each delivery of the Goods is accompanied by a delivery note and a copy of the Order.

4.2 (a) the Goods are properly packed and secured in such a manner as to ensure that they are delivered and arrive in a sound condition;
(b) the Supplier shall ensure that the Goods, and any rejected Goods shall be returnable at the Supplier’s expense.

4.3 (a) the Supplier shall ensure that:
(b) the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
(c) the Supplier requires Kew to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.4 (a) the Goods are delivered to Kew’s premises as stated on the Order or, if no such date is stated, as stated in the Order or instructed by Kew before delivery;
(b) Kew’s premises as stated on the Order or, if no such date is stated, as stated in the Order or instructed by Kew before delivery.

4.5 (a) the Supplier shall not deliver the Goods in instalments without Kew’s prior written consent.
(b) If it is agreed that the Goods are unlikely to comply with the Supplier’s undertakings or at all or at any defect in an instalment shall entitle Kew to the remedies set out in Clauses 5.1 and 5.2.

5. TITLE TO GOODS

5.1 The Supplier shall provide the Goods to Kew in accordance with the terms of the Agreement and all the relevant dates for provision of the Services stated in the Order or, if no such dates are specified, as notified by the Supplier to Kew.

5.2 In providing the Services, the Supplier shall:
(a) co-operate with Kew in all matters relating to the Services, and comply with all instructions of Kew;
(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier’s industry, profession or trade;
(c) use personnel who satisfy all Supplier Personnel Requirements and who are suitably trained and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations under the Agreement are discharged.

6. USE OF GOODS

6.1 (a) The Supplier shall supply the Goods in accordance with the Supplier’s written instructions or in the Supplier’s written undertaking at Kew’s request, and Kew shall have the right to conduct further inspections.

6.2 (a) the Supplier shall ensure that the Specifications and any rejected Goods shall be returnable at the Supplier’s expense.
(b) the Supplier shall ensure that the Goods, and any rejected Goods shall be returnable at the Supplier’s expense.

6.3 The Supplier shall not deliver the Goods in instalments without Kew’s prior written consent.

6.4 (a) the Supplier shall not deliver the Goods in instalments without Kew’s prior written consent.
(b) If it is agreed that the Goods are unlikely to comply with the Supplier’s undertakings or at all or at any defect in an instalment shall entitle Kew to the remedies set out in Clauses 5.1 and 5.2.

6.5 (a) the Supplier shall provide the Goods to Kew in accordance with the terms of the Agreement and all the relevant dates for provision of the Services stated in the Order or, if no such dates are specified, as notified by the Supplier to Kew.
(2) the Supplier shall pass on the earlier of payment or the completion of delivery of the Goods in question in accordance with Clause 4.3.

6.6 The Supplier shall pass on delivery in accordance with Clause 4.3.

7. SUPPLY OF SERVICES

7.1 The Supplier shall provide the Services to Kew in accordance with the terms of the Agreement and all the relevant dates for provision of the Services stated in the Order or, if no such dates are specified, as notified by the Supplier to Kew.

7.2 In providing the Services, the Supplier shall:
(a) co-operate with Kew in all matters relating to the Services, and comply with all instructions of Kew;
(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier’s industry, profession or trade;
(c) use personnel who satisfy all Supplier Personnel Requirements and who are suitably trained and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations under the Agreement are discharged.

7.3 (a) the Supplier shall supply the Goods in accordance with the Supplier’s written instructions or in the Supplier’s written undertaking at Kew’s request, and Kew shall have the right to conduct further inspections.

7.4 (a) the Supplier shall ensure that the Specifications and any rejected Goods shall be returnable at the Supplier’s expense.
(b) the Supplier shall ensure that the Goods, and any rejected Goods shall be returnable at the Supplier’s expense.

7.5 (a) the Supplier shall not deliver the Goods in instalments without Kew’s prior written consent.
(b) If it is agreed that the Goods are unlikely to comply with the Supplier’s undertakings or at all or at any defect in an instalment shall entitle Kew to the remedies set out in Clauses 5.1 and 5.2.

7.6 The Supplier shall pass on delivery in accordance with Clause 4.3.

7.7 The Supplier shall pass on delivery in accordance with Clause 4.3.

7.8 The Supplier shall pass on the earlier of payment or the completion of delivery of the Goods in question in accordance with Clause 4.3.
6. GOODS AND SERVICES

6.1 Where any access to Kew Premises is necessary in connection with the delivery or installation of Goods or the provision of Services, the Supplier shall at all times observe all health and safety rules and regulations including all relevant provisions of the Construction (Design and Management) Regulations 2015 and any other security requirements that apply at Kew Premises and otherwise the reasonable instructions and requirements of Kew.

6.2 Where any work by the Supplier is carried out on site at Kew, the Supplier shall comply with the Contractors’ Code.

6.3 The Supplier shall have due regard to and comply with the following in so far as relevant to the Agreement:

(a) Retail, Ethical and Environmental Sourcing Policy (where applicable);
(b) Kew Site Security Guidelines (provided separately, if applicable);
(c) Data Processor Schedule (attached hereto or otherwise available at www.kew.org).

6.4 The Supplier acknowledges and agrees that RBG Kew is a world-leading charity, concerned with the research and conservation of plants. As such, it is a material condition of this Agreement that the Supplier ensures that the provenance, production, procurement and delivery of all Goods and Deliverables is sustainable and ethical, and in accordance with all laws and regulations including, but not limited to the DEFRA Timber, Wood, and Non-Timber Policy (as published by the UK Government).

The Supplier agrees that the supply of Goods, Services and the use of the (include the) Kew site is subject to such a way as to minimise damage to the environment and the Supplier should immediately consult with Kew if it is in any doubt as to its ability to comply with this Clause.

6.5 Recall of Goods

(a) If either Kew or the Supplier is the subject of a directive, court order or requirement of a governmental or regulatory authority to withdraw any Goods from the marketplace (or recall) it shall immediately notify the other party in writing enclosing a copy of the Recall Notice.

(b) In the event Kew or the Supplier is the subject of a Recall Notice, or the Supplier voluntarily decides to recall any Goods, Goods the Supplier may discontinue, any laws or regulations or for any other reason:

(i) the Supplier shall cooperate fully with one another in connection with any recall and
(ii) Supplier shall reimburse Kew for the price paid by Kew for such recalled Goods, all of the costs and expenses actually incurred by Kew in connection with the recall including, but not limited to, costs of retrieving Goods already delivered to customers, costs and expenses Kew is required to pay for notification, shipping and transporting Goods, and any other costs as may be reasonably related to the recall.

7. STATUTORY OBLIGATIONS AND OTHER REQUIREMENTS

7.1 Whilst providing the Goods and/or Services, the Supplier shall comply with all applicable current laws, statutes, rules, regulations, and sanctions, (Legislation) including those relating to data protection, health, safety, fire, food and the environment. The Supplier shall obtain and at all times maintain all necessary licences and consents.

7.2 Safeguarding. Supplier shall comply with Kew’s safeguarding policies and procedures, to protect children and vulnerable adults, including but not limited to following Kew’s safeguarding Code of Good Practice, reporting procedures and if required, ensuring that relevant Supplier Personnel undertake training and DBS (Discipline and Behavior) checks in accordance with being permitted access to the Kew Premises. Supplier shall ensure that any required DBS checks that Kew, in its sole discretion, determines are necessary (on its behalf and, on behalf of all Supplier Personnel).

7.3 Discrimination. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, nationality or ethnic origin, sex or sexual orientation, religion or belief, age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation.

7.4 Modern Slavery. Supplier warrants and represents that it complies with the Modern Slavery Act 2015 and in particular it does not engage in, facilitate or allow any form of

(a) slavery, servitude, forced compulsory labour or trafficked persons;
(b) force, threat or deception to obtain services from anybody including children and other vulnerable persons;
(c) human trafficking, all as defined within the Modern Slavery Act 2015.

7.5 Anti-facilitation of tax evasion. The Supplier shall:

(a) not engage in any activity, practice or conduct which would constitute facilitation of a tax offence under section 455 of the Criminal Finances Act 2017 or a breach of the facilitation offence under section 46(6) of the Criminal Finances Act 2017; and
(b) promptly report to Kew any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with this Agreement and
(c) on request by Kew, certify to Kew in writing signed by an officer of the Supplier, compliance with this Clause 7.5 by the Supplier and Supplier Personnel. The Supplier shall provide such supporting evidence of compliance with, or to provide a refusal of the price of the rejected Goods (if paid):

(i) anti-bribery, in those Cases 7.6 – 7.12, the following definitions apply:

(ii) the Bribery Act 2010 and any subordinate legislation made under that Act from time to time to implement the Bribery Act or otherwise required by the relevant government department concerning the legislation.

Prohibited Act: the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by Kew a financial or other advantage to;
(b) induce that person to perform improperly a relevant function or activity; or
(c) reward that person for improper performance of a relevant function or activity.

7.6 Anti-Trafficking. In those Clauses 7.6 – 7.12, the following definitions apply:

(a) the Bribery Act 2010 and any subordinate legislation made under that Act from time to time to implement the Bribery Act or otherwise required by the relevant government department concerning the legislation.

Prohibited Act: the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by Kew a financial or other advantage to;
(b) induce that person to perform improperly a relevant function or activity; or
(c) reward that person for improper performance of a relevant function or activity.

7.7 The Supplier shall not, and shall procure that Supplier Personnel shall not, in connection with the Agreement commit a Prohibited Act.

7.8 The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person (including Kew) to induce or reward that person for improper performance of a relevant function or activity.

7.9 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 1.3, then, without limiting the rights of remedies, Kew shall have one or more of the following rights, whether or not it has accepted the Goods:

(a) to reject the defective or non-complying Goods or in part whether or not title has passed and to return them to the Supplier at the Supplier’s own risk; and
(b) to terminate the Agreement with immediate effect by giving written notice to that effect.

7.10 the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid):

(a) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
(b) to cancel the Agreement to the extent necessary to avoid any breach of the Agreement; and
(c) to claim for any additional costs, loss or expenses incurred by Kew arising from the Supplier’s failure to supply Goods in accordance with Clause 3.1.3.

7.11 This Agreement shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

8. KEW’S RIGHTS UNDER THE AGREEMENT

8.1 Kew’s rights under the Agreement are in addition to its rights and remedies implied by statute and common law.

9. KEW’S OBLIGATIONS

9.1 Subject to the Supplier complying with the Agreement, Kew shall:

(a) provide the Supplier with reasonable access at reasonable times to the Kew Premises for the purpose of providing the Services; and
(b) provide such facilities and information as the Supplier may reasonably require to enable the Supplier to comply with the undertakings set out in the Services and Kew considers reasonably necessary for the purpose of providing the Services.

10. CHARGES AND PAYMENT

10.1 The price for the Goods:

(a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier’s published price list if in force at the date of the Order; and

(b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods (where applicable), unless agreed in writing by Kew. No extra charges shall be effective unless agreed in writing by Kew.

10.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. The charges for Services set out in the Order shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

10.3 Unless otherwise specified in the Order: in respect of Goods, the Supplier shall invoice Kew on or at any time after completion of delivery; and in respect of Services, the Supplier shall invoice Kew on completion of the Services.

10.4 Each invoice for the supply of the Goods and/or Services shall include such supporting information required by Kew to verify the accuracy of the invoice, including but not limited to the relevant contract number.

10.5 Where the Supplier submits an invoice to Kew in accordance with Clause 10.2 which includes any error, Kew will consider and verify that invoice in a timely fashion.

10.6 In consideration of the supply of the Goods and/or Services by the Supplier, the Kew shall pay the invoiced amounts within 30 days from the date on which Kew has determined that the invoice is valid and undisputed.

10.7 Where Kew faces and verify an invoice in a timely fashion in accordance with Clause 10.5, the invoice shall be regarded as valid and undisputed for the purposes of Clause 10.6 after a reasonable time has passed.

10.8 Where the Supplier enters into a Sub-Contract, the Supplier shall include in any Sub-Contract (a) any provisions having the same effect as clauses 10.4 – 10.7 of this Agreement; and

(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 10.4 – 10.7 of this Agreement.

In this Clause, “Sub-Contract” means a contract between two or more suppliers at any stage of remoteness from Kew in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

10.9 All amounts payable by Kew under the Agreement are exclusive of any value added tax (VAT) chargeable from time to time (VAT). Kew shall on receipt of a valid tax invoice from the Supplier claim back from the Supplier any additional consideration or VAT which may be payable by Kew in respect of the Supplier on the basis of the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or
SERVICES AS THE SAME TIME AS PAYMENT IS DUE FOR THE SUPPLY OF GOODS AND/OR SERVICES.

10.1 If either party fails to pay any amount properly due and payable under the Agreement and, in the event of any such default, the other party shall have the right to charge interest on the overdue amount at the rate of five per cent per annum above the base rate for the time being of Lloyds Bank accruing on a daily basis. In the event of any such default, the other party shall have the right to charge interest on the overdue amount, whether before or after judgment. This clause shall not apply to payments that are disputed in good faith.

11. Kew may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Kew to the Supplier under the Agreement.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 In respect of the Goods and any goods that are transferred to the Supplier under the Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to Kew, it will have all such rights, title and interest as to cover the liabilities that may arise under or in connection with, defects in the Supplier’s obligations; for property arising out of, or in connection with, defects in the Kew Materials, any amendments or improvements to the Goods and/or Services at the Supplier’s expense; indemnify in full against all costs, expenses, losses, damages and other liabilities that may arise under or in connection with, defects in the Goods and/or Services at the Supplier’s expense; indemnify in full against all costs, expenses, losses, damages and other liabilities that may arise under or in connection with, defects in the Kew Materials, any amendments or improvements to the Goods and/or Services at the Supplier’s expense; indemnify in full against all costs, expenses, losses, damages and other liabilities that may arise under or in connection with, defects in the Kew Materials, any amendments or improvements to the Goods and/or Services at the Supplier’s expense; indemnify in full against all costs, expenses, losses, damages and other liabilities that may arise under or in connection with, defects in the Kew Materials, any amendments or improvements to the Goods and/or Services at the Supplier’s expense; indemnify in full against all costs, expenses, losses, damages and other liabilities that may arise under or in connection with, defects in the Kew Materials, any amendments or improvements to the Goods and/or Services at the Supplier’s expense; indemnify in full against all costs, expenses, losses, damages and other liabilities that may arise under or in connection with, defects in the Kew Materials, any amendments or improvements to the Goods and/or Services at the Supplier’s expense; indemnify in full against all costs, expenses, losses, damages and other liabilities that may arise under or in connection with, defects in the Kew Materials, any amendments or improvements to the Goods and/or Services at the Supplier’s expense; 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obligations and/or duties performed by any subcontractors expressly listed in the Order.

(b) Kew may at any time assign, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

16.5 Notices: Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid second-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party’s main fax number.

16.6 Waiver and cumulative remedies:
(a) A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
(b) Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

16.7 Severance: If a court or any other competent authority finds that any provision (or part of any provision) of the Agreement is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

16.8 No partnership: Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.9 Third parties: A person who is not a party to the Agreement shall not have any rights under or in connection with it, save that any affiliate of Kew shall be entitled to enjoy the benefit of and enforce such contractual provisions as are expressly to be for the benefit of it.

16.10 Approvals. Notwithstanding any other provision of this Agreement, the terms ‘acceptance’ ‘approval’ or similar when used in the context of any acceptance or approval to be given by or on behalf of Kew has the meaning ‘acceptance of general principles only’ and no such acceptance or approval shall diminish or relieve the Supplier from any of its obligations or liabilities under this Agreement (save for the obligation to seek or obtain such acceptance or approval).

16.11 Variation: Any variation, including any additional terms and conditions, to the Agreement shall only be binding when agreed in writing by Kew.

16.12 Entire Agreement: This Agreement sets out the entire agreement and understanding between the parties in respect of the matters covered herein to the exclusion of any other terms that the Trader seeks to impose or incorporate, or which might otherwise be implied by trade, custom, practice or course of dealing.

16.13 Counterparts: This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same agreement. No counterpart shall be effective until each party has executed at least one counterpart. The transmission of an executed counterpart of this Agreement (but not just a signature page) by e-mail (such as in PDF) will take effect as the delivery of an executed original counterpart of this Agreement.

16.14 Dispute Resolution: If at any time, any dispute shall arise between the parties in relation to this Agreement, the parties agree that in order to resolve any such dispute, they shall first attempt to resolve the dispute by holding a meeting and discussing the dispute in good faith with a view to agreeing the action to be taken to solve the issues giving rise to the dispute.

16.15 Governing law and jurisdiction: The Agreement, and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.