1. INTERPRETATION

1.1 Unless the context otherwise states or requires:
(a) terms of the Order shall be construed as being given to them when used in these Standard Terms & Conditions; and
(b) all other capitalised words used in these Standard Terms & Conditions shall have the meanings set out below.

2. AGREEMENT

2.1 The terms of this Agreement shall apply to the provision of the Goods or Services to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 In the event of any conflict between these Standard Terms & Conditions and any subcontractor's Standard Terms & Conditions, the Special Conditions shall take precedence over any other provisions of these Standard Terms & Conditions.

2.3 All of these Standard Terms & Conditions shall apply to the purchase of both Goods and Services except where the application of the same is otherwise specified.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:
(a) correspond with their description and any applicable Goods Specification;
(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held by the Supplier to be of such quality as is reasonable to expect, and fit for any purpose other than the purpose for which they are supplied, and be of acceptable quality and safe for any person to use and sale for both the purposes for which they are supplied and for any other purpose for which they are likely to be used, and in accordance with any specification for the Goods, and that they shall be in good condition; and
(c) be properly packed and secured in such包装 and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all such rights, licences, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.

3.3 The Supplier shall have the right to inspect and test the Goods at any time before delivery.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:
(a) the Goods are properly packed and secured in such a manner as is reasonable to ensure their safe passage to the Delivery Location without undue risk of loss or damage,
(b) all packaging used is capable of easy recovery for further use or recycling,
(c) each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the number of Items in each delivery, the Goods, the quality of the Goods (including the code number of the Goods (where applicable), special storage instructions if any) and, if the Goods are included in any specification for the Services, the agreed contractual delivery location; and
(d) during Kew’s normal business hours, or as instructed by Kew.

4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5. DELIVERY OF SERVICES

5.1 The Supplier shall deliver the Goods:
(a) on the date specified in the Order, or if no such date is specified, as soon as is reasonably practicable, in all circumstances, being no later than 10 working days after the Order has been placed for their destination; and
(b) on Kew’s normal business hours of operation, or as instructed by Kew.

5.2 The Supplier shall deliver the Goods in accordance with Kew’s written instructions or of equivalent experience and skills to the Supplier’s undertakings at Clause 3.1, Kew shall inform the Supplier immediately of any defects, non-delivery or late delivery. Supplier shall be liable for any costs incurred by Kew in connection with the Goods.

5.3 The Supplier shall provide to the Supplier promptly any repairable or serviceable parts that the Goods are delivered by the Supplier, and all manufacturer’s manuals and any other documentation provided by the Supplier.

5.4 Where the Goods are not of a kind supplied in bulk to meet a specified quantity, the Supplier shall deliver to the Order at the cost of the Supplier.

5.5 The Supplier shall deliver the Goods:
(a) on the date specified in the Order, or if no such date is specified, as soon as is reasonably practicable, in all circumstances, being no later than 10 working days after the Order or, if Kew may at its sole discretion reject the Goods delivered as not in excess Goods, and any rejected Goods shall be reimbursable at the Supplier’s risk and expense, and shall be either re-delivered or returned to the Supplier, or the Supplier shall make good and carry out such work as shall be required to remedy the defects in the Goods, and shall be delivered by the Supplier in good condition at the cost of the Supplier.

5.6 Where the Supplier delivers less than the quantity ordered and the quantity delivered is outside of the permitted tolerances stated on the Order (if any), Kew may reject the Goods, refusing to receive them or refusing to pay for them;

5.7 The Supplier shall deliver the Goods in accordance with Kew’s written instructions or of equivalent experience and skills to the Supplier’s undertakings at Clause 3.1, Kew shall inform the Supplier immediately of any defects, non-delivery or late delivery. Supplier shall be liable for any costs incurred by Kew in connection with the Goods.

5.8 The Supplier shall deliver the Goods in accordance with Kew’s written instructions or of equivalent experience and skills to the Supplier’s undertakings at Clause 3.1, Kew shall inform the Supplier immediately of any defects, non-delivery or late delivery. Supplier shall be liable for any costs incurred by Kew in connection with the Goods.

5.9 The Supplier shall deliver the Goods in accordance with Kew’s written instructions or of equivalent experience and skills to the Supplier’s undertakings at Clause 3.1, Kew shall inform the Supplier immediately of any defects, non-delivery or late delivery. Supplier shall be liable for any costs incurred by Kew in connection with the Goods.

5.10 The Supplier shall deliver the Goods in accordance with Kew’s written instructions or of equivalent experience and skills to the Supplier’s undertakings at Clause 3.1, Kew shall inform the Supplier immediately of any defects, non-delivery or late delivery. Supplier shall be liable for any costs incurred by Kew in connection with the Goods.
the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

6. GOODS AND SERVICES

6.1 Where any access to Kew Premises is necessary in connection with the recall, the inspection, installation of Goods or the provision of Services the Supplier shall at all times observe safety rules and regulations and any other security requirements that apply at Kew Premises and comply with the reasonable instructions and requirements of Kew.

6.2 Where any work by the Supplier is carried out on site at Kew Premises, the Supplier shall comply with the requirements of the Modern Slavery Act 2015 and shall provide a Modern Slavery and Human Rights statement to Kew in respect of Goods and Services provided to Kew.

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

(a) Retail, Ethical and Environmental Sourcing Policy (if applicable);
(b) Data Processor Schedule (attached hereto or otherwise available at www.kew.org).

6.4 The Supplier acknowledges and agrees that RBG Kew is a well-regarded charity, concerned with the research and conservation of plants. As such, it is a 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 Procurement Policy (as published on GoodGopher).

The Supplier agrees that the supply of Goods, Services and Deliverables shall be undertaken in such a way as to minimise damage to the environment and the Supplier should immediately consult with Kew if 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 request of a government agency or a governmental or regulatory authority to withhold any Goods from the market, the Supplier shall immediately notify the other party in writing enclosing a copy of the Recall Notice or other relevant notice.

(b) The recall notice from Kew or the Supplier shall be treated as a Recall Notice under this Clause.

In the event that the Supplier has not received a Recall Notice, it shall:

(i) the recall notices shall cooperate fully with each other and with any other recall
(ii) the delivery of Goods
(iii) the recall notices
(iv) the recall notices
(v) the recall notices.

6.7 STATUTORY OBLIGATIONS AND OTHER REQUIREMENTS

6.7.1 Whilst providing the Goods and/or Services, the Supplier shall comply with all applicable current laws, statutes, regulations, codes of practice and sanctions; (Legislation) including those relating to data protection, health, safety, fire, food and the environment.

The Supplier shall obtain and shall always maintain all licences, consents and approvals required by it and shall ensure that the Goods and/or Services are delivered in accordance with the relevant Legislation.

6.7.2 Safeguarding

The Supplier shall comply with Kew’s safeguarding policies and procedures to protect children and vulnerable adults, including but not limited to the following Code of Good Practice, reporting procedures and if required, ensuring that relevant Supplier Personnel undertake training and Disclosure and Barring Service (DBS) checks before being permitted access to the Kew Premises. Supplier Personnel shall be instructed to refuse service to any person who is unable to comply with Kew’s, in its sole discretion, determine are necessary (on their behalf, and on behalf of all Supplier Personnel).

6.7.3 Discrimination

The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and shall comply with the general duties of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation.

6.7.4 Modern Slavery

Supplier warrants and represents that it is in compliance 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 slavery
(b) force, threat or coercion to obtain services from anyone including children and other vulnerable persons
(c) human trafficking, all as defined within the Modern Slavery Act 2015.

6.7.5 Anti-facilitation of tax evasion

The Supplier shall:

(a) not engage in, directly or indirectly, activity, practice or conduct which would constitute either a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence under section 94(5) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(8) of the Criminal Finances Act 2017;
(b) promptly report to 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 the performance of this Agreement. Such action will be reported in the manner set out in the Kew Whistleblowing Policy.

(b) on request by Kew, certify to Kew in writing signed by an officer of the Supplier, that it complies with this Clause 7.5 by the Supplier and Supplier Personnel. The Trader shall provide evidence of compliance as Kew may reasonably request.

7.6 Anti-Bribery

Clause 7.6, 7.7 and 7.8, the following definitions apply:

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under it and any regulations made under it at any time in so far as together with any guidance or codes or practice issued by the relevant government department concerning the legislation.

Prohibited Act: the following constitute Prohibited Acts:

(a) directly or indirectly offer, promise or give any person working for or engaged by Kew a financial or other advantage to:
(b) influence that person to perform improperly a relevant function or activity; or
(c) reward that person for improper performance of a relevant function or activity; or
(d) directly or indirectly fail to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement.

7.7 The Supplier shall not, and shall procure that all Supplier Personnel shall not, in connection with the Agreement or any other agreement or arrangement with Kew:

7.7.1 The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person for working for or engaged by Kew, or that an agreement has been made in connection with the execution of the Agreement, excluding any agreement of which full details have been disclosed in writing to Kew’s Director of Resources before the Commencement Date.

7.7.2 The Supplier shall have an anti-bribery policy which shall be disclosed to Kew on request to prevent any Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.

7.7.3 Any breach of Clauses 7.7 - 7.8 is suspected or known, the Supplier must notify Kew immediately and must respond to any request by Kew or Kew’s Director of Resources, co-operate with any investigation, and allow Kew to audit books, records, and any other relevant documentation.

7.7.4 Kew may terminate the Agreement by written notice with immediate effect if the Supplier or Supplier Personnel:

(a) breaches any of the legislation concerned with the performance of this Agreement.

7.7.5 Any dispute relating to the interpretation of this Clause 7.7 or 7.11 or the amount or value of any gift, consideration or commission, shall be determined by Kew and its decision shall be final and conclusive.

7.8 Supplier Personnel

The Supplier Personnel confirms that it takes all reasonable steps to ensure the observance of this Clause 7.7 by the Supplier and all Supplier Personnel involved in the performance of the Agreement. The Supplier shall be responsible for the observance by all Supplier Personnel of such Clauses, and shall be directly liable to the Kew for any breach thereto by any Supplier Personnel.

7.8.1 Breach

Any breach of this Clause 7.8 shall be considered a material breach under Clause 14.1(a).

8. KEW REMEDIES

8.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Kew shall, without limiting its other rights and remedies, have one or more of the following rights:

(a) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
(b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attaches to the recall including, but not limited to, costs of retrieving Goods already delivered by the Supplier; and
(c) to recover from the Supplier any costs incurred by Kew in connection with the recall including, but not limited to, costs of retrieving Goods already delivered by the Supplier, to have such costs refunded by the Supplier; and
(d) to claim damages for any additional costs, loss or expenses incurred by Kew arising from the Supplier’s failure to supply the Goods and/or Services under the provisions of this Clause.

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

8.3 Kew’s rights under the Agreement are in addition to its other 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 all reasonable times to Kew’s premises for the purpose of providing the Services; and
(b) provide such facilities and information as the Supplier may reasonably request for the provision of 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 Kew’s published price list in force at the Commencement Date;

(b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, and the charge for Kew in writing to Kew. No extra charges shall be effective unless agreed in writing to Kew and the Supplier.

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 for the Services on terms set out in the Services and 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:

(a) all sums payable by the Supplier to Kew for the performance of the Services 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.

10.4 In consideration of the supply of Goods and/or Services, Kew shall pay the invoice amounts within 30 days of receipt of a correctly rendered invoice.

10.5 All amounts payable by Kew under the Agreement are exclusive of any amounts added or charged tax chargeable from time to time at VAT. Kew shall on receipt of a valid invoice, pay to the Supplier any such additional amounts in respect of VAT as the Supplier requires. Kew shall accept the Services and/or Services at the same time as payment is due for the supply of Goods and/or Services.

10.6 If either party fails to pay any amount properly due and payable by it under the Agreement, the other party shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the base rate for the time being of Lloyds Bank accounting on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that are disputed in good faith.

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

11. INTELLECTUAL PROPERTY RIGHTS

11.1 In respect of the Goods and any goods that are trademarked to Kew as per the terms of the Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear title to all such items, and that at the date of delivery of such Items to Kew, it will have full and unencumbered rights to sell and transfer all such items to Kew.

11.2 The Supplier assigns to Kew, with full title guarantee and free from all encumbrances, Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

11.3 The Supplier shall observe all morals in respect of the Products and Services, to the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Standards for Term of Purchase for Goods and/or Services v.1 (December 2018) 2
14. TERMINATION

14.1 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party except that:

(a) the other party commits a material or persistent breach of the Agreement or any of the other party’s obligations under the Agreement, such a breach is remediable but fails to remedy that breach within 14 days of receipt of notice in writing
(b) the other party suspends, or threatens to suspend, payment of its debts or it is referred to a liquidator, receiver, manager or administrative receiver (as its agents, for the time being) is taken
(c) any event occurs by reason of which the other party is taken, with respect to the other party, under a floating charge, or afloat charge or other security for the payment of its debts, or makes a proposal for or enters into any arrangement with view to rescheduling or rearranging of its debts, or becomes subject to any proceedings for its winding up or to the appointment of an administrator, or makes a voluntary arrangement under Part 1 of the Insolvency Act 1986, or has a petition presented under section 1 of the Administration of Insolvency and Company Winding Up Act 1986, or (being an individual) is declared unable to pay his debts, or is ordered to be removed from or refused admission to an approved establishment, or (being an individual) is found guilty of bankruptcy, or (being an individual) is deemed either unable to pay his debts or is declared bankrupt or becomes or is presented or proposed as a bankrupt or an order for his破产 or bankruptcy is made
(d) the Agreement is0 in any of its obligations hereunder.

14.2 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be

(a) professional indemnity insurance to the minimum value of £2 million
(b) production insurance to the minimum value of £5 million per incident and
(c) public liability insurance to the minimum value of £5 million
(d) to cover the liabilities that may arise under or in connection with the Agreement and shall, on Kew’s request, produce both the insurance certificate giving details of the insurer and the current year’s premium in respect of each insurance.

12. CONFIDENTIALITY

12.1 A party (Receiving Party) shall keep secret all information which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party) which comprises trade secrets, confidential information and/or trade secrets, confidential information and/or any other confidential information which is disclosed in connection with his/her business or its products or services which the Receiving Party may obtain.

12.2 The Supplier shall not disclose to any third party any information with respect to the Services which are services to which these Rules of Conduct apply and shall not disclose to any third party information about any other confidential information to which these Rules of Conduct apply.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Agreement or any part of it for any reason:

(a) the Services are terminated immediately, whether or not complete, and return all Kew Materials. If the Supplier breaches any of its obligations under the Agreement without limiting its other rights or remedies enter the Supplier’s premises and take possession of them. Until they have been returned to the Supplier, the Supplier shall be solely responsible for their safe keeping and will not use them in any purpose or at any time.
(b) the accrued rights and remedies of the parties at as termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
(c) clauses which express or by implication have effect after termination shall continue in full force and effect.

16. GENERAL

16.1 Publicity, trade marks and reputation

(a) The Supplier may not refer to Kew or the Agreement under any advertising media or in any other manner without the prior written consent of Kew.

(b) In providing the Services, the Supplier must comply with all of its obligations under the Agreement, the Supplier will, and shall ensure that Supplier Personnel (including any Key Personnel) provide the Services under the Agreement without committing any breach of any of their obligations which may have adverse effects on Kew’s business or its business or its employees and agents.

16.2 Force majeure: Neither party shall be liable to the other as a result of any act or omission which is beyond its reasonable control.

(a) In general, this section applies to any claims under the Agreement if and to the extent such delay or failure is caused by an event or circumstances which, by reason of unforeseeable or unavoidable causes beyond the control of that party by which its nature could not have been foreseen or foreseen it was unavoidable (Force Majeure Event).

(b) The Supplier shall not use Kew’s logo(s) or trade mark(s) without the prior written consent of Kew.

16.3 Audit

(a) The Supplier shall keep and maintain until 6 years after the Agreement has been completed, and as long a period as may be required (whether or not the Supplier’s business or services ceased) full and accurate records of the Goods supplied by the Supplier prior to the delivery of the Goods and (or) Services and any collection or other information in respect of the purchase of Services.

(b) The Supplier shall, on request afford the Supplier and its agents, access to such records and information to enable the Supplier to audit the accuracy and completeness of any invoice or account submitted by the Supplier under the Agreement.

16.4 Assignment and subcontracting

(a) Unless otherwise provided in this Agreement, the Supplier shall not assign, transfer, charge, sub contract or deal in any other manner with or in obligations under the Agreement without the prior written consent of Kew.

(b) The Supplier agrees that it will not sub contract any of its obligations and/or duties under the Agreement without the prior written consent of Kew. Any such assignment, transfer, charge, sub contract or deal in any other manner with or in obligations under the Agreement without the prior written consent of Kew.

(c) Neither party shall be liable to the other for any actions or omissions of any subcontractor of the other party which exceed the Supplier’s obligations under the Agreement.

16.5 Notices

(a) Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and delivered to the other party at the address specified in this Agreement.

(b) Each party may terminate this Agreement in writing and shall be delivered to the other party at the address specified in this Agreement.

16.6 Waiver and cumulative remedies

(a) A waiver of any rights or remedies given by the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any other right or remedy. No waiver of any right or partial exercise of such right or remedy shall prejudice or restrict the further exercise of that right 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 competent authority finds that any provision (or part of any provision) of the Agreement is void, illegal or ineffective under any jurisdiction to which it is subject, it shall not affect any other provision of this Agreement or the validity or enforceability of any other provision of the Agreement or the validity or enforceability of any other provision of the Agreement.
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 expressed 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 his 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.