

J&A GROWERS LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. Definitions and Interpretation

1.1 In these Conditions the following words and expressions have the following meanings unless inconsistent with the context:

“Additional Charges”	the costs of carriage, any additional packaging, any taxes, duties or other charges levied by any Governmental or authority in respect of or by reason of the sale, delivery, export or import of the Goods, courier and messenger costs and any other additional charges payable by the Customer in addition to the Price;
“Conditions”	these terms and conditions;
“Confidential Information”	without limitation, business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to a party or its interests disclosed to the other party whether before, during or after the provision of the Goods, whether in written, oral, pictorial or any other form, and all information, data, know-how, trade secrets, formulae, processed, designs, photographs, drawings, specifications, software programs, samples or other material attributable to or deriving its existence from the provision of the Goods;
“Contract”	any agreement for the supply of Goods from the Supplier to the Customer in accordance with Condition 2.5;
“Contract Details”	the specific details of the Contract confirmed by the Supplier in writing, orally or any other form of communication, where applicable, to the Customer;
“Costs”	all costs, (including but not limited to any legal fees (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier (either directly or by a third party) including disbursements, VAT and other expenses;
“Customer”	the person which has accepted these Conditions;
“Due Date”	the date on which payment is due in accordance with Condition 4.4;
“Goods”	all goods supplied by the Supplier to the Customer pursuant to the Contract as detailed in the Contract Details;
“Incoterms”	the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
“Price”	the price due from the Customer for the supply of the Goods as detailed in the Contract Details;
“Proposal”	any proposal, tender, estimate or quotation submitted to the Customer by the Supplier prior to the Contract being made;
“Supplier”	J & A Growers Limited registered in England and Wales with company number 04473143;
“Unpaid Amount”	any sum due to the Supplier under the Contract which has not been paid by the Customer to the Supplier by the Due Date; and
“Working Day”	any day from Monday to Friday other than a statutory holiday or public holiday in England.

1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time and any subordinate legislation made from time to time under the relevant statute or statutory provision.

1.3 References to persons include natural persons, firms, partnerships, companies, corporations, associations and organisations, (in each case whether or not having separate legal personality).

1.4 Use of any gender includes the other genders.

1.5 Words in the singular include the plural and words in the plural include the singular.

1.6 Any reference to “writing” or any cognate expression includes communications by post, email and facsimile but excludes text messages.

1.7 The headings to Conditions do not affect the interpretation of these Conditions.

1.8 Any phrase introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. Basis of Contract

2.1 These Conditions shall apply to the sale and supply by the Supplier of all Goods purchased by the Customer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Customer.

2.2 No variation of these Conditions shall be binding unless agreed in writing by the Supplier and no collateral or supplemental contract may be made or construed unless confirmed in writing by the Supplier.

2.3 Any Proposal submitted to the Customer will not constitute an offer and shall remain valid for the period stated therein.

2.4 Each order or acceptance of a Proposal for the supply of Goods by the Customer shall be deemed to be an offer by the Customer to purchase the Goods subject to these Conditions.

2.5 These Conditions shall become binding on the Customer when the Supplier:

2.5.1 acknowledges the order placed by the Customer in writing;

2.5.2 commences processing of the order; or

2.5.3 notifies the Customer that the Goods are ready;

whichever is the earlier, at which point a Contract shall come into existence between the Supplier and the Customer.

2.6 Where the Supplier confirms the details of the Contract in writing, the Customer shall be under a duty to bring any discrepancies to the Supplier's notice within 3 days of receipt of the written confirmation, and if the Customer fails to bring any such discrepancies to the Supplier's notice within the said time period, the Customer shall be bound by the details contained mentioned or referred to in the Contract Details.

2.7 The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed save that nothing in this Condition excludes the Supplier's liability for fraudulent misrepresentation.

2.8 In the event that the Customer wishes to cancel an order, it may only do so with the written consent of the Supplier and on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

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

3. Prices

3.1 Except as otherwise stated under the terms of any Proposal, or in the Contract Details or as agreed by the parties in writing, the Price bareroot is Ex Works the Supplier's nursery (as defined in the Incoterms), is exclusive of transport costs and insurance costs. Where the Customer requests delivery the Supplier shall be entitled to charge the Customer for the cost of delivery as an Additional Charge which will appear separately on the Supplier's invoice, to be paid in accordance with Condition 4 below.

3.2 The Price and any Additional Charges stated in the Proposal or the Contract Details or the Supplier's price list is based on conditions ruling at the date of first publication.

3.3 The Supplier reserves the right to charge the Customer, for any additional work undertaken over and above that which would have been otherwise required, (including any expenses or financial penalties incurred by the Supplier) as a result of any instructions supplied by the Customer being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or provided to the Supplier too late to enable it to meet a deadline

3.4 All Prices quoted are exclusive of VAT or any other sales tax which will be charged at the rate in force at the time of despatch.

4. Payment Terms

4.1 The payment terms in this Condition apply save to the extent that they are inconsistent with any specific payment terms set out in the Proposal or Contract Details or otherwise agreed in writing between the parties.

4.2 The Supplier shall be entitled to invoice the Customer for the Price and where applicable any Additional Charges on or at any time after delivery of the Goods or any instalment thereof. In the event that any Additional Charges arise following the issue by the Supplier of the invoice, the Supplier will be entitled to invoice the Customer as and when the Additional Charges arise.

4.3 The Customer shall make payment for the Price and where applicable any Additional Charges in sterling by cheque or telegraphic transfer. Unless agreed otherwise in writing any payment received by the Supplier in any other currency or by any other method will not be deemed to be payment for the Goods in question. Payment will not be deemed payment for the Goods in question unless and until it is received in full and in cleared funds.

4.4 The Customer shall pay each invoice from the Supplier without any set-off or other deduction within 30 days from the invoice date.

4.5 The Supplier's invoices shall be payable in accordance with this Condition 4, notwithstanding that delivery of the Goods may not have taken place and title in the Goods may not have passed to the Customer. The time of payment of the Supplier's invoices shall be of the essence of the Contract.

4.6 If the Customer fails to pay in full any invoice from the Supplier by the Due Date or in any other way breaches the terms of this Contract without prejudice to any other right or remedy the Supplier may have:

4.6.1 all invoices issued by the Supplier in respect of any Goods sold or supplied and any Additional Charges pursuant to this Contract and any sums due for goods and/or services under any other contract which may exist between the parties shall immediately fall due for payment; and

4.6.2 the Supplier shall be entitled to:

4.6.2.1 cancel or suspend any further deliveries of Goods to the Customer under any order;

4.6.2.2 sell or otherwise dispose of the Goods and/or any goods which are the subject of any order by the Customer, whether or not appropriated thereto, and, where applicable, apply the proceeds of sale to the Unpaid Amount;

4.6.2.3 where applicable, charge the Customer interest (both before and after any judgment) on the Unpaid Amount, at the rate of 4% per annum above the Supplier's bankers rate current and notified to the Customer from time to time;

4.6.2.4 appropriate any payment made by the Customer to such of the Goods (or goods supplied under any other order) as the Supplier may think fit; and

4.6.2.5 by notice to the Customer unilaterally vary payment terms for future Contracts.

4.6.3 the Customer shall indemnify the Supplier for all reasonable Costs that are reasonably incurred by the Supplier (either directly or indirectly or by a third party) in seeking or securing payment of any Unpaid Amount or otherwise pursuing any claim for damages for breach of this Contract. This indemnity shall apply whether or not the Customer has been negligent or at fault. Nothing in this Condition 4.6.3 shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity. For the avoidance of doubt, the limitations set out in Condition 8, do not apply to the indemnity in this Condition 4.6.3.

4.7 Unless otherwise agreed in writing by the Supplier, all queries from the Customer regarding any invoice must be received prior to the required payment date in Condition 4.4.

5. Packaging

5.1 The packaging of Goods shall be entirely at the discretion of the Supplier and the Supplier shall have the right to pack all Goods in such manner and in such quantities as the Supplier thinks fit and shall not be obliged to comply with any packaging requests or instructions from the Customer unless agreed by the Supplier and the Customer in writing.

5.2 The cost of any additional packaging requests or instructions agreed by the parties or deemed necessary by the Supplier shall be an Additional Charge.

6. Risk and Title

6.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery to the address provided by the Customer to the Supplier when the order is placed or set out in the Contract Details or other such address as may be agreed between the parties from time to time, save in the following situations:

6.1.1 if the Supplier is not responsible for delivery, risk shall pass to the Customer at the point when the Customer or a representative of the Customer collects the Goods from the Supplier's place of business; or

6.1.2 if the Customer wrongfully fails to take delivery, risk shall pass to the Customer at the time when the Supplier has tendered delivery of the Goods; or

6.1.3 if delivery is to a location outside the United Kingdom, then risk shall pass in accordance with the relevant Incoterm as stated in the Proposal or Contract Details or as agreed in writing between the parties.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of:

6.2.1 the Price and any Additional Charges; and

6.2.2 all other sums payable by the Customer to the Supplier for which payment is then due.

6.3 Until such time as title in the Goods passes to the Customer:

6.3.1 the Customer shall hold the Goods as the Supplier'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 Supplier's property, but shall be entitled to resell or use the Goods in the ordinary course of its business;

6.3.2 if Goods are damaged or destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Supplier;

6.3.3 the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or third party where the Goods are stored and mark identify and repossess the Goods and the Customer grants the Supplier an irrevocable license to enter any premises of the Customer for such purposes; and

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

7. Delivery

7.1 Goods shall be available for collection from the Supplier's place of business. Any requests from the Customer for delivery shall entitle the Supplier to impose an Additional Charge in accordance with Condition 3.1. In the event that the Goods are for export outside the United Kingdom the Goods shall be delivered in accordance with the Incoterm stated in the Proposal or Contract Details or, agreed between the parties in writing.

7.2 The Supplier shall reasonably endeavour to deliver the Goods on the date(s) indicated by the Supplier in the Proposal or as set out in the Contract Details or on the date(s) agreed between the parties in writing from time to time (the "**Anticipated Delivery Date**"), but the time of delivery shall not be of the essence.

7.3 The Supplier shall have the right to deliver Goods ordered in instalments.

7.4 In the event that the Supplier is unable for any reason to fulfil any delivery of the Goods on any Anticipated Delivery Date the Supplier shall not be deemed to be in breach of contract or have any liability to the Customer. Failure by the Supplier to deliver any one or more of the instalments on any Anticipated Delivery Date or any claim by the Customer in respect of the Goods delivered in any one or more instalments shall not entitle the Customer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.

7.5 If the Customer fails to take delivery of the Goods (otherwise than by reason of the Supplier's fault) or fails to give the Supplier adequate instructions for delivery then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

7.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and redelivery; or

7.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price and any Additional Charges under the Contract.

7.6 The Customer shall accept delivery of the Goods and shall promptly unload the Goods. For the avoidance of doubt, the Supplier or the Supplier's carrier shall not be responsible for unloading the Goods and the Customer shall be charged for wasted time at the Supplier's standard rate and any other expenses incurred by the Supplier:

7.6.1 for any delay in unloading; and/or

7.6.2 for each repeat delivery where the Supplier or Supplier's carrier leaves the delivery point and subsequently returns to the delivery point with the Goods; and/or

7.6.3 as a result of the Customer's inability or unwillingness to accept delivery.

7.7 The Customer shall notify the Supplier in writing of any shortfall of Goods delivered within 3 Working Days of delivery, or in the event of non-delivery of a consignment, within 3 Working Days of the Anticipated Delivery Date. For the avoidance of doubt, the Supplier shall be entitled to make good any shortage or non-delivery of a consignment of Goods. Where it does not do so, it shall notify the Customer in writing of its decision and the Price shall be adjusted on a pro-rata basis.

7.8 Upon delivery the Customer will be required to sign the Supplier's delivery note as conclusive evidence that delivery was made and of the quantity of Goods received by the Customer.

8. Warranties and Liability

8.1 Subject to the Conditions set out below the Supplier warrants that:

8.1.1 the Goods shall on delivery comply with any description of the Goods set out in the Proposal or Contract Details or otherwise agreed between the parties in writing; and

8.1.2 the Goods shall on delivery be free from any physical defects which are apparent upon delivery.

8.2 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Supplier makes no warranty as to the fitness of the Goods for any particular purpose even if that purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Supplier to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness for the purpose for which the Goods are intended.

8.3 The Supplier shall not be liable for a breach of any of the warranties in Condition 8.1 unless:

8.3.1 the Customer gives written notice of the defect to the Supplier and if the defect is as a result of damage in transit gives written notice to the Supplier or the Supplier's carrier within 3 Working Days of receipt specifying the details of the defect and the delivery date; and

8.3.2 the Supplier is given a reasonable opportunity after receiving the notice of examining the Goods and the Customer complies with any request from the Supplier to return Goods to the Supplier's place of business at the Customer's cost for examination to take place there. The reasonable cost of packaging and carriage of returned Goods incurred by the Customer will be reimbursed by the Supplier if the Goods are found to be damaged or defective.

8.4 The Supplier shall not be liable for breach of warranty under Condition 8.1 if:

8.4.1 the Customer makes any further use of such Goods or resells the Goods after giving notice under Condition 8.3; or

8.4.2 the defect arises because the Customer has failed to follow the Supplier's instructions (whether oral or in writing) as to the storage, proper use and maintenance of the Goods or (if there are none) good trade practice; or

8.4.3 the Customer alters or repairs the Goods without the written consent of the Supplier.

8.5 Where any valid claim in respect of the Goods is made by the Customer the Supplier shall be entitled at its option to:

8.5.1 replace the Goods (or the part in question) found not to conform to warranty at the Supplier's cost; or

8.5.2 at the Supplier's sole discretion, refund to the Customer the Price (or a proportionate part of the Price) of the relevant part of the Goods found not to conform to warranty;

and subject to Condition 8.6.2 the Supplier shall have no further liability to the Customer.

8.6 Subject to Condition 8.6.2, the Supplier's liability in connection with the sale and supply of Goods shall be as follows:

8.6.1 in respect of any direct or indirect loss of profits, loss of business, loss of goodwill, loss of anticipated savings or loss of use, the Supplier's liability shall be nil;

8.6.2 in respect of physical damage to or loss of the Customer's tangible property to the extent that it results from the wilful default or negligence of the Supplier, its employees, agents or contractors, the Supplier's liability shall be limited to an amount of £1 million in aggregate, except for any physical damage to or loss of the Customer's tangible property with regards to pollution or contamination to the extent that it result from the wilful default or negligence of the Supplier, its employees, agents or contractors, where the Supplier's liability shall be limited to an amount of £200,000 in aggregate;

8.6.3 in respect of all other direct loss (whether in contract, tort or otherwise) the Supplier's total liability under the Contract shall not exceed the Price paid for the Goods and

8.6.4 for any type of consequential, special or indirect loss or damage, the Supplier's liability shall be nil.

8.7 Nothing in these Conditions seeks to limit the Supplier's liability for personal injury or death caused by the Supplier's negligence in respect of which the Supplier's liability shall be unlimited.

8.8 Subject to Condition 8.6.2 and 8.7 the Supplier shall have no liability under these Conditions or otherwise if the Goods have not been paid for by the due date for payment in accordance with Condition 4.4.

8.9 Any claim by the Customer under this Condition 8 in respect of any Goods shall not entitle the Customer to withhold or delay payment in respect of any other Goods in respect of which no such claim has been made whether or not those Goods form part of the same consignment.

9. Termination and Consequences

9.1 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Supplier may terminate the Contract at any time by written notice to the Customer and the notice taking effect as specified in the notice if

9.1.1 the Customer commits a material or persistent breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 14 days of being notified in writing;

- 9.1.2 the Customer suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 9.1.3 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of any property or assets of the Customer;
- 9.1.4 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 9.2 the Customer reasonably apprehends that any of the events mentioned above is about to occur and notifies the Supplier accordingly.
- 9.3 For the purposes of Condition 9.1.1, a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 9.4 The Supplier may terminate the Contract if the Customer fails to pay any sum due under the Contract, including any interest accrued, in full cleared funds in accordance with Condition 4.
- 9.5 Upon termination of the Contract for any reason:
- 9.5.1 the Customer shall immediately pay to the Supplier all outstanding invoices, and in respect of any part of the Price, Additional Charges or other sums payable by the Customer but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt;
- 9.5.2 each party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other party belonging to that other party in whatever medium in accordance with the instructions of that other party; and
- 9.5.3 the accrued rights and remedies of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 10. Force Majeure**
- 10.1 The Supplier shall not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Supplier's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or inability to procure materials required for performance of the Contract.
- 10.2 The Supplier shall promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 3 months, the Supplier may terminate the Contract by written notice to the Customer.
- 11. Export Terms and Licences**
- 11.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of the Incoterms and these Conditions, the latter shall prevail.
- 11.2 The Customer is responsible for obtaining all necessary export licences and complying with all regulations governing the admission of the Goods into the country of destination and for the payment of all custom duties, port duties and charges.
- 12. Notices**
- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice:
- 12.1.1 sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom;
- 12.1.2 delivered personally shall be deemed served at the time of personal delivery, provided the same occurs on a Working Day; and
- 12.1.3 sent by email or fax shall be deemed served at the time of transmission provided that the transmission occurs on a Working Day and a confirmatory copy of the email or fax is sent by post within 24 hours of transmission of the email or fax.
- 12.2 To prove service it shall be sufficient to show that the email or fax was transmitted to the email address or fax number of the other party or that the envelope containing the notice was properly addressed and posted.
- 13. Entire Agreement**
- 13.1 Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 14. No Partnership or Agency**
- 14.1 Nothing in the Contract 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 another party in any way.
- 15. Further Assurance**
- 15.1 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.
- 16. Assignment**
- 16.1 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.
- 17. Severance**
- 17.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.
- 18. Waiver**
- 18.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 19. Cumulative Remedies**
- 19.1 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.
- 20. Third Party Rights**
- 20.1 A person who is not a party to the Contract will not have any rights under any term of the Contract.
- 21. Governing Law and Jurisdiction**
- 21.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (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.