

## TERMS & CONDITIONS FOR THE SUPPLY OF GOODS

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## 1. **THESE TERMS**

- 1.1 These terms and conditions (**Conditions**) set out the terms on which Spalding Auction (**we, us and our**) supply product to **you**.
- 1.2 Please read these Conditions carefully before you submit your order to us. These Conditions tell you who we are, how we will provide the product to you, how you and we may change or end the contract, what to do if there is a problem and other important information.
- 1.3 In some areas you will have different rights under the contract depending on whether you a **business** or a **consumer** customer. The terms are set out in three parts:
  - 1.3.1 **Part 1:** terms which apply to businesses and consumers;
  - 1.3.2 **Part 2:** terms which apply only to consumers; and
  - 1.3.3 **Part 3:** terms which apply only to businesses.
- 1.4 You are a **consumer** if:
  - 1.4.1 you are an individual; and
  - 1.4.2 you are buying a product from us wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).

### **PART 1**

#### **TERMS WHICH APPLY TO BUSINESSES AND CONSUMERS**

## 2. **INFORMATION ABOUT US AND HOW TO CONTACT US**

- 2.1 We are Spalding Auction and our address is Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 3YR. Our registered VAT number is 119581065.
- 2.2 You can contact us by telephoning us on 01775 723333 or by writing to us at the address in clause 2.1 or by email at MikeKnight@spaldingauction.co.uk.

## 3. **OUR CONTRACT WITH YOU**

- 3.1 Our acceptance of your order will take place when we tell you that we are able to provide you with the product, at which point a contract will come into existence between you and us.
- 3.2 We may accept your order either over the telephone, or in person at our premises.

4. **OUR PRODUCT**

4.1 The images of the product displayed at our premises are for illustrative purposes only. Your product may vary slightly from those images.

5. **OUR RIGHTS TO MAKE CHANGES**

5.1 We may change the product including, for example, to reflect changes in relevant laws and regulatory requirements.

6. **PRICE AND PAYMENT**

6.1 The price of the product (which is exclusive of VAT) will be the price, as indicated at the location where the product is displayed at our premises, or as otherwise advised to you. We take reasonable care to ensure that the price of product, as indicated, is correct. However please see clause 6.4 for what happens if we discover an error in the price of the product you order.

6.2 We will advise you of the amount of VAT payable and the total cost of the product at the time you pay for the product (or if ordered before payment, the date you place your order). However, please note carefully the terms of clause 6.3 below.

6.3 If the rate of VAT changes between your order date and the date we supply the product, we will adjust the rate of VAT that you pay, unless you have already paid for the product (including delivery costs) in full before the change in the rate of VAT takes effect.

6.4 It is always possible that, despite our best efforts, some of the products we sell may be incorrectly priced. We will normally check prices before accepting your order so that, where the product's correct price at your order date is less than our stated price at your order date, we will charge the lower amount. If the product's correct price at your order date is higher than the price stated, we will ask you for your instructions before we accept your order. If we accept and process your order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may terminate the contract, refund you any sums you have paid and require you to return the product at our expense.

6.5 We accept payment in cash and by all major debit cards.

6.6 Subject to clause 6.7, if we are delivering the product to you, we will not dispatch them before we have received payment for them.

6.7 If we have agreed for payment to be made after delivery and if you do not make payment to us by the due date we may charge interest to you on the overdue amount at the rate of 5% a year about the base rate of NatWest Bank from time to

time. This interest shall accrue on a daily basis from the date due until the actual date of payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

- 6.8 If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date.

## **7. HOW WE MAY USE YOUR PERSONAL INFORMATION**

- 7.1 We will use the personal information you provide to us:

7.1.1 to supply the product to you;

7.1.2 to process your payment for the product; and

7.1.3 if you agreed as such during the order process, to give you information about product we provide, but you may stop receiving this at any time by contacting us.

- 7.2 We will only give your personal information to other third parties where the law either requires or allows us to do so.

## **8. COMPLAINTS HANDLING PROCEDURE**

- 8.1 All complaints should initially be made in writing and addressed to the General Manager, Spalding Auction, Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 3YR.

- 8.2 If we are unable to satisfactorily resolve your complaint, you may refer it to the Ombudsman Dispute Resolution Service (if you are a consumer) or to the Royal Institute of Chartered Surveyors Dispute Resolution Service (if you are a business) contact details for which are available from us on request.

## **PART 2**

### **TERMS WHICH APPLY ONLY TO CONSUMERS**

#### **9. PROVIDING THE PRODUCT**

- 9.1 During the order process, if we agree to deliver the product, we will let you know when we deliver the product to you and the costs of delivery.

- 9.2 Delivery of the product is at our absolute discretion.

- 9.3 We are not responsible for delays outside our control. If our delivery of the product is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any product you have paid for but not received.
- 9.4 If you are collecting the product from our premises, you can collect the product from us at any time during our working hours which are:
- 9.4.1 in respect of florist supplies, 9.00am to 5.00pm on weekdays and 9.00am to 1.00pm on Saturdays; and
- 9.4.2 in respect of horticultural supplies, 7.30am to 4.30pm on weekdays,
- or at such other times as we may advise from time to time.
- 9.5 If no one is available at your address to take delivery and the product cannot be posted through your letterbox, we will leave you a note informing you of how to rearrange delivery or collect the product. If you do not re-arrange delivery or collect the product from us as arranged or if, after a failed delivery to you, you do not re-arrange delivery or collect them we will contact you for further instructions and may charge you for storage costs and any further delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery or collection we may end the contract and clause 13 will apply.
- 9.6 You have legal rights if we deliver any product late. If we miss the delivery deadline for any product then you may treat the contract as at an end straight away if any of the following apply:
- 9.6.1 we have refused to deliver the product; or
- 9.6.2 delivery within the delivery deadline was essential (taking into account all the relevant circumstances).

## 10. **TITLE AND RISK**

- 10.1 The product will be your responsibility from either the time we deliver the product to the address you gave us or when you collect it from us.
- 10.2 You own the product once we have received payment in full.

## 11. **YOUR RIGHTS TO END THE CONTRACT**

- 11.1 Your rights when you end the contract will depend on what you have bought, how you bought it (at our premises or over the telephone) whether there is anything wrong with it, how we are performing and when you decide to end the contract.
- 11.2 You may contact us to end your contract for a product at any time before you have taken possession and you have paid for it, but in some circumstances we may charge you for doing this, as set out below:
- 11.2.1 if you want to end the contract because of something we have done or have told you we are going to do, see clause 11.3;
  - 11.2.2 for telephone purchases only, see clause 11.4 - you may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions and you will have to pay the costs of return of any product;
  - 11.2.3 if what you have bought is faulty or misdescribed you may have a legal right to end the contract (or to get the product repaired or replaced or to get some or all of your money back), see clause 14; and
  - 11.2.4 in all other cases (if we are not at fault and there is no right to change your mind), see clause 11.5.
- 11.3 If you are ending a contract for a reason set out at 11.3.1 to 11.3.4 below, the contract will end immediately and we will refund you in full for any product which has not been provided and you may also be entitled to compensation. The reasons are:
- 11.3.1 we have told you about an upcoming change to the product or these terms which you do not agree to (see clause 5.1);
  - 11.3.2 we have told you about an error in the price or description of the product you have ordered and you do not wish to proceed;
  - 11.3.3 there is a risk that supply of the product may be significantly delayed because of events outside our control; or
  - 11.3.4 you have a legal right to end the contract because of something we have done wrong (including because we have delivered late (see clause 9.6)).
- 11.4 For most product bought over the telephone you have a legal right to change your mind within fourteen (14) days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail below:

- 11.4.1 How long you have depends on what you have ordered and how it is delivered.
  - 11.4.2 You have fourteen (14) days after the day you (or someone you nominate) receives the product, unless your product is split into several deliveries over different days. In this case you have until fourteen (14) days after the day you (or someone you nominate) receives the last delivery to change your mind about the product.
  - 11.4.3 You do not have a right to change your mind in respect of any product which:
    - 11.4.3.1 become mixed inseparably with other items after their delivery (for example, you have planted plants); or
    - 11.4.3.2 are perishable or are likely to expire rapidly.
- 11.5 Even if we are not at fault and you do not have a right to change your mind, you can still end the contract before it is completed, but you may have to pay us compensation. A contract for a product is completed when the product is delivered and paid for (which includes you taking the product following payment at our premises). If you want to end the contract in these circumstances, contact us to let us know. The contract will end immediately and we will refund any sums paid by you for product not provided but we may deduct from that refund (or, if you have not made an advance payment, charge you) reasonable compensation for the net costs we will incur as a result of your ending the contract.

## 12. **HOW TO END THE CONTRACT WITH US**

- 12.1 To end the contract with us, please let us know by doing one of the following:
- 12.1.1 contacting us using the details as set out in clause 2.2; or
  - 12.1.2 visit our shop and speak to the department manager.
- 12.2 If you end the contract for any reason after the product has been dispatched to you or you have received it, you must return it to us. You must either return the product in person to where you bought it or allow us to collect it from you. Contact us using the details in clause 2.2 to arrange collection. If you are exercising your right to change your mind you must send off the product within fourteen (14) days of telling us you wish to end the contract.
- 12.3 We will pay the costs of return:
- 12.3.1 if the product are faulty or misdescribed; or

12.3.2 if you are ending the contract because we have told you of an upcoming change to the product or these terms, an error in pricing or description, a delay in delivery due to events outside our control or because you have a legal right to do so as a result of something we have done wrong.

In all other circumstances (including where you are exercising your right to change your mind) you must pay the costs of return.

12.4 If you are responsible for the costs of return and we are collecting the product from you, we will charge you the direct cost to us of collection.

12.5 We will refund you the price you paid for the product including delivery costs, by the method you used for payment. However, we may make deductions from the price, as described below.

12.6 If you are exercising your right to change your mind:

12.6.1 we may reduce your refund of the price (excluding delivery costs) to reflect any reduction in the value of the product, if this has been caused by your handling them in a way which would not be permitted in a shop (if we refund you the price paid before we are able to inspect the product and later discover you have handled them in an unacceptable way, you must pay us an appropriate amount); and

12.6.2 the refund for delivery costs will be the cost of delivery charged by us.

12.7 We will make any refunds due to you as soon as possible. If you are exercising your right to change your mind your refund will be made within fourteen (14) days from the day on which we receive the product back from you or, if earlier, the day on which you provide us with evidence that you have sent the product back to us. For information about how to return a product to us, see clause 12.2. In all other cases, your refund will be made within fourteen (14) days of your telling us you have changed your mind.

### 13. **OUR RIGHTS TO END THE CONTRACT**

13.1 We may end the contract if you break it and we may end the contract for a product at any time by writing to you if:

13.1.1 you do not make any payment to us when it is due and you still do not make payment within seven (7) days of us reminding you that payment is due; or

- 13.1.2 you do not, within a reasonable time, allow us to deliver the product to you or collect them from us.
- 13.2 You must compensate us if you break the contract. If we end the contract in the situations set out in clause 13.1 we will refund any money you have paid in advance for product we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.
- 14. IF THERE IS A PROBLEM WITH THE PRODUCT**
- 14.1 If you have any questions or complaints about the product, please contact us. Using the details in clause 2.2 or visit our shop and speak to our department manager.
- 14.2 If you wish to exercise your legal rights to reject product you must either return them in person to where you bought them or allow us to collect them from you. We will pay the costs of collection.
- 14.3 We are under a legal duty to supply product that are in conformity with the contract.
- 15. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**
- 15.1 If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking the contract or our failing to use reasonable care and skill, but, except as set out in clause 15.2 we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.
- 15.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the goods, including the right to receive goods which are: as described and match information we provided to you and any sample or model seen or examined by you; of satisfactory quality; fit for any particular purpose made known to us; and for defective product under the Consumer Protection Act 1987.
- 15.3 If you are a consumer, we only supply the product for domestic and private use. If you use the product for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption or loss of a business opportunity.

15.4 Subject to clause 15.2, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to 100% of the price you paid, or which are payable, in respect of the product supplied subject to these terms.

## 16. **GENERAL TERMS**

16.1 We may transfer our rights and obligations under the contract to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract.

16.2 You cannot transfer your rights to someone else in any circumstance.

16.3 The contract is between you and us and no other person shall have any rights to enforce any of its terms.

16.4 Each of the clauses in the contract operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

16.5 If we do not insist immediately that you do anything you are required to do under the contract, or if we delay in taking steps against you in respect of your breaking the contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

16.6 The laws of England and Wales will apply to the contract. If you want to bring court proceedings under the contract, the courts of England and Wales shall have exclusive jurisdiction.

## **PART 3**

### **TERMS WHICH APPLY ONLY TO BUSINESSES**

## 17. **DELIVERY**

17.1 In most cases, the product is to be collected from our premises by you, but at your request we can arrange delivery of the product by courier, which shall be at your cost and risk.

17.2 Delivery of products is at our absolute discretion.

17.3 Delivery of product shall occur either on:

17.3.1 the collection of the product, by you or your agent, from our premises; or

- 17.3.2 the loading of the product on to a courier's transport for delivery to the you.
- 17.4 Risk in the product shall pass on delivery.
- 17.5 Title in the product shall not pass to you until payment in full is received (in cash or in cleared funds) for the product.
- 17.6 Until title to the product has passed to you, you shall:
  - 17.6.1 store the product separately from all other goods held by you so that they remain readily identifiable as our property;
  - 17.6.2 not remove, deface or obscure any identifying mark or packaging on or relating to the product;
  - 17.6.3 maintain the product in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 17.6.4 notify us immediately if it becomes subject to any of the events listed in clause 19.1; and
  - 17.6.5 give us such information relating to the product as we may require from time to time.
- 17.7 If before title to the product passes to you, you become subject to any of the events listed in clause 19.1, then, without limiting any other right or remedy we may have:
  - 17.7.1 we may, at any time:
    - 17.7.1.1 require you to deliver up all product in your possession that have not been resold, or irrevocably incorporated into another product; and
    - 17.7.1.2 if you fail to do so promptly, enter your premises or the premises of any third party where the product are stored in order to recover them.
- 17.8 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the product that is caused by a Force Majeure Event or by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the product.

18. **QUALITY**

18.1 we warrant that on delivery the product shall:

18.1.1 conform in all material respects with their description; and

18.1.2 be free from material defects in design, material and workmanship; and

18.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

18.2 Subject to clause 18.3, if:

18.2.1 you give notice in writing to us within a reasonable time of discovery that some or all of the product do not comply with the warranty set out in clause 18.1;

18.2.2 we are given a reasonable opportunity of examining such product; and

18.2.3 you (if asked to do so by us) return such product to the our premises at the your cost,

we shall, at its option, repair or replace the defective product, or refund the price of the defective product in full.

18.3 We shall not be liable for the product's failure to comply with the warranty set out in clause 18.1 in any of the following events:

18.3.1 you make any further use of such product after giving notice in accordance with clause 18.2;

18.3.2 the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the product or (if there are none) good trade practice regarding the same;

18.3.3 you alter or repairs such product without our written consent;

18.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

18.3.5 the product differs from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

18.4 Except as provided in this clause 0, we shall have no liability to you in respect of the product's failure to comply with the warranty set out in clause 18.1.

18.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the contract.

18.6 These conditions shall apply to any repaired or replacement product supplied by us.

## 19. **TERMINATION**

19.1 Without limiting its other rights or remedies, the we may terminate the contract with immediate effect by giving written notice to you if:

19.1.1 you commit a material breach of any term of the contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of us notifying you to do so;

19.1.2 you take any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

19.1.3 you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or

19.1.4 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the contract has been placed in jeopardy.

19.2 Without limiting its other rights or remedies, we may suspend provision of the product under the contract or any other contract between us and you if you become subject to any of the events listed in clause 19.1.1 to clause 19.1.4, or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under the contract on the due date for payment.

19.3 Without limiting its other rights or remedies, we may terminate the contract with immediate effect by giving notice to you if you fail to pay any amount due under the contract on the due date for payment.

19.4 On termination of the contract for any reason you shall immediately pay to us all of the outstanding unpaid invoices and interest.

19.5 Termination of the Contract shall not affect any rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the contract that existed at or before the date of termination.

19.6 Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 20. **LIMITATION OF LIABILITY**

20.1 This clause 20 sets out our entire financial liability (including any liability for the acts or omissions of our respective employees, agents and subcontractors) for:

20.1.1 any breach of these conditions however arising;

20.1.2 any use made or resale of the product you; and

20.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these conditions.

20.2 Nothing in these conditions shall limit or exclude our liability for:

20.2.1 death or personal injury resulting from negligence;

20.2.2 fraud or fraudulent misrepresentation; or

20.2.3 any other liability which cannot be excluded or limited by applicable law.

20.3 Without prejudice to clause 20.2, we shall not under any circumstances whatever be liable to you, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

20.3.1 loss of profit;

20.3.2 loss of goodwill;

20.3.3 loss of business;

20.3.4 loss of business opportunity;

20.3.5 loss of anticipated saving; or

20.3.6 special, indirect or consequential damage,

suffered by you and which arises under or in connection with these conditions.

20.4 Without prejudice to clause 20.2 or clause 20.3, our total liability for all other losses arising under or in connection with these conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the price paid the product supplied subject to these terms.

## 21. NOTICES

21.1 Any notice given under or in connection with the contract shall be in writing and shall be:

21.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

21.1.2 sent by email to:

21.1.2.1 us using the details in clause 2.2

21.1.2.2 to you at the address you provided us with.

21.2 Any notice shall be deemed to have been received:

21.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

21.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service.

21.2.3 if sent by email, at 9.00 am on the next working day after transmission.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 22. FORCE MAJEURE

22.1 We shall not be in breach of the contract nor liable for delay in performing, or failure to perform, any of our obligations under the contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the contract by giving seven (7) days written notice to the affected party.

22.2 For the purposes of this clause 22, **Force Majeure Event** shall mean a circumstance beyond our reasonable control.

## 23. GENERAL

23.1 For the purposes of this clause 23 “**party**” shall mean either you or us and “**parties**” shall mean both you and us.

- 23.2 A person who is not a party to a contractual relationship under these conditions shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 23.3 No variation of the contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 23.4 The contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.5 Each party acknowledges that in entering into the contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the contract.
- 23.6 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the contract.
- 23.7 Nothing in these conditions shall limit or exclude liability for fraud.
- 23.8 No failure or delay by a party 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 23.9 If any provision or part-provision of the contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the contract.
- 23.10 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under the contract.
- 23.11 You shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under the contract.

- 23.12 The contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 23.13 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the contract or its subject matter or formation.