

1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

Contract means the contract formed when the Customer accepts an Order Confirmation in accordance with Condition 2.4, which incorporates the Specification and these Conditions;

Customer means the person or firm who purchases Materials and/or Services from Hargreaves;

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time, including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

Delivery Date(s) means the estimated date for delivery set out in the Order Confirmation;

Equipment means any equipment used by Hargreaves in the provision of the Services;

Event of Force Majeure means events, circumstances or causes which are beyond the reasonable control of Hargreaves and include, without limitation: acts of God, natural disturbances, adverse weather conditions, floods, fires, war, civil unrest or commotion, strikes or labour disputes, interruptions in supply or shortages in Materials, fuel shortages, and delays by suppliers, distributors or carriers;

EXW means Ex-Works as set out in Incoterms 2010;

FCA means Free Carrier as set out in Incoterms 2010;

Hargreaves means Hargreaves Raw Material Services GmbH incorporated and registered in Germany with company number HRB 18684 whose registered office is at Bönningerstraße 29, 47051 Duisburg, Germany;

Health and Safety Requirements means compliance in full with all applicable health and safety legislation, together with any applicable technical data notes, thresholds and guidance relating to the Materials, and Hargreaves' data sheet for the Materials, a copy of which will be supplied upon request;

Incoterms 2010 means the 2010 edition of the International Chamber of Commerce official rules for the interpretation of trade terms;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Materials means the goods (or any part of them) to be supplied by Hargreaves as set out in the Specification;

Order means the Customer's written or verbal enquiry in relation to the purchase of Materials and/or Services from Hargreaves;

Order Confirmation means Hargreaves' written offer to the supply the Materials and/or Services to the Customer;

Quotation means a non-binding quotation for the supply of Materials and/or Services issued by Hargreaves;

Services means the services to be supplied by Hargreaves as set out in the Specification;

Specification means the description or specification of the Materials and/or Services provided by Hargreaves to the Customer as part of the Order Confirmation;

Working Day means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business; and

Working Hours means between 09:00 and 17:00 hours on a Working Day.

1.2 In these Conditions, unless a contrary intention appears:

1.2.1 the masculine includes the feminine and vice versa, and the singular includes the plural and vice versa;

1.2.2 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment;

1.2.3 headings are included in these Conditions for ease of reference only and shall not affect the interpretation or construction of these Conditions;

1.2.4 references to the Conditions are, unless otherwise provided, reference to Conditions of these Conditions; and

1.2.5 any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3 Where the Customer comprises more than one person the obligations and undertakings of the Customer in these conditions shall be joint and severally binding upon such persons.

2. APPLICATION OF TERMS

2.1 These Conditions are the only basis upon which Hargreaves is prepared to deal with the Customer and they shall govern each Contract between Hargreaves and the Customer to the entire exclusion of all other terms or conditions, including any standard or other terms of purchase of the Customer. These Conditions shall apply to all of the Customer's purchases of Materials and/or Services from Hargreaves.

2.2 All Quotations issued by Hargreaves for Materials and/or Services are non-binding invitations to treat and shall not constitute an offer by Hargreaves to supply the Materials and/or Services.

2.3 Each Order for the Materials and/or Services by the Customer shall be a written or verbal enquiry by the Customer to Hargreaves in relation to the purchase the Materials and/or Services. Hargreaves may, at its discretion, issue to the Customer an Order Confirmation, which shall be an offer by Hargreaves to sell the Materials and/or perform the Services strictly subject to the Specification and these Conditions.

2.4 The Customer shall be deemed to accept the Order Confirmation on the earlier of:

2.4.1 accepting the Order Confirmation, whether in writing (including by email) or verbally;

2.4.2 in the case of Materials, the Customer collecting the Materials (where delivery is not specified in the Order Confirmation) or the Customer accepting delivering the Materials (where delivery specified in the Order Confirmation); or

2.4.3 in the case of Services, the Customer allowing Hargreaves to commence performing the Services.

2.5 No terms or conditions endorsed upon, delivered with or contained in any Order, or any other documents sent by the Customer to Hargreaves (including any documents attached by the Customer to the Order) form part of the Contract. The Customer hereby waives any right which it otherwise might have to rely on such terms and conditions.

2.6 For the avoidance of doubt, where Hargreaves does not send an Order Confirmation to the Customer but subsequently makes Materials and/or Services available to the Customer and such Materials and/or Services are accepted by the Customer, these Condition shall apply to the purchase of such Materials and/or Services.

3. QUALITY AND DEFECTS

3.1 Hargreaves warrants to the Customer that:

3.1.1 the Materials will comply in all material respects with the terms of any Specification;

- 3.1.2 the Services will comply in all material respects with the terms of any Specification; and
- 3.1.3 Hargreaves will perform the Services with reasonable skill and care.
- 3.2 Hargreaves has given commitments as to compliance of the Materials and Services with relevant specifications in Condition 3.1. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract
- 3.3 It is the Customer's responsibility to ensure that the Materials are fit for the purpose for which they are going to be used, whether by the Customer or by any third party to whom the Materials will be re-sold or to whom products incorporating the Materials are going to be sold.
- 3.4 The Customer's sole remedy:
 - 3.4.1 under the warranty set out in Condition 3.1.1 shall be that Hargreaves, at its sole discretion, shall either: (i) make good any fault, non-compliance, or shortfall in quantity in the Materials; (ii) replace any non-compliant Materials; or (iii) where payment has been received, refund the price of such non-compliant Materials; and
 - 3.4.2 under the warranty set out in Condition 3.1.2 shall be that Hargreaves, at its sole discretion, shall either: (i) make good any fault in the Services; or (ii) where payment has been received, refund the price of such non-compliant Services.

4. SUPPLY AND DELIVERY

- 4.1 Hargreaves shall use its reasonable endeavours to deliver the Materials or to perform the Services by the Delivery Date, but the time of delivery of the Materials and time of performance of the Services shall not be of the essence. Services shall only be performed during Working Hours unless otherwise agreed.
- 4.2 Subject to Condition 4.4, where delivery of Materials is specified in the Order Confirmation, the Materials shall be delivered FCA to the agreed delivery address. Please note that under FCA the Customer is responsible for unloading of the Materials at the place of delivery.
- 4.3 Where delivery of Materials is not specified in the Order Confirmation, the Materials shall be made available for collection EXW at the agreed collection address. The Customer shall be responsible for loading of the materials, and if it requires loading assistance from Hargreaves, there may be an additional charge.
- 4.4 Delivery under Condition 4.2 shall only take place during Working Hours unless otherwise agreed, by lorry in full lorry loads along hard access roads onto a safe, pre-agreed delivery site. Where such delivery conditions are not in place, Hargreaves shall notify the Customer, and shall be deemed to have delivered the Materials. The Customer shall become responsible for collection of the Materials, and Hargreaves shall be entitled to charge to the Customer wasted delivery costs and a storage charge per day at Hargreaves' standard storage rate from time to time. Where the Materials are not collected by the Customer within 14 days of notification, Hargreaves shall be entitled to treat the Customer as in breach of Contract and to sell the Materials to a third party (without prejudice to any other rights or remedies Hargreaves may have).
- 4.5 Where delivery is taking place EXW under Condition 4.3, the Customer shall ensure that its haulage contractor:
 - 4.5.1 is fully aware of the Health and Safety Requirements;
 - 4.5.2 complies with all instructions given by Hargreaves to the Customer, or directly to the haulage contractor, and with all instructions at the unloading point at Material's ultimate destination;
 - 4.5.3 ensures that all vehicles transporting the Materials are properly sheeted; and
 - 4.5.4 complies in full with all statutory provisions in place from time to time, including but not limited to the Environmental Protection Act 1990.
- 4.6 The weight of Materials supplied shall be measured at Hargreaves' nominated weighbridge and the tonnage recorded by Hargreaves shall be the final conclusive deemed weight of the Materials delivered, save in the case of manifest and substantial error.

- 4.7 Signature of any delivery note by an agent, employee or representative of the Customer or by an individual haulier shall be conclusive proof of delivery.
 - 4.8 The Customer shall as soon as reasonably practicable, and in any event within three Working Days following the date of delivery of the Materials or performance of the Services, notify Hargreaves in writing of any shortage or defects in the Materials or of any other cause by reason of which the Customer alleges that the Materials delivered or the Services performed are not in accordance with the provisions of the relevant Contract. If required by Hargreaves, the Customer will promptly provide a sample of the Materials to Hargreaves.
 - 4.9 If the Customer fails to notify Hargreaves in accordance with Condition 4.8, then the Materials and the Services shall be presumed to be in all respects (except in respect of any defect which is not one which should be apparent on reasonable inspection) in accordance with the provisions of the relevant Contract and accordingly the Customer shall be deemed to have accepted delivery of the Materials or performance of the Services in question and Hargreaves shall have no liability to the Customer in respect such Materials and/or Services.
 - 4.10 When delivery of the Materials or performance of the Services is made by instalments the Contract will be construed as a separate contract for each instalment to which all the provisions of these Conditions shall apply.
 - 4.11 Ownership of Equipment remains with Hargreaves at all times and nothing in these Conditions shall imply or create a hire or bailment of the Equipment to the Customer.
 - 4.12 The Customer agrees to take all reasonable skill and care for the safety of any Equipment which is located on its premises during any Contract, and to ensure that its staff, contractors, sub-contractors and any visitors to the premises (including but not limited to guests and trespassers) shall not interfere with, and shall be kept at a suitable safe distance away from, any Equipment for such time as it is on the Customer's premises.
 - 4.13 The Customer hereby agrees to indemnify fully and keep Hargreaves indemnified against all liabilities, losses, damages, costs, expenses, claims, actions, demands, and proceedings suffered or incurred Hargreaves as a result of a breach by the Customer of Condition 4.5 or Condition 4.12.
- #### 5. RISK AND TITLE
- 5.1 Risk in and responsibility for the Materials shall pass to the Customer once the Materials have been delivered as per FCA or per EXW, as appropriate, under Conditions 4.2 and 4.3.
 - 5.2 Ownership of the Materials shall not pass to the Customer until Hargreaves has received in full and cleared funds all sums due to it in respect of the Materials and all other sums which are or which become due to Hargreaves from the Customer on any account.
 - 5.3 Until ownership of the Materials has passed to the Customer, the Customer shall:
 - 5.3.1 not do, or permit or cause to be done, any matter or thing whereby the rights of Hargreaves in respect of the Materials are or may be prejudiced;
 - 5.3.2 hold the Materials on a fiduciary basis as Hargreaves' bailee;
 - 5.3.3 store the Materials (at no cost to Hargreaves) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Hargreaves' property;
 - 5.3.4 not destroy, deface or obscure any identifying mark relating to the Materials (whether in their storage zones or otherwise);
 - 5.3.5 maintain the Materials in good condition insured on Hargreaves' behalf for their full price against all risks to the reasonable satisfaction of Hargreaves. On request the Customer shall produce the policy of insurance to Hargreaves; and
 - 5.3.6 hold the proceeds of the insurance referred to in Condition 5.3.5 on trust for Hargreaves and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
 - 5.4 The Customer may resell the Materials before ownership has passed to it solely on the following conditions:
 - 5.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value;

- 5.4.2 the Customer shall deal as principal when making such a sale; and
- 5.4.3 the Customer shall hold the proceeds of sale on trust for Hargreaves and shall not mix such proceeds with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.5 The Customer's right to possession of the Materials shall terminate immediately if:
- 5.5.1 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 5.5.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 5.5.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- 5.5.4 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
- 5.5.5 the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- 5.5.6 a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- 5.5.7 a creditor or encumbrancer of the other party 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 the Customer's assets and such attachment or process is not discharged within 14 days;
- 5.5.8 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 5.5.9 the Customer fails to observe or perform any of its obligations under these terms and conditions; or
- 5.5.10 the Customer fails to pay in full any sum owing to Hargreaves, including under or in relation to a Contract, on the date on which payment falls due.
- 5.6 The Customer hereby grants to Hargreaves, its agents and employees an irrevocable licence to enter at any time any premises where the Materials and/or any Equipment are or may be located, stored or kept (and to the extent that such licence is invalid or inoperative the Customer agrees that it shall procure for Hargreaves such a licence) in order to inspect it, or, where the Customer's right to possession of the Materials has terminated, or in respect of the Equipment generally, to recover it.
- 6. CUSTOMER OBLIGATIONS**
- 6.1 The Customer shall:
- 6.1.1 ensure that the terms of the Order Confirmation and the Specification are complete and accurate;
- 6.1.2 co-operate with Hargreaves in all matters relating to the Services;
- 6.1.3 provide Hargreaves, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Hargreaves to provide the Services;
- 6.1.4 provide Hargreaves with such information and materials as Hargreaves may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 6.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- 6.1.6 comply with all applicable laws, including health and safety laws.
- 7. PRICE AND PAYMENT**
- 7.1 The price payable by the Customer for the Materials and/or Services shall be as set out in the Order Confirmation and, unless otherwise agreed in writing by Hargreaves, shall be exclusive of value added tax (if any).
- 7.2 In respect of Materials, Hargreaves shall invoice the Customer on or at any time after actual delivery of the relevant Materials. In respect of Services, Hargreaves shall invoice the Customer monthly in arrears unless otherwise agreed in the Specification.
- 7.3 The Customer shall pay each invoice submitted by Hargreaves:
- 7.3.1 within 30 days of the end of the month in which the invoice is raised by Hargreaves or in accordance with any credit terms agreed by Hargreaves and confirmed in writing to the Customer; and
- 7.3.2 in full and in cleared funds to a bank account nominated in writing by Hargreaves,
- and time for payment shall be of the essence of the Contract.
- 7.4 Payment shall be made by bank transfer to the bank account notified by Hargreaves to the Customer, unless otherwise agreed. Time for payment is of the essence.
- 7.5 Unless agreed otherwise, all sums payable shall be calculated and paid in Pound Sterling (£).
- 7.6 Where the Customer fails to make payment as set out in Condition 7.3, Hargreaves shall be entitled (but shall not be obliged) to charge the Customer interest on all sums overdue at the rate of 4% above the Bank of England base rate (from time to time in force) until payment is made in full by the Customer.
- 7.7 In addition to its right to charge interest on late payment as set out in Condition 7.6, where the Customer fails to make payment within a further 7 days from the first date that any sums are overdue, Hargreaves shall be entitled (but shall not be obliged) to do any or a combination of the following:
- 7.7.1 to cancel all or any part of any outstanding Contracts;
- 7.7.2 suspend all or part of the supply of the Materials and/or Services (including under any Contracts where supply is still outstanding at the time of suspension);
- 7.7.3 suspend any discounts it has made available to the Customer;
- 7.7.4 exercise its rights to recover the Materials pursuant to these Conditions.
- 7.8 Where Hargreaves elects to pursue one of its rights under Condition 7.7, Hargreaves shall not be in breach of these Conditions (nor for the avoidance of doubt shall Hargreaves have any liability to the Customer).
- 7.9 All sums payable by the Customer under and in respect of any Contract or any indemnity set out in these Conditions shall be paid in full without any deduction, counterclaim or set-off (including but not limited to any circumstances of bona fide dispute).
- 7.10 The Customer hereby indemnifies Hargreaves in full, and holds Hargreaves indemnified in full against any tax, levy or duty of any nature that may be charged, levied or imposed on Hargreaves in respect of the sale or of the delivery of the Materials or in respect of performance of the Services.
- 8. LIMITATION OF LIABILITY**
- 8.1 Neither party excludes or limits liability to the other party for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation nor where liability cannot be excluded or limited as a matter of law.
- 8.2 Subject to Conditions 8.1, Hargreaves shall not have any liability to the Customer for any of the following whatsoever or howsoever caused or arising:
- 8.2.1 loss of profit;
- 8.2.2 loss of use;

- 8.2.3 loss of goodwill; a proposal for or enters into any compromise or arrangement with any of its creditors;
- 8.2.4 business interruption; or
- 8.2.5 indirect, consequential or special loss or damage.
- 8.3 Subject to Conditions 8.1 and 8.2:
- 8.3.1 in the event of a failure to deliver the Materials or of the delivery of faulty Materials, Hargreaves' liability to the Customer shall be limited to the reasonable and proper costs incurred by the Customer in replacing such Materials;
- 8.3.2 in the event of a failure to deliver the Services or of the delivery of faulty Services, Hargreaves' liability to the Customer shall be limited to the reasonable and proper costs incurred by the Customer in obtaining such Services on a like-for-like basis; and
- 8.3.3 the aggregate liability of Hargreaves under these Conditions whatsoever or howsoever caused or arising (without prejudice to any non-financial remedies), shall: (a) in the case of a dispute arising from or relating to Materials, be limited to the lower of the cost of replacing the Materials which give rise to the claim, or of the price of the Materials which give rise to the claim; and (b) in the case of a dispute arising from or relating to Services, be limited to the lower of the reasonable and proper costs incurred by the Customer in obtaining such Services on a like-for-like basis, or of the price of the Services which give rise to the claim; and (c) in the case of a dispute arising from or relating to both Materials and Services, be limited to the combination of lower of the relevant figures from Conditions 8.3.3 (a) and (b) above.
- 8.4 The Customer hereby indemnifies Hargreaves in full, and holds Hargreaves indemnified in full against all costs, claims, expenses and losses that Hargreaves may suffer or incur as a result of any claim brought by any third party relating to or arising in respect of any loss, damage or expense which arises from the proper performance by Hargreaves of any Contract.
- 8.5 The Customer acknowledges that the allocation of risk and liability under these Conditions takes into account Hargreaves' insurance cover and is reflected in the prices for the Materials and/or Services.
- 9. LEGAL COMPLIANCE AND INSURANCE**
- 9.1 The Customer will comply with all laws, statutory regulations and Health and Safety Requirements in relation to the handling, transport, use and sale of the Materials and will insure against its liabilities arising out of or in connection with the same, and against its liabilities arising out of or in connection with any Contract under these Conditions including (without prejudice to the generality of the foregoing):
- 9.1.1 employers' liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident; and
- 9.1.2 public liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident.
- 9.2 The Customer will promptly at Hargreaves' request provide Hargreaves with details of all relevant insurance policies and copies of any cover-notes relating to the insurances effected pursuant to this Agreement and will use all reasonable endeavours to procure that:
- 9.2.1 the interests of Hargreaves are duly noted on insurance policies;
- 9.2.2 subrogation rights are waived by the insurers; and
- 9.2.3 such insurance policies include non-avoidance of liability provisions to ensure that an act by the Customer which negates the terms of an insurance policy will not prejudice the insurance cover benefit to Hargreaves.
- 9.3 If the Customer shall fail to comply in any respect with the provisions of this Condition 9, Hargreaves shall be entitled (but not obliged) to arrange the insurance cover required by this Condition 9 and the Customer hereby indemnifies Hargreaves fully and holds it fully indemnified against all costs, claims, demands and liabilities incurred by Hargreaves as a result.
- 10. TERMINATION**
- 10.1 Hargreaves shall be entitled at its sole discretion to terminate any Contract immediately upon written notice to the Buyer in the event that:
- 10.1.1 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes
- 10.1.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 10.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- 10.1.4 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
- 10.1.5 the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- 10.1.6 a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- 10.1.7 a creditor or encumbrancer of the other party 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 the Customer's assets and such attachment or process is not discharged within 14 days;
- 10.1.8 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 10.1.9 any action or occurrence analogous to the provisions of Conditions 10.1.1 to 10.1.8 occurs in respect of the Customer in any jurisdiction;
- 10.1.10 the Customer is in breach of a Contract and such breach is not remedied within fourteen (14) days of issue of a written notice to the Customer specifying the breach and requiring remedy;
- 10.1.11 the Customer fails to pay in full any sum owing to Hargreaves, including under or in relation to a Contract, on the date on which payment falls due; or
- 10.1.12 Hargreaves determines that the credit limit of the Customer (as determined by Hargreaves from time to time exercising its reasonable discretion) is not sufficient to cover the Materials and/or Services requested by the Customer.
- 10.2 On termination of a Contract:
- 10.2.1 the Customer shall immediately pay to Hargreaves all of Hargreaves' outstanding unpaid invoices and interest and, in respect of Materials and/or Services supplied but for which no invoice has been submitted, Hargreaves shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.2.2 the Customer shall return all of the Equipment and any Materials which have not been fully paid for. If the Customer fails to do so, then Hargreaves may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 10.3 Termination of a Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.4 Any provision of a Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 10.5 In addition to Hargreaves' right to terminate any Contract under clause 10.1.12, where Hargreaves determines that the credit limit of the Customer (as determined by Hargreaves from time to time exercising its reasonable discretion) is not sufficient to cover the Materials and/or Services requested by the Customer, Hargreaves shall be entitled (but shall not be obliged) to do either or both of the following: (i) suspend all or part of the supply of the Materials and/or Services (including under any Contracts where supply is still outstanding at the time of suspension); (ii) suspend any discounts it has made available to the Customer.

11. CONFIDENTIALITY

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Condition 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- 11.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Condition 11; and
- 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Hargreaves.
- 12.2 Hargreaves grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free licence to use and copy any deliverables for the purpose of receiving and using the Services in its business.
- 12.3 The Customer grants Hargreaves a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Hargreaves for the purpose of providing the Services to the Customer.

13. DATA PROTECTION

Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. The Customer agrees that Hargreaves may pass personal data to credit referencing agencies and identity checking agencies (and other sources of information that help to verify the Customer's credit rating and identity). A record of this process may be kept by third parties and may be used to help other companies verify the Customer's credit rating and identity, and to prevent fraud.

14. FORCE MAJEURE

Hargreaves shall not be liable to the Customer for any total or partial failure or delay in fulfilling its obligations under these Conditions where such delay or failure is due to an Event of Force Majeure, and performance shall be suspended until the Event of Force Majeure has passed.

15. WAIVER AND VARIATION

- 15.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.2 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16. CUMULATION OF REMEDIES

Subject to the specific limitation set out in these Conditions, no remedy conferred by any provision of these Conditions is intended to be exclusive of any other remedy except as expressly provided for in these Conditions and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder under existing law or in equity by statute or otherwise.

17. SEVERABILITY

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 Condition 17 shall not affect the validity and enforceability of the rest of the Contract.

18. DOCUMENT STORAGE

Hargreaves may store copies of documentation relating to Contracts in secure electronic form, and the Customer agrees that such electronic copies shall be admissible in Court.

19. ENTIRE AGREEMENT

- 19.1 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.
- 19.2 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

20. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

21. ASSIGNMENT

- 21.1 Hargreaves may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 21.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Hargreaves.

22. NOTICES

- 22.1 Any notice given to a party under or in connection with a Contract shall be in writing and shall be delivered by hand or by tracked mail or courier at its registered office (if a company) or its principal place of business (in any other case).
- 22.2 Any notice shall be deemed to have been received:
- 22.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- 22.2.2 if sent by tracked mail or courier, at 9.00 am on the third Business Day after posting or at the time recorded by the delivery service.

- 22.3 This Condition 22 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.

23. THIRD PARTY RIGHTS

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24. GOVERNING LAW

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.

25. JURISDICTION

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.