

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Contract: the contract between Palmer Hargreaves and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from Palmer Hargreaves.

Deliverables: the deliverables set out in the Order or otherwise agreed in writing between Palmer Hargreaves and the Customer.

Delivery Location: has the meaning set out in clause 5.1.

Force Majeure Event: has the meaning given to it in clause 16.1(a).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Palmer Hargreaves.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Palmer Hargreaves' quotation, or overleaf, as the case may be.

Services: the services, including the Deliverables, supplied by Palmer Hargreaves to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by Palmer Hargreaves to the Customer.

Palmer Hargreaves: Palmer Hargreaves (UK) Limited, registered in England and Wales with company number 03252935.

Palmer Hargreaves Materials: has the meaning set out in clause 8.1(g).

1.2 Construction. In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Palmer Hargreaves issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Palmer Hargreaves which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Palmer Hargreaves and any descriptions of the Goods or illustrations or descriptions of the Services contained in Palmer Hargreaves' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Palmer Hargreaves shall not constitute an offer, and is only valid for a period of 45 from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. SUPPLY OF SERVICES

- 3.1 Palmer Hargreaves shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 3.2 Palmer Hargreaves shall use its reasonable endeavours to meet any performance dates for the Services which are agreed by Palmer Hargreaves in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 Palmer Hargreaves shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Palmer Hargreaves shall notify the Customer in any such event.
- 3.4 Palmer Hargreaves warrants to the Customer that the Services will be provided using reasonable care and skill.

4. GOODS

- 4.1 The Goods are described in the Goods Specification.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Palmer Hargreaves against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Palmer Hargreaves in connection with any claim made against Palmer Hargreaves for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Palmer Hargreaves' use of the Goods Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3 Palmer Hargreaves reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

5. DELIVERY OF GOODS

- 5.1 Palmer Hargreaves shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after Palmer Hargreaves notifies the Customer that the Goods are ready.
- 5.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the

essence. Palmer Hargreaves shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Palmer Hargreaves with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 5.4 If Palmer Hargreaves fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Palmer Hargreaves shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Palmer Hargreaves with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.5 If the Customer fails to accept or take delivery of the Goods within three Business Days of Palmer Hargreaves notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Palmer Hargreaves' failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Palmer Hargreaves notified the Customer that the Goods were ready; and
 - (b) Palmer Hargreaves shall store the Goods until delivery takes place, and may, at its absolute discretion, charge the Customer for all related costs and expenses (including insurance).

6. QUALITY OF GOODS

- 6.1 Palmer Hargreaves warrants that on delivery the Goods shall conform in all material respects with the Goods Specification.
- 6.2 Subject to clause 6.3, if:
- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
 - (b) Palmer Hargreaves is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by Palmer Hargreaves) returns such Goods to Palmer Hargreaves' place of business at the Customer's cost,

Palmer Hargreaves shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 6.3 Palmer Hargreaves shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
 - (b) the defect arises as a result of Palmer Hargreaves following any drawing, design or instructions supplied by the Customer;
 - (c) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this clause 6, Palmer Hargreaves shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Palmer Hargreaves under clause 6.2.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until Palmer Hargreaves has received payment in full (in cash or cleared funds) for:
- (a) the Goods;
 - (b) the Services; and
 - (c) any other goods or services that Palmer Hargreaves has supplied to the Customer in respect of which payment has become due.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with Palmer Hargreaves in all matters relating to the Services;
- (c) provide Palmer Hargreaves, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Palmer Hargreaves to provide the Services;
- (d) provide Palmer Hargreaves with such information and materials as Palmer Hargreaves may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) permit Palmer Hargreaves to refer to the Customer as a client of Palmer Hargreaves for marketing purposes and to use the Customer's Intellectual Property for such purpose (subject to any conditions that may be agreed between the parties).
- (f) 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
- (g) keep and maintain all materials, equipment, documents and other property of Palmer Hargreaves (Palmer Hargreaves Materials) at the Customer's premises in safe custody at its own risk, maintain Palmer Hargreaves Materials in good condition until returned to Palmer Hargreaves, and not dispose of or use Palmer Hargreaves Materials other than in accordance with Palmer Hargreaves' written instructions or authorisation.

8.2 If Palmer Hargreaves' performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) Palmer Hargreaves shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Palmer Hargreaves' performance of any of its obligations;
- (b) Palmer Hargreaves shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Palmer Hargreaves' failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Palmer Hargreaves on written demand for any costs or losses sustained or incurred by Palmer Hargreaves arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price for Goods shall be the price set out in the Order or such other price as may be agreed in writing by Palmer Hargreaves and the Customer. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 Unless otherwise agreed in writing by Palmer Hargreaves and the Customer, the charges for Services shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with Palmer Hargreaves' standard hourly fee rates, as may be notified by Palmer Hargreaves to the Customer from time to time;
- (b) Where day rates are charged, Palmer Hargreaves' standard daily fee rates for each individual person are calculated on the basis of a seven and a half hour day from 9.00 am to 5.30 pm worked on Business Days;
- (c) Palmer Hargreaves shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Palmer Hargreaves engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Palmer Hargreaves for the performance of the Services, and for the cost of any materials.

9.3 Palmer Hargreaves reserves the right to:

- (a) increase its standard fee rates for the charges for the Services at any time;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Palmer Hargreaves that is due to:
 - (i) any factor beyond the control of Palmer Hargreaves (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Palmer Hargreaves adequate or accurate information or instructions in respect of the Goods.

9.4 Unless otherwise agreed in writing, the Customer shall pay each invoice submitted by Palmer Hargreaves:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Palmer Hargreaves, and time for payment shall be of the essence of the Contract.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT) which shall be charged in addition.

9.6 Without limiting any other right or remedy of Palmer Hargreaves, if the Customer fails to make any payment due to Palmer Hargreaves under the Contract by the due date for payment (Due Date), Palmer Hargreaves may, at its absolute discretion, charge interest on the overdue amount at the rate of eight per cent (8%) per annum above the official dealing rate of the Bank of England from time to time accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

9.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Palmer Hargreaves in order to justify withholding payment of any such amount in whole or in part. Palmer Hargreaves may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Palmer Hargreaves to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Save where otherwise agreed, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Palmer Hargreaves.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Palmer Hargreaves obtaining a written licence from the relevant licensor on such terms as will entitle Palmer Hargreaves to license such rights to the Customer.

10.3 All Palmer Hargreaves Materials are the exclusive property of Palmer Hargreaves.

10.4 To the extent necessary to allow Palmer Hargreaves to carry out the Services, the Customer hereby grants Palmer Hargreaves a non-exclusive license for the term of this Agreement and for such period as may be agreed, to use such of the Customer's Intellectual Property Rights as may reasonably be required by Palmer Hargreaves for the purpose of performing the Services.

11. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. Subject to clause 8.1(e), this clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY: **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

12.1 Nothing in these Conditions shall limit or exclude Palmer Hargreaves' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (a) Palmer Hargreaves shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Palmer Hargreaves' total aggregate liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 120% of the sums paid or due to Palmer Hargreaves under clause (a) above.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. ASSIGNMENT AND SUBCONTRACTING

13.1 The Customer hereby gives Palmer Hargreaves consent to at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and Palmer Hargreaves may subcontract or delegate in any manner any or all of its obligations under the Contract and sub-contract the processing of personal data (provided the sub-contractor agrees to comply with its obligations under the Data Protection Act 1998) to any third party or agent.

14. TERMINATION

14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach;
- (b) the other party becomes or is reasonably likely to become insolvent; or
- (c) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

14.2 Without limiting its other rights or remedies, Palmer Hargreaves may terminate the Contract:

- (a) by giving the Customer one months' written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

14.3 Without limiting its other rights or remedies, Palmer Hargreaves shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Palmer Hargreaves if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 14.1(b) and 14.1 (c) above, or Palmer Hargreaves reasonably believes that the Customer is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Palmer Hargreaves all of Palmer Hargreaves' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Palmer Hargreaves shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Palmer Hargreaves Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Palmer 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;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. GENERAL

16.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Palmer Hargreaves including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, failure of a computer system, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Palmer Hargreaves shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Palmer Hargreaves from providing any of the Services and/or Goods for more than four weeks, Palmer Hargreaves shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16.2 Assignment and subcontracting:

- (a) Palmer Hargreaves may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of Palmer Hargreaves, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

16.4 Waiver and cumulative remedies:

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

16.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.6 No partnership: 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, the other party in any way.

16.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

16.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Palmer Hargreaves.

16.9 Governing law and jurisdiction: This 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 and Wales.