

- 1.1 In these Conditions, the following expressions shall have the following meanings:
- "**Conditions**" means these terms and conditions of contract for the supply of works and services;
- "**Confidential Information**" means any and all information provided by either party under the Contract that is either: (a) marked as being confidential; and/or (b) any and all information or data disclosed (whether in writing, orally or in any other form, and whether directly or indirectly) by a party to the other party, that is of a type that may reasonably be considered confidential, including without limitation, the terms and conditions of the Contract, any Specification, drawings, samples or other documents provided by a party in respect of the Works and the existence of the relationship between the Customer and HIS;
- "**Contract**" means the contract between HIS and the Customer for the execution of the Works, comprising:
- (i) these Conditions, together with any documents referred to herein; and
 - (ii) the Works Order and any special conditions, Specification or other documents referred to therein.
- "**Contract Price**" means the sum stated in the Works Order as being payable by the Customer to HIS in consideration of the execution of the Works in accordance with the Conditions;
- "**Control**" means the power of a person to direct the affairs of another whether by virtue of ownership of shares, contracts or otherwise;
- "**Customer**" means the person, firm or company with whom the Contract is made, as more particularly set out in the Works Order;
- "**Data Protection Legislation**" means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679) and any other directly applicable European Union regulation relating to privacy;
- "**HIS**" means Hargreaves Industrial Services Limited (CRN: 02307132) with its registered office at West Terrace, Esh Winning, Durham, County Durham, DH7 9PT;
- "**Insolvency Event**" occurs when:
- (a) a resolution is passed or an order is made for the winding up of the other party (otherwise than for the purpose of solvent amalgamation or reconstruction); or
 - (b) the other party becomes subject to an administration order; or
 - (c) a receiver or administrator is appointed over the whole or part of the other party's business or any step is taken for the appointment of any such receiver or administrator; or
 - (d) an encumbrancer takes possession of any of the other party's property or equipment; or
 - (e) if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986; or
 - (f) if a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors; or
 - (g) the other party is unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986; or
 - (h) the other party, being an individual or partnership, is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors; or
 - (i) anything analogous to the events set out in sub clauses (a) to (h) occurs in any jurisdiction.
- "**Intellectual Property Rights**" means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or future;
- "**Loss**" means any and all loss, damage, penalties, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims, demands and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made;
- "**Machinery**" means any plant and/or machinery belonging to HIS and/or any third party under the Contract;
- "**Maintenance Period**" means the period (if any) specified in the Works Order during which HIS is to provide the Maintenance Services in respect of the Works Deliverables and/or any plant and/or equipment provided by HIS as part of the Works;
- "**Maintenance Services**" means the support and maintenance services to be provided by HIS to the Customer during the Maintenance Period in respect of the Works Deliverables and/or any plant and/or equipment provided by HIS as part of the Works, as specified in the Works Order;
- "**Personal Data**" has the same meaning as the term 'personal data' under the Data Protection Legislation
- "**Site**" means the location where the Works are to be executed by HIS;
- "**Specification**" means any specification set out in the Works Order;
- "**UK Data Protection Legislation**" means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation;
- "**Working Day**" a day (other than a Saturday, Sunday or public holiday) when banks are open for business in London;
- "**Works**" means the engineering and/or construction works or services, and/ or general supply of labour and/or supply of Machinery to be performed and/ or provided by HIS (including without limitation, the delivery of the Works Deliverables and the provision of the Maintenance Services) in accordance with the terms of the Contract, as more particularly set out in the Works Order;
- "**Works Deliverables**" means all the plant, equipment, materials, structures, buildings, erections and/or any other deliverables to be provided by HIS in the course of executing the Works, as more particularly set out in the Works Order; and
- "**Works Order**" means the Customer's order for the Works in the form attached to these Conditions.
- 1.2 In these Conditions:
- 1.2.1 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 thereof;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 headings are for ease of reference only and shall not affect the interpretation or construction of these Conditions; and
- 1.2.4 any list of examples following the word including shall be interpreted without limitation to the generality of the preceding words.
- 1.3 The Conditions shall apply to all Works Orders made by the Customer for the Works and are the only Conditions upon which HIS is prepared to deal with the Customer. No terms or conditions endorsed upon, delivered with or contained in any documents submitted by the Customer to HIS shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.
- 1.4 If there is any conflict between the provisions of, or documents forming, the Contract, the following order of prevalence shall apply (unless expressly stated otherwise in a Works Order):
- 1.4.1 firstly, the Works Order;
 - 1.4.2 secondly, these Conditions; and
 - 1.4.3 finally, any other documents referred to in the Works Order.
- 2 EXECUTION OF THE WORKS**
- 2.1 HIS shall carry out and complete the execution of the Works in accordance with the Contract.
- 2.2 HIS shall undertake the Works with reasonable skill and care and in accordance with any agreed standards of performance and requirements set out in the Works Order and shall comply with all applicable laws.
- 2.3 HIS shall use reasonable endeavours to meet any performance dates specified in the Works Order but any such dates shall be estimates only and time for performance by HIS shall not be of the essence of this Contract.
- 2.4 HIS warrants to the Customer in respect of the Works Deliverables provided by HIS that such deliverables shall be free of any material defects and shall comply with any agreed Specification for a period of six (6) months from the date of completion of the Works unless otherwise specified in the Works Order.
- 2.5 In respect of Works Deliverables provided by third parties HIS shall use reasonable endeavours to procure that the Customer shall obtain the benefit of any third party warranty given to HIS.
- 2.6 For the avoidance of doubt, HIS is under no obligation to carry out any Works which are not within the scope of the Contract and HIS is entitled to charge the Customer for such additional works.
- 2.7 The Customer warrants and represents to HIS that:
- 2.7.1 it will provide, for HIS, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's Site, premises, office accommodation, data and other facilities as reasonably required by HIS including any such access as is specified in a Works Order;
- 2.7.2 it will provide to HIS in a timely manner all document, information, items and materials in any form (whether owned by the Customer or a third party) required under a Works Order or otherwise reasonably required by HIS in connection with the Works and ensure that they are accurate and complete;
- 2.7.3 it shall inform HIS of all health and safety and security requirements that apply at the Site;
- 2.7.4 it has, or will obtain prior to the commencement of the Works, all necessary licences, consents and permissions required for the execution of the Works;
- 2.7.5 it shall co-operate in good faith with HIS in all matters relating to the Works and shall comply with the reasonable and lawful instructions of HIS;
- 2.7.6 it shall notify HIS of any relevant laws, regulations, consents and licences applicable to HIS in relation to:
- (a) its carrying out the Works at the Customer's Site; and/ or
 - (b) the type of Works contemplated under the Contract,
- HIS shall not be liable for any Loss suffered by the Customer in the event that the Customer fails to comply with this Condition 2.7.6.
- 2.8 If HIS's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees or circumstances beyond HIS' reasonable control then, without prejudice to any other right or remedy it may have, HIS shall be granted:
- 2.8.1 an extension of time to perform its obligations equal to the delay; and
 - 2.8.2 a fair and reasonable adjustment to the Contract Price.
- 3 CONTRACT PRICE**
- 3.1 In consideration of the execution of the Works by HIS, the Customer shall pay to HIS the Contract Price.
- 3.2 Unless otherwise agreed in the Works Order, the Contract Price excludes the following, which shall be payable by the Customer following submission of an appropriate invoice:
- 3.2.1 the out-of-pocket costs and expenses reasonably incurred by the individuals whom HIS engages in connection with the Works including travel and overnight stays; and
 - 3.2.2 the cost to HIS of any materials or services procured by HIS from third parties for the provision of the Works as such items and their cost are approved by the Customer in advance from time to time.
- 3.3 HIS shall invoice the Customer monthly, unless otherwise agreed in the Works Order.

- 3.4 The Customer shall pay such invoices within thirty (30) days of the date of receipt to a bank account nominated in writing from time to time by HIS.
- 3.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay HIS any sum due under the Contract on the due date:
- 3.5.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base lending rate from time to time of the Bank of England until such payment has been made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- 3.5.2 HIS may suspend part or all of the Works until payment has been made in full.
- 3.6 All sums payable to HIS under the Contract:
- 3.6.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 3.6.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4 TERMINATION FOR CAUSE

- 4.1 Without prejudice to any other rights or remedies to which it may be entitled, HIS shall have the right at any time by giving notice in writing to the Customer to terminate the Works Order or the Contract immediately if:
- 4.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 4.1.2 the Customer commits a material and/or persistent breach of any of the Conditions and (if the breach is capable of remedy) the Customer fails to remedy it within seven (7) days of receipt of notice in writing requiring remedy of the breach; or
- 4.1.3 the Customer is subject to a change of Control or an Insolvency Event.

5 CONSEQUENCES OF TERMINATION

- 5.1 Upon termination or expiry of the Contract, howsoever caused or occasioned:
- 5.1.1 all existing Works Orders shall terminate automatically;
- 5.1.2 the Customer shall immediately pay to HIS all of HIS's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, HIS may submit an invoice, which shall be payable immediately on receipt; and
- 5.1.3 the Customer shall promptly return all of the Machinery and if the Customer fails to do so, then HIS may enter the Customer's premises and take possession of the Machinery and, until the Machinery has been returned or repossessed, the Customer shall be solely responsible for its safe keeping.
- 5.2 The termination of the Contract however arising will be without prejudice to the rights and duties of either party accrued prior to termination or expiry. The Conditions which impliedly or expressly have effect or continue after termination or expiry will continue to be enforceable notwithstanding termination or expiry of the Contract.

6 LIMITATION OF LIABILITY

- 6.1 Subject to Condition 6.2, HIS shall not be liable to the Customer for any of the following:
- 6.1.1 loss of profits;
- 6.1.2 loss of business;
- 6.1.3 loss of anticipated savings;
- 6.1.4 loss of revenue;
- 6.1.5 loss of opportunity;
- 6.1.6 loss of contracts;
- 6.1.7 loss of data;
- 6.1.8 loss of goodwill or reputation;
- 6.1.9 special, indirect or consequential loss; or
- 6.1.10 delay in performing or any failure to perform its obligations under this Contract to the extent that such delay or failure was caused or contributed to by the act or omission of the Customer, and in each case whether arising under or in connection with this Contract, whether in contract, tort (including negligence) or otherwise, and irrespective of whether any of the above are direct or indirect loss or damage.
- 6.2 The limitations in Condition 6.1 shall not apply to any liability:
- 6.2.1 for death or personal injury caused by negligence;
- 6.2.2 for fraud or fraudulent misrepresentation; or
- 6.2.3 that cannot be excluded by law.
- 6.3 The aggregate liability of HIS, whether in contract, tort (including for negligence) or for breach of statutory duty (howsoever arising), misrepresentation or otherwise in connection with this Contract, shall be limited to an amount equal to the Contract Price paid by the Customer to HIS in respect of Works executed. The Customer shall have a duty to mitigate any loss and/or damage arising from any claim.
- 6.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

7 CONFIDENTIALITY

- 7.1 Each party shall keep, and shall procure that their employees, agents, representatives and sub-contractors shall keep, in strict confidence, all Confidential Information received from the other party or which otherwise comes into its possession. Each party shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging its obligations under the Contract.
- 7.2 This Condition 7 shall apply during the continuance of the Contract and after its termination or expiry howsoever arising without limitation in time.
- 7.3 The Customer shall not, without the prior written consent of HIS, publicly announce or advertise in any form that it is receiving services from HIS and/or its relationship with HIS pursuant to the terms of the Contract.

8 INTELLECTUAL PROPERTY

- 8.1 All Intellectual Property Rights of either party in existence prior to the date of the commencement of the Works under the Contract (**Background IPR**), will be owned by and shall remain vested in the party in whom the Background IPR was owned and vested in prior to the date of the commencement of the Works under the Contract.
- 8.2 Subject to Condition 8.3 and without prejudice to Condition 8.1, all Intellectual Property Rights produced and/or arising from the performance of the Contract shall vest and remain solely and exclusively vested in HIS (and to the extent the same are not already vested in HIS, the Customer hereby assigns to HIS with full title guarantee and free from all third party rights, all such Intellectual Property Rights). For the avoidance of doubt, all Intellectual Property Rights in the Works Deliverables shall vest in and be the exclusive property of HIS.
- 8.3 HIS hereby grants to the Customer a royalty-free and non-exclusive licence to use its Background IPR to the extent required to obtain the benefit of the Works.

9 ASSIGNMENT AND SUB-CONTRACTING

- 9.1 The Customer shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of HIS.
- 9.2 HIS shall not sub-contract the execution of the Works or part thereof without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).

10 HEALTH AND SAFETY

- 10.1 HIS shall use reasonable endeavours to observe all health and safety rules and regulations that apply at the Site and/or in relation to the Works, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 10.2 The Customer shall notify HIS as soon as it becomes aware of any health and safety hazards and/or failures to observe the health and safety rules and regulations and any other security requirements that apply at the Site and/or in relation to the Works.
- 10.3 The Customer shall provide all necessary supervision, having regard to the nature and extent of the Works, to secure the proper and safe execution of the Works in accordance with the Contract, including without limitation the provision of a competent and authorised agent or charge man skilled in the type of work being executed and approved by the Project Manager and who shall be on the Site at all times while the Works are in progress.
- 10.4 The Customer shall also provide during the Maintenance Period (where applicable) such supervision as HIS may require.

11 DATA PROTECTION

- Each party warrants to the other party that to the extent it processes any Personal Data in connection with the provision of this Agreement, it shall comply with the provisions of the Data Protection Legislation.

12 GENERAL

- 12.1 This Contract set out the entire agreement between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Contract, whether written or oral. Each party acknowledges and agrees that in entering into the Contract it places no reliance on any representation or warranty in relation to the subject matter of this Contract, nor shall it have any remedy in relation to the subject matter of the same save as expressly set out in the Contract. The only remedy available to either party for breach of such warranties or representations shall be for breach of contract under the terms of this Contract. Nothing in this Condition or in this Contract shall operate so as to exclude or restrict any remedy or liability for fraud or fraudulent misrepresentation.
- Any notice to be given under the Contract shall be in writing and may be made or delivered by one party hereto to the other at the registered office of the party or to such other address as such party may have notified to the other party giving such notice for the purposes of this Condition and shall be deemed to have been made or delivered by letter, when left at the address or, if sent by prepaid first class recorded delivery, forty eight hours (48) after posting. If such notice arrives on a day which is not a Working Day, it shall be deemed to have been delivered on the next following Working Day.
- 12.2 HIS is appointed as an independent contractor and neither party shall have the authority to act in the name of or otherwise bind the other in any way, whether contractually or otherwise.
- 12.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable (in whole or part), the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.
- 12.4 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 12.5 The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 12.6 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 12.7 Save as expressly set out in this Contract, no variation of the Contract shall be binding upon the parties unless the same is in writing signed by a duly authorised representative of both HIS and the Customer.
- 12.8 The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of England and Wales, and the English courts shall have exclusive jurisdiction in all matters relating to the Contract (whether of a contractual or tortious nature or otherwise).

September 2021