

## 1. General

- 1.1. These general terms and conditions for the supply of goods and services ("**General Terms and Conditions**") apply to all contracts between HARGASSNER Biomass Heating Ltd, registered in England and Wales with company number 11641173 ("**HARGASSNER**") and the person or firm who purchases goods and/or services from HARGASSNER ("**Customer**").
- 1.2. By ordering goods and/or services from HARGASSNER, the Customer expressly agrees that these General Terms and Conditions apply to the Contract (as defined below) between HARGASSNER and the Customer to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.3. The current version of the General Terms and Conditions effective at the time the Contract is made between HARGASSNER and the Customer shall apply to that Contract.
- 1.4. Changes and/or amendments to these General Terms and Conditions shall not be effective unless they are expressly agreed to by HARGASSNER in writing.
- 1.5. All of these General Terms and Conditions shall apply to the supply of both goods and services by HARGASSNER except where application to one or the other is specified.
- 1.6. These General Terms and Conditions will be valid for business customers only. If the Customer is a consumer under any applicable law, he/she is obligated to notify HARGASSNER without delay.
- 1.7. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.8. Unless the context requires otherwise, words in the singular include the plural and in the plural shall include the singular.
- 1.9. A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.10. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.11. Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.12. A reference to writing or written excludes fax but not email.

## 2. Quotations and prices

- 2.1. From time to time, HARGASSNER shall provide the Customer with its quotation for the supply of goods and/or services in accordance with these General Terms and Conditions ("**Quotation**").
- 2.2. Unless expressly stated otherwise, all prices quoted by HARGASSNER in its Quotations and price lists are non-binding and exclusive of value added tax as chargeable from time to time ("**VAT**").
- 2.3. Unless otherwise expressly agreed by HARGASSNER in writing the price of an Order (as defined below) shall be:
  - 2.3.1. calculated by reference to HARGASSNER's price list applicable on the day the Order is accepted by HARGASSNER; and
  - 2.3.2. exclusive of all costs and charges of packaging, insurance, transport of the goods, and VAT which shall be invoiced to the Customer.
- 2.4. HARGASSNER reserves the right to increase the price of the Order, by giving notice to the Customer at any time before supply of the goods and/or performance of the services, to reflect any increase in the cost of the goods to HARGASSNER that is due to:
  - 2.4.1. any factor beyond the control of HARGASSNER (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 2.4.2. any request by the Customer to change the Order or the specification of any goods or services; or
  - 2.4.3. any delay caused by any instructions of the Customer or failure of the Customer to give HARGASSNER adequate or accurate information or instructions in respect of the goods and/or services.
- 2.5. HARGASSNER shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom HARGASSNER engages in connection with the services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by HARGASSNER for the performance of the services, and for the cost of any materials.
- 2.6. HARGASSNER shall prepare Quotations using all reasonable care and expertise but does not guarantee that Quotations will be free of errors or omissions. The Customer acknowledges and agrees that Quotations provided by HARGASSNER are non-binding and that HARGASSNER shall, to the extent permitted under law, have no liability in respect of a Quotation provided to the Customer that contains any errors or omissions.
- 2.7. Export deliveries are strictly charged in Pounds Sterling ("**GBP**") and are also to be paid in GBP. If HARGASSNER agrees in writing that payment can be made in a different currency, the payment shall be made on the basis of the exchange rate valid on the date the Contract comes into existence in accordance with clause 3.2. For this calculation, only the Bank of England's currency conversion rate is relevant.

## 3. Orders, acceptance and basis of contract

- 3.1. By ordering goods and/or services from HARGASSNER (as set out in the Customer's written acceptance of the Quotation) ("**Order**"), the Customer shall be deemed to have accepted these General Terms and Conditions. The Order constitutes an offer by the Customer to purchase goods and/or services from HARGASSNER in accordance with these General Terms and Conditions.
- 3.2. The Order shall only be deemed to be accepted by HARGASSNER when HARGASSNER issues written acceptance of the Order to the Customer at which point and on which date the contract shall come into existence ("**Contract**").
- 3.3. Any samples, drawings, descriptive matter or advertising issued by HARGASSNER and any descriptions of the goods or illustrations or descriptions of the services contained in HARGASSNER's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods and/or services described in them. They shall not form part of the Contract between HARGASSNER and the Customer nor have any contractual force.

## 4. Supply of goods

- 4.1. Save as modified by any applicable specification agreed in writing between the parties, the goods shall be described in the Quotation.
- 4.2. To the extent that the goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify HARGASSNER 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by HARGASSNER arising out of or in connection with any claim made against HARGASSNER for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with HARGASSNER's use of the specification provided by the Customer. This clause 4.2 shall survive termination of the Contract.
- 4.3. HARGASSNER reserves the right to amend the specification of the goods if required by any applicable statutory or regulatory requirement, and HARGASSNER shall notify the Customer in any such event.

## 5. Delivery and Collection of goods

- 5.1. HARGASSNER shall ensure that each Delivery or Collection (as applicable) of the goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the goods.
- 5.2. Where the Order states that HARGASSNER shall deliver the goods, HARGASSNER shall deliver the goods to the location set out in the Order or such other location as the parties may agree in writing ("**Delivery Location**") at any time after HARGASSNER notifies the Customer that the goods are ready for delivery ("**Delivery**"). Delivery of the goods shall be completed on the completion of unloading of the goods at the Delivery Location.
- 5.3. Where the Order states that the Customer shall collect the goods, the Customer shall collect the goods from HARGASSNER's premises located at Unit 215b Holme Lacy Road, Hereford HR2 6BQ ("**HARGASSNER's Premises**") within 5 (five) Business Days (as defined below) of HARGASSNER notifying the Customer that the goods are ready for collection ("**Collection**"). Collection of the goods shall be completed on the completion of loading of the goods at HARGASSNER's Premises. For the purposes of these General Terms and Conditions, "**Business Day**" shall mean a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 5.4. Any dates quoted for Delivery or Collection (as applicable) of the goods are approximate only, and the time of Delivery or Collection (as applicable) is not of the essence. HARGASSNER shall not be liable for any delay in Delivery or Collection (as applicable) of the goods that is caused by a Force Majeure Event (as defined below) or the Customer's failure to provide HARGASSNER with adequate Delivery or Collection instructions or any other instructions that are relevant to the supply of the goods.
- 5.5. If HARGASSNER fails to supply 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. HARGASSNER shall have no liability for any failure to supply the goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide HARGASSNER with adequate Delivery or Collection instructions or any other instructions that are relevant to the supply of the goods.
- 5.6. If the Customer fails to accept Delivery or Collection (as applicable) of the goods within 5 (five) Business Days of HARGASSNER notifying the Customer that the goods are ready for Delivery or Collection (as applicable), then except where such failure or delay is caused by a Force Majeure Event or by HARGASSNER's failure to comply with its obligations under the Contract in respect of the goods:
  - 5.6.1. Delivery or Collection (as applicable) of the goods shall be deemed to have been completed at 9.00am on the 5<sup>th</sup> (fifth) Business Day following the day on which HARGASSNER notified the Customer that the goods were ready for Delivery or Collection (as applicable); and
  - 5.6.2. HARGASSNER shall store the goods until actual Delivery or Collection (as applicable) takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.7. If 10 (ten) Business Days after the day on which HARGASSNER notified the Customer that the goods were ready for Delivery or Collection (as applicable) the Customer has not accepted actual Delivery or Collection (as applicable) of them, HARGASSNER may resell or otherwise dispose of part or all of the goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the goods or charge the Customer for any shortfall below the price of the goods.
- 5.8. HARGASSNER may supply the goods by instalments. Each instalment shall constitute a separate contract. Any delay in supply of the goods or a defect to the goods included in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.9. The Customer shall, immediately on receipt, check that the goods are complete and that they have not been damaged in any way. Claims of damage and/or defects must be notified in writing to HARGASSNER on the deliver note and/or CMR document with photographs of the damage without delay. The written notification of any damage and/or defect must indicate clearly state the kind and extent of the alleged defect. If any damage, defects or errors are not notified to HARGASSNER in accordance with this clause 5.9, the goods shall be deemed accepted by the Customer.
- 5.10. All packaging materials, including but not limited to, cardboard, plastic packaging and pallets shall be disposed by the Customer at the Customer's cost and expense.

## 6. Quality of goods

- 6.1. HARGASSNER warrants that on Delivery or Collection (as applicable) the goods shall:
  - 6.1.1. conform in all material respects with their description and any applicable specification;
  - 6.1.2. be free from material defects in design, material and workmanship.
- 6.2. [Subject to clause 6.3, if:
  - 6.2.1. the Customer gives notice in writing to HARGASSNER during the Warranty Period that some or all of the goods do not comply with the warranty set out in clause 6.1;
  - 6.2.2. HARGASSNER is given a reasonable opportunity of examining such goods; and
  - 6.2.3. the Customer (if asked to do so by HARGASSNER) returns such goods to HARGASSNER's place of business at the Customer's cost,

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

- 6.3. HARGASSNER shall not be liable for the goods' failure to comply with the warranty set out in clause 6.1 if:
- 6.3.1. the Customer makes any further use of such goods after giving a notice in accordance with clause 6.2;
- 6.3.2. the defect arises because the Customer failed to follow HARGASSNER's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods or (if there are none) good trade practice regarding the same;
- 6.3.3. the defect arises as a result of HARGASSNER following any drawing, design or specification supplied by the Customer;
- 6.3.4. the Customer alters or repairs such goods without the written consent of HARGASSNER;
- 6.3.5. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
- 6.3.6. the goods differ from their description or any applicable specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4. Except as provided in this clause 6, HARGASSNER shall have no liability to the Customer in respect of the goods' failure to comply with the warranty set out in 6.1.
- 6.5. These General Terms and Conditions shall apply to any repaired or replacement goods supplied by HARGASSNER.

## 7. Terms of warranty and service

- 7.1. Where set out in any applicable documentation provided to the Customer by HARGASSNER, the goods and/or services supplied under the Contract shall be covered under HARGASSNER's separate warranty and service agreement with the Customer ("**Terms of Warranty and Service**"). The cover provided to the Customer under the Terms of Warranty and Service shall be subject to any terms and conditions included in the Terms of Warranty and Service from time to time.

## 8. Title and risk to goods

- 8.1. The risk in the goods shall pass to the Customer on completion of Delivery or Collection (as applicable).
- 8.2. Title to the goods shall not pass to the Customer until the earlier of:
- 8.2.1. HARGASSNER receiving payment in full (in cash or cleared funds) for the goods; and
- 8.2.2. the Customer reselling the goods, in which case title to the goods shall pass to the Customer at the time specified in clause 8.4.
- 8.3. Until title to the goods has passed to the Customer, the Customer shall:
- 8.3.1. store the goods separately from all other goods held by the Customer so that they remain readily identifiable as HARGASSNER's property;
- 8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
- 8.3.3. maintain the goods in satisfactory condition and keep them insured against all risks for their full price on HARGASSNER's behalf from the date of Delivery or Collection (as applicable);
- 8.3.4. notify HARGASSNER immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4 (both inclusive); and
- 8.3.5. give HARGASSNER such information as HARGASSNER may reasonably require from time to time relating to:
- (i) the goods; and
- (ii) the ongoing financial position of the Customer.
- 8.4. Subject to clause 8.5, the Customer may resell or use the goods in the ordinary course of its business (but not otherwise) before HARGASSNER receives payment for the goods. However, if the Customer resells the goods before that time:
- 8.4.1. it does so as principal and not as HARGASSNER's agent; and
- 8.4.2. title to the goods shall pass from HARGASSNER to the Customer immediately before the time at which resale by the Customer occurs.
- 8.5. At any time before title to the goods passes to the Customer, HARGASSNER may:
- 8.5.1. by notice in writing, terminate the Customer's right under clause 8.4 to resell the goods or use them in the ordinary course of its business; and
- 8.5.2. require the Customer to deliver up all goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the goods are stored in order to recover them.

## 9. Return of goods which are not defective

- 9.1. In exception cases, HARGASSNER may agree, at its sole discretion, to accept the return of delivered, not defective goods ("**Returned Goods**").
- 9.2. Where HARGASSNER agrees to accept Returned Goods, the Customer shall:
- 9.2.1. incur all the costs, expenses and risk associated with the return of the Returned Goods to HARGASSNER; and
- 9.2.2. enclose the original invoice or the delivery note (or a copy of either document) with the Returned Goods.
- 9.3. Upon the receipt of Returned Goods by HARGASSNER:
- 9.3.1. if HARGASSNER determines, in its absolute sole discretion, that the Returned

Goods are undamaged, in their original condition, and are still in HARGASSNER's product range then HARGASSNER shall issue the Customer with a credit note for the value of the Returned Goods; and

- 9.3.2. if HARGASSNER determines, in its absolute sole discretion, that the Returned Goods are damaged, not otherwise in their original condition, or are no longer in HARGASSNER's product range HARGASSNER reserves the right to refuse to issue the Customer with a credit note for the value of the Returned Goods, or to only grant the Customer a partial amount as a credit note for the value of the Returned Goods.
- 9.4. HARGASSNER can only issue the Customer with a credit note in accordance with this clause 9 if the original invoice or the delivery note (or a copy of either document) is enclosed with the Returned Goods.
- 9.5. Returned Goods which are damaged, not otherwise in their original condition, or which are no longer in HARGASSNER's product range may be disposed of by HARGASSNER at its option.

## 10. Supply of services

- 10.1. HARGASSNER shall supply the services to the Customer in accordance with their specification. Save as modified by any applicable specification agreed in writing between the parties, the services shall be described in the Quotation.
- 10.2. HARGASSNER shall use all reasonable endeavours to meet any performance dates for the services specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the services or the Contract.
- 10.3. HARGASSNER reserves the right to amend any applicable services specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the services, and HARGASSNER shall notify the Customer in any such event.
- 10.4. HARGASSNER warrants to the Customer that the services will be provided using reasonable care and skill.

## 11. Customer's obligations

- 11.1. The Customer shall:
- 11.1.1. ensure that the terms of the Order and any information it provides to HARGASSNER is complete and accurate;
- 11.1.2. provide HARGASSNER comprehensive and correct information, data and details required for the manufacture of the goods and/or the performance of the services (including, but not limited to, general measurements, boiler room details, fuel storage room details and chimney details);
- 11.1.3. co-operate reasonably with HARGASSNER in all matters relating to the Contract;
- 11.1.4. provide HARGASSNER, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by HARGASSNER to provide the services;
- 11.1.5. provide HARGASSNER with such information and materials as HARGASSNER may reasonably require in order to supply the services, and ensure that such information is complete and accurate in all material respects;
- 11.1.6. prepare the Customer's premises for the supply of the services;
- 11.1.7. 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;
- 11.1.8. comply with all applicable laws, including health and safety laws; and
- 11.1.9. keep all materials, equipment, documents and other property of HARGASSNER ("**HARGASSNER Materials**") at the Customer's premises in safe custody at its own risk, maintain the HARGASSNER Materials in good condition until returned to HARGASSNER, and not dispose of or use the HARGASSNER Materials other than in accordance with HARGASSNER's written instructions or authorisation.
- 11.2. If HARGASSNER's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 11.2.1. without limiting or affecting any other right or remedy available to it, HARGASSNER shall have the right to suspend performance of the Contract 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 in each case to the extent the Customer Default prevents or delays HARGASSNER's performance of any of its obligations;
- 11.2.2. HARGASSNER shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from HARGASSNER's failure or delay to perform any of its obligations as set out in this clause 11.2; and
- 11.2.3. the Customer shall reimburse HARGASSNER on written demand for any costs or losses sustained or incurred by HARGASSNER arising directly or indirectly from the Customer Default.

## 12. Payment

- 12.1. HARGASSNER shall invoice the Customer in respect of an Order in accordance with the invoicing procedure set out in the Quotation
- 12.2. If no alternative payment terms are agreed by HARGASSNER in its Quotation, the Customer shall pay each invoice submitted by HARGASSNER:
- 12.2.1. immediately upon receipt of the invoice by the Customer;
- 12.2.2. in full and in cleared funds to a bank account nominated in writing by HARGASSNER, and
- 12.2.3. time for payment shall be of the essence of the Contract.
- 12.3. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is by HARGASSNER to the Customer, the Customer shall, on receipt of a valid VAT invoice from HARGASSNER, pay to HARGASSNER such additional amounts in respect of VAT as are chargeable on the supply of the goods or services at the same time as payment is due for the supply of the goods or services.

12.4. If the Customer fails to make a payment due to HARGASSNER under the Contract by the due date, then, without limiting HARGASSNER remedies under clause 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 12.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

12.5. All amounts due under the Contract 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).

12.6. All bank charges, fees and taxes are at the expense of the Customer.

### 13. Termination

13.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.1.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 20 (twenty) Business Days after receipt of notice in writing to do so;

13.1.2. the other party takes 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), obtaining a moratorium, 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.1.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.1.4. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.2. Without affecting any other right or remedy available to it, HARGASSNER may terminate the Contract with immediate effect by giving written notice to the Customer if:

13.2.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or

13.2.2. there is a change of control of the Customer.

13.3. Without affecting any other right or remedy available to it, HARGASSNER may suspend the supply of goods or the supply of services under the Contract or any other contract between the Customer and HARGASSNER if:

13.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment;

13.3.2. the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4 (both inclusive), or

13.3.3. HARGASSNER reasonably believes that the Customer is about to become subject to any of the events in clause 13.1.2 to clause 13.1.4 (both inclusive).

### 14. Consequences of termination

14.1. On termination of the Contract:

14.1.1. the Customer shall immediately pay to HARGASSNER all of HARGASSNER's outstanding unpaid invoices and interest and, in respect of goods and services supplied but for which no invoice has been submitted, HARGASSNER shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

14.1.2. the Customer shall return all HARGASSNER Materials and any goods which have not been fully paid for. If the Customer fails to do so, then HARGASSNER 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 the Contract.

14.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

14.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

### 15. Intellectual property rights

15.1. For the purposes of these General Terms and Conditions, "Intellectual Property Rights" shall mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

15.2. All Intellectual Property Rights in or arising out of or in connection with the Contract (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by HARGASSNER.

15.3. The Customer grants HARGASSNER a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to HARGASSNER for the term of the Contract for the purpose of enabling HARGASSNER to exercise its rights and perform its obligations under or in connection with the Contract.

### 16. Confidentiality and publicity

16.1. Each party undertakes that it shall not at any time during the Contract, and for a period of 2 (two) years after termination or expiry of the Contract, disclose to any

person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.2 and clause 16.3.

16.2. Each party may disclose the other party's confidential information:

16.2.1. to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

16.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3. Notwithstanding any other term of the Contract, HARGASSNER shall be permitted without restriction to use photographs of any of the goods and/or services supplied under the Contract in its publicity and/or advertising materials.

16.4. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### 17. Limitation of liability

17.1. HARGASSNER has obtained insurance cover in respect of its own legal liability under the Contract. The limits and exclusions in this clause reflect the insurance cover HARGASSNER has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

17.2. The restrictions on liability in this clause 17 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

17.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

17.3.1. death or personal injury caused by negligence;

17.3.2. fraud or fraudulent misrepresentation;

17.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

17.3.4. defective products under the Consumer Protection Act 1987.

17.4. Subject to clause 17.3, HARGASSNER's total liability to the Customer shall not exceed the total amounts paid by the Customer to HARGASSNER under the Contract.

17.5. Subject to clause 17.3, HARGASSNER shall not be liable to the Customer for the following losses, which are whole excluded:

(i) loss of profits;

(ii) loss of sales or business;

(iii) loss of agreements or contracts;

(iv) loss of anticipated savings;

(v) loss of use or corruption of software, data or information;

(vi) loss of or damage to goodwill; and

(vii) indirect or consequential loss.

17.6. HARGASSNER has given commitments as to compliance of the goods and services with relevant specifications under the Contract. 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.

17.7. This clause 17 shall survive termination of the Contract.

### 18. Force majeure

18.1. Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a "Force Majeure Event"). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 (twelve) weeks, the party not affected may terminate the Contract by giving 5 (five) days' written notice to the affected party.

### 19. Assignment and other dealings

19.1. HARGASSNER 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.

19.2. 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 HARGASSNER.

### 20. Notices

20.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

20.1.1. 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

20.1.2. sent by email to the email address for that party as set out in the Quotation (or an address substituted in writing by the party to be served).

20.2. Any notice shall be deemed to have been received:

- 20.2.1. if delivered by hand, at the time the notice is left at the proper address;
  - 20.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - 20.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.
- 20.3. 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.

## **21. Severance**

- 21.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 21 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

## **22. Waiver**

- 22.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 22.2. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **23. No partnership or agency**

- 23.1. 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.

## **24. Entire agreement**

- 24.1. The Contract constitutes the entire agreement between the parties.
- 24.2. Each party acknowledges that in entering into the Contract it does not rely on 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 misstatement based on any statement in the Contract.

## **25. Third party rights**

- 25.1. 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.
- 25.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

## **26. Variation**

- 26.1. Except as set out in these General Terms and Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

## **27. Governing law**

- 27.1. 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.

## **28. Jurisdiction**

- 28.1. 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.