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Terms of Sales

Standard Sales Terms and Conditions of Sale for John Hargreaves (C & S) Limited

1. Definitions

1.1 In these Conditions:-

- "**DBF**" means Double Faced Corrugated Board;
 "the **Company**" means John Hargreaves (C & S) Limited (registered in England under number 197422);
 "the **Conditions**" means the standard terms and conditions of sale set out herein and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company and specified herein or overleaf;
 "the **Contract**" means the contract set out in the Order Confirmation and in this document for the purchase and sale of the Goods;
 "the **Customer**" means the Person whose order for the Goods is accepted by the Company by way of the Order Confirmation;
 "the **Goods**" means the goods which the Company is to supply in accordance with these Conditions and as described on the Order Confirmation and including the Boards and the Rolls;
 "**Order Confirmation**" means the note of confirmation delivered by the Company to the Customer confirming acceptance of the Customer's order;
 "**Person**" means an individual or a body corporate or unincorporate or a partnership and "Persons" shall be construed accordingly;
 "**SFR**" means Single Face Corrugated Rolls;
 "**Writing**" shall have the ordinary meaning ascribed to it, including type written documents or communications and shall include telex, cable, facsimile transmission and comparable means of communication.
 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
 1.3 Except where the context otherwise requires words herein denoting the singular include the plural and vice versa; words denoting any one, gender include all genders.
 1.4 References to clauses are, unless the context otherwise permits, references to clauses of these Conditions.
 1.5 Clause headings herein are for reference only and do not affect the construction of these Conditions or the Contract.

2. Parties

2.1 The parties to these Conditions are the Company and the Customer. All transactions as between the Company and the Customer are as between principal and principal and are subject to the following expressed conditions.

3. Variation

3.1 The Contract between the Company and the Customer cannot be varied, altered or excluded unless such variation, alteration or exclusion is agreed between the parties in Writing between the authorised representatives of the Company and the Customer (being in the case of the Company a Director of the Company) and signed by the parties to be bound.

4. Waiver

4.1 Any concession, latitude or waiver allowed by the Company at any time shall only apply to the extent specifically covered by such concession, latitude or waiver and shall not prevent the Company otherwise exercising its full rights under the Contract and these Conditions.

5. Acceptance of Orders

- 5.1 All quotations or tenders made and price or product lists supplied by the Company shall be treated as invitations to treat only.
 5.2 The Company also reserves the right (without prejudice to any other remedy) to cancel any full or part order placed by the Customer as a result of the Company being prevented from supplying the Goods ordered for any reason whatsoever.
 5.3 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
 5.4 All orders placed by the Customer shall be acknowledged by the Company by way of delivery by the Company of the Order Confirmation. The Order Confirmation shall form the basis of the Contract between the parties and shall be based on these terms and conditions
 5.5 In addition to the Company's rights set out in Clause 5.2 above, the Company reserves the right to refuse to accept any order placed with it if it is not capable of fulfilling such order and further, with the consent of the Customer, to sub-contract such order to a third party. The Customer hereby agrees that the Company shall pass such work on to the sub-contractor as agent for the sub-contractor and any rights of action that the Customer may have in relation to such work carried out by the sub-contractor shall be between the Customer and the subcontractor.

6. Specification

- 6.1 Subject to Clause 6.3, the Company reserves the right to vary or upgrade the specification of the Goods without liability to the Customer.
 6.2 It is incumbent upon the Customer to satisfy himself absolutely that he fully understands the specification of the Goods that the Customer is purchasing.
 6.3 Subject to the generality of clause 6.1, the quantity, quality, description and specification of the Goods to be supplied to the Customer by the Company shall be in accordance with the description of such goods indicated on the Order Confirmation by the Company subject always to all and any amendments or variations whatsoever which may be agreed in Writing between the Company and the Customer subsequent to the Order Confirmation and before delivery.
 6.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
 6.5 It is further hereby acknowledged by the Customer that due to the difficulty of producing exact quantities of the Goods, a margin of 10% above or below the exact quantity of Goods ordered shall be accepted by the

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Customer and the Customer shall have no right of action in respect of any loss suffered as a result of quantities being within the margin of 10% above or below the quantity of Goods stated on the Order Confirmation.

6.6 It is accepted by the Customer that there may be an inaccuracy in the dimensions of DFB, of 2mm in width or length, and in the Rolls, of 3½mm in width, from the measurements stated in the Order Confirmation and the Customer shall have no right of action in respect of any loss suffered as a result thereof.

7. Carriage and Packaging

7.1 Unless expressly stated in Writing by the Company all prices quoted include packing and delivery charges.

7.2 The packaging of the Goods is at the sole discretion of the Company who shall have the right to pack the Goods in such manner and with such materials as it thinks fit.

7.3 There shall be a "small order delivery charge" for all orders below a minimum value, such minimum shall be set by the Company from time to time and if the charge applies the Customer will be so informed when he receives the confirmation of his order.

7.4 The Company reserves the right to charge an "urgent order delivery charge" where the Customer requests delivery earlier than the agreed delivery date and the means of delivery results in a higher-than-normal cost to the company.

8. Price

8.1 The price for the Goods shall be the price as set out in the Order Confirmation and shall be exclusive of Value Added Tax and any other taxes from time to time in force.

8.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions. The Customer shall have the right to cancel the Contract in the event that the Company has to increase the price of the Goods in accordance with this clause.

9. Payment

9.1 Payment shall be made no later than the due date as shown on the invoice.

9.2 Payment shall only be deemed to be made when cleared funds have been received by the Company and the Company's bank account credited. The details of the Company's bank account are printed on the statement issued every month.

9.3 Where the Customer wrongfully fails to take delivery of the Goods, the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Company has tendered delivery of the Goods.

9.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

9.4.1 cancel the Contract or suspend any further deliveries to the Customer; and/or

9.4.2 appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and/or

9.4.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per annum above National Westminster Bank plc base rate from time to time, with quarterly rests until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

9.5 The Customer shall not withhold or reduce the amount due on account of any complaint unless such complaint has been received in Writing by the Company

10. Collection

10.1 If the recovery of any sums outstanding from the Customer to the Company is passed to a debt collection agency, the Customer shall pay the Company's costs incurred on an indemnity basis in instructing the said debt collection agency and all legal and other costs ancillary thereto.

11. Delivery

11.1 Save where the Customer collects the Goods from the Company's premises (in which case delivery shall take place at the Company's premises) delivery shall take place at the Customer's premises or such other actual location of which the Customer shall have previously notified the Company in Writing.

11.2 The Company will endeavour to complete on any delivery dates stipulated, but such dates are only estimated, and the Company will not be liable to the Customer for any loss, damage, injury, penalty, claim or any other matter of whatsoever nature arising from any delay of twenty-eight days or less in delivery.

11.3 The Company shall be entitled to deliver Goods by instalments.

11.4 The Company reserves the right to withhold delivery of Goods to the Customer at any time when the Customer is exceeding or upon delivery would exceed any credit limit with the Company either in relation to such Goods or otherwise.

11.5 A delivery or collection note signed by the Customer or the duly authorised agent of the Customer is deemed to be absolute evidence of delivery or collection of the Goods specified therein.

11.6 In the event that the Customer postpones or in any way delays a delivery in excess of fourteen days and the Company has to re-programme such delivery, the Company reserves the right to charge the Customer for any additional expenses thereby incurred, including in particular, without limitation, interest at the rate specified in clause 9.4.3 calculated from the original date of delivery (as appropriate) to the date of actual payment.

12. Cancellation by the Customer

12.1 If the Customer cancels an order in whole or part at any time the Customer shall be liable to pay to the Company as liquidated damages such an amount as the Company shall reasonably estimate to represent its loss (including loss of profit) in consequence of such cancellation. Such cancellation shall not be effective unless it is made in Writing and is accepted by the Company.

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13. Storage Charges

13.1 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

- 13.1.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 13.1.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

14. Claims and Damages

14.1 The Customer shall upon delivery examine the Goods and shall promptly but in any event;

- 14.1.1 Within three days of delivery for complaints relating to delamination or other quality defects.
- 14.1.2 Within 24 hrs of delivery date and time for transport and FLT damages.

The Customer should notify the Company in Writing of any apparent damage, defect or shortage. These Conditions shall not affect the Customer's statutory rights in any way whatsoever.

14.2 In default of the written notification referred to in clause 14.1 the Company shall be deemed conclusively to have properly performed its obligations under the Contract.

14.3 The Company shall not be liable for any loss or damage of any kind arising out of the use of the Goods supplied by it under the Contract. The limit of the Company's liability under the Contract for any breach of the terms of these Conditions, whether as to damages or otherwise, shall be limited to the contract price of the Goods.

14.4 The Company shall not be liable or held responsible for any damages, costs, charges or expenses awarded against or any liabilities incurred by the Customer arising out of any infringement of any patent belonging to third parties.

14.5 Goods supplied to the Customer may not be returned without the Company's Written consent. The Company reserves the right to refuse Goods so returned.

15. Title and Risk

15.1 The Customer acknowledges that before entering into the Agreement for the purchase of Goods from the Company it has expressly represented and warranted to the Company that it is not insolvent and has not committed any act of bankruptcy or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or entitle any Person to petition for winding-up of the Customer or exercise any other right over or against the Customer or its assets.

15.2 The risk with Goods shall pass to the Customer on delivery and the Customer should insure the Goods accordingly. In the event of any loss or damage to the Goods prior to the Company receiving payment in full for the Goods or in respect of any sums owed by the Customer to the Company, the Customer shall hold the proceeds of any such insurance on behalf of the Company as trustee for the Company.

15.3 Notwithstanding the delivery and passing of risk in the Goods or any other provision of these Conditions, the legal and beneficial property and title in the Goods shall remain in the Company and shall not pass to the Customer until:

- 15.3.1 the purchase price of all Goods comprised in the Contract has been paid in full to the Company either by way of cash or cleared funds;
- 15.3.2 any other sums owed by the Customer to the Company have been paid in full to the Company either by way of cash or cleared funds.

15.4 So long as the property in the Goods remains vested in the Company the Customer shall keep the Goods as the Company's fiduciary agent and bailee and shall insofar as may be possible store them in such a way that they are identifiable as the property of the Company and separate from all other Goods in the Customer's possession.

15.5 Until such time as legal ownership in the Goods passes to the Customer, the Company may at any time enter upon any of the Customer's premises and remove the Goods there from and the Customer permits the Company access to the said premises to do so. All costs and expenses reasonably incurred by the Company in connection with such recovery shall be paid by the Customer.

15.6 The Customer may attach or fix the Goods to other property belonging to the Customer but, provided that the Goods may be removed without causing damage (other than superficial damage) to the property of the Customer, such attaching or fixing shall not effect the ownership of the Goods.

15.7 In the event that the price is not paid by the due date, the Company shall at its absolute discretion be at liberty either to recover the Goods or maintain an action for the price and/or damages.

15.8 No provision of these Conditions shall prejudice the Company's right to exercise any alternate remedy whatsoever in default of payment by the Customer or any other breach of contract.

16. Termination

16.1 If the Company or the Customer shall not comply with any of their obligations hereunder, the other party shall have the right to terminate the Contract forthwith but without affecting any other claim, right or remedy it may have hereunder against the other party.

16.2 If the Customer shall have a Bankruptcy Order made against him or commits any act of bankruptcy or on the death or mental incapacity or insolvency of the Customer:

- 16.2.1 the Company may at its option cancel the Contract or any contract in relation to future deliveries;
- 16.2.2 the price of all Goods delivered to the Customer to date and all expenses incurred by the Company in performance or part performance of this or any other contract with the Customer and any sums due to it from the Customer on this or any other account shall immediately become due and payable from the Customer to the Company;
- 16.2.3 the Company has the right to cancel any other contract made with the Customer;
- 16.2.4 the Company shall have the right, without notice, to enter upon the Customer's premises and remove any Goods and materials which are the property of the Company; all such rights to be without prejudice to the Company's right to recover the amount due to the Company for Goods delivered to date and any loss sustained.

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17. Force Majeure

17.1 Insofar as the performance of the Contract by the Company may be affected by any lack of available transport or materials, any restriction, regulation or decree by any local or municipal authority or government department or by any strike, commotion, riot, act of God, any refusal by a supplier to supply the Goods or for any other cause or reason of whatsoever nature beyond the Company's control (which shall be construed without the ejusdem generis rule) the Company may elect at its absolute discretion either:-

17.1.1 to terminate the Contract; or

17.1.2 to proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances and with such reasonable variation as the circumstances shall prevail.

17.2 In either instance the Company shall not be liable to the Customer for any loss or damages or expenses whatsoever suffered or incurred by the Customer.

18. Severability

18.1 Should any of these Conditions be found by a court or other competent authority to be void or unenforceable such provision shall be deemed to be deleted from these Conditions and the remaining Conditions shall continue in full force and effect.

19. Notices

19.1 Save as hereinbefore otherwise provided, any notice required or permitted to be given by the Customer under these Conditions shall be in Writing, addressed to the Company at its trading address shown on the Contract. Any notice required or permitted to be given by the Company to the Customer under these Conditions shall be in Writing, addressed to the Customer at the address shown for the Customer herein.

20. Conflict

20.1 To the extent of any conflict between these Conditions and any Terms and Conditions of the Customer either on the Customer's order form or otherwise, the Conditions herein contained shall take precedence. The Company shall not be bound by the Customer's Terms and Conditions or any of them unless expressly agreed to in Writing by a Director of the Company.

21. Proper Law

21.1 These Conditions and the Contract shall be construed according to English Law and the parties hereto hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.