

# Art & Assembly Limited Terms and Conditions

Company No. 8517141 / Vat No. 182797754

Amended 12-04-2017

## DEFINITIONS

In these Conditions, the following definitions apply:

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

**Charges:** the charges payable by the Client to the Designer for the supply of the Services in accordance with clause 4.

**Commencement Date:** has the meaning set out in clause 1.2.

**Conditions:** these Terms and Conditions as amended from time to time.

**Contract:** the written contract between the Designer and the Client for the supply of Services in accordance with these Conditions. When a contract document is not issued then the Contract will refer to any other written form of agreement between the Designer and the Client. This includes, but is not limited to:

- Project start invoices and proposals (assuming acceptance of the proposal by the Client either written or in the form of payment made to the Designer for the proposed Services)
- Email correspondences
- Payments received by the Designer from the Client for purchase of Services

**Client:** the person(s) or firm(s) who purchases Services from the Designer.

**Designs:** drawings, renderings, models, technical schematics, images produced by the Designer for the Client. Sometimes provided in CAD or other digital format. Sometimes provided as physical drawings, models etc.

**Designer:** Art & Assembly Limited registered in England and Wales. Company number 08517141.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get- up,

goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Client's order for Services as set out in the Client's written acceptance of the Designer's cost estimate and/or Proposal.

**Proposal:** the description or specification of the Services provided in writing by the Designer to the Client. This may sometimes take the form of a final cost estimate or project start invoice.

**Services:** the fabrication and design services, including deliverables, supplied by the Designer to the Client.

## **1. BASIS OF CONTRACT**

- . 1.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- . 1.2 The Order shall only be deemed to be accepted when the Designer issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- . 1.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Designer that is not set out in the Contract.
- . 1.4 Any samples, drawings, descriptive matter or advertising issued by the Designer, and any descriptions or illustrations contained in the Designer's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- . 1.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- . 1.6 Any quotation given by the Designer is only valid for a period of 20 Business Days from its date of issue.

## **2. SUPPLY OF SERVICES**

- . 2.1 The Designer shall supply the Services to the Client in accordance with the Proposal in all material respects.
- . 2.2 The Designer shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services unless otherwise expressly agreed in writing.
- . 2.3 The Designer 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 the Designer shall notify the Client in any such event.
- . 2.4 The Designer warrants to the Client that the Services will be provided using reasonable care and skill.

## **3. CLIENT'S OBLIGATIONS**

- . 3.1 The Client shall:
  - (a) ensure that the terms of the Order and any information it provides in the accordance with the Order are complete and accurate;
  - (b) co-operate with the Designer in all matters relating to the Services;
  - (c) provide the Designer with access to the Client's premises, office accommodation and other facilities as reasonably required by the Designer;
  - (d) provide the Designer with such information and materials as the Designer may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.
- . 3.2 If the Designer's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):
  - (a) the Designer shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Designer's performance of any of its obligations;

(b) the Designer shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Designer's failure or delay to perform any of its obligations as set out in this clause 3.2; and

(c) the Client shall reimburse the Designer on written demand for any costs or losses sustained or incurred by the Designer arising directly or indirectly from the Client Default.

#### **4. CHARGES AND PAYMENT**

4.1 The Charges for the Services shall be on a time, materials and expense basis:

(a) the Charges shall be calculated in accordance with the Designers' standard daily rate which can be provided upon written request. The daily rate is determined by the specific requirements and difficulty of the specific project. Freelancers rates are determined by skill level and experience and vary person to person;

(b) the Designer's standard daily rate is calculated on the basis of a eight-hour day from [9.00 am to 6.00 pm] worked on Business Days;

(c) the Designer shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Designer 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 the Designer for the performance of the Services, and for the cost of any materials.

4.2 For Services provided for longer than 12 months from the Commencement Date, the Designer reserves the right to increase its standard daily rate. The Designer will give the Client written notice of any such increase 2 month before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify the Designer in writing within 1 week of the date of the Designer's notice and the Designer shall have the right without limiting its other rights or remedies to terminate the Contract by giving written notice to the Client.

4.3 The Designer shall invoice the Client as detailed in the Proposal. The Proposal itself may at times function as the project start invoice. If no payment schedule has been given payment shall default to a standard scheme of 50% total project value to be paid prior to start of work and 50% total project value to be paid at project completion, prior to goods leaving the workshops. For projects with a total value exceeding £5,000 the standard default payment schedule shall be 50% total project value to be paid prior to start of work, 25% total project value to be paid at an interim point in the work and the remaining 25% to be paid at project

completion, prior to goods leaving the workshops. The interim point may be agreed between the Designer and the Client or specified by the Designer in the Proposal.

4.4 The Client shall pay each invoice submitted by the Designer:

- (a) as per the payment scheme detailed in clause 4.3.
- (b) if any invoice is not paid after 30 days of the date of the invoice a late fee may be applied as per clause 4.6. The Designer may choose to terminate the Contract, providing written notice to the Client after ten days if the Client does not abide by the terms of payment, as detailed in clause 4.3.
- (b) in full and in cleared funds to a bank account nominated in writing by the Designer.
- (c) time for payment shall be of the essence of the Contract.

4.5 All amounts payable by the Client under the Contract are inclusive of amounts in respect of value added tax chargeable for the time being (VAT). The contract shall specify both VAT inclusive and exclusive amounts.

4.6 If the Client fails to make any payment due to the Designer under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Lloyds Bank's base rate from time to time. 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 Client shall pay the interest together with the overdue amount.

Furthermore, a fixed late fee of £15 will be added to the total amount due at the first of each month after the first 30 days that an account is in arrears (60 days from issue of final invoice). This amount will be added to the principle and interest applied. This will apply until the overdue amount is paid in full, unless otherwise expressly agreed in writing.

4.7 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Designer may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Designer to the Client.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- . 5.1 Upon payment of the Charges, the Designer shall assign to the Client all right title and interest in the Intellectual Property Rights in the Designs, unless otherwise agreed in writing.
- . 5.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Designer's obtaining a written licence from the relevant licensor on such terms as will entitle the Designer to license such rights to the Client.
- . 5.3 At the Client's expense, the Designer shall execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to these Conditions.

## **6. 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 6 shall survive termination of the Contract.

## **7. LIMITATION OF LIABILITY:**

### **ATTENTION SHOULD BE PARTICULARLY DRAWN TO THIS CLAUSE**

- . 7.1 The Designer warrants that its own Designs are original and authored by the Designer or an employee and/or subcontractor that may be employed by the Designer (temporarily, part time, full-time or otherwise).
- . 7.2 The Designer provides no warranties as regards any Design, original and authored by the Designer and/or provided to the Designer by the

Client and/or any third party, passing relevant product testing procedures and no warranties as regards the safety of its Designs unless verified by an engineer. Engineer verification is undertaken only upon the request of the Client, included in the Contract and/or added to the Services by the Designer and communicated to the Client in writing. The Designer is not required to obtain engineer verification on any work unless expressly mutually agreed in writing.

**7.3** The Client shall, where relevant and at its expense, carry product liability and comprehensive general liability insurance coverage of at least £1M. The Client shall ensure that such insurance remains in effect throughout the duration of these Conditions and for a period of 5 years after termination or expiry of the Conditions, and shall supply the Designer with a copy of such policy on request.

**7.4** Nothing in these Conditions shall limit or exclude the Designer's liability for:

(a) fraud or fraudulent misrepresentation; or

(b) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

**7.5** Subject to clause 7.1:

(a) the Designer shall under no circumstances whatever be liable to the Client, 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) the Designer's total liability to the Client 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 in no circumstances exceed the Charges for the Services.

**7.6** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**7.7** In special cases the Designer may provide a product guarantee to the Client as part of the Contract and/or Proposal. The terms of this guarantee are valid and binding only if in writing and only if agreed to by the Client in writing. The terms of the guarantee will be bespoke and vary depending on the specific project as well as the specific Client.

**7.8** This clause 7 shall survive termination of the Contract.

## 8. TERMINATION

8.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 month written notice.

8.2 Without limiting its other rights or remedies, either 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 any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party (being an individual) is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- . (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- . (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- . (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(b) to clause 8.2(i) (inclusive);
- . (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- . (l) the other party's financial position deteriorates to such an extent that in the Designer's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- . (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

. **8.3** Without limiting its other rights or remedies, the Designer may terminate the events listed in clause 8.2(b) to clause 8.2(m), or the Designer reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

. **8.4** Without limiting its other rights or remedies, the Designer may suspend provision of the Services under the Contract or any other contract between the Client and the Designer if the Client becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(m), or the Designer reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

## **9. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- . (a) the Client shall immediately pay to the Designer all of the Designer's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the

Designer shall submit an invoice, which shall be payable by the Client immediately on receipt;

- . (b) the Client shall return all of the Designer Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Designer may enter the Client's premises and take possession of them. Until they have been returned, the Client 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, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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 survive termination shall continue in full force and effect.

## **10. FORCE MAJEURE**

- . 10.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Designer including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Designer or any other party), failure of a utility service or transport network, 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 Designers or subcontractors.
- . 10.2 The Designer shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- . 10.3 If the Force Majeure Event prevents the Designer from providing any of the Services for more than 4 weeks, the Designer shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

## **11. GENERAL**

- . 11.1 Assignment and other dealings.
  - . (a) The Designer may at any time assign, transfer, mortgage, 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 or agent.

(b) The Client shall not, without the prior written consent of the Designer, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

## 11.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax [or e-mail].

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax [or e-mail], one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 11.3 Severance.

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

. **11.4 Waiver:**

A waiver of any right under the Contract or law 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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

. **11.5** No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

. **11.6** Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

. **11.7** Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Designer.

. **11.8** Governing law. 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 the law of England and Wales.

. **11.9** Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims)