



Art & Assembly Ltd. Terms and Conditions

Company No. 8517141 / Vat No. 182797754

Amended 22.03.2023

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1. 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.

Client

the person(s) or firm(s) who purchases Goods and/or Services from Art & Assembly.

Commencement Date

has the meaning set out in clause 1.2.

Conditions

these Terms and Conditions as amended from time to time in accordance with clause 17.8.

Contract

the written contract between Art & Assembly and the Client for the supply of Goods and/or 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 Art & Assembly and the Client. This includes, but is not limited to:

- (a) Project start invoices and proposals (assuming acceptance of the proposal by the Client either written or in the form of payment made to Art & Assembly for the proposed Goods and/or Services)
- (b) Email correspondences
- (c) Payments received by Art & Assembly from the Client for purchase of Goods and/or Services

Deliverables

the deliverables set out in the Order produced by Art & Assembly for the Client.

Delivery Location

has the meaning given in clause 4.2.

Force Majeure Event

any circumstance not within a party's reasonable control, including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (including those of Art & Assembly's workforce and/ or subcontractors relevant to the Contract agreement); and
- (h) interruption or failure of utility service.

Goods

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

Goods Specification

any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Client and Art & Assembly.

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...

1. Definitions

Intellectual Property Rights (continued)

...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.

(Art & Assembly) Materials

has the meaning given in clause 8.1(h).

Order

the Client's order for the supply of Goods and/or Services, as set out in the Client's written acceptance of Art & Assembly's quotation and/or proposal, as the case may be.

Proposal

the description or specification of the Goods and/or Services to be supplied, provided in writing by Art & Assembly to the Client. This may take the form of a final cost estimate, quotation or project start invoice.

Services

the services, including the Deliverables, supplied by Art & Assembly to the Client as set out in the Service Specification, and which may in particular include the installation of the Goods for the Client at the Delivery Location.

Service Specification

the description or specification for the Services provided in writing by Art & Assembly to the Client.

1.2 Interpretation

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to writing or written includes fax and email.

2. Basis of Contract

- 2.1**
The Order constitutes an offer by the Client to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2**
The Order shall only be deemed to be accepted when Art & Assembly issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3**
The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Art & Assembly that is not set out in the written Contract.
- 2.4**
Any samples, drawings, descriptive matter or advertising issued by Art & Assembly and any descriptions of the Goods or illustrations or descriptions of the Services contained in Art & Assembly's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5**
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 law, trade custom, practice or course of dealing.
- 2.6**
Any quotation or tender given by Art & Assembly shall not constitute an offer, and is only valid for a period of [20] Business Days from its date of issue, unless otherwise agreed by Art & Assembly in writing.
- 2.7**
Force Majeure-conditions time-limited quotations: quotations or tenders given by Art & Assembly involving material Goods experiencing price volatility due to Force Majeure Events are only valid for a period of 24hrs from its date of issue, unless otherwise agreed by Art & Assembly in writing. The particular material Goods affected will be communicated to the Client in these circumstances.
- 2.8**
All of these Conditions shall apply to the supply of both Goods and Services, except where application to one or the other only is specified.

3. Supply of Goods & Services

3.1 Supply of Goods

Terms for the Supply of Goods from Art & Assembly to the Client, entail the following:

- (a) The Goods are described in the Contract between Art & Assembly & the Client, as modified by any applicable Goods Specification.
- (b) To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Client, the Client shall indemnify Art & Assembly 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 Art & Assembly arising out of or in connection with any claim made against Art & Assembly for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Art & Assembly's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- (c) Art & Assembly reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Art & Assembly shall notify the Client in any such event.

3.2 Supply of Services

Terms for the Supply of Services from Art & Assembly to the Client, entail the following:

- (a) Art & Assembly shall supply the Services to the Client in accordance with the Proposal in all material respects.
- (b) Art & Assembly shall use all reasonable endeavours to meet any performance dates specified in the Proposal, with the understanding any such proposed dates shall be estimates only, and time shall not be of the essence for performance of the Services unless otherwise expressly agreed in writing.
- (c) Art & Assembly reserves 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 Art & Assembly shall notify the Client in any such event.
- (d) Art & Assembly warrants to the Client that the Services will be provided using reasonable care and skill.

4. Delivery of Goods

4.1

Delivery charges are quoted separately to the Contract for the Supply of Goods & Services, unless otherwise agreed & written into the Contract. Clients have the option to collect the Goods from our place of business at no additional charge, but must do so per Art & Assembly's terms laid out in **clause 4.7 (UK Clients) & 4.8 (International Clients)**.

4.2

Art & Assembly shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Client and Art & Assembly reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) it states clearly on the delivery note any requirement for the Client to return any packaging material to Art & Assembly. The Client shall make any such packaging materials available for collection at such times as Art & Assembly shall reasonably request. Returns of packaging materials shall be at Art & Assembly's expense.

4.3

Art & Assembly shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after Art & Assembly notifies the Client that the Goods are ready.

4.4

Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and being signed for as received by Client's representative.

4.5

Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence unless expressly so agreed by Art & Assembly in writing. Art & Assembly shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide Art & Assembly with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6

If Art & Assembly fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Art & Assembly shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide Art & Assembly with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.7

For Clients within mainland UK: If the Client fails to accept delivery of the Goods within 5 Business Days of Art & Assembly notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Art & Assembly's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5th Business Day following the day on which Art & Assembly notified the Client that the Goods were ready; and
- (b) Art & Assembly shall store the Goods until delivery or collection takes place, and charge the Client for all related costs and expenses for storing (including insurance). **See clause 4.10 for storage charges & conditions.**

4. Delivery of Goods

4.8

For International Clients: If the Client fails to arrange delivery of the Goods within 20 Business Days of Art & Assembly notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Art & Assembly's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 20th Business Day following the day on which Art & Assembly notified the Client that the Goods were ready; and
- (b) Art & Assembly shall store the Goods until delivery requested or collection takes place, and charge the Client for all related costs and expenses for storing (including insurance). **See clause 4.10 for storage charges & conditions.**

4.9

Unless otherwise stated in the Order, Art & Assembly may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

4.10

In the event that the Client fails to accept delivery of the Goods within the specified delivery window (see clauses 4.7 & 4.8), storage charges and conditions apply:

- (a) A base storage fee of £50 will be applied starting from the day delivery has been deemed completed in line with clause 4.7(a) & 4.8(a), and will cover a period of one calendar month. After this period, Art & Assembly will continue to charge Goods storage at a rate of £50/month until the Client collects or requests re-delivery from Art & Assembly.

4.10 (continued)

- (b) If an item for storage exceeds 1m³, a rate of £50 per m³ will be calculated and charged on a monthly basis until collection or re-delivery.
- (c) Storage fees cover the cost of packing supplies to prevent damage to the Goods, moving Goods into storage, and occupying space in our workshop storage space only. This figure does not include insurance; **see 4.10(d)**.
- (d) Art & Assembly will take reasonable care and precautions with regard to moving and storing the Goods, but will not be held liable for any damage that may occur as a result of doing so, storage conditions and the passing of time after the Client fails to accept delivery of the Goods, arrange collection or request delivery from Art & Assembly.
- (e) If the Client would like to guarantee condition of the Goods while they are in our storage space, the Client can request an insurance quote. This will be charged in addition to our storage fee, and the insurance cost will be based on the commercial value of the Goods.

5. Quality

5.1

Art & Assembly warrants that on delivery, and for a period of 6 months from the date of delivery (and installation, where applicable) (warranty period), the Goods shall:

- (a) conform in all material respects with their description and the Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by Art & Assembly and/or specified in the Order.

5.2

Subject to clause 5.3, Art & Assembly shall, at its option, repair or replace the defective Goods, or partially refund the price of the defective Goods if:

- (a) the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Art & Assembly is given a reasonable opportunity of examining such Goods; and
- (c) the Client (if asked to do so by Art & Assembly and if practical to do so) returns such Goods to Art & Assembly's place of business at Art & Assembly's cost.

5.3

Art & Assembly shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3 (continued)

- (b) the defect arises because the Client failed to follow Art & Assembly'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;
- (c) the defect arises as a result of Art & Assembly following any drawing, design or Goods Specification supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of Art & Assembly;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure their working conditions; or comply with applicable statutory or regulatory standards.

5.4

Except as provided in this clause 5, Art & Assembly shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5

The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Art & Assembly.

6. Title & Risk

6.1

MAINLAND UK ONLY: INCOTERMS DAP

The risk in the Goods shall pass to the Client on completion of delivery at a mainland UK address.

INT'L EXPORTS: INCOTERMS EX WORKS

Where the Goods are being exported from the UK, the risk in the Goods shall pass to the Client upon collection from our workshop, unless otherwise agreed in the project contract.

6.2

Title to the Goods shall not pass to the Client until the earlier of:

- (a) Art & Assembly receives payment in full (in cleared funds) for the Goods and any other goods that Art & Assembly has supplied to the Client in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Client resells the Goods, in which case title to the Goods shall pass to the Client at the time specified in clause 6.4.

6.3

Until title to the Goods has passed to the Client, the Client shall:

- (a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as Art & Assembly's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Art & Assembly's behalf from the date of delivery;

(d) notify Art & Assembly immediately if it becomes subject to any of the events listed in **clause 14.1(b) to clause 14.1(d)**; and

(e) give Art & Assembly such information as Art & Assembly may reasonably require from time to time relating to:
(i) the Goods; and
(ii) the ongoing financial position of the Client.

6.4

Subject to clause 6.5, the Client may resell or use the Goods in the ordinary course of its business (but not otherwise) before Art & Assembly receives payment for the Goods. However, if the Client resells the Goods before that time:

- (a) it does so as principal and not as Art & Assembly's agent; and
- (b) title to the Goods shall pass from Art & Assembly to the Client immediately before the time at which resale by the Client occurs.

6.5

At any time before title to the Goods passes to the Client, Art & Assembly may:

- (a) by notice in writing, terminate the Client's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Client to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

7. Client's Obligations

7.1

The Client shall at the Client's own cost and expense:

- (a) ensure that the terms of the Order and any information that the Client provides in the Service Specification and the Goods Specification (including any drawings) are complete and accurate;
- (b) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services and/or fabrication of Goods are to start
- (c) co-operate with Art & Assembly in all matters relating to the Goods and Services, and in particular ensure that the following are provided on-site free of charge before and, where applicable, during the installation of the Goods (or seek an additional quotation from Art & Assembly to arrange any of the following if not in the original contract agreement):
 - (i) *Power – 110 V and/or 240 V mains electricity supply;*
 - (ii) *Scaffolding – any works above ground floor level require suitable scaffolding to this level;*
 - (iii) *Hoisting and craneage – all hoisting and crange of materials and equipment to working level to be carried out by the Client; and*
 - (iv) *Health & Safety and Welfare – all health and safety and welfare facilities conforming to the latest British Standards, relevant Codes of Practice and complying with all legal requirements;*
- (d) provide all reasonably necessary protection of Art & Assembly's works prior to Art & Assembly's arrival on site;
- (e) provide Art & Assembly, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Art & Assembly to provide the Services;
- (f) provide Art & Assembly with such information and materials as Art & Assembly may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

7.1 (continued)

- (g) prepare the Client's premises or other facilities for the supply of the Services (which may include the installation of the Goods);
- (h) comply with all applicable laws, including health and safety laws;
- (i) keep all materials, equipment, documents and other property of Art & Assembly (Art & Assembly Materials) at the Client's premises in safe custody at its own risk, maintain Art & Assembly Materials in good condition until returned to Art & Assembly, and not dispose of or use Art & Assembly Materials other than in accordance with Art & Assembly's written instructions or authorisation; and
- (j) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

7.2

If Art & Assembly'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) without limiting or affecting any other right or remedy available to it, Art & Assembly shall have the right to suspend the manufacture and/or delivery of the Goods and/or the 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 in each case to the extent the Client Default prevents or delays Art & Assembly's performance of any of its obligations;
- (b) Art & Assembly shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Art & Assembly's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Client shall reimburse Art & Assembly on written demand for any costs or losses sustained or incurred by Art & Assembly arising directly or indirectly from the Client Default.

8. Charges & Payment

8.1 The price for Goods:

- (a) shall be the price set out in the Order; and
- (b) shall, unless otherwise agreed in writing, be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Client; and
- (c) shall, unless otherwise agreed in writing, be exclusive of Research & Development costs where commissioning unique and unprecedented Goods would require R&D to determine accurate Order pricing. Art & Assembly can arrange R&D in-house, and reserves the right to review pricing based on R&D findings. This will be communicated to the Client.

8.2

The charges for Services (unless included in the price for the Goods) shall be calculated on a time and materials basis:

- (a) the Charges shall be calculated in accordance with the Art & Assembly's 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. Technician rates under Art & Assembly's employ are determined by skill level, experience and vary person to person;
- (b) Art & Assembly's daily fee rates for each individual person are calculated on the basis of an eight- hour day from 9.00 am to 5.30 pm worked on Business Days;
- (c) Art & Assembly shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 8.2(b); and
- (d) Art & Assembly shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Art & Assembly 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 Art & Assembly for the performance of the Services, and for the cost of any materials.

8.3

Art & Assembly reserves the right to increase the price of commissioned Goods, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to Art & Assembly that is due to:

- (a) any factor beyond the control of Art & Assembly (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give Art & Assembly adequate or accurate information or instructions in respect of the Goods.

8.4

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

8.5

Art & Assembly shall invoice the Client as detailed in the Proposal. We invoice under the following terms as appropriate to the size of the Contract:

- (a) Projects with a total value under £3,000 require payment in full prior to Art & Assembly commencing work on the commissioned Goods and/or Services.
- (b) Projects valued between £3,000-£50,000 are issued a "Project Start" invoice for 50% total project cost to be paid prior to works commencing, and 50% "Project Close" to be paid at project completion, prior to Goods leaving Art & Assembly's workshops.

8. Charges & Payment

8.5 (continued)

- (c) For projects with a total value exceeding £50,000 the standard 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 workshop. The interim point may be agreed between Art & Assembly and the Client, or specified in the Proposal.

8.6

The Client shall pay each invoice submitted by Art & Assembly:

- (a) as per the payment scheme detailed in clause 8.5.
- (b) in full and in cleared funds to a bank account nominated in writing by Art & Assembly, and time for payment shall be of the essence of the Contract.
- (c) if any invoice is not paid after 30 days of the date of the invoice a late fee may be applied as per clause 8.9. Art & Assembly 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 8.5.

8.7

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. International clients, wherein the Goods are being exported outside the United Kingdom, are exempt from paying VAT, and are issued an ex VAT invoice.

8.8

If the Client fails to make any payment due to Art & Assembly under the Contract by the due date for payment, the following charges and interest will apply:

- (a) the Client shall pay 'statutory interest' on the overdue amount at the rate of 8% per cent per annum above the Bank of England'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.
- (b) a fixed late fee will be added to the total amount due 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, and will apply unless otherwise agreed in writing. The late fee is determined by the amount in arrears and is only applied once:
 - (i) £40 / up to £999.99
 - (ii) £70 / £1,000 - £9,999.99
 - (iii) £100 / £10,000 or more

9. Intellectual Property Rights

9.1

All Intellectual Property Rights in or arising out of or in connection with Fabrication Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Art & Assembly.

9.2

Art & Assembly grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Goods, the Services and/or the Deliverables in the particular project only for which the Goods,

...Services and/or the Deliverables are to be supplied by Art & Assembly.

9.3

The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 9.2.

9.4

The Client grants Art & Assembly a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to Art & Assembly for the term of the Contract for the purpose of supplying the Goods and/or providing the Services to the Client.

10. Data Protection

10.1

The following definitions apply in this clause 10:

- (a) Controller, Processor, Personal Data, and processing: as defined in the Data Protection Legislation.
- (b) Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (c) Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

10.2

Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation and/or under Domestic Law.

10.3

The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and Art & Assembly is the Processor.

10.4

Without prejudice to the generality of clause 10.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to Art & Assembly and/or lawful collection and/or processing of the Personal Data by Art & Assembly on behalf of the Client for the duration and purposes of the Contract.

11. Confidentiality

11.1

Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, 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 11.2.

11.2

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

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or...

- (a) (cont...) 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 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3

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.

12. Limitation of Liability

12.1

Art & Assembly has obtained product liability insurance cover and professional indemnity insurance cover in respect of its own legal liability for claims not exceeding a total of £5 million during any one period of insurance. The limits and exclusions in this clause reflect the insurance cover Art & Assembly has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

12.2

The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract, including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.3

Neither party may benefit from limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.4

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

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) 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
- (d) defective products under the Consumer Protection Act 1987.

12.5

Subject to clause 12.4, Art & Assembly's total liability to the Client shall in no circumstances exceed the Contract cost of Goods and/or Services.

12. Limitation of Liability

12.6

The amounts awarded or agreed to be paid under any of these Conditions shall count towards the cap on Art & Assembly's liability under clause 12.5.

12.7

This clause 12.7 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 12.4, the types of loss listed in clause 12.7(c) are wholly excluded by the parties, but the types of loss listed in clause 12.7(d) are not excluded.
- (b) If any loss falls into one or more of the categories in clause 12.7(c) and also falls into a category in clause 12.7(d), then it is not excluded.

(c) The following types of loss are wholly 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.*

(d) The following types of loss and specific loss are not excluded:

- (i) *sums paid by the Client to Art & Assembly pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;*
- (ii) *wasted expenditure;*
- (iii) *additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;*

- (iv) *losses incurred by the Client arising out of or in connection with any third party claim against the Client which has been caused by the act or omission of Art & Assembly. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, Art & Assembly's personnel, regulators and Clients of the Client.*

12.8

Art & Assembly has given commitments as to compliance of the Goods and Services with relevant specifications in clause 3 and clause 5. 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.

12.9

This clause 12 shall survive termination of the Contract.

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:

- (a) 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 [14] days after receipt of notice in writing to do so;
- (b) 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;
- (c) 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

- (d) (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, Art & Assembly may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Client.

13.3

Without affecting any other right or remedy available to it, Art & Assembly may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and Art & Assembly if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d), or Art & Assembly reasonably believes that the Client is about to become subject to any of them.

14. Consequences of Termination

14.1

On termination of the Contract:

- (a) the Client shall immediately pay to Art & Assembly all of Art & Assembly's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Art & Assembly shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of Art & Assembly Materials and any Deliverables or Goods which have not been fully paid for. If the Client fails to do so, then Art & Assembly may enter the Client's premises or facilities and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping...

- (b) (cont.) ...and will not use them for any purpose not connected with this Contract.

14.2

Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.3

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

15. Force Majeure

15.1

If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.2

The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

15.3

The Affected Party shall notify the other party no later than 7 days after the start of the Force Majeure Event, providing details and likelihood of duration, effect on operations, and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on Contract obligations.

15.4

If the Force Majeure Event prevents Art & Assembly from providing any Services for more than 4 weeks, the Client may, without limiting Art & Assembly's other rights or remedies, have the right to terminate this Contract by giving written notice to Art & Assembly.

16. General

16.1 Assignment and other dealings

- (a) Art & Assembly 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.
- (b) The Client 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 Art & Assembly.
 - (ii) *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 at the time recorded by the delivery service; and*
 - (iii) *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. In this clause 16.2(b)(iii), business hours means 9.00am to 5.30pm Monday to Friday on a day that is not a public holiday in the place of receipt.*

16.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) *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 an other case); or*
 - (ii) *sent by email to the address specified in the Order.*
- (b) Any notice or communication shall be deemed to have been received:
 - (i) *if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and*
- (c) 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.

16.3

Severance. 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 16.3 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.

16. General

16.4 Waiver.

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 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, 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.

16.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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 misrepresentation] based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

16.7 Third party rights.

- (a) Unless it expressly states otherwise, 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.8 Variation.

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

16.9 Governing law.

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.

16.10 Jurisdiction.

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.



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