



## 1 Definitions in these Terms.

- (1) "Company" means Nova Design Limited.
- (2) "Client" means any party with whom the Company enters into a contract.
- (3) "Contract" means the contract entered into between the Company and the Client.
- (4) "Price" means the price of the services provided by the Company under the Contract, whether expressed as a fixed sum or as an hourly rate.
- (5) "Services" means the provision of a draughtsman or design engineer or the provision of other associated services under the Contract.
- (6) "Introduction Fee" means either :
  - (a) if the Price is a fixed sum – a sum equal to the Price, or
  - (b) if the Price is calculated at an hourly rate – a sum equal to 200 times that hourly rate.
- (7) "Worker" means any worker supplied by the Company to the Client to perform the Services at a place other than at the usual place of the Company's business.
- (8) Unless the context requires otherwise, references to singular include the plural and reference to the masculine include the feminine and vice versa.
- (9) The headings contained in these Terms are for convenience only and do not affect their interpretation.

## 2 The Contract

- (1) The Contract arises when the Company accepts in writing the Client's instructions to provide the Services to the Client.
- (2) No variation of the Contract shall have effect unless the Company agrees it in writing.
- (3) These Terms contain the whole agreement between the parties and supersede and replace any prior written or oral agreements, representations or understandings between the parties and in particular shall supersede any terms set out in any purchase order other communication issued by the Client to the Company.

## 3 Provision of the Services

- (1) The Company shall provide the Services to the Client in consideration of the payment of the Price by the Client.
- (2) These Conditions apply to the Contract.

## 4 The Price

- (1) The Price is exclusive of VAT, which will be charged at the appropriate rate.
- (2) The Company shall be entitled to increase the Price in any of the following cases:
  - (a) After 3 months from the date of the Contract being made, but by no more than 10% of the Price; and
  - (b) If the Price is a fixed sum, upon any variation to the Contract being agreed, but by no more than a reasonable amount for such variation.
- (3) The Price (or any part of it) is not refundable.

## 5 Payment

- (1) If the Price is calculated at an hourly rate, the Company shall be entitled to render invoices to the Client weekly.
- (2) If the Price is a fixed sum, the Company shall be entitled to render invoices to the Client weekly on account on a reasonable pro rata basis according to the work done.
- (3) Each invoice of the Company shall be paid by the Client within 30 days of the invoice being delivered.
- (4) The Company shall be entitled to charge the Client interest on the amount outstanding on any invoice from the date when it was due for payment until actual payment at a rate of 8% per calendar month without prejudice to any other right or remedy.
- (5) The time stipulated for payment of the invoice shall be of the essence and failure to pay within that time shall entitle the Company, without incurring any liability to the Client and without prejudice to any other right or remedy available to the Company, upon 7 days notice in writing to the Client either to suspend further performance of the Contract or of any other contract between the Company and the Client until payment, or to rescind the Contract or any other such contract.

## 6 Copyright

- (1) The copyright in all plans, drawings and designs produced under the Contract by or on behalf of the Company shall remain the property of the Company until such time as the Contract has been fully performed and in any event until all invoices rendered by the Company to the Client have been paid.

- (2) The Client shall have a licence to use the plans, drawings and designs for so long as the Company owns the copyright, but the licence may be revoked or suspended by the Company without the Company incurring any liability to the Client by written notice to the Client in the event of the Client breaching any condition or term of the Contract.

## 7 Performance

- (1) The Company shall use all reasonable professional care and skill to comply with the requirements of the Client under the Contract.
- (2) No times or dates specified in the Contract shall be of the essence unless agreed in writing by the parties.
  - (3) (a) For so long as the Company is prevented or hindered from performing the Contract by any circumstances beyond its reasonable control, further performance shall be suspended.
  - (b) If the performance of the Contract is so suspended for more than 3 consecutive calendar months, the Client may by notice in writing to the Company forthwith terminate the Contract and pay for all services already performed either at the appropriate hourly rate or, if the Price is a fixed sum, as a fair proportion thereof, in either case according to the time spent and the Client shall also pay for any other additional costs thereby incurred by the Company.
- (4) The Client shall give to the Company all such instructions, plans, drawings and specifications as shall be necessary and at all times promptly so that the Company can fulfil its obligations under the Contract.
- (5) If performance of the Contract is suspended at the request of or delayed through the default of the Client, the Company shall be entitled to render an invoice to the Client for services already performed either at the appropriate hourly rate or, if the Price is a fixed sum, as a fair proportion thereof, and in either case according to the time spent and the Client shall also pay for any other additional costs thereby incurred by the Company.
- (6) The Company shall be entitled to assign, sub-contract or sub-let performance of the Contract or any part thereof.
- (7) The Contract shall be performed by the Company at its usual place of business, or at such other place as the parties shall agree. In the event that the Company provides the Services at a place other than the usual place of business of the Company, the Company is an employment business and Contract shall be subject to the relevant conditions in these General Conditions and the provisions of the Conduct of Employment Agencies and Employment Business Regulations 2003 as amended from time to time or to such other Regulations as may replace them.

## 8 Drawings, Plans and Specifications

If during performance of the Contract, the Company determines that there is a defect in any drawings, plans and specifications, the Company shall be given a reasonable opportunity to rectify any such defect.

## 9 Company's Liability

- (1) The liability of the Company to pay compensation for any claims made by the Client against the Company under the Contract shall be limited to the actual costs of rectification or redrawing of the drawings, plans and specifications in question.
  - (2)(a) Under this quotation total value of company liability will be limited to total purchase order value, excluding V.A.T.
  - (b) Where purchase orders have been placed with multiply line items, total company liability per item will be limited to the total line item value.
  - (c) Where purchase orders are placed on an hourly basis, total company liability is limited to the total value invoiced against the designated Company project number.
- (3) The Company shall not be liable for any economic loss, loss of production, loss of profit, loss of opportunity or loss of bargain suffered by the Client as a result of any breach of the Contract by the Company.
- (4) The Company accepts no responsibility for the accuracy or suitability of patterns, designs, drawings, plans, particulars, information, instructions or specifications supplied by the Client or any failure by the Client to supply any of the same.
- (5) The Company shall not be liable in anyway whatsoever for any losses arising to the Client if the instructions given by the Client to the Company including any plans, drawings and specifications are inaccurate or unsuitable.
- (6) The Client shall be responsible for checking the accuracy of the drawings, plans and specifications produced under the Contract before using the same and the Company shall not be liable if it fails to do so.



## 10 Client's Warranty and Obligations

- (1) The Client warrants that the Company will not infringe any patent, copyright, registered design or any other proprietary right of any third party performing the Contract.
- (2) In the event that the Company is acting as an Employment Business, the Client shall :
  - (a) provide the Company with such information and documents as it shall reasonably request so that the Company can comply with its statutory, regulatory and other obligations owed to the Worker; and
  - (b) be responsible for the day to day Health and Safety of the Worker when the Worker is being employed to provide the Services at the relevant premises; and
  - (c) notify the Company promptly in writing if the Client reasonably believes that the Worker is unsuitable, unsatisfactory or otherwise incapable of performing the Services; and
  - (d) provide the Worker with appropriate training and a suitable environment for performing the Services;
  - (e) keep all information relating to the Worker confidential.

## 11 Complaints

- (1) The client must notify the company in writing within 14 days of the date of the invoice of any complaint or dispute relating to the invoice or the work undertaken.

## 12 Lien

The Company shall have a lien on all property of the Client in its possession for any unpaid invoice.

## 13 Termination

- (1) The Company may immediately terminate the Contract by written notice to the Client (but without prejudice to any claim or right which the Company may have) in any of the following events:
  - (a) if the Client shall either persistently or substantially breach any term of the Contract, or
  - (b) if the Client shall fail to remedy a breach of any terms of the Contract, if capable of remedy, within a period of five days from receipt of a notice in writing from the Company requiring such breach to be remedied, or
  - (c) if any distress or execution is levied upon any property of the Client, or
  - (d) if the Client, being a person, is adjudged bankrupt, or enters into a voluntary arrangement, or
  - (e) if the Client, being a partnership, is wound up, or
  - (f) if the Client, being a company, enters into liquidation (unless solely for the purposes of amalgamation or reconstruction when solvent) or has a receiver appointed or enters into administration.
- (2) The Client may only terminate the Contract if the Price is calculated at an hourly rate by giving to the Company not less than seven days prior notice in writing.
- (3) In the event that the Company is acting as an employment business and reasonably considers that the Worker is unsuitable, unsatisfactory or otherwise incapable of performing the Services, the Client may, having given the notice under 10(2)(c) terminate the Contract, but only if it has given the Company a reasonable opportunity to replace the Worker.

## 14 Payment of the Introduction Fee

- (1) In a case when the Company is an Employment Business :
  - (a) if the Client employs any Worker within the Relevant Period other than through the Company, the Client shall pay the Introduction Fee to the Company on demand. For the purposes of this clause, the "Relevant Period" means the later of :
    - the period of fourteen weeks after the first working day of that period or
    - the period of eight weeks after the last working day of the period of the Worker being employed to provide the Services, or
 and when determining the first working day of the period, any previous supply of the Worker to the Client which occurred more than 42 calendar days before the current period of supply shall not be taken into account; and
    - (b) the Introduction Fee shall not be payable if the Client gives written notice to the Company that it intends to continue with the hire of the Worker for a further period of thirteen weeks before it employs the Worker other than through the Company and in that event the same terms shall apply to the further period of hire as applied under the Contract immediately before the notice.
  - (2) In any other case, the Introduction Fee is payable by the Client to the Company on demand in the event that the Client within the Relevant Period

employs any person employed by the Company to provide the Services. For the purposes of this clause, the "Relevant Period" means :  
at any time during the currency of the Contract, or  
within six months of the date when the Contract was fully performed.

- (3) In the event that any employee of the Company with whom the Client has had personal dealings accepts Engagement with the Client within 3 months of leaving the Company's employment, the Client shall be liable to pay an introduction fee to the Company in accordance with the Companies Recruitment Terms and Conditions.

## 15 Force Majeure

The Company shall not be liable to the Client for any direct or indirect loss arising from the Company's failure to perform the Contract by reason of any act of God, riot or civil commotion, strike, lock-out, fire, flood, act of Government or any other cause whatsoever beyond its control.

## 16 Waiver

The rights of the Company under the Contract shall not be waived if the Company fails or agrees or chooses not to assert any right, or acts in any other particular way.

## 17 Client's Indemnity

The Client shall fully indemnify the Company against any loss, damage, penalties, costs, expenses and any other liability incurred by the Company as a result of any breach of any term or condition of the Contract by the Client, and this shall include an indemnity against any compensation paid by the Company upon legal advice to settle a claim out of Court.

- (1) A person or body which is not a party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly given in the Contract.

## 19 Proper Law

The Contract shall be governed by the laws of England.

## 20 Confidentiality

- (1) Except as permitted by law, the Parties shall not disclose any Confidential Information relating to the other party without the other parties prior written consent.
- (2) Either party shall immediately notify the other party if it becomes aware of the possession, use or knowledge of any of the Confidential Information by any unauthorised person, whether during or after the term of the Agreement and shall provide such assistance as is reasonable to deal with such an event.
- (3) Confidential Information means any information relating to the business and affairs of both the Company and the Client and to the identity and business and affairs of either parties' customers and clients and potential customers and clients which comes to either parties' attention or possession and which both parties regard or could reasonably be expected to regard as confidential, whether or not any such tangible information is marked 'confidential'.

## 21 CORRUPT GIFTS AND PAYMENTS

Neither party shall offer or give or agree to give any person employed by or connected with the other party any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to this agreement, or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement.

## 22 ADDITIONAL SERVICES

From time to time the Company may inform the Client of other products and services offered by the Company, which may be of interest to the Client. The Client may opt out of such communications by sending an email to that effect to [sales@nova-design.co.uk](mailto:sales@nova-design.co.uk)

## 23 GENERAL

- (1) The forbearance or failure of the Company to enforce any of its rights or remedies to which it is entitled under these terms shall not be construed as a waiver of those rights or remedies and shall not restrict or prevent the Company enforcing or exercising those rights or remedies in any other instance at any time whether during or after the termination of the Agreement.
- (2) If any provision of these terms is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remaining of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity.
- (3) The Client shall observe the provisions of the Data Protection Act 1988.