

INNOVARE DESIGN LIMITED

TERMS & CONDITIONS OF BUSINESS

1. DEFINITIONS

- 1.1 In these terms and conditions, the following expressions shall have the following meanings:
- "Client" means the person, firm or company to whom the Proposal is addressed;
- "Company" means INNOVARE Design Limited;
- "Contract" means the Contract between the Company and the Client on these terms and conditions for the supply of the Services.
- "Designs" means all designs, drawings, plans, specifications, artwork, copy, layouts, photographs, samples, written or recorded material of any kind produced by or for the Company in connection with the provision of the Services;
- "Fee" means the fee stated in the Proposal for the provision of the Services;
- "Expenses" means all out of pocket expenses which are incurred by the Company in connection with the Contract (including without limitation the costs of materials, model making, illustration, printing, travel, accommodation, and local authority or other official fees), together with an administration charge equal to 20% of the cost of each such item of expenses.
- "Proposal" means the Company's offer in respect of the provision of the Services;
- "Services" means the services supplied or to be supplied by the Company to the Client under the Contract;
- "Site" means the address as notified by the Client to the Company in writing for or at which the Services are to be provided;
- 1.2 In construing these Terms and Conditions and save where otherwise expressly provided:
- 1.2.1 Headings are for ease of reference only and shall not affect construction;
- 1.2.2 If the Client consists of more than one person then their obligations hereunder shall be joint and several; and
- 1.2.3 Words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing whole shall be treated as including a reference to any part thereof.

2. GENERAL

- 2.1 All Proposals are made and accepted, and the Services shall be supplied subject to the Terms and Conditions which shall prevail to the exclusion of any terms, conditions and provisions submitted, proposed or stipulated by the Client in whatever form, whether written or oral, which shall be of no contractual effect whatsoever.
- 2.2 No amendment to these terms and conditions shall be binding unless expressly agreed in writing by the Company's authorised representative.
- 2.3 In the event of a conflict between any provision of the Proposal and any provision of these Terms and Conditions then unless specifically stated to the contrary in the Proposal, the provision of these Terms and Conditions shall prevail.

3. THE BASIS OF THE PROPOSAL

- 3.1 Unless notified to the contrary by the Company, the Client may assume that the Fee will not be varied for a period of 30 days from the date of the Proposal, but if the Client does not accept the Proposal within that time, the Fee may be subject to increase by the Company without notice.
- 3.2 The Company reserves the right to increase the Fee if before the date for the commencement of the Services the cost of providing the Services increases for any reason beyond the control of the Company.

4. SERVICES AND VARIATIONS

- 4.1 The Company shall provide the Services as specified in the Proposal in return for payment by the Client of the Fee and the Expenses.
- 4.2 The Client shall pay for any additional work or variations to the Services caused by the requirements of any local or other competent authority or any prevailing regulation (whether statutory or otherwise).
- 4.3 The Company shall only be bound to carry out such additional work or variations to the Services requested by the Client as have been confirmed in writing by the Company's authorised representative. Any additional work or variations to the Services, which the Company agrees to provide, will be supplied in accordance with these Terms and Conditions and will be charged for as extras to the Fee and the Client agrees to pay for the same in accordance with Condition 9.

4.4 The Company shall endeavour to provide the Service with reasonable skill and care but subject thereto, Company's decision as to the extent; type and quality of the Services shall be final and binding on the Client.

5. THE DESIGNS AND COPYRIGHT

5.1 Property in the physical media on which the Designs are produced shall remain in the Company, and the Client shall hold the Designs as bailee for the Company until the Company has received payment in full of the Fee together with all other sums due from the Client to the Company under the Contract.

5.2 If payment of any sum due from the Client to the Company is not made on the due date, the Client shall if required by the Company return to the Company forthwith such of the Designs as the Company may specify and if this requirement is not complied the Company may (without prior notice) at any time retake possession of such Designs and may for that purpose enter upon any premises upon which the Designs are situated and remove the Designs there from, without prejudice to any other right or remedy of the Company.

5.3 The Company's rights under this clause 5 shall not prejudice or reduce any other remedies of the Company and shall not affect the Company's right to recover the price in respect of the items so removed. The Company shall credit the Client with any sums obtained by resale of such items. Client property not collected from the Company within 6 months will be deemed abandoned by the Client and may be disposed of by the Company without liability.

5.4 The Company shall retain at all times ownership of any copyright and all other intellectual property rights, in any Design created by the Company, its employees or subcontractors or on behalf of the Company subject to any agreement in writing to the contrary. The Client shall not without the written consent of the Company use or part with any Design or information supplied by the Company for any purpose other than that for which such Design or information was supplied. If the Company gives such written consent it may be on such terms (whether as to payment or otherwise) as the Company in its absolute discretion thinks fit.

5.5 The Client warrants that the Company will have all necessary rights in respect of the copyright in the materials supplied by or for the Client to the Company. Further, if any claim is made against the Company for infringement of copyright and/or intellectual property rights of another person in relation to those materials the Client shall indemnify the Company against all loss damages costs (on a full indemnity basis) and expenses awarded against or incurred by the Company in connection with such claim or paid or agreed by the Company in settlement of such a claim.

6. RISK AND INSURANCE

6.1 Notwithstanding that the property in the Designs may remain in the Company pursuant to condition 5.1 the risk in the Designs shall pass to the Client upon delivery of the Designs to the Client or his agent.

6.2 If any Design is destroyed damaged or lost from any cause (other than the negligence of the Company), the Company shall be entitled to charge for the materials and work required for the restoration or replacement of the same.

7. ADVERTISING

7.1 The Company shall be entitled to advertise its name at the Site during the implementation of any of its Designs.

7.2 The Client shall allow the Company reasonable access to the Site after completion, to take photographs at the Site and to use the photographs in its marketing or publicity materials.

8. LIABILITY

- 8.1 Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of either party. If either party is unable to perform its duties and obligations under this Agreement as a direct result of the effect of one of those reasons that party shall give written notice to the other of the inability details of the reason in question. The operation of this Agreement shall be suspended during the period (and only during the period) in which the reason continues. Forthwith upon the reason ceasing to exist, the party relying upon it shall give written advice to the other of this fact. If the reason continues for a period of more than 60 days and substantially affects the commercial intention of this Agreement, the party not claiming relief under this clause 8.1 shall have the right to terminate this Agreement upon giving 10 days' written notice of such termination to the other party.
- 8.2 The Company shall not in any event be liable (whether in contract or otherwise) for any indirect or consequential loss whatever or however caused or arising as a result of the provision, defective provision or non provision by the Company of the Services.
- 8.3 The Company's aggregate liability in respect of the Contract and any matter arising out of the Contract (including claims whether made in contract or tort) shall be limited to a sum equal to the Fee excluding VAT.
- 8.4 The Company shall not be liable for any loss or damage of any nature caused by or arising from:
- 8.4.1 Errors in or material omissions from designs, information or instructions which were not provided by the Company;
 - 8.4.2 Defects at the Site which were not apparent on visual inspection and not notified to the Company prior to the date of the Contract;
 - 8.4.3 Late or non completion of designs or consents or other matters which were not being supplied or provided by the Company;
 - 8.4.4 Any failure by the Client to provide Company with Site access, information or instructions as and when reasonably required to enable it to proceed with the Services in the manner anticipated by the parties.
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- 8.4.1 Errors in or material omissions from designs, information or instructions which were not provided by the Company;
 - 8.4.2 Defects at the Site which were not apparent on visual inspection and not notified to the Company prior to the date of the Contract;
 - 8.4.3 Late or non completion of designs or consents or other matters which were not being supplied or provided by the Company;
 - 8.4.4 Any failure by the Client to provide Company with Site access, information or instructions as and when reasonably required to enable it to proceed with the Services in the manner anticipated by the parties.

9. FEE and PAYMENT TERMS

9.1 The Fee, the Expenses and all other amounts payable by the Client to the Company under the Contract are exclusive of value added tax which where applicable shall be payable by the Client at the rate for the time being in force.

9.2 The Client shall (unless otherwise specified in the Proposal) pay the Fee in relation to each stage of the provision of the Services identified in the Proposal in the following instalments: -

9.2.1 50% of the agreed fee plus any anticipated Expenses upon commencement of that stage; and
9.2.2 the balance of agreed Fee and Expenses upon completion (as certified by the Company) of that Stage.

9.3 If any payment is not made on the due date, the whole amount or balance outstanding under the Contract shall immediately become due and payable by the Client.

9.4 The Company reserves the right to submit invoices for additional work undertaken at any time during the course of that work and such invoices shall be due for payment 7 days after the date thereof. Subject thereto the Client shall pay any amount due to the Company under the Contract in addition to the Fee within 7 days of submission of the Company's final account.

9.5 Where the Company has bona fide concerns as to the financial position of the Client, the Company may at any time insist on payment of the Company's Fee in advance notwithstanding any provision of these Conditions or the Contract.

9.6 The Company may charge interest at the rate of 4% above the prevailing Base Rate of NAT WEST Bank Plc on any sum due to it hereunder not paid on the due date. Such interest shall run from day to day, be compounded quarterly and accrue on the amount overdue until payment thereof (whether before or after judgment in a Court of Law).

9.7 The Client shall not be entitled to withhold payment in whole or in part on the grounds that it has a claim, counterclaim or set-off against the Company.

10. PROGRAMME

10.1 Commencement and completion dates in the Proposal are subject to variation by the Company in any of the following events: -

10.1.1 if the Client does not accept the Proposal within 30 days of its date;

10.1.2 if the terms of payment set out in condition 9 are not complied with;

10.1.3 if any additional work or variations to the Services are agreed which effect either such dates;

10.2 If the Client delays or defaults in providing sufficient Site access, instructions or information to the Company.

10.3 Dates given in the Proposal are estimates only and the Company shall not be liable for any loss or damage howsoever arising, directly or indirectly, as a result of delay in the provision of the Services.

10.4 The Company may charge an additional fee if there is any acceleration or delay to the programme requested by the Client or resulting from any such event or matter as is mentioned in clause 10.1 or 4.2. with English Law. The Client irrevocably agrees for the exclusive benefit of the Company to submit any dispute hereunder to the jurisdiction of the courts of England but nothing herein shall prevent the Company from taking proceedings against the Client in any other court of competent jurisdiction.

11. TERMINATION AND CANCELLATION OF CONTRACT

11.1 If the Client commits any default or breach of its obligations hereunder, or if any distress execution or other legal process is levied upon or issued out against the Client's property or if the Client makes or offers to make any arrangement or composition with its creditors or permits any act of bankruptcy or if any bankruptcy petition or order is presented or made against the Client, or if any resolution or petition to wind up the Client is passed or presented or if a receiver of all or any of the Client's assets is appointed, then (without prejudice to any other right or remedy the Company might have) in each and every such case the Company may at any time suspend or determine the Contract or any unfulfilled part thereof and notwithstanding any other provisions hereof, payment in respect of any Services provided to the Client by the Company shall be immediately due. Upon termination under this clause the Client shall cease to have any licence (express or implied) to use the Designs for any purpose whatsoever.

11.2 If the Client wrongfully cancels the Contract, it will be liable for and shall promptly pay to the Company the balance of the stage commenced.

12. COMPANY EMPLOYEES
The Client shall not during the Contract or for the period of one year following its termination solicit or entice away any employee of the Company or do any act whereby any such employee is encouraged to terminate his/her employment with the Company, whether or not such person would by reason of terminating his service with the Company commit a breach of his contract with the Company.
13. WAIVER
No failure or delay by the Company in exercising any right hereunder shall operate as a waiver thereof or extend to or affect any other or subsequent event or impair any rights or remedies consequent thereon or in any way modify or diminish the rights of the Company under these terms and conditions.
14. ASSIGNMENT
The Company may perform any of its obligations hereunder by independent contractors and may assign the benefit of the Contract. Save as aforesaid the contract shall not be assignable.
15. NOTICES
All notices given by either party under the Contract or pursuant to it shall be in writing and given to the other party at its address shown in the Contract or at such other address as that party may have nominated in writing for that purpose. All notices may be served by personal delivery, first class registered or recorded delivery post or by facsimile transmission. Any notice given by post shall be deemed to be received by the party to whom it was given 48 hours after posting (excluding Saturday, Sundays and UK bank and public holidays). Notices given by facsimile shall be deemed to have been given 1 hour after transmission thereof.
16. CONTRACTS WITH THIRD PARTIES
- 16.1 If the Company as agent for the Client or for the benefit of the Client signs or enters into contracts with contractors, suppliers, consultants or professional advisers the Client shall indemnify and keep indemnified the Company against all actions, claims, costs or demands by any such contractor, supplier or consultant. The Company shall not be liable for any breach of contract, negligence or breach of duty by such contractors, suppliers, consultants or professional advisers.
- 16.2 If the Company shall incur any liability to a contractor, supplier or consultant on behalf of or for the benefit of the Client then the Client shall forthwith upon demand pay to the Company the amount of such liability together with an administration charge equal to 15% of the amount of such liability.
17. SEVERANCE
If any condition shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other condition all of which shall remain in full force and effect.
18. GOVERNING LAW
The terms and conditions herein contained shall be governed and construed in accordance with English Law. The Client irrevocably agrees for the exclusive benefit of the Company to submit any dispute hereunder to the jurisdiction of the courts of England but nothing herein shall prevent the Company from taking proceedings against the Client in any other court of competent jurisdiction.

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