

BACKGROUND:

Woburn Consultancy Ltd t/a Brand Designs (the "Supplier") provides Lighting Design and Lighting Control Consultancy services to business clients. The Supplier has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of Services and supply of Goods by the Supplier to its Clients.

1. Application of Terms and Conditions

- 1.1 The Supplier shall supply and the Client shall purchase the Goods and Services in accordance with the Quotation and/or Specification Schedule which shall be subject to these Terms and Conditions; and
- 1.2 The Contract will exclude any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Client.

2. Definitions and Interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	means any day other than a Saturday, Sunday or bank holiday;
"Client"	means the party procuring the Goods and Services from the Supplier who shall be identified in the Contract;
"Client Material"	means any documents, materials or information provided by you relating to the Services pursuant to Clause 15.1
"Commencement Date"	means the commencement date for the Contract as set out in the Quotation and/or Specification Schedule;
"Contract"	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
"Delivery Date"	means the date on which the Goods or Services are to be delivered as stipulated in the Client's order and accepted by the Supplier;
"Fees"	means any and all sums due under the Contract from the Client to the Supplier, as specified in the Contract;
"Goods"	means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Terms and Conditions;
"Month"	means a calendar month;
"Output Material"	means any documents or other materials, and any data or other information provided by the Supplier to you relating to the Services.
"Services"	means the Services to be provided to the Client as set out in the Quotation and Specification Schedule
"Supplier"	means Woburn Consultancy Ltd t/a Brand Designs, a company registered in England under 15398379 of The Design Studio, Unit 34 Chess Business Park, Moor Road, Chesham, Bucks HP 1SD and includes all employees and agents of Woburn Consultancy Ltd t/a Brand Designs.
"Term"	means the term of the Agreement as defined therein.
"Third Party Suppliers"	has the meaning given to it in Clause 16.1

- 2.1 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 2.1.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or fax transmission or similar means;
- 2.1.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 2.1.3 "these Terms and Conditions" is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
- 2.1.4 a Schedule is a schedule to these Terms and Conditions; and
- 2.1.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
- 2.1.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

- 2.2 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

- 2.3 Words imparting the singular number shall include the plural and vice versa.

3. Basis of Sale and Service

- 3.1 The Supplier's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Supplier in writing. In entering into the Contract the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised

representatives of the Client and the Supplier.

- 3.3 Sales literature, price lists and other documents issued by the Supplier in relation to the Goods and Services are subject to alteration without notice. No contract for the sale of the Goods and Services shall be binding on the Supplier unless the Supplier has issued a quotation which is expressed to be an offer to sell the Goods and Services or has accepted an order placed by the Client by whichever is the earlier of:
- 3.3.1 the Supplier's written acceptance;
 - 3.3.2 delivery of the Goods; or
 - 3.3.3 provision of the Services; or
 - 3.3.4 the Supplier's invoice.
- 3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

4. The Goods

- 4.1 No order submitted by the Client shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorised representative.
- 4.2 The specification for the Goods shall be that set out in the Supplier's sales documentation unless varied expressly in the Client's order (if such variation(s) is/are accepted by the Supplier).
- 4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Supplier are intended as a guide only and shall not be binding on the Supplier.
- 4.4 The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Client's specification, which do not materially affect their quality or performance.
- 4.5 No order which has been accepted by the Supplier may be cancelled by the Client except with the agreement in writing of the Supplier on the terms that the Client shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

5. The Services

- 5.1 With effect from the Commencement Date, the Supplier shall, throughout the Term of the Agreement, provide the Services to the Client.
- 5.2 The Supplier shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the Lighting Design sector in the United Kingdom.
- 5.3 The Supplier shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.
- 5.4 The Supplier shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 5.5 The Supplier may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
- 5.6 The Supplier shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.

6. Client's Obligations

- 6.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Supplier that is necessary for the Supplier's provision of the Services.
- 6.2 The Client may, from time to time, issue reasonable instructions to the Supplier in relation to the Supplier's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 6.3 In the event that the Supplier requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 6.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 6.5 If the nature of the Services requires that the Supplier has access to the Client's home or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Supplier has access to the same at the times to be agreed between the Supplier and the Client as required.
- 6.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 6 of the Agreement shall not be the responsibility or fault of the Supplier.

- 6.7 The Client will ensure that all Goods provided by the Supplier are only installed by fully qualified professional electricians, qualified to the latest 17th Edition Regulations [i.e. The Wiring Regulations] and registered to one of the following regulatory bodies; NICEIC, NAPIT, ELECSA, ECA. The Supplier reserves the right to refuse help or support of any installation should the Client not be able to provide this information when requested. Furthermore the Supplier will not uphold the warranties of any product not installed by a qualified electrician as detailed within sub-clause 6.7.

7. Price

- 7.1 The price of the Goods and Services shall be the price listed in the Supplier's Quotation current at the date of acceptance of the Client's order or such other price as may be agreed in writing by the Supplier and the Client.
- 7.2 Where the Supplier has quoted a price for the Goods other than in accordance with the Supplier's published price list the price quoted shall be valid for 31 days only or such lesser time as the Supplier may specify.
- 7.3 The Supplier reserves the right, by giving written notice to the Client at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions.
- 7.4 Except as otherwise stated under the terms of any Quotation or Specification Schedule or in any price list of the Supplier, and unless otherwise agreed in writing between the Client and the Supplier, all prices are exclusive of the Supplier's charges for packaging and transport.
- 7.5 The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Client shall be additionally liable to pay to the Supplier.

8. Payment

- 8.1 Subject to any special terms agreed in writing between the Client and the Supplier, the Supplier shall invoice the Client for the price of the Goods and Services prior to delivery of the Goods and/or the Provision of the Services (as applicable)
- 8.2 For Services the Client shall be required to pay in full prior to the delivery of any Services. For Goods the Client shall be required to pay a 50% deposit of the total price of the Goods (less any discount or credit allowed by the Supplier, but without any other deduction, credit or set off), at point of order. All remaining monies must be received by the Supplier by the agreed delivery date for all Goods or Services. The time for the payment of the price shall be of the essence of the Contract.
- 8.3 All payments shall be made to the Supplier as indicated on the form of acceptance or invoice issued by the Supplier.
- 8.4 The Supplier is not obliged to accept orders from any Client or buyer who has not supplied the Supplier with references satisfactory to the Supplier. If at any time the Supplier is not satisfied as to the creditworthiness of the Client it may give notice in writing to the Client that no further credit will be allowed to the Client in which event no further goods or services will be delivered or provided to the Client other than against cash payment and notwithstanding sub-Clause 8.2 of these conditions, all amounts owing by the Client to the Supplier shall be immediately payable in cash.

9. Delivery and Performance

- 9.1 Delivery of the Goods shall be made by the Supplier delivering the Goods to the place in the United Kingdom specified in the Quotation and/or Specification Schedule or, if no place of delivery is so specified, by the Client collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Client that the Goods are ready for collection.
- 9.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Supplier in writing. The Goods may be delivered by the Supplier in advance of the Delivery Date upon giving reasonable notice to the Client.
- 9.3 If the Client fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Supplier shall be entitled upon giving written notice to the Client to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 11.1 of these Conditions risk in the Goods shall pass to the Client, delivery shall be deemed to have taken place and the Client shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.
- 9.4 With effect from the Commencement Date the Supplier shall, in consideration of the price being paid in accordance with these Terms and Conditions and the Quotation and/or Specification Schedule, provide the Services expressly identified in the Quotation and/or Specification Schedule.

10. Non-Delivery of Goods and Services

- 10.1 If the Supplier fails to deliver the Goods or provide the Services or any part of them on the Delivery Date (or Commencement Date, as appropriate) other than for reasons outside the Supplier's reasonable control or the Client's or its carrier's fault:

- 10.1.1 if the Supplier delivers the Goods and/or provides the Services (as applicable) at any time thereafter the Supplier shall have no liability in respect of such late delivery; or
- 10.1.2 if the Client gives written notice to the Supplier within 7 Business Days after the Delivery Date (or Commencement Date, as appropriate) and the Supplier fails to deliver the Goods and/or Services within 31 Business Days after receiving such notice the Client may cancel the order and the Supplier's liability shall be limited to the excess (if any) of the cost of the Client (in the cheapest available market) of similar goods or services to those not delivered or provided over the price of the Goods or Services not delivered or provided.

11. Risk and Retention of Title

- 11.1 Risk of damage to or loss of the Goods shall pass to the Client at:
 - 11.1.1 in the case of Goods to be delivered at the Supplier's premises, the time when the Supplier notifies the Client that the Goods are available for collection;
 - 11.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods; or
 - 11.1.3 in the case of Goods being installed by the Supplier, the time that the Supplier notifies the Client that the installation is complete.
- 11.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods shall not pass to the Client until the Supplier has received in cash or cleared funds payment in full of the price of the Goods.
- 11.3 Sub-Clause 11.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Client until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by the Supplier and the Client has repaid all monies owed to the Supplier, regardless of how such indebtedness arose.
- 11.4 Until payment has been made to the Supplier in accordance with these Conditions and title in the Goods has passed to the Client, the Client shall be in possession of the Goods as bailee for the Supplier and the Client shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Supplier and shall insure the Goods against all reasonable risks.
- 11.5 The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Client does so all money owing by the Client to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 11.6 The Supplier reserves the right to repossess any Goods in which the Supplier retains title without notice. In the event of repossession the Client shall deliver up to the Supplier all Goods in which title has not passed, the cost of which shall be born by the Client.
- 11.7 The Client's right to possession of the Goods in which the Supplier maintains legal and beneficial title shall terminate if:
 - 11.7.1 the Client commits or permits any material breach of his obligations under these Conditions;
 - 11.7.2 the Client is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors.

12. Assignment

- 12.1 The Supplier may assign the Contract or any part of it to any person, firm or company without the prior consent of the Client.
- 12.2 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

13. Defective Goods

- 13.1 If on delivery, any of the Goods are defective in any material respect and either the Client lawfully refuses delivery of the defective Goods or, if they are signed for on delivery as "condition and contents unknown" the Client gives written notice of such defect to the Supplier within 7 Business Days of such delivery, the Supplier shall at its option:
 - 13.1.1 replace the defective Goods within 31 Business Days of receiving the Client's notice; or
 - 13.1.2 refund to the Client the price for those Goods which are defective;but the Supplier shall have no further liability to the Client in respect thereof and the Client may not reject the Goods if delivery is not refused or notice given by the Client as set out above.
- 13.2 No Goods may be returned to the Supplier without the prior agreement in writing of the Supplier. Subject thereto any Goods returned which the Supplier is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Supplier's sole discretion the Supplier shall refund or credit to the Client the price of such defective Goods but the Supplier shall have no further liability to the Client.
- 13.3 The Supplier shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Supplier's instructions (whether given

orally or in writing), misuse or alter the Goods without the Supplier's prior approval, or any other act or omission on the part of the Client, its employees or agents or any third party.

- 13.4 Goods, other than defective Goods returned under sub-Clauses 13.1 or 13.2, returned by the Client and accepted by the Supplier may be credited to the Client at the Supplier's sole discretion and without any obligation on the part of the Supplier.
- 13.5 Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.6 The Client shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Client is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Client is carried out in accordance with directions given by the Supplier or any competent governmental or regulatory authority and the Client will indemnify the Supplier against any liability loss or damage which the Supplier might suffer as a result of the Client's failure to comply with this condition.

14. Client's Default

- 14.1 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
 - 14.1.1 cancel the order or suspend any further deliveries of Goods or provision of Services to the Client;
 - 14.1.2 appropriate any payment made by the Client to such of the Goods and/or Services (or the goods and and/or services supplied under any other contract between the Client and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Client); and
 - 14.1.3 charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 3% per annum above Natwest PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 14.2 This condition applies if:
 - 14.2.1 the Client fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
 - 14.2.2 the Client becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt; or
 - 14.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
 - 14.2.4 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.
- 14.3 If sub-Clause 14.2 applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Client, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15. Rights in Materials

- 15.1 If you supply any documents, materials or information which are required for the performance of the Services, it shall be at your expense. You must supply the Supplier with such Client Material within sufficient time to enable the Supplier to provide the Services in accordance with the Contract. It is your responsibility to ensure the accuracy of all Client Material. It is also your responsibility to retain duplicate copies of all Client Material at your own expense and, consequently, the Supplier shall have no liability for any loss or damage to such Client Material, however caused.
- 15.2 All Output Material shall be your responsibility and your risk from the time of delivery to you.
- 15.3 The property and any copyright or other intellectual property rights in: a) any Client Material shall belong to you; (b) any Output Material shall, unless otherwise agreed in writing between you and the Supplier, belong to the Supplier, but you shall be entitled to use the Output Material for the purposes for which the Services were provided by use of a non-exclusive licence, so long as you pay in full of all sums payable under the Contract.
- 15.4 The Supplier shall have no liability for any loss, damage, costs, expenses or other claims for compensation arising from any Client Material or instructions supplied by you which are incomplete, incorrect, inaccurate, or misleading or from any other fault on your part.

16. Other Suppliers of Goods or Services

- 16.1 The Supplier may from time to time provide you with the names of other suppliers of goods or services ("Third Party Suppliers"). In providing such names, the Supplier is not making any recommendation or representation regarding the fitness of the Third Party Suppliers to supply the relevant goods or services. It is your responsibility to satisfy yourself of the fitness of such Third Party Suppliers before you enter into a contract with them by, for example, asking for and following up references or asking for details of and checking on qualifications. You should not rely on the fact that the Supplier has supplied such names.
- 16.2 If any Third Party Supplier supplies any goods or services to you, the contract to do so is between you and the Third Party Supplier directly and the Third Party Supplier is not acting on behalf of (as the agent or sub-

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contractor) of the Supplier. Consequently, the Supplier shall not be liable for any misperformance or negligent performance by Third Party Suppliers of any contract between themselves and yourself.

- 16.3 For the avoidance of doubt, if the Supplier supplies any goods to you, it does so on its own terms for the supply of goods which were or will be provided to you prior to or at the time any such order for the supply of goods was made.

17. **Liability, Indemnity and Insurance**

- 17.1 The Supplier shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 17.2 In the event that the Supplier fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 17.3 The Supplier's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited only to the cost of the Services provided.
- 17.4 The Supplier shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Supplier.
- 17.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Supplier's liability for death or personal injury.
- 17.6 Subject to sub-Clause 18.2 of the Agreement the Supplier shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Supplier's provision of the Services or any breach of the Agreement.

18. **Communications**

- 18.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 18.2 Notices shall be deemed to have been duly given:
- 18.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
- 18.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 18.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 18.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 18.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

19. **Force Majeure**

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

20. **Waiver**

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

21. **Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

22. **Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. **Law and Jurisdiction**

- 23.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 23.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.