

<p>1 DEFINITIONS In these conditions:</p> <p>1.1 'Client' means the person body or organisation referred to as the Client in the Quotation 1.2 'MLL' means Matthew Link Limited registered in England with registered number 5295846 1.3 'Project' means the Project specified in the Quotation 1.4 'Articles' means the articles specified in the Quotation 1.5 'Term' means a period of 3 months commencing on the Commencement Date and subsequently until this Agreement shall be determined by either party in accordance with clause 9 1.6 'Conditions' means the provisions contained in clauses 2 to 15 set out below which shall be incorporated into this Agreement in their entirety 1.7 'Commencement Date' means the date specified in the Quotation 1.8 'Intellectual Property Rights' means all copyright and other intellectual property rights howsoever arising and in whatever media whether or not registered including without limitation patents trade marks service marks and registered designs and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world</p> <p>2 APPOINTMENT 2.1 The Client engages MLL to provide its services as a designer and consultant on design matters set out in the Quotation for the Term (subject to prior termination under clause 9) in return for the payments set out in clause 4 2.2 MLL shall be the Client's sole external consultant in respect of the design of the Project and the Client undertakes not to employ or consult any other designer (except staff designers as provided in this Agreement) for or in relation to the design of the Articles and not to manufacture construct market exhibit or otherwise deal in any Articles without having first consulted MLL as to the design of it. Provided that nothing in this Agreement shall be taken as binding the Client to accept MLL's advice on any matter or as precluding the Client from employing staff designers within its own organisation or from manufacturing constructing marketing exhibiting or otherwise dealing in the Articles made to the designs of such staff designers or to the designs of the designer as altered modified or adapted by such staff designers and provided also that nothing in this Agreement shall preclude MLL from rendering design or consultancy services to any other person or company 2.3 MLL shall not be responsible for ensuring that any design complies with the relevant safety standards or obtaining any third party consents or licences or approvals. The Client accepts that the charges made by MLL reflect this limitation</p> <p>3 MLL's OBLIGATIONS MLL shall as and when requested by the Client and within a reasonable time after receiving each such request supply designs for the Project and diligently proceed with the preparation or construction of such concept designs models development drawings prototypes production drawings and other matters connected with the designing of the Articles as shall be reasonably required by the Client</p> <p>4 CLIENT'S OBLIGATIONS In consideration of the services to be rendered by MLL under this Agreement the Client agrees: 4.1 To pay without deduction or set off to MLL the following fees: 4.1.1 The sum set out in the Quotation for the Project for the preparation of a project drawing or project model in respect of each different design which the Client shall require MLL to supply 4.1.2 A design charge (to be agreed between the parties prior to the commencement by MLL of the work for which such charge is to be made) calculated on: 4.1.2.1 A reasonable estimate of the time during which MLL will properly be occupied in or in connection with the production or supervision of the production of development drawings for the construction of each prototype which the Client shall require and in or in connection with the construction or supervision of the construction of such prototype 4.1.2.2 The rate as set out in the Quotation for the proper costs and charges of draftsman modellers and others whom MLL may properly employ in such production or construction and the cost of materials actually used in such production or construction 4.1.3 A consultancy fee as set out in the Quotation for the employees of MLL's time properly occupied at the request of the Client in advice on or supervision or revision of the design of or the construction or preparation of prototypes or drawings or of the production of any article or structure not designed by MLL 4.1.4 A consultancy fee as set out in the Quotation for any further liaison with suppliers manufacturers toolmakers moulders etc 4.1.5 All fees and charges shall be paid by the Client within one month after receipt by the Client of a note setting out the fees and charges with particulars of the services to which they relate except for any non-refundable deposit that might have been paid in advance on acceptance of the Quotation 4.2 To pay to MLL without deduction or set off in addition to the fees specified in clause 4.1: 4.2.1 The rate set out in the Quotation of the manufacturing cost of Articles sold which have been designed by MLL and an Article shall be deemed to be so designed notwithstanding that its design be an adaptation or modification of a design supplied to the company by MLL 4.2.2 The rate set out in the Quotation of any net sum received by the Client or any subsidiary or associated company for the grant or continuance of any licence or other permission for the manufacture of or other dealing in any Article designed by MLL and an Article shall be deemed to be so designed notwithstanding that its design be an adaptation or modification of a design supplied to the company by MLL 4.2.3 For this purpose to supply to MLL accurate accounts and records showing the money received by the Client for the purposes of calculating the amount payable to MLL in accordance with clause 4.2 and to allow MLL or its accredited representative from time to time to examine the Client's books insofar as they relate to the subject matter of this Agreement 4.3 All sums due under clause 4.2 shall be paid within one month of each month in which they have accrued 4.4 In addition to the sums payable under clauses 4.1 to 4.2 the Client shall reimburse to MLL all proper out of pocket expenses incurred in the provision of materials for project models postage photographic development and copying and in travelling upon the Client's business but MLL shall (subject to the above provisions) provide its own working premises and staff 4.5 To check and obtain all safety clearances and all other consents and approvals necessary for the implementation of the Project. MLL may be willing to assist such process after a written request from the Client and subject to prior agreement as to the fees to be paid to MLL</p> <p>5 VAT DUTIES AND TAXES 5.1 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes 5.2 Any VAT duties or taxes payable in respect of such sums shall be payable in addition to such sums</p>	<p>6 OWNERSHIP OF DESIGNS 6.1 Subject to the terms of this Agreement and in consideration of the payment to MLL by the Client of the sums due pursuant to Clauses 4.1 to 4.4 all drawings designs documents and the Intellectual Property Rights arising out of the work commissioned by the Client and made exclusively for the Project by MLL at the written request of the Client shall be assigned or transferred to the Client on completion of the Project 6.2 The Client will be responsible at its own expense for complying with all applicable export and import laws and regulations 6.3 MLL will retain the ownership of and sole right to use the Intellectual Property Rights until final payment is received by MLL of all sums due under Clauses 4.1 to 4.4 6.4 MLL will retain the ownership of and sole right to the Intellectual Property Rights in all designs drawings prototypes models digital files reports and specifications proposed by MLL as options or alternatives if not specifically commissioned or used by agreement between the parties as part of this project 6.5 Final drawings printouts and specifications will only be delivered by MLL to the Client on receipt of full payment under Clauses 4.1 to 4.4 6.6 If the Client gives written notice of a request to MLL of its desire for MLL to apply for a patent or design right protection in the name of MLL and pays in advance to MLL for all costs (direct and indirect) associated with such application including filing costs patent agents and other professional fees together with the reasonable cost of the time of MLL and its employees then MLL will not unreasonably refuse such request and will use its reasonable efforts to progress such application. No representation or warranty is given as to the success or otherwise of such application 6.7 On completion of the Project and payment to MLL of all sums due under Clauses 4.1 to 4.4 MLL will if reasonably required in writing by the Client assign to the Client at the Client's sole expense the benefit and burden of any application already made pursuant to Clause 6.6 6.8 All Intellectual Property Rights relating to the Project not transferred or assigned to the Client within 2 years of the Commencement Date shall be retained by MLL who shall be free to use and exploit them in any way it sees fit for its sole benefit and the Client hereby agrees to such steps. Thereafter the Client shall have no rights in such Intellectual Property Rights</p> <p>7 LIMITATION OF LIABILITY 7.1 MLL's responsibilities in relation to the design services provided as part of the Quotation are limited to the uses and territory defined in the Quotation. If the Client elects to use the design at variance to these definitions then this is the responsibility of the Client and the Client shall indemnify MLL for all costs and losses that MLL shall incur arising out of the Client's action 7.2 MLL shall not be liable to the Client for the death of or injury to the Client or loss or damage to the Client's property unless due to the negligence or other failure of MLL to perform its obligations under this Agreement or under the general law. To the extent permitted by law and in circumstances where MLL has not effectively excluded liability to the Client under or in connection with this Agreement the maximum limit of MLL's liability to the Client whether in contract tort negligence breach of statutory duty or otherwise shall not exceed £100,000 (one hundred thousand pounds sterling) in aggregate. The Client accepts that the charges made by MLL reflect this limitation 7.3 The Client acknowledges that in entering into this Agreement it does not do so in reliance on any representation warranty or other provision except as expressly provided in this Agreement and any conditions warranties or terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law</p> <p>8 MORAL RIGHTS MLL shall be entitled to hold itself out as the designer of the Articles made wholly or substantially to its design and shall be entitled to publish the name of MLL in that connection provided that if any design supplied by MLL to the Client shall be substantially modified or altered (except by MLL) from the form in which it was so supplied the Client shall not be entitled to publish the name of MLL in that connection without MLL's written consent</p> <p>9 TERMINATION 9.1 This Agreement (except the provisions as to the payments contained in clause 4.2) may be terminated by either party by notice in writing to the other party in the event of serious breach by the other party of the terms of this Agreement 9.2 In the event of this Agreement being terminated at a date not coinciding with the end of the month of the Client the remuneration of MLL under clause 4.2 shall be apportioned as at the date of such termination and the proper proportion paid to MLL by the Client as soon as it can reasonably be ascertained 9.3 The remuneration of MLL under the terms of clause 4.2 shall continue to be payable by the Client to MLL or its assigns for the period of years afterwards notwithstanding the termination of this Agreement in other respects by effluxion of time notice or otherwise specified in the Quotation 9.4 This Agreement (except the provisions as to the payments contained in clause 4.2) may be terminated by either party giving to the other not less than 28 days prior written notice to expire at any time after the initial Term of 3 months</p> <p>10 NOTICES Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post and shall be deemed to have been received by the addressee within 72 hours of posting</p> <p>11 REMEDIES 11.1 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the determination of this Agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it 11.2 Any right or remedy to which either party is or may become entitled under this Agreement or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this Agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative</p> <p>12 MISCELLANEOUS 12.1 WARRANTY - Each of the parties warrants its power to enter into this Agreement and has obtained all necessary approvals to do so 12.2 INTEREST - All sums due from either of the parties to the other which are not paid on the due date (without prejudice to the rights of MLL under this Agreement) shall bear interest from day to day at the annual rate of 5% over the base lending rate of HSBC Bank plc with a minimum rate of 10% per year 12.3 RECEIPT - The receipt of money by MLL shall not prevent it from questioning the correctness of any statement in respect of such money 12.4 FORCE MAJEURE - Both parties shall be released from their respective obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Agreement impossible whereupon all money due under this Agreement shall be paid immediately and in particular: 12.4.1 The Client shall immediately pay to MLL all arrears of sums due under clause 4 12.4.2 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement</p>	<p>12.5 SEVERANCE - If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality. The remaining provisions of this Agreement shall remain in full force and effect unless MLL in its discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event MLL shall be entitled to terminate this Agreement by 28 days notice to the Client and the provisions of clause 9 shall apply accordingly 12.6 WHOLE AGREEMENT - Each party acknowledges that this Agreement contains the whole Agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it 12.7 SUPERSEDES PRIOR AGREEMENTS - This Agreement supersedes any prior Agreement between the parties whether written or oral and any such prior Agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties 12.8 DISCRETION - Any decision exercise of discretion judgment or opinion or approval of any matter mentioned in this Agreement or arising from it shall be binding on a party only if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement 12.9 CHANGE OF ADDRESS - Each of the parties shall give notice to the other of the change or acquisition of any address or telephone or email or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition 12.10 HEADINGS - Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate 12.11 JOINT AND SEVERAL - All Agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successor in title to the parties 12.12 CLIENT'S RIGHT TO ASSIGN - This Agreement and all rights under it may not be assigned or transferred by the Client 12.13 PROPER LAW AND JURISDICTION - 12.13.1 This Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England 12.13.2 Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in England 12.13.3 The submission by the parties to such jurisdiction shall not limit the right of MLL to commence any proceedings arising out of this agreement in any other jurisdiction it may consider appropriate 12.13.4 Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 10 12.13.5 In the event that Client is resident outside England its address for service in England shall be the address for such service nominated at the head of this agreement and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Client 12.14 RIGHTS CUMULATIVE - All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Agreement shall restrict or prejudice the exercise of any other right granted by this Agreement or otherwise available to it 12.15 WAIVER - The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement 12.16 STATUS OF MLL - During the Term MLL shall be an independent contractor and not the servant of the Client 12.17 COSTS - Each of the parties shall pay any costs and expenses incurred by it in connection with this Agreement 12.18 NO ASSIGNMENT OR SUB-CONTRACTING - MLL shall not assign or sub-contract any of its rights or duties under this Agreement without the consent in writing of the Client (such consent not to be unreasonably withheld) 12.19 THIRD PARTY RIGHTS - For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions</p> <p>13 ARBITRATION All disputes or differences which shall at any time arise between the parties whether during the Term or afterwards touching or concerning this Agreement or its construction or effect or the rights duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this Agreement shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force</p> <p>14 ACCEPTANCE 14.1 Any order sent to MLL by the Client shall be accepted entirely at the discretion of MLL and if so accepted shall only be accepted upon these conditions and by means of MLL's standard order acknowledgement form 14.2 Each order which is so accepted by MLL shall constitute an individual legally binding contract between MLL and the Client 14.3 These conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other document or correspondence from the Client and no addition alteration or substitution of these terms shall bind MLL or form part of any order unless they are expressly accepted in writing by a Director of MLL</p> <p>15 THIRD PARTY FUNDING If the Client has the benefit of third party funding for a project (e.g. from Regional Development Agencies, Business Link, DTI etc.) then the following provisions shall apply:- 15.1 The Client shall remain liable for the entire cost of the Project (including MLL's own fees and those of its sub-contractors) until MLL shall receive cleared funds from the third party and shall indemnify MLL against all losses incurred by MLL arising out of the failure of the third party to discharge the sums due to MLL 15.2 The Client is to provide full co-operation with the third party and any of its agents or auditors. The Client undertakes to provide to the third party full complete and accurate information and fulfil all relevant obligations in relation to such third party funding to the third party. MLL shall not be responsible for the information supplied to the third party by the client. The Client shall indemnify MLL for all costs and losses that MLL shall incur arising out of the Client's breach of this sub-clause 15.3 If MLL are required to refund to the third party any sum received by MLL as a result of the Client's breach of this clause or the conditions and terms applying to third party funding the Client shall at once pay to MLL all such sums</p>
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