

STUDIO FRITH LTD
STANDARD TERMS & CONDITIONS (THE “AGREEMENT”)

These terms and conditions (as amended from time to time) apply, to the exclusion of anything else not provided by them, to the relationship between the Designer and the Client in connection with the Project in each case as set out below. Their purpose is to set out and govern the relationship between the Client and the Designer and to ensure that the Client understands what it can expect of the Designer and from the Designer’s services, and what the Designer is expected to do.

This Agreement is a legally binding agreement between:

- (1) STUDIO FRITH LIMITED (a company registered in England and Wales under number 06814992) of 28 Pall Mall Deposit, 124-128 Barlby Road London W10 9AD (the “Designer”); and
- (2) the party that is identified in the relevant Proposal of the Designer referencing these terms and conditions and above (the “Client”), and the Designer and the Client are together referred to as “the Parties”.

1. Definitions

1.1 The following terms when used in this Agreement shall have the following meaning:

“Copyright” means as defined in the Copyright, Designs and Patents Act 1988 as amended or varied from time to time (“CDPA”) including but not limited to rights in original artistic and literary works such as (for example only) drawings, sketches, plans, images, software programs and characters;

“Design Right” means rights in designs including as defined in the CDPA and/or the Registered Designs Act 1949 as amended, including but not limited to rights in any original two-dimensional or three-dimensional design including but not limited to models, patterns, and diagrams whether registered or unregistered;

“Other Rights” means any right to sue for passing off and/or for unfair competition and/or for misuse of confidential information or trade secrets and all other forms of intellectual property right (insofar as any of them are capable of being transferred) not expressly referred to in this Clause 1.1;

“Patent” means as defined in the CDPA and the Patents Act 1977 including but not limited to rights in any original invention which is new, not obvious and which is capable of industrial application;

“Trade Mark” means as defined in the Trade Marks Act 1994 including but not limited to any name or mark used or intended for use in the course of trade, trade name, the combined shapes and colours used in packaging or the product itself;

“IPR” means all of the rights specified above and any and all other rights comprised within intellectual property rights;

“Design Contract” means the works and/or services provided by the Designer to the Client as set out in and in accordance with the relevant Proposal as set out in Part A of the Schedule and subject to the terms of this Agreement;

“Territory” means the territory as specified in the Schedule, Part B, within which the Client will enjoy by licence or assignment specified rights in the product of the Designer’s services under the Design Contract to the exclusion of any other territory, region or area.

1.2 In this Agreement unless the context otherwise requires:

- (a) words importing the singular number include the plural number and vice versa;
- (b) words importing persons include firms, companies and corporations and vice versa;
- (c) references to numbered Clauses are references to the relevant Clauses in this Agreement;
- (d) the headings to the Clauses and paragraphs of this Agreement will not affect the interpretation;
- (e) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment;
- (f) any Party which agrees to do something will be deemed to fulfill that obligation if that Party procures that it is done.

2. Appointment of the Designer

The Client appoints the Designer on an exclusive basis to carry out the Design.

3. Term

3.1 This Agreement shall remain in force between the Client and the Designer for the period of the Design Contract provided that where any Proposal involves any ongoing continual retainer, termination shall be subject to 1 months’ notice to be given by either Party at any time unless the Proposal provides otherwise.

3.2 Additional rights to terminate early, suspend or cancel early, and the consequences thereof, are set out in Clause 14 below.

4. Remuneration

4.1 The Client shall pay the Remuneration as set out in the Design Contract.

4.2 If the Client wishes to change the scope of the Design Contract or the requirements of the work to be carried out for the Design Contract or if it unreasonably fails to approve work or causes work to be repeated or duplicated, the Designer may invoice the Client in respect of all additional time spent in respect of the additional work contemplated by this clause 4.2 or extra time spent doing extra work beyond that of the set completion date of artwork, to be agreed in a written schedule on commencement of this job, on the Design Contract at its then current rate as contained in the Designer’s Rate Card.

4.3 If the Client instructs the Designer to manage the project, which is the subject matter of this Agreement, or any part of it, then the Designer may charge and invoice the Client a reasonable fee for carrying out such service which shall generally be 30% of the Remuneration specified in the Design Contract subject to such particular arrangements as may be set out in a relevant Proposal.

4.4 The Client shall reimburse the Designer in full for all sums due in respect of all reasonable third party contracts entered into by the Designer in order to fulfil its services and obligations hereunder. The Designer may also charge a handling fee of 15% for any third party contracts which fee the Client accepts to be customary and reasonable.

4.5 The Client shall reimburse the Designer in respect of all reasonable office expenses (which expenses shall be levied at the cost to the Designer plus 20% handling fee) directly attributable to the Project including but not limited to couriers, colour outputs and scanning costs.

4.6 All sums due under this Agreement shall be payable together with VAT and any like taxes or charges at the prevailing rate as and when they fall due.

4.7 All invoices shall be paid by the Client within 14 days of delivery and late payment of any invoices shall be subject to interest of 8% above the base rate of the Bank of England in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

5. Where a Licence is Granted hereunder

Where a royalty-bearing licence is specified in Part C of the Schedule and/or where by subsequent agreement made in accordance with this Agreement the Client is permitted to extend usage beyond the original Territory and/or Purpose/ Field of Application in return for a running royalty payment, the following provisions will apply.

5.1 Definitions

5.1.1 Licensed Articles: means any items or articles manufactured according to, or to which are applied, the designs or plans or specifications or other materials produced by the Designer under the Design Contract, and including any other product into which such items or articles are incorporated.

5.1.2 Licensed Rights: means the IPR specified as licensed as set out in Part C of the Schedule (or as separately agreed between the Parties where a licence is subsequently agreed for extended usage or otherwise).

5.1.3 Net Sales Price: means the amount invoiced by the Client (or, where the transaction is not at arm's length, the amount which would have been invoiced had the transaction been at arm's length) on its sale, rental or other exploitation of the Licensed Articles or Licensed Rights, less only value added or other sales tax and credits given in respect of damaged or faulty goods.

5.1.4 Royalty Rate: means the percentage of the Net Sales Price as specified in Part C of the Schedule (or as separately agreed between the Parties where a licence is subsequently agreed for extended usage or otherwise).

5.1.5 Term: means the Term as specified in Part C of the Schedule (or as separately agreed between the Parties where a licence is subsequently agreed for extended usage or otherwise).

5.1.6 Territory: means the Territory as specified in Part B of the Schedule (or as separately agreed between the Parties where a licence is subsequently agreed for extended usage or otherwise).

5.2 The Designer grants to the Client the non-exclusive right under the Licensed Rights in the Territory for the Term to manufacture, have manufactured (subject to the Designer's approval of any manufacturing sub-contractor, not to be unreasonably refused), sell, distribute, offer for sale or lease the Licensed Articles.

6. The Designer's Duties

6.1 The Designer shall exercise all reasonable skill and care in carrying out its obligations under this Agreement. It is the Designer's responsibility to complete and deliver concepts, finished design/s and artwork, including in the digital formats specified by the Designer in the Proposal or otherwise from time to time following approval of the Client. The Designer shall, in a timely fashion, follow and implement all reasonable requests by the Client to revise any of the Designer's work, and, in the case of artwork, to make any and all amendments, changes, corrections and deletions to the textual and visual content of the artwork as reasonably requested by the Client and provided always within the scope of the Design Contract. Two rounds of these amendments have been allowed for in the Proposal. The Designer will spend no more than 5 working days carrying out each set of amendments. In each case the Client shall communicate in full its reasonable amendments within the scope of the Design Contract. The Designer shall implement such amendments as directed by the Client. Where any dates/ timeframes are set out in the Design Contract, the Designer shall endeavor to comply with such dates/timeframes but time shall not be of the essence and no liability shall attach to the Designer in the event that it is unable to meet such deadlines as a result of delays caused by the Client or third party contractor(s) or by any other reason outside of the Designer's control.

6.2 Each Party shall provide the other with all reasonable assistance in securing satisfactory completion of the Project.

7. Third Party Relationships

7.1.1 The Designer shall exercise all reasonable skill and care in its selection or recommendation of third parties, but it is not responsible for the quality of the goods or services so provided.

7.1.2 The Client is and remains responsible for approving design specifications, and production drawings, for approving third party suppliers' terms and quotations, and for approving and exercising quality control over the production exercise.

8. Infringements

8.1 The Client shall be solely responsible for taking whatever action it considers necessary and proper in connection with any infringement, suspected or threatened infringement, passing off, or other unlawful interference with any IPR in so far as assigned to the Client under Clause 10.

8.2 The Designer shall at the Client's expense provide any assistance reasonably required by the Client, including but not limited to being joined as a party in proceedings before any court or tribunal, in relation to any action the Client decides to take under Clause 8.1 above.

9. The Client Obligations

9.1 The Client shall be responsible for ensuring that all products made under or following the Design Contract shall

comply with all local laws wherever such products are sold or marketed. This obligation includes (but is not limited to) product safety and liability and product marketing, packaging, labelling and any documentation supplied with such products.

9.2 The Client warrants, represents and undertakes to and with the Designer that it will not be in breach of any contractual obligation binding on it by reason of having entered into this Agreement or in performing its duties hereunder.

9.3 The Client warrants, represents and undertakes to the Designer that it will obtain all necessary rights and consents in relation to the use and reproduction by the Designer for the purposes of the Project of any works supplied by the Client.

9.4 The Client shall not make any changes to the plans, designs, schemes or other such items produced by the Designer under the Design Contract without the Designer's prior written approval (which shall not be unreasonably withheld or delayed where the proposed change would not harm the integrity of such work or the reputation of the Designer). At the stage where final layouts are ready to be made into press-ready Artwork, two sets of amendments are allowed for. The Designer will spend no more than 5 working days carrying out each set of amendments. In each case the Client shall communicate in full its reasonable amendments within the scope of the Design Contract. The Designer shall implement such amendments as directed by the Client. The Client is provided with a copy of the layouts to mark- up, these amendments are made, a digital PDF proof is then checked by the Client, and a last and final set of amendments is requested. Upon approval of this second set, the layouts are deemed ready for art-working.

10. IPR and Title

10.1 Subject to Clause 10.3 any new IPR arising in the subject matter of the Design Contract and in any other materials provided to the Client by the Designer during the Term of this Agreement shall be owned by the Designer save insofar as set out to the contrary in Part C of the Schedule.

10.2 Only the final version of work chosen or approved by the Client and delivered by the Designer will be subject to the IPR provision in Part C of the Schedule if applicable. All other rights, including in all other works (including but not limited to those: concepts and designs presented but not selected by the Client to be developed in the course of the Design Contract and which have not been chosen or approved by the Client) remain the exclusive unfettered property of the Designer and are not available for use by the Client in any manner unless the Designer so agrees in writing and conditional upon agreement on the level of additional payment which the Designer will receive and payment of it.

10.3 On completion of the Design Contract, and subject to the Client complying with its obligations hereunder including (but not limited to) making all payments due, the Designer will grant to the Client such rights as may be specified in Part C of the Schedule, for which purpose the Designer will at the Client's expense enter into such documents and do such other things as the Client may reasonably require.

10.4 IPR will be assigned or licensed (as the case may be and as set out in Part C of the Schedule) by the Designer to the Client only for use by the Client in the Territory and subject to any conditions, restrictions and limitations as set out in Part B of the Schedule of the Schedule. The Designer will give good faith consideration to extending the ambit of such assignment or license on the Client's written request, provided that agreement is first reached as to the level of additional remuneration due in consequence to Designer having regard to the Designer's prevailing policies.

10.5 Where any IPR are to be assigned to the Client as specified in Part C of the Schedule, the Client is solely responsible for making such applications for registration as may be required and paying all applicable fees and expenses but the Designer will at the Client's expense provide the Client with all reasonable assistance in order to obtain such protection.

10.6 Where any IPR are to be licensed to the Client as specified in Part C of the Schedule, the Designer will make such applications for registration as may be required provided that it is put in funds by the Client in advance and indemnified by the Client against losses or expenses which it may thereby

incur. The Client will provide all reasonable assistance to the Designer in such processes.

10.7 Risk in all products, prototypes and other physical materials derived from the Design Contract shall pass to the Client on delivery.

10.8 Title in all products, prototypes and other physical materials derived from the Design Contract shall pass to the Client only when payment of all sums due has been made by the Client to the Designer.

10.9 The Client may not use (including, production, exhibition, advertising or marketing) any designs, IPR, products, prototypes, or other physical materials arising in consequence of or derived from the Design Contract until payment of all sums due from the Client to the Designer has been made.

11. Warranties

The Designer warrants that it will not knowingly infringe or copy any third party IPR. The Designer cannot and does not warrant that the Client will be immune from the rights or claims of others owing to the complexity of the laws and regulations governing IPR. In particular, the Designer does not undertake any searches or research concerning potential third party rights and recommends that the Client undertake such searches or research on advice from the Client's own advisors.

12. Confidentiality, Data & Privacy

12.1 The Parties agree to keep this Agreement and its contents and any non-public documentation and information which passes between them under the Design Contract confidential save as set out herein or insofar as otherwise required or permitted by law.

12.2 Notwithstanding Clause 12.1 above, the Designer shall be free to refer to and use the fact of the Design Contract in its professional credentials including (but not limited to) audio-visual presentations, brochures, newsletters, exhibition materials, advertising, press releases and use on its website.

12.3 The Client shall credit the Design Contract as being the work of the Designer whenever it refers to or uses work derived from the Design Contract, including (but not limited to) press release(s), exhibition, product launch or other such activity.

12.4 The Designer is subject to and complies with the requirement of the GDPR (EU General Data Protection Regulations) and the Designer's Privacy & Data Policy forms part of the Agreement.

12.5 This Clause 12 shall survive termination of this Agreement.

13. Limitation of Liability and Indemnity

13.1 Save as expressly set out herein, the Designer excludes all warranties, conditions or other terms that may be implied into this Agreement whether by law, statute or otherwise.

13.2 The Designer gives no warranty, condition or other term whatsoever, either express or implied, including (but not limited to) as to merchantability, satisfactory quality, fitness for a particular purpose, or non-infringement of IPR.

13.3 The Designer shall not be liable in contract, tort or otherwise for any loss or damage, howsoever arising in connection with the Design Contract or this Agreement, or for any indirect, special, or consequential damages, and whether such damages or losses (or the risk thereof) were known, unknown, foreseen, foreseeable, unforeseen or unforeseeable.

13.4 Further and in any event the Designer shall not be liable to the Client for any sum in excess of the payments made hereunder to the Designer by the Client.

13.5 Nothing in this Agreement shall limit the Designer's liability for negligently caused death or personal injury or fraud.

13.6 The Client agrees to indemnify and hold the Designer and the Designer's subsidiaries, affiliates, officers, agents and employees harmless from and against any third party claim arising from or in any way related to the Design Contract, including (but not limited to) any liability or expense arising from any and all claims, losses, damages (actual and consequential), suits, judgments, and legal costs, of every kind and nature SAVE WHERE AND INSOFAR AS the Designer has breached its express obligations hereunder and such breach

has been subject to a determination as such by a proper court or tribunal.

13.7 The Designer sets its level of remuneration taking into account the exclusions and limitations of liability as set out in this Clause 13. Without such exclusions and limitations, it would charge a higher level of remuneration.

14. Term and Termination

14.1 Either Party may terminate this Agreement forthwith on giving notice in writing to the other if the other:

- (a) commits any material breach of any material term of this Agreement and (in the case of a breach capable of being remedied) fails to remedy the breach, within 30 days after receipt of a request in writing to do so specifying the breach and the action needed to remedy the same; or
- (b) enters into liquidation, bankruptcy, or other insolvency procedure, whether compulsorily or voluntarily, other than for the purposes of reconstruction or amalgamation; or
- (c) fails to pay its debts or enters into an arrangement or composition with its creditors or convenes a meeting of its creditors or ceases or threatens to cease to carry on its business; or
- (d) has a provisional liquidator, a trustee in bankruptcy, an administrator or administrative receiver appointed over all or a substantial part of its assets.

14.2 The terms used in Clause 14.1 shall have the meaning given to them in the Insolvency Act 2000.

14.3 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement.

14.4 In the event of any such termination by the Designer:

- (a) all and any sums which would have fallen due in the future shall become immediately payable in full by the Client; and
- (b) the Designer shall not be required to grant any IPRights to the Client whether as may be set out in Part C of the Schedule or otherwise howsoever.

14.5 The Client may cancel this Agreement at any time provided that:

14.5.1 it gives any notice as specified in Clause 3.1 above; and

14.5.2 it pays all sums due to date; and

14.5.3 it pays such further sums (calculated at the Designer's then current hourly rate) as represents the value of work undertaken by the Designer in respect of which payment has not yet been made (including but not limited to payments in respect of work which has not yet reached what would otherwise be the next stage payment or benchmark); and

14.5.4 it pays a cancellation charge of 25% of the balance of the payments which would otherwise have fallen to be made under Clause 4 between the date of such cancellation and the date on which this Agreement would otherwise have terminated.

14.6 The Designer may terminate and cancel further performance of this Agreement at any time if (i) the Designer's work has extended beyond applicable tolerances for revision, or (ii) the Client (a) ceases to give instructions, or (b) seeks to suspend or alter the timetable, or (c) otherwise acts so as to end, delay or reduce the level or frequency of payments which would otherwise have been made to the Designer hereunder or so as unreasonably to impair, impede or frustrate the Designer's ability to fulfil the Design Contract whether creatively or otherwise. In event of such cancellation the Client will make to the Designer payments as set out in Clause 14.5 above.

14.7 In the event of any such cancellation by the Client or by the Designer, the Designer shall not be required to grant any IPR to the Client whether as may be set out in Part C of the Schedule or otherwise howsoever.

15. Dispute Resolution

15.1 If any dispute arises between the Parties in connection with this Agreement, the Directors/Partners or other senior representative(s) of the Parties shall, within 10 working days of a respective written request from one party to the other, meet in good faith to resolve the issue to the mutual satisfaction of the Parties.

15.2 If a dispute between the Parties is not resolved in accordance with Clause 15.1 above, the Parties will then attempt to reach a settlement by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. A notice will be sent by the party requesting the mediation in accordance with the CEDR Model Mediation Procedure and the Party in receipt of such notice shall respond within 10 working days.

15.3 In the event that a dispute between the Parties is not resolved in accordance with Clause 15.2 above, the Parties may then proceed to determine the matter through the Courts.

16. Non-Solicitation

Each Party hereby agrees that, during the term of this Agreement and for 12 months thereafter, it shall not whether directly or indirectly acting by itself, its employees or other third party, solicit or cause to be solicited for its benefit any employee or other person employed or engaged by the other Party or any Party in business relations with the other Party within period of the Design Contract.

17. Amendments

Save as expressly permitted under this Agreement, the Parties' obligations under this Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties and referencing the Design Contract and this Agreement.

18. Assignment

Neither this Agreement nor any rights, licences or obligations under it, may be assigned by the Client SAVE THAT it may assign this Agreement to successors in title with the prior written approval of the Designer.

19. Entire Agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. However, the obligations of the Parties under any pre-existing nondisclosure agreement shall remain in full force and effect insofar as there is no conflict between that and this Agreement. The Parties confirm that they have not entered into this Agreement on the basis of or in reliance upon any representation that is not expressly incorporated into this Agreement.

20. Notices

20.1 Any notice to be given under this Agreement shall be by email to the email address of the relevant party set out at the head of this Agreement or such other email address as that party may from time to time notify to the other party in accordance with this Clause 20.1.

20.2 Notices sent by email as set out in 20.1 above shall be deemed to have been received in accordance with the confirmation of e-mail transmission/receipt of the sender, and shall not require acknowledgement by the recipient provided that any party sending notice by email shall have simultaneously advised the recipient by telephone and/or SMS/text of transmission of that email.

21. Severance

If any provision of this Agreement is prohibited by law or judged by a court of competent jurisdiction to be unlawful, void or unenforceable, that provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances pertaining to this Agreement or the validity or enforcement of this Agreement.

22. Successors and Assignees

22.1 This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and expressly permitted assignees, and references to a Party in this Agreement shall include its successors and expressly permitted assignees.

22.2 In this Agreement references to a Party include references to a person:

(a) who for the time being is entitled (by expressly permitted assignment, novation or otherwise) to that party's right under this Agreement (or any interest in those rights); or

(b) as administrator, liquidator or otherwise, is entitled to exercise those rights; and

(c) in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that Party. For this purpose, references to a Party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

23. Waiver

No delay, neglect or forbearance on the Designer's part in enforcing any term or condition of this Agreement against the Client shall be or be deemed to be a waiver or in any way prejudice any of the Designer's rights under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for the Designer is exclusive of any other right, power or remedy available to the Designer.

24. Third Parties

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

25. Proper Law and Jurisdiction

This Agreement and its validity and all matters arising from it shall be governed by and construed according to the laws of England and Wales and shall be subject to the [exclusive] jurisdiction of the courts of England and Wales.