

# Grove Design Limited

These terms and conditions govern the supply of products and services by Design Limited to the Client. Please read these terms and conditions carefully before ordering any products or services from Grove Design. You should understand that by ordering any of our products or services, you agree to be bound by these terms and conditions.

## 1 Definitions

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions.

**Client:** the person, firm or company who purchases Goods and Services from Grove Design

**Grove Design:** Grove Design Limited which is registered at Companies House with company number 06600794 with its current registered office at Lamsey House Dagnall Road Little Gaddesden Hertfordshire HO4 1QS

**Contract:** the contract between Grove Design and the Client for the sale and purchase of Goods and Services, incorporating these conditions

**Goods:** any goods agreed in the Contract to be supplied to the Client by Grove Design (including any part or parts of them)

**Order Form:** Grove Design's standard order form signed by Grove Design and the Client which forms part of the Contract

**Services:** any design and/or project management services referred to in the Order Form

**Specification:** the document forming part of the Order Form which sets out the specification of Goods and services to be supplied by Grove Design

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

## 2 Application Of Terms

2.1 Subject to any variation under condition 2.3 the Contract shall include the Order Form (and any special conditions stated therein) and these terms and conditions to the exclusion of all other terms and conditions including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document.

- 2.2 No terms or conditions endorsed on, delivered with or contained in the Client's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These terms and conditions apply to all Grove Design's sales and any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of Grove Design.
- 2.4 The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Grove Design which is not set out in the Contract. Nothing in this condition shall exclude or limit Grove Design's liability for fraudulent misrepresentation.
- 2.5 Each order or acceptance of a quotation for Goods by the Client from Grove Design shall be deemed to be an offer by the Client to buy Goods subject to these conditions.
- 2.6 No order placed by the Client shall be deemed to be accepted by Grove Design until the Order Form is signed by Grove Design or (if earlier) Grove Design delivers the Goods and/or Services to the Client.
- 2.7 The Client shall ensure that the terms of its order and the Specification are complete and accurate.

### **3 Description**

- 3.1 The quantity and description of the Goods shall be as set out in the Specification.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Grove Design and any descriptions or illustrations contained in Grove Design's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

### **4 Delivery**

- 4.1 Unless otherwise agreed in writing by Grove Design, delivery of the Goods shall take place at the Place Of Delivery stated in the Order Form.
- 4.2 The Client shall take delivery of the Goods on the days determined by Grove Design.
- 4.3 Any dates specified by Grove Design for delivery of the Goods or performance of the Services are intended to be an estimate and time for delivery or performance shall not be made of the essence by notice. If no dates are so specified, delivery and performance shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions Grove Design shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss),

costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or performance of the Services, nor shall any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 60 days.

- 4.5 If for any reason the Client fails to accept delivery of any of the Goods when they are ready for delivery, or Grove Design is unable to deliver the Goods on time because the Client has not provided appropriate instructions, access, documents, licences or authorisations:
- 4.5.1 risk in the Goods shall pass to the Client (including for loss or damage caused by Grove Design's negligence);
  - 4.5.2 the Goods shall be deemed to have been delivered; and
  - 4.5.3 Grove Design may store the Goods until delivery, whereupon the Client shall be liable for all related costs and expenses (including, without limitation, storage, transport and insurance).
- 4.6 The Client must ensure at its cost that access to the property is suitable for the delivery and installation of all Goods.
- 4.7 Grove Design may deliver the Goods by separate instalments. Each separate instalment may be invoiced and paid for in accordance with the provisions of the Contract.
- 4.8 Prior to commencement of the Services and delivery of the Goods, the Client shall instruct the making of applications for consents under planning legislation, building acts, regulations or other statutory requirements and by freeholders and others having an interest in the Property where necessary. The Client shall pay any statutory charges and any fees, expenses and disbursements in respect of such applications.

## **5 Non-delivery**

- 5.1 The quantity of any consignment of Goods as recorded by Grove Design or its sub-contractor on despatch from Grove Design's (or its sub-contractor's) place of business shall be conclusive evidence of the quantity received by the Client on delivery unless the Client can provide conclusive evidence proving the contrary.

## **6 Risk/title**

- 6.1 The Goods are at the risk of the Client from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Client until Grove Design has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods; and Services
  - 6.2.2 all other sums which are or which become due to Grove Design from the Client on any account.
- 6.3 Until ownership of the Goods has passed to the Client, the Client shall:

- 6.3.1 hold the Goods on a fiduciary basis as Grove Design's bailee;
  - 6.3.2 store the Goods (at no cost to Grove Design) separately from all other goods of the Client or any third party in such a way that they remain readily identifiable as Grove Design's property;
  - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 6.3.4 maintain the Goods in satisfactory condition and keep them insured on Grove Design's behalf for their full price against all risks to the reasonable satisfaction of Grove Design. On request the Client shall produce the policy of insurance to Grove Design.
- 6.4 The Client's right to possession of the Goods shall terminate immediately if:
- 6.4.1 the Client has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Client or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client; or
  - 6.4.2 the Client suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Grove Design and the Client, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Client ceases to trade; or
  - 6.4.3 the Client encumbers or in any way charges any of the Goods.
- 6.5 Grove Design shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Grove Design.
- 6.6 The Client grants Grove Design, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Client's right to possession has terminated, to recover them.

- 6.7 Where Grove Design is unable to determine whether any Goods are the goods in respect of which the Client's right to possession has terminated, the Client shall be deemed to have sold all goods of the kind sold by Grove Design to the Client in the order in which they were invoiced to the Client.
- 6.8 On termination of the Contract, howsoever caused, Grove Design's (but not the Client's) rights contained in this condition 6 shall remain in effect.
- 6.9 Notwithstanding the passing of title in any of the Goods, Grove Design retains all intellectual property rights in any Goods designed by or for Grove Design.
- 6.10 Any designs, samples, drawings and specifications remain the property of Grove Design at all times.

## **7 Price**

- 7.1 Unless otherwise agreed by Grove Design in writing, the price for the Goods shall be the price set out in the Order Form unless following a delay in delivery of the Goods or provision of the services caused by the Client, the cost of the Goods to Grove Design shall increase whereupon Grove Design may pass on such increase in cost to the Client.
- 7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Client shall pay in addition when it is due to pay for the Goods.

## **8 Payment**

- 8.1 Subject to condition 8.2, payment of the price for the Goods is due in pounds sterling on the date of receipt of invoice provided such invoice is then due.
- 8.2 Where completion of the Services is delayed due to circumstances in the Client's control Grove Design shall be entitled to submit appropriate invoices as if performance of the Contract by Grove Design had taken place as anticipated by the parties.
- 8.3 Time for payment shall be of the essence.
- 8.4 No payment shall be deemed to have been received until Grove Design has received cleared funds.
- 8.5 All payments payable to Grove Design under the Contract shall become due immediately on its termination despite any other provision.
- 8.6 The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Grove Design to the Client.

8.7 If the Client fails to pay Grove Design any sum due pursuant to the Contract, the Client shall be liable to pay interest to Grove Design on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

## **9 Quality**

9.1 Where Grove Design is not the manufacturer of the Goods, Grove Design shall endeavour to transfer to the Client the benefit of any warranty or guarantee given to Grove Design.

9.2 In performing the Services, Grove Design warrants that it shall exercise reasonable skill and care and shall carry out its duties in a professional manner.

9.3 Grove Design warrants that (subject to the other provisions of these conditions) on delivery , and for a period of 6 months from the date of delivery, the Goods shall:

9.3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

9.3.2 be reasonably fit for purpose; and

9.3.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Client had made known that purpose to Grove Design in writing and Grove Design has confirmed in writing that it is reasonable for the Client to rely on the skill and judgement of Grove Design.

9.4 Grove Design shall not be liable for a breach of the warranty **OR** any of the warranties in condition 9.2 or 9.3 unless:

9.4.1 the Client gives written notice of the defect to Grove Design, and, if the defect is as a result of damage in transit to the carrier, within 14 days of the time when the Client discovers or ought to have discovered the defect; and

9.4.2 (in the case of Goods) Grove Design is given a reasonable opportunity after receiving the notice of examining such Goods.

9.5 Grove Design shall not be liable for a breach of the warranty **OR** any of the warranties in condition 9.2 or 9.3 if:

9.5.1 the defect arises because the Client failed to follow Grove Design's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

9.5.2 the Client alters or repairs such Goods without the written consent of Grove Design.

9.6 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with the warranty **OR** any of the warranties in condition 9.3 Grove Design shall at its option repair or

replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate.

9.7 If Grove Design complies with condition 9.6 it shall have no further liability for a breach of the warranty **OR** any of the warranties in condition 9.3 in respect of such Goods.

9.8 Any Goods replaced shall belong to Grove Design and any repaired or replacement Goods shall be guaranteed on these terms for a period of 12 months.

## **10 Limitation Of Liability**

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of Grove Design (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

10.1.1 any breach of these conditions;

10.1.2 any use made or resale by the Client of any of the Goods, or of any product incorporating any of the Goods; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of Grove Design:

10.3.1 for death or personal injury caused by Grove Design's negligence; or

10.3.2 under section 2(3), Consumer Protection Act 1987; or

10.3.3 for any matter which it would be illegal for Grove Design to exclude or attempt to exclude its liability; or

10.3.4 for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 Grove Design's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 125% of price paid by the Client; and

10.4.2 Grove Design shall not be liable to the Client for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11 Assignment**

- 11.1 Grove Design may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of Grove Design.

## **12 Force Majeure**

Grove Design reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Client (without liability to the Client) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Grove Design including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Client shall be entitled to give notice in writing to Grove Design to terminate the Contract.

## **13 General**

- 13.1 Each right or remedy of Grove Design under the Contract is without prejudice to any other right or remedy of Grove Design whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by Grove Design in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by Grove Design of any breach of, or any default under, any provision of the Contract by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

- 13.7 If either party requests a change to the Specification or to the scope or execution of the Services, Grove Design shall, within a reasonable time, provide a written estimate to the Client of:
- 13.7.1 the likely time required to implement the change;
  - 13.7.2 any necessary variations to Grove Design's charges arising from the change;
  - 13.7.3 the likely effect of the change on any Project Plan; and
  - 13.7.4 any other impact of the change.
- 13.8 If the Client wishes Grove Design to proceed with the change, Grove Design has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Services, the Specification and any other relevant terms of the Contract to take account of the change.
- 13.9 Notwithstanding clause 13.8, Grove Design may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 13.10 Grove Design may charge for the time it spends assessing a request for change from the Client on a time and materials basis at its normal rates.