

# Terms and Conditions of Purchase.

## 1. Definitions

The following definitions apply in these Conditions:

<b>Acuity</b>	We Are Acuity Limited incorporated and registered in England & Wales with company number 6752739 whose registered office is at 39 The Metro Centre, Tolpits Lane, Watford, Hertfordshire, United Kingdom, WD18 9SB;
<b>Acuity's Materials</b>	all materials, equipment, tools, drawings, specifications and data supplied by Acuity to the Supplier in connection with the Contract including any materials received from Acuity's clients;
<b>Applicable Data Protection Laws</b>	means to the extent that: <ul style="list-style-type: none"> <li>a) UK GDPR (which has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018) applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data;</li> <li>b) EU GDPR (the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law) applies, the law of the European Union or any member state of the European Union to which a party is subject, which relates to the protection of personal data;</li> </ul>
<b>Business</b>	has the meaning set out in clause 3.1;
<b>Conditions</b>	these purchase terms and conditions;
<b>Confidential Information</b>	all information in whatever form that is not in the public domain and that is of a confidential nature and information that relates to the parties, their employees, clients or business and is of a confidential nature;
<b>Contract</b>	the Order together with these Conditions;
<b>Design Work</b>	all products and materials developed by the Supplier or its agents, contractors or employees in relation to the Goods and/or Services in any form or media, (including, but not limited to, copyright, coding, exhibition design and photography) which may incorporate the Intellectual Property of any third party;
<b>Dispute</b>	a dispute that arises out of or in connection with the Contract or the performance, validity or enforceability of the Contract;
<b>Goods</b>	the goods (or any part of them) as set out in the Order;
<b>Intellectual Property</b>	copyright, moral rights, design rights, patent rights, registered designs, know-how (including inventions and modifications and all information relating thereto), goodwill and trademarks;

<b>Order</b>	a confirmation of the Supplier's offer to provide Goods and/or Services which may include the following details (as relevant): the commencement of the Contract; the identity of the Supplier; any Design Work to be provided; the Price to be paid; the Commencement Date for delivery of the Goods and/Services; any of Acuity's Materials to be provided; the delivery location; Timescales; all of which are to be subject to these Conditions;
<b>Personal Data</b>	has the meaning given to it in the UK GDPR and any personal data which Acuity processes in connection with the Contract, in the capacity of a controller (which has the meaning given to in in the UK GDPR);
<b>Price</b>	the sums payable for the Goods and/or Services, as set out in the Contract;
<b>Services</b>	the services, including any Design Work, to be provided by the Supplier under the Contract as set out in the Order;
<b>Supplier</b>	the person or firm set out in the Order; and
<b>Timescales</b>	the dates and/or timescales specified in the Order.

## **2. Interpretation**

### **2.1. In these Conditions:**

- (a) references to clauses are to clauses of these Conditions;
- (b) clause, Schedule and paragraph headings shall not affect the interpretation of the Contract;
- (c) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (d) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (e) a reference to legislation or a legislative provision is a reference to it as it is in force as at the date of the Contract;
- (f) a reference to writing or written includes email delivered to the recipient; and
- (g) documents to be signed may be physically or virtually by an electronic signature or digital signature.

## **3. Conditions of Contract**

- 3.1. These Conditions are the terms upon which Acuity purchases Goods and/or Services in connection with its business of providing design consultancy advice and Services relating to the design and promotion of its clients, whether as principal or agent, for the purposes of its clients or on its own behalf (Business).
- 3.2. These Conditions and the Order together form the Contract and the Contract shall govern the agreement between Acuity and the Supplier.
- 3.3. The Contract supersedes all previous agreements between the parties. Acuity may agree modifications to the Contract, but such modifications must be in writing and cannot be inferred from a course of conduct.
- 3.4. Subject to the Contract, the Supplier shall supply and Acuity shall purchase the Goods and/or Services in consideration of payment of the Price.
- 3.5. The Order shall be deemed to be accepted and the Contract shall exist on the Supplier issuing written acceptance of the Order (Commencement Date).
- 3.6. The Supplier will not subcontract Services or any of its other obligations under the Contract, without written authorisation from Acuity.

- 3.7. If the Supplier subcontracts any of its obligations under the Contract then it shall remain liable to Acuity for the proper performance of the Contract. The Supplier shall procure that the subcontractor will observe the terms of the Contract and shall be directly liable to Acuity.
- 3.8. The Supplier holds itself out as being expert in its field and Acuity relies upon such expertise in all matters relating to the quality, Timescales, and delivery of the Goods and/or Services.

#### **4. Supply of Goods**

- 4.1. In providing the Goods, the Supplier shall co-operate with Acuity in all matters relating to the Goods.
- 4.2. The Supplier shall inspect all Goods consigned to it and report any defects to Acuity and ensure that the Goods shall:
  - (a) conform with their description in the Order;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for purpose held out by the Supplier or made known to the Supplier by Acuity, expressly or by implication, and in this respect Acuity relies on the Supplier's skill and judgment; and
  - (c) comply with all applicable statutory and regulatory requirements.
- 4.3. The Supplier shall supply the Goods with the longer of:
  - (a) an 18 month warranty from date of receipt of the Goods by Acuity; or
  - (b) the Supplier's standard warranty period.
- 4.4. The Supplier shall warrant that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and/or Services.
- 4.5. Acuity may at any time before delivery, inspect and test the Goods and the Supplier shall afford Acuity access to the Goods for this purpose. Such inspection and/or testing shall not relieve the Supplier of its obligations in respect of any defects that were not reasonably apparent upon inspection or otherwise affect the Supplier's obligations under the Contract.
- 4.6. If following such inspection or testing the Customer considers that the Goods do not or are unlikely to comply with the specifications in the Order then the Supplier shall immediately take remedial action as is necessary to ensure compliance.
- 4.7. Acuity may conduct further inspections and tests after the Supplier has carried out its remedial actions in clause 4.6.

#### **5. Delivery of Goods**

- 5.1. The Supplier shall deliver the Goods in accordance with the Timescales and time for delivery shall be of the essence.
- 5.2. The Supplier shall be liable to Acuity in respect of any costs incurred or damage suffered by Acuity as a result of the late delivery of the Goods.
- 5.3. All Goods shall be delivered to the place of delivery specified in the Order or otherwise agreed by the parties (Delivery Location) and in a condition that permits their safe and convenient unloading and storage.
- 5.4. Delivery of the Goods shall be completed on the unloading of the Goods at the Delivery Location at which point title and risk in the Goods shall pass to Acuity.
- 5.5. The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods, special storage instructions and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

## 6. Supply of Services

- 6.1. The Supplier shall, from the date of the Contract as set out in the Order and for the duration of the Contract, supply the Services to Acuity in accordance with the Contract.
- 6.2. The Supplier shall observe all security and health and safety regulations that apply at any of Acuity's premises.
- 6.3. The Supplier shall meet the Timescales for the Services. Time is of the essence in relation to Timescales.
- 6.4. In providing the Services, the Supplier shall:
  - (a) co-operate with Acuity in all matters relating to the Services;
  - (b) perform the Services with the care, skill and diligence in accordance with best practice in the Supplier's industry and comply with all professional rules applying to its service;
  - (c) ensure the Design Work conforms with any specifications in the Order and is fit for any purpose that Acuity makes known to the Supplier;
  - (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them;
  - (e) use the best quality goods, materials, standards and techniques, and ensure that all materials supplied and used in the Services or transferred to Acuity, will be free from defects in workmanship, installation and design;
  - (f) not do or omit to do anything which may cause Acuity to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting the Business; and
  - (g) for the duration of the Contract, remain members of any relevant regulatory body which may be applicable to performance of its obligations under the Contract.

## 7. Acuity's remedies

- 7.1. If the Supplier fails to deliver the Goods and/or perform the Services by the Timescales, Acuity shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
  - (a) to terminate the Contract with immediate effect by giving notice to the Supplier;
  - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - (c) to recover from the Supplier any costs incurred by Acuity in obtaining substitute goods and/or services from a third party;
  - (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;
  - (e) to claim damages for any additional costs, loss or expenses incurred by Acuity which are in any way attributable to the Supplier's failure to meet Timescales.
- 7.2. If the Goods and/or Services do not conform with the specifications in the Order or do not comply with the terms of the Contract then, notwithstanding that the Goods and/or Design Work may have been incorporated into other goods, Acuity shall have the right to:
  - (a) terminate the Contract with immediate effect by giving notice to the Supplier;
  - (b) reject the Goods and/or Design Work (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
  - (c) require the Supplier to repair or replace the rejected Goods at no additional cost to Acuity, or to provide a full refund of the price of the rejected Goods;
  - (d) require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;
  - (e) refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make;

- (f) recover from the Supplier any expenditure incurred by Acuity in obtaining substitute Goods and/or Services from a third party;
  - (g) to claim damages for any additional costs, loss or expenses incurred by Acuity arising from the Supplier's failure to supply Goods and/or perform the Services.
- 7.3. These Conditions shall extend to any substituted or remedial Services and/or replaced Goods supplied by the Supplier.
- 7.4. Acuity's rights and remedies under the Contract are in addition to, and not exclusive of any rights and remedies implied by statute and common law.

## **8. Prices and Payment**

- 8.1. In consideration of the provision of the Services and delivery of the Goods, Acuity shall pay the Price.
- 8.2. The Price shall be the full remuneration payable by Acuity under the Contract, unless otherwise agreed by Acuity.
- 8.3. The Supplier shall invoice Acuity at the times set out in the Order or if no such times are set out in the Order:
- (a) in respect of the Goods, the Supplier shall invoice Acuity on completion of delivery; and
  - (b) in respect of Services, the Supplier shall invoice the Customer on completion of the Services,
  - (c) each invoice shall include such supporting information required by Acuity to verify the accuracy of the invoice, including any Order number that Acuity has given.
- 8.4. Acuity shall pay the invoiced amounts within 30 calendar days of a correctly rendered invoice to a bank account nominated by the Supplier (but in the event of any failure to comply with the Contract then Acuity may use its reasonable discretion to withhold a reasonable part of payment commensurate with the failure).
- 8.5. The Supplier shall maintain and complete accurate records of the time spent and materials used by it in providing the Goods and/or Services, and the Supplier shall allow Acuity to inspect such records at all reasonable times on request.
- 8.6. The Price is exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Acuity, Acuity shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

## **9. Liability**

- 9.1. Acuity may at any time, without notice to the Supplier, set off any liability of the Supplier to Acuity against any liability of Acuity to the Supplier, whether liability is present or future and whether or not either liability arises under the Contract. Any exercise by Acuity of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **10. Indemnity**

- 10.1. The Supplier shall indemnify Acuity against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses and all other reasonable professional costs and expenses) suffered or incurred by Acuity arising out of or in connection with:
- (a) any claim made against Acuity for actual or alleged infringement of a third party's Intellectual Property rights in connection with, the manufacture, supply or use of Goods, or receipt, use or supply of Services;
  - (b) any violations of laws or regulations concerning the quality, marking, labelling, safety, use or any other aspect of the Goods and/or Services;

- (c) any claim made against Acuity by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods and/or Services; and
  - (d) any claim made against Acuity by a third party arising out of or in connection with the supply of the Goods and/or Services.
- 10.2. The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and product liability insurance to cover liabilities that may arise in connection with the Contract, and shall, on Acuity's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **11. Data Protection and Confidentiality**

- 11.1. Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 11.2. Acuity provides its authorisation for the Supplier to process Personal Data. The Supplier will only use Acuity's Personal Data for a permitted purpose and for a reasonable time, subject to any legal or regulatory requirements.
- 11.3. Acuity will ensure it has all necessary appropriate consents to enable the lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 11.4. Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination disclose to any person any Confidential Information except as permitted by clause 11.6.
- 11.5. Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under the Contract.
- 11.6. Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.7. Each party shall notify the other without undue delay on becoming aware of any breach of Confidential Information or Personal Data.
- 11.8. Each party shall ensure that each of its officers, employees, agents, representatives and contractors to whom it discloses such information comply with this clause 11.

## **12. Intellectual Property**

- 12.1. All Intellectual Property that belongs to Acuity or any of its clients shall remain vested in Acuity.
- 12.2. The Supplier grants to Acuity, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and/or modify the Design Work for the purpose of receiving and using the Services and Design Work and shall have all rights in respect of third party Intellectual Property so to do.
- 12.3. Acuity grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify Acuity's Materials for the purpose of performing its obligations under the Contract and for no other purpose whatsoever.
- 12.4. The Supplier acknowledges that all rights in Acuity's Materials shall remain the exclusive property of Acuity.

- 12.5. All Intellectual Property that is generated by the Supplier, its employees or sub-contractors in connection with the Contract shall belong to Acuity and the Supplier will, at the request and expense of Acuity, do all things necessary to transfer such Intellectual Property to Acuity.
- 12.6. The Supplier shall not:
  - (a) use Acuity's Materials or materials produced by the Supplier in connection with the Contract for advertising or marketing purposes unless authorised by Acuity; and
  - (b) make any reference to their being a Supplier of Service to Acuity's clients unless otherwise agreed by Acuity.

### **13. Termination**

- 13.1. Without affecting any other right or remedy available to it, Acuity may terminate the Contract upon ten calendar days' notice to the Supplier and the Supplier shall be entitled to be paid a reasonable price for work it has carried out up to the date of termination.
- 13.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving notice to the other party if:
  - (a) the other party commits a material breach of any term of the Contract;
  - (b) there is a change in Control, for the purposes of 1124 of the Corporation Tax Act 2010;
  - (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on its business;
  - (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (e) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 13.3. On termination of the Contract, the Supplier shall immediately deliver to Acuity all Goods, whether or not then complete, and return all Acuity's Materials. If the Supplier fails to do so, Acuity may enter the Supplier's premises and remove them. Until the Goods have been returned, the Supplier shall be solely responsible for their safe keeping.
- 13.4. Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry.
- 13.5. On termination of the Contract, the Supplier shall not be entitled to any Intellectual Property rights of Acuity and the Intellectual Property in the Design Work shall belong to Acuity absolutely and Acuity shall be obliged to pay a reasonable price for it.

### **14. Force Majeure**

- 14.1. If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations by the Affected Party shall be extended by a reasonable amount of time and the corresponding obligations of the other party will be suspended and the time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 14.2. In the case of a Force Majeure Event, Acuity may direct that delivery of performance of obligations under the Contract be postponed until the end of the Force Majeure Event, and any such postponement shall not entitle the Supplier to charge additional costs, save for any reasonable charges incurred in the storage of Goods.

- 14.3. If the period of delay or non-performance continues for ten calendar days, the party not affected may terminate the Contract by giving five calendar days' notice to the Affected Party.

## **15. Dispute Resolution Procedure**

- 15.1. If a Dispute arises, then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other a notice setting out the nature and full particulars of the Dispute (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, Acuity and the Supplier shall attempt in good faith to resolve the Dispute;
  - (b) if Acuity and the Supplier are for any reason unable to resolve the Dispute within five calendar days of service of the Dispute Notice, the Dispute shall be referred to a director of Acuity and a director of the Supplier who shall attempt in good faith to resolve it; and
  - (c) if the Dispute is not resolved within ten calendar days of it being referred to the directors, either party may issue notice of termination in accordance with clause 13.
- 15.2. No party may commence any proceedings in relation to the whole or part of a Dispute unless the Dispute is mediated and until 30 calendar days after a final mediation agreement has been signed or ceased, provided that the right to issue proceedings is not prejudiced by a delay. Mediation shall, be by a single mediator appointed by agreement of both parties in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 15.3. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.4. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## **16. Notices**

- 16.1. Any notice or other communication given by either party to the other under the Contract shall be in writing and delivered by email, hand or pre-paid first class post or other next working day delivery service at its registered office (if a company) or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 16.2. Any notice or communication will be deemed to be received:
- (a) if delivered by hand, at the time the notice is left at the property address;
  - (b) if by letter sent by pre-paid first-class post or other next working day delivery service, at 12:00pm on the fifth calendar day after posting or collection by the courier service (or, in the case of airmail, ten calendar days after such letter was posted). In proving service, it shall be sufficient to prove the letter was properly stamped first class (or airmail), addressed and delivered to the postal authorities or courier service; and
  - (c) if by email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2.1(c) business hours means 9:00am to 5:00pm, on a day, other than a Saturday, Sunday or an official bank holiday in London, in place of receipt. In proving service, it shall be sufficient to produce a computer printout indicating that the message was sent to the recipient's email address.
- 16.3. This clause 16 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.



## **17. Assignment**

- 17.1. The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract, without the prior consent of Acuity.
- 17.2. Acuity may at any time any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

## **18. General**

- 18.1. If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract and the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18.2. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.3. A party that waives a right or remedy provided under the Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
- 18.4. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.5. Each party confirms it is acting on its own behalf and not for the benefit of any other person and the Contract creates no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise for any third party to rescind, vary or enforce any term of these Conditions.