

VORTEK DESIGN LTD AGREEMENT AND TERMS & CONDITIONS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSES 7.3, 8 and 10.

1. INTERPRETATION

The following definitions and rules of interpretation apply in these conditions:

1.1. DEFINITIONS:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services as set out in the Quotation and otherwise payable under the terms of the Contract.

Contract: the contract between Vortek Design and the Customer for the supply of Services in accordance with these terms and conditions.

Customer: the person or business who purchases Services from Vortek Design.

Event: means the event in connection with which Vortek Design is providing the Services.

Vortek Design: Vortek Design Limited a company registered in England and Wales under number 09519073 whose registered office is Vortek Design Ltd, Unit 13 Gemini Business Estate, Landmann Way, London, England, SE14 5RL.

Event Date: the date or dates on which the Event is to be held as specified on the Quotation.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Quotation: the Vortek Design quotation which incorporates these terms and conditions.

Services: the services supplied by Vortek Design to the Customer as set out in the Specification.

Specification: the description or specification of the Services set out in or incorporated by reference in the Quotation.

Venue: the location at which the Event will be held as specified on the Quotation or otherwise agreed by the parties.

1.2. INTERPRETATION:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 2.1. Any samples, drawings, descriptive matter or advertising issued by Vortek Design, and any descriptions or illustrations contained in Vortek Design's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.2. These terms and conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1. Vortek Design shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. Vortek Design warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.3. Vortek Design reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.
- 3.4. Vortek Design will inform the Customer of any amended Specifications.
- 3.5. Where Vortek Design agrees to provide named individuals to perform the Services and the individual(s), are for whatever reason, unable to do so, Vortek Design shall provide a suitable replacement.
- 3.6. Vortek Design shall use all reasonable endeavours to meet any performance dates specified in the Quotation but, save in respect of time critical services provided during the Event, time shall not be of the essence for performance of the Services.

4. CUSTOMER'S OBLIGATIONS

- 4.1. The Customer shall:
 - (a) ensure that the terms of the Quotation and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with Vortek Design in all matters relating to the Services;
 - (c) provide Vortek Design, its employees, agents, consultants and subcontractors, with access to the Venue, as reasonably required by Vortek Design;
 - (d) provide Vortek Design with such information and materials as Vortek Design may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects and does not infringe the rights of any third party;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (f) comply with all applicable laws, including laws relating to health and safety; and
 - (g) ensure that the Venue is in such condition and has such facilities as to enable the Services to be carried out safely and expeditiously.

- 4.2. If Vortek Design's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - (a) without limiting or affecting any other right or remedy available to it, Vortek Design shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Vortek Design's performance of any of its obligations;
 - (b) Vortek Design shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Vortek Design's failure or delay to perform any of its obligations as set out in this Clause 4.2; and
 - (c) the Customer shall reimburse Vortek Design on written demand for any costs or losses reasonably sustained or incurred by Vortek Design arising from the Customer Default but will not exceed the Quotation for Services.

5. CHARGES AND PAYMENT

- 5.1. Unless otherwise specified in the Quotation, Vortek Design shall be entitled to invoice the Customer for the Charges in full in advance.
- 5.2. Where a deposit is to be paid by the Customer such deposit shall, unless otherwise stated on the Quotation, be due on the signing of the Contract. Vortek Design shall have no obligation to perform any Services until it has received the deposit in full in cleared funds.
- 5.3. Unless otherwise stated in the Quotation, all amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Vortek Design to the Customer, the Customer shall, on receipt of a valid VAT invoice from Vortek Design, pay to Vortek Design such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.4. Vortek Design shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Vortek Design engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Vortek Design for the performance of the Services, and for the cost of any materials. Vortek Design will seek Customer's approval before incurring such expenses.
- 5.5. Save in the case of the deposit (if any), the Customer shall pay each invoice submitted by Vortek Design within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by Vortek Design. Time for payment shall be of the essence of the Contract.
- 5.6. If the Customer fails to make a payment due to Vortek Design under the Contract by the due date, then, without limiting Vortek Design's remedies under Clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time.
- 5.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.8. If the Customer requests Vortek Design to perform services additional to the Services and Vortek Design agrees to perform those additional services such additional services will be supplied in accordance with the terms and conditions of the Contract ("**Additional Services**"). Vortek Design will have no obligation to perform any Additional Services until the parties have agreed the Charges payable in respect of such Additional Services.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. The Customer grants Vortek Design a non-exclusive, royalty-free licence to use any materials provided by the Customer to Vortek Design for the purpose of providing the Services. The Customer warrants that any such materials shall not infringe the rights of any third party.

7. VORTEK DESIGN EQUIPMENT

- 7.1. Any equipment or materials used by Vortek Design to perform the Services at the Venue (the "**Equipment**"), shall at all times remain the property of Vortek Design,

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and the Customer shall have no right, title or interest in or to the Equipment. Vortek Design shall have the right to enter any premises of the Customer or of any third party where any Equipment is stored (including, where applicable, the Venue) to recover the Equipment.

- 7.2. Subject to clause 7.4, the risk of loss, theft, damage or destruction of any Vortek Design owned and/or leased, Vortek Design shall obtain sufficient insurance to cover the cost of the equipment for any damage, destruction, loss, or theft during the Event/engagement period, including off loading and on loading times.
- 7.3. Where it is specifically agreed in writing that Vortek Design staff will be with the Equipment at all times, the Customer shall not be liable to reimburse Vortek Design, unless the Equipment is damaged or stolen by the Customer, its staff or contractors, or any attendee of the Event.
- 7.4. The Customer shall notify Vortek Design immediately in the event of any loss, accident or damage to the Equipment during the event/engagement time.
- 7.5. If and when required, Vortek Design will provide technical support to train and guide the Customer as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is not damaged and is used in a manner which is safe.

8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence and fraud or fraudulent misrepresentation.
- 8.2. Subject to clause 8.1 Vortek Design's total liability to the Customer shall not exceed the higher of the Charges payable by the Customer under the Contract or £500, whichever is higher. Vortek Design's total liability includes liability in contract and tort (including negligence).
- 8.3. Subject to clause 8.1, neither party shall be liable under the Contract for any loss of profit; loss of revenue; loss of business; or any losses or damages not foreseeable to both parties on the date the Contract was formed.
- 8.4. Where the Services include technical services (for example the supply of IT or audio visual equipment) Vortek Design recommends that the Customer includes within the Services the services of an Vortek Design standby technician for the period during which those technical services will be provided. Subject to clause 8.1, if the Customer has opted not to so include the services of a standby technician Vortek Design accepts no liability for technical problems arising in relation to the technical services save where such problems have arisen as a result of Vortek Design's negligence.
- 8.5. This Clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1. Subject to clause 10, the Customer may terminate the Contract by giving Vortek Design not less than 14 days written notice ("**Termination Notice Period**").
- 9.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - the other party takes or has taken against it any step or action in connection with its entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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 business or, where the other party is an individual, is the subject of a bankruptcy petition, application or order, or if the applicable step or action is taken in another jurisdiction in connection with any analogous procedure in the relevant jurisdiction.
- 9.3. Without affecting any other right or remedy available to it, Vortek Design may (at its option) terminate the Contract with immediate effect by giving written notice to the Customer if:
- the Customer fails to pay any amount due under the Contract on the due date for payment;
 - the Customer fails to comply with any of its obligations under clauses 4.1(c) to 4.1(g) (inclusive).

10. CONSEQUENCES OF TERMINATION

- 10.1. Subject to clause 10.2 and 10.3, if the Customer wishes to terminate the Contract in accordance with clause 9.1 the Customer shall pay to Vortek Design a termination fee which shall be equivalent to the higher of (i) a percentage of the total Charges paid and/or payable under the Contract as determined by reference to the table below; or (ii) the costs incurred and/or committed to by Vortek Design in connection with the Services including Vortek Design's own staff costs which shall be calculated on a time and materials basis based on Vortek Design's standard rates. Vortek Design shall notify the Customer of the applicable Termination Fee within 7 days of receiving the Customer's notice of termination and the Customer shall pay such Termination Fee prior to the expiry of the Termination Notice Period. If the Customer fails to make such payment by such date Vortek Design shall be entitled to reject the Customer's notice of termination and if so rejected the Contract shall continue in full force and effect.

Date of termination (Number of days before the Event)	Termination Fee
182 or more	20%
91 – 181 (inclusive)	25%
90 - 31 (inclusive)	50%
30 - 15 (inclusive)	75%
14 or fewer	100%

- 10.2. Any Charges already paid by the Customer (including any deposit) shall be credited against the Termination Fee payable by the Customer under clause 10.1.
- 10.3. If the Charges already paid by the Customer exceed the Termination Fee then Vortek Design will refund the difference to the Customer with a reasonable period subject to the Customer confirming the details of the account to which the refund should be made.
- 10.4. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10.6. If the Customer is a consumer and following termination of the Contract in accordance with 9.1, Vortek Design is engaged by a third party to provide services on the same date(s) which the Event was due to be held and will use substantially similar resources and Equipment that it would have used to provide the Services under the Contract, then Vortek Design shall pay the fees it receives from such third party to the Customer less an administration charge of 15% or £150 (whichever is higher) up to a maximum of the Termination Fee paid by the Customer to Vortek Design in accordance with clause 10.1.
- 10.7. If Vortek Design is not able to fulfil its obligations, as noted and agreed upon in the Quotation for an Event/engagement, they will use best efforts to find an alternative supplier that is capable of completing the Services at the same level of quality or higher. If the Services from the alternative vendor exceeds the amount in the agreed-upon Quotation, Vortek Design shall, in the first instance, inform and agree with the Customer any such terms that may have to be altered due to the inability of Vortek Design not fulfilling its obligations. Such terms could include:
- Reimburse the Customer the full value of the pre-negotiated price but not equal to the difference in Quotes to engage a new supplier
 - Return 100% Deposits paid by the Customer.
 - Forfeit any additional payments for services rendered.

11. GENERAL

11.1. Assignment and other dealings.

- Vortek Design shall not assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, without the Customer's written approval.
- The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

- 11.2. **Force Majeure.** Vortek Design shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.3. Entire agreement.

- The Contract constitutes the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

- 11.4. **Variation.** Except as set out in these terms and conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties.

- 11.5. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. 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.

- 11.6. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum

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extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 11.7. Notices.** Any notice given to a party under or in connection with the Contract shall be delivered by hand or by pre-paid first-class post or other next working day delivery service and, in the case of Vortek Design, to Unit 13, Gemini Project, Landmann way, London, England, SE14 5RL and, in the case of the Customer, the Customer's address specified in the Quotation.
- 11.8. Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.9. Governing law and Jurisdiction.** 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. 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.
- 11.10. A "Trigger Event"** means any of the following events occurring, either in connection with the Covid-19 pandemic, the UK's withdrawal from the European Union or as a result of any supply-chain or other issues arising in connection therewith (or otherwise) or due to any other unforeseeable (at the date of the Contract) change to the business or economic environment in which Vortek Design operates.
- (a)** there is a change in the law, including the introduction of or change to any by-law, regulation, order, mandatory guidance or code of practice or requirement of any regulatory body as a result of which it is not viable for the planned Event to proceed on the Event Date (a "Viability Trigger Event"); or
 - (b)** there is an increase of at least 10% in the costs necessarily incurred by Vortek Design in performing the Contracts (a "Cost Trigger Event")