

Contract for Architectural Lighting Design Services**1. Definitions**

"Contract" means this Contract and any annexures;

"Day" is a reference to a calendar day;

"GST" means the goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Project" means the project set out in Item 4 of the Schedule and more particularly described in the Scope of Work;

"Price" means the price for the Services set out in Item 2 of the Schedule;

"Your Property" means the physical address where the Services are delivered and/or provided.

"Scope of Work" means the Scope of Work attached at Annexure A;

"Services" means the services provided by Us to You, being architectural lighting design services;

"We/Us/Our" means Bedizen Design Pty Ltd ABN 51 007 059 501 trading as "Mint Lighting Design";

"You/Your" means the customer, being the person or organisation described in Item 1 of the Schedule.

2. Basis of Contract

- 2.1. By signing this Contract and/or paying your invoice, You agree to be bound by its terms.
- 2.2. This Contract applies to all Services provided by Us to You.
- 2.3. If You have engaged us to provide light fitting procurement services, by signing this Contract, You agree to be bound by the terms and conditions of the Contract for Light Fitting Procurement Services set out in **Annexure 1**.

3. Scope of Work

We shall provide the Services to You for the Project as set out in the Scope of Work provided to You. Work completed, at your request, outside the Scope of Work will be charged at hourly rates.

4. Additional Services

- 4.1. The following services, if not included in the Scope of Work, may be requested by You and a quote will be provided:
 - (a) Special renderings or presentation materials, or scale models of lighting treatments;
 - (b) Review of contractor submittals for equipment substitutions;
 - (c) Coordination of light fitting orders and deliveries from manufacturers;
 - (d) Preparation of daylighting calculations or analysis;
 - (e) Redesign because of changes to the Scope of Work or value engineering after Your acceptance of Our documentation;
 - (f) Preparation of documents for alternate bids or out-of-sequence services requested by You;
 - (g) Preparation of supporting data and other services in connection with change orders or negotiated contracts;

- (h) Energy audits and preparation of energy-use calculations and/or other submittals as required for energy code compliance and/or public utility rebate programs;
- (i) Site visits to lighting manufacturers' facilities as required to verify their products' conformance to Our specifications and/or Our ability to perform according to any other project requirements;
- (j) Development of custom light fittings (including custom modifications of standard fittings requiring shop drawings, mock-ups, or sample reviews);
- (k) Emergency and exit lighting;
- (l) Programming of lighting control systems;
- (m) Assistance with purchasing of lighting equipment;
- (n) Installation of lighting equipment;
- (o) Selection of decorative furniture-type light fittings;
- (p) Focusing of adjustable light fittings.

5. Pricing

- 5.1. In consideration for provision of the Services, You agree to pay the Price to Us in the manner set out in Item 3.
- 5.2. Pricing may be fixed fee or hourly rate.
 - a. Hourly Rate Senior Designer = \$245
 - b. Hourly Rate Designer = \$200
 - c. Hourly Rate Technical = \$185
 - d. Hourly Rate Documenter = \$150
- 5.3. Prices quoted exclude GST unless otherwise stated.
- 5.4. If Item 3 of the Schedule provides that any part of the Price is payable on completion of the Services, We will issue You with an invoice for that part of the Price.
- 5.5. Prices are in Australian dollars.

6. Out of pocket expenses

- 6.1. You must reimburse Us for any out of pocket expenses incurred in providing the Services, including but not limited to:
 - (a) photocopying;
 - (b) reproduction;
 - (c) printouts;
 - (d) mock-up supplies;
 - (e) long-distance calls;
 - (f) parking;
 - (g) out of town travel (including fuel);
 - (h) couriers and postage;
 - (i) lodging and meals.
- 6.2. If any expenses are unusual or costly, We will obtain Your permission prior to incurring the expense.

7. Payment

- 7.1. Payment is accepted by credit card or electronic funds transfer to our nominated bank account.
- 7.2. Banks or third-party merchant facilities may charge fees or surcharges which You remain fully liable for.
- 7.3. Our invoices are payable within 7 days of the date of the Invoice.

- 7.4. If an invoice remains unpaid fourteen (14) Days after You receive it, We may, in Our discretion, suspend Services and/or charge You interest at a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2 per cent accruing on a simple basis from the day the invoice became overdue and ending on the day payment is received in full by Us.

8. Our Responsibilities

- 8.1. We will use Our best endeavours to complete the Services in the time frame agreed to between You and Us that is set out in Item 5 of the Schedule.
- 8.2. We will use acceptable care and skill in providing the Services to You.
- 8.3. We shall not be responsible for architectural, structural, mechanical, or electrical works, including but not limited to structural supports, ventilation, wiring, circuiting, code compliance, emergency lighting, security lighting and exit lighting.
- 8.4. We may delegate part or all of the Project to Our agents, representatives or employees.

9. Your Responsibilities

- 9.1. You must promptly furnish accurate, up-to-date and complete information, drawings, specifications, services, surveys and reports relating to the Project to Us at Your own cost and expense.
- 9.2. You may designate a representative to act and make decisions on Your behalf with respect to the Project.
- 9.3. You must provide a listing of all parties providing associated services in relation to the Project, such as consultants, builders, tradespeople and subcontractors.
- 9.4. You must properly and promptly coordinate the associated services. We will not be responsible for any delays to the Project as a result of Your failure or Your builder's failure, to properly coordinate the associated services.
- 9.5. If You become aware of any fault or defect with respect to any part of the Project, You must immediately give Us notice in writing.

10. Insurance

We agree to hold and maintain the insurances relevant or required by law. Should You require us to take out insurance in excess of what We hold, You must reimburse Us for the cost of such additional insurance.

11. Intellectual Property

- 11.1. You acknowledge and agree that all copyright and other intellectual property in documents, designs and recommendations in relation to the Project belong to Us.
- 11.2. You must not share, modify, publish, disclose or use Our intellectual property without Our prior written consent or unless otherwise required by law.

12. Termination

- 12.1. This Contract may be terminated in the following circumstances:
- (a) by mutual agreement between the parties;
 - (b) where one party has breached a term of this Contract, notice of the breach has been provided to that party by the other party and the breaching party has failed to remedy the breach in the manner specified;
 - (c) where a party has committed a material breach of this Contract that is incapable of remedy;
 - (d) where either party becomes bankrupt, insolvent, under administration or an externally administered body corporate;
 - (e) on completion of the Services and full payment of the Price.
- 12.2. If this Contract is terminated, the Price and all costs incurred by Us up to the date of the termination will be immediately due and payable.
- 12.3. No refunds for payments already made by You to Us will be provided except as required by law.
- 12.4. You cannot terminate this Contract if:
- (a) the problem was outside of Our control;
 - (b) You changed your mind;
 - (c) You insisted on having the Services provided in a particular way against Our advice; or
 - (d) You failed to clearly explain Your needs or requirements to Us.

13. No Set Off

You are not entitled to set off against the Price any amount which is owed, or You believe is owed, to You by Us.

14. Limitation of Liability and Indemnity

- 14.1. We make no guarantees or warranties regarding the market value of Your Property upon completion of the Project.
- 14.2. All works at the property, whether recommended by Us or otherwise, are expected to be exercised with due diligence and best practice, and performed in accordance with all relevant codes, standards, regulations and statutory authority requirements.
- 14.3. The installation or operation of any materials or fittings proposed by Us must be carried out in accordance with the manufacturer's instructions or recommendations by a suitably qualified person.
- 14.4. All persons carrying out Our recommendations are responsible for making their own safety assessments and complying with all relevant safety legislation.
- 14.5. Whilst We will make every effort to ensure that the relevant budget estimates are accurate, We will not be responsible for differences between estimated and actual costs.

- 14.6. You agree to indemnify and hold Us harmless from all claims, demands, costs and expenses, including legal costs, arising in connection with:
- 14.6.1. a breach by You of this Contract, and/or,
 - 14.6.2. any statute or regulation, and/or,
 - 14.6.3. any damage or loss to Your Property or any persons on Your Property, and/or,
 - 14.6.4. any damage or loss arising out of Your negligence or the negligence of Your directors, employees, agents, advisers, representatives or contractors, and/or
 - 14.6.5. Faulty or defective equipment or fixtures on Your Property.

15. DISPUTE RESOLUTION

- 15.1. If any difference or dispute arises between You and Us, either party may not commence any legal proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).
- 15.2. A party to this Agreement claiming a dispute (the **"Dispute"**) has arisen under the terms of this Agreement, must give written notice to the other party detailing the nature of the Dispute, the desired outcome and the action required to settle the Dispute (the **"Notice"**).
- 15.3. On receipt of the Notice by the other party, the parties to this Agreement (the **"Parties"**) must within seven days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree.
- 15.4. If for any reason whatsoever, 21 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the Victorian Association for Dispute Resolution and attend a mediation.
- 15.5. It is agreed that mediation will be held in Melbourne, Victoria.
- 15.6. The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation (if applicable) and without limiting the foregoing, undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation.
- 15.7. All communications concerning negotiations made by the Parties arising out of and in

connection with this dispute resolution clause are confidential and to the fullest extent possible, must be treated as "without prejudice" negotiations.

- 15.8. If thirty days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either party may ask the mediator to terminate the mediation and the mediator must do so.
- 15.9. In the event that the Dispute is not resolved at the conclusion of the mediation, either party may institute legal proceedings concerning the subject matter of the Dispute thereafter.

16. General

- 16.1. If the parties fail to resolve the dispute, the dispute shall be referred to mediation.
- 16.2. If any provision of this Contract is void, voidable, unenforceable, illegal, prohibited or otherwise invalid, then that provision shall be severed and the remaining provisions of this Contract shall remain operative.
- 16.3. Failure or delay in performance of any obligation by either party shall be deemed not to be a breach of this Contract if that failure or delay is due to an event that is not caused or contributed to by that party's fault or negligence, but due to an event that is outside the reasonable control of that party, which event may include an act of God, outbreak of hostilities, riot, civil disturbance or acts of terrorism, strikes, lock outs, fire, flood or drought.
- 16.4. The rights and obligations of either party may not be assigned without the prior consent of the other party.
- 16.5. Nothing in this Contract constitutes or establishes an employment, partnership or agency relationship between the parties.
- 16.6. Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favour of a third party against either party.
- 16.7. This Contract may only be varied by agreement between the parties.
- 16.8. This Contract may be signed by hand or electronically and returned to Us by email, hand or post.
- 16.9. If the Contract has not been signed and returned to Us but you have received the Contract and payment of the invoice has been completed, payment will be regarded as consideration of the Contract, forming a legally binding contract as per the terms and conditions of this Contract.
- 16.10. The laws of the State of Victoria, Australia from time to time governs this Contract and the parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia and of courts entitled to hear appeals from those courts.

- 16.11. Neither party will use the other party's name or trademarks in any publicity without the other party's written permission.
- 16.12. You consent to Us publishing photographs of the completed Project, including photographs of the interior and exterior of Your Property, for the purposes of advertising, promotional and marketing materials.
- 16.13. This Contract constitutes the entire agreement between the parties with respect to its subject

matter. Neither party has placed any reliance on any representations made before the signature of the Contract, whether orally or in writing, relating to the provision of the Services other than those expressly incorporated or referred to in the Contract (or its recitals), which has been negotiated on the basis that its provisions represent their entire agreement relating to the Services and supersede all such representations. This clause does not apply to any representation made fraudulently.

SIGNING PAGE

Executed as an Agreement.

By signing below, the Parties have caused this Agreement to be executed by their duly authorised representatives, as of the Effective Date.

If Customer is a Company or Business:

EXECUTED by/on behalf of

(Name) (ACN/ABN)
in accordance with the Corporations Act:

(Customer)

Director/Company Secretary

Director

Name

Name

Date

Date

If Customer is an individual:

EXECUTED by/on behalf of -----

(Customer)

Signature

Date

EXECUTED by/on behalf of **Bedizen Design Pty Ltd ACN 007 059 501 trading as Mint Lighting Design** in accordance with the Corporations Act:

Director/Company Secretary

Director

Name

Name

Date

Date

ANNEXURE 1

Contract for Light Fitting Procurement Services

We will provide the specified procurement services in this Annexure 1, on the condition that You have paid Us for these additional services.

The terms of this Contract for Light Fitting Procurement Services shall be governed by the same terms and definitions as set out in the Contract for Architectural Lighting Design Services unless otherwise stated.

RECITALS

A. The Customer has engaged Mint Lighting Design to provide the Services.

B. As part of the Services, Mint Lighting Design may make suggestions with regards to recommended Products.

C. The parties have agreed that Mint Lighting Design will purchase the Products from Suppliers on the Customer's behalf in accordance with the terms and conditions of this document.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

- 1.1. For the purposes of this document, including the Recitals and the Schedules:
 - 1.1.1. "**Agreement**" means this agreement and any Schedules and/or Recitals unless the context or subject matter other requires;
 - 1.1.2. "**Business Day**" means any day other than a Saturday, Sunday or public holiday in Melbourne, Australia;
 - 1.1.3. "**Custom Order**" means an Order for Products that are specifically designed and custom-made according to the specifications, finish and dimensions of the Customer;
 - 1.1.4. "**Customer's Property**" means the physical address where the Services are delivered and/or provided.
 - 1.1.5. "**Order**" means an order for the Products placed with the Supplier;
 - 1.1.6. "**Product**" means lights, light fittings, light globes and other associated products, as more specifically described in the Quote;
 - 1.1.7. "**Quote**" means a quote for the Products provided by Mint Lighting Design to the Customer;
 - 1.1.8. "**Services**" means the architectural lighting design services provided by Mint Lighting Design to the Customer; and
 - 1.1.9. "**Supplier**" means the third-party supplier of the Products with whom Mint Lighting Design places an Order.

- 1.2. In this Annexure 1, including the Recitals, unless the context otherwise requires:
 - 1.2.1. a reference to any thing includes a part of that thing;
 - 1.2.2. words importing the singular include the plural and vice versa;
 - 1.2.3. a party includes the party's executors, administrators, successors and permitted assigns;
 - 1.2.4. documents, records and the like include information in electronic form;
 - 1.2.5. a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
 - 1.2.5.1. that Statutory Provision as amended or re-enacted from time to time; and
 - 1.2.5.2. a statute, regulation or provision enacted in replacement of the Statutory Provision;
 - 1.2.6. "Including" and similar expressions are not words of limitation;
 - 1.2.7. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
 - 1.2.8. Headings are for convenience and do not form part of this document or affect its interpretation; and
 - 1.2.9. If an act must be done on a specific day which is not a Business Day, the act must be done instead on the next Business Day.

2. ORDERS

- 2.1. The parties acknowledge and agree that the Products are manufactured and supplied by the Suppliers.
- 2.2. Before placing an Order, Mint Lighting Design will provide the Customer with a Quote.
- 2.3. Quotes are valid for 30 days only and after this time are subject to change without notice.
- 2.4. To accept a Quote, the Customer must:
 - 2.4.1. notify Mint Lighting Design that it accepts the Quote; and
 - 2.4.2. pay for the Products in full.
- 2.5. Upon acceptance of the Quote, Mint Lighting Design shall place an Order with the Supplier.
- 2.6. All designs and specifications for Custom Orders must be signed off and approved by the Customer prior to the Order being placed with the Supplier. Custom Orders cannot be cancelled once the Order has been placed.
- 2.7. Should the Customer require any alterations to be made to Custom Orders following the Order being placed with the Supplier, the Customer must pay for any additional costs incurred as a result of the alterations.
- 2.8. Suppliers may have their own terms of service which the Customer must also read, acknowledge and agree to.

- 2.9. Orders are not accepted by the Supplier until shipped or delivered by the Supplier, and Mint Lighting Design is not obliged to supply the Product to the Customer until the Supplier has accepted the Order.
- 2.10. If an Order is not accepted by the Supplier for any reason, any payment the Customer has made for the Products will be refunded in full, or if an alternative Product is available, applied towards that alternative Product (as directed by the Customer).
- 2.11. Mint Lighting Design does not accept liability for any loss the Customer may suffer as a result of a failure by the Supplier to accept an Order.

3. DELIVERY/COLLECTION

- 3.1. Products will be housed at Mint Lighting Design's premises located at 3 Corr St, Moorabbin VIC 3189 for collection by tradespeople or customers. Alternatively, the Products can be delivered to an address specified by the Customer for a fee to be quoted at time of delivery.
- 3.2. Where the Customer elects to have the Products delivered for a fee, reasonable endeavours will be used to deliver the Products by the delivery date specified by the Customer (which cannot be earlier than the estimated available date specified by the Supplier).
- 3.3. Mint Lighting Design cannot guarantee any delivery times.
- 3.4. If delivery by the Customer's required date is not possible by reason of inventory shortage, transit delay or otherwise, Mint Lighting Design will notify the Customer and will make every effort to deliver Products within a reasonable period after the Customer's required date.
- 3.5. The Customer must inspect the Products immediately upon delivery, but in any case within 3 days, to ensure the Products are complete and intact. If the Customer becomes aware that any Product is incomplete or damaged, they must immediately inform Mint Lighting Design so that Mint Lighting Design can arrange a replacement or refund.
- 3.6. Title in the Products remain with the Supplier until the Products are delivered to the Customer and have been paid for in full.
- 3.7. All risk in the Products shall pass to the Customer upon delivery. The Customer must take care when opening the Products or packaging so as not to damage them.

4. INSTALLATION

- 4.1. It is the Customer's responsibility to ensure that Products are properly installed in accordance with the Supplier's or manufacturer's instructions or recommendations.
- 4.2. Installations should be carried out by a suitably qualified and licensed electrician and in accordance with all relevant codes, standards, regulations and statutory authority requirements.
- 4.3. The Customer is wholly responsible for making their own safety assessments and complying with all relevant safety legislation in installing the Products.

5. REFUNDS AND RETURNS

- 5.1. Under Australian Consumer Law, Mint Lighting Design guarantees that the Products are fit for purpose, of acceptable quality and not faulty or damaged. Except as set out in clause 6 below, Mint Lighting Design provides no other guarantees or warranties with respect to the Products whatsoever.
- 5.2. If a Product has been received with a fault, damage or defect, the Customer must contact Mint Lighting Design immediately and provide evidence of the fault, damage or defect along with proof of purchase. It is recommended that the Customer takes care not to tamper with the Products or packaging in any way upon noticing a defect, as the Products are fragile and contain electrical wiring.
- 5.3. A repair, replacement or refund will be offered as elected by the Customer. However, in some circumstances, due to the nature or availability of the Products, it may not be possible to offer a replacement. Faulty Products must be returned to Mint Lighting Design prior to the replacement or refund being processed.
- 5.4. As Products are supplied by the Supplier or may need to be manufactured again, Mint Lighting Design cannot guarantee that Products can be replaced within the timeframe required by the Customer.
- 5.5. Mint Lighting Design will use its best endeavours to process a refund within 14 days of receipt of the returned Product.
- 5.6. If a Product has been installed and is later confirmed to be faulty, damaged or defective, Mint Lighting Design will arrange for a repair or replacement of the Product. Repairs and replacements are strictly not offered due to damages or defects arising out of a faulty installation. Refunds are not offered on installed Products unless otherwise specified by the Supplier's warranty.
- 5.7. Mint Lighting Design is not liable for any site costs to repair, replace or otherwise access a faulty Product. Mint Lighting Design will only consider repairing or replacing faulty Products that are returned to Mint Lighting Design.
- 5.8. Products may be replaced or refunded for change of mind in Mint Lighting Design's absolute discretion, and provided the Products are unopened and in their original condition and packaging. In such circumstances, a restocking fee may apply to the return of the Products and the Customer agrees to pay for such fee in full.
- 5.9. The Customer acknowledges that repairs may not necessarily be undertaken on-site at the Customer's premises.
- 5.10. The Customer agrees to indemnify and hold Mint Lighting Design harmless from all claims, demands, costs and expenses, including legal costs, arising in connection with:
- 5.10.1. a breach by the Customer of this Contract, and/or,
- 5.10.2. any statute or regulation, and/or,
- 5.10.3. any damage or loss to the Customer's Property or any persons on the Customer's Property, and/or,
- 5.10.4. any damage or loss arising out of the Customer's negligence or the negligence of the Customer's directors, employees, agents, advisers, representatives or contractors, and/or

- 5.10.5. Faulty or defective equipment or fixtures on the Customer's Property.
- 5.11. Nothing in this clause is intended to exclude any of the Customer's statutory rights as a consumer under Australian Consumer Law.

6. WARRANTY

- 6.1. Mint Lighting Design warrants that Products will be free from defects for a period of 12 months from the date of the Order provided that:
 - 6.1.1. the Customer notifies Mint Lighting Design in writing immediately upon becoming aware of the defect, together with proof of purchase;
 - 6.1.2. the Product has been properly installed in accordance with clause 4 and evidence is provided of same;
 - 6.1.3. the Product has not been subject to misuse or damaged by the Customer (whether accidentally or not); and
 - 6.1.4. any warranty claim is accompanied by an assessment report provided by a suitably qualified and licensed electrician.
- 6.2. If a valid warranty claim has been made, Mint Lighting Design will provide a repair or replacement Product as elected by the Customer. However, in some circumstances, due to the nature or availability of the Products, it may not be possible to offer a replacement.
- 6.3. Any repairs undertaken will be completed by a contractor approved or appointed by Mint Lighting Design in its absolute discretion and may not necessarily be completed on-site at the Customer's premises. The Customer cannot request a reimbursement for repairs undertaken by a contractor not approved or appointed by Mint Lighting Design.
- 6.4. The above warranty does not apply to light globes.

7. GENERAL

- 7.1. If any provision of this document is void, voidable, unenforceable, illegal, prohibited or otherwise invalid, then that provision shall be severed and the remaining provisions of this document shall remain operative.
- 7.2. Failure or delay in performance of any obligation by either party shall be deemed not to be a breach of this document if that failure or delay is due to an event that is not caused or contributed to by that party's fault or negligence, but due to an event that is outside the reasonable control of that party, which event may include an act of God, outbreak of hostilities, riot, civil disturbance or acts of terrorism, strikes, lock outs, fire, flood or drought.
- 7.3. The rights and obligations of either party may not be assigned without the prior consent of the other party.
- 7.4. Nothing in this document constitutes or establishes an employment, partnership or agency relationship between the parties.
- 7.5. Nothing contained in this document shall create a contractual relationship or a cause of action in favour of a third party against either party.
- 7.6. This document may only be varied by document between the parties.

- 7.7. The laws of the State of Victoria, Australia from time to time governs this document and the parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia and of courts entitled to hear appeals from those courts.