

CHRIS BENSON SIGNS LIMITED
TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following terms have the following meanings:

Benson Signs

Chris Benson Signs Limited whose principal place of business is at 96 – 98 Great Howard Street, Liverpool L3 7AX;

Conditions

the terms and conditions set out in this document;

Contract

any agreement between Benson Signs and the Customer for the sale and purchase of the Goods and Services incorporating these Conditions;

Customer

the person who agrees to purchase the Goods and Services from Benson Signs subject to these Conditions;

Deposit

the amount of the deposit against the Price to be paid by the Customer in advance;

Goods

the goods which Benson Signs is to supply to the Customer;

Lead Time

the time after the Customer's final confirmation of the Specification within which Benson Signs estimates that the Goods will be delivered to and/or the Services will be performed;

Order

the Customer's order for the supply of the Goods and/or Services;

Price

the price to be paid by the Customer under the Contract;

Quotation

Benson Signs' quotation for the supply of the Goods and/or Services;

Services

the services which Benson Signs is to supply to the Customer including in particular installation of the Goods at the Supply Address;

Specification

the specification for the Goods and / or the Services provided or agreed in advance by Benson Signs (and subsequently finalised by agreement) together with all applicable legislative and regulatory requirements for the Goods and / or Services in question;

Supply Address

the address for delivery of the Goods and/or performance of the Services which shall be the Customer's principal place of business unless specified otherwise;

Working Day

any day which is not a Saturday, Sunday or public holiday in England.

2. **BASIS OF CONTRACT**

- 2.1 These Conditions apply to all contracts for the supply of Goods and Services entered into by Benson Signs to the exclusion of all others including, without limitation, any terms and conditions appearing on or referred to in the Customer's purchase order.
- 2.2 No variation to these Conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Customer and Benson Signs.
- 2.3 Benson Signs' employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by Benson Signs in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. The Customer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.
- 2.4 Any advice or recommendation given by Benson Signs or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in writing by Benson Signs is followed or acted upon entirely at the Customer's own risk and accordingly Benson Signs shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by Benson Signs shall be subject to correction without any liability on the part of Benson Signs.

3. **SALE AND PURCHASE**

- 3.1 Benson Signs agrees to supply the Goods and Services to the Customer on the terms of these Conditions.
- 3.2 Each Order or acceptance of a Quotation shall be deemed to be an offer by the Customer to purchase the Goods and/or Services subject to these Conditions and shall be binding on the Customer but shall not bind Benson Signs until Benson Signs has accepted that Order or acceptance of Quotation in writing.
- 3.3 The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.
- 3.4 Benson Signs shall be under no obligation to proceed with its obligations under the Contract until:
 - 3.4.1 Benson Signs shall have received the Deposit; and
 - 3.4.2 the Customer shall have provided all designs and artwork necessary for the Specification
 - 3.4.3 the Customer shall have given its final approval of the Specification.

Approval of the Specification shall be deemed to be conclusive evidence of the Customer's acceptance of the incorporation of these Conditions into the Contract.

4. **DESCRIPTION**

- 4.1 The quantity and description of the Goods and/or Services shall be as set out in the Quotation or Benson Signs' acceptance of Order.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Benson Signs and any descriptions or illustrations contained in Benson Signs' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract.
- 4.3 If the Goods are to be manufactured or any process is to be applied to them by Benson Signs in accordance with the specifications submitted by the Customer, or if the Goods are to be marked with any trade mark or any words or images at the request of the Customer, the Customer shall indemnify and hold Benson Signs harmless against all damages, costs and expenses awarded against or incurred by Benson Signs or agreed to be paid by

Benson Signs in settlement or in connection with any claim for infringement of any intellectual property rights, misuse of confidential information, defamation or otherwise as a result of use of such specifications or marking.

- 4.4 Benson Signs reserves the right to make any changes in the specifications of the Goods and/or Services which are required to conform with any applicable safety standard or other requirements or which do not materially affect their quality or performance.

5. **PERFORMANCE OF THE CONTRACT**

- 5.1 Benson Signs shall use its reasonable efforts to supply the Goods and/or Services to the Customer at the Supply Address within the Lead Time, but time of performance shall not be of the essence. The Lead Time does not start until the conditions in clause 3.4 have been satisfied. The Customer shall provide safe and clear unobstructed access to the Supply Address.

- 5.2 Benson Signs shall be entitled to supply the Goods and/or Services in instalments in which case each instalment shall be treated as an entirely separate contract and any default or breach by Benson Signs in respect of any such instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated. Signature of Benson Signs' delivery note by a person reasonably appearing to be the Customer's representative shall be conclusive proof of delivery.

- 5.3 The Customer shall inspect the Goods on delivery and if the Goods are damaged on delivery or less than the correct amount of the Goods is delivered then, unless the Customer puts a note to such effect on the delivery note and notifies Benson Signs within two (2) Working Days of delivery, confirming the notification in writing by letter to Benson Signs within 5 Working Days of delivery, no claim against Benson Signs may be made in respect of damage to or short delivery of such Goods. Except where such notification is given, the Customer shall be deemed to accept the Goods on delivery notwithstanding any late delivery by Benson Signs.

- 5.4 The Customer will have no claim in respect of any alleged non-delivery of the Goods unless it gives written notice to Benson Signs which is received by Benson Signs within seven (7) Working Days of the date of the invoice in respect of those Goods.

- 5.5 If the Customer fails to take delivery of the Goods or fails to give Benson Signs adequate delivery instructions before the Estimated Supply Date, then, without prejudice to any other right or remedy available to Benson Signs, Benson Signs may:

5.5.1 store the Goods until actual delivery is made and charge the Customer for the costs (including insurance) of storage; and/or

5.5.2 dispose of the Goods (whether or not such Goods were manufactured or marked by Benson Signs pursuant to the provisions of clause 4.3 above) to a third party in any country at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Customer for any shortfall below the price that Benson Signs would have achieved under the Contract

and in either case shall be entitled to charge interest (both before and after any judgment) on the price payable for the Goods under the Contract at the statutory interest rate (as provided for in the Late Payment of Commercial Debts (Interest) Act 1998) from the Estimated Delivery Date to the date of actual delivery or disposal.

- 5.6 Where the Services include installation of the Goods, the Customer shall provide safe and clear unobstructed access to the place of installation and such other supplies and facilities as Benson Signs requires in order to perform the Services. If the Services include electrical installation the Customer shall provide a suitable electrical feed within 1 metre of the place where the Goods are to be installed. The Customer is responsible for ensuring that the building or structure to which they are to be attached is suitable and where the Goods are to be fixed to an existing subfascia that the subfascia is suitable and of sound construction and condition. When installing the Goods onto an existing subfascia Benson Signs will not intrude into or dismantle the subfascia but will install the Goods onto the subfascia on the

basis that the subfascia is sound and suitable. Where the Customer fails in such obligations Benson Signs shall be entitled at its option to:

- 5.6.1 terminate the Contract in relation to the relevant Goods; or
- 5.6.2 continue with the supply of the Goods and charge for such costs (if any) as it has incurred at its standard rates in relation to such installation (up to a maximum of the amount it would have charged for the installation) in which case the Contract shall be deemed to be amended so as to limit the relevant Services to those actually provided.

5.7 Where the Services include installation of the Goods, Signature of Benson Signs' installation note by a person reasonably appearing to be the Customer's representative shall be conclusive proof of their satisfactory installation.

6. **PRICE AND PAYMENT**

6.1 Benson Signs reserves the right, by giving notice to the Customer at any time before supply, to increase the Price to reflect any increase in the cost to Benson Signs which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Goods and Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give Benson Signs adequate access, information or instructions.

6.2 The Price is exclusive of any applicable VAT and the cost of delivery if not expressly included in the Price, which the Customer shall be additionally liable to pay to Benson Signs.

6.3 Benson Signs shall be entitled to invoice the Customer for all amounts due under the Contract on or at any time after supply of the Goods and/or Services unless the Customer wrongly fails to accept supply of them, in which case Benson Signs shall be entitled to invoice the Customer at any time after Benson Signs has tendered supply.

6.4 The Customer shall make payment to Benson Signs in respect of all invoices in full by the 20th day of the month following the month in which the invoice is issued. Time of payment shall be of the essence.

6.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

6.6 All payments shall be applied to invoices and to Goods and/or Services listed in such invoices in the Order determined in its discretion by Benson Signs.

6.7 If at any time the credit standing of the Customer has in the reasonable opinion of Benson Signs been impaired, Benson Signs may suspend the further provision of goods and/or services to the Customer without incurring any liability until arrangements as to payment or credit have been established which are reasonably satisfactory to Benson Signs.

6.8 If full payment is not received by Benson Signs by the due date then without prejudice to its rights Benson Signs shall be entitled:

- 6.8.1 to sue for the entire Price; and/or
- 6.8.2 to suspend the further provision of goods and/or services to the Customer without incurring any liability; and/or
- 6.8.3 to terminate the Contract without incurring any liability; and/or
- 6.8.4 to charge statutory interest (both before and after any judgment) as provided for in the Late Payment of Commercial Debts (Interest) Act 1998 on the outstanding balance; and/or
- 6.8.5 to require the immediate return to Benson Signs of all Goods agreed to be sold by Benson Signs to the Customer in which the property has not passed to the Customer;
- 6.8.6 to recover its reasonable costs incurred in recovering payment from the Customer together with its costs and expenses in recovering the Goods.

7. **WARRANTY AND LIABILITY**

7.1 Benson Signs warrants that the Goods will correspond in all material respects with the Specifications for a period of twelve (12) months from the date of delivery provided that:

7.1.1 Benson Signs shall have no liability in respect of any defects in the Goods arising from any drawing, design or specifications supplied by or on behalf of the Customer;

7.1.2 Benson Signs shall have no liability in respect of any Goods installed by the Customer or a third party;

7.1.3 Benson Signs shall have no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Customer or persons using the Goods, abnormal working conditions, failure to follow Benson Signs' instructions (whether oral or in writing), or misuse or alteration or repair of the Goods without Benson Signs' approval;

7.1.4 Benson Signs shall have no liability if the total Price has not been paid by the due date for payment;

7.1.5 any such failure to meet any such specification shall be notified to Benson Signs in writing as soon as reasonably possible after the Customer discovers such non-conformity.

7.2 Benson Signs warrants that the Services will be performed in accordance with the Specifications by appropriately qualified and experienced personnel with reasonable care and skill provided that:

7.2.1 Benson Signs shall have no liability from compliance with any specification supplied by or requirement of the Customer;

7.2.2 Benson Signs shall have no liability in respect of failures and problems resulting from faults with the building, structure or subfascia to which Benson Signs fixed the Goods where such faults were not apparent at the time of installation and had not been notified to Benson Signs in writing by the Customer.

7.2.3 Benson Signs shall have no liability if the total Price has not been paid by the due date for payment; and

7.2.4 any such failure to meet any such specification shall be notified to Benson Signs in writing as soon as reasonably possible after the Customer discovers such non-conformity.

7.3 In the event of any valid claim under clauses 7.1 or 7.2 above being made by the Customer, the Customer shall afford Benson Signs a reasonable opportunity to inspect the Goods or the results of the Services at a time convenient to Benson Signs and Benson Signs shall be entitled to replace or repair the Goods (or the part in question) or re-perform the Services free of charge or, at Benson Signs' sole discretion, refund to the Customer the Price (or a proportionate part of the Price as appropriate). Benson Signs shall have no further liability to the Customer.

7.4 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 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

7.5 Benson Signs does not seek to exclude or limit its liability for fraud or fraudulent misrepresentation or death or personal injury resulting from negligence, fraud or for any other matter in respect of which it would be unlawful for Benson Signs to exclude or limit its liability.

7.6 Benson Signs shall be liable to the Customer for any direct physical damage (other than death or personal injury) to the extent that it results from the negligence of Benson Signs up to a maximum of £1 million.

7.7 Except pursuant to clause 7.5 above, Benson Signs shall not in any event be liable for:

- 7.7.1 any loss of profits;
- 7.7.2 loss or depletion of goodwill;
- 7.7.3 loss of anticipated savings, business opportunity or data; or
- 7.7.4 for any indirect, special or consequential loss or damages;

howsoever arising in connection with or arising out of the provision, performing, furnishing, functioning or use of the Goods and/or Services, or any item or service provided whether in contract, strict liability, tort (including without limitation, negligence) and whether Benson Signs knew or had reason to know of the same, and shall not be liable for any other damages except as provided in the Contract.

- 7.8 Except pursuant to clause 7.5 above in no event shall Benson Signs' liability in respect of any of the Goods and/or Services where such a claim is for breach of contract, strict liability or tort (including without limitation, negligence) or otherwise exceed the price paid for those Goods and/or Services.

8. **THIRD PARTY RIGHTS**

- 8.1 Benson Signs shall at its expense defend any action against the Customer and pay all damages and costs awarded against the Customer (except to the extent that the Customer is entitled to recover such sums under any policy of insurance) based on a claim that any of the Goods constitute an infringement of any patent or copyright or other intellectual property rights of the United Kingdom or on a claim of misuse of any confidential information belonging to any third party (except to the extent that such infringement or misuse results from following the Customer's specifications or other requirements) ("a Claim") provided that:

- 8.1.1 Benson Signs shall be notified promptly in writing by the Customer of any notice of a Claim;

- 8.1.2 Benson Signs shall have the sole control of the defence of any Claim and all negotiations for settlement or compromise of the Claim and the Customer shall not make any statement or enter into any settlement negotiations or compromise in relation thereto;

- 8.1.3 the Customer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action; and

- 8.1.4 the Customer shall take all steps reasonably possible to mitigate or reduce any compensation and costs which may be awarded against it as a result of a Claim.

- 8.2 If a Claim is successful or Benson Signs considers that it is likely to be successful, Benson Signs may, at its option or as part of a settlement or compromise, procure for the Customer the right to continue using the Goods, modify the Goods so that they are non-infringing or terminate the Contract in so far as it applies to those Goods subject to the Claim, in which latter case Benson Signs shall refund to the Customer the price paid for such Goods less depreciation on a straight line basis over the life of the Goods as determined by Benson Signs.

- 8.3 In no event shall Benson Signs have any liability under this clause with respect to any claim based on the use of the Goods in combination with any other product or equipment not supplied by Benson Signs.

- 8.4 This clause states the entire obligation and liability of Benson Signs with respect to infringement of intellectual property rights and misuse of confidential information.

9. **RISK AND TITLE**

- 9.1 The Goods are at the risk of the Customer from the time of delivery.

- 9.2 Ownership of the Goods shall not pass to the Customer until Benson Signs has received in full (in cash or cleared funds) the Price for the Goods. Benson Signs shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Benson Signs.

- 9.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 9.3.1 hold the Goods on a fiduciary basis as Benson Signs' bailee;
 - 9.3.2 store the Goods (at no cost to Benson Signs) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Benson Signs' property;
 - 9.3.3 grant Benson Signs, 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 Customer's right to possession has terminated, to recover them;
 - 9.3.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 9.3.5 maintain the Goods in satisfactory condition and keep them insured on Benson Signs' behalf for their full price against all risks to the reasonable satisfaction of Benson Signs. On request the Customer shall produce the policy of insurance to Benson Signs.
- 9.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- 9.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - 9.4.2 any such sale shall be a sale of Benson Signs' property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 9.5 The Customer's right to possession of the Goods shall terminate immediately if:
- 9.5.1 Benson Signs is entitled to terminate the Contract under clauses 10.1.3 or 10.1.4 below; or
 - 9.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under this agreement or any other contract between Benson Signs and the Customer; or
 - 9.5.3 the Customer encumbers or in any way charges any of the Goods.
- 9.6 Benson Signs shall be entitled to re-sell or otherwise dispose of recovered Goods in any way Benson Signs in its absolute discretion, thinks fit. The Customer hereby grants Benson Signs a non-exclusive, world-wide, royalty free, perpetual, irrevocable licence (with a right to sub-license) to use, for the purposes of such re-sale or other disposal, any and all trade marks and other text, images and marks which may have been applied to the Goods by the Customer and/or by Benson Signs or any third party at the request or with the consent of the Customer.

10. TERMINATION

- 10.1 Benson Signs shall be entitled to terminate the Contract immediately by notice in writing to the Customer if:
- 10.1.1 the Customer fails to pay the Deposit or provide all designs and artwork necessary for the Specification within five (5) Working Days after the date of the Contract or fails to agree the final Specification within ten (10) Working Days after the date of the Contract (or in each case within such longer period as the parties may agree);
 - 10.1.2 the Customer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 (thirty) days of receipt of notice of the breach requiring remedy of the same; or
 - 10.1.3 the Customer makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise

becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere; or

- 10.1.4 the Customer ceases or threatens to cease to carry on business; or
 - 10.1.5 there is at any time a material change in the management, ownership or control of the Customer; or
 - 10.1.6 if Benson Signs reasonably apprehends that any of the events specified in clauses 10.1.2 to 10.1.4 are about to occur in relation to the Customer and notifies the Customer accordingly.
- 10.2 In the event of termination by Benson Signs pursuant to clause 10.1 above then, without prejudice to any other right or remedy available to Benson Signs, Benson Signs shall be entitled to suspend any further supply under the Contract and under any other contract between the parties without any liability to the Customer and, if the Goods and/or Services have already been supplied but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. **FORCE MAJEURE**

Benson Signs reserves the right to defer the date of supply of the Goods and/or Services or to cancel the Contract without incurring any liability or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Benson Signs 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 ninety (90) days, the Customer shall be entitled to give notice in writing to Benson Signs to terminate the Contract.

12. **GENERAL**

- 12.1 The remedies available to Benson Signs under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.
- 12.2 The failure or delay of Benson Signs to enforce or to exercise, at any time, or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect its right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 12.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 12.4 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at its address set out above or to such other address which it has been previously notified to the sending party and shall be deemed to have been given on the day of delivery.
- 12.5 The Contract is personal to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of Benson Signs. Benson Signs shall be entitled to assign, transfer, sub-contract or otherwise part with the whole or any part of the Contract or any right or obligation under it to any third party.
- 12.6 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.

- 12.7 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation (unless made fraudulently), undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract.
- 12.8 No variation or amendment to the Contract shall be effective unless in writing signed by authorised representatives of the parties.
- 12.9 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.
- 12.10 The formation, existence, construction, validity and performance and all aspects of the Contract (including any associated non-contractual disputes or claims) are governed by the laws of England and the parties accept the exclusive jurisdiction of the English Courts.