

TERMS AND CONDITIONS OF SIGNMASTER SYSTEMS LTD

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Cancellation Charge: the charge payable by the Customer in the event of cancellation or variation of the Order to cover costs already incurred by Signmaster in respect of the Order.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Contract: the contract between Signmaster and the Customer for the sale and purchase of the Equipment in accordance with these Conditions.

Customer: the person or firm who purchases the Equipment from Signmaster.

Customer Support Agreement: the support programme offered by the relevant UK distributor of the Equipment to the Customer (through Signmaster).

Delivery Location: the location that the Customer nominates for the Equipment to be delivered.

Deposit: the deposit payable by the Customer in respect of the purchase of the Equipment, such amount as notified by Signmaster from time to time.

Equipment: the Equipment (or any part of it) offered for sale by Signmaster as set out in the Order.

Force Majeure Event: has the meaning given in clause 10.

Order: the Customer's order for the Equipment, as set out/described in the email order, telephone order, purchase order or face to face order, as the case may be.

Signmaster: Signmaster Systems Limited a company registered in England and Wales with company number 04921232 and whose registered office is Bank Chambers, 3 Churchyard Side, Nantwich, Cheshire, CW5 5DE.

Signmaster's Premises: Unit 3, Waymills Industrial Estate, Whitchurch, Shropshire, SY13 1TT or such other main trading premises as notified from time to time.

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- 1.2 **Construction.** In these Conditions, the following rules apply:
- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - (b) A reference to a party includes its personal representatives, successors or permitted assigns.
 - (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - (e) A reference to **writing** or **written** includes faxes and e-mails.
 - (f) Any obligations are jointly and severally liable as against the obligors (if applicable).

2. BASIS OF CONTRACT

- 2.1 These 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted and come into force when the Customer pays the Deposit (in respect of the larger items of Equipment) or when Signmaster delivers the Equipment to the Customer or when the Customer pays for the Equipment in full, whichever is earlier, at which point the Contract shall come into existence.
- 2.4 At the point the contract comes into existence it shall be deemed that the customer has directed Signmaster to proceed with the Order. From this point the Customer shall become liable to the Cancellation Charge in respect of any costs incurred by Signmaster in relation to the Order.

- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Signmaster which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Signmaster and any descriptions or illustrations contained in Signmaster's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Equipment given by Signmaster shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.

3. EQUIPMENT

- 3.1 The Equipment is described in Signmaster's brochure and/or catalogue and/or on the Signmaster website at <http://www.signmaster.co.uk>.
- 3.2 Signmaster reserves the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirements. Signmaster shall not be required to provide the Customer with notice of such amendments.
- 3.3 Signmaster shall not be under any obligation to continue to supply all or any of the Equipment to the Customer.
- 3.4 Subject to clause 3.2, Signmaster shall use its reasonable endeavours to supply the Equipment to the Customer in accordance with the Order.
- 3.5 Each Order for the Equipment shall constitute a separate contract. Any default by Signmaster in relation to any one order shall not entitle the Customer to treat this Contract as terminated.

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4. DELIVERY

- 4.1 Signmaster shall ensure that the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer information, Signmaster reference numbers, installation documents and special storage and maintenance instructions etc.
- 4.2 Delivery of the Equipment shall be completed on the Equipment' arrival at the Delivery Location.
- 4.3 Signmaster shall use its reasonable endeavours to dispatch the Equipment in accordance with the estimated delivery date provided to the Customer pursuant to clause 4.1.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Signmaster shall not be liable for any delay in delivery of the Equipment to the Customer's nominated address that is caused by a Force Majeure Event, an event outside Signmaster's control or the Customer's failure to provide Signmaster with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 4.5 If Signmaster fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. Signmaster shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Signmaster with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

Equipment which does not require installation and training by a Signmaster engineer (smaller items of Equipment)

- 4.6 Upon delivery of the Equipment (together with the installation instructions) to the Delivery Location the Customer is required to examine the Equipment within five Business Days and notify Signmaster in writing of any damaged Equipment or discrepancies of the Equipment within the aforementioned period of four Business Days otherwise the Customer will not be able to raise such an issue. For the avoidance of doubt, a notification on Signmaster's delivery note shall not constitute written notice.

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Equipment which does require installation and training by a Signmaster engineer (larger items of Equipment)

- 4.7 Following delivery a Signmaster engineer shall install the Equipment at the Delivery Location. The Engineer shall train the Customer in the proper use and maintenance of the Equipment in accordance with the relevant guidelines and instructions. Following installation and training the Customer will be required to complete a form to confirm they are happy with things such as the Equipment, installation and training received.
- 4.8 If the Customer fails to accept delivery of the Equipment within four Business Day of Signmaster attempting to deliver the Equipment, then, except where such failure or delay is caused by a Force Majeure Event or Signmaster's failure to comply with its obligations under the Contract, Signmaster shall store the Equipment until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.9 If 10 Business Days after the day on which Signmaster notified the Customer that the Equipment was ready for delivery the Customer has not accepted delivery of them, Signmaster may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 4.10 Equipment returned without the prior written consent of Signmaster may at Signmaster's absolute discretion be returned to the Customer or stored at the Customer's cost.

5. QUALITY

- 5.1 Subject to clause 5.8, Signmaster gives no warranty or assurance to the Customer that the Equipment shall:
- (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Equipment Act 1979); and
 - (d) be fit for any purpose held out by Signmaster,

and the Customer acknowledges and accepts that it must rely exclusively on any manufacturer's warranty given.

5.2 In the event of a problem with the Equipment during the relevant manufacturer's warranty period:

- (a) the Customer shall give notice to Signmaster within a reasonable time of discovery that some or all of the Equipment does not comply with the manufacturer's warranties;
- (b) as soon as reasonably practicable following notification to Signmaster of a problem with the Equipment, Signmaster shall either (in respect of a smaller item of Equipment) attempt to deal with the problem themselves OR (in respect of a larger item of Equipment) contact the UK distributor of the Equipment (on behalf of the manufacturer);
- (c) Signmaster shall (in respect of a smaller item of Equipment), at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full OR shall (in respect of a larger item of Equipment) ask an engineer of the UK distributor or manufacturer to visit the Delivery Location to examine such Equipment as soon as reasonably practicable.

5.3 If applicable in respect of the Equipment, the Customer acknowledges the receipt and understanding of the Customer Support Agreement.

5.4 The manufacturer, the UK distributor and/or Signmaster shall not be liable under any circumstances in relation to the Equipment in respect of any of the following events:

- (a) the Customer makes any further use of such Equipment after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Signmaster's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs such Equipment without the written consent of Signmaster;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

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- (e) the Equipment differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
 - 5.5 Signmaster shall have no liability to the Customer in respect of the Equipment' failure to comply with the manufacturer's warranty.
 - 5.6 The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
 - 5.7 These Conditions shall apply to any Equipment which has been repaired or replaced by a UK distributor or the manufacturer of the Equipment.
 - 5.8 In respect of any Equipment which has been sold as second hand and refurbished by Signmaster, Signmaster warrant that it shall be of satisfactory quality and be free from material defects in design, material and workmanship for three months following the date of delivery.
- 6. TITLE AND RISK**
- 6.1 The risk in the Equipment shall pass to the Customer upon delivery at the Delivery Location.
 - 6.2 Title to the Equipment shall not pass to the Customer until the earlier of:
 - (a) Signmaster receives payment in full (in cash or cleared funds) for the Equipment and any other Equipment that Signmaster has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums; and
 - (b) the Customer resells the Equipment, in which case title to the Equipment shall pass to the Customer at the time specified in clause 6.4.
 - 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
 - (a) store the Equipment separately from all other Equipment held by the Customer so that they remain readily identifiable as Signmaster's property;

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- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - (c) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify Signmaster immediately if it becomes subject to any of the events listed in clause 8.2; and
 - (e) give Signmaster such information relating to the Equipment as Signmaster may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Equipment in the ordinary course of its business (but not otherwise) before Signmaster receives payment for the Equipment. However, if the Customer resells the Equipment before that time:
- (a) it does so as principal and not as Signmaster's agent; and
 - (b) title to the Equipment shall pass from Signmaster to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy Signmaster may have:
- (a) the Customer's right to resell the Equipment or use them in the ordinary course of its business ceases immediately; and
 - (b) Signmaster may at any time:
 - (i) require the Customer to deliver up all Equipment in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

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7. PRICE PAYMENT AND DEPOSIT

- 7.1 The price of the Equipment shall be the price set out in the Order, or, if no price is quoted, the price set out in Signmaster's published price list in force as at the date of delivery.
- 7.2 Payment in full shall be taken in respect of the Equipment at the time of placing the Order unless the Order is in respect of a larger piece of Equipment, whereby the Customer shall be required to pay the Deposit at the time of placing the Order and the remainder once the installation date has been agreed upon.
- 7.3 Signmaster may, by giving notice to the Customer at any time up to 7 Business Days before delivery, increase the price of the Equipment to reflect any increase in the cost of the Equipment that is due to:
- (a) any factor beyond Signmaster's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Signmaster adequate or accurate information or instructions.
- 7.4 The price of the Equipment is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Signmaster, pay to Signmaster such additional amounts in respect of VAT as are chargeable on the supply of the Equipment.
- 7.5 Signmaster may invoice the Customer for the Equipment on or at any time after the placing of the Order but will require payment in full before any delivery of the Equipment.
- 7.6 Time of payment is of the essence in respect of the payment of any invoice.
- 7.7 If the Customer fails to make any payment due to Signmaster under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Plc's base rate

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from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Signmaster may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Signmaster to the Customer.

8. TERMINATION AND SUSPENSION

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, Signmaster may terminate the Contract with immediate effect by giving written notice to the Customer.

- 8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer];
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

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- (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in Signmaster's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Without limiting its other rights or remedies, Signmaster may suspend provision of the Equipment under the Contract or any other contract between the Customer and Signmaster if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(l), or Signmaster reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

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- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to Signmaster all of Signmaster's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9. LIMITATION OF LIABILITY**
- 9.1 Nothing in these Conditions shall limit or exclude Signmaster's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Equipment Act 1979;
 - (d) defective products under the Consumer Protection Act 1987.
- 9.2 Subject to clause 9.1:
- (a) Signmaster shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss (including ink, materials and time) arising under or in connection with the Contract; and
 - (b) Signmaster's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Equipment in respect of the particular Order.
- 9.3 Signmaster shall use its reasonable endeavours to ensure the accuracy of the technical data and literacy provided with the Equipment, but shall not be liable for any loss of profit, or any indirect or consequential loss arising for any errors or omissions contained within such technical data and literacy.

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10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Signmaster's or its subcontractors.

11. INDEMNITY

THE CUSTOMER SHALL INDEMNIFY AND KEEP SIGNMASTER FULLY INDEMNIFIED AT ALL TIMES AGAINST ALL LIABILITIES, COSTS (INCLUDING LEGAL COSTS ON AN INDEMNITY BASIS), EXPENSES, DAMAGES AND LOSSES (INCLUDING ANY DIRECT, INDIRECT OR CONSEQUENTIAL LOSSES, LOSS OF PROFIT, LOSS OF REPUTATION AND ALL INTEREST, PENALTIES AND OTHER COSTS AND EXPENSES SUFFERED OR INCURRED BY SIGNMASTER) ARISING FROM ANY BREACH OF THE TERMS OF THE CONTRACT BY THE CUSTOMER AND FROM THE ACTIONS OR OMISSIONS OF ANY REPRESENTATIVE OF THE CUSTOMER.

12. GENERAL

12.1 Assignment and other dealings.

- (a) Signmaster may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Signmaster.

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12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum 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.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 12.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or

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partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Signmaster.
- 12.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 12.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including noncontractual disputes or claims).