



The Customer's attention is particularly drawn to the provisions of clauses 5, 8.3 and 12.

1. Interpretation

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

|                                       |  |
|---------------------------------------|--|
| <b>"Business Day"</b>                 | means a day other than a Saturday, Sunday or public holiday in England when UK banks are open for business.  |
| <b>"Commencement Date"</b>            | means has the meaning set out in clause 2.2.   |
| <b>"Conditions"</b>                   | means these terms and conditions as amended from time to time in accordance with clause 15.7.  |
| <b>"Contract"</b>                     | means the contract between FASTSIGNS and the Customer for the supply of Goods and/or Services in accordance with these Conditions.   |
| <b>"Customer"</b>                     | means the person or firm who purchases the Goods and/or Services from FASTSIGNS.   |
| <b>"Delivery Location"</b>            | means has the meaning set out in clause 4.2.   |
| <b>"Force Majeure Event"</b>          | means has the meaning given to it in clause 14.1   |
| <b>"Goods"</b>                        | means the goods (or any part of them) set out in the Order.  |
| <b>"Goods Specification"</b>          | means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and FASTSIGNS.  |
| <b>"Intellectual Property Rights"</b> | means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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 |

|                   |   |
|-------------------|---|
| <b>"Order"</b>    | Means the customer's order for the supply of Goods and / or Services, as set out in the Customer's purchase order form, or the Customer's written or verbal acceptance of FASTSIGNS' quotation as the case may be.  |
| <b>"Services"</b> | means the artwork and design, manufacture, installation and maintenance of signs, graphics, mobile websites, visual communication products and/or any other services or goods supplied by FASTSIGNS under the terms of this agreement which are expressly stated in the Order |
| <b>"Supplier"</b> | Merchandise Matters Ltd registered in England and Wales with Company Reg. No. 08821184 trading as FASTSIGNS Southampton   |

1.2.

**1.2.** "Construction". In these Conditions, the following rules apply :

- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory 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;
- 1.2.4. 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; and
- 1.2.5. a reference to writing or written includes faxes, mobile phone texts, social media correspondence and e-mails.

**2.** Basis of Contract

**2.1.** The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

- 2.2.** The Order shall only be deemed to be accepted when FASTSIGNS issues written acceptance of the Order or verbal confirmation in respect of face to face orders at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.3.** 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 FASTSIGNS which is not set out in this Contract.
- 2.4.** Any samples, drawings, descriptive matter or advertising issued by FASTSIGNS and any descriptions of the Goods or illustrations or descriptions of the Services contained in FASTSIGNS' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5.** 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.
- 2.6.** Any quotation given by FASTSIGNS shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.7.** All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. Goods**

- 3.1.** The Goods are described in the quotation provided by FASTSIGNS.
- 3.2.** To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify FASTSIGNS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by FASTSIGNS in connection with any claim made against FASTSIGNS for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with FASTSIGNS' use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3.** FASTSIGNS reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

### **4. Delivery of Goods**

- 4.1.** FASTSIGNS shall ensure that:
  - 4.1.1.** if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered shall be detailed on a delivery note; and
  - 4.1.2.** if FASTSIGNS requires the Customer to return any packaging material to FASTSIGNS, that fact is clearly stated on a delivery note. The Customer shall

make any such packaging materials available for collection at such times as FASTSIGNS shall reasonably request. Returns of packaging materials shall be at FASTSIGNS' expense.

- 4.2.** FASTSIGNS shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after the Goods are ready.
- 4.3.** Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4.** Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. FASTSIGNS shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide FASTSIGNS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5.** If FASTSIGNS fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. FASTSIGNS shall have no liability for any failure to deliver the Goods to the extent that such failure not notified to FASTSIGNS within 5 Business Days of the date of Delivery of the Goods and is caused by a Force Majeure Event the Customer's failure to provide FASTSIGNS with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6.** If the Customer fails to accept or take delivery of the Goods within 5 Business Days of FASTSIGNS notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by FASTSIGNS' failure to comply with its obligations under the Contract in respect of the Goods:
  - 4.6.1.** delivery of the Goods shall be deemed to have been completed at 9.00 am on the next Business Day following the day on which FASTSIGNS notified the Customer that the Goods were ready; and
  - 4.6.2.** FASTSIGNS shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7.** If 10 Business Days after FASTSIGNS notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, FASTSIGNS may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8.** FASTSIGNS may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9.** If the Customer believes that not all the Goods in the Order have been delivered and FASTSIGNS is not delivering in instalments, the Customer must provide written notice to FASTSIGNS within 3 Business Days of the Goods being Delivered detailing its purported claim of short delivery before FASTSIGNS shall review.

## **THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THIS CLAUSE**

### **5. Quality of Goods and Limitation of Liability**

**5.1.** Subject to clause 5.4 and 5.5, FASTSIGNS warrants that on delivery, or for any extended period as expressly set out in writing in respect of a specific Good but to be from the date of delivery only ("warranty period"), the Goods shall:

5.1.1. conform in all material respects with their description and any applicable Goods Specification;

5.1.2. be free from material defects in design, material and workmanship; and

5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

**5.2.** Subject to clause 5.3 and clause 5.4, if:

5.2.1. the Customer gives notice in writing, during the warranty period and within a reasonable time of discovery and in any event no later than:

5.2.1.1. 5 Business Days of Delivery in the case of a defect that is apparent on normal visual inspection; or

5.2.1.2. In the case of a latent defect, within 14 days of the latent defect having become apparent such latent defect having to have manifested itself with a reasonable time from delivery

that the Goods and/or the Services do not comply with the warranty set out in clause 5.1;

5.2.2. FASTSIGNS is given a reasonable opportunity of examining such Goods; and

5.2.3. the Customer (if asked to do so by FASTSIGNS) returns such Goods to FASTSIGNS' place of business at the Customer's cost and liability and in the original packaging,

FASTSIGNS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

**5.3.** FASTSIGNS shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3.2. the defect arises because the Customer failed to follow FASTSIGNS' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.3.3. the defect arises as a result of FASTSIGNS following any drawing, design or Goods Specification supplied by the Customer;

- 5.3.4. the Customer alters or repairs such Goods without the written consent of FASTSIGNS;
  - 5.3.5. damage is caused by adverse weather conditions, including but not limited to above average wind and/or rain, storm damage and extreme temperatures beyond the level reasonably expected;
  - 5.3.6. the Customer fails to comply with clause 8.1;
  - 5.3.7. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 5.3.8. the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4.** FASTSIGNS excludes all liability for any Goods it has not manufactured and no warranty is given in respect of such Good. The Customer shall be entitled to the benefits of any manufacturer's warranty in existence and which is capable of assignment or can otherwise be passed to the Customer.
- 5.5.** The Customer acknowledges that any vehicle templates used by FASTSIGNS are not 100% accurate and the graphics applied to the vehicle may appear different to the 2 dimensional artwork previously approved and the exact position of any graphic may need to be adjusted when placed on to a vehicle to accommodate for example (but without limitation) grooves, recesses or added components not detailed on the standard vehicle templates, colour matching cannot be guaranteed, a vehicle may not be wrapped without overlapping joins and alignment of graphics may vary on either side of the vehicle up to +/- 25mm , the Customer must inform FASTSIGNS in writing of any previous work which a vehicle has undergone as this may affect the transfer of the templates and the Customer must ensure that the vehicle is supplied in a clean condition or FASTSIGNS reserves the right to charge for additional labour time incurred in preparing the vehicle to a clean state for graphics to be applied
- 5.6.** The Customer acknowledges that removal of graphics may be very difficult and any damage caused shall not be the responsibility of FASTSIGNS, the Customer further acknowledges it may be possible to see through any transfer in direct sunlight and to see a ghost outline of a vinyl graphic after removal due to protection against UV of the area covered by the vinyl over the time that the vinyl graphic has been on the vehicle and that any vehicle which has been re-sprayed may mean that any transfers do not work or that the paint, if inferior, to the original manufacturers specification may be adversely affected by any cleaning fluids FASTSIGNS uses to prepare the vehicle for the application of graphics and FASTSIGNS shall not be liable for any loss arising therefrom.
- 5.7.** The Customer further acknowledges that if a graphic, sign or any other Goods are being placed onto a vehicle or any other property that damage may be caused and whilst FASTSIGNS shall take all reasonable care so as to not cause damage or limit the

damage caused, FASTSIGNS, its employees, agents or subcontractors shall not be liable for any damage caused unless they are proven to be negligent.

- 5.8.** Except as provided in this clause 5, FASTSIGNS shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.9.** The terms of these Conditions shall not apply to any repaired or replacement Goods supplied by FASTSIGNS under clause 5.2.
- 5.10.** The Customer acknowledges that, in respect of any third party making a claim against the Customer in respect of the Services or the Goods, the Customer shall notify FASTSIGNS within 7 days of becoming aware of such a claim and FASTSIGNS may in its absolute discretion take conduct of any such claim or allow the Customer to continue, negotiations, litigation or other matters stemming from the matter and in any event the Customer will not correspond with any such third party until they have referred the matter to FASTSIGNS.
- 5.11.** If the Customer is a consumer, the Customer may have legal rights in relation to Goods that are faulty or not as described. Advice about the Customers legal rights is available from their local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## **6.** Title and Risk

- 6.1.** The risk in the Goods shall pass to the Customer on completion of delivery or collection of the Goods as appropriate.
- 6.2.** Title to the Goods shall not pass to the Customer until:
  - 6.2.1.** FASTSIGNS receives payment in full (in cash or cleared funds) for the Goods and any other goods that FASTSIGNS has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - 6.2.2.** the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3.** Until title to the Goods has passed to the Customer, the Customer shall:
  - 6.3.1.** store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as FASTSIGNS' property;
  - 6.3.2.** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.3.** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on FASTSIGNS' behalf from the date of delivery;
  - 6.3.4.** notify FASTSIGNS immediately if it becomes subject to any of the events listed in clause 13.1.1 to clause 13.1.12; and

- 6.3.5. give FASTSIGNS such information relating to the Goods as FASTSIGNS may require from time to time.
- 6.4.** Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before FASTSIGNS receives payment for the Goods. However, if the Customer resells the Goods before that time:
  - 6.4.1. it does so as principal and not as FASTSIGNS' agent;
  - 6.4.2. title to the Goods shall pass from FASTSIGNS to the Customer immediately before the time at which resale by the Customer occurs; and
  - 6.4.3. any outstanding invoice shall immediately become payable to FASTSIGNS.
- 6.5.** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1.1 to clause 13.1.12, then, without limiting any other right or remedy FASTSIGNS may have:
  - 6.5.1. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
  - 6.5.2. FASTSIGNS may at any time:
    - 6.5.2.1. require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - 6.5.2.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. Supply of Services**

- 7.1.** FASTSIGNS shall use all reasonable endeavours to meet any performance dates for the Services specified in Order or unless otherwise agreed in writing between FASTSIGNS and the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services by FASTSIGNS.
- 7.2.** FASTSIGNS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and FASTSIGNS shall notify the Customer in any such event.
- 7.3.** FASTSIGNS warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.4.** If the Customer fails to accept the Services on the performance date and time agreed and is not at the site or FASTSIGNS is unable to carry out the Services at the Customer's site due to a default of the Customer pursuant to clause 8.1, FASTSIGNS shall have the option to charge the Customer £100 per hour until the Customer arrives and FASTSIGNS are able to provide the Services.



**7.5.** If the Customer is a consumer, the Customer may have legal rights in relation to Services not carried out with reasonable skill and care, or if the materials FASTSIGNS use are faulty or not as described. Advice about the Customer's legal rights is available from their local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## **8.** Customer's Obligations

### **8.1.** The Customer shall:

- 8.1.1. ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- 8.1.2. co-operate with FASTSIGNS in all matters relating to the Services;
- 8.1.3. provide FASTSIGNS, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by FASTSIGNS to provide the Services including but not limiting to surveying and inspecting the site before performance of the Contract
- 8.1.4. ensuring a representative of the Customer is at the site to enable the Services to be carried out at the agreed time and on the agreed date;
- 8.1.5. provide FASTSIGNS with such information and materials as FASTSIGNS may reasonably require to supply the Services and the Goods, and ensure that such information is accurate in all material respects including but not limited to approving all artwork or any other specifications requested by the Customer;
- 8.1.6. prepare the Customer's premises or vehicles for the supply of the Services including but not limited to providing all health and safety requirements of the Customer to FASTSIGNS and an electricity supply to the site of any installation, providing a clean surface and any other requirements which FASTSIGNS request including but not limited to removing any obstructions which may reasonably affect installation or provision of the Services generally;
- 8.1.7. ensure the property where any Goods are to be installed is adequate for such use including but not limited to any structural design of any building or property and ensuring that it can bear the weight and size of the Goods
- 8.1.8. 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 or in respect of the Goods including but not limited to obtaining all landlord's consents, planning permissions, consents, building regulations approval; and

**8.2.** If FASTSIGNS' performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation detailed in clause 8.1 ("Customer Default"):

- 8.2.1. FASTSIGNS shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays FASTSIGNS' performance of any of its obligations;

- 8.2.2. FASTSIGNS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from FASTSIGNS' failure or delay to perform any of its obligations or performing its obligations which result in a loss to the Customer because of a Customer Default; and
  - 8.2.3. the Customer shall reimburse FASTSIGNS on written demand for any costs or losses sustained or incurred by FASTSIGNS arising directly or indirectly from the Customer Default.
- 8.3.** In accordance with the Health & Safety Executive, Building and Planning regulations and guidelines which place the responsibility of sign maintenance with the sign buyer, FASTSIGNS recommends regular inspection where the positioning of the sign can endanger lives or property in the event of failure of the sign (including fixings). FASTSIGNS are not responsible for maintaining signs unless such maintenance is expressly referred to in the Order.

## 9. Charges and Payment

- 9.1.** The price for Goods and Services shall be the price set out in the Order or if not referred to in the Order in the written quotation provided by FASTSIGNS, all prices are exclusive of VAT. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2.** Unless expressly referred to in the Order, the price of the Goods and/or Services excludes removing and/or disposal of old signs, graphics or other equipment required for the installation which shall be charged in addition to the price quoted and payable immediately on demand.
- 9.3.** FASTSIGNS reserves the right to increase the price of the Goods or the Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to FASTSIGNS that is due to:
  - 9.3.1.1. any factor beyond the control of FASTSIGNS (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 9.3.1.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;
  - 9.3.1.3. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give FASTSIGNS adequate or accurate information or instructions in respect of the Goods;
  - 9.3.1.4. any part of the contract is to be performed outside of the normal working hours of [0900 to 17.30] on a Business Day;

9.3.1.5. any special access equipment is, in the opinion of FASTSIGNS, necessary or required for the performance of its obligations under the Contract or is otherwise required by law; or

9.3.1.6. any drawings, plans or surveys whether prepared on behalf of FASTSIGNS or the Customer require any amendments which is either requested by the Customer or which in the opinion of FASTSIGNS is necessary or required for the performance of its obligations under the contract or is otherwise required by law.

**9.4.** In respect of Goods and/or the Services, FASTSIGNS shall invoice the Customer at placement of Order (Pro-Forma Invoice), or on or at any time after completion of delivery.

**9.5.** A Customer located in England and Wales shall pay each invoice submitted by FASTSIGNS:

9.5.1. On delivery if requested by FASTSIGNS in the Order, excluding any payments which have been requested and paid in advance; or

9.5.2. Within 30 days of the date of the invoice;

and in both cases in full and in cleared funds to a bank account nominated in writing by FASTSIGNS and time for payment shall be of the essence of the Contract.

**9.6.** A Customer located outside of England and Wales shall pay each invoice submitted by FASTSIGNS before performance of the Contract commences, unless otherwise agreed in writing by the Company, and in full and in cleared funds to a bank account nominated in writing by FASTSIGNS and time for payment shall be of the essence of the Contract.

**9.7.** 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 FASTSIGNS to the Customer, the Customer shall, on receipt of a valid VAT invoice from FASTSIGNS, pay to FASTSIGNS such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

**9.8.** If the Customer fails to make any payment due to FASTSIGNS 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 HSBC's base rate 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.

**9.9.** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. FASTSIGNS may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by FASTSIGNS to the Customer.

**10.** Intellectual Property Rights

- 10.1. All Intellectual Property Rights in or arising out of or in connection with the Services or the Goods shall be owned by FASTSIGNS.
- 10.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services or the Goods, the Customer's use of any such Intellectual Property Rights is conditional on FASTSIGNS obtaining a written licence from the relevant licensor on such terms as will entitle FASTSIGNS to license such rights to the Customer.
- 10.3. The Customer shall indemnify FASTSIGNS against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other professional costs and expenses) suffered or incurred by FASTSIGNS arising out of or in connection with any claim made against FASTSIGNS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods created with a Goods Specification.

## 11. Confidentiality

A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

## 12. Limitation of Liability: **The Customer's Attention Is Particularly Drawn to this Clause**

### 12.1. Nothing in these Conditions shall limit or exclude FASTSIGNS' liability for:

- 12.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2. fraud or fraudulent misrepresentation;
- 12.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 12.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 12.1.5. defective products under the Consumer Protection Act 1987; and
- 12.1.6. in the case of consumers only breaches of terms implied by sections 13, 14 and 15 of the Sales of Goods Act 1979 and sections 3, 4 and 5 of the Supply of

Goods and Services Act 1982 (description, satisfactory quality, fitness for purpose and samples)

**12.2.** Subject to clause 12.1:

- 12.2.1. FASTSIGNS 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 arising under or in connection with the Contract;
- 12.2.2. FASTSIGNS shall under no circumstances whatever be liable for any direct loss arising out of the Customer's breach of these conditions and specifically clause 8.1;
- 12.2.3. FASTSIGNS shall under no circumstances whatever be liable for any loss to the Customer or third party (including but not limited to indirect or consequential loss, loss profit or goodwill) arising out of any damage, destruction or other loss or defects to any vehicle, property, walls, timbers or other structures to which any of the Goods or any part of the Goods may have been installed by the Customer unless FASTSIGNS have been expressly requested to and have accepted they will advise on the suitability for installing the Goods to such vehicles, walls, timbers or other structure or have otherwise been engaged to install the Goods;
- 12.2.4. FASTSIGNS shall under no circumstances whatever be liable for any loss to the Customer or third party (including but not limited to indirect or consequential loss, loss of profit or goodwill) arising out of any damage caused to any person or property by the Customer's failure to accept a maintenance and/or inspection contract previously offered to the Customer in respect of any such Goods or Services. The Customer acknowledges that it has a legal duty to maintain and inspect any signs; and
- 12.2.5. FASTSIGNS' 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 price of the Contract.

**12.3.** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**12.4.** This clause 12 shall survive termination of the Contract.

**13.** Termination

**13.1.** Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 13.1.1. the other party 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;

- 13.1.2. the other party 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 a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.1.3. 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 other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 13.1.4. the other party (being an individual) is the subject of a bankruptcy petition or order;
- 13.1.5. a creditor or encumbrancer of the other party 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;
- 13.1.6. 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 other party (being a company);
- 13.1.7. the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 13.1.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 13.1.9. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.1 to clause 13.1.8 (inclusive);
- 13.1.10. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 13.1.11. the other party's financial position deteriorates to such an extent that in FASTSIGNS' opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 13.1.12. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 13.2.** Without limiting its other rights or remedies, FASTSIGNS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.3.** Without limiting its other rights or remedies, FASTSIGNS may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and FASTSIGNS if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1.1 to clause 13.1.12, or FASTSIGNS reasonably believes that the Customer is about to become subject to any of them.
- 13.4.** On termination of the Contract for any reason:
- 13.4.1. the Customer shall immediately pay to FASTSIGNS all of FASTSIGNS' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, FASTSIGNS shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.4.2. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 13.4.3. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 14.** Force Majeure
- 14.1.** For the purposes of this Contract, "Force Majeure" Event means an event beyond the reasonable control of FASTSIGNS including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of FASTSIGNS or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, adverse weather, fire, flood, storm or default of suppliers or subcontractors.
- 14.2.** FASTSIGNS shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3.** If the Force Majeure Event prevents FASTSIGNS from providing any of the Services and/or Goods for more than 6 weeks, FASTSIGNS shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 15.** General
- 15.1.** Assignment and other dealings.
- 15.1.1. FASTSIGNS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may

subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

- 15.1.2. The Customer shall not, without the prior written consent of FASTSIGNS, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

**15.2. Notices.**

- 15.2.1. Any notice or other communication given to a party under or in connection with this 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 or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail. In respect of FASTSIGNS any notice or communication shall only be valid if being sent by e-mail if sent to [Southampton@fastsigns.com](mailto:Southampton@fastsigns.com)
- 15.2.2. 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 fax or e-mail, one Business Day after transmission.
- 15.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**15.3. Severance.**

- 15.3.1. 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.
- 15.3.2. If [one party gives notice to the other of the possibility that] 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.

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

- 15.5. No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either



party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 15.6.** Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7.** 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 agreed in writing and signed by FASTSIGNS.
- 15.8.** Governing law. This agreement 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.
- 15.9.** 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 non-contractual disputes or claims).