

## **Identity Holdings Ltd Terms of business**

### **Terms of Business**

#### **1. DEFINITIONS AND INTERPRETATION**

“Company” refers to “Identity Holdings Limited” a Company incorporated under the laws of England and Wales with Company number 04217845

“Buyer” refers to the person who accepts an estimate of the Seller/Company for the sale of goods or services and those orders for goods or services as accepted by the Seller/Company.

“Contract” refers to the Contract between the Seller/Company and the “Buyer”.

“Customer” refers to the person firm or Company entering into the Contract with the Company.

“Export Contract” means a Contract where the goods or services are being sold to a purchaser whose place of residence is outside the United Kingdom of Great Britain and Northern Ireland.

“Goods” refers to any goods or materials to be manufactured by the Company and/or supplied to the Customer/Buyer under the terms of the Contract.

“Services” refers to designs, artwork, installations, and any other activity which may support the delivery of goods to the customer

“Invoice” refers to the list of goods sent or services provided by the Company with a sum due for the listed goods or services. This will constitute a formal request for payment within the set terms.

“Order” means the confirmed placement of an Order for the Goods by the Customer.

“Quote” means an estimated price of the goods or services. A quote does not constitute a formal offer, but is instead an invitation to treat.

“Works” refers to the manufacture installation or maintenance of signs or other equipment by the Company under the terms of the Contract.

## 2. GENERAL

Unless otherwise agreed in writing by one of the directors of the Company all quotations are made and all orders accepted subject to these conditions and shall override any conditions or stipulations incorporated or referred to by the Customer whether in the order or in any negotiations verbally or in writing.

## 3. PRICE

- a) All tenders and quotations are exclusive of VAT, which will be charged at the rate applicable at the date of Invoice.
- b) Except as otherwise expressly stated and contracted the Company reserves the right to vary prices at any time without notice to the customer. Prices do not include the cost of freight, carriage, installation or packing, as that will be additionally charged to the customer.
- c) The Company may charge a surcharge and the Customer shall pay such increase in price if;
  - (i) any special access equipment is in the opinion of the Company during the course of the performance of the Contract necessary for proper performance of its part of the Contract;
  - (ii) any drawings plans or surveys whether prepared by or on behalf of the Company or the Customer require any amendment which is either requested by the Customer or which in the opinion of the Company is necessary for the proper performance of its part of the Contract;
  - (iii) any Part of the Contract whether at the request of the Customer or otherwise is to be performed outside the normal working hours 09.00 to 17.00 Monday till Friday.
  - (iv) the cost to the Company of any materials to be used in the works increases as a result of circumstances outside the control of the Company; and
  - (v) any other circumstance which increases the cost to the Company, and the Company, acting reasonably, believes that these costs should be borne by the Buyer.
- d) Unless specifically mentioned on the face of the quotation or any written Contract the price does not include the cost of removal and disposal of any old signs or other of the Customer's property from the Customer's premises. The cost of such removal and disposal will be an additional charge to the Quote and will be added to the Invoice.
- e) Quotes are subject to withdrawal at any time before receipt of an Order.
- f) Customers will receive written confirmation of their Order upon placement of their Order
- g) It is the Customers responsibility to ensure that their Order is accurate and to the desired requirements. If the Customer has received written confirmation and not contested it within 24 hours, the Order will be processed and placed, as this will deem acceptance of the Contract. The Company excludes liability for any costs or implications over misunderstandings over the Order confirmation. This liability is held only with the customer.

#### 4. PAYMENT

- a) The time of payment shall be of the essence of this Contract.
- b) The foregoing provisions will be in addition and without prejudice to all other remedies available to the Company for non-payment.
- c) Customers without a credit account must pay for goods on collection or before delivery. Orders in excess of £1,000 are subject to a 50% deposit, before work will commence.
- d) Customers with an annual spend of less than £500 will not be entitled to a credit account.
- e) Customers with a credit account must pay for the goods within 30 days following an issue of an Invoice in respect of the Goods. Orders placed with a value in excess of £1500 are subject to a 50% deposit, before work will commence, unless the customer agreed specific terms in writing. The Company also reserves the right to claim from the Customer its reasonable costs of recovery of any monies due pursuant to The Late Payment of Commercial Debts (interest) Act 1988, to which interest rate will be applied at 8% above the Bank of England base rate.
- f) Payments of accounts should be made, by bank transfer (Details on our invoice) with remittance advices sent to our office at Westham Business Park, Eastbourne Road, Eastbourne, East Sussex. BN24 5NP, or by cheque made to Identity Holdings Ltd and sent to the above address. Credit card payments are accepted on request subject to clause 4g below.
- g) Overdue accounts paid for by card will be charged an additional 5% over and above the outstanding amount.
- h) No Order that has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- i) No Order that has been accepted by the Company may be placed on hold by the Buyer, except with the agreement in writing of the Company and on a payment plan as approved by the Company.

#### 5. WARRANTY

- a) The Company agrees at its own cost and at its sole discretion to repair or replace any of the goods or parts thereof and to repair or rectify any defects in the works which in

each case are proved to the Company to be faulty due to bad workmanship or materials providing in such case that such fault is notified to the Company in writing within, unless agreed in accordance with clause 2 a), a period of 6 months from the date of delivery of the goods or completion of the Works, or unless otherwise stated in the quote.

b) The Company specifically exempts from the provisions of this clause 5, any part or parts of the goods that were not manufactured by the Company ("Externally Manufactured Goods"). In the case of such Externally Manufactured Goods, the Customer shall be entitled to the benefit of any rights obtained by the Company in the Company's Contract to purchase the Externally Manufactured Goods or parts thereof.

## 6. LIMITATION OF LIABILITY (THE BUYERS ATTENTION IS SPECIFICALLY DRAWN TO THIS CLAUSE)

Subject to the provisions of clause 5 hereof it is hereby specifically agreed:

a) If the Customer has examined a sample of goods produced by the Company, the goods shall be deemed to correspond with their description if they correspond with the sample, notwithstanding how the goods may have been described by the Company. On delivery, the goods shall conform in all material aspects with their description subject to any qualification or representation contained in any advertisement, brochure or other documentation. The Company cannot accept any liability for the failure of the Customer to properly examine the goods.

b) If the Customer has examined the goods or has been provided with plans drawings, visuals proofs or specifications or other information by the Company relating to the goods or the works the Customer must make his own judgment as a result of such examination or plans specification and other information. The Company can accept no liability for the failure of the customer to properly examine drawings, visuals proofs or specifications or other documentation.

c) No warranty, condition, description or representation on the part of the Company is given or implied by these conditions nor is any warranty condition description or representation to be taken to have been given or implied from anything said or written in negotiations between the parties or their representatives by or on behalf of the Company prior to the Contract. All statutory or other warranties conditions descriptions or representations express or implied as to the state quality of fitness of the goods or the works the subject of the Contract are hereby expressly excluded so far as their exclusion is permitted by law.

d) Without prejudice to the generality of the foregoing it is specifically agreed that the Company will in no circumstances be liable for any loss or damage suffered by the Customer arising out of any defects in the internal or external fabric of the building or other structures to which any sign or other goods may have been affixed unless the

Company has been asked by the Customer to advise and as advised in arrears on the suitability of the fabric of the building, internal or external or other structure. Such consultation, if requested will hold an additional surcharge. Without prejudice to the generality of the foregoing it is specifically agreed that the Company will in no circumstances be liable for any loss (including consequential loss) or damage suffered by the Customer, whether direct or indirect, arising out of any defect in any goods supplied and / or manufactured by the Company. For the avoidance of doubt, this includes any costs incurred by a 3rd party on behalf of the Customer

e) Nothing in these conditions shall restrict the liability of the Company arising out of any defect in the goods or the works due to the negligence of the Company that causes death or personal injury.

f) The Company's liability shall in any event cease if:

(i) The Customer shall not have paid in full any invoices from the Company on the due date.

(ii) The Company's representatives are denied full and free right of access to the goods and/or the site where the works have been affected.

(iii) The Customer permits persons other than those approved or authorized by the Company to effect any replacement of parts maintenance adjustments or repairs to the goods or the works.

(iv) The Customer has not properly maintained the goods in accordance with the instructions pamphlets or directions given or issued by the Company from time to time.

(v) The Customer has used any spare parts or replacements not manufactured by or on behalf of the Company and supplied by it or fail to follow the Company's instructions for the use of same.

(vi) The Customer permits any additions or alterations to be made to the goods of whatever kind without the Company's approval in writing.

(vii) The goods as supplied have been subject to vandalism howsoever caused.

g) In the event of any claim being made against the Customer by reason of any matter referred to and in respect of which the Company is liable under these conditions the customer shall notify the Company in writing within thirty days of receipt by him of notice of such claim. In these circumstances the Company may on its election conduct all negotiations for the settlement of the said claim and any litigation that may arise there from. The Customer shall not unless and until the Company shall have failed to take over the conduct of such negotiations or litigation make any admission that might be prejudicial thereto.

h) The Company will make every effort to ensure that all goods are manufactured and/or supplied to specification but it is in all cases for the Customer to ensure that goods are fit and suitable for the purpose for which they are required. All conditions and warranties expressed or implied, whether by statute, common law or otherwise as to the conditions or fitness for any purpose of the goods are expressly excluded so far as their exclusion is permitted by law and the Company shall not be liable for any direct or consequent loss howsoever arising which may be suffered by the customer by reason of any defect or

failure to perform on the part of the goods.

i) In the event that that Customer is dissatisfied with the Goods only as a result of them being of unsatisfactory quality or not fit for purpose, the Customer must return the Goods to the Company for analysis. If upon analysis the Company accepts liability for any defects, the Company shall at its own cost repair / replace the defective Goods in accordance with clause 6k). If upon analysis the Company does not accept liability for the defects, the Goods shall be remedied / replaced on the express written agreement by the Customer that it will bear the costs of remedial / replacement work and any delivery charges and any other charges incurred in respect of this extra work. If the Goods are not returned to the Company for analysis or are repaired / replaced by the Customer or any other party without the Company's written consent, the Company shall in no circumstances be liable for any costs incurred by the Customer or any other party.

j) If any goods prove to be defective, the liability of the Company shall for all purposes, be limited to the cost of making good the defects or, at our discretion, replacement of the goods. The Company will only consider crediting in part or in full in cases where it has been given a proper opportunity to make good any defects or to replace the goods and only where the Company has accepted liability.

k) We take no responsibility for the infringement of any patent or copyright or registered design or trade mark of any third party in the execution of the Buyer's instructions and it is the Buyer's entire responsibility to obtain any necessary licenses or permissions and to indemnify us against all claims, actions, proceedings, costs and losses arising out of such an infringement.

l) Orders for the installation and erection of Goods are undertaken on the understanding that the Buyer has complied with the requirements of the local planning and other interested official departments and the responsibility for obtaining any planning permission and permits is entirely that of the Buyer. All charges levied by authorities before, during and/or after installation and erection are to be borne by the Buyer.

m) Where the Goods are to be erected in the ground, the responsibility for ensuring that no services such as water, gas, electricity, telephones or pipelines are likely to be interfered with, damaged or obstructed is the responsibility of the Buyer as is any interference damage or obstruction caused thereto by our staff or sub-Contractors in the event of the position of such services not being revealed (or being incorrectly revealed) to us. Furthermore, where the Goods are to be erected on a structure, it is the Buyer's responsibility to ensure that the structure is of adequate strength and in good condition to bear the additional loads imposed thereon by the installation of the sign and fittings.

n) The Company's pantone colour matching system is an interpretation of a printed ink colour chart and may in some instances not be as bright or as clean as when reproducing the colour on a different substrate using alternative materials and applications. It may also vary by a number of shades, due to using industrial materials, as opposed to using screen printing inks for which the pantone colour system was

intended. If we are to supply a match to something already produced in a pantone match, we will require a sample of the item on the same substrate that we are being asked to match to. Otherwise we can only supply our interpretation and best match to the printed colour chart version. We can produce a sample for approval prior to manufacture, however this could be chargeable depending on the colour and required urgency (any cost will be advised by our sales staff at the point of request of the sample by the Customer).

o) Any returns requested by the Company as part of any ongoing investigation into the products under these terms and conditions shall arrive no later than 14 days from the receipt of notification from the Company to the Customer. Failure for the Customer to comply with this clause 6 (o) shall result in the Customer being charged for any relevant additional work on the Goods unless an alternative arrangement has been agreed in writing between the Company and the Customer.

p) Delivery times are intended as indications only, and cannot in any case be considered to constitute a formal commitment. Their non-observance cannot in any circumstances give rise to an allowance, to cancellation of the order, or a penalty for delay. The Company shall not be liable for any loss to the Customer arising from delay in transit.

q) Unless agreed otherwise it is the customers responsibility to provide brand colouring and logo styles. The company will not be responsible for any discrepancy resulting in the failure of the customer to provide such brand colouring and logos.

## 7. PERFORMANCE

a) Where a period is named for performance of the Contract unless such period is extended by mutual consent in writing the Customer shall accept performance within that period.

b) Any time or date for performance of the Contract named by the Company is an estimate only and the Company shall not be liable for the consequences of any delay.

c) The Customer shall provide to the Company such details as may be necessary or may be required by the Company to enable the Company to perform the Contract. If for any reason the Customer fails to provide such information, or if any reason not related to any act of default by or on the part of the Company, the Customer is unable to accept the performance of the Contract at the time when the Company is ready and willing to perform the Contract the Customer shall indemnify the Company in respect of any losses occasioned to the Company by reason of such failure on the part of the Customer.

d) Should any default be made by the Customer in paying any sum due under this or any Contract between the parties as and when it becomes due the Company shall have the right either to suspend all further performance of the Contract until such default is made good to cancel the Contract so far as any goods remain to be delivered or work

remains to be done there under.

## 8. DELIVERY

a) Any loss or damage to the goods in transit must be noted on the delivery note of the carrier and notified to the Company within 24 hours of receipt of the consignment. In the event of non-delivery of the goods, the Customer must notify the Company within 24 hours of delivery due date.

b) No claims for shortages of delivery will be entertained by the Company unless notice in writing is given to the carrier concerned and to the Company and a complete claim in writing is submitted within 5 days of the date of consignment being received.

c) Any expenses incurred due to adverse weather conditions rest solely with the customer. This can include but is not limited to additional transportation costs and additional installation costs.

e) The Company is unable to work to a fixed time delivery service. The Company will not accept responsibility for any delays incurred in respect of orders placed or delivery timelines.

f) The Company may, at its sole discretion, repair / replace any goods manufactured by the Company that are faulty due to poor workmanship but shall under no circumstances be liable for any consequential (or other) loss arising out of such defect.

## 9. TITLE AND RISK

a) The risk in the goods shall pass to the Customer on completion of delivery

b) Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:

(i) 'the Goods', and

(ii) any other goods that the Company has supplied to the Customer in respect of which payment has become due

(iii) Until title to the Goods has passed to the Customer, the Customer shall:

(A) hold the Goods on a fiduciary basis as the Company's bailee;

(B) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

(C) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(D) maintain the Goods in satisfactory condition and keep them insured against all risks for the full price on the Company's behalf from the date of delivery;

(E) notify the Company immediately if it becomes subject to any of the events listed in clause 19; and



(F) give the Company such information relating to the Goods as the Company may require from time to time;

But the Customer may resell or use the Goods in the ordinary course of its business provided that:

(vi) any sale monies are held in trust for the Company, are not mixed with other money of the Customer or paid into an overdue account and are at all times identifiable as the Company's money

(v) the Customer is not in default of its payments obligations in respect of the Goods for Period in excess of 7 days; and/or

(vi) the Company has not notified the Customer that it revokes the right to resell or use the Goods because the Company reasonably believes that the Customer is liable to become subject to any event listed in clause 18.

## 10. RETENTION OF TITLE

a) The risk in the goods supplied by the Company shall pass to the Customer when the Company delivers the goods to the Customer and the Company shall have no responsibility in respect of the safety of the said goods thereafter and accordingly the Customer shall insure the goods thereafter against such risks (if any) as it thinks appropriate. However the ownership of the goods and any goods previously supplied under any other Contract with the Company shall remain with the Company which reserves the right to dispose of the goods until payment in full for all the materials has been received by it in accordance with the terms of this Contract or any other Contract or until such time as the Customer sells the goods to its customers by way of a bona-fide sale at full market value.

b) The Customer shall ensure that the goods belonging to the Company should be kept separate from those that have been paid for. The Customer is licensed by the Company as an agent to agree to sell the goods on behalf of the Company subject to the Express condition that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the money of the Company.

c) If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 18 or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and if the Customer fails to do so promptly, enter any premises of the Customer (without trespass) or of any third party where the Goods are stored in Order to recover them.

## 11. ACCEPTANCE

- a) The Customer shall inspect the goods and/or works immediately on delivery or completion and shall within 7 days from such inspection give notice in writing to the Company of any matter or thing by reason whereof it alleges the goods or works are not in accordance with the Contract.
- b) If the Customer fails to give such notice the goods and work shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to accept and pay for them accordingly.

## 12. APPROVAL AND CONSENT

- a) Unless otherwise agreed in writing by the Company the responsibility for obtaining all approval or consents for the works as may be required by statute Contract landlord permission or otherwise shall be the responsibility of the Customer.
- b) Where the Company agrees to make all necessary occasions for planning permission under the Town & Country Planning acts the Customer will pay to the Company a fee either at the rates of the British Sign Association applicable at the time of the application or at such other rates as may be agreed between the parties whether or not the application is successful.
- c) Where the Company at the request of the Customer commences performance of the Contract before any required approvals or consents have been obtained the Customer will indemnify the Company against any liability arising from such performance and in the event of such permission or consent being refused the Customer shall indemnify the Company against all losses arising from such refusal.

## 13. TOOLS

- a) All tools, dyes and patterns used in the manufacture of the goods shall remain the exclusive property of the Company as any surcharge for such tools, dyes or patterns is agreed upon by both parties as a rental charge.

## 14. LETTERS PATENT

- a) The Customer agrees not without the previous consent in writing of the Company to manufacture or sell any third party any goods the manufacture or sale of which would infringe any Letters Patented of which the Company is patentee, licensee or under which the Company is authorized to manufacture or sell.
- b) The Customer shall fully indemnify the Company against all damages penalties costs and expenses to which the Company may be liable if any work done on the Customers

instructions involves an infringement of a registered design trade mark copyright or Letters Patent.

## 15. COPYRIGHT

a) All drawings plans specifications technical information and estimates supplied by the Company and the Copyright therein remain the property of the Company and they will be returned by the Customer to the Company forthwith in the event of any Order for goods or works of a similar type being placed with another Company and in any event not later than 6 months after they are supplied in the event of no Contract having being entered into between the Customer and the Company in relation thereto.

b) All such plans drawings specifications and estimates are confidential and shall be used by the Customer only for the purpose of considering any quotation or tender the performance of the Contract or the operation of the goods may not be divulged in any circumstances without the written authority of the Company.

c) Where drawing plans and technical information are supplied by the Customer the provisions of sub' paragraphs hereof shall apply to the Company mutatis mutandis.

(i) Without prejudice to clause 6 hereof the Company will accept no liability for any loss caused to the Customer that arises wholly or partly from any defect or error or in omission from the said drawing plans and technical information.

(ii) Company will accept no liability for any loss caused to the Customer that arises wholly or partly from any defect or error or in omission from the said drawing plans and technical information.

## 16. SUB-CONTRACTING

The Company reserves the right to subcontract the performance of the whole or part of the Contract.

## 17. ACCESS

The Customer should ensure access by the Company to the site for the purpose of surveying and inspecting the premises and installing signs or other equipment. Any cost incurred by the Company in the event of delay in obtaining access arranged by the Customer shall be charged to and be paid by the Customer.

## 18. TERMINATION

a) The Company shall be entitled to terminate the Contract in the following situations:

i) if the Customer shall make default in or commit a breach of any of its obligations to the Company or

ii) if any judgment shall be entered against the Customer or distress or execution shall be levied upon the Customer, its properties or assets or

- iii) if the Customer shall make or offer to make any arrangements or composition with creditors or commit any act of bankruptcy or
- iv) if any petition or receiving Order shall be presented or made against him or
- v) if the Customer being a Limited Company any resolution or petition to wind up such a Company shall be passed or presented otherwise than for reconstruction or amalgamation or if a receiver of the Customers undertaking property or assets or any part thereof shall be appointed by the Customer

b) The Company shall have the right forthwith to determine any Contract then subsisting and upon written notice of determination being posted to the Customer at the last known address of the Customer any subsisting Contract shall be deemed to have been determined without prejudice to any claim or right the Company may otherwise make or exercise.

## 19. ARBITRATION

Any difference or dispute arising between the Company and the Customer in respect of a Contract governed by these conditions shall if the Company so determines to be referred to the arbitration of a person to be mutually agreed. The submission shall be deemed to be a submission to arbitrate within the meaning of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

## 20. LEGAL CONSTRUCTION AND JURISDICTION

These terms and conditions and any Contract between the Company and the Customer are subject to and shall be construed in accordance with English Law and the English Courts shall have jurisdiction in relation to any disputes or claims arising there from.

## 21. PROTOTYPES

Any prototypes, models, plans, illustrations, drawings, descriptions and specifications are intended to give a general outline of the Company's proposals and are not binding as to details nor to final sizes or arrangements. They shall remain the property of the Company and not be copied or communicated to a third party without the Company's written consent. The Company reserves the right to charge for any prototype, models, plans, illustrations and drawing supplied at the Customers request. The Company also reserves the right to charge for attendance at site meetings.

## 22. BULK SUPPLY

Goods Ordered and manufactured in bulk under an arrangement whereby they are to be delivered on a call off basis shall unless otherwise agreed in writing be invoiced to the Customer at the total price current when manufactured.

## 23. HEALTH & SAFETY

Any liability for ensuring compliance with any requirement statutory or otherwise concerning health, safety or welfare on the premises of the Customer or the client of the Customer or any premises that are required to be visited on behalf of the Customer rests exclusively with the Customer.

The goods are sold on condition that;

a) The Customer carries out such tests and examination of the goods as are reasonably practicable to ensure that when used the goods are safe and without risk to health and comply with all local laws and regulations.

b) The Customer shall, if so requested by the Company, enter into a written undertaking to take such steps as may be specified by the Company relating to such tests and examination.

c) The Customer shall indemnify the Company against any loss, liability or expense arising from the Customer's failure to carry out any such tests or examinations required under (a) and (b) above.

#### 24. FORCE MAJEURE

The Company shall not be liable for any loss or damage caused by any delay in performance or by non-performance of any of its obligations where the same is occasioned by any cause whatsoever which is beyond its control including, but not limited to, acts of god, war (whether or not declared), riots, civil commotions, fire, explosion, sabotage, storm, flood, earthquake, fog, subsidence, adverse weather conditions, pestilence, epidemics, legal restrictions, or acts of any Government or branch or agency thereof (including without limitation any local Government), non availability of transport, strikes, lockouts or trade disputes of whatever kind, cessation or interruption of operation of any plant or process, failure of supply of raw materials or components of or breakdown of machinery. Should any such event occur the Company shall be entitled to cancel or rescind or suspend the Contract or suspend any delivery without liability for loss or damage resulting there from but only after advising the Customer in writing of the cause of the cancellation or rescission or suspension.