

Terms and Conditions



I. Definitions:

- 1.1. **Brief:** the Customer's requirements that the Design needs to meet.
- 1.2. **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.3. **Conditions:** the terms and conditions set out in this document
- 1.4. **Contract:** the contract between SDL and the Customer for the supply of Services in accordance with these Conditions.
- 1.5. **Customer:** the person or firm who purchases Goods and/or Services from SDL.
- 1.6. **Deliverables:** The Design, Design visual, Prototype, and Goods supplied by SDL for the Customer.
- 1.7. **Design:** the interpretation of the Brief as agreed between the Customer and SDL.
- 1.8. **Design visual:** The two-dimensional drawings or photo realistic renderings or 3D CAD models of the Design.
- 1.9. **Force Majeure Event:** an event or circumstance beyond a party's reasonable control.
- 1.10. **Goods:** the manufactured goods, such as signage, banners, light boxes and display unit(s) supplied by SDL for the Customer as set out in a Proposal or Order.

1.11. **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, 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 trade secrets), 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.

1.12. **Order:** the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form or otherwise in writing or in the Customer's written acceptance of SDL's quotation.

1.13. **Proposal:** SDL's proposal for Goods and/or Services as set out in SDL's proposal form.

1.14. **Prototype:** a pre-production example of the Design in 3 dimensions.

1.15. **SDL:** Splash Display Limited registered in England and Wales with company number 05117332

1.16. **Services:** The Design, Design visual and Prototype produced by SDL for the Customer as set out in a Proposal or Order.

1.17. **Specification:** the description or specification of any Deliverables, including any related plans and drawings, that are provided in writing by the Customer to SDL or provided by SDL to the Customer in SDL's proposal form.

1.18. Interpretation:

1.18.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). 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.

1.18.2. Any phrase introduced by the terms **including**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.18.3. A reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

- 2.1. The Proposal constitutes an offer by SDL to provide the Goods and/or Services in accordance with these Conditions.
- 2.2. An Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these conditions.
- 2.3. The Customer is responsible for ensuring that the terms of an Order and any applicable Specification are complete and accurate.
- 2.4. A Proposal shall only be deemed to be accepted when the Customer issues written acceptance of the Proposal at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.5. An Order shall only be deemed to be accepted when the Customer issues written acceptance of an Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.6. Any samples, drawings, descriptive matter or advertising issued by SDL, and any descriptions or illustrations contained in SDL's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7. 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.
- 2.8. All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.9. Any quotation given by SDL shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

3. Supply of Goods and Services

- 3.1. SDL warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.2. SDL shall supply the Goods when the Customer has approved the Prototype in writing and ensure that the Goods shall:
 - 3.2.1. correspond with their description;
 - 3.2.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by SDL or made known to SDL by the Customer, expressly or by implication, and in this respect the Customer relies on SDL's skill and judgement;
 - 3.2.3. where they are manufactured by SDL be free from defects in design, materials and workmanship; [and]
 - 3.2.4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; [and]
 - 3.2.5. Subject to Clause 3.5, if;
- 3.4.1. the Customer gives notice in writing to SDL within 7 days of delivery that some or all of the Goods do not comply with the warranty set out in Clause 3.2;
- 3.4.2. SDL is given a reasonable opportunity of examining such Goods; and
- 3.4.3. the Customer (if asked to do so by SDL) returns such Goods to SDL's place of business at the Customer's cost.
- 3.5. SDL shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 3.6. SDL shall not be liable for the Goods' failure to comply with the warranty set out in Clause 3.2 in any of the following events:
 - 3.6.1. the Customer makes any further use of such Goods after giving notice in accordance with Clause 3.3;
 - 3.6.2. the defect arises because the Customer failed to follow SDL's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 3.6.3. the defect arises as a result of SDL following any drawing, design or Specification supplied by the Customer;
 - 3.6.4. the Customer alters or repairs such Goods without the written consent of SDL;
 - 3.6.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 3.6.6. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 3.7. Except as provided in this Clause 3.6, SDL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 3.2.
- 3.8. To the extent that the Goods and/or Services are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify SDL 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 SDL in connection with any claim made against SDL for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with SDL's use of the Specification. This Clause 3 shall survive termination of the Contract.
- 3.9. SDL shall use reasonable endeavours to meet any performance dates specified in the Proposal or Order; but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4. SDL reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and SDL shall notify the Customer in any such event.

5. Delivery

- 5.1. SDL shall ensure that:
 - 5.2. the Prototype and the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 5.3. SDL shall by agreement with the Customer either:
 - 5.3.1. deliver the Prototype and/or the Goods to the location set out in the Proposal or an Order or such other location as the parties may agree (Delivery Location) at any time after SDL notifies the Customer that the Goods and/or Services are ready; or
 - 5.3.2. the Customer shall collect the Prototype and/or Goods from SDL's premises at Unit 4 Copse Business Centre, Bulls Copse Road, Totton, Southampton SO40 9LR or such other location as may be advised by SDL prior to delivery (**Delivery Location**) within three Business Days of SDL notifying the Customer that the Goods and/or Services are ready.
 - 5.4. Delivery is completed on the completion of unloading of the Prototype and/or Goods if delivered by SDL or loading of the Prototype and/or Goods at the Delivery Location if collected by the Customer.
 - 5.5. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. SDL shall not be liable for any delay in delivery of the Goods and/or Services that is caused by a Force Majeure Event or the Customer's failure to provide SDL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Services.

6. Title and Risk

- 6.1. The risk in the Goods shall pass to the Customer on completion of delivery.
 - 6.1.1. Title to the Goods shall not pass to the Customer until SDL receives payment in full (in cash or cleared funds) for the Goods and any other Goods that SDL has supplied to the Customer in which case title to the Goods and/or Services shall pass at the time of payment of all such sums.
 - 6.2. Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3. store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as SDL's property;
 - 6.4. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and/or Services;

7. Customer's obligations

- 7.1. The Customer shall ensure that any information it provides to SDL is complete and accurate, and:
 - 7.2. The Customer shall approve the Design, the Design Visual and the Prototype in writing as soon as reasonably practicable and in any event within 14 days of receiving it from SDL.
 - 7.3. If SDL's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to provide complete and accurate information:
 - 7.4. without limiting or affecting any other right or remedy available to it, SDL shall have the right to suspend performance of the Services.
 - 7.5. SDL shall not be liable for any costs or losses sustained or incurred by the Customer; and
 - 7.6. The Customer shall reimburse SDL on written demand for any costs or losses sustained or incurred by SDL.
- ## 8. Charges for the Goods and/or Services and payment
- 8.1. The charges shall be the price set out in the Proposal or Order; and
 - 8.2. includes one Design. If further designs are requested by the Customer, SDL reserves the right to charge for further designs on a time and materials basis calculated in accordance with SDL's hourly fee rates, as set out in the Proposal or Order.
 - 8.2.1. excludes value added tax (VAT), which the Customer shall be liable to pay to SDL at the prevailing rate; and
 - 8.2.2. excludes the costs and charges of, insurance and transport of the Goods and to any additional address or addresses to the address agreed with the Customer in accordance with clause 5.3.1, which shall be invoiced to the Customer.
 - OR
 - 8.3. SDL shall invoice the Customer:
 - 8.3.1. the price of the Goods and/or Services at the Commencement Date or in accordance with any credit terms agreed by SDL and confirmed in writing to the Customer;

8.3.2. The price of the Design (if any) on Delivery of the Prototype.

8.4. The Customer shall pay each invoice submitted by SDL:

- 8.4.1. on receipt of the invoice or in accordance with any credit terms agreed by SDL and confirmed in writing to the Customer; and
- 8.4.2. in full and in cleared funds to a bank account nominated in writing by SDL; and
- 8.5. time for payment shall be of the essence of the Contract.
- 8.6. If the Customer fails to make a payment due to SDL under the Contract by the due date, then, without limiting SDL's remedies under Clause, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.6. will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8.8. SDL may, by giving notice to the Customer at any time up to the thirty (30) Business Days before delivery, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:

- 8.8.1. any factor beyond SDL's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.8.2. any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
- 8.8.3. any delay caused by any instructions of the Customer or failure of the Customer to give SDL adequate or accurate information or instructions.

9. Intellectual property rights

9.1. All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by SDL but the Customer shall from the date 18 calendar months after delivery of the Goods and for a period of [5] years thereafter have a fully paid-up, worldwide, non-exclusive, royalty free licence to copy the Deliverables for the purpose of using the Deliverables in its business.

9.2. The Customer grants SDL a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to SDL for the term of the Contract for the purpose of providing the Services to the Customer.

9.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in this Clause 9.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

10. Limitation of liability

- 10.1. Nothing in the Contract shall limit or exclude SDL's liability for:
 - 10.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.1.2. fraud or fraudulent misrepresentation; or
 - 10.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 10.1.4. SDL shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - 10.1.5. loss of profits;
 - 10.1.6. loss of sales or business;
 - 10.1.7. loss of agreements or contracts;
 - 10.1.8. loss of anticipated savings;
 - 10.1.9. loss of use or corruption of software, data or information;
 - 10.1.10. loss of damage to goodwill; and
 - 10.2. any indirect or consequential loss.
- 10.3. SDL's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the price paid by the Customer for the Goods and/or Services.
- 10.4. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 and by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.5. This clause 10 shall survive termination of the Contract.

11. Termination

- 11.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 30 days written notice.
 - 11.2. Without affecting any other right or remedy available to it, SDL may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 11.3. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that being notified in writing to do so;
 - 11.4. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
 - 11.5. the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.6. the Customer's financial position deteriorates to such an extent that in SDL's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
 - 11.7. Without affecting any other right or remedy available to it, SDL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment, or there is a change of Control of the Customer.
 - 11.8. Without affecting any other right or remedy available to it, SDL may suspend the supply of Goods and/or Services under the Contract or any other contract between the Customer and SDL if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.4 to clause 11.6 or SDL reasonably believes that the Customer is about to become subject to any of them.

12. Consequences of termination

- 12.1. On termination of the Contract:
 - 12.2. the Customer shall immediately pay to SDL all of SDL's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, SDL shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 12.3. the Customer shall return all of SDL's Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then SDL may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
 - 12.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.
 - 12.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. General

Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

Assignment and other dealings. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of SDL.

Confidentiality. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause.

Each party may disclose the other party's confidential information to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract.

Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause, and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract. **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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

Severance. 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.

Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in Unit 4 Copse Business Centre, Bulls Copse Road, Totton, Southampton SO40 9LR. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 or at the time recorded by the delivery service; or if sent by fax or email, at SDL on the next Business Day after transmission. This clause does not apply to the service of any proceedings or other documents in any legal action or; where applicable, any other method of dispute resolution.

Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.