

TERMS AND CONDITIONS OF SUPPLY

1 Definitions and Interpretation

1.1.1 In these Conditions

'Customer' means the person firm or company who purchases Goods or Services from Birch

'Birch' means M F Birch Limited Trading as Birch Print (registered number 01840436)

'Goods' means the goods (if any) to be supplied and/or delivered to the Customer (including any part or parts of them) by Birch

'Services' means the services (if any) agreed in the Contract to be supplied to the Customer (including any part or parts of them) by Birch

'Price' means the price of the Goods and Services as agreed in writing between the parties or, if no price has been quoted, means Birch's then current standard charges for materials and charging rates for labour and costs of manufacture as subsequently varied (if appropriate) in accordance with the Contract

'Conditions' means these standard terms and conditions of supply of Birch set out in this document

'Contract' means the contract between Birch and the Customer for the sale and purchase of the Goods and/or the supply of the Services, incorporating these Conditions

'Customer Items' means any materials or information provided by the Customer

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Formation of the Contract

2.1 These Conditions apply to all sales of Goods or Services by Birch. No variation to these Conditions or representation about the Goods or Services shall have effect unless expressly agreed in writing and signed by a director of Birch.

2.2 Subject to Clause 2.1 the Contract will be on these Conditions to the exclusion of all other terms and conditions and all previous oral or written representations. No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 Birch may submit a quotation to the Customer verbally or by post, fax, email, or electronic transfer. Unless Birch has agreed otherwise any quotation is valid for 30 days only and may be withdrawn at any time by Birch.

2.4 Each order or acceptance of a quotation for Goods or Services by the Customer shall be deemed to be an offer by the Customer to purchase Goods or Services 2 subject to these Conditions, irrespective of any statement to the contrary in such order or acceptance.

2.5 No order placed by the Customer shall be deemed to be accepted by Birch until it is acknowledged by Birch in writing or Birch delivers the Goods to the Customer or performs the Services for the Customer, at which time a Contract shall be formed incorporating these Conditions.

2.6 The Contract may not be delayed or cancelled by the Customer unless Birch agrees in writing on such terms as Birch may specify.

3 Specifications

3.1 The Customer shall be responsible for ensuring that any order (including any applicable specification) submitted by the Customer is complete, accurate, unambiguous and legible, that it meets the Customer's requirements, and that any designs, equipment, material, information and instructions as may be necessary for Birch to perform its obligations are provided promptly.

3.2 The quantity, quality and description of the Goods and any specification for the Goods or Services shall be those set out or referred to in the Customer's order or as otherwise agreed in writing between the Customer and Birch.

3.3 Birch shall not be obliged to comply with the Customer's specification of goods or services if it becomes aware that this would not comply with any applicable safety or other statutory requirements. If it becomes aware of any such non-compliance Birch shall request the Customer to provide a revised specification and may revise the Price to reflect any increased costs.

4 Customer Items

4.1 Birch will take reasonable care of any Customer Items left with it for the purpose of the Contract but they will remain at the risk of the Customer.

4.2 Birch shall keep any information forming part of the Customer Items confidential and shall comply with the Data Protection Act 1998 in respect of any personal data.

4.3 The Customer warrants that:

4.3.1 any copy which is to be supplied by the Customer shall be supplied by the date specified by Birch or (if no such date is specified) in sufficient time for Birch to perform its obligations under the Contract and in a complete, legible and useable form and format;

4.3.2 any drawings, calculations, packing details, artwork, original material of any kind or any other particulars supplied by the Customer, the same will be correct, complete, legible and otherwise useable;

4.3.3 any materials (including without limitation paper and plates) supplied or specified by the Customer shall be suitable and adequate for the purpose for which they are supplied and (if applicable) supplied in quantities adequate to cover normal spoilage; and

4.3.4 it possesses all necessary Intellectual Property Rights to allow Birch to use any Customer Items in accordance with the Contract.

4.4 If Birch considers that the Customer is in breach of the warranties set out in clause 4.3 or any of them, it shall be entitled to reject the defective Customer Items at any time, without thereby giving the Customer grounds to terminate the Contract.

4.5 If the Customer is in breach of the warranties set out at clause 4.3 or any of them:

4.5.1 Birch shall notify the Customer if it becomes aware of such a breach;

4.5.2 Birch shall use reasonable endeavours to secure a satisfactory result, but cannot guarantee that the quality of the Goods delivered will not be impaired as a result of the Customer's breach. Accordingly, whether or not the Goods are of a reasonable quality is to be judged against the background of the Customer's breach of warranty;

4.5.3 Birch shall be entitled to increase the Price to reflect any increase in its costs resulting from the Customer's breach of warranty, and

4.5.4 the Customer will indemnify Birch against all costs claims and demands arising from any use by Birch in accordance with the Contract of any Customer Items.

5 Materials Owned by Birch

Metal, film, glass and other materials owned by Birch or its sub-contractors and used in the production of type, plates, moulds, stereotypes, electrotypes, film-setting, negatives, positives and the like remain their exclusive property.

6 Price

6.1 Birch may, by giving notice to the Customer at any time before delivery or performance, increase the Price to reflect (a) any increase in the costs due to any foreign exchange fluctuation, currency regulation or alteration of duties, (b) any change in delivery dates, quantities or specifications for the Goods or Services which is requested by the Customer, or (c) any delay caused by any failure of the Customer to comply with its obligations under the Contract.

6.2 Unless otherwise agreed in writing the Price does not include transport, packaging and insurance in transit of the Goods. Birch will deliver the Goods to the address in the United Kingdom specified in the Customer's order for an additional charge.

6.3 The Price is exclusive of any applicable value added tax (or other applicable sales tax), which the Customer shall also pay to Birch.

7 Payment

7.1 Unless otherwise agreed in writing,

7.1.1 Birch may invoice the Customer for the price of the Goods or Services on delivery, or when they would have been delivered but for the default of the Customer, and

7.1.2 The Customer shall pay the Price within 30 days of the date of the invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer.

7.2 The time of payment of the Price shall be of the essence of the Contract. Payments are to be made without deduction or set-off into such bank account as Birch may from time to time specify. No payment shall be deemed to have been received until Birch has received cleared funds or cash.

7.3 All payments payable to Birch under the Contract shall become due immediately upon termination of the Contract despite any other provision of the Contract.

7.4 If the Customer fails to make any payment on the due date then Birch may (without prejudice to any other right or remedy available to it):

7.4.1 cancel the Contract or suspend any further deliveries of Goods or provision of Services to the Customer;

7.4.2 appropriate any payment made by the Customer to such of the Goods or Services (or any goods or services supplied under any other contract between Birch and the Customer) as Birch may think fit (notwithstanding any purported appropriation by the Customer); and

7.4.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of [4] per cent per annum above Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

7.5 Birch shall have a lien on all undelivered Goods for all monies due from the Customer to Birch under any contract between them and the Customer shall have no right of set-off in respect of such monies.

8 Proof Copies and Sign Off

8.1 Birch will provide the Customer with proofs of the Goods

before printing.

8.1.1 The Customer must approve the proof or notify Birch of any necessary corrections as soon as reasonably practicable. If the proof is not approved or any necessary corrections notified within 30 days of the quotation Birch reserves the right to increase the Price if the cost to Birch of performing the Contract increases as a result.

8.1.2 Birch will not be responsible for correcting any errors in the printed Goods unless it has failed to print strictly in accordance with the proof supplied to the Customer and any corrections notified to it by the Customer in accordance with clause 8.1.1.

8.2 The Customer shall pay for any re-prints that may be necessary due to the Customer's failure to notify Birch of any correction in accordance with clause 8.1.

8.3 Birch may charge the Customer an additional charge if the Customer requests any alterations other than a correction for which Birch is responsible under clause 8.1.

9 Refusal of Work

Birch may refuse to carry out work and shall be reimbursed by the Customer for all costs expenditure claims and demands and for any loss of profit if

9.1 the work contravenes any applicable legislation or in the opinion of Birch is contrary to the British Code of Advertising, Sales Promotion and Direct Marketing or any other legal instrument or guidance.

9.2 in its sole opinion the Goods are or may be obscene or otherwise illegal or libellous or which may infringe any Intellectual Property Rights of another party.

9.3 The Goods or any Customer Items contravene the Intellectual Property Rights of any third party.

10 Delivery

10.1 Time for delivery of the Goods or Services shall not be of the essence of the Contract. Any date for that purpose given by Birch shall be given in good faith but shall be approximate only. Birch shall use its reasonable endeavours to deliver the Goods on the due date but may deliver them either before or after that date upon giving reasonable notice to the Customer.

10.2 On delivery of the Goods the Customer shall provide any necessary labour and facilities for unloading the Goods from the vehicle on which they are delivered.

10.3 If delivery is refused or impossible then the Goods will be returned to Birch and the Customer shall indemnify Birch against all abortive and additional transport costs and storage costs. Birch will notify the Customer the delivery was refused or impossible. The Customer will make alternative arrangements with Birch for delivery of the Goods. If after one month the Goods cannot be delivered and have not been collected by the Customer Birch will warn the Customer that it may dispose of or destroy the Goods unless the Customer notifies Birch within 14 days of such warning that it still requires the Goods. If the Customer does so it shall make arrangements to collect or take delivery of the Goods as soon as reasonably practical and Birch may charge the Customer for storage of the Goods at its standard rate until they are collected or delivered.

10.4 If the Customer, its employees, agents or sub-contractors, request the use of Birch's property, including any lifting equipment or transport, to assist in the collection of the Goods or the unloading of the Goods from the vehicle in which they are delivered, the Customer accepts liability for all the associated risks and agrees to comply with any instructions issued by Birch.

10.5 Unless expressly agreed between the parties in writing, the Customer shall be solely responsible for the proper unloading of the Goods. If, to assist the Customer in removing the Goods from point of delivery, Birch or its sub-contractor does any unloading of the Goods free of charge, no liability whatsoever (except liability for death or personal injury resulting from the negligence of Birch or its sub-contractors) shall thereby be incurred by Birch or its sub-contractor and the Customer shall indemnify Birch in respect of any such liability.

10.6 The Customer shall be deemed to have accepted the Goods on delivery unless Birch is notified of a defect or default in accordance with clause 12.5. If the Customer uses the Goods or any part of them, it shall be deemed to have accepted all the Goods by so doing.

10.7 The quantity of any consignment of Goods as recorded by Birch upon despatch from its place of business shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence proving the contrary.

10.8 Subject to the other provisions of these Conditions, Birch will not be liable for any direct, indirect or consequential losses (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) for late or non-delivery howsoever caused (including as a result of Birch's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 30 days.

10.9 Birch shall not be liable for any non-delivery of Goods (even if caused by Birch's negligence) unless notice in writing is given to Birch within 3 days of the date when the Goods would in the ordinary course of events have been received.

10.10 Any liability of Birch for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

10.11 Birch shall use reasonable endeavours to deliver the quantity of Goods ordered but is not obliged to deliver that exact quantity, and the Customer agrees that Birch shall be entitled to deliver +/-10% of the quantity of Goods ordered.

10.12 If, in accordance with clause 10.11 above, Birch:

10.12.1 delivers more Goods than ordered, it shall be entitled to increase the Price pro rata; and

10.12.2 delivers fewer Goods than ordered, it shall reduce the Price pro rata.

11 Ownership and Risk

11.1 Unless otherwise expressly agreed in writing between the parties, risk of damage to or loss of the Goods shall pass to the Customer upon delivery or (if the Customer specifies postal delivery) when the Goods are delivered to the Royal Mail.

11.2 Ownership of the Goods shall not pass to the Customer until Birch has received in full (in cash or cleared funds) all sums due to it:

11.2.1 in respect of the Goods and Services;

11.2.2 and all other sums which are or which become due to Birch from the Customer on any account.

11.3 Until ownership of the Goods passes to the Customer, the Customer must:

11.3.1 hold the Goods on a fiduciary basis as Birch's bailee;

11.3.2 store the Goods (at no extra cost to Birch) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as Birch's property;

11.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

11.3.4 maintain the Goods in satisfactory condition insured for their full Price against all risks to the reasonable satisfaction of Birch and with the interest of Birch noted on the policy.

11.4 The Customer may resell the Goods before ownership has passed to it only if the sale:

11.4.1 is in the ordinary course of the Customer's business at full market value and the Customer uses the sale proceeds to reduce the amount due to Birch; and

11.4.2 is a sale of Birch's property on the Customer's own behalf and the Customer deals as principal when making the sale.

11.5 The Customer's rights to possession of the Goods shall terminate immediately if any of the circumstances set out in clause 16.1 occur.

11.6 Birch shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Birch.

11.7 The Customer grants Birch, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

11.8 On termination of the Contract, howsoever caused, Birch's rights contained in this clause 11 shall remain in effect.

12 Quality, Quantity and Warranties

12.1 Birch warrants that it and/or its servants or agents shall perform the Services with reasonable care and skill.

12.2 Birch warrants that (subject to the other provisions of these Conditions) upon delivery and for a reasonable period of time from the date of delivery the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994. Unless otherwise expressly agreed in writing between the parties, Birch will have sole discretion to determine what constitutes a reasonable period of time for the purposes of this clause taking certain factors into account (including the Customer's storage procedures) when making such a determination. As a guide, paper Goods will deteriorate after two months unless stored in the correct conditions and any adhesive materials or business reply envelopes will be fit for the purpose for one month only from delivery.

12.3 Where Birch is not the manufacturer of the Goods Birch will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Birch.

12.4 Birch shall not be liable for any defects in the Goods or in the performance of the Services, or for breach of the warranty in clauses 12.1 and 12.2 if:

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

12.4.2 the Customer alters or repairs such Goods without the written consent of Birch; and/or

12.4.3 the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Customer or from the Customer failing to amend the proofs correctly prior to Sign Off.

12.5 Birch shall not be liable for a breach of any of the warranties in clauses 12.1 and 12.2 unless the Customer gives notice in writing of an error in the provision of the Services, or in the quantity or description of Goods delivered or of the defect to Birch within 3 days of:

12.5.1 the date of the provision of the Services or date of delivery of the Goods (where the defect would be apparent to the Customer upon a reasonable inspection); or

12.5.2 (in the case of non-delivery of the Goods or non-provision of the Services) the date when the Goods would in the ordinary

course of events have been received or when the Services would have been performed; or

12.5.3 the date when the Customer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Customer upon a reasonable inspection).

12.6 Subject to clauses 12.4 and 12.5, if any of the Goods or Services do not conform with any of the warranties in clauses 12.1 and 12.2 Birch shall at its option repair or replace such Goods (or the defective part) or re-perform the Services (or the defective part) or refund the Price of such Goods or Services at the pro rata Contract rate provided that, if Birch so requests, the Customer shall return the Goods or the part of such Goods which is defective to Birch.

12.7 If Birch complies with clause 12.6 it shall have no further liability for a breach of any of the warranties in clauses 12.1 and 12.2 in respect of such Goods or Services.

13 Limitation of Liability

13.1 The following provisions and the provisions of clause 12 set out the entire liability of Birch (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

13.1.1 any breach of these Conditions; and 8

13.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 11B of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

13.3 Nothing in these terms and conditions excludes or limits the liability of either party for death or personal injury caused by that party's negligence or fraudulent misrepresentation.

13.4 Subject to clauses 13.2 and 13.3:

13.4.1 Birch's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance, delay in performance of or non-performance of the Contract (even if caused by negligence) shall be limited to the Price payable under the Contract or, if delivery is by instalments or performance is in stages, that part of the Contract to which the delivery or performance relates; and

13.4.2 Birch shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of the Contract (subject to clause 13.4.1) for any direct loss including loss of profit or any indirect or consequential loss or damage (whether for loss of business, revenue, capital, anticipated savings, reputation or goodwill or otherwise), customer claims, costs, expenses, mailing costs or other claims for consequential compensation whatsoever (whether or not caused by the negligence of Birch, its employees, agents or sub-contractors) which arise out of or in connection with the Contract or the performance or contemplated performance or delay in performance or non-performance of the Contract.

13.5 The Customer shall indemnify Birch against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with the Contract brought or threatened to be brought against Birch by any third party except to the extent Birch is liable to the Customer in accordance with these terms and conditions.

14 Intellectual Property Rights

14.1 The Customer shall indemnify and keep indemnified Birch against all actions, costs (including reasonable legal fees), claims, proceedings and demands arising directly or indirectly in respect of:

14.1.1 Goods or Services which are obscene or otherwise illegal or libellous; or

14.1.2 any infringement or alleged infringement by Birch of any Intellectual Property Rights attributable to Birch complying with any instructions from or requirements of the Customer relating to the Goods or Services; or

14.1.3 any breach of the Data Protection Act 1998 by Birch in carrying out its obligations in accordance with the Contract.

14.2 The Customer shall grant to Birch a non-exclusive licence to use the Intellectual Property Rights in the Customer Items for the purposes of carrying out its obligations under the Contract.

14.3 The Customer warrants that it owns the Intellectual Property Rights in the Customer Items.

14.4 Any drawings, artwork, designs or other materials prepared by Birch in the production of the Goods or provision of the Services and all Intellectual Property Rights therein are and shall remain the exclusive property of Birch, unless provided by the Customer or otherwise agreed in writing by Birch.

14.5 If any drawings, artwork, designs or other materials are created by Birch as a result of a proposal by Birch to the Customer that is not accepted or a commission from the Customer that is subsequently cancelled, then the Customer shall have no licence to use any Intellectual Property Rights in any such material and the Customer shall promptly return all such material to Birch.

14.6 Birch shall grant to the Customer a non-exclusive licence to use the Intellectual Property Rights in the Goods and Services only for the sole express purpose for which the Goods and Services were supplied, and the Customer shall have no licence for any other use without the express consent in writing of Birch.

15 Force Majeure

Birch reserves the right to defer the date of delivery or to cancel or suspend the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Birch including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

16 Termination

16.1 Birch may by Written Notice served on the Customer terminate the Contract forthwith if the Customer:

16.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Customer fails to remedy such breach within the number of days specified in any notice in writing from Birch, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with clause 7 is a material breach of the terms of the Contract which is not capable of remedy;

16.1.2 becomes bankrupt, insolvent, makes any composition with its creditors or has a receiver appointed under the Mental Health Act 1982;

16.1.3 has any distraint, execution, or other process levied or enforced on any of its property;

16.1.4 ceases or threatens to cease to trade;

16.1.5 has a change in its management and/or control as defined by Section 416 Income and Corporation Taxes Act 1988;

16.1.6 the equivalent occurs to the Customer in another jurisdiction; or if Birch reasonably anticipates that one of the above set of circumstances is about to occur.

16.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or Birch accrued prior to termination. The conditions which expressly or by implication have effect after termination shall continue to be enforceable notwithstanding termination.

16.3 Birch shall be entitled to suspend any deliveries following service of a notice in writing specifying a breach under clause 16.1.1, until either the breach is remedied or the Contract terminates, whichever occurs first.

17 Notices

17.1 All notices to be given in accordance with the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email: (a) (in case of notices to Birch) to its registered office or such changed address as shall be notified to the Customer by Birch; or (b) (in the case of notices to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to Birch by the Customer.

17.2 Notices shall be deemed to have been received: (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or (b) if delivered by hand, on the day of delivery; or (c) if sent by fax or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

18 General

18.1 Each right or remedy of Birch under the Contract is without prejudice to any other right or remedy of Birch whether under the Contract or not.

18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.3 Failure or delay by Birch in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

18.4 Any waiver by Birch of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

18.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.



M F Birch Ltd T/as Birch Print

Registered Number: 1840436

Registered Office:

Heritage House, Cossall Industrial Estate,

Ilkeston, Derbyshire DE7 5UD