

F Bender Limited Standard Terms and Conditions of Supply (March 2020 Edition)

These terms and conditions (**Conditions**) apply to the supply of our services and the Products listed on our website, www.benders.co.uk (our **Website**). Please read these terms and conditions carefully. By setting up an account with us and ordering products and services from us, you are confirming you agree to be bound by these Conditions, in particular the limitation of liability provisions contained in clause 11.

1. INTERPRETATION

In these Conditions certain terms are capitalised. Where terms and capitalised, they have a specific meaning, which is as follows:

1.1 DEFINITIONS:

Contract	the contract between you and us for the supply of Products and/or Services which comprises these Conditions and the Order Confirmation.
Delivery Location	has the meaning given in clause 3.2.
Intellectual Property Rights	all patents, copyright and related rights, trade marks, business names, rights in get up and goodwill, rights in designs, rights to use and protect the confidentiality of confidential information (including know-how) and all other intellectual property rights, registered or unregistered, which subsist now or in the future in any part of the world
Order Confirmation	has the meaning given to it in clause 2.3.
Products	the products (or any part of them) set out in the Order Confirmation.
Services	the services supplied by us to you as set out in the Order Confirmation.
We, us, our	F Bender Limited, company number 01816910.
You, your	the company who purchases the Products and/or Services from us, whose details are contained in the account set up form.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

2. CONTRACT

- 2.1 When you wish to purchase our Products and Services, we will create a customer account for you, and we will ask you to confirm you agree to be bound by these Conditions as part of that account creation process. The contract between us shall be formed on the earlier of you confirming you agree to be bound by these Conditions or you placing an order with us for the supply of our Products and/or Services (the **Start Date**).
- 2.2 Following the Start Date, all orders you place with us for our Products and/or Services shall be governed by and be subject to these Conditions. We may notify you of changes to these Conditions from time to time, in accordance with clause 14.8.
- 2.3 Each time you place an order with us, that order will be an offer by you to purchase Products and/or Services from us in accordance with these Conditions. We will send you an email acknowledging your order. When we issue a dispatch confirmation email to you (the **Order Confirmation**), this will be confirmation that we have accepted your order, subject to these Conditions. An order will only be accepted when we confirm in writing that we have approved and accepted your order. We are only obliged to deliver the Products and/or Services which are detailed in the Order Confirmation. If you wish to purchase any further Products and/or Services from us, you will need to place a separate order with us.

3. SUPPLY OF THE PRODUCTS

- 3.1 The Products are as described on our Website and in our brochures. We warrant that the Products will be of satisfactory quality and be fit for purpose. On your request and at your expense, we may agree to carry out reasonable tests on the Products before delivery. If you request we shall provide you with a report detailing the results of such tests.
- 3.2 We shall deliver the Products to the location specified in the Delivery Confirmation (which shall be based on the information you provided in the order) or such other location as is agreed in writing by both of us (**Delivery Location**). We will endeavour to deliver the Products on the date specified in the Order Confirmation, but we do not guarantee we can do this.

- 3.3 If we are unable to deliver the Products to you due to a failure or fault on your part (for example, you give us the wrong delivery address) then we shall endeavour to re-deliver on an alternative date, but you shall be responsible for our costs until we successfully deliver the Products to you (such as our storage and redelivery costs).
- 3.4 Delivery of the Products shall be completed when the Products are unloaded from the delivery transportation at the Delivery Location, unless agreed otherwise in writing by both of us.
- 3.5 We can deliver up to and including 5% more or less than the quantity of Products ordered and you may not reject them, but on receipt of notice from you that the wrong quantity of Products was delivered, we shall make a pro rata adjustment to the invoice for the Products.
- 3.6 We may deliver the Products by instalments, which shall be invoiced and paid for separately. Where each contract is to be fulfilled in separate instalments, deliveries or parts, each instalment, delivery or part shall be made as if the same constituted a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 3.7 If you find that the Products are defective, we may either replace the defective Products, or refund the price of the defective Products provided (1) you tell us about the defect within 7 days of the Products being delivered to the Delivery Location; (2) you give us a reasonable opportunity to examine the defective Products; and (3) if asked by us, you return the Products to us.
- 3.8 We will not be liable for defects in the Products where those defects arise because (1) you have failed to follow our instructions in relation to storage of the Products or (if there are none) good trade practice; and/or (2) we have followed your instructions in relation to the design to be placed on the Product, and your instructions or the design you supplied was wrong; or (3) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 3.9 Where we supply Products with barcode identification we shall use reasonable efforts to ensure such barcodes are clear and decipherable, but we accept no liability for any losses arising due to such barcodes being unreadable or indecipherable.
- 3.10 You are responsible for obtaining, at your own cost, such import licences and other consents in relation to the Products as are required from time to time. If requested by us, you shall make those licences and consents available to us prior to the relevant shipment. Import and export duties shall be payable in accordance with the Incoterm® relevant to the Contract, as specified in the Order Confirmation.

4. TITLE AND RISK

Risk in the Products shall pass to you on completion of delivery (as detailed in clause 3.4). Title to the Products shall not pass to you we receive payment in full (in cleared funds) for the Products, and any other Products we have supplied to you in respect of which payment has become due, in which case title to the Products shall pass at the time of payment.

5. SUPPLY OF SERVICES

5.1 If agreed by us in writing, we shall provide the Services to you. The Services we provide include using artwork you supply to imprint a design on our Products on your behalf. We engage a third party to convert your artwork into a design that can be printed on our Products. We will ask you to confirm your written approval of the converted artwork, prior to it being used on our Product. We shall remain primarily liable for the acts and omissions of our third party subcontractor at all times.

5.2 We shall provide the Services in a professional and diligent manner using reasonable care and skill.

6. YOUR OBLIGATIONS

6.1 You shall:

6.1.1 co-operate with us in all matters relating to supply of the Products and the Services;

6.1.2 ensure that your order is accurate and correct and provide us with such information and materials as we may reasonably require to supply the Products and Services, and ensure that such information is complete and accurate in all material respects.

6.2 If we cannot perform our contractual obligations because you have not performed your obligations under the Contract (**Your Default**), then we:

6.2.1 may suspend provision of the Products and Services to you, until you remedy Your Default;

6.2.2 will not be liable for any costs or losses you incur because we have been unable to perform our contractual obligations; and

6.2.3 may require you to reimburse us, on written demand, for any costs or losses we have suffered directly or indirectly due to Your Default.

7. CHARGES AND PAYMENT

7.1 The price for Products and Services shall be the price set out in the Order Confirmation. The prices are inclusive of all packaging, insurance and delivery costs, unless specified otherwise in the Order Confirmation.

7.2 We shall invoice you, and you shall pay each invoice submitted by us in accordance with the payment terms set out in the Order Confirmation to the bank account we notify to you. Payments shall be made in GBP sterling, unless expressly agreed otherwise in writing. Time for payment shall be of the essence of the Contract.

7.3 All amounts payable by you 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, on receipt of a valid VAT invoice from us, you shall pay such VAT as is chargeable on the supply of the Services or Products at the same time as payment is due.

7.4 If you fail to pay an invoice on the due date, then, without limiting our remedies under clause 12 (Termination), we reserve the right to charge you interest on the overdue sum from the due date until the date payment is made. Interest will accrue each day at 4% a year above the base lending rate of National Westminster Bank plc from time to time, but at 4% a year for any period when that base rate is below 0%.

7.5 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. INTELLECTUAL PROPERTY RIGHTS

8.1 We shall own all Intellectual Property Rights in or arising out of or in connection with the Products and Services (other than the Intellectual Property Rights in any materials provided by the you).

8.2 If required, you will supply to us all artwork, branding, branding guidelines, logos and other materials required by us in order to supply the Services. You shall own all Intellectual Property Rights in any materials provided by you, including any adaptations or conversions of such materials (including the conversion of your artwork into a format which can be used on our Products). You grant to us and our third party subcontractors a limited, non-exclusive, royalty-free right for the duration of the Contract (or such longer period as we may agree in writing with you) to use your Intellectual Property Rights solely for the purpose of providing the Services.

9. DATA PROTECTION

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 9, **Applicable Laws** means (for so long as and to the extent that they apply to the us) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

9.2 We shall process personal data in accordance with the terms of our privacy policy, and we agree to comply with the terms of our privacy policy when processing any personal data in relation to the Contract. A copy of our privacy policy is available at <https://www.benders.co.uk/privacy-policy/>. No third party shall be permitted to process your personal data on our behalf except where you have given your express prior written consent to such processing.

9.3 We shall have in place appropriate technical and organisational measures in place protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data which is proportionate to the type of personal data processed and the harm that may arise from its loss, destruction or damage.

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's confidential information:

10.2.1 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 10; and

10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

11.1 Except as expressly and specifically provided in the Contract all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from the Contract, to the fullest extent permitted by applicable law.

11.2 Nothing in the Contract excludes the liability of either of us for:

11.2.1 death or personal injury caused by negligence;

11.2.2 fraud or fraudulent misrepresentation; and

11.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.3 Subject to clause 11.1 and clause 11.2:

11.3.1 neither of us shall be liable to the other, for any special, indirect or consequential losses suffered or incurred by the other due to a breach of the Contract, which shall include (without limit) loss of profits, loss

of business, damage to goodwill or loss or corruption of data; and

- 11.3.2 each party's total aggregate liability to the other for any claims arising in connection with the Agreement shall be limited to the charges paid by You during the 12 months immediately preceding the date on which the claim arose.

11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without affecting any other right or remedy available to it, either of us may terminate the Contract with immediate effect by giving written notice to the other if:

12.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

12.1.2 the other party 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without affecting any other right or remedy available to us, we may suspend the supply of Services or all further deliveries of Products if you fail to pay any amount due under the Contract on the due date for payment, you become subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or we reasonably believe that you are about to become subject to any of them.

12.3 On termination of the Contract:

12.3.1 you shall immediately pay all our outstanding unpaid invoices and interest and, if we have supplied Services and Products but not yet raised an invoice for payment, we shall issue an invoice in respect thereof to you, and this shall be payable by you immediately on receipt;

12.3.2 we shall return to you or destroy (at your request) any materials, information, artwork, designs or other items which belong to you, and which you have made available to us for the purpose of providing the Services.

12.4 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

13. 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.

14. GENERAL

14.1 **Assignment and other dealings**

14.1.1 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in

any other manner with any or all of our rights and obligations under the Contract. We shall remain primarily liable to you for the acts or omissions of any subcontractors we engage.

14.1.2 You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract without our prior written consent, such consent not to be unreasonably withheld or delayed.

14.2 **Notices.**

14.2.1 Any notice 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).

14.2.2 Any notice shall be deemed to have been received (1) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and (2) 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.

14.3 **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 14.3 shall not affect the validity and enforceability of the rest of the Contract.

14.4 **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 right or remedy. 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.

14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

14.6 **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.

14.7 **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.

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

14.9 **Governing law and jurisdiction.** 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. Both of us irrevocably agree 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.