

GENERAL TERMS AND CONDITIONS OF SUPPLY (PRODUCTS AND SERVICES)

1. DEFINITIONS

In these Terms, the following definitions apply

Account Customer: a Customer who, at the Supplier's discretion, holds an account in relation to the supply of the Products and/or Services.

Commencement Date: has the meaning set out in clause 2.2.

Contract: the contract between the Supplier and the Customer for the supply of Products and/or Services in accordance with these Terms.

Customer: the person or firm who purchases the Products and/or Services from the Supplier.

Delivery Location: has the meaning set out in clause 4.2.

Delivery Note: any delivery note accompanying the Products to be signed by the Customer in accordance with clause 4.5.

Force Majeure Event: has the meaning given to it in clause 12.1.

Products: the products (or any part of them) set out in the Order.

Products Specification: the specification for the Products.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Products and/or Services, as set out on the Order Form.

Order Confirmation: the Supplier's written form of acknowledgement and acceptance of the Order.

Order Form: the form incorporating the Quotation for the Products and/or the Services and any applicable Products Specification and/or Service Specification.

Quotation: the Supplier's quotation submitted to the Customer in advance of the Contract for the supply of the Products and/or Services.

Services: the services supplied by the Supplier to the Customer as set out in the applicable Order.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer including, without limitation, lighting design, on-site commissioning and on-site inspection and advice.

Supplier: John Cullen Lighting Limited registered in England and Wales with company number 2222386.

Terms: these terms and conditions as amended from time to time in accordance with clause 13.7.

2. BASIS OF CONTRACT

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

2.2 The Order shall only be deemed to be accepted when the Supplier issues the Order Confirmation at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 The Contract expressly incorporates these Terms together with any individual terms and conditions expressly agreed between the parties in the Order. In the event of a conflict between these Terms and the

individual terms contained in the Order the Terms shall prevail. The Contract constitutes the entire agreement between the parties and these Terms 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.

2.4 Other than as stipulated in the Products Specification and the Service Specification, any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Products or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.

2.5 Any Quotation given by the Supplier is only valid for a period of 30 days from its date of issue. Quotations are not binding on the Supplier until an Order has been accepted.

2.6 All of these Terms shall apply to the supply of both Products and Services except where application to one or the other is specified.

3. PRODUCTS AND SERVICES AND WARRANTIES

3.1 The Products are described in the Supplier's catalogue as modified by any applicable Products Specification which the Supplier reserves the right to amend if required by any applicable statutory or regulatory requirements.

3.2 The Supplier warrants that on delivery, and for a period of 24 months from the date of delivery (warranty period), the Products shall:

- (a) conform with the Products Specification; and
- (b) be free from material defects in design, material and workmanship.

3.3 Subject to clause 3.4, if:

- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 3.2;
- (b) the Supplier is given a reasonable opportunity of examining such Products; and
- (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost (such cost to be refunded in the event that it is proven that the Products are defective),
- (d) the Supplier shall, at its discretion, repair or replace the defective Products, or refund the price of the defective Products in full.

3.4 The Supplier shall not be liable for the Products' failure to comply with the warranty in clause 3.2 if:

- (a) the Customer makes any further use of such Products after giving a notice in accordance with clause 3.3 (a);
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- (c) the Customer alters or repairs such Products without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (e) the Products differ from the Products Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

3.5 Except as provided in this clause 3, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 3.

3.6 The Supplier shall provide the Services to the Customer in accordance with the Order Confirmation and the Service Specification in all material respects.

3.7 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. For the avoidance of doubt the Supplier shall not be responsible for any delays caused or contributed to by the late provision of third party professional services.

3.8 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.9 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. DELIVERY OF PRODUCTS AND RETURNS

4.1 The Supplier shall ensure that each delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable).

4.2 The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Products are ready. Unless otherwise specified by the Supplier on the Order Form the Products shall be delivered ex works (Seller's named place of business, Incoterms 2010).

4.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products. Notwithstanding the foregoing provisions of this clause, if the Order Form stipulates a fixed date for delivery the Customer shall be entitled to a compensation (by way of liquidated damages) payment equating to 0.5% of the value of the of the Products per week of delay subject to a maximum payment of 5%. If the Supplier has not delivered the Products by the end of the tenth week of the delay the Customer shall be entitled to terminate the Contract and recover any sums due. The compensation and recovery of sums paid set out in this clause 4.4 represents the Supplier's entire liability for delay.

4.5 Where the Order Confirmation provides that the Supplier is responsible for arranging transit of the Products to the Delivery Location, the Customer must check the Products upon receipt and report any damage, loss or unsatisfactory condition on the enclosed Delivery Note. The Supplier shall, at its discretion, repair or replace free of charge any Products damaged or lost in transit, provided that the carriers and the Supplier receive written notice of such damage or loss within two days of delivery (or such other period as may be specified on the Delivery Note).

4.6 Except for returns for valid warranty claims made under clause 3 of these Terms no returns will be accepted by the Supplier without its prior written agreement and any such returns shall be at the Supplier's sole discretion on the basis of its returns policy in place at the time.

5. TITLE AND RISK

5.1 The risk in the Products shall pass to the Customer on completion of delivery.

5.2 Title to the Products shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Products.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall cooperate with the Supplier in all matters relating to the Services and provide the Supplier, its agents, consultants and subcontractors with the requisite accurate information about and safe access to the applicable premises as required for the performance of the Contract.

6.2 Account Customers further acknowledge that any and all credit issued shall be issued at the discretion of the Supplier and the Supplier expressly reserves the right to withdraw or amend the credit facilities at any time by written notice to the Account Customer.

6.3 Account Customers shall not exceed the credit limits placed on their accounts and agree to regular status checks of their credit status to ensure that the limits are not exceeded.

6.4 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

(a) the Supplier shall be entitled to suspend performance of the Services until such time as the Customer Default has been remedied and to be relieved from performing its obligations to the extent that it has been delayed or prevented from carrying them out;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6.4; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

7. CHARGES AND PAYMENT

7.1 The price for Products shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Products is exclusive of all costs and charges of packaging, insurance, transport of the Products, which shall be paid by the Customer when it pays for the Products.

7.2 The charges for Services shall be on a time and materials basis:

(a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Order;

(b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

7.3 The Supplier reserves the right to increase its standard daily fee rates for the charges for the Services and to increase the price of the Products, by giving notice to the Customer at any time before performance or delivery provided that any increase reflects any increase in the cost to the Supplier which is due to:

(a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- (b) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Products Specification; or
- (i) any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products.
- (ii) In respect of Products and Services, the Supplier shall invoice the Customer at the time and frequency specified in the Order.

7.4 Account Customers shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.

7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4 % per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

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

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Customer acknowledges that all Intellectual Property Rights relating to the Products shall remain the exclusive property of the Seller or its suppliers and shall not be used, distributed, licensed, disclosed or registered by the Customer or any third party without prior written consent of the Supplier.

8.2 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

8.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

9. CONFIDENTIALITY

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

Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 9 shall survive termination of the Contract.

10. LIMITATION OF LIABILITY:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Products and/or Services paid for under the Contract.
- 10.3 In relation to a breach of this Agreement, any direct or consequential loss includes but is not limited to:
- (a) assembly costs;
- (b) delivery costs;
- (c) liability under other agreements or liabilities to third parties resulting from such breach;
- (d) loss of contract;
- (e) loss of goodwill;
- (f) loss of production;
- (g) loss of profit;
- (h) loss of revenue;
- (i) loss or damage to premises;
- (j) installation or reinstallation costs;
- (k) property or assets; or
- (l) Customers' overhead costs,
- whether or not the party committing such breach knew or ought to have known, that such loss would be likely to be suffered as a result of such breach.
- 10.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.5 Subject to clause 10.2 no action shall be brought against the Supplier more than 12 months after the cause of action has occurred and in any event no later than 18 months after the delivery of the Products.
- 10.6 The limitations and exclusions set out in this Clause 10 will only affect a Customer's statutory rights (when dealing as a consumer under these terms) to the extent permitted by the law.
- 10.7 This clause 10 shall survive termination of the Contract.

11. TERMINATION

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

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so; and
- (b) a resolution for winding up (other than for the purposes of a solvent amalgamation or reconstruction) is made against the other party or a court shall make any order to that effect, or the other party shall cease or threaten to cease its business or becomes or is declared insolvent or (being an individual) bankrupt or has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over its assets or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due or any other analogous event or measure of equivalent effect takes place (in any jurisdiction) that threatens the ability (or prejudices the party that is the subject of the event in any way) of that party to perform its obligations (financial or otherwise) under the Contract.

11.2 Without limiting its other rights or remedies, the Supplier may, at its sole discretion, with immediate effect by giving written notice to the Customer, suspend the supply of the Services or all further deliveries of the Products under the Contract if the Customer fails to pay any amount due under the Contract on the due date for payment or becomes (or the Supplier reasonably believes will become) subject to any of the events listed in clause 11.1 (b) above terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

11.3 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest. The accrued rights and remedies of the Supplier at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

12. FORCE MAJEURE

12.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Products for more than eight weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

13. GENERAL

13.1 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

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

13.2 **Notices.** Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business or abode (in any other case) and shall be delivered personally or sent by prepaid first class post or other next working day delivery service, or by commercial courier or email.

13.3 **Severance.**

- (a) 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.

- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

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

13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7 **Variation.** Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and Terms shall be effective unless it is agreed in writing and signed by the Supplier.

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

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