

# **KINGFISHER LIGHTING LIMITED**

## **TERMS AND CONDITIONS OF SALE**

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## 1. Definitions

In these Conditions, unless the context requires otherwise:

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods from the Seller;
- 1.2 'Conditions' means the terms and conditions set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.3 'Contract' means any contract between the Seller and the Buyer for the sale and purchase of the Goods or supply of Services incorporating these Conditions;
- 1.4 'Delivery' means the delivery of the Goods as specified in clause 7;
- 1.5 'Delivery Date' means the date specified by the Seller when the Goods are to be delivered;
- 1.6 'Goods' means the articles which the Buyer agrees to buy from the Seller;
- 1.7 'Price' means the price for the Goods and/or Services but excludes VAT and unless the parties agree otherwise in writing excludes carriage, packing and insurance;
- 1.8 'Seller' means Kingfisher Lighting Limited whose registered office is at Ratcher Way, Crown Farm Industrial Park, Mansfield, Nottinghamshire, NG19 0FS; and
- 1.9 'Services' means the services which the Buyer agrees to take from the Seller.

## 2. Conditions Applicable

- 2.1 These Conditions shall apply to all Contracts for the sale of Goods or the provision of Services or both by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods or Services shall be deemed to be an offer by the Buyer to purchase Goods or receive and pay for Services as the case may be pursuant to these Conditions. A Contract is formed when the order is accepted by the Seller, either by way of a written acknowledgement of order (or similar document) issued by the Seller or where no such document is issued, either by the Seller despatching the Goods or providing the Services ordered.



- 2.3 Acceptance of delivery of the Goods or receipt of the Services shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the Seller and the Buyer) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 Orders, once accepted by the Seller, may only be cancelled with the Seller's written agreement.

### **3. General**

- 3.1 All headings are for ease of reference only and shall not affect the construction of these Conditions.
- 3.2 Any provision of these Conditions which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of these Conditions.
- 3.3 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under the Contract shall prejudice its right to do so in the future. The Seller may licence or sub-contract all or any part of its rights and obligations under these Conditions or the Contract without the Buyer's consent

### **4. Price and Payment**

- 4.1 Where Goods or Services are standard items ordered from the Seller's catalogue the Price of the Goods shall be the price stipulated in the Seller's published price list current at the date of delivery of the Goods or provision of the Services.
- 4.2 Where the Goods or Services are non-standard items the Price of the Goods or Services shall be the Seller's quoted price which shall be binding on the Seller provided that the Buyer shall accept the Seller's quotation within 60 days or if a different period is stated in the relevant quotation within the period so stated. The Seller may be giving notice to the Buyer at any time up to 7 days before Delivery increase the Price of the Goods or Services to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the Contract which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing or service provision costs).
- 4.3 The Price is exclusive of VAT and any other sales tax or duties which shall be due at the rate ruling on the date of the Seller's invoice and which the Buyer shall be additionally liable to pay to the Seller. The Seller may invoice the Buyer for the Goods on or at any time after Delivery and for the Services on or at any time after performance commences (and in either case at any earlier point if specified by the Seller in its quotation).

- 4.4 Orders will be accepted by the Seller only if the Buyer has opened a credit account with the Seller. Such an account will not be opened unless the Seller is satisfied with the credit references provided by the Buyer and the Buyer has acknowledged in writing that these Conditions will apply to transactions between the Seller and the Buyer unless otherwise agreed in accordance with clause 2.4.
- 4.5 Payment of the Price and VAT shall be due within 30 days of the end of the month in which the Goods or Services were invoiced. Time for payment shall be of the essence.
- 4.6 The Seller reserves its statutory right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 if sums due from the Buyer to the Seller are not paid in accordance with the agreed credit terms.
- 4.7 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may in its discretion:
- 4.7.1 suspend or cancel deliveries of any Goods or Services due to the Buyer; and/or
- 4.7.2 appropriate any payment made by the Buyer to such of the Goods or Services (or Goods or Services supplied under any other Contract with the Buyer) as the Seller may in its sole discretion think fit.
- 4.8 If the Buyer fails to make any payment within three months of the date of the relevant invoice then without prejudice to any of the Seller's other rights the Seller may at its discretion treat the Contract as repudiated and either sell the Goods or any part of the Goods to a third party or reuse components included in the Goods or both. If the Seller does so and the combined total amount received by the Seller from the Buyer in respect of the Goods (less any sum appropriated to any other transaction under clause 4.7.2), the amount received from any third party for the Goods and the value of any component parts of the Goods re-used by the Seller exceeds the combined total amount of the Price and any expenditure incurred by the Seller in exercising its rights under this clause, then the Seller will pay any such excess to the Buyer.
- 4.9 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have or for any reason whatever.

## **5. The Goods and Services**

- 5.1 Where Goods are standard items ordered from the Seller's catalogue the description of the Goods shall be as set out in the Seller's catalogue current at the date of Delivery of the Goods. Information in the catalogue is provided in good faith but is approximate and the Buyer must rely on its own judgement as to the nature, quality

and suitability for its purposes of the Goods. Dimensions quoted in the catalogue are approximate.

- 5.2 Where Goods are non-standard items the Goods shall be supplied in accordance with the description contained in the Seller's specification.
- 5.3 The Seller may from time to time make changes in the description or specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 5.4 Services for which a charge is made will be provided with reasonable care and skill but no warranty is given that the result of the Services will be suitable for the Buyer's purposes.
- 5.5 No charge is made for the lighting applications design service, which is provided in good faith on the basis of the information provided by the Buyer but for which no liability is accepted other than as referred to in clause 6.9. The Buyer must satisfy itself that any proposed layout suggested by the lighting applications design service is feasible and suitable for its purposes.
- 5.6 Except as specified in clause 5.7 the specification and designs of the Goods and any items produced as a result of the Services such as drawings or specifications (including the copyright, design right or other intellectual property in them) shall remain the exclusive property of the Seller.
- 5.7 Information provided by the Seller is confidential and may not be disclosed to a third party without the prior consent of the Seller.
- 5.8 Where any designs or artwork have been supplied by the Buyer for display on or incorporation in the Goods then the Buyer warrants that the use of those designs or artwork for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party. Such designs or artwork provided by the Buyer to the Seller (including the copyright, design right or other intellectual property in them) shall remain the exclusive property of the Buyer.

## **6. Warranties and Liability**

- 6.1 The Seller warrants that the Goods supplied will at the time of Delivery correspond to the description given by the Seller. The Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price.
- 6.2 Subject to clause 6.3 below the Seller will, if Goods or components of Goods (other than consumable items including lamps and control gear) are defective solely because of faults in design, materials or workmanship during the warranty period specified in the relevant catalogue or agreed between the Seller and the Buyer, at its

option replace or repair such items on site or at its factory. Items replaced will become the property of the Seller.

- 6.3 If any claim is made by the Buyer under clause 6.2 it must be notified in writing to the Seller before the end of the relevant warranty period and within 7 days of the date when the defect was or ought to have been apparent. The Seller will have no liability for any claim under clause 6.2 unless Goods have been installed and used in a proper and reasonable manner and in accordance with any instructions or recommendations issued by the Seller.
- 6.4 Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1)) the warranties contained in this clause are given in place of and supersede all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise which are excluded to the fullest extent permitted by law and the Buyer waives any such rights as the Buyer might otherwise have had.
- 6.5 The Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed the Price and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.
- 6.6 The Seller shall be under no liability whatever to the Buyer for any form of economic, special or consequential loss and/or expense (including loss of profit, wasted expenditure, increased loss, loss of production or opportunity) suffered by the Buyer howsoever arising and of whatever nature, whether or not such loss could reasonably have been foreseen by the Seller and whether or not such loss is a direct or indirect loss.
- 6.7 In the event of any breach of the Contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 6.8 If the Buyer notifies a defect in the Goods and on investigation by the Seller no defect is found that is covered by the warranties contained in this clause 6 then the Seller may charge the Buyer for time spent in investigating the alleged defect (including any travelling time) at the rate of £40 per hour plus travel and subsistence expenses and VAT thereon.
- 6.9 Notwithstanding anything else in these Conditions nothing in the Contract shall restrict or exclude the liability of the Seller (if any) to the Buyer for death or personal injury caused by the negligence of the Seller or for fraud or affect the statutory rights of a buyer dealing as a consumer.

## **7. Carriage and Delivery of the Goods**

- 7.1 If the Seller and Buyer so agree in writing the Seller will provide insurance and transport to the Buyer's premises or to a site specified by the Buyer on the mainland of Great Britain or (in the case of Goods for export) to the freight forwarder on the mainland of Great Britain acting for the Buyer at such additional charge as shall be agreed and delivery of the Goods shall be made to that address on the Delivery Date. The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Buyer. The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for Delivery.
- 7.2 If the Seller has not agreed to provide insurance and transport to the Buyer's premises the Buyer shall be responsible for collection of the Goods from the Seller's premises on the Delivery Date and Delivery shall take place and risk in the Goods shall pass to the Buyer when the Goods are loaded onto the vehicle collecting them.
- 7.3 If it is necessary to deliver the Goods in crates, cases, pallets, stillages or skids or other such packaging a charge will be made for this. Unless otherwise agreed, this amount will be refunded on the return to the Seller within one month of all such packaging materials in good condition and carriage paid. The Seller shall use reasonable care in packaging the Goods.
- 7.4 The Seller may deliver the Goods by separate instalments in accordance with the agreed delivery schedule. The Seller may raise a separate invoice and require payment for each instalment.
- 7.5 The failure or refusal of the Buyer to take delivery or to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the sole option of the Seller):
- 7.5.1 without notice to suspend further deliveries of the Goods pending payment by the Buyer; and/or
  - 7.5.2 to treat the Contract as repudiated by the Buyer.
- 7.6 If the Buyer declines to accept the Goods in breach of these Conditions the Buyer shall pay to the Seller as and by way of agreed liquidated damages an amount equal to the price of the Goods less any net proceeds received by the Seller on reselling the Goods after deducting the costs and expenses of storage and resale.

## **8. Title, Risk and Insurance**

- 8.1 The Goods shall be at the Buyer's risk as from Delivery in accordance with clause 7.
- 8.2 In spite of Delivery having been made property in the Goods shall not pass from the Seller until:

- 8.2.1 the Buyer shall have paid the Price plus VAT in full; and
- 8.2.2 no other sums whatever shall be due from the Buyer to the Seller.
- 8.3 Until property in the Goods passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings.
- 8.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 8.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 8.4 shall cease.
- 8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods that are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller from the time that risk passes to the Buyer until property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

## **9. Acceptance of the Goods**

- 9.1 The Buyer shall inspect the Goods on Delivery and shall as soon as practicable thereafter but in any event within 3 days of Delivery notify the Seller of any alleged shortage in quantity, damage or failure to comply with description or sample. If the outer packaging in which any Goods are delivered is damaged or opened the Buyer is put on notice that the contents may be damaged or defective or missing and must inspect the contents immediately. If the foregoing do not apply but the Buyer alleges

the Goods to be defective the Buyer shall notify the Seller of the alleged defect as soon as reasonably practicable after the defect was or ought to have been apparent to the Buyer. The Buyer shall provide sufficient information to allow the Seller to consider such claim and afford the Seller and (if transport is included in the Price) any carrier or agent an opportunity to inspect the Goods within a reasonable time following such notification and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.

- 9.2 The Buyer shall notify the Seller of any non-delivery of a whole consignment of Goods within 7 days of the date on which Delivery was due or receipt of an invoice for the Goods whichever shall first occur.
- 9.3 Notwithstanding the receipt by the Seller of any such notice a clear signature on behalf of the Buyer on a carrier's delivery advice sheet shall be deemed to signify receipt of the Goods indicated on the advice sheet. Qualifications to such a signature such as 'unchecked' or 'unseen' will be disregarded.

## **10 Remedies of Buyer**

- 10.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods that conform to the Contract.
- 10.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods other than as provided for in clause 6.
- 10.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods unless the claim has been notified to the Seller in accordance with clause 9.

## **11 Force Majeure**

- 11.1 Save for the Buyer's obligation of payment under clause 4 neither the Seller or the Buyer shall be deemed to be in breach of the Contract or otherwise be liable to the other for any default due to any act of God, war, civil disturbance, malicious damage, strike, lockout, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of the party affected ('Force Majeure Event').
- 11.2 Each of the Seller and the Buyer shall upon becoming aware of a Force Majeure Event impacting on it give notice forthwith to the other specifying details of the circumstances giving rise to the Force Majeure Event.

## **12. Insolvency of the Buyer**

If the Buyer fails to make payment for the Goods in accordance with the Contract or commits any other breach of the Contract or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if, being a limited company, any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:

- 12.1 suspend all future deliveries of Goods to the Buyer and/or terminate the Contract without liability upon its part; and/or
- 12.2 exercise any of its rights pursuant to clause 8.

## **13. Notices**

- 13.1 Any notice under or in connection with the Contract shall be in writing and shall be delivered by first class post or by hand or sent by recorded delivery or e-mail addressed to the recipient at its registered office or other trading address notified for these purposes.
- 13.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:
  - 13.2.1 if delivered personally when left at the address in clause 13.1;
  - 13.2.2 if sent by recorded delivery 3 days after posting; and
  - 13.2.3 if sent by e-mail, when received.

## **14. Rights of Third Parties**

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to the Contract and a person who is not a party to the Contract shall have no right under that Act to enforce any term of the Contract.

## **15. Proper law of Contract**

- 15.1 The Contract is subject to the law of England and Wales.
- 15.2 All disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the courts of England and Wales