

# low carbon lighting

## **Low Carbon Lighting Limited - General Conditions of Sale**

Low Carbon Lighting Limited ( hereinafter referred to as the Company ) General Conditions of Sale applicable to sales in the United Kingdom and Europe.  
The Company reserves the right to amend these General Conditions of Sale during the life of this publication.

### **1. General**

- (a) All orders are accepted and executed on condition that the Purchaser is bound by these General Conditions of Sale and no order placed or contract made may be withdrawn, cancelled, deferred or varied without the Company's written agreement.
- (b) No variation to these General Conditions of Sale shall be binding unless agreed in writing between the Company and the Purchaser.
- (c) If any clause or sub-clause in these General Conditions of Sale is held to be or becomes unenforceable for any reason, it shall be deemed omitted from these General Conditions of Sale and the validity and /or enforceability of the remainder of the General Conditions of Sale shall in no way be affected or impaired as a result of the omission.

### **2. Validity of Quotation**

A quotation addressed to the Purchaser by the Company does not constitute an offer to supply and no contract exists unless and until there has been an acceptance by the Company in writing of an order placed by the Purchaser.

### **3. Prices**

- (a) Unless otherwise agreed in writing all orders are executed subject to prices ruling at the date of despatch.
- (b) All prices are subject to the addition of Value Added Tax at the appropriate rate at the relevant tax point.
- (c) Where a price per unit has been quoted and the Purchaser requires a smaller number of units to be delivered than those quoted for, then the Company reserves the right to adjust the price per unit accordingly.

### **4. Payment**

- (a) Unless otherwise agreed in writing payment is due on delivery of the goods.
- (b) Where the contract is to be or may be fulfilled in separate instalments, deliveries or parts, payment for each such instalment, delivery or part, shall be made as if the same constituted a separate contract.
- (c) Should the Purchaser default in paying sums due for goods supplied, the Company reserves the right in its absolute discretion to: (i) suspend all further deliveries until the default is made good; or (ii) cancel the balance of the order. In either case, the Company shall hold the Purchaser liable for costs incurred by the Company in producing goods already in course of manufacture or ready for despatch. Whenever under this contract any sum of money is overdue for payment by the Purchaser, the Company may deduct the same amount from any sum then due or which at any time thereafter may become due to the Purchaser, under this or any contract with the Company.
- (d) Should the Purchaser fail punctually to comply with the terms of payment, the Company shall be entitled to charge and the Purchaser must pay to the Company interest on any amount overdue at the rate of 8% per annum above the base rate for the time being of the Company's bankers until payment is received. Such sum shall be calculated on a daily basis and compounded monthly.
- (e) The Company shall be entitled to set-off any sums owed by the Company to the Purchaser under a contract pursuant to these General Conditions of Sale against any sums payable to the Company whether under that contract or under any other agreement with the Purchaser.
- (f) The Purchaser must make all payments without any withholding, deduction, set-off or counterclaim.

### **5. Credit**

Any contract shall be subject to the Company being satisfied as to the Purchaser's credit references.

# low carbon lighting

## **6. Carriage**

(a) Unless otherwise specified the price quoted does not include insurance and transportation to the Purchaser's premises. The Company reserves the right to choose the method of transport.

(b) Where the price quoted does not include insurance and transportation and the Purchaser makes his own arrangements in this regard all the Company's goods are sent to the Purchaser at the Purchaser's own risk. Risk shall pass to the Purchaser when the order is loaded onto the Purchaser's or carrier's transport or otherwise collected by or on behalf of the Purchaser or (if the Company agrees to deliver them using its own transport) they are off-loaded at their destination. The Company takes all reasonable care and precautions in packaging the goods and therefore cannot accept responsibility for damage or delay during transit unless it has failed to take such reasonable care. It is the Purchaser's responsibility to arrange insurance cover for the full replacement value against all risks prudently insured against between risk and property passing unless otherwise agreed in writing between the parties.

## **7. Packing**

Where it is necessary to despatch goods in crates, cases, pallets, stillages or skids or other such packing a charge will be made for this. Unless otherwise specified, this amount will be credited in full on the return, within one month, of such crates, cases, pallets, stillages and skids etc. in good condition carriage paid.

## **8. Loss or Damage in Transit**

(a) When the price quoted includes delivery, the Company shall repair or replace free of charge goods damaged in transit or not signed for in accordance with the Dispatch Document PROVIDED THAT: (i) the Purchaser examines the goods as soon as practicable and in any event within 3 days after delivery; (ii) the Company is sent written notification of such damage or non-delivery within 4 days, this period extending from the date the goods are delivered in the event of a claim arising out of damages in transit, or from receipt of the Company's invoice in the event of a claim arising out of non-delivery; and (iii) the Purchaser gives the Company, any carrier and their agents a reasonable opportunity to inspect the goods as delivered.

(b) If the Purchaser does not comply with the provisions of (a) above, it will be deemed to have accepted the goods.

(c) Notwithstanding the above undertaking at (a), the Company will only consider claims for alleged shortage if they are received within 4 working days of the receipt of the goods by the Purchaser together with sufficient information to enable the Company properly to identify the shortage including the Dispatch Documents and Dispatch Document number.

## **9. Samples**

Any samples submitted within the Company's quotation or at the Purchaser's request must be returned within sixty days of receipt and the Purchaser may be charged if not so returned.

## **10. Delivery**

(a) Products shall be delivered ex-works ( manufacturing location ) or as otherwise designated by The Company, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by The Company are approximate only, and The Company shall not be liable for, nor shall The Company be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. The Company agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

(b) Buyer will give The Company written notice of failure to deliver and thirty (30) additional days within which to deliver outstanding products. If The Company does not deliver within such thirty (30) day period, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the Agreement.

(c) Title in the Products shall pass to Buyer upon payment in full of the purchase price in respect thereof. Risk of loss in the Products shall pass to Buyer upon delivery.

(d) If Buyer fails to take delivery of Products ordered, then The Company may deliver the Products in consignment at Buyer's cost.

(e) In the event The Company's production is curtailed for any reason, The Company shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in the Agreement, as the case may be.

# low carbon lighting

(f) Minimum Order - Unless varied by mutually agreed trading terms, the minimum order value is £500. A surcharge of £30 will apply to each invoice of less than £500.

(g) Carton Quantity/Minimum Order Quantity ("MOQ") - The carton quantity stated in The Company Lighting Trade Price List is the minimum order quantity per item. A 10% surcharge will be applied to each item where the order is less than the minimum order quantity. Notwithstanding, The Company Lighting reserves the right not to supply less than the minimum order quantity where breaking a carton could lead to product damage and/or impede the logistics process.

## **11. Force Majeure**

The Company shall be under no liability for any loss or injury suffered by the Purchaser where the Company is prevented from carrying out any provisions of the contract as a result of any cause beyond its reasonable control including (but not limited to) Acts of God, change of law or regulation or any form of governmental, official or regulatory intervention, war, acts of terrorism, fire, drought, failure of plant or power supply or collapse of structure, lock-out, strike or industrial action in contemplation of furtherance of a trade dispute, or owing to any inability to procure materials required for the performance of the contract. The contract shall be suspended during such delay but upon cessation of the cause of delay, the contract shall again become fully operative provided that if such delay exceed a period of twelve months, either party may give written notice of termination of the contract and thereupon the contract shall terminate.

## **12. Passing of Property and Risk**

(a) The risk in the goods shall pass to the Purchaser immediately on delivery of the goods to the Purchaser.

(b) The property in the goods shall pass to the Purchaser on receipt by the Company of payment in full of all debts and other liabilities (whether arising under this contract or otherwise) owed by the Purchaser to the Company. Until property in the goods has passed to the Purchaser, the Company reserves the right to dispose of the goods.

(c) While the goods remain the property of the Company the Purchaser shall keep the goods identifiable and separate from all other goods in its possession.

(d) While the goods remain the property of the Company, the Company shall be entitled at any time to retake possession of and resell the goods and for that purpose to enter upon any land or premises of the Purchaser where the goods may be for the time being. Such retaking of possession and resale of the goods shall be without prejudice to the rights of the Company to claim damages for the failure by the Purchaser to purchase the goods.

(e) Until such time as the property in the goods passes to the Purchaser, the Purchaser shall keep the goods properly insured for not less than their contract value for the benefit of the Company. The Purchaser shall use its reasonable endeavours to note the Company's interest on its insurance policies.

## **13. Warranty**

(a) Warranty period starts from date of invoice and runs for 60 months. Should the luminaire fail within this period Low carbon Lighting will make the product good either by replacement or repair.

(b) Compensation is product for product for all confirmed failures; no minimum threshold applies; labour costs are not covered.

(c) This is a limited warranty and excludes, among other items, installation, providing access to products (scaffolding, lifts, etc.), and special, incidental and consequential damages (such as loss of revenue/profits, damage to property or other extended costs not previously mentioned), and is further defined by the limitations and conditions set forth in the respective warranty policy and these terms and conditions.

(d) Upon request, The Company's representatives have to be allowed to access the defective Product, system or application for verification of non-compliance.

(e) The Company cannot be held liable for electrical supply conditions, including supply spikes, over voltage/under-voltage and Ripple Current control systems that are beyond the specified limits of the products and those defined by relevant supply standards (e.g. EN 50160 norms).

(f) With respect to products sold to the Purchaser by The Company but not bearing the The Company's name or sub-brands, The Company makes no warranty of any kind, express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose, but will make available to the Purchaser upon request but only to the extent permitted by law and relevant contracts, the warranties of the manufacturer of the relevant product.

# low carbon lighting

## **14. Consequential Loss**

The Company shall not be liable for any claims for loss of profit, wasted expenditure, economic loss, increased loss, loss of production, loss of opportunity, special, indirect or consequential injury, loss or damage howsoever arising and of whatsoever nature suffered by the Purchaser.

## **15. Company's Liability**

(a) The Company accepts liability for direct physical loss to the tangible property of the Purchaser due to the fault or negligence of the Company or its employees in performing their duties under these General Conditions of Sale PROVIDED THAT the Company's total liability under these General Conditions of Sale for any such damage shall not exceed twice the value of the order for each event or series of events arising from the same cause.

(b) Any Warranty specified above and the amounts of damage specified in (a) above is the total liability accepted by the Company for any single or series of claims arising from the same failure or breach under these General Conditions of Sale.

(c) In the event that the Company fails to comply with its obligations under these General Conditions of Sale after it shall have been given a reasonable opportunity to correct any failure then it shall be liable to the Purchaser in damages for direct losses suffered by the Purchaser up to an amount not exceeding twice the value of the order for each event or series of events arising from the same cause, provided that the Purchaser is not itself in material breach of these General Conditions of Sale at the date of such failure by the Company.

(d) Nothing in this condition shall exclude or limit the liability of the Company for: (i) breach of any term implied by section 12 of the Sale of Goods Act 1979; (ii) death or personal injury caused by the negligence of the Company; or (iii) fraud or any other matter if and to the extent that, under English law, liability for it cannot be excluded, restricted or limited as against the Purchaser in the context of any contract.

## **16. Made to Order and Non Standard Products**

Orders for products which are made to order or are not part of the current list of Low Carbon Lighting standard products can only be cancelled with the prior agreement of the Company. The Company also reserves the right to recover from the Purchaser any costs which it may have incurred prior to the acceptance of the cancellation .

## **17. Return of Goods**

In no circumstances may goods supplied against a firm order be returned without the Purchaser having first applied for and obtained the written consent of the Company. A handling charge may be deducted from any credit allowed where it is established that the reason for their return was not the subject of the provisions of clauses 8 or 13 hereof or through any error on the part of the Company.  
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## **18. Storage**

If the Company does not receive written forwarding instructions sufficient to enable it to despatch within 14 days after the Company has notified the Purchaser in writing that the goods are ready for delivery the Purchaser shall take delivery or arrange for storage. If the Purchaser does not so take delivery or arrange for storage, the Company shall be entitled to invoice and be paid for the goods as though the goods had been duly delivered in accordance with these General Conditions of Sale and the Company may arrange storage either at the Company's own works or elsewhere on the Purchaser's behalf and all charges for storage, insurance or demurrage shall be payable by the Purchaser.

## **19. Descriptive Matter and Illustrations**

All descriptions and illustrations and particulars of weights and dimensions issued by the Company in catalogues, price lists, advertising matter and forwarding specifications are by way of general descriptions and approximate only, and shall not form part of any contract or give rise to any liability on the part of the Company. It is the policy of the Company to endeavour to develop and improve its products, and accordingly the Company reserves the right to change all specifications without prior notification or public announcement pursuant to such policy, provided that nothing in this clause shall oblige the Purchaser to accept goods which do not reasonably comply with the contract.

# low carbon lighting

## **20. Indemnity**

The Company agrees to indemnify the Purchaser against costs and/or damages awarded in connection with all actions instituted against the Purchaser in respect of goods manufactured and furnished to the Purchaser by the Company under these General Conditions of Sale when used or sold for the purposes for which such products are licensed and wherein it is established that such goods are an infringement of any British Letters Patent valid and effective at the date of the order by refunding to the Purchaser such costs and/or damages which may be awarded against the Purchaser in such actions by a court of competent jurisdiction in England PROVIDED ALWAYS that the Company is immediately informed in writing of such actions threatened or brought against the Purchaser and is given full and complete rights to take over at its own cost and in the name of the Purchaser and through its own legal representatives the defence of such actions if the Company so requests and in that event the Purchaser shall assist the Company in every reasonable manner free of expense to the Company but the Company shall be free at its unfettered discretion to compromise submit to judgement abandon discontinue or otherwise to dispose of such action. The Company assumes no liability consequential or otherwise for infringement of patent claims covering completed equipment or any assembly, circuit, combination, method or process in which any such product may be used or for products manufactured by the Company to the Purchaser's design or specification or specially designed by the Company to meet the Purchaser's requirements, in which case, the Purchaser agrees to hold the Company harmless against any patent claims or liability resulting from such manufacture or from the use of products so manufactured. In addition, the Company assumes no liability, consequential or otherwise for and the Purchaser agrees to hold the Company harmless from any trade mark infringement involving any marking or branding not applied by the Company or involving any marking or branding applied at the request of the Purchaser. No costs or expense shall be incurred for the account of the Company without its written consent.

## **21. Bankruptcy and Winding-Up**

(a) In the event of failure to make any payment within seven days of it being due, or the Purchaser committing a breach of this contract, or if any distress or execution is levied upon the goods of the Purchaser or if he offers to make an arrangement with or for the benefit of his creditors, or commits an act of bankruptcy or (being a limited company) has a receiver or manager appointed of its undertakings or assets or any part thereof, or (save for the purpose of a reconstruction or amalgamation without insolvency) goes into liquidation, the Company shall thereupon be entitled without prejudice to its other rights, forthwith to suspend all further deliveries until the default has been made good, or to determine the contract or any unfulfilled part thereof, or at the Company's option to make partial deliveries.

(b) The Purchaser shall notify the Company forthwith after it becomes aware that anything within (a) above has occurred or is likely to occur.

## **22. Performance**

Any performance figures given by the Company are based on its experience and are such as the Company expect to obtain on test in its works. The Company shall be under no liability for damages or failure to attain such figures unless the Company has specifically guaranteed performance figures subject to the recognised tolerances applicable to such figures. The Purchaser assumes responsibility that goods stipulated by it are sufficient and suitable for its purposes save in so far as the Purchaser may have relied on the Company's advice in connection therewith.

## **23. Intellectual Property Rights**

Any intellectual property rights (including without limitation patents, registered and unregistered designs, trade marks and service marks (registered or not) and copyright created by the Company in the course of the performance of a contract for manufacture of goods subject to these General Conditions of Sale shall remain the Company's property. Nothing in these General Conditions of Sale shall be deemed to have given the Purchaser a licence or any other rights of the Company. All drawings, descriptions and other information submitted by the Company shall remain the property of the Company and shall be promptly returned on the request of the Company.

## **24. Notices**

Any notice required to be given by either party hereunder shall be made in writing and dispatched to the other party by first class registered or recorded delivery post at the respective addresses of the parties as set out in the Purchaser's order and the Company's acknowledgement of order or by fax numbers for the

# low carbon lighting

parties as stated in these documents and promptly confirmed by written notice. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been received on the fifth working day after the day of posting. Any notice sent by fax shall be deemed to have been delivered upon receipt of the hard copy.

## **25. Assignment**

(a) The Purchaser shall not assign or delegate or otherwise deal with all or any of its rights or obligations under these General Terms and Conditions without the Company's prior written consent. The Company shall have the right to assign, charge or otherwise deal with all or any of its rights or obligations under these General Terms and Conditions.

A person who is not a party to a contract subject to these General Conditions of Sale (including without limitation any employee, officer, agent, representative, or sub-contractor of either party) shall not have any right to enforce any term of that contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Purchaser.

## **26. Waiver**

The Company's rights shall not be prejudiced or restricted by any concession, indulgence or forbearance extended to the Purchaser. The failure on the part of the Company to exercise or enforce any rights conferred under these General Terms and Conditions shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

## **27. Confidentiality**

All secret or confidential information and advice, written or oral, of whatever nature (including these General Terms and Conditions) supplied by the Company to the Purchaser is for the Purchaser's sole use and may not be disclosed or made available to any third party (save to the extent it is in the public domain otherwise than by breach of this clause or disclosure is required by law) without the Company's prior written consent.

## **28. Legal Construction**

Any conduct under these General Conditions of Sale shall be governed by and construed in all respects in accordance with English Law and the Company and the Purchaser both hereby irrevocably agree to submit to the non-exclusive jurisdiction of the English Courts.