

# SPECIALS LIGHTING DESIGN LIMITED

## GENERAL CONDITIONS OF SALE

### 1. GENERAL

(A) All quotations are given and all orders are accepted on these terms, which supersede any other terms appearing in the Seller's catalogue or elsewhere, and shall override and exclude any other terms stipulated or incorporated or referred to by the Buyer, whether in the order or in any negotiations, and any course of dealing established between the Seller and the Buyer. All orders hereafter made by the Buyer shall be deemed to be made subject to those terms.

(B) Subject to Clause 2 below, no contract for the sale of the goods specified overleaf ("The Goods") shall be concluded until the Seller has issued an "Acknowledgement of Order" form.

(C) The Buyer acknowledges that there are no representations outside these terms which have induced him to enter into the contract (which expression shall include any contract of which these terms form part) and these terms and those on the face hereof shall constitute the entire understanding between the parties for the sale of the Goods.

(D) No modification of these terms shall be effective unless made by an express written agreement between parties. The signing by the Seller of any of the Buyer's documentation shall not imply any modification of these terms.

### 2. QUOTATIONS

Quotations are subject to withdrawal at any time before receipt of an unqualified order from the Buyer and shall be deemed to be withdrawn unless so accepted within 1 month from their date.

### 3. THE GOODS

If it should prove impractical for the Seller to obtain any of the materials or components named in the Buyer's specification the Seller shall provide and the Seller shall accept reasonable alternative materials or components.

### 4. THE PRICE

(A) The price quoted by the Seller is based on the cost of materials and other commodities, labour and transport and the cost of conforming with statutory obligations ruling at the date of the quotation. If before the Goods are despatched from the Seller's works variations either by rise or fall have occurred in these costs then the Seller reserves the right to vary the price quoted to take account of these variations.

(B) All prices are quoted exclusive of Value Added Tax and ex-works and where the Seller has undertaken to provide or arrange carriage from its works to the place of delivery specified by the Buyer such as carriage shall be charged in addition to the price unless otherwise expressly agreed by the Seller in writing.

### 5. CANCELLATION

The Buyer may not cancel the contract without the consent of the Seller, which if given shall be deemed to be on the express condition that the Buyer shall indemnify the Seller against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing.

### 6. PAYMENT

Unless otherwise agreed the Goods are sold subject to payment in cash within one month of the date of the Seller's invoice.

### 7. DELIVERY

(A) All delivery dates are estimates only and the time of delivery shall not be of the essence of the contract, in no circumstances shall the Seller be liable to compensate the Buyer in damages or otherwise for non-delivery or late delivery of the Goods or any of them for whatever reason or for any loss consequential or otherwise arising therefrom.

(B) Should the Seller be prevented from or hindered in delivering the Goods or any part thereof by reason of war, riot, explosion, fire, flood, strike, lock-out, shortage of materials or labour or any cause beyond the Seller's control, the time for delivery shall be extended until the operation of the cause preventing or hindering delivery has ceased.

(C) Should the Seller be prevented from delivering part of the Goods by reason of any causes specified in the preceding sub-clause, the Seller shall deliver and the Buyer shall take and pay for such part of the Goods as the Seller shall be able to deliver in accordance with the contract.

(D) The Seller shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed.

(E) Delivery shall be deemed to take place when the Goods are delivered to the Buyer.

(F) The Seller shall not be liable for any loss of any kind to the Buyer arising from any damage to the Goods occurring after the risk has passed to the Buyer however caused, nor shall any liability of the Buyer to the Seller be diminished or by reason of such loss.

### 8. PASSING OF RISK AND PROPERTY

(A) Risk of loss or damage to the goods shall pass to the Buyer at the time of delivery.

(B) The property in the Goods shall not pass to the Buyer until the whole of the price has been paid, and until payment the Buyer shall hold the Goods as bailee for the Seller and the following provisions of this Clause 8 shall apply.

(C) The whole of the price shall not be paid until any cheque, bill of exchange or other instrument of payment given by the Buyer has been met on presentation or otherwise honoured in accordance with its terms. The Seller may sue for the whole price at any time after it has become payable.

(D) Payments shall be applied to invoices in the order in which they were issued and to the Goods in the order in which they are listed in invoices.

(E) In the event of any sale or other disposition of the Goods by the Buyer, the Buyer shall, subject to sub-clause (F) below, hold on trust for the Seller (a) if the Goods have not been mixed with or incorporated into other goods the whole of the proceeds of sale, or (b) if the Goods have been mixed with or incorporated into other goods, a just proportion of the proceeds of sale.

(F) The trust declared in sub-clause (E) above shall be void if and to the extent that a trust in like terms arises by operation of law in favour of the Seller.

(G) The Buyer shall not:-

(i) pledge the Goods or documents of title thereof, or allow any lien to arise thereon.

(ii) process the Goods other than in the ordinary course of the Buyer's business.

(iii) deal with or dispose of the Goods or documents of title thereto or any interest therein other than by a sale to an independent purchaser buying for full value in the ordinary course of the Buyer's business.

(iv) hold itself out as the Seller's agent in respect of the Goods.

(H) If the Buyer defaults in the punctual payment of any sum owing to the Seller then the Seller shall be entitled to the immediate return of all Goods sold by the Seller to the Buyer (or the documents of title thereto) in which the property has not passed to the Buyer, and any premises of the Buyer for that purpose. Demand for or recovery of the Goods or documents

by the Seller shall not of itself discharge either the Buyer's liability to pay the whole of the price and take delivery of the Goods or the Seller's right to sue for the whole of the price.

### 9. INSPECTION OF GOODS

The Buyer shall inspect the Goods immediately on delivery thereof and shall within three days from such delivery give notice to the Seller of any matter or thing by reason whereof the Buyer may allege that the Goods are not in accordance with the Contract or are defective in material or workmanship. If the Buyer shall fail to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the contract and free from any defect which would be apparent on reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods accordingly. In the event that the Buyer establishes to the Seller's reasonable satisfaction that the Goods are not in accordance with the contract or are so defective, the Buyer's sole remedy in respect of such non-accordance or defects shall be limited as Seller may elect to the replacement of the Goods or refund of the purchase price against return of the Goods.

### 10. USE OF GOODS

(A) The Goods will be manufactured or constructed according to designs or configurations or by processes specified or supplied by the Buyer and the Buyer represents and warrants to the Seller that the Buyer and the Buyer represents and warrants to the Seller that the Buyer has or will have satisfied itself that all necessary tests and examinations have been made or will be made prior to the Goods being brought into use to ensure that the Goods are designed, constructed and operational so as to be safe and without risk to the health or safety of workmen or others using the same, and that it will take such steps as are necessary to secure that there will be available in connection with the use of the Goods at work adequate information about the use for which they are designed and have been tested and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.

(B) The Buyer shall indemnify the Seller against all actions, suits, claims, demands, losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts which if established would indicate a breach of the undertakings representations and warranties on the part of the Buyer contained in this condition 10.

### 11. DEFECTS AFTER DELIVERY

(A) The Seller will make good, by repair or at the Seller's option by the supply of a replacement, defects which under proper use appear in such part or parts of the Goods as are of the Seller's manufacture within a period of twelve months after the Goods have been delivered and arise solely from faulty materials or workmanship, provided always that defective parts are promptly returned by the Buyer carriage paid to the Seller's works and become the property of the Seller if replaced.

(B) These terms set out in the Seller's entire liability in respect of the Goods, and the Seller's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities express or implied statutory or otherwise in respect of the quality or the fitness for any particular purpose of the Goods or otherwise howsoever (notwithstanding any advice or representation to the Buyer, all liability in respect of which, howsoever arising, is expressly excluded) except any implied by law or statute cannot be excluded. Save as provided in these terms and except as aforesaid the Seller shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in the Goods or failure to correspond the specification or sample or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.

### 12. LIMITATION OF LIABILITY

The Seller's liability (if any) whether in contract tort or otherwise in respect of any defect in the Goods, or for any breach of this Agreement or of any duty owed to the Buyer in connection herewith, shall be further limited in the aggregate to the price of the Goods in question.

### 13. SELLER'S LIEN

In addition to any right of lien to which it may be by law entitled the Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (although such goods or some of them may have been paid for) for all sums, whether liquidated or quantified or not, due from the Buyer to the Seller. The Seller shall not be liable for loss of or damage to the Buyer's property in the Seller's possession either as a result of the exercise by the Seller of its lien or otherwise.

### 14. INDEMNITY

The Buyer shall indemnify the Seller in respect of all damage injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of the Goods in the event and to the extent that the damage injury or loss shall have been occasioned partly or wholly by the carelessness of the Buyer or his servants or agents or by any breach by the Buyer of its obligations to the Seller hereunder.

### 15. PATENTS, TRADE MARKS, ETC...

The Goods will be manufactured or constructed according to designs or configurations or by processes specified or supplied by the Buyer and the Buyer represents and warrants to the Seller that the Goods as so designed or configured and/or the processes so used do not infringe the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods or the use of such processes in any part of the world. The Buyer shall indemnify the Seller against all actions, suits, claims, demands, losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts which if established would indicate a breach of the representations and warranties contained in this condition 15.

### 16. PROPER LAW

The contract shall be governed by and interpreted in accordance with English Law, and the Buyer submits to the jurisdiction of the High Court of Justice in England but the Seller may enforce the contract in any court of competent jurisdiction.

### 17. ASSIGNMENT

The Buyer shall not assign nay benefit under the contract without the consent in writing of the Seller, which may if given be on such terms as to guarantee or indemnity or otherwise as the Seller thinks fit.

### 18. NOTICES

Any notice given under or pursuant to the contract may be sent by hand or by post or by registered post or by the recorded delivery service or fax or email or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the face hereof or such other address as the party may by notice to the other have substituted therefore shall be deemed validly and effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee.