



## **TAISON CONTRACT LIGHTING LIMITED**

### **GENERAL CONDITIONS OF SALE**

#### **1. ACCEPTANCE AND AMENDMENT**

- 1.1. These General Conditions shall apply to all tenders, offers quotations, acceptances, agreements, and deliveries relating to the sale of Goods by the Seller and the Buyer shall be deemed to assent thereto.
- 1.2. No other conditions or modifications of these Conditions shall be binding on the Seller unless a director of the Seller agrees thereto in writing making express references as to the amendment of these Conditions and the Seller shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or other communication from the Buyer.

#### **2. DEFINITIONS AND INTERPRETATION**

- 2.1. In these Conditions:

**“Contract”** means the contract for the sale and purchase of the Goods (in which these Conditions apply).

**“Goods”** means the goods (including any instalments of such goods) which the Seller is to supply pursuant to or in connection with the Buyer’s purchase order and the Contract.

**“Seller”** means Taison Contract Lighting Limited.

**“Buyer”** means the person, firm or company placing an order with the Seller.

**“WEEE”** means The Waste Electrical & Electronic Equipment Regulations 2006 and any subsequent amendments.

- 2.2 Any reference in these Conditions to any provision of statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.

#### **3. SPECIFICATIONS**

- 3.1 All descriptions, specifications, drawings, photographs, weights, dimensions, capacities, prices, performance ratings and other data quoted or submitted by the Seller or included in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by the Seller are to be deemed approximate only (except where stated in writing to be exact) and the subject thereto none of such items or any part thereof shall form part of the Contract (other than as approximations).

- 3.2 Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acknowledgement, of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 3.3 The Seller reserves the right to make any changes in the specification of Goods which are required to conform with any applicable safety or legal requirements, or which do not materially affect their quality or performance.

#### 4. **ORDERS**

- 4.1 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of a director of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by the Seller as result of cancellation.
- 4.2 The Seller reserves the right to sell goods to and deal with any other customer whatsoever.

#### 5. **PRICES**

- 5.1 Unless otherwise agreed in writing by the director of the Seller or stated on the Seller's quotation or acknowledgement of order the price payable by the Buyer for each delivery of the Goods shall be that agreed between the Buyer and the Seller each time the Buyer places an order for Goods.
- 5.2 Until an order has become binding on the Seller all prices are subject to change without prior notice.
- 5.3 After an order has become binding on the Seller, all prices will have V.A.T added at the appropriate rate and are subject to increase to reflect increases from time to time in list prices and any increases in costs to the Seller (including without limitation costs of materials, labour, transport and services and fluctuations in currency exchange rates and any tax, duty, fee or charge imposed by the government or other authority) prior to delivery, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

#### 6. **PAYMENT**

- 6.1 Unless otherwise agreed in writing or stated on the Seller's quotation or acknowledgement of order, the invoiced amount shall become due for payment not later than the end of the month following the month of invoice at the due time as previously agreed with the Buyer and confirmed in writing upon the opening of a Credit Account, or (if earlier) upon the occurrence of any circumstances where under, pursuant to the Contract or these Conditions, payment falls immediately due. The time of payment shall be of the essence of the Contract.
- 6.2 The Seller reserves the right at any time before proceeding or proceeding further with an order to demand full or partial payment of monies due and payable under the Contract and under any other contract between the Seller and the Buyer.
- 6.3 If the Buyer defaults in any payment the Seller may in addition to exercising the right contained in Condition 6.2 above suspend work, delay, or withhold delivery or cancel the Contract or any other Contract between the Seller and the Buyer and retain any progress payments or payments on account already received under the Contract or under any other contract between the Seller and the Buyer.
- 6.4 The Seller reserves the right to charge interest and compensation in line with the "Late Payment of Commercial Debts (Interest) Act 1998".

- 6.5 The Seller shall have a lien on all undelivered Goods which the Buyer agrees to purchase from the Seller for all monies due from the Buyer to the Seller under any contract between them and the Buyer shall have no right of set-off in respect of such monies.
- 6.6 All rights and remedies afforded to the Seller in these Conditions for non-payment shall be in addition and without prejudice to all other rights and remedies available to the Seller under the Contract or at law.
- 6.7 All payments to the Seller by the Buyer must be by BACS transfer on or before the due date. This will only be varied at the discretion of a Director and must be given in writing.

## 7. **DELIVERY**

- 7.1 Time of delivery is not of the essence of the Contract and may not be made so by notice, and any time or date specified by the Seller as the time at which or date on which the Goods will be delivered is given and intended as an estimate only and the Seller shall not be liable for any loss, damage or expense however arising from delay in delivery.
- 7.2 The Seller reserves the right to make delivery by instalments, unless otherwise expressly agreed in writing. The period during which delivery by instalments may be made and the quantity of Goods delivered in each instalment shall be in the Seller's discretion.
- 7.3 Where Goods are delivered in instalments, each delivery shall constitute a separate contract (in which these Conditions apply (mutatis mutandis)) and failure by the Seller to deliver any one or more of the instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as repudiated.
- 7.4 Where the Contract provides for delivery by instalments at unspecified times over a period the Buyer shall order all Goods and accept all deliveries thereof within 3 months from the issuing of a formal purchase order to the Seller. If the Buyer fails to so order the Goods or accept all such deliveries within such time the Seller shall be entitled to invoice the full balance of the price of the Goods remaining to be ordered and/or delivered, the cost of which shall immediately become due.
- 7.5 Where the Contract provides for delivery by instalments at specified times or intervals the Buyer shall accept each delivery at the time specified. If the Buyer refuses or is unable to accept any such delivery the Seller may terminate all future deliveries and treat the Contract as repudiated and claim damages from the Buyer for breach of contract.
- 7.6 Delivery of more or less than the quantity or weight of the Goods due for delivery or the inclusion therewith of goods of a different description not included in the Contract shall not entitle the Buyer to reject the Goods delivered.
- 7.7 Notwithstanding any express agreement as to the date of delivery the Seller shall be entitled to postpone or cancel delivery in whole or in part when it is delayed in or prevented from making or obtaining any Goods or materials or parts or components or services therefor or making delivery of Goods by strikes, lockouts, trade disputes or labour troubles or any cause beyond the Seller's reasonable control. In the event of cancellation, the Seller shall be paid pro rata for Goods delivered or work done to the date of cancellation.
- 7.8 If the Buyer fails to take delivery of Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller (including its right to payment), the Seller may: -
- i. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; and/or

- ii. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

And the Buyer shall indemnify the Seller in full against all losses, damages, charges, and expenses incurred by the Seller directly or indirectly as a result of the Buyer's said failure to take delivery or give adequate delivery instructions to the extent that the Seller's said losses, damages, charges, and expenses are not covered by any payments made or monies obtained under paragraph (i) or (ii) above.

#### **8. BUYER'S OBLIGATIONS AND CLAIMS ON DELIVERY**

The Buyer will examine the Goods carefully within 3 days of taking delivery and notify the Seller (and any carrier of the Goods for the Seller) in writing within 5 days of taking delivery of any error in quantity or weight or description of the Goods delivered and within 10 days of taking delivery of any damage to goods revealed by such examination and not caused since delivery was taken.

#### **9. RISK**

Risk of damage to or loss of the Goods shall pass to the Buyer: -

- i. in the case of the Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- ii. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

Delivery to a carrier or to any person firm or company on the Buyer's behalf shall constitute delivery to the Buyer.

#### **10. TITLE TO GOODS**

10.1 Property in the Goods shall remain with the Seller until the Seller has received in cash or cleared funds payment in full of the price of Goods, all other goods ordered by or delivered to the Buyer and any monies due from the Buyer to the Seller on any account whatsoever.

10.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's Fiduciary agent and bailee and shall keep the Goods separate and unmixed from those of the Buyer and third parties and properly stored, protected, insured, and identified as the Seller's property. Until such time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business. The Buyer shall account to the Seller for the proceeds of sale of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in case of tangible proceeds, properly stored, protected, and insured.

10.3 The Buyer shall ensure that in the event of any re-sale of the Goods in accordance with Condition 10.2 the contract of sale between the Buyer and its purchaser shall contain a retention of ownership clause which will have the same effect for the Buyer as Condition 10.1 has for the Seller.

10.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so, forthwith to enter upon any premises of the Buyer or any third party where the Goods are held and repossess the Goods.

10.5 Where the property in the Goods has not passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing to the Seller in relation to the Goods notwithstanding Section 49 of the Sale of Goods Act 1979.

## 11. **WARRANTIES AND LIABILITY**

11.1 Subject to the terms and conditions set out in this Condition 11, the Seller warrants to the Buyer that the Goods will correspond with their specification at the time of delivery.

11.2 The warranty in Condition 11.1 above is given by the Seller subject to the following conditions: -

- i. the Seller shall be under no liability in respect of any defect in the quality or condition of the Goods or their failure to meet specification unless such defect or failure appears within 12 months of delivery and the Buyer notifies the Seller of its claim within 2 days of delivery, if relating to transit damage, or within 7 days of discovering the alleged defect or failure (if later) giving full details of the alleged defect(s) or failure(s).
- ii. the Seller shall be entitled and shall be afforded the facilities to inspect and test the Goods or products into which the Goods have been incorporated and the Seller shall be under no liability if such Goods or products are found upon examination by the Seller not to be in accordance with the specification and the Seller shall be entitled to recover from the Buyer the Seller's reasonable charges for any such inspection or testing.
- iii. the Seller shall be under no liability in respect of any defect in the Goods or the products into which the Goods have been incorporated arising from any drawing, design or specification supplied by the Buyer.
- iv. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) misuse or alteration or repair of the Goods or the products into which the Goods have been incorporated without the Seller's prior Approval.
- v. the Seller shall be under no liability under such warranty (or any other warranty, condition, or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- vi. such warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to the Seller.

11.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by law are excluded to the fullest extent permitted by law.

11.4 Where any valid claim in respect of any Goods or part(s) thereof based on any defect in the quality or condition of the Goods or part(s) thereof or their failure to meet specification or perform is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to repair or replace the Goods (or the part(s) in question) free of charge or, at the Seller's sole discretion, or credit to the account of the buyer the price of the goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

11.5 The seller is not obliged to offer a cash refund under any circumstances and may do so only at his absolute discretion.

11.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

## **12. THE BUYERS OBLIGATIONS UNDER THE WEEE DIRECTIVE**

12.1 Where the Buyer purchases product branded with the sellers' name. The buyer shall:

- i. Pay the WEEE levy on each product identified under the Regulations without deduction. This levy to be set by the seller and included on the invoice with the associated product.
- ii. Advise the seller in writing on each occasion a collection is requested providing them with such information to enable a collection to be undertaken.
- iii. To prepare the WEEE in such a manner as it can be collected by an agent efficiently. This is to include separation from other WEEE which is not the responsibility of the Seller, other product which is not covered by the WEEE regulations and general building waste.
- iv. Indemnify the seller for all costs associated with the disposal of any product or material not covered under the WEEE legislation (and therefore has not been subject to a levy being made) given to collection agents in error by the seller or the sellers agents or customers.
- v. Indemnify the seller for all costs associated with sorting product at points of collection to identify WEEE products from other products and waste materials where this has not already been done as stipulated in section iii above.

12.2 Where the Buyer purchases from the Seller product that is Own branded or branded in a name other than the Sellers as a direct clause of the contract the Buyer shall be responsible for the disposal of this product under the WEEE regulations.

Under these circumstances the Buyer must make their own arrangements and register With compliance scheme operator in their own right.

## **13. INSOLVENCY OF THE BUYER**

13.1 This Condition applies if:

- i. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - ii. an encumbrancer takes possession of, or a receiver is appointed in respect of, any of the Goods or any of the property or assets of the Buyer: or
  - iii. the Buyer ceases, or threatens to cease, to carry on business.
- or
- iv. if the Buyer pledges or in any way charges by way of security for any indebtedness any of the Goods which remain the Property of the Seller; or
  - v. if the Buyer receives a written demand from the Seller to pay overdue sums owed to the Seller; or
  - vi. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

13.2 If this Condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to suspend work, delay, or withhold delivery under or cancel the Contract without any liability to the Buyer, and if the Goods have been delivered but not

paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13.3 If this Condition applies then the Buyer's consent from the Seller to do the acts referred to in Condition 10.2 shall determine and be deemed to have determined forthwith and the Buyer shall not thereafter sell or use the Goods or any other goods belonging to the Seller, save with the consent in writing of the Seller, until the Seller has been paid in full in accordance with Condition 10.1.

**14. ENTIRE AGREEMENT**

The Contract and these Conditions set forth the entire agreement between the Seller and the Buyer with respect to the sale and purchase of the Goods and replace all prior communications, drafts, agreements, representations, warranties, undertakings, and agreements of whatsoever nature, whether oral or in writing, between the Seller and the Buyer relating thereto. In addition, the Buyer acknowledges that time spent by the Seller in developing a product for the Buyer shall not be taken into account in determining the time of delivery.

**15. NOTICES**

Any notice given hereunder must be in writing and may be effected by personal delivery, telex or by registered mail postage and (subject, in each case, to proof that such notice was properly addressed and despatched) if effected by telex shall be deemed to be received on the day of sending and if effected by post shall be deemed to be received 48 hours after the date of posting.

**16. ASSIGNMENT**

The Contract shall be personal to the Buyer and shall not nor shall any rights under it be assigned by the Buyer without the prior written consent of the Seller.

**17. NO WAIVER**

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**18. GOVERNING LAW**

The Contract (and these Conditions) shall be governed by and construed in accordance with the laws of England and the Buyer and the Seller hereby submit to the exclusive jurisdiction of the English Courts. This Condition 17 is for the benefit of the Seller only, who accordingly retains the right to take proceedings in any other court of competent jurisdiction.

**19. INVALIDITY**

If any provision of the Contract (or of these Conditions) is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract (or of these Conditions) and the remainder of the provision in question shall not be affected thereby.