

# Terms and Conditions

## 1. APPLICABILITY.

(i) These general conditions with any other Terms and Conditions agreed to in writing by Mode Lighting Limited ("the Company") shall constitute the entire contract ("the Contract") for the sale and supply of any goods ("the Goods") ordered from the company by any person ("the Customer"). Where any terms and conditions agreed to in writing by the Company as aforesaid are in conflict with these General Conditions of Sale, such terms and conditions shall prevail.

(ii) In the Contract the term "the Goods" shall include any of them or any part thereof.

## 2. PREVIOUS AGREEMENTS OR CONDITIONS.

(i) Unless otherwise agreed in writing by the Company the Contract shall supersede any earlier conditions appearing in the Company's price lists, catalogues or elsewhere and shall override and take precedence over any and all terms or conditions stipulated, incorporated or referred to whether expressly or implied by the Customer whether in the order or in any other document or any negotiations leading to the Contract.

## 3. WARRANTIES.

(i) The Customer hereby acknowledges and agrees that he shall have satisfied himself before entering into the Contract as to the capacity, quality, effectiveness and performance of the Goods and their fitness and suitability for the purpose(s) for which they are required by him and that in purchasing the Goods the Customer shall not rely upon any statement, representation, term, condition or warranty other than those (if any) stated in the Contract and that save as aforesaid all guarantees, warranties, representatives and conditions whether expressed or implied statutory or otherwise (save with regard to the Company's title to the Goods) are hereby excluded or negated.

(ii) The Customer shall by entering into the Contract accept the exclusions from and the limitations on the Company's liability contained in the Contract as being fair and reasonable in the circumstances.

## 4. PRICE.

(i) The price(s) to be paid by the Customer for the Goods shall be that specified in the Company's invoice, all of which shall unless otherwise stated be exclusive of Value Added Tax. The Company shall be entitled to vary any such prices to reflect changes in the cost of materials, labour or the Goods and fluctuations in rates of exchange occurring between the date of the Contract and the delivery of the Goods.

(ii) The price (if any) to be paid by the Customer to the Company in respect of the delivery of the Goods or the basis upon which such price shall be calculated shall be as specified on the Company's invoice which sum shall be in addition to the price for the Goods under sub-clause (i) of this Clause.

## 5. TIME OF DELIVERY.

(i) Any time or date named by the Company for the delivery of the goods is given and intended as an estimate only based upon conditions prevailing at the time the Contract is made and time in this respect shall not be of the essence.

(ii) Without prejudice to sub-clause (i) of this Clause the Company make no warranty whatsoever that the Goods will comply in all respects with any illustration contained herein and in particular reserves the right to supply Goods in place of those illustrated, provided that the Goods supplied perform the same function as those illustrated and are the same in all material respects.

(iii) The Company shall use its best endeavours to supply the Goods in accordance with the estimated time or date for delivery, but it shall not be liable for any damage or loss arising directly or indirectly out of any delay in delivery or non-delivery of the Goods and the Customer shall not be entitled to terminate or rescind the Contract by reason thereof.

## 6. PLACE OF DELIVERY.

(i) The Goods shall be delivered at the point of delivery specified in the Company's invoice or if so specified in the order, shall be collected by the Customer from the point of collection specified therein within seven days of the date upon which the Company notifies the Customer that the Goods or any part thereof are available for collection. The Company shall be entitled to make delivery or require collection by installments as and when such installments are available to the Company and to treat such installments as a separate Contract and to receive payment thereof accordingly.

## 7. SHORTAGE AND NON-DELIVERY.

(i) No claims for shortage of Goods may be made by the Customer unless the Company shall receive and where the Goods are transported by a carrier and the carrier also receives written notification thereof within two days of delivery.

(ii) No claims for non-delivery of Goods shall be accepted or considered unless the Company receives written notification thereof within seven days from the date of receipt by the Customer of the Company's invoice in respect of the Goods.

(iii) If the Customer fails to give notice in accordance with the provisions of this clause, Goods of the quality and quantity specified in the Contract shall be deemed to have been received and accepted by the Customer.

## 8. PAYMENT.

(i) The time specified for payment shall be of the essence of the Contract.

(ii) Unless otherwise agreed in writing by the Company all sums due from the Customer under Contract shall be paid by the Customer as stated on the Company's invoice. If the Customer shall have failed to pay all sums due prior to the expiry of the payment terms then the Company shall be entitled to charge interest at the rate of per annum two percent above the Base Rate from time to time of Barclays Bank PLC on all overdue payments such interest to accrue on a daily basis with effect from the due date and to be payable after as well as before judgement.

(iii) The Customer shall not be entitled to deduct from or set-off against any monies due to the Company in respect of the Contract any sum claimed by the Customer against the Company whether in relation to the supply of Goods or otherwise.

## 9. TITLE.

(i) Notwithstanding delivery and the passing of risk, the legal and beneficial ownership in all Goods shall not pass to the Customer and shall remain with the Company which retains the right of disposal until full payment has been received by

the Company from the Customer for all Goods supplied at any time whether hereunder or in respect of any other Contract or Contracts and of all other sums due.

(ii) In the event that the Goods are not paid for on the due date or if the Company shall otherwise be entitled to determine the Contract pursuant to Condition 18 hereof, the Company may, whether or not such right of termination shall be exercised and without prejudice to its other rights and remedies at any time recover the Goods or such part thereof as shall be in the possession or under the control of the Customer and for that purpose the Company and its authorised representatives may enter upon any of the Customer's land or buildings upon or in which the Goods may be situated.

(iii) Until the property of the Goods passes to the Customer pursuant hereto the Customer shall hold the Goods as the fiduciary agent and bailee of the Company and shall keep the Goods separate from any other property of the Customer or any other person and properly stored, protected and identified as the Company's property and insured to their full value against all normal comprehensive risks with the Company's interest as owner being noted on the relevant policy or policies.

(iv) If the Customer shall purport to dispose of any Goods before the property therein shall have passed to the Customer, the Customer shall be under fiduciary duty to the Company to hold the proceeds in trust for the Company in a separate account and forthwith to pay therefrom such sum as shall satisfy its total indebtedness whether under this Contract or any other Contract. If in such circumstances the proceeds of such disposal are not received by the Customer, the Customer hereby irrevocably appoints the Company to be its attorney to collect and receive payments of such proceeds in its name and on its behalf and to discharge therefrom the sums owing to the Company under the Contract and any other Contract and all costs and expenses incurred by the Company in connection with the collection of such proceeds and to pay over the balance to the Customer or as it may direct.

## 10. RISKS AND INSURANCE.

(i) All Goods shall be at the risk of the Customer, from the time of delivery to or collection by the Customer, his servant agent or other representative at the agreed point of delivery or collection.

(ii) The Customer shall keep the Goods fully and comprehensively insured and a note of the Company's interest in the Goods shall be endorsed on all policies of insurance until the Company receives payment in full for the sale and supply of the Goods.

(iii) All payments received by the Customer from the insurance in the event of the Goods being damaged shall first be applied towards payment of any outstanding sums due to the Company under the Contract.

## 11. LIABILITY OF THE COMPANY.

(i) The Company shall not be liable, either in Contract or in tort for any loss, injury or damage of whatsoever nature or to whomsoever or by whatsoever cause arising directly or indirectly from any defect in the Goods (whether latent or apparent) or as a result of the use of the Goods (save and except any liability for the death of or injury to any person resulting directly from the negligence of the Company) and the Customer shall fully indemnify the Company against all claims and demands made upon the Company by reason of any such loss or injury or damage.

(ii) Without prejudice to the provisions of the immediately preceding sub-clause the Company shall not in any event be liable for consequential or indirect loss or damage howsoever arising under the Contract or in relation to the Goods.

## 12. SAFETY.

(i) The Customer shall ensure that the Goods are properly used and, without prejudice to the foregoing, that they are selected, installed, commissioned and maintained in accordance with all applicable safety and other regulations. The Customer shall ensure that all Goods incorporated within or otherwise joined to other components or products are so incorporated or joined as to ensure that the Goods and the final product comply in all respects with all applicable safety and other regulations.

(ii) The Customer shall take such steps as are necessary or desirable to ensure that all information and instructions relevant to the Goods and their use are provided to any person using the Goods or likely to be affected by them. Without prejudice to the foregoing, the Customer shall ensure that all packaging and instruction supplied to the Customer remain with the Goods whenever they are the subject of any future supply.

(iii) The Customer shall not supply any Goods to any person unless the safety of the Goods at the time of such supply is such as persons generally are entitled to expect.

(iv) The Customer shall on demand fully and effectively indemnify the Company against all claims, demands and proceedings made or brought against the Company by any third party or parties in relation to the Goods or their supply together with all expenses, costs (including the legal costs on a full indemnity basis), damages, losses and liabilities incurred by the Company in connection with any such claims, demands or proceedings.

## 13. RETURNS.

(i) No goods will be accepted back for credit or replacement unless a Returns Number has been issued by Mode.

(ii) All returns must be sent back at the Customer's expense, carriage paid, together with a Returns/Debit Note quoting the original Invoice Number for the goods and advising the reason for return.

(iii) Faulty goods must be returned to Mode for evaluation prior to replacement to your customer. Immediate exchange is not available.

(iv) All goods returned to Mode for credit must be unused and with the original packing and are subject to a minimum handling charge of £20.00 or 20% of the original invoice value, whichever is the greater.

(v) Products returned for repair that are incomplete, nor our manufacture, or damaged due to mis-use will be returned to the customer, as received and at the customer's expense.

## 14. FORCE MAJEURE.

(i) If the Company's ability to perform any of its obligations under the Contract is limited, delayed or prevented in whole or in part by reason of any cause or event beyond the Company's control, including, but without limiting the foregoing, fire, storm, tempest, explosion, accident, breakdown of plant or machinery, strike or industrial dispute, shortage of materials or failure of supplies, war, civil strife or commotion, act of foreign enemy, hostilities, law or act of or authorised by any gov-

ernment, the Company's performance of its said obligation under the Contract shall be suspended for so long as such event or cause shall continue and the Company shall not be liable to the Customer therefore nor for any loss, damage or liability arising therefrom and if such cause or events shall be continued for longer than six months the Company shall be entitled to terminate the Contract without incurring any liability whatsoever to the Customer and without prejudice to the Company's rights accrued up to the date of such termination.

## 15. VARIATIONS OF CONDITIONS.

(i) Any purported variation of the Contract shall only be valid if evidenced in writing and signed by a Director of the Company.

## 16. ASSIGNMENT.

(i) The Company reserves the right to assign or sub-contract the performance of its obligations under the Contract or any part thereof or to assign the benefits of its rights thereunder. The Contract may not be assigned, sub-let or charged in whole or in part by the Customer without prior written consent of the Company.

## 17. WAIVER.

(i) The waiver by the Company or any breach of any term of the Contract by the Customer or any time or indulgence granted by the Company to the Customer shall not affect the enforcement of the rights of the Company hereunder or be deemed a waiver of any further breach.

## 18. TERMINATION.

(i) The Company shall be entitled to determine the Contract or the unfulfilled part thereof forthwith by written notice to the Customer in any of the following events:-

(a) If the Customer commits any breach of the terms or conditions of the Contract.

(b) If the Customer ceases to carry on business or pay his debts as and when they fall due or threatens so to do.

(c) If the Customer shall become bankrupt or have a receiving order or administration order made against him or shall make any composition or arrangement with or conveyance or assignment for the benefit of his creditors or shall purport so to do if any proposal shall be made for a voluntary arrangement in relation to the Customer or if the Customer shall have any application made against him under the Insolvency Act 1986 or any Statutory re-enactment or replacement thereof of any other insolvency legislation in whatever jurisdiction or (being a company) if any Resolution be passed or any Order of the Court be made that the Customer be wound up or a Receiver and/or Manager be appointed by any creditor or any act shall be done which would cause any of the foregoing to be done.

(ii) Any termination of the Contract shall be without prejudice to the Company's rights accrued up to the date of the termination and the Customer shall forthwith pay to the Company all payments due to it up to such a date.

## 19. SEVERABILITY.

(i) The various provisions of the Contract are severable and if any provision is held to be invalid or un-enforceable by any Court of competent jurisdiction then such invalidity or un-enforceability shall not affect the remaining provisions of the Contract.

## 20. HEADINGS.

(i) The headings to the clauses hereof shall not affect the construction of the Contract and are inserted for ease of reference only.

## 21. APPLICABLE LAW.

(i) The Contract shall be constructed and have effect in all respects in accordance with the Laws of England and the Customer hereby submits to the jurisdiction of the English Courts.

## 22. NOTICES.

(i) Any notice to be served under the provisions of the Contract shall only be deemed to have been effectively served if it is personally delivered or sent pre-paid first class recorded delivery or registered post in the case of the Company to its registered office for the time being and in the case of the Customer to its address as specified on the application for credit or such other address as may have been notified to the Company in accordance with the provisions hereof. Any notices sent by post as aforesaid shall be deemed to have been served on the day next following the date of posting (excluding Saturdays, Sundays and public holidays).

## 23. GUARANTEE

(i) The Company undertake that if within 24 months of the date of purchase the goods, or any part thereof, are proved to be defective by reason only of faulty workmanship or materials, we will at our discretion repair or replace the same free of charge, on condition that:-

(a) The goods have been correctly installed by a qualified electrician.

(b) The goods have been used in accordance with the Companies operating and maintenance instructions.

(c) The goods have not been repaired, taken apart or tampered with by any person not authorised by the Company.

(d) All service work under this guarantee must be undertaken by the Company.

(e) Any Product or defective part replaced shall become the Companies property.

(f) All goods must be sent back to the Company at the Customer's expense, carriage paid, together with a Returns/Debit Note quoting the original Invoice Number for the goods and advising the reason for return.

(ii) This Guarantee does not cover any damage or malfunction determined by the companies qualified service representatives as due to abuse, misuse, or accident such as, but not limited to:-

(a) Use of incorrect line voltage.

(b) Use of incorrect fuses or breakers.

(c) Failure to maintain and operate goods in accordance with applicable electrical codes.

(d) Failure to maintain equipment under specified ambient temperatures.

(e) Vandalism.

(f) Force Majeure, or any other issues beyond the control of the company.

(iii) This guarantee is in addition to your statutory and other legal rights.