

# Aether Lighting Ltd

## Terms & Conditions of Purchase

Note that all supplier's Terms & Conditions of Sale will be overridden by these Terms & Conditions of Purchase.

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### 1. DEFINITIONS AND FORMATION OF CONTRACT

#### 1.1. DEFINITIONS

- 1.1.1. The "Company": means Aether Lighting Ltd.
- 1.1.2. "Conditions": means the Terms & Conditions of Purchase set out herein:
- 1.1.3. "Contract": means a contract for the supply of Goods and/or Services to the Company formed in accordance with condition 1.2:
- 1.1.4. "Goods": means goods, materials or items supplied by the Supplier to the Company pursuant to a Contract or Purchase Order:
- 1.1.5. "Purchasing Agreement": means an agreement between the supplier and the Company pursuant to which a supplier has agreed to supply goods or services as and when requested by the Company:
- 1.1.6. "Purchasing Authority": means such a person as shall have been duly authorised by the Company to sign a Contract or Purchase Order or any variations thereto:
- 1.1.7. "Purchase Order": means a written request on a Company official Purchase Order issued by the Company to supply Goods or Services to the Company:
- 1.1.8. "Services": means services of any description provided by the supplier to the Company pursuant to a Purchase Order:
- 1.1.9. "Supplier": means the company or person to whom a Purchase Order for the supply of Goods or Services is addressed:

#### 1.2. FORMATION OF A CONTRACT

- 1.2.1. The Company will be responsible for payment for Goods or Services only if ordered on an official Company Purchase Order or Purchase Order Schedule form.
- 1.2.2. A Contract means: (i) a contract formed on acceptance of a Purchase Order by the supplier: or (ii) a contract made upon issue of a Purchase Schedule pursuant to a Purchasing Agreement: or (iii) a contract for purchase where payment is made by Credit Card.
- 1.2.3. A Contract shall be governed only by the Conditions save to the extent that, any amendment to or variation of the Conditions is expressly agreed in writing by a Purchasing Authority.
- 1.2.4. It shall be the responsibility of the supplier to ensure that any person claiming to have Purchasing Authority is duly authorised.
- 1.2.5. Delivery of the Goods or commencement of the performance of the service shall be deemed conclusive acceptance by the supplier of the contract and its conditions. No other terms or conditions, including any terms or conditions endorsed upon, delivered with, or referred to in any invoice, acceptance or acknowledgement of order or other document delivered by the supplier to the Company nor any previous correspondence shall form part of a Contract and any such terms or conditions shall not be deemed to constitute a counter offer.
- 1.2.6. Where a Purchase Schedule is issued pursuant to a Purchasing Agreement between the Company and the supplier, the Purchase Schedule shall be deemed to be accepted as soon as it has been received by the supplier (the Purchasing Agreement being deemed to constitute an irrevocable standing offer valid for the term specific therein which is accepted by the Purchase Schedule). In the event of any conflict between any of the Conditions and the Purchasing Agreement, the terms of the Purchasing Agreement shall prevail.

### 2. GENERAL

#### 2.1. PRICE

- 2.1.1. Prices shall remain firm and fixed against upwards movements and shall not be subject to any increase or escalation whatsoever for the duration of the contract.
- 2.1.2. Unless otherwise stated in the Contract the price payable for Goods and Services shall be:
  - 2.1.2.1. exclusive of value added tax (which shall be payable by the Company subject to receipt of a VAT invoice): and
  - 2.1.2.2. inclusive of (i) all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the destination specified in the Contract: and (ii) all duties, licences, permits and taxes (other than VAT) as may be payable in respect of Goods or Services from time to time.

#### 2.2. PAYMENT

- 2.2.1. Unless otherwise specified, BACS payment instructions for the Goods or Services shall normally be issued within 7 working days of the end of the month following the month of receipt of invoice.
- 2.2.2. Invoices will be included if rendered by 5<sup>th</sup> of the month following delivery of Goods or completion of performance of Services.

#### 2.3. ASSIGNMENT AND SUB-CONTRACTING

Contracts are made with the supplier on the basis that the Goods will be supplied and/or the Services performed by the supplier and no assignment or sub-contracting may be made without the prior written consent of the Purchasing Authority.

#### 2.4. MATERIALS PROVIDED BY THE COMPANY

The supplier shall be fully responsible for any materials, equipment or other property belonging to the Company or for which the Company is responsible whilst in the supplier's possession for any purpose connected with the contract and will promptly replace or repair, as required by the Company, at the suppliers own cost, any materials, equipment or other property lost or damaged by the supplier. The supplier will return such property immediately on request and will allow access to the Company personnel for the purpose of removing such property.

#### 2.5. TERMINATION

2.5.1. The Company shall be entitled to terminate the Contract immediately upon notice and enter the supplier's premises and remove any property belonging to the Company or for which the Company is responsible if:

2.5.1.1. there is a breach of term of the Contract by the supplier: or

2.5.1.2. if any distress or execution shall be levied on the supplier's goods or if the supplier has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any agreements with its creditors or commits any act of bankruptcy or is wound up or goes into liquidation or if the supplier shall suffer any analogous proceedings under foreign law.

2.5.2. Termination of the Contract shall be without prejudice to the accrued rights of the Company or the Supplier prior to the date of termination.

#### 2.6. PUBLICITY

The Supplier shall make no reference to the Company in its advertising, literature or correspondence without prior written agreement of the Purchasing Authority.

#### 2.7. INDEMNITY & INSURANCE

2.7.1. The Supplier shall hold harmless and indemnify the Company against any liability, loss, cost expense, damage or injury in consequence of a defect in design (other than a design made or furnished by the Company), materials or workmanship or any breach by the Supplier of the Contract or any negligence, wilful default or wrongful act or omission of the supplier, its employees, sub-contractors or agents, save to the extent that such liability, loss cost expense, damage or injury is due to the negligence of the Company.

2.7.2. Unless otherwise stated in the Contract, the supplier shall arrange and maintain and the Supplier's price shall be deemed to include the cost of all necessary insurances. In particular insurance must be effected for:

2.7.2.1. Public liability for not less than £2,000,000 for any one incident

2.7.2.2. Product liability for not less than £2,000,000 for any one incident

2.7.2.3. Employer's liability insurance for a minimum limit of £10 million.

Evidence of these insurances, shall be produced upon request.

#### 2.8. WARRANTIES AND GUARANTEE

2.8.1. The Supplier warrants that the design, construction and quality of any Goods (including packaging) manufactured or supplied by it and any Services provided comply in all respects with the requirements of any relevant statute, statutory instrument, order or regulation which may be in force in the United Kingdom at the time when the same are supplied including without limitation the Health and Safety Work etc.. Act 1974. Where Goods are stated in the Contract as being intended by the Company for supply as consumer goods, the supplier warrants that the goods shall comply with the general safety requirement with the meaning set out in clause 10 of the consumer protection Act 1987 and that each item for the Goods has attached or is accompanied by all appropriate instructions or warnings in relation to the keeping, use consumption or disposal of the Goods.

2.8.2. The supplier warrants to the Company that the Services will be performed in a safe and workmanlike manner, in accordance with the best practice and with the degree of skill, care and diligence exercised by skilled and experienced contractors in the Supplier's industry.

2.8.3. The Supplier warrants that the Goods and any parts and materials used in the performance of the Service shall be new and unused, shall conform to specification or sample, shall be suitable for their purpose or any specific purpose notified by the Company to the Supplier, shall be of sound materials and workmanship and shall be of satisfactory quality and free from any defects (latent or otherwise). Further the Supplier warrants that all Services (including without limitation design work) undertaken and performed under connection with a Contract shall be, in all respect, adequate and sufficient so as to ensure that the completed works are free from defects in material and workmanship and suitable for purpose. The Supplier warrants that Goods supplied will be accompanied by all appropriate instructions and documentation and will comply with and be properly marked in accordance with any regulations and directives relating to CE markings.

2.8.4. The supplier shall at its own cost (including without limitation labour, dismantling, re-assembling, transport and other incidental costs) immediately and without prejudice to any other right of the Company, at the Company's discretion replace or repair any defective Goods and remedy defects arising from or re-perform the Services, within 12 months after putting into service of the Goods or within 12 months after completion of performance of the service. If action to remedy such a defect or damage is not taken quickly and defect or damage remedied within a reasonable time, the Company may proceed to do the work at the Supplier's risk and expense.

2.8.5. If in the course of making good any defect pursuant to the provisions of this Condition 2.8 the Supplier repairs, modifies or replaces any part or material, the Supplier shall at its own cost replace at the Company's discretion any of the parts or materials so repaired, modified or replaced within a period of 12 months from the date of acceptance of such repair, modification or replacement.

2.8.6. If in the course of normal business, should the Company be called upon by a customer to remedy a defect, which it is found relates to a supplier's component, the Company reserves the right to charge the supplier any labour costs relating to the repair of the Company product.

2.8.7. The Supplier agrees to the assignment to any subsequent user or purchaser of any warranty or guarantee to which the Company is entitled hereunder and the Supplier agrees to enter into any such documentation as may be necessary to achieve this.

2.8.8. The Supplier shall notify the Company prior to the supply of any Goods or use of any materials in the provision of Services, which are manufactured using or containing ozone-depleting substances.

2.9. LEGAL CONSTRUCTION

2.9.1. All Contracts, acceptances, correspondence, specifications and other documents shall be in English Language and shall be governed by and construed in accordance with English Law.

2.9.2. Headings to Conditions are for guidance only and do not form part of these Conditions.

2.9.3. References to all statutes, statutory instruments, Health and Safety Executive Guidance Notes, British Standards and Codes of Practice of any relevant Goods as regards the Goods being supplied hereunder shall be deemed to include all amendments or revisions thereto an re-enactments thereof as may be made from time to time.

2.10. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

2.10.1. All intellectual property rights including patents, trade marks, service marks, design rights (whether registered or unregistered), copyright (including any future copyright), and any application for any of the foregoing, arising from work conducted or prepared by the supplier for the Company shall belong to the Company, unless otherwise agreed in writing by the Company and the Supplier agrees at the Company's expense to execute all documents and do all such other things as may reasonably be required (i) to assign such rights to the Company and (ii) to otherwise assist the Company in applying for and being granted such rights.

2.10.2. Property in all goods and materials (including without limitation, photographs, drawings, illustrations, film negatives, positives, bromides, recordings, proofs, physical embodiments of computer programmes, tools and dies) supplied to the Supplier by or on behalf of the Company, or prepared manufactured or procured by the Supplier specifically in connection with the performance of the Contract for the Company shall belong to the Company and shall immediately upon the Company's request handed over to the Company free of charge and in good condition and no such goods or materials shall be disposed of without the prior consent of the Company.

2.10.3. All information and documents provided to the Supplier by the Company, or otherwise acquired by the Supplier relating to the Company's business or created or produced by or on behalf of the Supplier specifically for or in connection with the performance of the Contract for the Company, shall be kept confidential by the Supplier and shall not be used by the Supplier other than for the purpose of the Contract without first obtaining the Company's express consent in writing.

2.10.4. The provisions of Condition 2.10.3 above shall continue in force notwithstanding termination however caused or completion of the Contract.

2.10.5. The provision of Conditions 2.10.3 above shall not apply to any information or document in the public domain or coming into the public domain other than through the default of the Supplier.

2.10.6. Without prejudice to Condition 2.10.3 above, if the supplier assigns or sub-contracts any part of the Contract to any person, the Supplier shall ensure that such person agrees to be bound by these Conditions 2.10.1 to 2.10.4 as though a party to the Contract and the Supplier shall indemnify the Company against any consequences of the Suppliers failing to do so, including any claim made by such person which it could not if it were party to the Contract.

2.10.7. Unless specifically released in writing by the Company from doing so, the Supplier warrants that the sale or use of the Goods and the performance of the Service to be supplied do not infringe any intellectual property rights, including patents, designs (whether registered or not) copyright, trade and service marks (whether registered or unregistered), and undertakes to indemnify the Company against all royalties or licence fees (to the extent not specifically provided for) and against all damages, losses or costs suffered by the Company in respect of any breach of this warranty. The Supplier will give the Company all such support and assistance as the Company reasonable requires in defending a claim that the Goods and Services infringe an intellectual property right. If it should come to the Company's knowledge that a claim may arise under warranty, the Company reserves the right to terminate the Contract forthwith on written notice and without any liability.

2.11. SPECIAL TOOLS, JIGS OR FIXTURES

2.11.1. Where Tooling, Jigs or Fixtures are designed, prepared or produced specifically for the Company, such items shall become the property of the Company. They shall not be used for any other person (legal or otherwise) or corporation and shall not be stripped, altered or destroyed without prior written consent of the Company. The Company reserves the right to require the Supplier to transfer such items to third parties nominated by the Company in the event that the Company deems it necessary.

2.11.2. Where a supplier states, part tool cost, title of the tooling shall pass to Aether Lighting Ltd upon payment of the invoice for that tool.

2.12. DELIVERY AND PERFORMANCE

2.12.1. The Goods shall be delivered by the Supplier and Services performed by the Supplier as specified in the Contract. Each separate pack and group of packs comprising a separate unit shall be clearly indelibly marked.

2.12.2. The delivery date stated on the purchase order is of the essence of the contract.

2.12.3. Delivery of the Goods shall take place when the Goods reach the destination specified in the Contract and the delivery note accompanying the delivery has been signed by an authorised signatory of the Company. If the supplier fails to deliver Goods or complete performance of the Services by a specified date, the Company shall have the right without prejudice to any other remedy it may have to:

2.12.3.1. For all additional costs and expenses incurred and/or

2.12.3.2. Terminate the contract forthwith and/or

2.12.3.3. Be indemnified in accordance with Condition 2.7

3. ADDITIONAL PROVISIONS FOR THE SUPPLY OF GOODS

3.1. DELIVERY INSPECTION AND REJECTION

3.1.1. The Company's staff or nominees shall have the right at all reasonable times to enter the Suppliers works, or those of its sub-contractors for the purpose of expediting work-in-progress and for enabling inspection and where appropriate rejection of goods prior to delivery.

- 3.1.2. The Supplier shall comply with the inspection and/or testing requirements stated in the Contract. The supplier shall advise the Company at least seven days in advance when any Goods will be ready for inspection. Inspection by the Company at any time or signature of a release note shall not relieve the Supplier of responsibility or liability for the Goods and shall not imply acceptance thereof. the Company shall be entitled to waive inspection at any point of manufacture, without prejudice to its right to reject the Goods after delivery.
- 3.1.3. All Goods shall be supplied subject (but without obligation on the Company) to inspection and testing by the Company on delivery. The Company shall be entitled at any time within two weeks of Goods being put into operation or use, or within two months of delivery, whichever ever is the longer, or if the Contact is not completed to the Company's reasonable satisfaction, to accept or, at the suppliers expense, to reject the Goods (including, at its sole discretion, a complete consignment of Goods) in the event that a consignment or instalment contains Goods which are not in accordance with Condition 2.8.
- 3.1.4. Without prejudice to Condition 3.1.7 the Supplier shall immediately, upon receiving notice thereof from the Company, repair or replace, free of charge, at the option of the Company, Goods damaged in transit and replace Goods lost in transit and delivery of such Goods shall not be deemed to have taken place until replacement or repaired Goods have been supplied by the Supplier to the Company.
- 3.1.5. The supplier shall comply with all packaging specifications issued by the Company from time to time and the majority of all packaging supplied by the Supplier shall be recoverable and recyclable and the Supplier shall, if requested by the Company, collect from the Company free of charge all packaging supplied with any Goods or materials used in connection with any Service provided.
- 3.1.6. Information and advice regarding the transportation, storage, operation or use of the Goods together with notice of potential hazards, safety precautions to be taken and data sheets, shall be provided to the Company delivery point, before delivery unless otherwise agreed.
- 3.1.7. Rejection of the Goods pursuant to this Condition 3.1 shall entitle the Company without prejudice to any other rights it may have to do all or any of the following acts:
  - 3.1.7.1. to advise the Supplier that the Goods are held for collection by the Supplier and to obtain the supplies from a third party and to be reimbursed by the Supplier for all additional costs and expenses incurred in which event property in the Goods shall re-pass to the Supplier when the Supplier has fully reimbursed the Company with all moneys which have been paid by the Company in respect of Goods: or
  - 3.1.7.2. require the Supplier to repair or replace the Goods at the Supplier's expense so that the Goods shall conform in all respects with Condition 2.8 and the Supplier shall use its best endeavours to ensure such repairs are carried out or replacement goods supplied expeditiously. In the event that Goods are repaired or replaced such Goods shall carry the benefit of a guarantee of 12 months in accordance with Condition 2.8: and
  - 3.1.7.3. refuse to accept any further deliveries on instalments of the Goods.

#### 3.2. ORIGIN AND TEST CERTIFICATES.

The Company reserves the right to call for all certificates of raw materials and test certificates for materials and equipment at any stage of manufacture. Such certificates must clearly state the Company's Purchase Order number and also any item or equipment number.

#### 3.3. STORAGE

If, for any reason the Company is unable to accept delivery of Goods at the time specified in the Contract, the Supplier shall, if requested by the Company store the Goods, insure and maintain them in satisfactory condition. If the supplier is required to store the Goods for a period of more than three months the Company shall reimburse the supplier for the agreed reasonable costs of such storage actually incurred in excess of three months.

#### 3.4. TITLE AND RISK

- 3.4.1. Title to all or any part of the Goods shall pass to the Company on the earlier of:
  - 3.4.1.1. identification or allocation of such Goods to the Contract:
  - 3.4.1.2. payment for such Goods: or
  - 3.4.1.3. delivery of such Goods
- 3.4.2. Risk in all or any part of the Goods shall be with the Supplier and shall only pass to the Company on acceptance of such Goods.
- 3.4.3. Where title to all or any part of the Goods has passed to the Company but the Goods remain the possession of the supplier, the Supplier shall clearly label the Goods as the property of the Company and store the Goods separately from all other Goods.

#### 4. ADDITIONAL PROVISIONS FOR SUPPLY OF SERVICES

- 4.1. The Supplier shall be responsible for the safe keeping of all property belonging to it or within its control including, without limitation, plant, equipment, tools and documents and the supplier shall perform the Services to ensure that all such property is handled and stored in such a manner so that it does not cause injury, loss or death to persons or loss or damage to property.
- 4.2. The Supplier shall ensure that all tools and equipment used in connection with the Services are properly maintained and are in good working order and repair and are accompanied by all necessary certificates and records.
- 4.3. The Supplier shall be responsible for ensuring at its own cost that all personnel engaged in the Services are supplied with and wear all safety gear and protective clothing appropriate to the Services to be provided.
- 4.4. The supplier shall not use any tools, equipment or other property belonging to or within the control of the Company without the written consent of the Company. In the event that the Supplier uses such property, the Supplier will be responsible for its use and safekeeping.
- 4.5. If under the terms of the Contract the Suppliers employees are required to work on an the Company site the following will apply:
  - 4.5.1. Materials used or to be used are at the Suppliers risk until completion of the Contract and acceptance of the work.

- 4.5.2. The Supplier must at all times abide by the Company's Rules and Regulations at the Company sites details of which will be made available by the responsible Manager of the site concerned. A permit to work must be obtained from the Company prior to commencement of any work on site. Particular attention must be paid to the site safety rules, "No Smoking" requirements and other warning signs.
- 4.5.3. The Supplier and its employees shall attend such safety training as may be required by the Company.
- 4.5.4. The Company shall have the right to request the removal of any individual working at a the Company site without giving a reason.
- 4.5.5. The Supplier shall when required by the Company's site engineer or nominated representative, carry away excavated and other unwanted material arising from the execution of any works by the Supplier and shall from time to time, as work progresses remove all surplus materials debris, rubbish, temporary erections etc. and shall on completion, leave the site clear and tidy to the Company's satisfaction. These duties shall be performed at the Suppliers cost. Without prejudice to any other Conditions in carrying out these duties the supplier shall comply with the provisions of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991 and warrants that it is properly licensed and registered to transport and store controlled and special waste.