

# Aether Lighting Ltd

## Terms & Conditions of Sale

### 1. GENERAL

In these Conditions of sale, the "Company" means Aether Lighting Ltd. The "goods" means anything of whatsoever nature sold by the company; the "Purchaser" means the immediate purchaser of the goods from the Company. These Conditions of Sale shall apply to and form part of every contract entered into by the Company. All orders are accepted and executed on the understanding that the Purchaser is bound by these Conditions of Sale. Where there is any inconsistency between these Conditions of Sale and any conditions that the Purchaser seeks to impose, these Conditions of Sale shall prevail. No contract of sale shall come into being unless and until the Purchaser has accepted these Conditions of Sale either expressly or by implication. "Writing" includes facsimile transmission, e-mail and comparable means of communication.

THE PURCHASER'S ATTENTION IS DRAWN IN PARTICULAR TO THE CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY AND THOSE WHICH REQUIRE THE PURCHASER TO INDEMNIFY THE SELLER IN CERTAIN CIRCUMSTANCES.

### 2. LIMITS OF CONTRACT

2.1. The contract includes only such goods, accessories and work or services as are specified in the quotation or acknowledgement accompanying these Conditions of Sale.

2.2. Any advice or recommendation given by the Company or its employees or agents to the purchaser or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Company and is followed or acted upon entirely at the purchaser's own risk the Company shall not be liable for any such advice or recommendation which is not so confirmed.

### 3. PRICES

3.1. The price payable for goods or services shall unless otherwise stated by the Company in writing be the price of the Company current at the date of despatch or execution and in the case of an order for delivery or execution by instalments the price payable for each instalment shall be the price of the Company current at the date of such instalment.

3.2. Unless otherwise expressly stated to be firm for a period the Company's prices are subject to variation to take account of variations in costs. The Company accordingly reserves the right to adjust the invoice price without notice by the amount of any increase or decrease in such costs after the price is quoted.

3.3. All prices are exclusive of Value Added Tax and this will be charged at the applicable rate and recoverable as part of the price by the Company.

### 4. PAYMENT

4.1. Unless otherwise agreed in writing, payment is due, for Purchaser's who have an agreed credit account, by the last day of the month following that of dispatch of the goods or provision of services.

4.2. Where the contract is to be or may be fulfilled in separate instalments, deliveries or part, payment for each instalment, delivery or part shall be made as if the same constituted a separate contract.

4.3. Time for payment shall be of the essence of the contract.

4.4. Without prejudice to any other rights it may have the Company is entitled to charge interest at 4% above the current base rate of National Westminster Bank plc on overdue payments of the price of the goods or the price of any instalment or partial delivery thereof.

4.5. Additionally and without prejudice to its other rights the Company shall be entitled to recover all direct expenses reasonably incurred by the Company in collecting or attempting to collect amounts of the price outstanding or arising from any breach of contract by the purchaser including, but not limited to, all legal costs and disbursements on a full indemnity basis.

4.6. If the Purchaser fails to make any payment when due in accordance with these Conditions of Sale, the Company reserves the right in its absolute discretion and without prejudice to any of its rights or remedies to suspend all further deliveries or provision of service until such payment has been made in full or at the Company's option, to cancel the balance of the order. In either case the Company shall hold the Purchaser liable for costs incurred in respect of goods and services in course of manufacture, ready for despatch or resources allocated to the contract.

4.7. The Company shall be entitled to bring an action for the price or part thereof whether or not the property in the goods has passed.

4.8. The Purchaser shall make all payments hereunder in full, without deduction, set-off or counterclaim whatsoever from or against the same except as required by law and regardless of any delays in delivery or performance or any corrections or adjustments that may be necessary to the goods.

4.9. In the event that any remedial or repair works are required to either goods or installation works then these works shall not hold up the entire value of payment due to the company. In this event 10% may be withheld until completion of the works and 90% must be paid as due. The 90% will then be due regardless of completion of the remedial works.

### 5. CREDIT

Any contract shall be subject to the Company being satisfied as to the Purchaser's credit references, and without prejudice to the generality of the foregoing, the Company may (in its absolute discretion), refrain from manufacturing the goods or allocating any resources until such time as the Purchaser tenders the purchase money to the Company together with any outstanding amounts which may be due to the Company on any account whatsoever.

### 6. CARRIAGE

The cost of delivery of goods to the mainland of Great Britain shall be included in the contract price unless otherwise noted on a quotation.

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, skids, stillages and pallets etc. in good conditions carriage paid. No charge is made for any other form of packaging and no credit will be allowed for its return.

8. LOSS OR DAMAGE IN TRANSIT

The Company shall repair or replace free of charge goods damaged or lost in transit provided that the Company is given written notification of such damage or non delivery within 24 hours after receipt of the goods. Notwithstanding the above undertaking, the Company will only consider claims for alleged shortages if they are received within 24 hours of the receipt of the goods by the Purchaser together with sufficient information to enable the Company properly to identify the shortage including the Delivery Note number, case number and condition of case.

9. SAMPLES

Any samples submitted by the Company or at the Purchaser's request must be returned within ninety days of receipt and the Company shall be entitled to charge for them if they are not so returned.

10. DELIVERY

10.1. All times or dates for delivery of the goods or execution of the service are given in good faith but are approximate only and shall not be of the essence of the contract.

10.2. All times or dates shall be calculated from the date of acceptance by the Company of the order of the Purchaser, or from the date of receipt by the Company from the Purchaser of all information, instructions and drawings as shall be necessary to enable the Company to carry out the contract, whichever shall be the later.

10.3. Unless otherwise stated in writing the Company shall be entitled to make partial deliveries of the goods.

10.4. The Company shall not be liable in any way whatsoever for the consequences of any reasonable delay in delivery or in the carrying out of any work under the contract. Reasonable delay shall be considered to be three months or longer if due to a third party not providing goods or services to the Company on which the Company had relied.

10.5. In the event of goods being faulty or mistakenly manufactured but in good faith, the Company shall again be entitled to rely on clauses 10.1, 10.2, 10.3 & 10.4.

10.6. All goods are delivered by a third party courier. Signature of receipt of the goods on their docket denotes acceptance and receipt of all goods listed on our separate delivery note that accompanies the goods. Any discrepancies must be advised within 24 hours of signing for the goods. No claims for damage or incomplete delivery will be accepted after this time.

11. VARIATIONS

11.1.1. The Company shall be under no obligation to alter or vary any part of the contract or any work connected therewith. Any alteration to or addition to or amendment or other variation of the specification, including any increase or decrease in the quantity of the goods or any alteration to any drawings, or to the quality, performance, weight or measurements of any goods or any alteration or variation of advised schedules, shall, if requested by the Purchaser, be subject to the agreement of the Company, with such alteration or addition to the price and to dates or schedules as may be required by the Company, and shall not be binding upon the Company unless and until accepted and agreed in writing by authorised representatives of the Company and Purchaser.

11.1.2. In the event of any variation or suspension of the work by the Purchaser's instructions or lack of instructions the Company shall be entitled to adjust the contract price to reflect costs involved, and to adjust delivery dates or schedules.

12. STORAGE

It is a condition of the Contract that the Purchaser will give the Company adequate instructions for the delivery of the goods within fourteen days of being notified by the Company that the goods are ready for delivery. If the Purchaser fails to give instructions for delivering the goods within that period, the Company may exercise either of the following rights without prejudice to any other right or remedy available to the Company:

12.1. Treat the failure to give instructions for delivery of the goods as a repudiation of the contract and terminate the contract with immediate effect; in that case the Company may also do any or all of the following:

12.1.1. dispose of the goods as it thinks fit;

12.1.2. retain all payments made by the Purchaser prior to termination;

12.1.3. recover damages from the Purchaser in respect of (a) the costs of storing the goods, and (b) the costs of arranging for their disposal and (c) any other losses as a result of the Purchaser's breach or as a result of termination of the contract;

12.2. Arrange for the storage of the goods; in that case:

12.2.1. the goods shall be at the Purchaser's risk as regards all loss or damage;

12.2.2. the Purchaser will be responsible for the costs of storing the goods and will reimburse the Company all expenses incurred in connection with such storage;

12.2.3. the Purchaser will pay the Company a reasonable sum for its services in connection with the storage of the goods;

12.2.4. the Company shall be entitled to invoice and be paid for the goods as though the goods had been duly delivered in accordance with the terms and conditions of sale.

13. PERFORMANCE

Any performance figures given by the Company are based on its experience and are such as the Company expects to obtain under the conditions of its standard tests at its works.

14. INSPECTION AND TESTS

The Company's products are carefully inspected, and, where practicable submitted to its standard tests at the Company's works before despatch. If tests other than those specified or tests in the presence of the Purchaser or its representatives are required, these will be charged for. In the event of any delay on the Purchaser's part in attending tests after the Purchaser has received 7 days notice that the Company is ready to perform the tests, the tests will proceed in the Purchaser's absence and the Purchaser accordingly agrees herein to accept and pay for such tests as if they had been performed in the Purchaser's presence.

15. 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 specification 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.

16. DRAWINGS

16.1. If the goods being supplied by the Company are based upon drawings supplied by others then the Company will not be responsible for any additional or change of goods required (and any delays that may ensue) if the drawing proves to be inaccurate to the final room dimensions. The Company cannot guarantee that any additional or changed goods required under these circumstances can be delivered along with the rest of the goods.

16.2. Our design service is based upon supplying plan drawings only. Any additional drawings (such as elevations) are available at commercial rates and a quotation for these can be provided.

16.3. All designs/layouts provided by the Company should be endorsed by site contractors to ensure they fit into the built area and that there are no site obstacles either in situ or planned that would result in the design/layout not working.

16.4. Any drawings supplied by us are indicative only and are not accurate representations of actual products to be supplied. For accurate details (such as exact appliance dimensions) please request full technical specifications and/or M&E specifications.

17. WARRANTY

17.1. The Company will make good by repair, or at the Company's option by the supply of a replacement, defects which, under proper storage and use appear in the goods within the period of twelve calendar months after the goods have been delivered and arise solely from faulty design (other than design made or furnished by the Purchaser), material or workmanship.

17.2. Endurance Range products that include LED as the primary light source shall be covered by a warranty period of sixty months (five years), from the date of delivery, for the light emitting diode (LED) and the electronic driver components (but shall remain at twelve months for all other components). The LED light source is only deemed to have failed when the light output is reduced below 70% (L70). Batteries within emergency lighting units, with an LED primary light source, are subject to the standard 12 month warranty period only.

17.3. The warranty given in this Clause is subject to the following provisos, namely:

17.3.1. that the Purchaser shall have followed all instructions issued by the Company in relation to the goods;

17.3.2. that in the case of defects which would have been reasonably apparent to the Purchaser on reasonable examination of the goods on delivery, the Purchaser shall notify the Company of the defects in writing within three working days of delivery;

17.3.3. that in the case of any other defects, the Purchaser shall notify the Company of the defects in writing within seven working days of the date when the defect becomes apparent;

17.3.4. that where in discharge of its obligations under the Warranty given in this Clause the Company agrees that the Purchaser may undertake any repair or remedial work on its behalf, the cost of such work shall be agreed in writing between the Purchaser and the Company before the commencement of any such repair or remedial work.

18. PRODUCT LIABILITY

18.1. The Purchaser shall use all reasonable endeavours to ensure that the goods are operated in accordance with the instruction manual supplied with the goods and shall provide all relevant personnel with all necessary training in respect of the goods.

18.2. The Purchaser shall ensure that all warnings displayed on the goods or the packaging at the time of delivery shall not at any time be removed, defaced or otherwise obscured and further the Purchaser shall contractually pass such obligation to any third party recipient of the goods.

18.3. The Purchaser shall indemnify the Company against any loss suffered as a result of the Purchaser being in breach of any part of this term.

19. REJECTION

Unless otherwise agreed in writing, and subject to Clause 17 hereof (WARRANTY), goods rejected as not complying with the contract must be rejected within fourteen working days of delivery to the Purchaser's premises or to such other place as the Purchaser shall have specified.

20. 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 consent of the Company and an authorisation document. A handling charge may be deducted from any credit allowed by the Company where it is established that the reason for the return of goods was not the subject of Clause 17 hereof or due to any error on the part of the Company. Credit will not be given where the goods are in excess of six months past the invoice date.

21. CONSEQUENTIAL AND/OR DIRECT LOSS

Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Purchaser by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any indirect, direct, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential or direct compensation whatsoever (whether caused by the negligence of the Company, 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 Purchaser and in any event the entire liability of the Company under or in connection with the contract shall not exceed the price of the goods, except as expressly provided in these conditions.

22. PROTECTION OF INTELLECTUAL PROPERTY

The Purchaser will indemnify the Company against all damages, penalties, costs, losses and expenses suffered by the Company or for which it may become liable in respect of the infringement of any intellectual property including (but without limitation) any patent copyright registered design trade mark, trade name or know-how arising out of the Company's manufacture of goods in accordance with any specification design drawings or other data supplied by the Purchaser or its servants or agents. All drawings descriptions and other information submitted by the Company shall remain the property of the Company together with the copyright therein.

23. FORCE MAJEURE AND OTHER CIRCUMSTANCES

The Company shall be entitled without liability on its part and without prejudice to its other rights, to terminate the contract or any unfulfilled part thereof, or at its option to suspend or make partial completion or extend the time or times for delivery or execution of service, if the manufacture of the goods or provision of service by the Company or the Company's suppliers, or the delivery of the goods or the performance by the Company of any of its obligations under the contract is hindered or delayed whether directly or indirectly by reason of the Purchaser failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act of God, government action or legislation, interruption of transport, strike, lock out or other form of industrial action, accidents or stoppages to works, shortage of labour, materials equipment fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of the Company or its sub-contractors, whether or not such cause exists at the date of the order.

24. PASSING OF RISK AND RETENTION OF PROPERTY

24.1. The risk in the goods shall pass to the Purchaser immediately on delivery of the goods to the Purchaser.

24.2. In spite of delivery having been made property in the goods shall not pass from the Company until:

24.2.1. the Purchaser shall have paid the price plus value added tax in full and the Company has received in cash or cleared funds payment in full; and

24.2.2. no other sums whatever shall be due from the Purchaser to the Company.

24.3. Until property in the goods passes to the Purchaser in accordance with Clause 24.1 the Purchaser shall hold the goods and each of them on a fiduciary basis as bailee and agent for the Company. The Purchaser shall store, protect and insure the goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

24.4. Notwithstanding that the goods (or any of them) remain the property of the Company the Purchaser may sell or use the goods in the ordinary course of the Purchaser's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Purchaser on the Purchaser's own behalf and the Purchaser shall deal as principal when making such sales or dealings. Until property in the goods passes from the Company the entire proceeds of sale or otherwise of the goods shall be held in trust for the Company and shall not be mixed with other money or paid into an overdrawn bank account and shall be at all material times identified as the Company's money.

24.5. The Company shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the goods has not passed from the Company.

24.6. Until such time as property in the goods passes to the Purchaser from the Company the Purchaser shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Company. If the Purchaser fails to do so the Company may enter upon any premises owned, occupied or controlled by the Purchaser or any third party where the goods are situated and repossess the goods.

24.7. The Purchaser shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Purchaser does so all sums whatever owing by the Purchaser to the Company shall forthwith become due and payable without prejudice to any other right or remedy of the Company.

24.8. The Purchaser shall insure and keep insured the goods to the full price against ALL RISKS to the reasonable satisfaction of the Company until the date that property in the goods passes from the Company, and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Purchaser fails to do so all sums whatever owing by the Purchaser to the Company shall forthwith become due and payable.

24.9. The Purchaser shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part VII as amended. Without prejudice to the other rights of the Company, if the Purchaser fails to do so all sums whatever owing by the Purchaser to the Company shall forthwith become due and payable.

24.10. The Company shall be entitled to apply payments received from the Purchaser in satisfaction of whichever invoice or part thereof as the Company shall in its absolute discretion decide and shall be entitled to vary such application as many times as it shall desire until such time as all sums owing by the Purchaser to the Company have been paid.

25. BREACH OR INSOLVENCY

In the event of the Purchaser committing any breach of the contract, or if any distress or execution is levied upon the Purchaser, his goods or assets of the Purchaser, or if the Purchaser enters into any negotiations or arrangement or composition with the Purchaser's creditors or commits any act of bankruptcy or becomes bankrupt, or if being a corporate body, the Purchaser shall be wound up or if any resolution is proposed or petition presented to Wind Up the Purchaser (not being a members voluntary winding up for the purpose of reconstruction or amalgamation without insolvency), or if a receiver or administrator of the Purchaser's assets or undertaking or any part thereof shall be appointed or if the Purchaser shall be deemed to be unable to pay its debts or ceases or threatens to cease to carry on business, the Company shall be entitled, without prejudice to any other claim or right or remedy which it may have, forthwith to suspend any or all deliveries until the default has been made good or to terminate all or any part of the contract and any unexecuted contract with the Purchaser.

26. ENGLISH LAW

All contracts to which these Conditions of Sale apply shall be governed by and construed in accordance with English Law and the Purchaser irrevocably submits to the exclusive jurisdiction of the English Courts.

27. NO WAIVER

In no event shall any delay, failure or omission on the part of the Company in enforcing or pursuing any right power privilege claim or remedy, which is conferred by these terms and conditions or arises under the contract, or arises from any breach by the other party of any of its obligations hereunder be deemed to be or construed as:

27.1. a waiver thereof, or of any other such right power privilege claim or remedy, or

27.2. operate so as to bar the enforcement or exercise thereof, or of any such right power privilege claim or remedy, in any other instance at any time or times thereafter.

28. DELEGATION AND ASSIGNMENT

The Company may delegate its performance under the contract and may assign any of its rights or benefits there under.

29. NOTICES

Any notice required to be given under the contract shall be deemed to be served in the following circumstances:

- 29.1. if sent by pre-paid first class post to the party to whom it is given at its last known address, in which case it shall be effective on the 3rd day after posting;
- 29.2. if sent by fax to the recipient's fax number or by email, in which case it shall be effective on the next working day after transmission.

30. WEEE

30.1. The Customer shall:

30.1.1. be responsible for financing the collection, treatment, recovery and environmentally sound disposal of:

30.1.1.1. all WEEE arising or deriving from the Products; and

30.1.1.2. all WEEE arising or deriving from products placed on the market prior to 13 August 2005 where such products are to be replaced by the Products and the Products are of an equivalent type or are fulfilling the same function as that of such products;

30.1.2. comply with all additional obligations placed upon the Customer by the WEEE Regulations by virtue of the Customer accepting the responsibility set out in clause 30.1.1; and

30.1.3. provide the Customer's WEEE compliance scheme operator with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Seller's membership of the operator's compliance scheme.

30.2. The Customer shall be responsible for all costs and expenses arising from and relating to its obligations in clause 30.

30.3. Further information in respect of the arrangements set out in clause 30 can be found at [www.electrolink.eu.com](http://www.electrolink.eu.com) by clicking on the 'WEEE FINAL USERS' button and quoting WEEE registration number WEE/DK2843YQ where prompted.

Definitions:

'WEEE' means waste electrical and electronic equipment as defined in the WEEE Regulations

'WEEE Regulations' means The Waste Electrical and Electronic Regulations 2006 (SI 2006/3289)