

# TERMS AND CONDITIONS OF SALE

## 1. Definitions

- a) In the terms and conditions of sale set out below Apollo Lighting Ltd is referred to as the "Company". The "Buyer" is the person, firm or company to whom the quotation or by and on behalf of whom the order is placed.
- b) Nothing in the Buyer's Terms of Purchase shall override, cancel or modify any of the Company's Standard Conditions of Sale.

## 2. Application of Conditions

- a) These Terms & Conditions of Sale shall apply to and form part of every Contract entered into by the Company to the exclusion of all other terms and conditions (including any terms which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document).
- b) Each purchase order or acceptance of a Quotation for Goods by the Purchaser from the Company shall be deemed to be an offer by the Purchaser to purchase Goods subject to these conditions of sale.
- c) Any Quotation is given on the basis that no Contract shall come into existence until the Company despatches an Order Acknowledgement to the Purchaser.

## 3. Prices and Terms of Payment

- a) Charges for goods and services supplied by the Company shall be paid in full at the time of order, unless the Buyer has an account with the Company. Where the Buyer has an account, payment shall be made 30 days from month end date of invoice.
- b) Without prejudice to any other rights it may have, the Company is entitled to charge interest at 2% above the current base rate of HSBC Bank Plc on overdue payments from the due date for payment accruing on a daily basis until payment is made, whether before or after any judgment. The Company may waive its right to interest for the same period.
- c) 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 any outstanding payments from the Purchaser.
- d) The Purchaser shall make all payments due under the Contract in full without deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Purchaser.
- e) If the Purchaser fails to make any payment when due in accordance with these Terms & Conditions of Sale, the Company reserves the right in its absolute discretion and without prejudice to any of its other rights or remedies, to suspend all further deliveries 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 which are in the course of manufacture or ready for despatch.
- f) Terms of payment are strictly nett, if not otherwise agreed separately in writing. All prices are subject to the addition of Value Added Tax at the appropriate rate.
- g) Discount at the rate of 5% is provided to enable the Buyer to facilitate the order & delivery of the goods at the agreed time. The Company reserves the right to withdraw any discount offered wholly or in part if the buyer reneges on the agreed dates/place of delivery.
- h) Unless otherwise expressly stated to be firm for a period of 30 days on formal written quotations, the Company's prices are subject to variation to take account of variations in wages, materials and other costs. The Company accordingly reserves the right to adjust the price without notice by the amount of any increase or decrease in such costs after the price is quoted.

## 4. Indemnity Of The Purchaser

The Purchaser shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Purchaser's instructions or lack of instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or fault on the part of the Purchaser, its servants, agents or employees.

## 5. Quotation

The description and quantity of the Goods to be sold ("the Goods") shall be as set out in the quotation provided by the Company to the Buyer ("the quotation"). Firm price quotations are valid for a period of 30 days only from the date of quotation. All prices quoted to the Buyer are based on the full quantities specified by the Buyer, and the Company reserves the right to revise prices in the event of any quantities being reduced for whatever cause.

## **6. Acceptance**

Orders will only be accepted on the understanding that if it is found not possible to obtain supplies of materials at the prices existing at time the order was placed, any undelivered portion may be cancelled or prices re-arranged.

## **7. Delivery**

- a) Unless agreed in writing by the Company, all times and dates of delivery of the Goods are given in good faith but are approximate only and shall not be of the essence.
- b) All times and dates for delivery shall be calculated from the date of acceptance by the Company of the purchase 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 purchase order, whichever shall be the later.
- c) Unless otherwise stated in writing, the Company shall be entitled to make partial deliveries of the Goods.
- d) Should the Buyer for whatever reason, delay the delivery of an order where materials have been purchased, and work has already been completed on the order, the Company reserves the right to invoice for the value of the order at the time the delay is notified, at that time or any time thereafter. The Company reserves the right to invoice, if necessary for storage of the goods. Such goods are held at Buyers' risk as regards fire, unforeseen damage or loss, however it arises.
- e) Risk in the Goods passes when they are delivered to the Buyer, or to the Buyers designated address, or held at Apollo Lighting Ltd on the Buyers behalf. When the Goods are to be held at Apollo Lighting Ltd a despatch note and invoice will be issued to the Buyer at the point of the goods being ready for despatch. In this circumstance the Buyer agrees that the Goods have been delivered and the Goods held can be inspected by the Buyer. At this point the despatch note must be signed by the Buyer & duly returned to Apollo Lighting Ltd.
- f) The Company reserves the right to impose a cancellation charge to the Buyer where the Buyer cancels an order within two weeks of an agreed delivery date. Should cancellation of the order be within one week of the agreed delivery date, the cancellation fee shall be 100% of the order value.

## **8. Damage in Transit or Non-Delivery**

The Buyer shall inspect the goods immediately upon delivery and advise any damages and/or shortages within 5 working days.

## **9. Storage**

If the Company does not receive forwarding instructions sufficient to enable it to despatch the Goods on the agreed delivery date, risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence) and the Buyer shall thereupon take delivery or arrange for storage. If the Buyer does not take delivery or arrange for storage, the Company shall be entitled to invoice the Buyer and be paid for the Goods as though the Goods had been duly delivered (in accordance with Clause 7e). The Company may arrange storage either at the Company's own works or elsewhere on the Buyer's behalf. The Buyer agrees to all charges made by the Company as a result of such delay, including those for storage. Such charges will be invoiced and the Company may, where applicable, charge insurance at the rate of 3% of the value of the Goods. All Goods stored on behalf of the Buyer are stored at the Buyer's risk (as per Clause 7e).

## **10. Return of Goods**

In no circumstances may goods supplied against a firm order be returned without the Buyer having first applied for and obtained the written consent of the Company. A handling charge of up to 60% may be deducted from any credit allowed.

## **11. Title**

Title to the goods sold by the Company shall pass to the Buyer only when the amount due under the invoice for the goods (including any interest and costs) has been paid in full. Failure on the part of the Buyer to pay for the goods shall give the Company the right (without prejudice to any other remedies) to re-possess the goods and for the purpose of re-possessing the goods the Company shall be at liberty to enter any premises in which the goods are situated.

## **12. Advice, information & Opinion**

Advice information and opinion given by any Partner, Employee or Agent of the Company is given without legal responsibility. Any recommendation or suggestion made by the Company relating to the use of goods, whether in technical literature or in response to specific enquiry is made in good faith, but is for the Buyer to satisfy himself of the suitability of the goods for his particular purpose, and he shall be deemed to have done so.

### 13. Descriptive Matter & Illustrations

- a) All descriptions and illustrations and particulars of weights and dimensions issued by the Company in catalogues, price lists, advertising matter and forwarding specifications are by way of general description and approximate only and shall not form part of any contract or give rise to any liability on the part of the Company.
- b) 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 Condition shall oblige the Purchaser to accept Goods which do not reasonably comply with the Contract.

### 14. 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 suspend or make partial deliveries or extend the time or times for delivery, if the manufacture of the Goods 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 due to circumstances beyond the reasonable control of the Company including, without limitation, the Purchaser failing to furnish necessary instructions or information, war or other hostilities, acts of terrorism, civil commotion, fire, explosion, flood, epidemic, acts of God, government action or legislation, interruption of transport, strike, lock out or other form of industrial action (including, without limitation, labour disputes with the Company's or any subcontractor's employees), accidents or stoppages to works, shortage of labour, materials, equipment, fuel or power, breakdown of machinery, whether or not such cause exists at the date of the order provided that, if the event in question continues for a continuous period in excess of 180 days, the Purchaser shall be entitled to give notice in writing to the Company to terminate the Contract.

### 15. Passing Of Property & Risk

- a) Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract or the insolvency or similar of the Purchaser as defined below in Condition 16 the Company shall have the power to enter any premises where the Goods are or may be stored to inspect or, where the Purchaser's right to possession has terminated, to recover and re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise.
- b) Pending payment of the full purchase price of the Goods the Purchaser shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Purchaser in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. On request the Purchaser shall produce the policy of the insurance to the Company.
- c) To enable the Company to recover the Goods in accordance with Condition 15(a) the Purchaser grants to the Company, its agents and employees an irrevocable licence at any time to enter upon any premises in the ownership, possession or control of the Purchaser to recover the Goods.
- d) If the Contract is terminated by the Company in accordance with Condition 16, the Company's rights contained in this Condition 15 shall remain in effect.

### 16. Insolvency Of Purchaser

- a) This Condition applies if:
  - the Purchaser becomes insolvent or makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or:
  - an encumbrance takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Purchaser; or
  - the Purchaser ceases, or threatens to cease, to carry on business; or
  - the Company reasonably suspects that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.
- b) If this Clause applies, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Purchaser, 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.

### 17. Guarantees

Guarantees given shall not be applicable outside the United Kingdom unless expressly stated otherwise by the company in writing. Any guarantee given will be invalidated if the goods supplied by the Company are subjected to misuse or accidental damage after the Buyer has taken delivery of them.

## 18. General

- a) The Contract shall be governed by English Law and the parties submit to the non-exclusive jurisdiction of the English Courts.
- b) If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent that such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- c) The parties to the Contract do not intend that any term of the Contract shall be enforceable by the virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- d) The Contract constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between the Company and the Purchaser relating to the subject matter of this agreement save that nothing in this Condition 18(d) shall limit or exclude any liability for fraud or fraudulent misrepresentation.