

1. Definitions

In the terms and conditions of sale set out below, Kemps Architectural Lighting Ltd is referred to as the "Company". The "Purchaser" is the person, firm or company to whom the quotation is addressed or by and on behalf of whom the order is placed.

2. Validity of Quotation

The Company reserves the right to refuse the Purchaser's acceptance of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn in such period. No binding contract shall be created by the acceptance by the Purchaser of the Company's quotation until notice of acceptance of the order has been given in writing, which shall have been signed by the Company's duly authorised representative, or the Company has indicated its acceptance of the offer by making delivery or part delivery of the goods. In the event that no quotation is given by the Company and it has received an order from the purchaser, all deliveries are made subject to these General Conditions of Sale.

3. Prices

- (i) Price lists may be altered without notice and goods are invoiced at prices in force on the day of despatch. In the case of goods and/or services, which are the subject of a written quotation, the validity of prices are as detailed in that quotation.
- (ii) Variations - In the event of variations or suspensions of the work by the Purchaser's instructions or lack of instructions, the contract price shall be adjusted to reflect costs involved. Where a price per unit has been quoted and the Purchaser requires a smaller number of units to be delivered than those quoted for, the Company reserves the right to adjust the rates of prices applicable thereto.
- (iii) Packing - Where it is necessary to despatch goods in crates, case, 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, cases, skids, stillage, pallets, etc. in good condition carriage paid. No charge is made for any other form of packing and no credit will be allowed for its return.

4. Product Representation

Product details and specifications within published literature of any form should be considered as an initial guide, the company reserves the right to make changes to products that are not subject to existing contract award without prior Consultation.

5. Samples

Any samples submitted with the Company's quotation or at the Purchaser's request must be returned within Thirty (30) days of receipt and may be charged if not so returned.

6. Manufacture

- i) The Item supplied to the Purchaser shall comply with the Agreed Specification at the issue number stated in the Order.
- ii) The company shall be entitled to approach the Purchaser to propose modifications to the Item subsequent to the date of Order.
- iii) The company shall, subject to separate commercial agreement, implement all mutually Agreed Modifications to the Specification.
- iv) All drivers as detailed are supplied as standard with Factory Gate settings, so it is essential that the purchaser satisfies themselves that Control Systems as installed are compatible with the drivers as specified and quoted
- v) The Company reserve the right to advise costs to rectify on site faults as a direct result where drivers are either incompatible or require calibrating to suit control systems installed (by others).

7. Schedule Order

- (i) A schedule order (i.e. an order calling for delivery spread over a specified period) shall constitute unqualified authority for manufacture/installation and shall define the Purchaser's liability.
- (ii) Where the contract is to be or may be fulfilled in separate instalments, deliveries or parts, payments for each instalment, delivery or part shall be made as if the same constituted a separate contract.

8. Delayed Delivery By The Purchaser

Should the purchaser, for whatever reason, delay the installation or 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 at any time thereafter. The Company also reserves the right to invoice, if necessary, for storage of the goods, the cost of any material or tools used or intended to be used thereof and the cost of labour and other overheads.

9. Cancelled Order

If the Purchaser cancels the order or any part thereof, or fails to take delivery of any goods at the time agreed, should such cancellation or failure cause disruption to the Company's production, the Purchaser shall be liable, without prejudice to any other rights of the Company to claim damages, to indemnify the Company against any loss, damage or expense incurred by the Company in connection with the manufacture or non-manufacture of the goods, the cost of any material or tools used or intended to be used thereof and the cost of labour and other overheads. The Company reserves the right to impose a cancellation charge of 50% of the full order value and 100% for any Flexus or Bespoke orders.

10. Delivery

- i) Whilst the Company endeavours to meet agreed delivery schedules, lack of raw materials, late or disadvantageous delivery of goods, conditions that constitute Force Majeure meaning an excusable delay, unforeseen circumstances proved to be beyond the reasonable control and without the fault or negligence of the Purchaser or the Company including but not limited to acts of God, natural disasters, fire, flood, explosions, earthquakes, accident, civil unrest, any act of the Government of the Purchaser or the Supplier, war, insurrection, embargo, actions of the other party, riots, or strikes affecting the Purchaser, the Supplier or the Customer.

The parties non-compliance with any rule, regulation or government agency shall not constitute Excusable Delay, or the failure of the Purchaser to furnish necessary information or instructions for any reason whatsoever, release us from the agreed delivery dates, and if necessary, from the contracted responsibility for delivery.

- ii) Claims for damages on account of late or incomplete delivery or installation cannot be considered valid.
- iii) Should there be a default in payment by the due date in the case of a contract or order which involves more than one delivery, the Company reserves the right to suspend or cancel all or part of that contract on order and to claim the cost of the Items produced at that date and 50% of the remaining full order value.
- iv) Where special equipment / cabling is to be manufactured in accordance with the purchaser's requirements, the quoted lead-time shall commence from receipt of written confirmation of actual requirements.

11. Damage in Transit or Non-Delivery

- (i) A complaint must be made in writing within three days of receipt of goods if they have been damaged in transit. On receipt of an externally damaged delivery, a claim for damages must be submitted accompanied by an official report from the carrier. In cases of non-delivery of goods, a complaint must be made in writing within seven (7) days of despatch (within UK).
- (ii) The risk in the goods shall pass to the Purchaser at the point of delivery as specified in these Conditions or as otherwise agreed and the Company shall have no responsibility for the safety of the goods thereafter.

12. 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 written consent of the Company. A handling charge of 50% may be deducted from any credit allowed.

13. Guarantee

- (i) All the Company's LED products are guaranteed for three & five years depending on product type, from the date of delivery or installation, subject to the following conditions without prejudice to the purchaser's statutory rights.
- (ii) In the event of a complaint arising during the period of guarantee, the purchaser should notify the Company regarding the nature of the complaint before returning the goods. If the Company is satisfied that a component or part of the Company's manufacture has become defective due to faulty workmanship or material, in normal use, in accordance with the Company's instructions, the Company will, at the Company's discretion, either despatch a replacement part free of charge or repair the article free of charge if returned carriage is paid to the Company.
- (iii) Products not manufactured by the Company will receive the same guarantee conditions as extended by the supplier to the Company.
- (iv) It is the responsibility of the Purchaser to ensure that any system is installed in accordance with the written instructions supplied by the Company. Contravention of such instructions invalidates the guarantee and any rectification carried out by the Company at the request of the Purchaser is chargeable by the Company
- (v) For products or components supplied by the company for embodiment in equipment or systems, which are not supplied by the company, it is the responsibility of the Purchaser to ensure that those products or components are suitable for the purpose for which they are being used.

- v) The Company reserves the right to decide whether a product or system has been issued or tampered with in which case the guarantee becomes invalid.
- vi) The Company's guarantee is explicitly limited to the repair or replacement of defective goods, this guarantee does not cover activities or costs associated with the removal, refitting or commissioning of goods either before or after repair and/or replacement and it is the Purchaser's responsibility and cost to take such steps as reasonably required to allow the Company to exercise its rights to repair or replace a defective item under this clause. Where the Purchaser is required to take such a step but fails to do so, the Company shall have no further liability.

14. Payment

- i) The net prices quoted are exclusive of carriage & VAT. Standard payment terms are paid in full with order. Alternatively, and only with prior agreement, the Company will accept orders from an electrical wholesaler provided they hold a valid credit account. For Purchasers who already hold credit facilities with the Company, payment is due strictly 30 days from date of invoice. Terms of any retention passed on under terms for main contracts must be agreed in writing prior to placement of order. We do not accept back to back terms for main contracts. Customers should highlight any relevant clauses prior to placement of order. Cancellation of orders will result in a minimum charge of at least 50% of the full order value, although the exact sum above this depends on the amount of goods completed at the time of cancellation.
- ii) The Company reserves the right to seek full or part payment for special equipment in advance of manufacture.
- iii) The Company reserves the right to charge companies with more than 50 employees interest at 8% above the UK clearing bank lending rate on overdue accounts as per the Late Payment of Commercial Debts (Interest Act 1998).

15. Reservation of Title

- i) Notwithstanding delivery of the Goods to the Purchaser, ownership of the Goods (both legal and equitable) will not pass but remain with the Company. However, immediately on delivery to the Purchaser or into custody on the Purchaser's behalf (whichever is the sooner) the risk in the Goods will pass to the Purchaser. Property in the Goods will pass to the purchaser when all outstanding debts owed to the Company in respect of the goods relevant to this contract have been paid in full. Until that date, the Purchaser is to hold the Goods in a fiduciary capacity as bailliff on behalf of the Company, and shall be responsible for adequately insuring the Goods and if required shall store the Goods in such a way that they can be recognised as being held in a fiduciary capacity.
- ii) Notwithstanding that the Purchaser may hold the Goods in a fiduciary capacity only, the Company will allow the Purchaser the power to use the goods in its normal course of business and to sell the goods to third parties and to deliver them on the condition that so long as the Purchaser is indebted to the Company, the Purchaser shall assign the benefit of any claims against such third parties to the Company and in any event, if the Purchaser received the proceeds of such sales from third parties, such proceeds are to be held by the Purchaser for account of the Company (who shall be permitted to trace such proceeds) to the extent that the Purchaser is indebted to the Company under this contract.
- iii) If the Purchaser, in his normal course of business, mixes the Goods, the subject of this contract, with other Goods or the Goods, the subject of this contract, become a constituent of other goods, then the Company will assume title over the whole of the goods so mixed, and transfer ownership will be deemed to have taken place through and at the moment of conversion or mixing. Thereafter the Purchaser and the Company will assume the rights and duties conferred by paragraphs (14.i) and (14.ii) above as if the new goods were solely and simply the goods, subject of this contract.
- iv) If payment by the Purchaser under this contract becomes overdue in whole or in part, or if the Purchaser shall commit any other breach of this contract or any act of insolvency (as hereinafter defined), the Company shall be entitled (without prejudice to any of its other rights) to treat this contract as discharged, and to repossess the Goods, the subject of this contract, or the mixed goods, or any of them, as the case may be, and the Purchaser grants to the Company an irrevocable licence to enter upon any premises where the Goods may be situated for that purpose.
- v) The Purchaser shall, for the purpose of this clause, be deemed to commit an act of insolvency if any distress or execution shall be levied upon its property or assets, or if it shall make or offer to make any arrangements or composition with creditors, or commit any act of bankruptcy, or if any receiving order in bankruptcy shall be presented or made against it, or if the Purchaser is a limited company and any resolution or petition to wind up such company's business other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver of such a company's undertaking property or assets or any part thereof shall be appointed or if in the sole discretion of the company it appears to the Company that the financial position of the Purchaser has become unsatisfactory or impaired.
- vi) In the event of the Company repossessing the goods, the Purchaser shall be liable (notwithstanding the discharge of the contract) to pay the difference between the price of the goods and their value on repossessing and in the event of the Company being entitled to repossess the Goods, but being unable to do so for any reason whatsoever, the Purchaser shall pay to the Company the full price thereof, less in each case any amount previously paid by the Purchaser for the goods under this contract.
- vii) Any receiver or liquidator appointed over the assets of the Purchaser shall pay into a separate bank account any sums received from third parties in respect of sales to them of the goods by the Purchaser, up to the amount of any indebtedness of the Purchaser to the Company under this contract for the sole benefit of the Company.

16. Limit of Liability

This clause sets out the entire financial liability of each Party (including liability for the acts of omissions of its employees, agents and subcontractors) to each other in respect of:

- a) Any breach of this agreement
- b) Any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement

- i) Nothing in this Agreement shall limit or exclude liability of either Party to the other for death or personal injury resulting from negligence, for fraud or fraudulent misrepresentation.
- ii) Without prejudice to 16.i, neither Party shall not be liable to the other Party, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
 - i) Loss of profit;
 - ii) Loss of goodwill;
 - iii) Loss of business;
 - iv) Loss of business opportunity;
 - v) Loss of anticipated saving;
 - vi) Loss or corruption of data or information;
 - vii) Special, indirect consequential damage suffered by one Party that arises under or in connection with this agreement
- iii) Without prejudice to clause 16.i or clause 16.ii, the Company total liability of each Party arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the price of the Order to which the claim relates.

17. General

- i) This agreement shall be governed and construed in accordance with the law of England and the parties hereby accept the non-exclusive jurisdiction of the High Court of Justice in England in relation to all matters, claims or disputes arising out of or in connection with this agreement.
- ii) In the case that any part or parts of this contract are held to be illegal or otherwise unenforceable, the remainder of the contract should still apply.
- iii) All orders are accepted and executed on the understanding that the Purchaser is bound by these General Conditions of Sale. Where there is any inconsistency between these Conditions of Sale and any Conditions which the Purchaser seeks to impose these General Conditions of Sale shall prevail.