

1 DEFINITIONS

- 1.1 The Buyer:** the person, firm or company who purchases the Goods or Services from the Company
- 1.2 The Company:** Kellwood Lighting Ltd, registered in Scotland under company number SC 805939.
- 1.3 Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods and Services, incorporating these terms and conditions, together with any terms expressly stated in the Company's Quotation, Proposal and/or Sales Acknowledgement.
- 1.4 Goods:** any goods (including any part or parts of them) agreed in the Contract to be supplied by the Company to the Buyer.
- 1.5 Services:** lighting design, consultation, product supply and/or installation of products supplied by The Company and any other work carried out by The Company, its employees and sub-contractors.

2 APPLICATION OF TERMS

- 2.1** Subject to any variation under condition 2.2, the Contract shall be on these conditions (together with any terms expressly stated in the Company's Proposal and/or Sales Acknowledgement) to the exclusion of all other terms & conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). In the event of any conflict, any terms set out in the Company's Quotation, Proposal and/or Sales Acknowledgement shall take precedence and shall apply in priority to these conditions.
- 2.2** These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied, nor will rely, on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

3 DELIVERY & PERFORMANCE OF SERVICES

- 3.1** Delivery shall be deemed to occur at the time that risk in the goods passes from the Company to the Buyer in accordance with condition 4.
- 3.2** Any dates or lead-times specified by the Company for delivery of the Goods are intended to be an estimate, and time of delivery will not be made the essence of the contract by notice in writing or by any other means. If no dates are so specified, delivery shall be within a reasonable time. For Contracts where pro-forma or deposit payments are required, estimated lead-times are from the date The Company receives payment of the pro-forma invoice or deposit.
- 3.3** Quoted delivery for stocked items is subject to the Goods remaining unsold prior to The Company receiving an order from The Buyer for the Goods, and (where applicable), the deposit or pro-forma is paid.
- 3.4** Stocked Goods cannot be reserved until The Company receives an order for the Goods from the Buyer, and (where applicable), the deposit or pro-forma is paid.
- 3.5** The Buyer shall carry out an appropriate and diligent inspection of the Goods upon delivery and satisfy itself that they conform to the Contract. A claim that goods are not in accordance with the Contract, on any grounds that an appropriate and diligent inspection would reveal, will not be accepted by the Company unless notice in writing, specifying any alleged defect is given to the Company within 7 days of delivery of the Goods, part-delivery of the goods or invoice, whichever may be the earliest.
- 3.6** Failure to notify the Company within the timescale as defined in clause 3.3 of the non-delivery of the Goods, or any of them, or the non-conformance of the goods, or any of them, on any grounds which would

have been revealed by an appropriate and diligent inspection, will release the Company from liability for claims for non-delivery, short delivery or non-conformance of the goods.

- 3.7 Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained by the Buyer intact as delivered for a period of 31 days from notification of the claim to the Company, within which time the Company, or its agents, shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. The Buyer shall do all that is reasonable to help the Company investigate the complaint. Any breach of this condition will release the Company from any liability for Goods which are alleged not to conform to Contract.
- 3.8 Performance of a Service shall be deemed to have been completed as soon as the Company advises the Buyer that such services have been performed. However, the buyer shall have 10 working days from that date to inform the Company in writing of any non-performance of the contracted Service. If the Company agrees with the Buyer that such non-performance is not in accordance with the Contract the Service will not be deemed to have been completed. Any such agreement shall not be unreasonably withheld. Information of non-performance provided by the Buyer shall provide full details & explanation.
- 3.9 Any liability of the Company for non-delivery of the Goods, or non-performance of the Services, or for damaged or defective goods, or for non-conformance of the Services, shall be limited to replacing or repairing the Goods or re-performance of the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 3.10 It is the responsibility of The Buyer (purchasing authority) to ensure the Goods are suitable for their intended application.

4 RISK / TITLE

- 4.1 Unless otherwise agreed in writing, the Goods are at the risk of the Buyer from immediately before unloading off the Company's transport at the address for delivery or immediately after loading onto the Buyer's transport or being handed physically to the Buyer or any member of his staff, whichever may be earliest.
- 4.2 Unless otherwise agreed in writing, the value of any Services are at the risk of the Buyer immediately following the application of any such services at the address for such application as specified in the contract or immediately after delivery of any goods to which such services are applied. For the avoidance of doubt all services at the buyer's address, or at the address stipulated in the contract for the delivery of such services, shall be at the risk of the buyer.
- 4.2 Ownership of the Goods or Services shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and Services and all other sums which are or which become due to the Company from the Buyer on any account.
- 4.3 The Company will, at its sole discretion, consider accepting returns on the basis of a 20% to 100% handling fee. However, any decision to accept returns must be agreed by the Company in writing.
- 4.4 The Buyer is responsible for the WEEE and environmental obligations regarding the end-of-life disposal of Goods.
- 4.5 For Contract sales where the Goods are destined for delivery outside The United Kingdom of Great Britain, it is assumed the Buyer is acting as a local distributor and is responsible for all environmental and WEEE obligations.

5 PRICE

- 5.1 Unless otherwise agreed by the Company in writing, the price for the Goods and Services shall be in accordance with the Company's then current standard pricing practices unless agreed otherwise in a written quotation, proposal and/or sales acknowledgement. For the avoidance of doubt, previous prices for the same or similar product(s) or services shall not be deemed to establish a precedent.

- 5.2 The price of the Goods and Services shall be exclusive of any value added tax, for which the Buyer shall be additionally responsible.
- 5.3 Unless otherwise stated, Quotations/Contracts requiring the delivery of The Goods, are priced for a single delivery, and not in-part shipments. The Company reserves the right to deliver in part-shipment, and invoice for the Goods delivered on a part shipment.

6 PAYMENT

- 6.1 Subject to condition 6.2, payment of the price for the Goods and Services is due in pounds sterling at the time of delivery, unless alternative terms have been agreed in writing.
- 6.2 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Bank of Scotland, accruing on a daily basis until payment is made, whether before or after any judgment.
- 6.3 Payment must be in full. For avoidance of doubt, The Buyer is responsible for bank charges and fees; unless otherwise agreed, The Company must receive the total quoted price of the Contract.

7 QUALITY

- 7.1 Some Goods sold by The Company are supported by manufacturers' warranties of up to 10 years. Nothing in these conditions shall detrimentally affect manufacturers' warranties. The Company will provide a summary of these conditions, and support warranty claims processes. Buyers should satisfy themselves that the conditions of any relevant manufacturers' warranties are suitable for their needs. For the avoidance of doubt, you should assume that manufacturers' warranties are for "materials only".
- 7.2 The Company shall supply Goods which are fit for the purposes for which they were designed. Unless agreed otherwise, by The Company in writing, The Company warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of delivery, the Goods will correspond with their specification and will be free of material defects.
- 7.3 The Company shall supply Services which are fit for purpose. The Company warrants, for a period of 12 months from delivery or service, that all workmanship shall be in accordance with good current practice.
- 7.4 The Company shall not be liable for a breach of the warranty in conditions 7.2 and 7.3 if the defect has arisen because the Buyer has failed to follow oral or written instructions as to the storage, installation, use or maintenance of the Goods, has failed to adopt good practice in the use of the Goods or has materially altered the installation of the goods.
- 7.5 Subject to the condition 7.4, if any of the Goods or Services do not conform with the warranty in conditions 7.2 & 7.3 the Company shall, at its sole discretion, repair, replace or make good such Goods or Services (or the defective part) or refund the price of such goods or Services at the pro rata Contract rate. If the Company elects to replace or to refund the price the Buyer shall return such goods (or the defective part) to the Company, or shall otherwise make the Goods or Services available to the Company for inspection, all in a manner stipulated by the Company.
- 7.6 If the Company complies with condition 7.5 it shall have no further liability for a breach of the warranties in conditions 7.2 and 7.3.
- 7.7 Any Goods or Services replaced shall belong to the Company and any repaired or replacement Goods or Services made good shall be warranted on these terms for the unexpired portion of the 12 month period.
- 7.8 Documentation for Hazardous Area lighting products is issued to OEM codes.

8 LIMITATION OF LIABILITY

- 8.1 Nothing in these conditions excludes or limits the liability of the Company;
- a) for death or personal injury caused by the negligence of the Company,
 - b) under section 2(3), Consumer Protection Act 1987 or

- c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability, or
- d) for fraud or fraudulent misrepresentation.

8.2 Subject to conditions 8.1;

- a) the Company's total liability in contract, tort/delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the Contract price, and
- b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

8.5 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Company's reasonable control.

9 SPECIAL CONDITIONS RELATING TO EMPLOYMENT

- 9.1 If, following a period involving an employee of the Company working directly or indirectly for the Buyer, the Buyer enters into a commercial arrangement with such an employee, by, or as a result of, which the employee ceases to be an employee of the Company and then, within 6 months, becomes an employee of the Buyer or carries out work as an individual or through a company, for the Buyer, the Buyer will be liable to the Company for a fee for the introduction of that employee to the Buyer by the Company as if the Company were an employment agency. The fee will be 25% of the employee's salary immediately before he/she ceases to be an employee of the Company, subject to a minimum fee of £5,000.

10 GENERAL

- 10.1 If any provision of the 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 of 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.
- 10.2 Failure by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 10.3 Any waiver by either party of any breach of, or default under, any provision of the contract by the other party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 10.4 The Company may assign the Contract or any part of it to any firm, person or company, but shall guarantee the performance of the assignee in accordance with the terms of the contract.
- 10.5 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 10.6 This contract shall be governed by Scottish Law and the parties submit to the exclusive jurisdiction of the Scottish courts.