

**CORTEX LIGHTING LIMITED
CONDITIONS OF SALE**

1. **Interpretation**

(a) In these Conditions:

'Buyer' means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

'Goods' means the goods (including any instalment of the Goods or any parts for them) which the Company is to supply in accordance with these Conditions.

'Company' means Cortex Lighting Limited.

'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company.

'Intellectual Property' means patent, copyright, design, trademark or any other industrial or intellectual property rights.

'Prescribed Rate' means four per cent per annum above Base Lending Rate of Lloyds TSB or if that bank ceases to publish such a rate then such other compensable rate as the Company may reasonably decide.

(b) Reference in these Conditions to any statute are to be construed as a reference to that statute as amended, or re-enacted at the relevant time.

(c) The Headings in these Conditions are for convenience only and do not affect their interpretation.

2. **Bases of the Sale**

(a) The Company will sell and the Buyer will buy the Goods in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions which govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any order is made or purported to be made by the Buyer.

(b) Any quotation includes any such Goods, accessories and works as are specified therein.

(c) No variation of these Conditions will be binding unless agreed between the authorised representatives of the Buyer and the Company.

(d) The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any representations which are not so confirmed.

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

(f) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company may be corrected without any liability on the part of the Company.

(g) All orders are accepted and executed on the understanding that the Buyer is bound by these Conditions. Where there is any inconsistency between these Conditions and any conditions which the Buyer seeks to impose, these Conditions prevail.

3. **Validity of Quotation**

The Company reserves the right to refuse the Buyer's acceptance of a quotation unless the quotation is stated to be open for a specific period and the Company does not withdraw it within the period. The Contract for sale of the Goods does not come into existence until the Company notifies the Buyer in writing, signed by the Company's duly authorised representative, that the order has been accepted, or if the Company has indicated its acceptance of the order by making delivery or part delivery of the Goods. If the Company receives an order from the Buyer without a quotation, all deliveries are made subject to these Conditions.

4. **Prices**

(a) All Goods are sold subject to the prices and any relevant discounts ruling at the time of delivery. The Company's prices, discount rates and Conditions may be altered at any time without notification.

(b) All discounts and prices are based upon a whole order being the entirety of a quotation the Company has made. If when placing an order the Buyer specifies certain selected items or reduced quantities, the Company has the right to review the prices and discounts before accepting the order.

(c) The Company reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacturer), any change in delivery dates, quantities or specification for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

(d) All prices are subject to the addition of the Value Added Tax at the appropriate rate.

5. **Payments**

(a) Unless otherwise agreed in writing payment is due in full on delivery of the Goods. Where credit terms are agreed payment must be made by the last day of the month following delivery. Any variations of these credit

terms will only be accepted if agreed in writing by an authorised Director or Officer of the Company. If credit terms are exceeded the Company has the right to demand immediate payment of the total value of the Buyer's account. The Company has the right to refuse credit at any time and to demand immediate payment of all monies outstanding.

- (b) The Company is entitled to charge interest on overdue accounts at the Prescribed Rate prevailing at the date of delivery and the Company is entitled to suspend deliveries of or to cancel any outstanding order if any payment is overdue.
- (c) Buyers who wish to open a credit account with the Company must furnish two trade references and one banker's reference. Until the Company has granted the Buyer's credit account facilities all Goods must be paid for in full on delivery.
- (d) All costs including legal expenses incurred by the company in recovering overdue debts will be payable by the Buyer.

6. **Credit**

Any contract is subject to the Company being satisfied as to the Buyer's credit worthiness and without prejudice generality of the foregoing the Company may (in its absolute discretion) having informed the Buyer that the Goods are ready for delivery refrain from delivering the Goods until the Buyer tenders the purchase money to the Company in a form satisfactory to the Company.

7. **Carriage**

Subject to a minimum order value of £350 net excluding VAT, unless otherwise specified the price quoted includes a single delivery from the Company's warehouse to the Buyer's premises in the UK or Scotland. The Company reserves the right to choose the method of transport and to charge for deliveries to any location other than the premises specified by the Buyer when originally ordering the Goods.

8. **Packaging**

Where it is necessary to despatch Goods in crates, drums, cases, pallets, skips or other such packaging, an additional charge will be made. Unless otherwise stated, this charge will be credited in full on the return of the packaging in good condition, at the Buyer's expense within 14 days of the date of the Company's invoice. No charge is made for any other form of packaging and no credit will be allowed for its return.

9. **Return of Goods**

In no circumstances may goods be returned without the Buyer having applied for and obtained the written consent of the Company. Goods returned must be consigned carriage paid and accompanied by a packaging note stating our advice note number. A re-stocking charge may be deducted from any credit allowed where it is established that the reason for their return was not the subject of the provisions of Clause 10 and 11, or through any error on the part of the Company. No Goods will be accepted unless in the original condition and complete with original packaging.

10. **Loss or Damage in Transit**

- (a) The Company will only consider claims for alleged shortage if they are received within two working days of receipt of the Goods by the Buyer together with sufficient information to enable the Company properly to identify the shortage, including the Advice Note number, case number and condition of case.
- (b) The Company will repair or replace free of charge Goods damaged in transit or not delivered in accordance with the Advice Note, provided that the Company is given written notification of damage or non-delivery within such time (being not more than 3 days) as will enable the Company to comply with the carrier's conditions of carriage for alleging loss or damage in transit or, where delivery is made by the Company's own transport, within 3 days after receipt of the Advice Note.
- (c) The Buyers must also comply with the prescribed periods of notification of damage to or non-delivery of Goods and the submission of claims in respect thereof and we will hold ourselves indemnified from any loss resulting from Buyers' failure to comply with the requirements of the Railway Executive Road Carriers and Post Office Regulations or any other regulations or conditions in force relating to the postal service.

11. **Rejection**

Unless otherwise agreed in writing, Goods rejected by the Buyer as not complying with the contract must be rejected within seven working days of delivery.

12. **Title to Goods**

- (a) Risk of damage to or loss of the Goods passes to the Buyer:
 - (i) if the Goods are to be delivered to the Buyer, when they are delivered or, if the Buyer wrongfully fails to take delivery of the Goods, then the Company has tendered delivery;
 - (ii) if the Goods are to be collected from the Company's premises at the time when the Company notifies the Buyer that the Goods are available for collection.
- (b) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods will not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.
- (c) The Buyer is licensed to incorporate the Goods in or use the Goods as material for other Goods or products ('New Goods'). Where the Goods are severable after such incorporation or use, the Company reserves the right to sever and remove them. Where the Goods are not severable, then from the moment when the Goods are incorporated in or used as material for other Goods or products, the New Goods are deemed to be owned legally and beneficially by the Company and any other owner of the New Goods in common with that other owner. The Company will be entitled to require the same to be sold in order to recoup the monies owed to it.

- The Company's rights will be limited to the proportion necessary to recoup the money owed to it in respect of the Goods.
- (d) The Buyer has the right to sell or agree to sell the Goods or the New Goods in the course of his business and to pass good title to the Goods or the New Goods to his Customer being a bona fide purchaser for value without notice of the Company's rights subject to the following conditions:
- (i) that the entire proceeds of any sale are held in trust for the Company in a separate bank account (details of which account must be supplied to the Company on demand) and are not mixed with other monies or paid into an overdrawn bank account and must at all times be identifiable as the Company's monies and
 - (ii) that the Goods or the New Goods must only be sold for a reasonable price and
 - (iii) the Buyer hereby assigns to the Company all rights and claims which the Buyer must have against his Customers arising from such sales until payment is made in full.
- (e) Until title to the Goods or New Goods passes:
- (i) the Buyer will hold the Goods or the New Goods as fiduciary agent for the Company
 - (ii) the Goods or the New Goods, subject to clause 12(c), be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored and labelled in such a way as to be clearly identifiable as belonging to the Company
 - (iii) the Company may at any time revoke the power of sale and use contained in clause 12(c) by notice to the Buyer if the Buyer is in default for longer than 14 days in the payment of any sum due to the Company (whether in respect of the Goods or the New Goods or any other Goods supplied at any time by it to the Buyer) or if the Company has bona fide doubts as to the solvency of the Buyer
 - (iv) the Buyer's power of sale and use contained in clause 12(d) automatically ceases if the Buyer (being a company) has a petition presented for its winding up or passes a resolution for voluntary winding up (otherwise that for the purpose of a bona fide amalgamation or reconstruction) or compounds with its creditors or has a nominee supervisor or administrator appointed pursuant to Part 1 or Part II of the Insolvency Act 1988 or has a receiver or administrative receiver appointed of all or any part of its assets or (being an individual) become bankrupt or insolvent or enters into any deed of arrangement of has a nominee or supervisor appointed under any arrangement with creditors pursuant to Part VIII of the Insolvency Act 1988 or (being a partnership) an order is made pursuant to the Insolvency Act 1988 and the Insolvency Partnerships Order 1986 by reason of the insolvency of the Buyer or any of its members
 - (v) upon completion of the Buyer's power of sale and use with regard to clause 12(e)(iii) or 12(e)(iv) the Buyer must place any of the Goods or the New Goods in the possession or under his control and unsold at the disposal of the Company and the Company will be entitled to enter any premises of the Buyer for the purpose of removing the Goods or New Goods. This right conforms to submit notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued rights to the Company
 - (vi) the Company may at any time appropriate any payment made by the Buyer for any Goods in settlement any invoice or accounts (whether for Goods or New Goods) as the Company in its absolute discretion thinks fit notwithstanding any purported appropriation to the contrary by the Buyer.
13. **Samples**
- (a) Unless otherwise agreed, all samples are chargeable.
 - (b) Any samples submitted with the Company's quotation or at the Buyer's request must be returned in good condition within ninety days of receipt or such other period as may be specified and may be charged for if not returned.
14. **Delivery and Storage**
- (a) Any times quoted for delivery, repair or replacement are to be treated as estimates only and the Company will not be liable for any delay in delivery, repair or replacement however caused. Time for delivery is not of the essence of the contract unless previously agreed in writing by the Company.
 - (b) Where the Goods are to be delivered in instalments, each delivery constitutes a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments does not entitle the Buyer to treat the Contract as a whole as repudiated.
 - (c) If the Company does not receive forwarding instruction sufficient to enable it to despatch within fourteen days after notification that the Goods are ready for delivery to the Buyer, the Buyer must take delivery or arrange for storage, if the Buyer does not take delivery or arrange for storage, the Company will be entitled to invoice and be paid for the Goods as though the Goods had been duly delivered in accordance with these Conditions and the Company may at its option
 - (i) arrange storage at the Company's own premises or elsewhere on the Buyer's behalf and all charges for storage for insurance or for demurrage will be payable by the Buyer; or
 - (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
15. **Warranty**
- (a) The Company will give the Buyer a warranty period of 12 months against defective parts and premature failure. Save as aforesaid, and as provided in Clause 8, the Company will not be under any liability for defects in Goods

- delivered or for any injury, loss or damages resulting from such defect or from any work done in connection therewith and the liability under this Clause as in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the Goods. Save as aforesaid the Company, will be under no liability in Contract tort or otherwise for any personal injury, loss or damage of whatsoever kind howsoever caused for anything done or omitted in connection with the Goods or any whatever done in connection therewith. For the purposes of this Clause, the Company contracts on behalf of itself and as Trustees for its servants and agents.
- (b) Nothing in the clause excludes or restricts the liability of the Company for death or personal injury resulting from the negligence of the Company, its servants or agents.
16. **Cancellation**
No order which has been accepted by the Company may be cancelled by the Buyer, except with the agreement in writing of the Company and on terms that the Buyer indemnifies the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
17. **Minimum Invoice Value**
The Company reserve the right to impose a surcharge on orders of less than £100 net value exclusive of VAT and a minimum invoice charge of £100 plus VAT will be applied.
18. **Descriptive Matter and Illustrations**
Whilst every care has been taken in compiling catalogues, the Company cannot accept responsibility for errors or omissions. All descriptive and forwarded specifications, drawings and particulars of weights and dimensions issued by the Company are accurate to the information that we currently have and therefore does not form part of the Contract.
19. **Certification**
Buyers requiring material from a quality assured source or certificates of conformity must specify their requirements when placing the order. Requests must be made or confirmed in writing prior to release of material.
20. **Variations**
If variation or suspension of work results from the Buyer's instruction or lack of instructions, the Company will be entitled to adjust the contract prices to reflect all additional costs incurred. Where a price per unit has been quoted and the Buyer requests delivery of a smaller number of units than those quoted for, the Company reserves the right to adjust the rates of prices applicable thereto.
21. **Intellectual Property**
(a) If a claim is made or an action is brought against the Buyer that the Goods infringe the intellectual Property or any other person the Buyer must notify the Company immediately and the Company will be at liberty with the Buyer's assistance if required but at the Company's expense to conduct through the Company's own lawyers and experts all negotiations for the settlement of the claim or any litigation that may arise from PROVIDED THAT the Buyer will indemnify the Company against any loss, damage or expense resulting from infringement of Intellectual Property arising from the manufacture or supply of Goods by the Company in accordance with the Buyer's own specification, design or instructions.
(b) All drawing, descriptions and other information prepared by the Company remain the property of the Company together with the intellectual Property therein.
22. **Insolvency of Buyer**
(a) This Clause applies if:
(i) The Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation otherwise than for the purposes of amalgamation or reconstruction); or
(ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
(iii) the Buyer ceases, or threatens to cease, to carry on business; or
(iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
(b) If this Clause applies, without prejudice to any other right or remedy available to the Company, the Company will be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price will become immediately due and payable notwithstanding and previous agreement or arrangement to the contrary.
23. **Frustration**
(a) The Company is entitled without liability on its part and without prejudice to its other rights to end the Contract or any unfulfilled part of it or, at its option, to suspend or make partial deliveries if the manufacturer or completion of the Goods by the Company of its suppliers is prevented or delayed (directly or indirectly) by the Buyer's failing to give necessary information or instructions.
(b) The Company will not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay performing, or any failure to perform, and of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following are regarded as clauses beyond the Company's reasonable control:
(i) Act of God, explosion, flood, tempest, fire or accident;
(ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;

- (iii) acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (iv) import or export regulations or embargoes;
- (v) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or the Company or of a third party);
- (vi) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (vii) power failure or breakdown in machinery.

24. **Legal Construction**

The Contract and these Conditions are governed by the laws of England and the Buyer agrees to submit the non-exclusive jurisdiction of the English Courts.

Please sign and return a copy of these Terms and Conditions along with your Accounts application form:

Signature _____ Position _____ Date _____