



Standard Terms + Conditions of Sale

1. DEFINITIONS

In these Conditions, the following words shall have the following meanings:

- 1.1. The "Purchaser" shall mean the person acquiring or agreeing to acquire the Goods from the Company.
- 1.2. The "Company" shall mean Evoke Lighting UK Ltd or its assignee or successor in title.
- 1.3. The "Contract" shall mean the contract between the Purchaser and the Company for the sale and purchase of the Goods in accordance with these Conditions.
- 1.4. The "Goods" shall mean all or any of the products which are the subject of the Order.
- 1.5. The "Order" shall mean the Purchaser's order for the Goods as set out in the Purchaser's written acceptance of the Quotation.
- 1.6. The "Quotation" shall mean the Company's quotation to which these Conditions are appended;
- 1.7. "WEEE" means waste electrical and electronic equipment as defined in the WEEE Regulations; and
- 1.8. "WEEE Regulations" means The Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006/3289).

2. CONDITIONS OF CONTRACT

- 2.1. The Contract, and the sale and purchase of the Goods pursuant to, and the relationship between the Company and the Purchaser in relation to, the Order, shall be exclusively governed by the Conditions and any documents referred to herein, which are hereby incorporated by reference, and of which the Purchaser is deemed to have full knowledge.
- 2.2. For the avoidance of doubt any other terms that the Purchaser may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing, shall be excluded and shall not apply to the Contract, and the Purchaser waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document of the Purchaser, including the Order, that is inconsistent with the Conditions.
- 2.3. Unless otherwise agreed in writing by an authorised director of the Company, in no circumstances will the Company be bound by any purported addition to or other variation of the Conditions, whether orally or in writing by the Company or any employee of the Company. Moreover, all liability on the part of the Company is hereby expressly excluded in respect of any representation made by any employee or otherwise by or on behalf of the Company whether orally or in writing before or at the time the Contract is formed.

3. FORMATION OF CONTRACT

- 3.1. Unless otherwise stated in writing by the Company the Quotation shall only be valid for a period of 60 days from its date of issue and may be withdrawn by the Company at any time prior to the end of such period by the Company giving notice of its withdrawal to the recipient. The Quotation shall not constitute an offer.



3.2. The Order shall constitute an offer by the Purchaser to purchase the Goods in accordance with these Conditions, provided that the Order must be in writing in order to be effective, and any Order purported to have been made orally shall only effective at such time as it has been confirmed in writing. The Order shall be deemed to be accepted, and the Contract shall be formed, when the Company accepts the Order in writing.

4. PRICES

4.1. The prices stated on the Quotation are the prices prevailing in respect of the Goods at the time of the Quotation. Unless otherwise stated such prices are inclusive of delivery charges (curb-side to a location on the UK mainland only and excluding the costs of unloading) but exclusive of VAT and any other taxes, duties and levies that may apply.

4.2. The Company may, by giving notice to the Purchaser at any time before delivery, increase the prices of the Goods to reflect any increase in the cost of the Goods due to any factor beyond the Company's control (including foreign exchange fluctuations, deliveries, increases in taxes and duties, and increases in labour, materials and other manufacturing costs), any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered or to vary any agreed call-off arrangement and/or any delay caused by any instructions of the Purchaser or the Purchaser's failure to give the Company adequate or accurate information or instructions.

5. DELIVERY AND CANCELLATIONS

5.1. All timescales provided for delivery or for collection, as the case may be, are given in good faith, but shall not be binding upon the Company, and for the avoidance of doubt time shall not be of the essence for the purposes of the Contract. The Company shall not be liable for any loss whatsoever or howsoever arising caused by the Company's late delivery or failure to make the Goods ready for collection on any date agreed.

5.2. It is the responsibility of the purchaser to inspect the goods on delivery and report any discrepancy, damage or shortages to the Company within 48 hours. No liability of whatever nature will be accepted from any failure to submit such a report within this period.

5.3. The Company's prices include for standard delivery hours (9.00am-5.00pm) in economical quantities. Multiple small deliveries, special times or conditions of delivery are subject to additional charges. The responsibility for offloading the vehicle lies with the purchaser. Small orders/deliveries (below £5000) will be subject to additional delivery charges.

5.4. Any returned goods must be agreed by the Company in writing and in advance and will then be subject to the following handling charges:

- i. Standard luminaires 35% of original order value.
- ii. Variants of standard luminaires 50% of original order value.
- iii. Bespoke luminaires refer to 6.5.

All sales are final, and no return of non-damaged Goods will be accepted without prior written authorisation from the Company. The cost of transporting returned goods shall be the responsibility of the purchaser.

5.5. Products made specifically for a customer's requirement as stated (a 'special/ bespoke') are not returnable and as such any return will be charged at 100% of the



order value. Any special product is manufactured to a delivery programme provided by the customer and it is a condition of these terms that the customer takes delivery of the goods on that programme. Any deferral of the programme may incur additional charges and be subject to revised prices.

5.6. All order cancellations must be made in writing stating the original order reference number and date. Any cancellation made more than 5 days after the original order date, will incur a cancellation charge of 25% of the order value - in the case of a 'special' or variant product (see 6.5) this charge rises to 40% of the order value. Order Cancellations are not accepted after 5 working days of the purchase order date and will therefore be charged at the rates given for returns in section 6.4.

5.7. If the Purchaser seeks to delay delivery or collection of the Goods (whether by requesting the Company to delay the date of delivery or collection, by failing to accept delivery of the Goods at the time that the Company attempts to deliver them, or by failing to collect the Goods on the date that the Company notifies the Purchaser that they are ready for collection) then the Goods shall be deemed to have been delivered, and risk in the Goods shall pass to the Purchaser, on the date and at the time that the Company notifies the Purchaser that they are ready for delivery or collection, and the Purchaser shall pay all costs incurred by the Company by reason of and in connection with such delay, including any transportation and storage costs incurred in relation to such cancellation or amendment.

5.8. Solely where the Company supplies Goods that were not the subject of this Contract or ordered by the Purchaser, the Company will refund the reasonable costs incurred by the Purchaser in returning the Goods to the Company provided that the Company's prior written consent has been provided and that such Goods are delivered to the Company undamaged and in their full original packaging.

5.9. The Purchaser shall in no other circumstance have any right to return any Goods except with the Company's prior written consent, including in relation to the condition and packaging of such returned Goods, and provided always that the Purchaser shall arrange and pay for the return of all such Goods to the Company and shall pay all costs incurred by the Company by reason of and in connection with such return, including any transportation and storage costs incurred in relation to such return, and that the Purchaser shall receive such refund in relation to such returned Goods as the Company in its absolute discretion may determine.

6. RISK AND TITLE

6.1. Risk in the Goods shall subject to Condition 6.7 pass to the Purchaser when the Goods are available for delivery to the Purchaser at the point of delivery stated in the Contract, unless otherwise agreed by the parties in writing.

6.2. Title to the Goods shall not pass from the Company to the Purchaser unless and until the Company has received payment in full (in cash or cleared funds) in respect of the Goods and of all other sums which are or which become due to the Company from the Purchaser in relation to the Contract.

6.3. Until title in the Goods has passed to the Purchaser, the Purchaser shall hold the Goods on a fiduciary basis as the Company's bailee, store the Goods (at no cost to the Company) separately from all other goods and in such a way to enable them to be identified as the property of the Company; and keep the Goods fully insured to their full



market value.

6.4. If any one or more of the circumstances set out at Condition 8.1-8.6 inclusive occurs, the Company may repossess any Goods supplied to the Purchaser and thereafter resell the same, and for this purpose the Purchaser grants the Company, its agents and employees an irrevocable right and licence to enter any premises where the Goods or other products are or may be stored with or without vehicles during normal business hours.

6.5. The Purchaser may resell the Goods acting always as principal and not as agent of the Company provided that any sale shall be effected in the ordinary course of the Purchaser's business at full market value and that the Purchaser shall hold such part of the proceeds of sale or otherwise as represent the amount owed by the Purchaser to the Company, whether tangible or intangible, including insurance proceeds, separate from any monies or property of the Purchaser and any third parties, and in a fiduciary capacity on behalf of the Company, until payment has been received in full as set out at Condition 7.2.

6.6. On termination of the Contract, howsoever arising, the Company's (but not the Purchaser's) rights contained in this Condition shall remain in full effect.

7. BREACH AND INSOLVENCY

If any one or more of the circumstances set out in Condition 8.1-8.6 inclusive occurs then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract and/or to suspend any or all further deliveries of the Goods without thereby incurring any liability to the Company, and all amounts owing from the Purchaser to the Company shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

7.1. The Purchaser makes any voluntary arrangement or proposal in relation thereto with its creditors, or becomes subject to an administration order, or (being an individual or firm) becomes bankrupt, or (being a company) goes into liquidation; or

7.2. A resolution is passed for the winding-up of the Purchaser, or any person becomes entitled to present a petition for bankruptcy or insolvency against the Purchaser or to appoint a receiver in relation to the whole or any part of the Purchaser's assets, or any distress or execution, whether legal or equitable, is levied against any of the Purchaser's assets; or

7.3. The Purchaser ceases, or threatens to cease, to carry on its business; or

7.4. A judgement against the Purchaser remains unsatisfied, or the Purchaser is unable to pay a debt to a third party as it falls due to and/or is deemed to be insolvent; or

7.5. Any event analogous to any of the foregoing occurs in any jurisdiction in relation to the Purchaser; or

7.6. The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser; or

7.7. The Purchaser fails to comply with its payment obligations at Condition 16.1; or

7.8. The Purchaser is in breach of any provision of the Contract.



8. INSPECTION AND ACCEPTANCE

8.1. The Purchaser shall be deemed to have carried out a detailed inspection of, and to have accepted, the Goods on delivery or collection. Without prejudice to the foregoing any signature of the Company's delivery note or similar document on delivery or collection shall be conclusive proof that such inspection has been carried out and that the Purchaser is satisfied with the condition and quantity of Goods delivered or collected.

8.2. Without prejudice to the foregoing the Purchaser shall notify to the Company in writing any defects, deficiencies and/or shortfalls in the Goods delivered or collected within 48 hours of delivery or collection, and subject to Condition 11 it is a condition precedent of any liability accruing to the Company in respect of any Goods that such notification is provided within such timescale.

8.3. Where any Goods have not been delivered, any such non-delivery must be notified to the Company in writing within 5 days of the date of the Company's invoice in respect of such Goods, and if such notification is not made then such Goods shall be deemed to have been delivered as set out on the invoice.

9. DEFECTS AND LIABILITIES

9.1. Subject always to Conditions 9.1 and 9.2, if any Goods supplied by the Company break or become defective within the warranty period given for any particular product from the date of their delivery or collection the Company may at its option replace or repair them free of charge, or where no such repair or replacement is (in the sole opinion of the Company) practicable, refund the price actually paid for such Goods, provided always that as a condition precedent of any liability accruing to the Company pursuant to this Condition 11:

9.1.1. The Company is satisfied that the breakage of or defect in such Goods is due to a defect in workmanship or material that would not have been apparent on a detailed inspection at the time of delivery or collection and is not as a result of wear and tear, wilful damage or negligence; and

9.1.2. The Company is notified of such defect or breakage within 24 hours of such breakage or defect occurring, and written confirmation is subsequently provided within 5 days of such breakage or defect occurring together with full particulars of the breakage or defect satisfactory to the Company, and

9.1.3. The Company is satisfied that all such Goods have been properly stored, installed, commissioned and maintained by the Purchaser, have not been modified altered or adapted, and have not been operated beyond the manufacturer's limits of rated capacity and normal usage; and

9.1.4. All such broken or defective Goods are at the Company's request immediately returned to the Company at the Purchaser's cost, provided always that the Company shall not be liable for the cost of removal of any broken or defective Goods, the cost of fitting any repaired or replacement Goods, or the costs of any delay occasioned by, or any works that may be necessary in connection with, any broken or defective Goods (including in connection with the removal of broken or defective Goods or the fitting of repaired or replaced Goods).

9.2. Except as set out in this Condition 11 the Company shall have no liability arising out of or in connection with any defects in relation to the Goods (including in relation



to the conformance with description, quality or fitness-for-purpose of the Goods, and to defects in design, material and workmanship of the Goods).

9.3. Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10. WEE Compliance

UK law requires environmental provision be made for recycling of electronic products, including light fittings, and under the WEEE Directive the Company makes such provision via a WEEE Levy, which is added to invoices to cover the environmental charge.

11. LIMITATION OF LIABILITY

11.1. The Company's liability shall be limited as set out in Conditions 9 and 11 provided always that the Company's total liability under or in connection with the Contract, the Goods and the Order, whether in contract, tort (including negligence), for breach of statutory duty or otherwise shall be limited in the aggregate to the price to be paid by the Purchaser pursuant to the Contract.

11.2. The Company shall not be liable for any special, indirect or consequential loss or damage, any loss of investment, loss of contract, loss of production, loss of profits, loss of time or loss of use whatsoever (whether caused by the negligence of the Company or otherwise) including arising out of or in connection with the supply of the Goods or their use or resale by the Purchaser.

11.3. However, nothing in these Conditions shall restrict the Company's liability for death or personal injury caused by the Goods which arises by reason of the negligence of the Company or any of its employees or any other liability which cannot by law be restricted.

12. SELECTION AND DESCRIPTION OF THE GOODS

12.1. The Purchaser hereby acknowledges that the Goods fulfil its requirements and that it in no way relies upon the skill or judgment of the Company or any of its employees or agents in the selection provision installation and/or operation thereof.

12.2. Whilst the Company takes precautions to ensure accuracy in the preparation of its catalogues, technical circulars and its other literature, including the Quotation, these documents are for the Purchaser's general guidance only and the particulars contained therein shall not constitute representation by the Company and shall not be binding upon the Company.

13. FORCE MAJEURE

The Company shall not be in breach of the Contract, and shall have no liability for delay in performing or failure to perform any of its obligations under the Contract, if such delay or failure arises as a result of circumstances outside the Company's reasonable control, including, without limitation, delays by its suppliers, strike, lockouts, war, riots, fire, floods, Government intervention, Act of God, accidents or breakdown of machinery.



14. PAYMENT

14.1. The Company may invoice the Purchaser for any Goods delivered or collected on or at any time after dispatch or collection. All invoices shall be paid within 30 days of their issue or agreed payment terms

14.2. In the event of the Purchaser's failure to comply with its obligations at Condition **14.1** interest shall be chargeable by the Company on all sums as may be outstanding at 24 percent from time to time, and such interest shall be computed, calculated and applied as a monthly figure.

14.3. The Purchaser shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by the Company to the Purchaser. Any discount given becomes forfeit in the advent of late payment on any orders.

15. INTELLECTUAL PROPERTY RIGHTS

The Buyer acknowledges that it neither acquires nor has any interest in the intellectual property rights (including without limitation copyright, design rights or otherwise) attached to the Goods.