

Fitzgerald Lighting Cornwall Ltd

TERMS AND CONDITIONS OF SALE

1. GENERAL

In these General Conditions of Sale, the "Company" means FITZGERALD LIGHTING CORNWALL LTD. The "goods" means any item of whatsoever nature, which is to be sold or supplied by the Company including services; the "Purchaser" means the person, firm or body corporate, which buys or has agreed to buy the goods. These General Conditions of Sale shall apply to and form part of every contract of sale entered into by the Company. All orders are accepted and executed on the understanding that the Purchaser is bound by these General Conditions of Sale which shall govern the contract to the exclusion of any other terms and conditions subject to which any such order is accepted or purported to be accepted, or any such order is made or purported to be made, by the Purchaser. No contract of sale shall come into being unless and until the Purchaser has accepted these General Conditions of Sale either expressly or by implication.

2. LIMITS OF CONTRACT

a) The contract includes only such goods, accessories and work as are specified in the quotation or acknowledgment accompanying these General Conditions of Sale.
b) This contract is divisible. Each delivery made hereunder shall be deemed to be a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.

3. PRICES

a) The price payable for goods shall unless otherwise stated by the Company in writing be the list or the quoted price of the Company current at the date of dispatch and in the case of an order for delivery by instalments the price payable for each instalment shall be the list or quoted price of the Company current at the date of such instalment.
b) Unless otherwise expressly stated to be firm for a period the Company's prices are subject to variation to take into account, any foreign exchange fluctuations, variations in wages, materials and other costs. The Company accordingly reserves the right by giving notice to the Purchaser at any time before delivery to increase the price of the goods by the amount of any increase in such costs after the price has been quoted.
c) All prices are exclusive of Value Added Tax and this will be charged at the applicable rate and recoverable by the Company in addition to the price.
d) All price discrepancies must be notified to the Company by the Purchaser, within 7 working days of the date of the invoice.

4. PAYMENT

a) Unless otherwise agreed in writing, payment is due without an agreed deduction on or before the last working day in accordance with the company's terms of payment.
b) Where the contract provides for delivery in instalments each instalment shall be considered as a separate contract of sale.
c) Time for payment shall be of the essence of the contract.
d) Without prejudice to any other rights it may have the Company is entitled to charge interest at 2% above the current base rate of the National Westminster Bank Plc on overdue payments of the price of the goods or the price of any instalment or of partial delivery thereof.
e) 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 amounts of the price outstanding.
f) If the Purchaser fails to make any payment when due in accordance with these General Conditions of Sale, the Company reserves the right in its absolute discretion and without prejudice to its other rights or remedies to suspend all further deliveries until such payment has been made in full together with any other amounts owing to the Company whether the due date for payment has been reached or not if so requested by the Company, 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 in course of manufacture or ready for dispatch. The Company shall be entitled to bring an action for the price or part thereof whether or not the property in the goods has passed.

5. CREDIT

Any contract shall be subject to the Company being satisfied as to the Purchaser's credit references, and without prejudice to the generality of the foregoing, the Company may (in its absolute discretion), having informed the Purchaser that the goods are ready for dispatch, refrain from delivering the goods until such time as the Purchaser tenders the purchase money to the Company together with any outstanding amounts which may be due to the Company on any account whatsoever.

6. CARRIAGE

a) Where the value of an order exceeds £300.00 the cost of delivery of the goods to the Purchaser's premises on the mainland of Great Britain shall be included in the contract price. b) In all other cases the prices are exclusive of carriage and insurance to the Purchaser's premises.

7. PACKING

Where it is necessary to dispatch goods in crates, cases, pallets, stillages or skids or 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, stillages and pallets etc., in good condition carriage paid. No charge will be made for any other form of packaging and no credit will be allowed for its return.

8. LOSS OR DAMAGE IN TRANSIT

When the price quoted includes delivery, the Company shall repair or replace free of charge goods damaged in transit or not delivered in accordance with the Advice or Delivery Note provided that the Company is given written notification of such damage or non-delivery within such time (being not more than 2 days) as will enable the Company to comply with the carrier's conditions of carriage as affecting loss or damage in transit, or, where delivery is made by the Company's own transport within 2 days after receipt of the Advice or Delivery Note.

9. SAMPLES

Samples will be charged for under the Company's normal terms and credited in full when returned in good condition. Return of samples is at the purchaser's expense.

10. DELIVERY

a) Unless accepted by the Company in writing all times or dates for delivery of the goods are given in good faith but are approximate only and shall not be of the essence of the contract.
b) All times or dates for delivery shall be calculated from the date of acceptance by the Company of the 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 order, whichever shall be the later.
c) Unless otherwise stated in writing the Company shall be entitled to make partial deliveries of the goods.

11. VARIATIONS

a) The Company shall be under no obligation to alter or vary any part of the contract or any work connected therewith. Any alteration to or addition to or amendment or other variation of the specification, including any increase or decrease in the quantity of the goods or any alteration to any drawings or to the quality, performance, weight or measurements of any goods or any alteration or variation of advised delivery schedules, if requested by the Purchaser, shall be subject to the agreement of the Company, with such alteration or addition to the price and to delivery dates or schedules as may be required by the Company, and shall not be binding upon the Company unless and until accepted by the Company in writing. b) In the event of any variation or suspension of the work by the Purchaser's instructions or lack of instructions the Company shall be entitled to adjust the contract price to reflect any additional costs incurred, and to adjust delivery dates or schedules.

12. STORAGE

If the Company does not receive forwarding instructions sufficient to enable it to dispatch the goods within ten days after notification that the goods are ready for delivery or that they have been tested under Clause 14, the Purchaser shall thereupon take delivery or arrange for storage. If the Purchaser does not take delivery or arrange storage as aforesaid, the Company shall be entitled to invoice and be paid for the goods as though the goods had been duly delivered in accordance with these General Conditions of Sale and the Company may arrange storage either at the Company's own works or elsewhere on the Purchaser's behalf and all charges incurred by the Company as a result of such a delay including storage and insurance shall be payable by the Purchaser.

13. PERFORMANCE AND FITNESS FOR PURPOSE

Any performance figures given by the Company, including operating ranges of RF equipment, are based on the Company's experience and are such as the Company expects to obtain under the standard test conditions to which it operates. It is the responsibility of the Purchaser to satisfy himself that the Goods are fit for the use to which they will be put, taking account amongst other factors of any variations in RF performance that may be caused by the environment and situation in which the Goods may be installed.

14. INSPECTION AND TESTS

The Company's products are all carefully inspected, and, where practicable, submitted to its standard tests at the Company's works before dispatch. If tests other than those specified or tests in the presence of the Purchaser or its representatives are required, these will be charged for. In the event of any delay on the Purchaser's part in attending the tests after the Purchaser has received 7 days' notice that the Company is ready to perform the tests, the tests will proceed in the Purchaser's absence and the Purchaser hereby agrees to accept and pay for such tests as if they had been performed in the Purchaser's presence.

15. DESCRIPTIVE MATTER AND ILLUSTRATIONS

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 descriptions and approximate only, and shall not form part of any contract or give rise to any liability on the part of the Company. It is the policy of the Company to endeavor 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 a policy. Provided that nothing in this Clause shall oblige the Purchaser to accept goods, which do not reasonably comply with the contract.

16. WARRANTY

a) The Company will make good by repair, or at the Company's pre-authorized discretion by the supply of a replacement, any defects which under proper storage and use, appear in the goods within the period of 1 year after the goods have been delivered and arise solely from faulty design (other than design changes made or furnished by the Purchaser), materials or workmanship. (An extended warranty for years 2 - 5 years is available upon registration of the site with Fitzgerald Lighting Cornwall Ltd, this being a return to base warranty, which does not include labour or access equipment)
b) The Warranty given in this clause is subject to the following provisos, namely: i) That the installer is completely qualified to carry-out electrical installations and shall have followed all installation procedures under instructions issued by the Company in relation to the goods; ii) That in the case of defects which would have been reasonably apparent to the Purchaser on reasonable examination of the goods on delivery, the Purchaser shall notify the Company of such defects in writing within three working days of delivery (Damages to cartons should be inspected and reported to the delivery driver and noted on documentation at point of delivery and to the Company within 24hrs) iii) That in the case of any other defects the Purchaser shall notify the Company of the defects in writing within seven working days of the date when the defect becomes apparent, with covering photographs of any damage and of the carton in which the goods were delivered. iv) Consumable items, such as batteries and fuses, are excluded from any warranty. v) The total price for the goods has been paid by the due date for payment. vi) That where in discharge of its obligations under the Warranty given in this Clause the Company agrees that the Purchaser may undertake any repair or remedial work on its behalf, the cost of such work to be agreed in writing between the Purchaser and the Company before the commencement of any such repair or remedial work.

17. REJECTION

Unless otherwise agreed in writing, and subject to Clause 16 hereof, goods rejected as not complying with the contract must be rejected within seven working days of delivery to the Purchaser's premises or to such other place as the Purchaser shall have specified.

18. RETURN OF GOODS

In no circumstances may goods supplied against a firm order be returned without the Purchaser having first applied for and obtained written consent of the return by the Company. Only goods considered as normal stock items may be authorised for return. A handling charge may be deducted from any credit allowed by the Company where it is established that the reason for the return of goods was not the subject of Clause 8 hereof or due to any error on the part of the Company. Any return of goods will be made at the Purchaser's cost. Authorisation for return will only be issued if full details are made available i.e. invoice number, date and reason for return. Goods returned as faulty may be repaired and returned to the buyer unless a replacement has been dispatched. Goods returned as faulty which are proved to have been correctly manufactured may be returned to the Purchaser. In all instances credit will only be given on Goods returned in reusable condition and at discretion of the Company.

19. PATENTS

The Purchaser will indemnify the Company against all damages penalties costs losses and expenses suffered by the Company or for which it may become liable in respect of the infringement of any intellectual property including (but without limitation) any patent copyright registered design trade mark trade name or know how arising out of the Company's manufacture of goods in accordance with any specification design drawings or other data supplied by the Purchaser or its servants or agents.

20. COPYRIGHT

All drawings descriptions and other information submitted by the Company, together with the copyright therein, shall remain the property of the Company.

21. 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 to 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 by reason of the Purchaser failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act 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 sub-contractors employees), accidents or stoppages to works, shortage of labour materials equipment fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of the Company or its sub-contractors whether or not such cause exists at the date of the order.

22. PASSING OF PROPERTY AND RISK

a) Risk of damage to or loss of the goods shall pass to the Purchaser:
i) in the case of the goods to be delivered at the Company's premises, at the time when the Company notifies the Purchaser that the goods are available for collection; or
ii) in the case of goods to be delivered otherwise than at the Company's

premises, at the time of delivery, or, if the Purchaser wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the goods.

b) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions the property in the goods shall not pass to the Purchaser 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 Purchaser for which payment is then due.

c) Until such time as the property in the goods passes to the Purchaser, the Purchaser shall hold the goods as the Company's fiduciary agent and bailee, and shall keep the goods separate from those of the Purchaser and third parties and property stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the goods in the ordinary course of its business where the property in the goods will not be passed until the goods have been paid for in full.

d) Until such time as the property in the goods passes to the Purchaser (and provided the goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Purchaser to deliver up the goods to the Company and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the goods are stored and repossess the goods.

e) The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

23. INSOLVENCY OF PURCHASER

a) This clause applies if: i) The Purchaser becomes insolvent or makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or ii) An encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Purchaser; or iii) The Purchaser 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 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 any liability to the Purchaser, and if the goods have been delivered but not paid for, the company has the option to invoice clause 22d above or that the price shall become immediately due and payable to any previous agreement or arrangement to the contrary.

c) If this clause applies then the Purchaser shall have a duty to immediately bring to the notice of any receiver administrator or any such person or persons appointed the existence and content of Clause 22 of these General Conditions of Sale (Passing of Property and Risk) and the rights of the Purchaser to use or trade on the Company's goods is immediately terminated and any such receiver administrator or other person or persons appointed will not be entitled to use or to trade on the Company's goods unless so authorised in writing by the Company.

24. ARBITRATION

If at any time any question, dispute or difference whatsoever shall arise between the Purchaser and the Company upon or in relation to or in connection with the contract, either party may give the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within 30 days of receipt of such notice, some person appointed by the President for the time being of the Institution of Electrical Engineers in Great Britain. A submission to arbitration under this Clause shall be deemed to be a submission to a sole arbitrator pursuant to the Arbitration Act 1950 or any statutory modification or re-enactment thereof. Any such arbitration shall be held in London, England.

25. ENGLISH LAW

All contracts to which these General Conditions of Sale apply shall be governed by and construed in accordance with English Law.

26. GOODS SUBJECT TO REQUIREMENT

It is at the company's discretion to accept goods back for credit where the customer no longer requires or have been ordered in error.

27. DEFECTS AFTER DELIVERY

a) In respect of all Goods manufactured by the Company, the Company shall free of charge either repair or, at its option replace, defective Goods where the defects appear under proper use within 12 months (An extended warranty for years 2 - 5 years is available upon registration of the site with Fitzgerald Lighting Cornwall Ltd, this being a return to base warranty, which does not include charges covering labour or access equipment) from the date of delivery, PROVIDED THAT: i) notice in writing of the defects complained of shall be given to the company upon their appearance, and ii) such defects shall be found to the Company's reasonable satisfaction to have arisen solely from the Seller's faulty design, workmanship or materials, and iii) the defective Goods shall be returned to the Company's factory at the Purchaser's expense if so requested by the Company.

b) Any repaired or replaced Goods shall be redelivered by the Company free of charge to the original point of delivery but otherwise in accordance with and subject to these Conditions of Sale.

c) Alternatively to Clause 9(a) the Company shall be entitled at its absolute discretion to refund the price of the defective Goods in the event that such price shall already have been paid by the Purchaser to the Company, or, if such price has not been so paid, to relieve the Purchaser of all obligation to pay the same by the issue of a credit note in favour of the Purchaser in the amount of such price.

d) The Company will not be responsible for damages or shortages of goods delivered by the customer to the third parties.

e) The Company's liability under this Clause shall be to the exclusion of all other liability to the Purchaser whether contractual, tortious or otherwise for defects in the Goods or for any loss or damage to or caused by the Goods, and all other conditions, warranties, stipulations or other statements whatsoever concerning the Goods, whether express or implied, by statute, at common law or otherwise, however, are hereby excluded, in particular (but without limitation of the foregoing) the Company grants no warranties regarding the fitness for purpose, performance, use, nature or quality of the Goods, whether express or implied, by statute, at common law or otherwise, however.

f) The Company cannot be held responsible for late delivery penalties, such as accepted by contractors by site or consultancy contracts.