

## **Terms & Conditions of Sale**

### **1. Application of Terms**

- 1.1. Subject to clause 1.3, any contract (the "Contract") between Atrium Limited (the "Company") and the company, firm or person who purchases products (the "Goods") from the Company (the "Buyer") shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 1.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 1.3. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the products 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 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.
- 1.4. Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 1.5. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 1.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 1.7. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an order confirmation to the Buyer. Any quotation is valid for a period of 30 days only from its date unless otherwise stated and provided that the Company has not previously withdrawn it.

### **2. Description**

- 2.1. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample. Colour finishes will be maintained as accurately as reasonably possible.
- 2.2. The quantity and description of the Goods (including brand, colour temperatures and/or beam angles of lamps) shall be as set out in the Company's quotation or order confirmation unless otherwise informed by the Buyer (who shall be responsible for verifying quantities and descriptions quoted against drawings and final specifications) by way of written specification prior to, or at the time of order.
- 2.3. Lamps, transformers and gear are not included in the Contract unless itemised in the Company's quotation.
- 2.4. The Company accepts no liability for lamp manufacturers' colour variances or batch production tolerances.

### **3. Delivery / Storage**

- 3.1. Unless otherwise agreed in writing, delivery shall take place at the Company's premises.
- 3.2. Any dates or times quoted for delivery are given and intended as estimates only and shall not be made of the essence by notice.
- 3.3. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
  - (a) risk in the Goods shall pass to the Buyer;
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### **4. Non-delivery / damage in transit (prior to delivery)**

- 4.1. If the Company agrees to transport or ship the Goods to the Buyer it shall not be liable for any:
  - (a) damage to Goods in transit prior to delivery unless the Buyer gives notice in writing to the carrier and to the Company within three working days of receipt; or
  - (b) non-delivery (including partial non-delivery) of Goods unless the Buyer gives notice in writing to the carrier and to the Company within 5 days of date of advice.
- 4.2. Any liability of the Company pursuant to this clause **4** shall be limited to replacing the Goods within a reasonable time.

### **5. Risk / Title**

- 5.1. The Goods are at the risk of the Buyer from the time of delivery.
- 5.2. Title 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 all other sums which are or which become due to the Company from the Buyer on any account.
- 5.3. The Buyer grants the Company, its agents and employees an irrevocable licence at any time before title passes pursuant to clause 5.2 to enter any premises where the Goods are or may be stored in order to recover them.

### **6. Prices**

6.1. All prices quoted are exclusive of VAT and shipping/transport. Whilst every endeavour will be made to invoice Goods at the prices quoted and/or acknowledged, the Company reserves the right to invoice at prices ruling at the time of delivery or deemed delivery.

## **7. Payment**

7.1. Terms of payment will be proforma unless credit terms have been previously agreed in writing.

7.2. Time for payment shall be of the essence and no payment shall be deemed to have been received until the Company has received cleared funds.

7.3. The Buyer shall have no right to set off save where the Buyer has a valid court order directing as such.

7.4. Interest will be charged on late payments at a rate of 5% above the Bank of England base lending rate from time to time of accruing on a daily basis until payment is made, whether before or after any judgment.

7.5. The Company shall have the right to stop delivery at any time and the discretion to determine any Contract if the Buyer defaults on payment of any order after it has become due for payment.

## **8. Quality**

8.1. The Company's products are manufactured in accordance with the latest international standards.

8.2. Goods which develop faults, not caused by Buyer's negligence, within the relevant manufacturer's warranty or guarantee period will be repaired or replaced at the Company's sole discretion.

8.3. Any replacement Goods supplied are chargeable and will be invoiced at full value pending return of faulty items for testing. Faulty items returned within 30 days of despatch of replacements may at Company's sole discretion be credited in full dependent upon condition of returned items and result of testing.

## **9. Cancellations and Returns**

9.1. The written consent of the Company must be obtained before cancellation of any order is accepted. The Company reserves the right to charge for costs incurred in accepting the cancellation.

9.2. Goods may not be returned without the Company's written consent. Where permission for the return of Goods is given, a handling charge plus any carriage charge involved will be made. Goods should be returned carriage paid to the Company's warehouse in good resalable condition with its original packaging. Special works and fittings manufactured to non-standard design cannot be cancelled after production has started and cannot be returned.

## **10. Limitation of liability**

10.1. Subject to clause **4** (non-delivery) and clause **8** (quality), the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3. Nothing in these conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company's negligence; or

(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.

10.4. Subject to clause 10.2 and clause 10.3:

(a) the Company's total liability in contract, tort (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 price paid or payable by the Buyer for the Goods; 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, including by negligence) which arise out of or in connection with the Contract.

## **11. Force majeure**

11.1. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in doing so or in carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to its own workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [90] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **12. General**

12.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

12.2. 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.

- 12.3. Failure or delay by the Company 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.
- 12.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.6. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.