



CONDITIONS OF SALE (UK and EXPORT)

1. Definitions

In these conditions 'the Company' means Dialight BLP Limited.

'Buyer' means the person, firm or company to whom the quotation is addressed or by which the Order is placed.

'Goods' means the articles or things or any of them described in the Order.

'Order' means the order placed by the Buyer, for the supply of the Goods.

'Contract' means the contract for the sale of the Goods made pursuant to the Order.

2. Quotations

Quotations may be varied or withdrawn by the Company at any time and, unless otherwise specified, quotations shall be deemed to be withdrawn automatically at the expiry of 30 days from their date of issue. There will be no binding contract until the Order is accepted in writing by the Company.

Custom made articles - Where limits are shown on drawings, a quotation is not an agreement that these can be adhered to: the Company reserves the right, subject to the Buyer's consent, to make any practical modification which may be necessary.

3. Order

Quotations are given and orders are accepted on the following terms and conditions which shall prevail over any terms and conditions proposed by the Buyer, unless otherwise agreed in writing. Where the Company is bound by any statutory obligation e.g. conditions of carriage, the Buyer in accepting these conditions becomes bound by the same statutory obligations.

4. Specification

- (a) Performance figures given by the Company are based upon its experience and are such as the Company expects to obtain on test. The Company shall, however, be under no liability if those figures are not obtained unless they have been specifically guaranteed in writing by the Company. The Buyer assumes responsibility that drawings, specifications and/or any other information prepared by the Company in relation to the Goods are sufficient and the Goods so manufactured and supplied are suitable for the Buyer's purpose.
- (b) Where the Goods are supplied to the Buyer's design or specifications, there shall be no guarantee condition or warranty either express or implied that the Goods are suitable for the purpose for which they are to be used.

- (c) The Company reserves the right to make any changes or improvements in its designs at any time without notice notwithstanding any current literature issued by it, and the publishing and distribution of such literature, samples and price lists does not, by itself or themselves, constitute an offer or any part of a contract.

5. Application

- (a) These Conditions alone (as varied in accordance with Condition 5(c)) shall govern and be incorporated in every contract for the sale of goods made by or on behalf of the Company with the Buyer. They shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealing.
- (b) Acceptance by the Buyer of delivery of the Goods shall (without prejudice to Condition 2 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- (b) A variation of these Conditions is valid only if it is in writing and signed by a Director or authorised representative of the Company.

6. Third Party Rights

- (a) The Buyer shall indemnify the Company against each loss, liability and cost which the Company incurs as a result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of the rights of any third party.
- (b) In respect of export orders only, the Company is not liable to the Buyer if the Goods infringe or are alleged to infringe the rights of any third party. If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Company's reasonable opinion, such an allegation is likely to be made, the Company may at its option and at its own expense:
 - (i) modify or replace the Goods without detracting from the overall performance of the Goods, so as to avoid the infringement; or
 - (ii) procure for the Buyer the right to continue to use the Goods; or
 - (iii) repurchase the Goods at the price paid by the Buyer, less depreciation, at the rate the Company applies to its own equipment.
- (c) The Buyer shall notify the Company immediately of any claim made or action brought or threatened alleging infringement of the rights of any third party. The Company shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all such reasonable assistance as the Company may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine.

- (d) If the Company or its employees or agents design the Goods pursuant to a commission from the Buyer (whether in consideration of an order or otherwise) then any copyright or design rights created in relation to the Goods shall vest in the Company. The Buyer agrees that it shall do any acts and execute any documentation required by the Company to secure vesting of title to such copyright or design rights in the Company.

7. Prices

- (a) If, between the date of the quotation and delivery, the cost of the whole or any part of the Goods is increased by reason of any increase in the costs to the Company of raw materials, components, direct labour, transport, duties or taxes payable by the Company or any other cause whatsoever beyond the control of the Company, the Company may increase the price charged to the Buyer by the amount of the aggregate increase in cost.
- (b) The prices quoted apply only to such quantities and delivery rates as may be specified in the quotation and the price to be paid by the Buyer shall be fixed by the Company after taking into account the cost of manufacture of quantities, or of effecting delivery rates, other than as specified in the quotation. The Buyer also agrees to pay the Company for any loss or extra cost incurred by the company through any request or instruction or lack of instruction on the part of the Buyer, its employees or contractors.
- (c) Orders, the value of which to be determined from time to time, will incur a carriage and packing charge.
- (d) All Documents/Certificates/Tests additional to invoices will be charged at cost.

8. Delivery and Storage

- (a) The period quoted for delivery shall be calculated from the date of receipt by the Company of all instructions and information necessary for the execution of the work but time is not of the essence of the Contract so far as regards despatch or delivery dates and no liability shall attach to the Company for any delay howsoever arising or for any direct, contingent or consequential loss of damage arising from such delay.
- (b) Risk for the Goods passes on delivery.
- (c) The Company shall not be liable in any manner if prevented, hindered or delayed in fulfilment of all or part of the orders as set out in the Delivery Schedules, directly or indirectly, owing to Acts of God, war, threat of war, warlike conditions, hostilities, sanctions, mobilisation, blockade, embargo, detention, revolution, civil or political unrest, riot, looting, strike, shortage of labour and material, lockout, plague or other epidemics, fire, flood or any other causes or circumstances beyond its control.
- (d) Where delivery is by instalments, each delivery shall be considered as a separate part of the Order and a failure of any delivery shall not vitiate the Order as to the others.
- (e) If the Buyer shall request the Company to delay delivery of the Goods or shall fail to give instructions for their delivery, the Company shall be entitled to make a charge for storage and

insurance but payment shall nevertheless be due at the end of the month in which the Goods are available for despatch.

- (f) Quantities of custom made articles - Since it is impossible to foretell manufacturing rejects precisely, fulfilment of an order may be 5% over or under the quantity ordered. Any such variation will be charged or allowed for pro rata.
- (g) Materials etc supplied by the Buyer - The Buyer shall compensate the Company for any losses incurred as a result of unreasonable delays by him in supplying any agreed drawings, specifications, materials or parts.
- (h) We reserve the right to divert orders for proprietary products up to £500 in value to one of our appointed stockists in order to ensure speedy service, for export orders the value is £500.

9. Transit

- (a) The Company will replace free of charge any goods proved to its satisfaction to have been damaged in transit provided that, within three days after delivery, both the Company and the carriers have received from the Buyer notification in writing of the occurrence of the damage and also in so far as practicable its nature and extent.
- (b) Any consignment giving rise to complaint shall be retained by the consignee with all wrappings until disposal instructions are received from us.

10. Payment

- (a) All invoices must be paid within 30 days from the issue of the invoice. If payment of any sum payable to the Seller is not made on or before the due date the seller shall be entitled to charge interest thereafter on such sum at the rate of 4 per cent per annum above the current base rate of the Bank of Scotland, such interest being deemed to accrue from day to day and being compound on the last day of each calendar month.
- (b) If default is made in due payment for any Goods supplied and invoiced, the Company reserves the right to suspend manufacture or delivery of any further Goods and to determine any unexecuted Contract with the Buyer without prejudice to any other remedy the Company may have.
- (c) If the Buyer becomes bankrupt or insolvent, or compounds or makes any arrangement with his creditors, or being a Company goes into liquidation or has a receiver appointed of its assets, the Company may declare the Contract cancelled without prejudice to any other rights which the Company may have.
- (d) In the event of the Buyer wishing us to suspend deliveries, the Company requires 90 days notice in writing to this effect. Such suspension shall be limited to a maximum period of 3 months, after which deliveries shall be resumed at the former rate.
- (e) The property of the goods will not pass to the Buyer until payment of the price has been made in full. The Company reserves the right to retain title, both legal and beneficial. The Buyer shall permit

the Company and its representatives to enter the Buyer's premises during normal business hours to inspect and/or repossess goods which remain the Company's property.

11. Patents

- (a) The Company will, in lieu of all other liability for loss arising therefrom, indemnify the Buyer against any claim of infringement of Letters Patent, Registered Design, Trade Marks or Copyright (in force at the date of the Contract) by the use or sale of any article or material supplied by the Company to the Buyer and against all costs and damages which the Buyer may incur or for which the Buyer may become liable in any action for such infringement Provided always that this indemnity shall not apply to any infringement which results from the Company having followed a design or instruction furnished or given by the Buyer or to the use of such article or material in a manner or for a purpose to in a foreign country not specified by or disclosed to the Company and provided also that this indemnity is conditional on the Buyer giving to the Company the earliest possible notice in writing of any claim being made or action threatened or brought against the Buyer and on his permitting the Company at its expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim..
- (b) The Buyer on his part warrants that any part, design or instruction furnished or given by him shall not be such as will cause the Company to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of the Order and shall indemnify the Company against any such claim resulting from the use or adoption by the Company of any such part design or instruction.
- (c) The copyright in all the Company's documents, including drawings, furnished to the Buyer shall at all times be vested in the Company, and neither they nor their contents shall be used without written consent for any purpose other than that for which they were supplied.

12. Tools

Any tools acquired by the Company expressly for the performance of the contract will be charged at part cost and will remain the property of the Company. Half the estimated charge is payable on placing the order; the balance will be charged on submission of the samples. The Company reserves the right to destroy these tools if they have not been used for three years.

13. Warranty

All goods supplied by the Company are guaranteed against defects due to faulty workmanship and material for a period of 12 months from date of supply except proprietary parts or components not made by the Company, which are subject to the warranty of the manufacturer.

The Company will repair or replace (at its discretion) free of charge any defective items as defined above which arise under proper storage, installation, use and maintenance, and not having been damaged in transit, provided such items are returned to the Company without further damage, carriage paid, within 14

days of the discovery of the alleged defect, and subject to confirmation of the defect by the Company's inspection. Goods returned to the Company and found to be outside the scope of the warranty will be returned to the Buyer at his expense and subject to a charge for testing not exceeding 10% of their invoiced value.

This guarantee is given in lieu of any other warranty, condition or term, expressed, or implied, by statute, common law or otherwise, as to the quality of the goods or their fitness for purpose, and excludes liability for any loss, damage or injury arising from their storage or use.

14. Liability

- (a) The Company shall not be liable to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise, for:
 - (i) loss or damage incurred by the Buyer as a result of third party claims;
 - (ii) loss of profit, goodwill, business opportunity or anticipated saving nor for any indirect or consequential damage suffered by the Buyer.
- (b) The entire liability of the Company under or in connection with the supply of Goods, whether for negligence, breach of contract, misrepresentation or otherwise, is limited, in respect of each event or series of connected events, to the cost of the defective, damaged or undelivered Goods which give rise to such liability as determined by the net price invoiced to the Buyer.

15. Arbitration

Any dispute or question otherwise than as to any payment due to the Company under the Contract shall be referred to a single arbitrator to be agreed or, failing agreement, to be nominated by the President for the time being of the Institution of Electrical Engineers, and every such reference shall be deemed to be a reference to Arbitration within the meaning of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force.

16. Law

The Contract shall in all respects be governed by English Law. The place of jurisdiction shall be England.

17. Notices

Any notice purported to have been given under these conditions to the Buyer shall be deemed to have been duly served and have been received by the Buyer in due course of post, if sent by the Company by pre-paid letter post addressed to the Buyer at the Buyer's last known address.

18. Headings

The marginal notes or headings to these conditions do not form part thereof and shall not be taken into account in their interpretation.

19. Export Orders

Where delivery of the Goods is to take place outside the United Kingdom or upon f.a.s., f.o.b, c.&f., c.i.f., or ex-ship terms (as defined in INCOTERMS 1990 as revised from time to time) these conditions shall apply with the under-mentioned variations.

Condition 9 shall not apply.

For Condition 10 there shall be substituted Clause 19.1.

19.1. Payment (Export)

- (a) Payment in full in respect of any of the Goods shall be due in Sterling or any other previously agreed currency upon presentation of shipping documents and invoices against and irrevocable and divisible letter of credit lodged with and confirmed by a London bank at the time of placing the Order, unless otherwise expressly agreed in writing by the Company.
- (b) Where the Contract provides for insurance during transit to be effected by the Company then the Company may present a document in any form (endorsed by the Company) purporting to certify that insurance has been effected (whether or not the Goods are therein specifically referred to or not) which shall be accepted by the Buyer in the place of a policy of insurance.
- (c) Title to the Goods shall in no case pass from the Company until the full contract price has been received by the Company. The Company shall in any event have a particular and general lien over the Goods for all claims by the Company against the Buyer and all monies owing by the Buyer to the Company under any contract whatsoever.
- (d) If default is made in due payment for any Goods supplied and invoiced the Company reserves the right to suspend the manufacture or delivery of any further Goods and to determine any unexecuted Contract with the Buyer without prejudice to any other remedy the Company may have.
- (e) If the Buyer becomes bankrupt or insolvent, or compounds or makes any arrangement with his creditors, or being a Company goes into liquidation or has a receiver appointed of its assets, or in the event of any breach of the Contract by the Buyer, the Company may stop any Goods in transit and suspend further deliveries, and may determine the Contract without prejudice to any other rights which the Company may have.
- (f) Any liability of the Company under the Contract shall be suspended and unenforceable by the Buyer whilst the Buyer is in default of the terms of payment or any other of the Buyer's obligations under the Contract.

The following conditions shall be substituted for Condition 6 (e).

19.2. Storage

If the Company, within 14 days of notifying the Buyer that the Goods are ready for despatch, does not receive instructions from the Buyer to enable the Company to make despatch, the Company may, at its discretion and if facilities permit, allow the Goods to be stored at its works and in which event the Buyer shall pay a reasonable charge for such storage and for any handling or transport of such Goods which may be involved in any such case where the Company is unable to effect despatch the Buyer shall pay for the Goods as if they had been presented for shipment.

The following further conditions shall apply:

19.3. Licences

- (a) Should any licence be necessary for the importation of the Goods into the Buyer's country the Buyer shall state the type of licence and its issue number on his official form.
- (b) The acceptance of any Order is subject to the issue by the appropriate department of the Government of the United Kingdom of any necessary export licence and also to such approval as may be required for the export of any component of United States of America origin, import and end users certificates may be required for the issue of such certificates.

20. Cancellation

In the event of order cancellation, Dialight BLP reserves the right to implement a cancellation charge of up to 100% of the order value.