

Excelitas Noblelight Ltd. – Terms and Conditions of Sale

1. DEFINITIONS AND EXPLANATION

1.1. In these conditions:

"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;

"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 Seller;

"Contract" means the Contract for the purchase and sale of the Goods in accordance with these Conditions;

"Force Majeure Event" has the meaning given in Clause 8.9;

"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

"Order" the Buyer's order for the goods as set out in the Buyer's purchase order form or in the Buyer's written acceptance of the Seller's quotation;

"Seller" means Excelitas Noblelight Limited, (whose registered office is at Cambridge Science Park, Milton Road, CB4 0GQ Cambridge) or any of its subsidiaries or subsidiary undertakings as defined by Section 1159 Companies Act 2006;

"Writing" includes facsimile and emails and comparable means of communication.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any Order, which is accepted by the Seller, by the issue of a purchase acknowledgement. No Contract will arise between the Buyer and the Seller until such purchase acknowledgement is issued. All Goods are supplied subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

2.2. It is a condition of this Contract and the supply of Goods that any Goods supplied by the Seller must not in any circumstances be used where their failure could directly endanger life.

2.3. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and of the Seller.

2.4. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it is not relying on any statement, promise or representation made or given by or on behalf of the Seller, which is not set out in the Contract, or given in Writing in accordance with Clause 2.5. Any samples, drawings, descriptive matter, or advertising issued by the Seller and any descriptions or illustrations contained in the Seller'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 or any other contract between the Seller and the Buyer for the sale of the Goods.

2.5. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not obtained in Writing from an employee or agent authorised by the Managing Director of the Seller (a list of such employees or agents are available on request) is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.6. 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 Seller shall be subject to correction without any liability on the part of the Seller.

2.7. All industrial or intellectual property rights of any nature whatsoever in the Goods remain vested in the Seller at all times.

3. ORDERS AND SPECIFICATIONS

3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's purchase acknowledgement.

3.3. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, or utilising tooling, software or other goods or equipment supplied by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification or use of such tooling, software or other goods or equipment.

3.4. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5. Save as set out in Clause 4 below no order which has been accepted by the Seller may be cancelled by the Buyer except with the prior agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.

4. PRICE OF THE GOODS

4.1. The price of the Goods shall be as per the Seller's purchase acknowledgment.

4.2. The Seller may increase the price of the Goods by giving notice to the Buyer at any time before delivery to reflect any increase in the costs of materials or other costs of manufacture of the Goods, costs of transport, foreign exchange fluctuation, taxes, customs, levies and other public or administrative duties. The Buyer is entitled to terminate the Order by giving written notice to the Seller within 14 days after receipt of the notification about the price adaption, otherwise the increased purchase price shall be deemed accepted.

4.3. All prices quoted are valid for 60 days after which time they may be altered by the Seller on giving notice to the Buyer. If the Buyer is acting as a "Consumer", as defined by the Unfair Terms in Consumer Contracts Regulations 1999, the Buyer may within 7 days of receipt of such notice cancel the Contract.

4.4. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance which shall be the standard charges of the Seller's preferred supplier applicable at the date of shipment.

4.5. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. TERMS OF PAYMENT

5.1. The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2. The Buyer shall pay the price of the Goods in cleared funds within 30 days after the date of the Seller's invoice, and the time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3. The Buyer shall pay all amounts due under their Contract and for and without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

5.4. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.4.1. cancel the Contract or suspend any further deliveries to the Buyer;

5.4.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

5.4.3. charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and

5.4.4. charge the Buyer and the Buyer shall indemnify the Seller on demand from and against all costs and expenses incurred by the Seller (including, but not limited to, all administrative and legal costs) in obtaining the monies owed by the Buyer to the Seller.

6. DELIVERY

6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless stipulated by the Seller in the purchase acknowledgement. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller 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 shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or other instructions that are relevant to the supply of the Goods.

6.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2. after one month after the date when delivery should have taken place 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.

6.6. If delivery is delayed by industrial dispute or any circumstances beyond the Seller's control then the periods for delivery shall be extended by such a period as is reasonable in the circumstances. Should any delay continue for a period exceeding six months then, unless the parties agree to the contrary, the Contract shall be deemed to be terminated without any claim for compensation against the Seller.

7. RISK AND PROPERTY

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1. in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title to the Goods shall not pass to the Buyer until the Seller 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 Seller to the Buyer for which payment is then due.

7.3. Until such time as the title in the Goods passes to the Buyer, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4. Subject to Clause 7.3, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

7.4.1. it does so as principal and not as the Seller's agent; and

7.4.2. title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

7.5. If one of the events listed in Clause 9.2 applies and until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), then the Buyer's right to resell the Goods under Clause 7.4 shall automatically cease and the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.6. The Buyer 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.7. Save as otherwise stated therein, the provisions of this Clause 7 shall survive the termination of any Contract made pursuant to these Conditions for whatever reason and in particular but without limitations by the Seller by the acceptance or repudiation of this Contract by the Buyer.

8. WARRANTIES AND LIABILITY

The price of Goods is based, in part, on the limits on the Seller's liability in these Conditions. The Buyer's attention is drawn in particular to the conditions 8.2 to 8.10 (inclusive). In setting these limits the Seller has had regard to its insurance cover, copies of which are available on request. The Buyer should make sure it has in place adequate insurance cover.

8.1. Subject to the conditions set out below the Seller warrants that on delivery and for a period of 12 months from the date of delivery ("the Warranty Period"), the Goods will:

- 8.1.1. correspond in all material respects with their specification; and
- 8.1.2. be free from material defects in design, material and workmanship.

8.2. Subject to Clause 8.3 below, if:

- 8.2.1. the Buyer gives notice in Writing to the Seller, during the Warranty Period, on delivery, or if the defect or failure was not apparent on reasonable inspection of the Goods, within five business days after the Buyer becomes aware of the defect or failure;
 - 8.2.2. the Seller is given a reasonable opportunity of examining such Goods; and
 - 8.2.3. the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost,
- the Seller shall, at its option, repair or replace the defective Goods or refund the price of the defective Goods (or a proportionate part of the price).

8.3. The Seller shall not be liable for any Goods' failure to comply with the warranty set out in Clause 8.1 in any of the following events:

- 8.3.1. the defect arises as a result of any drawing, design or specification supplied by the Buyer;
- 8.3.2. the defect arises as a result of fair wear and tear, willful damage, negligence, abnormal working conditions;
- 8.3.3. the Buyer makes any further use of the Goods after giving notice in accordance with Clause 8.2;
- 8.3.4. the defect arises because the Buyer has failed to follow the Seller's instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same, including where the Goods have been used in circumstances where their failure could directly endanger life in breach of Clause 2.1;
- 8.3.5. the defect arises as a result of any parts, materials or equipment not manufactured by the Seller (to the extent that the benefit of any warranties made or provided by the manufacturer of the Goods (or the relevant parts) can be assigned to the Buyer, the Seller shall assign them to the Buyer;

8.3.6. the Buyer or a third party alters or repairs the Goods without the Seller's approval in Writing.

8.4. Except as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law, including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 (as amended) are excluded to the fullest extent permitted by law.

8.5. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

8.6. Notwithstanding anything else in the Contract, nothing shall limit or exclude the Seller's liability for:

- 8.6.1. death or personal injury caused by the Seller's negligence or the negligence of the Seller's employees, agents or subcontractors;
- 8.6.2. fraud or fraudulent misrepresentation;
- 8.6.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (as amended);
- 8.6.4. any matter in respect of which it would be unlawful for the Seller to exclude liability.

8.7. Subject to Clause 8.6:

- 8.7.1. the Seller shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, special or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, arising out of or in connection with this Contract, the supply of the Goods or their use or resale by the Buyer;
- 8.7.2. the Seller's entire aggregate liability to the Buyer in respect of all other losses arising under or in connection with the Contract whether for tort (including negligence), breach of contract, breach of statutory duty or otherwise shall in no circumstances exceed 150% of the price of the relevant Goods paid by the Buyer under the relevant Order.

8.8. Neither party shall be liable to the other party or be deemed to be in breach of these Conditions for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving its own workforce or third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

8.9. In the event of that the affected party is prevented from carrying out its obligations under this Contract due to a Force Majeure Event, the affected party shall give notice of suspension as soon as is reasonably possible to the other party stating the date and the extent of the suspension and its cause. The Seller shall resume the performance of its obligations as soon as reasonably possible after the removal of the Force Majeure Event and shall so notify the other party. In the event that the cause continues for more than one month either party may terminate this Contract by giving the other party notice in Writing.

8.10. Except as provided in this Clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out at Clause 8.1.

9. INSOLVENCY OF BUYER

9.1. If the Buyer becomes subject to any of the events listed in Clause 9.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

9.2. For the purposes of Clause 9.1, the relevant events are:

- 9.2.1. the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- 9.2.2. the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer; or
- 9.2.3. (being an individual) the Buyer is the subject of a bankruptcy petition or order; or
- 9.2.4. a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 9.2.5. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer; or
- 9.2.6. (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver; or
- 9.2.7. a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets; or
- 9.2.8. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 9.2.1 to Clause 9.2.7 (inclusive); or
- 9.2.9. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 9.2.10. the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 9.2.11. (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10. EXPORT TERMS

10.1. In this Clause 10 "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

10.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

10.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

10.4. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered EXW (Ex Works) Seller's premises at the standard rates of the Seller's preferred supplier at the date of shipment.

10.5. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

11. GENERAL

11.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice is deemed to have been served as follows:

- 11.1.1. if personally by facsimile or E-mail, at the time of delivery;
- 11.1.2. if posted, at the time of expiration of 48 hours or (in the case of airmail) 7 days after the envelope containing the notice is posted.

11.2. Unless specifically stated to the contrary no failure or delay by either party in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Conditions shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.4. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.5. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

11.6. The Contract shall be governed by the laws of England, and the parties hereby submit to the non-exclusive jurisdiction of the English Courts for all purposes arising in connection with the Contract.

11.7. The Buyer shall not without the prior written consent of the Seller assign, transfer, charge, declare a trust over or deal in this Contract or its rights under it or part of it, or purport to do any of the same.

11.8. The Seller may at any time assign, transfer, charge, subcontract or deal in any other matter with any or all of its rights or obligations under the Contract.