

# General Conditions of Sale of Cooper Lighting and Safety Ltd

## 1. General

- 1.1 In these Conditions of Sale (the Conditions) the Company means Cooper Lighting and Safety Limited, the Goods mean any item of whatsoever nature which is to be sold or supplied by the Company including services; and the Purchaser means the person, association, firm or body corporate (collectively person) which receives a quotation from the Company for, or buys or has agreed to buy, Goods.
- 1.2 All quotations are made and all orders are accepted subject to the following terms and conditions and no addition thereto or variation therein shall be made unless agreed in writing by the parties.
- 1.3 These Conditions shall apply to and form part of every contract of sale entered into by the Company (a Contract). All orders are accepted and executed on the understanding that the Purchaser is bound by these Conditions. Where there is any inconsistency between these Conditions and any conditions that the Purchaser seeks to impose, these Conditions shall prevail. These Conditions, together with any special terms and conditions agreed in writing by the parties, and any documents referred to in the Conditions or elsewhere in the Contract, shall constitute the entire agreement between the Company and the Purchaser and supersede any previous agreement or arrangement between them relating to the subject matter thereof. This Contract may not be amended or varied except in writing duly executed by the parties.
- 1.4 A Contract shall be formed when acceptance of the Purchaser's order is confirmed in writing by the Company or by (and to the extent of) the Company's commencement of performance.
- 1.5 No person other than a party to a Contract shall be entitled to enforce any term of it (save for a person to whom any rights and/or obligations contained in the Contract are assigned or novated by written agreement to the extent of any such rights).

## 2. Quotations and Orders

- 2.1 The Company reserves the right to refuse the acceptance of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn within such period.
- 2.2 A quotation by the Company does not constitute an offer and the Company may withdraw or revise any quotation at any time prior to the Company's acceptance of the Purchaser's order. The Company's quotation to supply Goods is valid for 30 days from the date submitted to the Purchaser, unless withdrawn prior to receipt of the Purchaser's acceptance or extended by the Company in writing. To the extent a quotation relies on third party information and the Company later determines a material alteration may be needed in the Goods specification or method of manufacture, the Company may amend or withdraw the quotation as it sees fit, regardless of the Purchaser's prior acceptance thereof.
- 2.3 Orders may be accepted in whole or in part, unless previously agreed in writing to the contrary. Shipment of less than an entire order shall be deemed acceptance of only the portion shipped. Written or oral acknowledgement of an order does not constitute acceptance of the un-shipped portion of the order.
- 2.4 No order accepted by the Company may be cancelled or varied by the Purchaser except with the Company's agreement in writing on terms including (without limitation) indemnification of the Company against any cost, loss or damage suffered or incurred as a result of such cancellation or variation.

## 3. Prices

- 3.1 The price payable for Goods shall, unless otherwise stated by the Company in writing, be the list price of the Company current at the date of despatch, and in the case of an order for delivery by instalments the price payable for each instalment shall be the list price of the Company current at the date of despatch of such instalment. Subject thereto, ALL PRICES AND TERMS ARE SUBJECT TO CHANGE WITHOUT NOTICE.
- 3.2 The Purchaser shall indemnify and hold harmless the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Purchaser's instructions or lack of instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or fault on the part of the Purchaser, its servants, agents or employees. The price of the Goods shall be due in full to the Company in accordance with the terms of the Contract and the Purchaser shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- 3.3 All prices are subject to the addition of Value Added Tax and all other applicable taxes and duties at the appropriate rate.

## 4. Descriptive Matter and Illustrations

- 4.1 All descriptive and forwarding specifications, drawings and particulars of weights and dimensions issued by the Company are approximated only and are intended only to present a general idea of the Goods to which they refer and shall not form part of the Contract.
- 4.2 Any data, technical information or performance figures provided by the Company are based on tests performed under standard conditions and cannot be guaranteed under different conditions.
- 4.3 The Company may make any changes in the specification of Goods as required to conform with any applicable safety or other statutory or EC requirements and/or which do not materially affect their quality or performance.

## 5. Despatch Times

- 5.1 Any times quoted for despatch are to be treated as estimates only and the Company shall not be liable for failure to despatch within such time unless the Purchaser has suffered loss thereby and the amount payable in respect thereof shall have been agreed in writing prior to despatch as liquidated damages, in which case the Company's liability shall be limited to the amount so agreed to be paid. In all cases, whether a time for despatch be quoted or not, the times for despatch shall be extended by a reasonable period if delay in despatch is caused by instructions or lack of instructions from the Purchaser, or by industrial dispute, or by any cause whatsoever beyond the Company's reasonable control.

## 6. Storage

- 6.1 If by reasons of instructions or lack of instructions from the Purchaser despatch in accordance with the Contract is delayed for 14 days after the Purchaser has been notified that the Goods are ready for despatch, the Purchaser shall take delivery or arrange for storage and for purposes of Clause 13 (Payments) and Clause 12 (Risk and Retention of Title) the Goods shall thereupon be deemed to have been delivered, provided that if the Purchaser should fail to take or arrange for such delivery, without prejudice to any other right or remedy

available to the Company, the Company may:

- (a) store the Goods until actual delivery, and charge the Purchaser for the reasonable costs (including handling and insurance) of storage; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract; or
- (c) terminate by written notice the Contract with immediate effect.

## **7. Delivery**

- 7.1 Unless otherwise specified in the Company's tender, the price quoted includes delivery by any method of transport at the Company's option within the mainland of Great Britain.
- 7.2 Subject to the delivery area, the Company can arrange a Next Day delivery service at additional cost as quoted below.
  - Small Parcels (up to 20kg) £20
  - Large Parcels (20kg to 50kg) £35
  - Any of the above overnights to site £50
  - 1 or 2 Pallets £75 each
  - Over 2 Pallets price on application
- 7.3 Our minimum order value for free delivery is £300 N.I.V. On orders below £300 N.I.V. an additional handling charge of £35 will be applied.
- 7.4 Deliveries are to the normal agreed delivery address of the account. Deliveries to site are at the discretion of the Company or by prior agreement in writing only and may be charged for.

## **8. Loss or Damage in Transit**

- 8.1 All claims related to loss, shortage, damage or breakage to Goods received shall be registered in writing within 5 days of delivery. Claims outside this period will not normally be considered by the Company. Full notification in writing shall be received in the above period, notifying the Company (and carrier when delivery is arranged by the Purchaser) of Advice Note number, date of delivery, catalogue numbers and details of faulty and/or missing Goods. A fax number (01302 303979) and an e-mail address (returns@cooper-ls.com) are available to speed this process.
- 8.2 Subject to the above, when the price quoted includes delivery, the Company shall repair or replace free of charge or give credit for Goods damaged in transit or not delivered in accordance with the Advice Note, as verified by the Company, in satisfaction of any liability of the Company in such circumstances. Where the price does not include delivery and/or the Purchaser makes delivery arrangements, the Goods are sent at the Purchaser's risk.

## **9. Return of Goods**

- 9.1 Goods returned without the written permission of the Company cannot be accepted and will be redirected to the Purchaser, at the Purchaser's cost, on the next available delivery.
- 9.2 At the Company's discretion, Standard Products (as listed in the Company's current Published Price List) are acceptable for return. This must be within one year of purchase and provided they are unused, in mint condition and the packaging is in acceptable condition. These will be subject to a handling charge of 25% of the original invoiced value. Application for the return of products must be made to the Company's local representative and permission obtained prior to the submission of a debit note. Original invoice numbers and catalogue numbers must also be quoted.
- 9.3 The returns facility does not apply to products containing lead acid batteries.
- 9.4 Custom, Modified and Obsolete products are all non-returnable.
- 9.5 Where Goods are debited as available for collection and are subsequently are not available, after the second attempt to collect, the debit note must be withdrawn.

## **10. Rejection**

- 10.1 Unless otherwise agreed, Goods rejected by the Purchaser as not complying with the Contract must be so rejected within 5 days of receipt by the Purchaser by immediate notice in writing to the Company.

## **11. Force Majeure**

- 11.1 The Company shall be under no liability for any loss or injury suffered by the Purchaser where the Company is prevented from carrying out any provisions of the contract as a result of any cause beyond its reasonable control including (but not limited to) Acts of God, legislation, war, fire, drought, failure of plant or power supply or collapse of structure, lock-out, strike or other action taken by employees in contemplation of furtherance of a trade dispute or owing to any inability to procure materials required for the performance of the contract. The contract shall be suspended during such delay but upon cessation of the cause of delay, the contract shall again become fully operative provided that if such delay shall exceed a period of twelve months, either party may give written notice of termination of this contract and thereupon the contract shall terminate.

## **12. Risk and Retention of Title**

- 12.1 The Goods shall be at the Purchaser's risk of loss or deterioration or of damage to the Goods or any part thereof, subsequent to delivery.
- 12.2 Notwithstanding that the Purchaser, its servants, agents and employees may obtain possession of the Goods, the property in the Goods shall remain with the Company until all sums payable at any time by the Purchaser to the Company whether under this Contract or under any other contract (including interest) have been discharged in full and unconditionally. The Purchaser shall as a mere bailee and on a fiduciary basis for the Company, store the Goods while in his possession in such a way that they can be readily identified as the sole and absolute property of the Company.
- 12.3 Pending payment of the full purchase price of the Goods the Purchaser shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire and theft in an amount at least equal to the balance of the price for the same from time to time remaining outstanding.
- 12.4 If before such payment in full, the Goods shall be sold or otherwise disposed of to a third party, the Company shall be entitled to all monies and rights which, but for these provisions, would otherwise be due to the Purchaser arising from such sale or disposition and the Purchaser shall (if required by the Company) assign to the Company, or as the Company may direct at the Purchaser's cost, any claim against such third party.

- 12.5 The Company reserves the right to deal with its property in any manner it thinks fit and shall be at liberty at any time to retake possession of the same or any part thereof and for that purpose the Purchaser irrevocably authorises the Company, its officers, servants and agents to enter without notice into or upon any premises of the Purchaser or upon any premises of which the Purchaser has possession or control. The Purchaser irrevocably instructs all and any of its officers, servants or agents to deliver up any such property in their possession.
- 12.6 If any of the Goods shall be incorporated into other Goods which are the property of the Purchaser before the price is paid in full the property in the whole of such Goods shall be and shall remain with the Company until the price has been paid in full and all the Company's rights hereunder in the Goods shall extend to those other Goods.

### **13. Payments**

- 13.1 Subject to Clause 13.2 below, payment shall be received by the Company no later than the last day of the month following the month of invoice, unless other payment terms have been agreed in writing.
- 13.2 The granting of credit facilities is at the Company's sole discretion and the Contract shall be subject to the Company's 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 despatch, 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.
- 13.3 The time of payment of the invoiced amount shall be of the essence of the Contract.
- 13.4 Without prejudice to any other rights the Company reserves the right to suspend and/or cancel further deliveries of Goods under any Contract with the Purchaser without notice if the Purchaser fails to settle his account on the due date and further to charge the Purchaser interest (both before and after any judgement) on the amount unpaid at the rate of 1.5 percent per annum above NatWest Bank 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).

### **14. Samples**

- 14.1 Unless expressly agreed between the parties to the contrary, samples must be returned within 90 days of receipt. The Company reserves the right to charge for any product samples not returned in good order within 90 days of receipt.

### **15. Warranty**

- 15.1 SUBJECT TO THE LIMITATIONS ON ITS LIABILITY SET OUT IN THIS CLAUSE 15 AND ELSEWHERE IN THESE CONDITIONS, THE COMPANY WARRANTS THAT THE GOODS WILL CORRESPOND WITH THE COMPANY'S SPECIFICATION AND BE FREE OF DEFECTS IN MATERIALS OR WORKMANSHIP AT THE TIME OF DELIVERY. SAVE AS AFORESAID, ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS EXPRESS OR IMPLIED WHETHER BY STATUTE, COMMON LAW OR OTHERWISE IN RELATION TO THE GOODS (APART FROM TERMS IMPLIED AS TO TITLE UNDER THE SALE OF GOODS ACT 1979) ARE HEREBY EXCLUDED.
- 15.2 The Company will make good, by repair or by the supply of a replacement at the Company's option, defects which, under proper use, appear in the Goods within a period of twelve calendar months (or such period as may be advised on specific Goods from time to time) after the Goods have been delivered and arise solely a failure to conform to the warranty above; provided always that non-conforming parts have been returned to the Company if the Company shall have so required. The Company shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered by the Company free of charge.
- 15.3 Nothing in these Conditions shall exclude or limit the Company's liability for fraud or for death or personal injury caused by its negligence or any other liability to the extent that the same may not be excluded or limited as a matter of law (but except as so provided the Company does not accept, and hereby excludes, any liability for negligence).
- 15.4 The warranty given in this Clause 15 is subject to the following provisos, namely:
- (a) that the Purchaser shall have followed all instructions issued by the Company in relation to and not neglected, misused or improperly altered or repaired the Goods;
  - (b) that (i) 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 have notified the Company of the defects in writing within ten working days of delivery; or (ii) in the case of any other defects, the Purchaser shall have notified the Company of the defects in writing within five working days of the date when the defect became apparent (provided such notice shall have been given during the warranty period set forth in Clause 15.1 above);
  - (c) that the defect has not arisen from or is attributable to any drawing, design or specification supplied by the Purchaser;
  - (d) that the warranty in this Clause 15 does not cover fair wear and tear;
  - (e) that the warranty in this Clause 15 does not extend to parts, materials or equipment not manufactured by the Company; and
  - (d) that where in discharge of its obligations under the warranty given in this Clause 15 the Company agrees that the Purchaser may undertake any repair or remedial work on its behalf, the cost of such work shall have been agreed in writing between the Purchaser and the Company before the commencement of any such repair or remedial work.
- 15.5 The Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.
- 15.6 Without prejudice to Clause 15.3, and notwithstanding the unenforceability or invalidity of any other provision in these Conditions, the Company's maximum aggregate liability arising out of or in connection with Goods and/or a Contract or any collateral contract, whether arising in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the contract price of the Goods in respect of any single event or series of connected events.

### **16. Third Party Rights**

- 16.1 In the event of any claims being made or action brought against the Purchaser in respect of infringements of patents, copyrights or other rights of third parties by the use, manufacture or sale of any article supplied by the Company immediate written notification must be given to the Company, who shall be at liberty with the assistance of the Purchaser if required, at the Company's expense to conduct all negotiations for settlement of the same or any litigation that may arise therefrom. Subject to such notification and control of any proceedings, the Company will indemnify the Purchaser in respect of such claims, provided always that:
- (a) the Goods in question have not been used for any purpose other than those for which they were sold; and
  - (b) the Purchaser has made no admission, payment or compromise in respect of the alleged infringement without the prior written consent of the Company;

- (c) the Purchaser has done nothing which would or might vitiate any insurance policy or cover which the Purchaser might have in relation to such infringement and has used its best endeavours to recover any sums due thereunder (and this indemnity does not apply to the extent that the Purchaser recovers any sums under any such policy or cover);
  - (d) the Company is entitled to the benefit of, and the Purchaser has accordingly accounted to the Company for, any damages and costs payable to the Purchaser by any other party in respect of any such claim; and
  - (e) without prejudice to any duty of the Purchaser at common law, the Company is entitled to require the Purchaser to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Purchaser under this Clause 16.
- 16.2 The Purchaser shall indemnify and hold harmless the Company at all times from and against any and all actions, claims, losses (including, without limitation, economic loss, loss of profit, revenue or goodwill) damages, costs (including legal costs) and expenses incurred by, or awarded against, the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for alleged infringement of any rights of any third party as a result of the carrying out by the Company, its servant, subcontractor or agent of any work required to be done to Goods in accordance with the requirements or specifications of the Purchaser.

## **17. Copyright**

- 17.1 All drawings descriptions and other information supplied by the Company together with the copyright therein shall remain the property of the Company.

## **18. Arbitration**

- 18.1 If at any time any questions, dispute or difference whatsoever shall arise between the Purchaser and the Company upon, in relation to or in connection with the contract, either the Purchaser or the Company may give to 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 14 days of receipt of such notice, of some person appointed by the President for the time being of the Institution of Electrical Engineers, provided that either party may seek provisional or interim relief from any court of competent jurisdiction without waiver of this Clause.

## **19. Insolvency**

- 19.1 This Clause 19 applies if:
- (a) 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) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - (b) an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Purchaser; or
  - (c) the Purchaser ceases, or threatens to cease, to carry on business; or
  - (d) 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.
- 19.2 If this Clause 19 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 price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **20. Statutory and other Regulations**

- 20.1 If the cost to the Company of performing its obligations under the Contract shall be increased or reduced by reason of making or amendment after the date of tender of any law or of any orders, regulation, or bye-law having the force of law that shall affect the performance of the Company's obligations under the Contract, the amount of such increase or reduction shall be added to or deducted from the contract price as the case may be.

## **21. Legal Construction**

- 21.1 Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 21.2 If any provision or part of a provision of these Conditions is or shall be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Conditions, all of which shall remain in full force and effect.
- 21.3 The Purchaser may not assign all or any of its rights or obligations under any Contract without the prior written consent of the Company.
- 21.4 Any notice to be given pursuant to these Conditions shall be deemed to have been duly given to a party if delivered by hand or sent by special delivery or facsimile to that party's registered office or principal place of business or such other address as may have been notified pursuant to this provision to the party giving the notice. Notices shall be deemed to have been served on delivery if delivered by hand or 48 hours after despatch if sent by special delivery and notices sent by facsimile shall be deemed to have been served when sent. In proving service by hand delivery or by special delivery it shall be sufficient to prove that the notice was properly addressed and delivered and in proving service by facsimile, it shall be sufficient to provide evidence of a successfully completed transmission report to the relevant facsimile number.
- 21.5 Unless otherwise agreed in writing the Contract shall in all respects be construed and operate as an English contract and in conformity with English law.

1st January 2008