

VEXICA TECHNOLOGY LTD

Terms & Conditions of Sale of Goods

In these conditions, unless the context requires otherwise:

'Buyer' means the company, firm, body or person purchasing the Goods;

'Goods' means the subject matter of the contract including (but not limited to) lighting goods and equipment (howsoever powered) and whether one or a number of items whether or not identical or similar;

'Order' means a purchase order in respect of the Goods issued by the Buyer to the Supplier on the Buyer's official purchase order form, together with all documents referred to in it;

'Supplier' means Vexica Technology Limited (company number 07097823) whose registered office is at Typhoon House, Moxon Way, Sherburn In Elmet, Leeds, LS25 6FB or any subsidiary or associated company of the Supplier by which the Goods are sold.

1. GENERAL

- 1.1. The Supplier's quotations are not binding on the Supplier and a contract (the 'Contract') will only come into being when the Supplier has issued a confirmation/acknowledgement of order form to signify its acceptance of the Order and the Buyer has signed the specification and payment forms, or upon the supply of the Goods ordered, and the following conditions shall be deemed to be incorporated in the Contract.
- 1.2. The Supplier is not under any obligation to process the Contract and the lead time for collection shall not run until the Supplier is in receipt of a specification and payment form signed by the Buyer and an Order.
- 1.3. These conditions shall be incorporated into any Contract between the parties. All the terms of Contract between the parties are contained or referred to in these conditions. Unless otherwise specifically agreed in writing these conditions shall apply to each Order by the Buyer. In the event of any inconsistency between the parties (including without limitation the Order, confirmation of order, specification or other documents) these conditions shall prevail. No variation of these conditions shall be applicable to any such Order unless expressly accepted in writing by the Supplier.
- 1.4. Where Goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.
- 1.5. Quotations submitted by the Supplier shall remain valid for a period of 30 days from the date of the quotation, unless in the quotation some other period is specified or accepted, or the tender is withdrawn by the Supplier.
- 1.6. The Buyer must ensure that the terms of its Order (including the quantity, quality, delivery details and the extent of any services to be provided) are complete and accurate.
- 1.7. All drawings, descriptive matter, specifications and advertising issued by the Supplier and descriptions or illustrations contained in the Supplier's catalogues or brochures and representations and specifications made or issued by the Buyer are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.
- 1.8. The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed in writing by the Supplier. In entering into a Contract, the Buyer acknowledges that it does not rely upon any such representations, which are not so confirmed.

2. PRICES

- 2.1. Prices are ex-works Leeds, UK and exclude VAT and delivery charges. Commissioning is not included if not in quotation nor additional cabling cost which may be required to suit the installation scheme.
- 2.2. The price payable for the Goods shall be the price contained in the quotation provided by the Supplier to the Buyer which shall remain valid for a period of 30 days; after the expiry of this period, the price payable for the Goods shall be the prevailing price as published in the price list current at the date the Order is accepted by the Supplier. If no quotation is provided the price payable for the Goods shall be the prevailing price shall be the list price current at the date the Order is accepted by the Supplier.
- 2.3. The price stated in the Contract is based on the cost to the Supplier of components, fuel and power, transport and labour and all other costs at the date of acceptance of the Order (whichever is earlier). If at the date of despatch of the Goods from the Supplier's works there has been any increase in all or any of such costs, the price payable for the Goods may at the request of the Supplier be increased accordingly.
- 2.4. Where the price for the Goods is varied in accordance with conditions 2.2 and 2.3, the price, as varied, shall be binding on both parties and shall not give either party any option of cancellation.
- 2.5. There shall be added to the price for the Goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods (whether initially charged on or payable by the Supplier or the Buyer)
- 2.6. All Goods are sold 'ex works' i.e., the Supplier makes the Goods available at its premises. Risk passes to the Buyer at the point of collection. The Buyer is responsible for collection, loading, transportation and delivery. If the Supplier does load the Goods, it does so at the Buyer's risk. If, at the Buyer's request, the Supplier arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of collection, such costs shall be for the Buyer's account and shall not affect the provisions of the Contract as to the passing of risk. It remains the Buyer's sole responsibility at all times to ensure the Goods are adequately insured against relevant risks from the point of collection.
- 2.7. Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.
- 2.8. The cost of any variation or modification in the design specification, materials or drawings of the Goods, which are required by the Buyer after the order has been acknowledged, shall be borne by the Buyer.
- 2.9. No Contract may be cancelled by the Buyer except with the agreement, in writing of the Supplier and on terms that the Buyer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including cost of all labour and materials used) damages, charges and expenses suffered by the Supplier as a result.

3. TERMS OF PAYMENT

- 3.1. Prices quoted are net and are in sterling unless otherwise agreed. Subject to the credit being approved, accounts are due for payment not later than thirty (30) days following the date of invoice. All payments shall be made without deduction or set-off. When deliveries are spread over a period, each consignment will be invoiced as despatched, and each month's invoices will be treated as a separate account and be payable accordingly.
- 3.2. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the Contract shall entitle the Supplier to suspend further deliveries and work both on the same Order and on any other Order from the Buyer without prejudice to any other right the Supplier may have. The Supplier also reserves the right to charge interest on overdue accounts (after as well as before judgment) such interest to accrue on a day-to-day basis on the amount outstanding in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

The Supplier reserves the right, where genuine doubts arise as to a Buyer's financial position or in the case of failure to pay for any Goods or any delivery or instalment as foresaid, to suspend delivery or performance of any Order or any part of any instalment without liability until payment or satisfactory security for payment has been provided.

- 3.3.** Where Goods are to be delivered outside the United Kingdom payment must be made against delivery of the Goods or shipping documents, FOB UK port unless credit arrangements within the United Kingdom approved by the Supplier have been made

4. TITLE TO GOODS

- 4.1.** Notwithstanding that risk in the Goods shall pass to the Buyer in accordance with condition 7, title to the Goods (whether separate and identifiable or incorporated in or mixed with other Goods) shall remain with the Supplier until payment in full has been received by the Supplier:
- 4.1.1.** For those Goods;
 - 4.1.2.** For any other Goods supplied by the Supplier; and
 - 4.1.3.** For any other monies due from the Buyer to the Supplier on any account.
- 4.2.** Until title to the Goods passes to the Buyer under condition 4.1, the Buyer shall:
- 4.2.1.** Keep the Goods separately and readily identifiable as the property of the Supplier; and
 - 4.2.2.** Not attach the Goods to real property without the Supplier's consent.
- 4.3.** Any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Supplier and the Buyer only) be made by the Buyer as agent for the Supplier.
- 4.4.** Goods shall be deemed sold or used in the order delivered to the Buyer.
- 4.5.** At any time before title to the Goods passes to the Buyer (whether or not any payment to the Supplier is then overdue or the Buyer is otherwise in breach of any obligation to the supplier), the Supplier may (without prejudice to any other of its rights):
- 4.5.1.** Retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorises; and/or
 - 4.5.2.** Require delivery up to it of all or any part of the Goods.
- 4.6.** The Supplier may, at any time, appropriate sums received from the Buyer as it thinks fit notwithstanding any purported appropriation by the Buyer.
- 4.7.** Each condition of this condition 4 is separate, severable and distinct, and, accordingly, in the event of any of them for any reason whatever being unenforceable according to its terms, the others shall remain in full force and effect.

5. WARRANTY; LIMIT OF RESPONSIBILITY

- 5.1.** The Supplier warrants that it will (at the Supplier's choice) either repair or replace, or refund the full purchase price of any Goods which are accepted by the Supplier as being defective or not in accordance with the Contract within a period of one year of despatch from the Supplier or within six months of Sale by the Distributor (the 'Warranty Period'); the Warranty Period can only be amended by written agreement of the Supplier.
- 5.2.** This warranty shall only be valid following registration of the warranty on the Supplier's website.
- 5.3.** This warranty shall not apply where the defect or fault is attributable to:
- 5.3.1.** Any drawing, design or specification supplied by the Buyer; or
 - 5.3.2.** Fair wear and tear, wilful damage, negligence, failure to follow the Supplier's instructions, misuse, alterations or repair, failure or interruption in the electrical supply, abnormal working conditions of the Goods without the Supplier's written approval.
- 5.4.** The Supplier operates a warranty policy for all Goods whereby the cost and the return of the Goods is the responsibility of the Buyer, unless written confirmation from the Supplier is obtained. Where the Supplier has received the Goods and is satisfied that the Goods are faulty, the cost of returning the Faulty Goods shall be refunded by the Supplier to the Buyer. The Supplier shall never be responsible for the removal of the Goods from the premises of the Buyer of the Buyer's customers.
- 5.5.** Nothing in these conditions shall limit or exclude the Supplier's liability for:

- 5.5.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 5.5.2. fraud or fraudulent misrepresentation;
 - 5.5.3. defective products under the Consumer Protection Act 1987;
 - 5.5.4. a consumer's statutory rights; or
 - 5.5.5. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 5.6. Subject to condition 5.9:
- 5.6.1. THE SUPPLIER SHALL UNDER NO CIRCUMSTANCES BE LIABLE TO THE BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR FOR ANY:
 - 5.6.1.1. EXPENSES, LOSS OF PROFITS AND/OR DAMAGE TO GOODWILL;
 - 5.6.1.2. PURE ECONOMIC AND/OR OTHER SIMILAR LOSSES;
 - 5.6.1.3. SPECIAL DAMAGES;
 - 5.6.1.4. AGGRAVATED, PUNITIVE AND/OR EXEMPLARY DAMAGES;
 - 5.6.1.5. CONSEQUENTIAL LOSSES AND/OR INDIRECT LOSSES; AND/OR
 - 5.6.1.6. BUSINESS INTERRUPTION, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF OPPORTUNITY AND/OR PRODUCTION.
 - 5.6.2. THE SUPPLIER'S TOTAL LIABILITY TO THE BUYER IN RESPECT OF ALL OTHER LOSSES ARISING UNDER OR IN CONNECTION WITH THE CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED 125% OF THE PRICE OF THE GOODS.
- 5.7. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment of any Contract or any part of it shall not entitle the Buyer to cancel or refuse delivery of or payment for any other Order, delivery or instalment or any part of the same Order, delivery or instalment.
- 5.8. The Supplier's warranty as herein set forth shall not be enlarged, diminished, or affected by, and no obligation or liability shall arise or grow out of the Supplier's renderings of technical advice, facilities or services in connection with a Buyer's Order of the Goods furnished hereunder. This does not affect the Buyer's statutory rights as a consumer.
- 5.9. The foregoing warranty applies to the Buyer of the Supplier and not to the purchaser or user of the Buyer's Goods.
- 5.10. The Supplier makes no other or further warranty, express or implied, including any warranty of fitness for a particular purpose or warranty of satisfactory quality.
- 5.11. The Buyer is advised to insure against any losses it may sustain which are not covered by this warranty.

6. DELIVERY AND COMPLETION DATES

- 6.1. The dates for delivery of the Goods are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance. The Supplier will not be liable in any circumstances for the consequences of any delay in delivery.
- 6.2. No delay shall entitle the Buyer to reject any delivery or performance or any further instalment or part of the Order or any other Order from the Buyer or to repudiate the Contract or the Order.
- 6.3. If the Contract provides for delivery by instalments the late delivery of any instalment (which shall not be a failure to comply with the delivery date) shall not entitle the Buyer to treat the Contract as at an end and/or reject any other instalment under the same Contract.
- 6.4. Where the Goods are to be delivered in instalments each delivery shall constitute a separate consignment and failure by the Supplier to deliver any one or more of the instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7. DAMAGE, SHORTAGE OR LOSS IN TRANSIT

- 7.1. Unless the Contract otherwise stipulates, the risk in the Goods passes to the Buyer when the Goods are collected and the Supplier accepts no responsibility for any damage or loss in transit. Claims for damage or loss in transit should be made on the carrier and any conditions imposed by the carrier in relation to claims for damage or loss in transit should be complied with.
- 7.2. Where the Contract provides for delivery elsewhere than at the Supplier's works, risk will pass when the Goods are collected.
- 7.3. As provided within 2.6, it remains the Buyer's sole responsibility at all times to ensure the Goods are adequately insured against relevant risks.

8. DELAYED DELIVERY

If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are due and ready for delivery, the Supplier may arrange storage of the Goods at the Buyer's risk and the Buyer shall be liable to the Supplier for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Supplier may have in respect of the Buyer's failure to take delivery of the Goods or pay for them in accordance with the Contract.

9. TERMINATION

If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with its or his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the court shall make an order that the Buyer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertakings of the Buyer or if the Buyer suffers the appointment or the presentation of the petition for the appointment of an administrator or if circumstances shall arise which entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitles the court to make a winding-up order or if the Buyer takes or suffers any similar action in consequence of debt or if the financial responsibility of the Buyer shall, in the opinion of the Supplier, become impaired or if the Buyer shall commit any breach of any part of the Contract, the Supplier may, without prejudice to its rights and remedies under these conditions, stop all Goods in transit and suspend further deliveries and by notice to the Buyer may terminate the Contract immediately.

10. TOLERANCES AND TESTS

- 10.1. Quantities and sizes will, so far as possible, be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Buyer, who shall not be entitled to reject any Goods or to require replacement of any Goods on the ground that they are not precisely as specified.
- 10.2. Unless otherwise specifically agreed, all tests, test pieces and inspections whatever required by the Buyer will be charged extra. All tests and inspection shall take place under the Supplier's standard testing arrangements and such tests shall be final. All tests are subject to analytical tolerances.
- 10.3. All data sheets have a +/- 10 per cent tolerance.

11. INDEMNITY

The Buyer agrees, upon demand to indemnify the Supplier against all losses, damages, injury, costs and expenses of whatever nature suffered by the Supplier to the extent that the same are caused or related to:

- 11.1. designs, drawings or specifications given to the Supplier by the Buyer in respect of the Goods;
- 11.2. defective materials or products supplied by the Buyer to the Supplier and incorporated by the Supplier the Goods; or

11.3. the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer.

12. NON-STANDARD ORDERS

Where the Buyer orders Goods or materials of a type, size, number or quality not normally supplied by the Supplier, the Supplier will use all reasonable endeavours to execute the Order, but if it proves impossible, impracticable or uneconomical to carry out or complete the Order, the Supplier reserves the right to cancel the Contract or the uncompleted balance of it, in which event the Buyer will only be liable to pay for the part of it actually delivered or performed.

13. PACKING

13.1. Unless otherwise specified, packing cases and packing materials will be charged extra but, where stated to be returnable, will be credited in full on return to the Supplier's works carriage paid in good condition, within one month of receipt by the Buyer. Where not returnable, the Buyer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

13.2. The Supplier uses all reasonable endeavours to ensure, where necessary, suitability of packing before despatch, but no claim will be accepted by the Supplier for breakage or damage in transit on the grounds of alleged unsuitability of the packaging.

14. ASSIGNMENT AND SUBCONTRACTING

14.1. None of the rights or obligations of the Buyer under the Contract may be assigned or transferred in whole or in part without the prior written consent of the Supplier.

14.2. The Supplier can assign, transfer or subcontract any work relating to the Contract without obtaining the consent of, or giving notice to, the Buyer.

15. HEALTH AND SAFETY

The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Supplier (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being commissioned, set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above. For these purposes, the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

16. NOTICES

16.1. Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by prepaid first class letter post, facsimile transmission or electronic mail.

16.2. Any notice or document shall be deemed served: if delivered, at the time of delivery, if posted, 48 hours after posting, if sent by facsimile transmission, at the time of transmission and if electronic mail, upon receipt of a delivery receipt.

17. INVALIDITY

The Invalidity, illegality or unenforceability of any provision of these conditions shall not affect the other conditions. If any provision of these conditions is found by any court tribunal, or administrative body of competent jurisdiction to be wholly or partly unlawful, invalid, voidable, unenforceable or unreasonable it shall be deemed severable, and the remaining provisions shall continue in full force and effect.

18. THIRD PARTY RIGHTS

A person who is not party to these conditions or any Contract shall have no right under the Contracts (Rights or Third Parties) Act 1999 to enforce any term of these conditions or any Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

19. LAW AND JURISDICTION

The Contract (and any proceeding whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

20. FITNESS FOR PURPOSE

20.1. Except where the Goods are supplied on the express advice of the Supplier, given in writing, that they are suitable for any particular purpose, it shall not be a term of the Contract that the Goods are sold as fit for any particular purpose, and this notwithstanding that the Supplier may have, or be deemed to have, knowledge of the purpose for which the Goods are required.

20.2. In all cases it is the sole responsibility of the Buyer to ensure that the Goods are entirely suitable for the purpose and location for which they are intended, in particular, but not exclusively the climatic and environmental conditions in which the Goods will be expected to operate. In particular orders for custom made or special Goods will not be accepted by the Supplier until the Buyer has tested them and signed them off as suitable for the purpose as above.

20.3. Orders for parts supplied to OEM's will only be supplied if the Buyer confirms that they have been tested in the ultimate luminaire and location in which they will be used by the OEM client.

20.4. In the event of the Buyer requesting the Supplier to carry out third party testing under 20.2 and 20.3 above the cost of such testing is payable by the Buyer.

21. FORCE MAJEURE

The Supplier shall not be under any liability whatsoever to Buyer for non-delivery or delay in delivery products/services directly or indirectly caused by unforeseen circumstances or resulting from an Act of God; outbreak of hostilities (whether or not war is declared); insurrection; riot; civil disturbance; Government Act or regulation; fire; flood; explosion; production delays; accident; theft; climatic conditions; shortage of material; strike; lockout; or trade dispute (whether the Supplier's or another party's employees); or other cause beyond the Supplier's reasonable control. In the event of any deliveries/services being suspended or delayed on account of any such aforementioned events or circumstances, the period of the Contract shall be correspondingly extended or, if deliveries/services are suspended for six month or more, The Supplier may, at its option, exercisable by notice in writing to Buyer, cancel the Contract with respect to any undelivered products/services without liability upon The Supplier and without relieving Buyer of its obligation to pay for any products/services which have been delivered.

22. GENERAL – ADDITIONAL

22.1. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

22.2. Subject as expressly provided in these conditions and except where the products(s) sold to a person dealing as a consumer all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law. Where the Goods are sold under a consumer transaction the statutory rights of the Buyer are not affected.

22.3. Cancellations to orders (except as provided in condition 2.9) and/or returns (except in respect of faulty Goods) are not accepted and will be invoiced accordingly. Upon receipt of the Goods,

the Buyer shall, within 48 hours carry out an inventory of the Goods received and any discrepancies on Supplier deliveries must be reported immediately. While every effort is made to ensure the accuracy of the design and/or advice that we have provided, please note that it is the Buyer's responsibility to ensure that the product and quality being supplied fully comply with the requirement of the specification. Where the Supplier has given design advice the final responsibility for ensuring that this advice is suitable for the Buyer's purpose resides with the Buyer. The Supplier will not accept any costs associated with correcting any errors or omissions as a result of any advice given.

- 22.4.** No relaxation, forbearance or indulgence by the Supplier in enforcing any of these conditions or the granting of any time by the Supplier shall prejudice, diminish, affect or restrict the rights and remedies of the Supplier or operate as a waiver of any of the conditions.
- 22.5.** The Supplier shall retain the property and copyright in all drawings, specifications and other documented technical information supplied by it. The Buyer will not use or reproduce or disclose the same to any third party without the prior consent in writing of the Supplier and shall return the same on demand.
- 22.6.** Delivery of any repaired or replacement Goods will be at the Supplier's premises.
- 22.7.** If the Supplier is liable for the whole or part or instalments of the Goods supplied, the Contract will remain in force in relation to the other parts of the Goods and no set-off or counterclaim will be made by the Buyer against or in respect of such other parts or instalments.
- 22.8.** The time or times stipulated for payment shall be of the essence of the Contract.

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