

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, the following words and phrases shall have the following meanings:

“**Company**” means Xsen Electrical Wholesalers Ltd where context permits, reference to the “Company” in these Terms and Conditions shall include reference to an employee of the Company.

“**Condition**” means any one or more of these Terms and Conditions.

“**Goods**” means the goods described in the Purchase Order.

“**Order Number**” means the unique number that appears on the Purchase Order.

“**Parties**” means the Company and the Supplier.

“**Price**” means the price for the Goods given in the Purchase Order.

“**Purchase Order**” means an order for the purchase of goods served by the Company on the Customer /Supplier which includes:

- The Order Number
- a description of the Goods;
- the date and, if appropriate, time, for delivery of the Goods;
- details of the delivery address;
- details of the Authority’s address for invoices;
- the Customer /Supplier’s address for notices; and
- the Price; and
- any terms applying to the purchase of the goods which are additional to these Terms and Conditions.

“**Customer /Supplier**” means the person, firm or company whose name appears as the addressee in the Purchase Order.

“**Terms and Conditions**” means these terms and conditions for the supply of goods.

1.2 The headings in these Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions.

1.3 Where the context permits, the use of the singular shall be construed to include the plural, and the use of plural the singular, and the use of any gender shall include all genders.

1.4 References to an Act of Parliament shall be deemed to include any subordinate legislation of any sort made from time to time under that Act.

1.5 References to any statute, enactment, order, regulation, code or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code or instrument as subsequently amended or re-enacted.

2. GENERAL

2.1 These Terms and Conditions together with the relevant Purchase Order, any specifications and plans provided by the Company and any specific guarantee arrangements applying to the Goods constitute the contract between the Parties for the supply of the Goods (the “**Contract**”).

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Purchase Order, the term of the Purchase Order shall prevail.

2.3 The Contract constitutes the entire agreement between the Parties relating to the supply of the Goods and replaces all previous negotiations, agreements, understandings and representations, whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

3. THE GOODS

3.1 The Customer /Supplier shall supply the Goods in accordance with the terms set out in the Purchase Order.

3.2 The Goods shall:

- a) be to the reasonable satisfaction of the Company;
- b) be fit and sufficient for all purposes for which such Goods are generally used and for any specific purpose made known to the Customer /Supplier by the Company;
- c) be of the same quality and description as any sample provided; and

d) comply with any requirements or specifications given on the Purchase Order.

4. DELIVERY

4.1 The Customer /Supplier shall deliver the Goods to the address for delivery given in the Purchase Order.

4.2 Where the Customer /Supplier requires access to the Company's premises in order to deliver the Goods:

a) the Customer /Supplier shall agree delivery times with the Company in advance (unless the Company agrees otherwise);

b) the Customer /Supplier shall comply with any rules or security requirements applied by the Company in relation to access to its premises.

4.3 Except where otherwise agreed by the Company, delivery of the Goods shall include unloading the Goods at such place and in such manner as the Company shall reasonably direct.

4.4 The Customer /Supplier shall deliver the Goods on or (where the Company agrees) before the date or dates given in the Purchase Order. Unless the Purchase Order provides otherwise, the time of delivery is of the essence in this Contract and any failure to deliver the Goods by the date (or at the time) given in the Purchase Order shall entitle the Company to give the Customer /Supplier notice terminating the Contract with immediate effect.

5. PROPERTY AND RISK

5.1 Without prejudice to the Company's other rights and remedies under this Contract, property and risk in the Goods shall pass to the Company on acceptance of delivery.

6. DAMAGE TO GOODS IN TRANSIT

6.1 Any consignment of Goods dispatched by the Supplier for delivery to the Company shall be accompanied by a delivery note prepared by the Customer /Supplier marked with the order number from the Purchase Order. Where applicable, the delivery note shall also specify the means of transport, the place and date of delivery, the number of packages, the content of the packages, the weight and volume of the packages and whether or not the packaging must be returned to the Customer /Supplier.

6.2 Where some or all of the Goods have been damaged in transit (or have failed to arrive at the Company after dispatch by the Customer /Supplier) the Customer /Supplier shall either repair or replace the Goods in question (at the choice of the Company) provided always that:

a) in the case of damage in transit the Company has informed the Supplier of the damage within 30 days of receiving the Goods; and

b) in the case of non-delivery and where the Customer /Supplier has notified the Company of the intended date of delivery, the Company has informed the Customer /Supplier within 10 days of the notified delivery date that the Goods have not been received.

7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Customer /Supplier shall permit the Company to inspect the Goods and shall provide all reasonable assistance to the Company in undertaking an inspection.

7.2 The Company shall not be taken to have waived any of its rights under this Contract (and in particular its right to reject the Goods) if it does not carry an inspection or if it approves the Goods following an inspection.

7.3 The Company may, by written notice to the Customer /Supplier, reject any of the Goods which fail to meet the requirements of this Contract, provided always that the Company gives notice of such rejection within a reasonable time of receiving the Goods.

7.4 If the Company rejects any of the Goods pursuant to this clause, it shall be entitled to:

a) have the Goods concerned either repaired by the Customer /Supplier or (at the choice of the Company) replaced by the Customer /Supplier with Goods which comply with this Contract; or

b). obtain a refund of any payment it has made to the Customer /Supplier

7.5 Subject to any alternative guarantee arrangements made between the Company and the Customer /Supplier, the guarantee period applicable to the Goods shall be 12 months from the Company putting the Goods into service or 18 months from delivery (whichever is the shorter).

7.6 If, within the guarantee period or within 30 days thereafter, the Company gives the Customer /Supplier written notice of any defect which arose within the guarantee period under proper and normal use of the Goods, the Customer /Supplier shall remedy such defect as quickly as possible (whether by repair or replacement, as the Company shall choose) without cost to the Company.

7.7 Any Goods rejected or returned to the Supplier shall be returned at the Customer /Supplier's expense.

8. LABELLING AND PACKAGING

8.1 The Goods shall be appropriately packaged and clearly labelled. The labelling and packaging shall comply with any reasonable requirements of the Company of which the Customer /Supplier is aware, and with any statutory requirements. In particular, if the packages contain any material, which is hazardous, noxious or dangerous, this shall be clearly indicated.

8.2 All packaging shall be considered non-returnable and shall be destroyed unless the Customer /Supplier indicates in the advice note accompanying the consignment of Goods that the packaging will be charged for unless it is returned. The Company shall only accept liability for packaging that does not arrive at the Supplier's premises following dispatch by the Company if the Customer /Supplier informs the Company of its non-arrival within 10 days of receiving notification from the Company that the packaging has been despatched.

9. INSTALLATION

9.1 Where the Purchase Order requires the Customer /Supplier to install the Goods at the Company's premises:

- a) the Customer /Supplier shall make no delivery of plant, materials or equipment and shall not commence any installation work without the prior consent of the Company;
- b) the Customer /Supplier shall carry out the installation work diligently and with reasonable skill and care;
- c) the Customer /Supplier shall comply with the Company's requirements relating to access to and use of its premises and shall co-ordinate its work with any other employee or contractor who is carrying out work for the Company; and
- d) the Customer /Supplier shall keep the Company's premises clean and tidy at all times and shall remove all plant and unused materials when the installation work is complete.

9.2 The Company shall have the power at any time during any installation works to give notice to the Supplier requiring:

- a) the removal from its premises of any materials which are hazardous or noxious or not in accordance with the Contract;
- b) the substitution of proper and suitable materials; and/or
- c) the removal and re-execution of any installation work or any Goods which are not in accordance with the Contract.

10. PAYMENT

10.1 In consideration of the supply and delivery of the Goods by the Customer /Supplier, the Company shall pay the Supplier the Price.

10.2 The Customer /Supplier shall submit an invoice for the Goods to the Company's address for invoices given in the Purchase Order. The invoice shall contain the Order Number given in the Purchase Order, a full description of the Goods supplied and the Price.

10.3 Save where the Goods have not been delivered or are not in accordance with the Contract, the Company shall pay the Customer /Supplier's invoice within 30 days of receiving it.

10.4 In addition to the Price, the Company shall (where applicable) pay the Supplier a sum equivalent to any Value Added Tax chargeable on the Goods supplied.

10.5 The Customer /Supplier shall implement any legislative requirement to account for goods and services in Euros instead of, or as well as, Sterling at no cost to the Company. The Company shall provide all reasonable assistance to facilitate any such requirement.

11. RECOVERY OF SUMS DUE

11.1 If any sum is recoverable from or payable by the Customer /Supplier under the Contract, that sum may be deducted from any sum then due or which later becomes due to the Customer /Supplier under the Contract or under any other agreement with the Company.

12. INTELLECTUAL PROPERTY

12.1 Save where the Goods are made up in accordance with a design supplied by the Company, the Customer /Supplier warrants that none of the Goods shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

12.2 The Customer /Supplier shall indemnify the Company against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Company may incur as a result of or in connection with any breach of Condition 12.1.

13. HEALTH AND SAFETY

13.1 The Customer /Supplier warrants and represents that:

- a) it has satisfied itself that all necessary examinations have been made prior to delivery of the Goods, to ensure that the Goods are designed and constructed so that they can be used without risk to health and safety; and
- b) that it has made available to the Company adequate information about any conditions necessary to ensure the Goods can be used safely and without risk to health.

13.2 The Customer /Supplier indemnify the Company against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Company may incur as a result of or in connection with any breach of Condition 13.1.

13.3 The Supplier shall notify the Company of any health and safety hazards that may arise in connection with the performance of this Contract.

13.4 The Company shall notify the Customer /Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Customer /Supplier. The Customer /Supplier shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

14. CONFIDENTIALITY AND OFFICIAL SECRETS

14.1 The Supplier undertakes to comply and to procure that its employees comply with the provisions of the Official Secrets Acts 1911 to 1989.

14.2 The Customer /Supplier undertakes to keep secret and not to disclose and to procure that its employees, subcontractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this Condition applies to information that is already in the public domain or the possession of the Supplier, other than by reason of breach of this Condition.

15. SECURITY MATTERS

15.1 The Customer /Supplier shall conduct an annual self-assessment of its compliance with the Company's security policy (details of which shall be provided to the Customer /Supplier) and shall report such findings to the Company's nominated representative in the manner requested by the Company's representative.

15.2 The Company may make available a particular self-assessment tool to assist its suppliers (including the Supplier) in conducting the self-assessment referred to in Condition 15.1 and if the Company does so, the Customer /Supplier shall use that self-assessment tool.

16. ENVIRONMENTAL MATTERS

16.1 The Supplier confirms that:

- a) the process used in the manufacture of the Goods relied on minimal use of ozone depleting substances, toxic chemicals and other pollutants including lead, methyl chloroform and formaldehyde;
- b) that minimal dependence has been made on non-renewable natural resources such as non-sustainably produced hardwoods;
- c) in the manufacture of the Goods and in the choice of any packaging for the Goods, it has given preference to Goods that have maximum recyclability or, where cost effective recycling is impracticable, maximum biodegradability.

17. INDEMNITY AND INSURANCE

17.1 Without prejudice to any rights or remedies of the Company, the Customer /Supplier shall indemnify the Company against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Company may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods, or any negligence or breach of this Contract by the Customer /Supplier.

17.2 The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract. At the request of the Company, the Customer /Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

18. CHANGE CONTROL

18.1 There shall be no change to the amount of or description of the Goods or the Price unless the Company has issued a new purchase order in substitution for the Purchase Order. These Terms and Conditions shall apply to any new purchase order and the new purchase order shall become "the Purchase Order" for the purpose of this Contract from the moment it is received by the Customer /Supplier.

18.2 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by authorised representatives of both the Company and the Customer /Supplier.

19. ASSIGNMENT OR SUB-CONTRACTING

19.1 The Customer /Supplier shall not assign nor sub-contract any part of this Contract without the prior written consent of the Company.

19.2 Sub-contracting of this Contract shall in no way relieve the Customer /Supplier of its obligations under the Contract.

19.3 Where the Customer /Supplier enters a sub-contract with a supplier or contractor for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Customer /Supplier to pay that supplier or contractor within 30 days of receipt of a valid invoice.

20. RIGHTS OF THIRD PARTIES

20.1 This Contract shall not create any rights that are enforceable by anyone other than the Parties

21. TERMINATION

21.1 Without prejudice to any other rights or remedies of the Company under this Contract, the Company shall have the right forthwith to terminate this Contract by written notice to the Customer /Supplier or his trustee in bankruptcy or receiver or (if a company) its liquidator or administrator, if the Customer /Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

21.2 The Company shall be entitled to terminate this Contract by notice to the Customer /Supplier with immediate effect if the Customer /Supplier has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the Company in writing to do so; or

22. NOTICES

22.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Company must be sent to the address given for the buyer contact in the Purchase Order and not to the address for invoices.

22.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving Party proves otherwise.

23. Freedom of Information

23.1 The Customer /Supplier and the Company shall to comply with the Freedom Of Information Act 2000 (the “**FOI Act**”), any subordinate legislation made under the FOI Act and any guidance issued by the Information Commissioner, in relation to the Contract.

23.2 The Supplier agrees to assist and cooperate with the Company to enable the Company to comply with its obligations under the FOI Act whenever a request is made for information, which relates to or arises out of this Contract and/or the supply of the Goods.

24 DISPUTES AND MEDIATION

24.1 Before resorting to litigation, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.

24.2 If the Parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator (“the Mediator”).

24.3 If the Parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution (“CEDR”) to appoint a Mediator.

24.4 The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the Mediator.

24.5 If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

25 GOVERNING LAW

25.1 Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.