

TERMS & CONDITIONS

1 Price

- 1.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 1.2 Our quotations lapse after 60 days (unless otherwise agreed).
- 1.3 The price quoted excludes delivery (unless otherwise stated).
- 1.4 Rates of tax and duties on the goods will be those applying at the time of delivery.
- 1.5 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.

2 Delivery

- 2.1 All delivery times quoted are estimates only.
- 2.2 You may cancel the contract (in writing) at any time prior to despatch, however a handling fee of up to 100% of the order value may be applied, however:
 - 2.2.1 you may not cancel if we receive your notice after the goods have been despatched; and
 - 2.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 2.3 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss or increase in the price of the goods).
- 2.4 We may deliver the goods in instalments. Each instalment is treated as a separate contract.

3 Delivery & Safety

- 3.1 We may decline to deliver if:
 - 3.1.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
 - 3.1.2 the premises (or the access to them) are unsuitable for our vehicle.

4 Payment Terms

- 4.1 You are to pay us in cleared funds prior to despatch, unless you have an approved credit account or obtain prior written agreement.
- 4.2 If you have an approved business credit account, payment terms are no later than 30 days from the end of month in which invoice is issued, unless otherwise agreed in writing.
- 4.3 If you fail to pay us in full on the due date:
 - 4.3.1 we may suspend or cancel future deliveries;
 - 4.3.2 we may cancel any discount offered to you;
 - 4.3.3 you must pay us interest at the rate equivalent to that set for the purposes of s.6 of the Late Payment of Commercial Debts (Interest) Act 1998:
 - a. calculated (on a daily basis) from the date of our invoice until payment;
 - b. compounded on the first day of each calendar month; and
 - c. before and after any judgement (unless the court orders otherwise).
- 4.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.
- 4.5 You do not have the right to set off any money you may claim from us against anything you may owe us.
- 4.6 While you owe money to us, we have a lien on any of your property in our possession.

4.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms

5 Title

5.1 Until you pay all debts you may owe us:

5.1.1 all goods supplied by us remain our property;

5.1.2 you must store them so that they are clearly identifiable as our property;

5.1.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;

5.1.4 you may use those goods and sell them in the ordinary course of your business, but not if:

a. we revoke that right (by informing you in writing); or

b. you become insolvent.

5.2 You must inform us (in writing) immediately if you become insolvent.

5.3 If your right to use and sell the goods ends you must allow us to remove the goods.

5.4 We have your permission to enter any premises where the goods may be stored:

5.4.1 at any time, to inspect them; and

5.4.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.

5.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.

5.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

6 Risk

6.1 The goods are at your risk from the time of delivery.

6.2 Delivery takes place either:

6.2.1 at our premises (if you are collecting them or arranging carriage); or

6.2.2 at your premises (if we are arranging carriage).

6.3 You must inspect the goods on delivery. If any goods are damaged or not delivered in full, you must notify (in writing) the carrier and us within three working days of delivery (or the expected delivery time). You must give us (and the carrier) a fair chance to inspect the damaged goods.

6.4 If there is a complete failure of delivery then you must notify us in writing within 7 days of the date of the invoice or delivery note.

7 Warranties

7.1 We warrant that **the goods:**

7.1.1 comply with their description on our acknowledgement of order form; and

7.1.2 will be free from defects in materials and workmanship for a period of **five years** from the delivery date ('the Warranty Period').

7.2 Emergency lighting components are excluded from the five year Warranty Period but will carry a Warranty Period in line with that offered by the manufacturer or originating supplier of the relevant component(s).

7.3 Where goods are delivered in more than one stage and relate to the same purchase order, the five year warranty will apply from the date of the first delivery as shown on the delivery note.

7.4 Our warranties shall not apply:

7.4.1 to normal wear and tear, or where the goods have been damaged or have been subject to abnormal use or abnormal working conditions;

7.4.2 where any defect arises because of your specifications, drawings or designs;

7.4.3 where you have not paid the total price of the goods by the due payment date; or

7.4.4 if you have not complied with clause 6.3.

- 7.4.5 where it is our opinion any defect occurs as a result of poor installation of the goods.
- 7.5 Where the goods have been repaired or replaced under the provisions of the Warranty Period the Warranty Period shall not be extended. Our decision will be final as to whether or not an alleged defect occurs within the time of the Warranty Period or outside the Warranty Period.
- 7.6 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
- 7.7 If you believe that we have **delivered goods** which are defective in materials or workmanship, you must:
- 7.7.1 inform us (in writing), with full details, within 3 working days of the date shown on the delivery note; and
- 7.7.2 allow us to investigate (we may need access to your premises and product samples); and
- 7.7.3 we may require you to return the goods at your expense.
- 7.8 If the goods are found to be defective in material or workmanship (following our investigations, and you have complied with those conditions in clause 7.2 in full) we will (at our option) replace the goods or refund the price.
- 7.9 If you believe that one or more parts of the goods become(s) **defective during the Warranty Period**, subject to paragraph 7.2, and you seek a replacement of the whole or part(s):
- 7.9.1 you will be required to raise a purchase order for the required replacements which will be sent to you, subject to availability (or we may discuss a suitable alternative);
- 7.9.2 you will be required to return parts believed to be defective.
- 7.10 If subsequently the goods are found to be defective in material or workmanship (following our investigations, and you have complied with those conditions in clause 7.2 in full, we will then issue a credit for the replacements issued.
- 7.11 We offer an optional **one year warranty** where customers may request an **on-site visit** from us following installation of goods supplied by us. The warranty will only apply:
- 7.11.1 when it has been registered by you (the customer) and acknowledged by Optaled - please refer to our website for full registration details (www.optaled.com);
- 7.11.2 when the registration form is received by us within 28 days from the delivery date of the order to which the on-site visit relates (where goods are delivered in more than one stage and relate to the same purchase order, the 28 days will apply from the date of the first delivery as shown on the delivery note).
- 7.11.3 for one year from the delivery date of the order to which the site visit relates (where goods are delivered in more than one stage and relate to the same purchase order, the one year warranty will apply from the date of the first delivery as shown on the delivery note).
- 7.12 Subject to paragraph 7.9 if an on-site visit is requested from you, we will undertake an initial evaluation with you either by telephone or on site.
- 7.13 If there is an issue identified which we deem to be the fault of another party (e.g. contractor installation) we will attempt to undertake rectification work as appropriate upon receipt of a purchase order from you. All rectification work by Optaled will be undertaken on the basis of the prevailing daily rate and directly associated expenses and will be at our discretion.
- 7.14 If there is an issue identified which relates to the goods supplied by us then the terms of the five year Warranty Period (as set out in paragraphs 7.1 to 7.4) will apply.
- 7.15 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 7.16 Our total liability to you (from one single cause) for damage to property is limited to two million pounds.
- 7.17 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.

7.18 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

8 Specification

8.1 If we prepare the goods in accordance with your specifications or instructions:

8.1.1 you must ensure that the specifications or instructions are accurate;

8.1.2 you must ensure that the goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use it; and

8.1.3 you warrant that the specifications or designs will not result in the infringement of any rights belonging to a third party and that you will indemnify us in respect of all loss, damage, costs or expenses (including legal fees) which we may incur in connection with any such claim or threatened claim by a third party.

8.2 By supplying goods to you we do not waive any intellectual property rights (including any design rights) that we may have in respect of them.

8.3 We reserve the right to make without notice any minor modifications in our specifications designs or materials as we think necessary or desirable.

8.4 We reserve the right to make any changes in the specifications and designs of our goods which are necessary to ensure they conform with any applicable safety or other statutory requirements.

9 Return of Goods

9.1 We will accept the return of goods from you only:

9.1.1 by prior arrangement (confirmed in writing);

9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered or there is a claim under the Warranty period); and

9.1.3 where the goods are as fit for sale on their return as they were on delivery.

10 Export terms

10.1 Clause 10 of these terms shall apply to exports except where inconsistent with any written agreement between us.

10.2 Where the goods are supplied by us to you by way of export from the United Kingdom then the 'Incoterms' of the International Chamber of Commerce which are in force at the time of the date when the contract is made shall apply.

10.3 The Incoterms are treated as amended by these terms (read as a whole) to the extent that they are inconsistent with them.

10.4 You are 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 due.

10.5 Where the goods are to be sent by us to you by a route including sea transport we shall be under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

10.6 You are responsible for arranging the testing and inspection of the goods at our premises before shipment except where otherwise agreed. We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.

10.7 Payment of all amounts due to us shall be made as stipulated by us, unless otherwise agreed in writing.

10.8 We shall have no liability for death or personal injury arising from the use of the goods where the goods are to be delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

11 Cancellation

- 11.1 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.
- 11.2 We may suspend or cancel the order, by written notice if:
 - 11.2.1 you fail to pay us any money when due (under the order or otherwise);
 - 11.2.2 you become insolvent;
 - 11.2.3 you fail to honour your obligations under these terms.
- 11.3 You may not cancel the order unless we agree in writing (and clauses 2.2 and 11.1 then apply).

12 Waiver & Variations

- 12.1 Any waiver or variation of these terms is binding in honour only unless:
 - 12.1.1 made (or recorded) in writing;
 - 12.1.2 signed on behalf of each party; and
 - 12.1.3 expressly stating an intention to vary these terms.
- 12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

13 Force Majeure

- 13.1 Suppose we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control. We may then cancel or suspend any of our obligations to you, without liability,
- 13.2 Examples of those circumstances include act of God, accident, explosion, fire, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

14 General

- 14.1 English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.
- 14.2 If you are more than one person, each of you has joint and several obligations under these terms
- 14.3 If any of these terms are unenforceable as drafted:
 - 14.3.1 it will not affect the enforceability of any other of these terms; and
 - 14.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 14.4 We may treat you as insolvent if:
 - 14.4.1 you are unable to pay your debts as they fall due; or
 - 14.4.2 you (or any item of your property) become the subject of:
 - a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements {including a moratorium} or bankruptcy);
 - b. any application or proposal for any formal insolvency procedure; or
 - c. any application, procedure or proposal overseas with similar effect or purpose.
- 14.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
- 14.6 Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 14.7 No contract will create any right enforceable (by virtue of the Contracts [Rights of Third Parties] Act 1999) by any person not identified as the buyer or seller.

- 14.8 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is (or whom you reasonably believe to be) our authorised representative and either:
- 14.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
 - 14.8.2 which expressly state that you may rely on them when entering into the contract.
- 14.9 Nothing in clause 14.8 is to affect or limit our liability for fraudulent misrepresentation.

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