

## **Terms & Conditions of Sale - Mark Jackson Lighting**

### **1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Specification Documents.
- 1.2 "Customer" means the proposed purchaser of Goods and services from the Supplier.
- 1.3 "Goods" means the products and services as set out in the Specification Document.
- 1.4 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how, databases and all other forms of intellectual property wherever in the world enforceable.
- 1.5 "Specification Document" means a statement of work, quotation, pro-forma invoice, or other similar document describing the Goods and services to be provided by the Supplier.
- 1.6 "Supplier" means Mr Mark Jackson, t/a **Mark Jackson Lighting, 129 Bay View Road, Northam, Bideford, Devon, UK, EX39 1BJ.**

### **2 GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of Goods by the Supplier to the Customer.
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Specification Document which shall specify the Goods supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to supply the Goods within estimated time frames but time shall not be of the essence in the performance of any services.

### **3 PRICE AND PAYMENT**

- 3.1 The price for the supply of Goods are as set out in the Specification Document. The Supplier shall invoice the Customer upon agreement of the specification of the Goods.
- 3.2 Unless otherwise agreed, the Supplier will commence production of the Goods upon receipt of the payment in full as invoiced.
- 3.3 All payments to be made in GBP, by BACs or cheque, as stated on the Specification Document.
- 3.4 The invoice will be valid for a period of 30 days. After this period a new invoice will be issued if required.
- 3.5 Where a period of credit of 30 days has been agreed, invoiced amounts shall be due and payable within 30 days of issue of invoice. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 4% per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the Goods are supplied.
- 3.6 All prices are quoted exclusive of UK VAT where applicable, and packaging and shipping unless stated on the Specification Document.
- 3.7 Any prices quoted in any sales literature or website may be subject to change without notice.
- 3.8 The Supplier reserves the right to repossess any Goods should the Customer become insolvent or fail to pay for them under the terms of the contract.

### **4 SPECIFICATION OF THE GOODS**

All Goods shall be required only to conform to the specification in the Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written of oral, correspondence or statement shall form part of the contract.

### **5 DELIVERY**

- 5.1 The Supplier shall make all reasonable effort to meet the quoted delivery date.
- 5.2 The date of delivery and lead time specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of Goods.
- 5.3 All risk in the Goods shall pass to the Customer upon dispatch of the Goods from the Supplier.
- 5.4 Divisibility Clause: This contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.

### **6 TITLE**

Title of the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods.

### **7 CUSTOMER'S OBLIGATIONS**

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall;
  - 7.1.1 co-operate with the Supplier;
  - 7.1.2 provide the Supplier with any reasonable information required by the Supplier;
  - 7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
  - 7.1.4 comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.
- 7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1
- 7.3 All Goods unless stated in the Specification Document, are made to order, to the Customer's specification. Therefore; without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the Goods agreed to in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days written notice the full amount of the Goods contracted for as set out in the Agreement, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the Goods and subject to the payment of the damages set out in this Clause.
- 7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
  - 7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
  - 7.4.2 if applicable, the timetable for the project will be modified accordingly;
  - 7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

### **8 ALTERATIONS TO THE SPECIFICATION DOCUMENT**

- 8.1 The parties may at anytime mutually agree upon and execute new Specification Documents. Any alterations in the scope of Goods to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed Goods and price and any other terms agreed between the parties.
- 8.2 The Customer may at any time request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

CONTINUED

## TERMS & CONDITIONS (CONT)

### 9 WARRANTY

9.1 The Supplier warrants that as from the date of delivery for a period of 12 months the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials.

9.2 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

9.3 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Goods to be provided by the Supplier. This exclusion does not exclude liability for fraud or fraudulent misrepresentation.

9.4 Subject to clause 9.1, the Supplier shall as its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

9.5 Cost and liability of returning unwanted or defective Goods is the responsibility of the Customer.

### 10 INDEMNIFICATION

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any Goods provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

### 11 LIMITATION OF LIABILITY

11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid or payable under the agreement.

11.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss or opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

11.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

### 12 TERMINATION

Either party may terminate this Agreement forthwith by notice in writing to the other if:

12.1 The other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;

12.2 The other party commits a material breach of this Agreement which cannot be remedied under any circumstances.

12.3 The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

12.4 The other party ceases to carry on its business or substantially the whole of its business; or

12.5 The other party is declared insolvent, or convenes a meeting of or makes proposes to make any arrangement or composition with its creditors; or liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

12.6 For any reason by the Supplier so long as 14 days notice in writing is provided.

### 13 INTELLECTUAL PROPERTY RIGHTS

13.1 The designs, images used on sales literature and website, pictures, logos used by the Supplier are, unless otherwise stated, or belonging to a component OEM, are the Intellectual Property of Mark Jackson Lighting. Switch fascias are registered designs, No's 6000677-82.

13.2 All Intellectual Property Rights produced from or arising as a result of bespoke or unique Goods produced for the Customer shall, unless previously mutually agreed between the Supplier and Customer, become the absolute property of the Supplier, and the Customer shall do all that is reasonable necessary to ensure that such rights vested in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

### 14 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events. The Supplier also has the right to terminate the agreement in the event of Force Majeure .

### 16 ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

### 17 SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

### 18 WAIVER

The failure by either party to enforce at any time or for period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

### 19 NOTICES

Any notice to be given by either party to the other may be served by e-mail, fax, personal service or by post to the address of the other party given in the Specification Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by e-mail shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

### 20 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

### 21 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

### 22 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with UK Law without exclusion.