

TERMS AND CONDITIONS OF SALE



1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words and phrases will have the following meanings:-

"Buyer" means the person specified as such on the Order Confirmation who buys or agrees to buy the Goods from the Seller;

"Goods" means the products to be supplied by the Seller to the Buyer pursuant to these Terms and Conditions and which are specified on the Order Confirmation;

"Contract" means the contract between the Seller and the Buyer for supply of the Goods and which comprises the Order Confirmation incorporating these terms and conditions;

"Delivery Address" means the address for delivery of the Goods specified on the Order Confirmation;

"Order Confirmation" means the order confirmation form issued by the Seller to the Buyer on the Seller's standard form of order confirmation form from time to time incorporating these terms and conditions;

"Price" means the price for the Goods specified on the Order Confirmation (for the avoidance of doubt, adjusted to take account of any discount which may be offered by the Seller to the Buyer);

"Seller" means Black Light Limited, a company incorporated in Scotland under the Companies Acts (registered number SC079054) and having its registered office at 18 West Harbour Road, Granton, Edinburgh, EH5 1PN;

"WEEE" means waste electrical and electronic equipment as defined in the WEEE Regulations; and

"WEEE Regulations" means the Waste Electrical and Electronic Regulations 2006 (SI 2006/3289).

1.2 In these terms and conditions:-

1.2.1 the singular shall include the plural and vice versa. The male, female and neutral pronouns shall be interchangeable.

1.2.2 headings are for convenience only and do not affect the construction and/or the interpretation of these conditions;

1.2.3 words importing the whole shall be treated as including a reference to any part of the whole; and

1.2.4 references in these terms and conditions to persons shall include individuals, partnerships, bodies corporate, unincorporated associations, trusts and any other form of legal entity; and

1.2.5 reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.

2. GENERAL

2.1 Subject to any variation in accordance with these terms and conditions, the Contract shall be governed by these terms and conditions which will apply to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order other than the Order Confirmation, specification or any other document), and will supersede any previous terms and conditions appearing in the Seller's catalogues, promotional literature or elsewhere. No waivers, alterations or modifications of these terms and conditions shall be valid unless made in writing and signed by the duly authorised representatives of the Seller and the Buyer.

2.2 Each Order Confirmation issued by the Seller to the Buyer, which shall always be on the Seller's standard form of order confirmation form from time to time, shall be deemed to be an offer from the Seller to the Buyer to supply the Goods, subject to these terms and conditions.

2.3 The Buyer is responsible for ensuring that the terms of the Order Confirmation are complete and accurate.

2.4 Any quotation given by the Seller is given on the basis that no contract will come into existence until an Order Confirmation has been issued by the Seller and signed by the Buyer. Any quotation is valid for a period of 30 days, unless otherwise stated, only from its date provided that the Seller has not previously withdrawn it.

2.5 Failure by the Seller at any time to require the performance of any provision of the Contract shall in no manner affect the rights of the Seller to enforce such provision at a later time. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or of any other provision of the Contract.

2.6 In addition to the rights and remedies contained in these terms and conditions, the Seller shall have all the rights and remedies afforded to a Seller pursuant to any rule of law. All rights and remedies of the Seller under the conditions shall be cumulative and not alternative.

2.7 The Buyer hereby acknowledges and agrees that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in these terms and conditions. Nothing in this clause shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.8 To the extent that these terms and conditions do not provide consumers (as defined in Section 25(1) of the Unfair Contract Terms Act 1977) with the statutory protections conferred upon them from time to time by United Kingdom consumer and/or sale of goods legislation, these terms and conditions will be deemed to be varied or amended to confer such statutory protection upon consumers as so defined who are Buyers and these terms and conditions shall be read and construed accordingly.

3. SUPPLY OF THE GOODS

3.1 Subject to these terms and conditions, the Seller shall supply the Goods to the Buyer in exchange for the Price.

3.2 The Buyer shall supply the Seller with all such information as the Seller may reasonably require to enable the Seller to fulfil its obligations under these terms and conditions.

4. PRICES AND PAYMENT

4.1 All prices are, unless otherwise stated, exclusive of any applicable value added tax, packing, posting and delivery charges (which, for the avoidance of doubt, the Buyer shall be additionally liable to pay to the Seller).

4.2 The Buyer shall pay the Price, packing and delivery charges (where applicable and subject to clause 5 below), and any VAT due:

4.2.1 if the Order Confirmation specifies that the payment of the Price must be made "In Advance", as soon as practicably possible following the commencement of the Contract; or

4.2.2 if the Order Confirmation specifies that payment of the Price shall be made "Following Invoice", within 30 days of the date of the Seller's invoice therefore.

4.3 Time of payment is of the essence of the Contract.

4.4 The Buyer shall not be entitled to withhold or set off payments for any reason whatsoever.

4.5 If the Buyer fails to make payment when payment is due, the Seller shall be entitled to:

4.5.1 withdraw any discount on the Price which may have been offered by the Seller to the Buyer;

4.5.2 terminate the contract and/or suspend any further deliveries to the Buyer; and

4.5.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

4.5.4 charge the Buyer interest on the amount unpaid at a rate equal to 4% above the base rate of The Royal Bank of Scotland plc from time to time until full payment is made.

4.6 The Seller reserves the right, by giving notice in writing at any time prior to delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to:

4.6.1 any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, material increase in the costs of labour, materials or other costs of manufacture); or

4.6.2 any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer;

4.6.3 or any delay caused by any instructions of the Buyer; or

4.6.4 failure of the Buyer to give the Seller adequate information or instructions

provided that in the case of any increase pursuant to clause 4.6.1 the Buyer shall have the right to cancel the Contract within 5 Working Days of being notified of the increase.

4.7 The Seller shall be entitled to invoice the Buyer from time to time in respect of any sums, other than the Price, which may be due to the Seller by the Buyer pursuant to the Contract. Such invoices shall be payable by the Buyer within 30 days of the date of the relevant invoice.

4.8 The Seller reserves the right to request the Buyer to supply details of the Buyer's creditworthiness as the Seller considers necessary, and the Buyer shall comply and co-operate with such request.

5. DELIVERY

5.1 Unless otherwise agreed between the parties, the Seller shall be responsible for ensuring that the Goods are delivered to the Delivery Address or to such other address within the United Kingdom as may be notified by the Buyer to the Seller prior to the Goods being dispatched from the Seller's premises. If the parties agree that the Buyer will collect the Goods from the Seller's premises, the Goods shall be deemed to have been delivered upon the Buyer collecting the Goods from the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.

5.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the contract unless previously agreed by the Seller in writing. The Goods may be delivered in advance of the quoted delivery date upon giving reasonable notice to the Buyer. For the avoidance of doubt, if clause 4.2.1 applies, the Seller shall be entitled to withhold delivery of the Goods or any part of the Goods until such time as the Buyer has paid in full for all of the Goods.

5.3 The Buyer shall be liable to the Seller in respect of all packing and delivery costs incurred by the Seller pursuant to this clause 5.

5.4 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the Contract. Failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller:

5.4.1 without notice to suspend further deliveries of the Goods pending payment by the Buyer; and/or

5.4.2 to treat the Contract as repudiated by the Buyer.

5.5 The Buyer shall inspect the Goods supplied by the Seller immediately upon delivery or upon collection (as the case may be). No liability for under-delivery, loss of or damage to the Goods will attach to the Seller unless a claim to that effect has been notified in writing by the Buyer to the Seller within seven days of delivery. In the event of a valid claim for under-delivery, loss of or damage to the Goods, the Seller undertakes at its option either to repair or replace the Goods at its expense to the extent required to make good the under-delivery, loss of or damage to the Goods, but shall not be under any further or other liability to any person in connection with such under-delivery, loss of or damage to the Goods.

5.6 If for any reason the Buyer fails to take delivery of the Goods at any time when the Goods are due and ready for delivery, the Goods may be stored by the Seller at the Buyer's risk and expense until the Buyer accepts delivery.

6. RISK

6.1 The risk in the Goods delivered or supplied hereunder shall pass to the Buyer when the Seller delivers or (for example, where the Buyer collects the Goods) is deemed to have delivered the Goods to the Buyer, in accordance with clause 5 above or, if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.

7. WARRANTY CLAIMS AND EXCLUSIONS

7.1 Subject to the conditions set out in this clause 7, the Seller warrants that, for a period of 12 months from the date on which the Goods are supplied to the Buyer ("the Warranty Period"), the Goods will be free from material defects in workmanship and materials.

7.2 The warranty given by the Seller in clause 7.1 above ("the Warranty") is subject to the following conditions:-

7.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any design specification or material supplied by the Buyer;

7.2.2 the Warranty does not extend to goods or materials not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;

7.2.3 the Seller shall be under no liability to the Buyer for any act or omission on the part of any agents, representatives or employees of the Buyer;

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- 7.2.4 the Seller shall be under no liability to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any instructions or materials supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Buyer;
- 7.2.5 the Seller shall be under no liability in respect of any defect in the Goods, and/or in respect of any loss, damage, costs, expenses or other claims for compensation, arising from use of the Goods in conjunction with, or incorporation of the Goods into, any third party goods or products;
- 7.2.6 the Seller shall be under no liability in respect of any defect in the Goods arising as a result of alterations, modifications, repairs or any other work done on or in relation to the Goods by any person other than:
- 7.2.6.1 the Seller; or
- 7.2.6.2 any person previously authorised by the Seller in writing to carry out such alterations, modifications, repairs or any other work; and
- 7.2.7 installation, operation and use of the Goods must be done by the Buyer in accordance with all reasonable instructions of the Seller from time to time. Failure by the Buyer to follow these instructions will invalidate the Warranty.
- 7.3 The Company's sole liability for any breach of the warranty given in clause 7.1 will be, at its sole discretion, either to repair or replace during normal working hours the Goods (or any relevant part(s) thereof) which prove defective during the Warranty Period ("**Defective Goods**"). Where the Buyer intends to exercise its rights to have Defective Goods repaired or replaced, it must first notify the Company of its intention to do so and return the Defective Goods to the Company within 14 days of giving such notification. The Buyer shall be responsible for any costs and expenses incurred by it in so returning the Defective Goods. Unless otherwise agreed between the parties, the Seller will deliver, at its own cost and expense, repaired Defective Goods or replacement Goods to an address to be agreed in writing between the parties or in the event that no such agreement is made to the Delivery Address.
- 7.4 For the avoidance of doubt, the Warranty shall not apply to Replacement Goods.
- 8. LIABILITY**
- 8.1 Nothing in these conditions shall limit or exclude the Seller's liability for personal injury or death caused by its negligence.
- 8.2 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer. The entire liability of the Seller shall not exceed the price of the Goods.
- 8.3 The Buyer will indemnify and defend the Seller and its employees in respect of any third party claims which arise from any acts or omissions done by the Seller on the instructions of the Buyer, its employees, agents or authorised representatives.
- 8.4 Save as expressly provided in these terms and conditions all terms, conditions and warranties (whether implied by statute or otherwise or made expressly) whether by the Seller or its servants or agents or otherwise are excluded to the fullest extent permitted by law.
- 9. PRODUCT INFORMATION**
- 9.1 All illustrations, drawings, descriptions, dimensions or specifications which appear in the Seller's catalogues, price lists, promotional materials, websites or on any documents submitted by the Seller to the Buyer with any quotation or tender, are for illustrative purposes only. The Seller reserves the right to (at its sole discretion) amend any such illustrations, drawings, descriptions, dimensions or specifications as it considers necessary without notice to the Buyer. Typographical or clerical errors or omissions on any of such catalogues, price lists, promotional materials, websites or documents are subject to correction.
- 10. DESIGN CHANGES AND SAMPLES**
- 10.1 The Seller's product development policy is one of continual development and improvement. Consequently, the Seller reserves the right to change or amend specifications without prior notice. Notwithstanding that any sample may have been produced or supplied by the Seller all sales shall be sales by description only and not by sample.
- 11. CANCELLATION AND VARIATION OF ORDER**
- 11.1 No order which has been placed by the Buyer with the Seller may be cancelled (whether in whole or in part) by the Buyer except with the prior consent in writing of the Seller. If the Seller grants such consent, the Seller shall be entitled to charge the Buyer a cancellation fee, at such a level as the Seller shall (acting reasonably) determine.
- 12. RETENTION OF TITLE**
- 12.1 Unless and until such time as the Buyer has made full payment to the Seller of all sums due by the Buyer to the Seller (including any interest and charges) under the Contract:
- 12.1.1 title to and ownership of the Goods shall remain with the Seller and shall not pass to the Buyer; and
- 12.1.2 the Buyer shall keep the Goods free from any charge, lien, security or other encumbrance; and
- 12.1.3 the Buyer may not sell, purport to pass title to, let on hire, lend, assign, grant security over or otherwise relinquish possession of the Goods.
- 12.2 If the Buyer fails to pay any sums due to the Seller by the due date for payment, in addition to any other remedies available to the Seller under the Contract or otherwise, the Seller shall be entitled to re-possess the Goods (provided that the Goods are still in existence and have not been resold) and deal with the Goods in any manner that the Seller sees fit, including but not limited to re-sale. In the event that the Seller re-sells the Goods then the Buyer shall remain liable to the Seller for the difference between the net proceeds of re-sale of the Goods and all outstanding sums due to the Seller under the Contract and for all costs and expenses incurred by the Seller in re-possessing, storing and re-selling such goods. The Buyer will assist and allow the Seller so to re-possess the Goods and, for this purpose, admit or procure the admission of the Seller or its employees or agents to the premises in which the Goods are situated.
- 12.3 Notwithstanding clause 12.1 above, if, before title to the Goods passes to the Buyer, the Buyer shall sell or otherwise deal with the Goods in such a manner as to pass to a third party a valid title to the Goods, the Buyer:-
- 12.3.1 shall hold the proceeds of any such sale or disposal, and any rights or claims against the parties arising out of such sale or disposal, in a fiduciary capacity for and to the account of the Seller; and
- 12.3.2 shall take all necessary steps to keep such proceeds separate from other monies, to pay over such proceeds to the Seller and to transfer to the Seller any rights or claims against third parties, to the extent necessary to discharge in full the Buyer's indebtedness to the Seller.
- 12.4 Where the Contract is terminated in accordance with clause 13, or any sums due by the Buyer to the Seller have not been paid when they fall due, then the Buyer's right to re-sell or otherwise deal with the Goods shall automatically terminate and the Seller shall be entitled to re-possess any of such goods forthwith.
- 13. TERMINATION**
- 13.1 This clause 13 applies if:-
- 13.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 13.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer if any court order is made upon or against any property of the Buyer; or
- 13.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 13.1.4 the Buyer makes default in or commits any breach of its obligations to the Seller under the Contract; or
- 13.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 13.2 If this clause applies, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled (without any requirement to give prior notice to the Buyer) to terminate the Contract and/or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have (at the time the Seller seeks to exercise its rights under this clause 13) been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 14. WASTE ELECTRICALS AND ELECTRONICS**
- 14.1 The Buyer shall:
- 14.1.1 be responsible for financing the collection, treatment, recovery and environmentally sound disposal of:
- 14.1.1.1 all WEEE arising or deriving from the Goods; and
- 14.1.1.2 all WEEE arising or deriving from products placed on the market prior to 13 August 2005 where such products are to be replaced by the Goods and the Goods are of an equivalent type or are fulfilling the same function as that of such products;
- 14.1.2 comply with all additional obligations placed upon the Buyer by the WEEE Regulations by virtue of the Buyer accepting the responsibility set out in clause 14.1.1; and
- 14.1.3 provide the Buyer's WEEE compliance scheme operator with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Seller's membership of the operator's compliance scheme.
- 14.2 The Buyer shall be responsible for all costs and expenses arising from and relating to its obligations in clause 14.1.
- 14.3 Further information in respect of the arrangement set out in clause 14.1 can be obtained from the Company on request.
- 14.4 This clause 14 shall not apply where the Buyer is not acting in the course of a business.
- 15. FORCE MAJEURE**
- 15.1 If either party is affected by circumstances beyond its reasonable control (including, without limitation, any failure or delay in delivery of raw or other materials to the Seller, any strike, lock-out or other industrial action) ("**Force Majeure**") then it shall promptly notify the other party of the nature and extent of the circumstances in question. Notwithstanding any other provisions of these terms and conditions, a party shall not be deemed to be in breach of the Contract, or otherwise liable to the other, for any delay in performance or non-performance of any of its obligations to the other party, to the extent that such delay or non-performance is due to any event of Force Majeure, and the time for performance of that obligation shall be extended accordingly. If any event of Force Majeure persists for at least 90 days, either party will be entitled to terminate the Contract with immediate effect by notice in writing to the other party.
- 16. ASSIGNATION AND SUB-CONTRACTING**
- 16.1 The Seller reserves the right to sub-contract the whole or any part of the performance of the Contract or any part thereof to any person, firm or company without any requirement to give prior notice to, or receive prior consent from, the Buyer.
- 16.2 The Buyer shall not be entitled to assign any of its rights and/or obligations under the Contract without the prior written consent of the Seller. Any assignation or purported assignation of Contract by the Buyer shall be wholly void and ineffective unless made in conformity with this condition.
- 17. PROPER LAW AND JURISDICTION**
- All disputes arising out of or in connection with the Contract shall be governed by Scots law and the Buyer accepts the exclusive jurisdiction of the Scottish Courts.

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