

Terms and Conditions of Sale

1. General

- a. In these conditions, "JCL" means John Clayton Lighting Limited, the "Buyer" refers to you, the purchaser of goods and/or services from JCL, and the "Agreement" means these terms and conditions of sale and any amendments hereto as agreed in accordance with the terms of this Agreement.
- b. This Agreement applies to and governs all contracts, quotations, sales, supplies and deliveries of JCL related goods and/or services (collectively, the "Products") by JCL or its representatives and shall prevail over any terms or conditions (i) contained or referred to in any correspondence or elsewhere, or (ii) implied by any course of dealing, unless such other terms and conditions are consented to in writing by JCL.
- c. No variation of this Agreement shall be effective without JCL's prior written consent.
- d. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. No provisions of any main building contract or sub-contract shall affect this Agreement notwithstanding that JCL has been given notice of the same.
- e. No assignment of this Agreement shall be valid without JCL's prior written consent.
- f. If any provision (or part thereof) of this Agreement is found by a court to be wholly or partly unenforceable, such provision shall be severed to the extent only of such unenforceability, and the remaining parts (if any) of that provision, and of this Agreement, shall continue in full force and effect.
- g. The headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

2. Quotations

- a. A quotation by JCL shall constitute an invitation to treat and not an offer. JCL may withdraw or amend any quotation at any time prior to JCL's acceptance of the Buyer's order. Acceptance of the Buyer's order will occur when JCL issues a written acknowledgement or when JCL begins to process the Buyer's order, whichever is the earlier.
3. **Estimates and Advice as to Fitness**
 - a. The Buyer acknowledges that it does not rely on, and waives any claim for breach of, any representations made by JCL or its employees, agents or representatives. Any estimate of quantities needed or advice or recommendation as to the suitability of any Products for any particular purpose given by JCL or its employees, agents or representatives, is given without liability on JCL's part. The Buyer is entirely responsible for ascertaining the quantities required and the suitability and fitness of the Products for their purpose.
4. **Prices**
 - a. Prices in any JCL price list are exclusive of all valued added or other taxes, any duties, any cost of transportation (including freight, packaging and insurance) of the Products to the destination specified by the Buyer, and any other costs incurred by JCL but not included in the price of the Products, all of which shall be payable in addition by the Buyer.
 - b. JCL reserves the right to vary prices of Products at any time. JCL may, without notice to any party, revise the price payable for Products to take account of increases in costs including, without limitation, costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rate since the date of JCL's acceptance of any order.
5. **Delivery**
 - a. Delivery will occur when the Products are ready for unloading at the delivery address, or when the Buyer takes possession of the Products at JCL's (or its representative's) premises, whichever is the earlier.
 - b. Delivery dates or times mentioned in any JCL correspondence are approximate and not of contractual effect and JCL shall not be liable for any failure to deliver on any particular date or dates, or at any particular time, nor shall time be of the essence of any contract.
 - c. Where JCL delivers to site, it is on the understanding that there is a suitable road to the point on the site where delivery is requested. If no such road exists, delivery will be made to the nearest point to which, in the opinion of the driver, the vehicle can safely proceed and unload.
 - d. The Buyer will provide all necessary labour and equipment required to unload Products promptly and indemnifies JCL against any cost, claim, loss or damage arising from such unloading.
 - e. If the Buyer refuses or fails to take delivery of Products tendered in accordance with the contract, JCL shall be entitled to immediate payment in full for the Products so tendered. JCL shall be entitled to store at the Buyer's risk any Products of which the Buyer refuses or fails to take delivery and the Buyer shall, in addition to the purchase price, pay all such storage and any additional costs or carriage incurred as a result of the Buyer's refusal or failure. Notwithstanding any other provision of this Agreement, if the Buyer refuses or fails to take delivery of Products, JCL may leave the Products on any part of the premises of the delivery address specified by the Buyer, notwithstanding that such part may be in a public or unsecured place, under the auspices of any person or exposed to any weather or other conditions, and such leaving of Products shall be deemed to be full and adequate delivery.
 - f. The Buyer shall inspect all Products and packaging for signs of damage, and must immediately (within 24 hours of Delivery) notify JCL. If damage to Products is apparent or suspected.

3. Estimates and Advice as to Fitness

- a. The Buyer acknowledges that it does not rely on, and waives any claim for breach of, any representations made by JCL or its employees, agents or representatives. Any estimate of quantities needed or advice or recommendation as to the suitability of any Products for any particular purpose given by JCL or its employees, agents or representatives, is given without liability on JCL's part. The Buyer is entirely responsible for ascertaining the quantities required and the suitability and fitness of the Products for their purpose.

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- b. JCL reserves the right to vary prices of Products at any time. JCL may, without notice to any party, revise the price payable for Products to take account of increases in costs including, without limitation, costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rate since the date of JCL's acceptance of any order.

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6. Payment

- a. Credit accounts may be opened, subject to satisfactory credit references being obtained, at JCL's absolute discretion. Payment for Products supplied on a credit account shall be due and payable not later than 30 days from the date of invoice. If the Buyer defaults in making payment as described, the entire balance of the Buyer's account shall immediately become due and payable and JCL shall be entitled to charge interest on the account, together with costs and expenses, in accordance with clause (e) below. Notwithstanding any such open credit account, if the Buyer's credit standing, in the absolute discretion of JCL, is impaired or reduced in any manner, JCL may refuse Delivery of Products until payment is made in full for the Products.
- b. For all other transactions, 50% of the amount payable must be paid at the time the Buyer places an order, and the remaining 50% must be paid at the time the Products are ready for Delivery.
- c. Payment must be made to JCL in pounds sterling, and may be made in cash, by cheque (crossed and payable to John Clayton Lighting Limited), or by telegraphic/BACS transfer of funds to John Clayton Lighting Limited (sort code 400328, account no 71756354).
- d. The Buyer may not withhold or set off payment of any amount due to JCL whether in respect of any claim by the Buyer relating to Products supplied by JCL or for any other reason which is contested or for which JCL does not admit liability.
- e. If the Buyer fails to make any payment on the due date, then without prejudice to any other remedy or right available to JCL, JCL shall be entitled to: (i) cancel the contract or suspend any further deliveries to the Buyer; and (ii) appropriate any payment made by the Buyer or the Products (or the Products supplied under any other contract between the Buyer and JCL) as JCL may think fit (notwithstanding any purported appropriation by you); and (iii) charge interest to the Buyer at the rate of 2% above the HSBK plc base rate from time to time on the unpaid balance, such interest accruing on a day to day basis from the due date for payment until receipt by JCL of the full amount of cleared funds, whether before or after any judgement; and (iv) be indemnified by the Buyer against all costs and expenses (including legal costs and expenses on a full indemnity basis) incurred by JCL in recovering sums due or in exercising its rights pursuant to this Agreement.

7. Title and Risk

- a. The risk in all Products passes to the Buyer upon delivery.
- b. Until JCL has been paid in full for the price of the Products and all other Products agreed to be sold by JCL to the Buyer for which payment is then due, together (where applicable) with the costs of packaging and delivery plus any interest and charges thereon:
 - (i) JCL shall retain ownership of the Products;
 - (ii) the Buyer may sell and deliver the Products to third parties in the ordinary course of business, acting towards such third parties as a principal and not as agent, but the Buyer must hold all proceeds of sale on trust for JCL in a separate bank account and in such an event, the Buyer hereby assigns to JCL all rights and claims which the Buyer may have against its customers arising from such sales until full payment is made as described above. This authority will continue until otherwise notified to the Buyer by JCL or until: (A) an administrative receiver, liquidator, administrator or other manager has been (or notice is given to the effect that such will be) appointed in respect of the Buyer's undertaking or a material part thereof or other property or assets; or (B) any notice to the Buyer that a petition to wind the Buyer up is to be or has been presented to the Buyer or any notice to the Buyer of a proposal to pass a resolution to wind up the Buyer (including any proposal by the Buyer to do so); or (C) the Buyer decides to make a voluntary arrangement or composition with its creditors or any notice to the Buyer and/or any of its creditors that a proposal for the same is to be or has been made; or (D) the Buyer becomes unable to pay its debts as such expression is defined by the Insolvency Act 1986; or (E) any notice to the Buyer that the Buyer is the subject of a petition for an administration order or the making of any administration order in respect of the Buyer, whichever event is the earlier. In such an event, the Buyer shall immediately notify JCL in writing of the happening of the event. On receipt of written notice from JCL or on the happening of any of the events set out in this clause (ii), the Buyer's authority to sell JCL Products shall immediately be withdrawn and all such Products within the Buyer's or the Buyer's customer's possession shall immediately be delivered to JCL at the Buyer's cost and risk.
 - (iii) the Buyer must store the Products in such a way as to clearly show JCL's ownership of them;
 - (iv) upon demand, the Buyer must immediately notify JCL of the place or places where the Products are situated;
 - (v) the Buyer will give JCL access to the Products during all normal business hours whether they are upon land occupied by the Buyer or the Buyer's customers and the Buyer shall deliver the Products to JCL at JCL's request and allow JCL to remove the same without any liability to JCL whatsoever. For this purpose, the Buyer hereby grants an irrevocable right and licence to JCL's employees, agents or representatives to enter upon the said land with or without vehicles during normal business hours.
 - c. Without prejudice to any other provision in this Agreement, the risk in Products for supply outside the United Kingdom will pass to the Buyer at the time of collection of the Products from JCL's premises by the freight carrier.

8. Warranty

- a. JCL warrants that the Products shall operate in accordance with the published JCL specification that is current at the time of Delivery, and for a period of five years from that date.
- b. JCL warrants that the Products shall at the time of Delivery correspond to the published JCL specifications when used for the purpose for which the Products are designed to be used.
- c. If any of the Products are shown to be defective, JCL shall at its option; (i) replace the defective Product; or (ii) bring the defective Product into conformity with the published specifications; or (iii) accept return of the defective Product and refund the price of the returned Product to the Buyer.
- d. The Buyer's sole remedy for breach of any warranty provided under this Agreement is as specified in clause (c) above and is subject to: (i) the Buyer not being in (or having been in) breach of any provision of this Agreement; (ii) the Buyer advising JCL as soon as practicable of the alleged defect, and in any event, no later than 5 days after the Buyer became aware of the alleged defect; (iii) the Buyer providing JCL with access as required by JCL for the purposes of inspecting the Product, application of site conditions in situ; and (iv) the Buyer making no further use of the Products that are alleged to be defective after the time at which the Buyer discovered the alleged defect.

9. Packaging and Waste

- a. A charge may be made by JCL to cover the cost of labour and materials for any special packaging required.
- b. Pallets, crates and cases will be charged for but charges will be credited in full if items are returned to JCL carriage paid and in good condition within 7 days of Delivery.
- c. The Buyer will be solely responsible for the disposal of any waste arising from the Products and will comply with all applicable laws, regulation and waste regulation licences relating to such waste. The Buyer indemnifies JCL against all costs, claims, liabilities and expenses incurred by JCL arising from or in connection with any breach by the Buyer of this clause (c).

10. Cancellation of Orders

- a. Once a Buyer's order has been accepted by JCL, the Buyer has no right of cancellation or suspension of such order in whole or in part without the prior written consent of JCL. Any such consent by JCL will be subject to the Buyer bearing the cost of returning any goods to JCL, and indemnifying JCL against any loss or costs incurred in relation to such cancellation or suspension.
- b. Where the Buyer is a "consumer" under a "distance contract", both as defined in the Consumer Protection (Distance Selling) Regulations 2000, the Buyer may only cancel the order within 7 working days after the Products have been delivered and only if the Products are returned at the Buyer's cost and in their original condition to JCL. No such right of cancellation will exist where the Products are made to the Buyer's individual specification, are personalised, or are liable to deteriorate or expire rapidly.

11. Return of Products

- a. No Products are supplied on a sale or return basis. JCL may, in its absolute discretion, accept or reject the return of any Products which have been incorrectly ordered. If JCL decides to accept the return of such Products, such acceptance shall be upon such terms as JCL may, in its absolute discretion, determine, such terms to include that (i) all Products returned must be in their original condition and in their original packaging; and (ii) in order to qualify for any refund, the Products must be returned within 14 days of JCL's agreement to accept the return; and (iii) all returns will be subject to a re-stocking fee of 20% of the original system price to be charged to the Buyer.

12. Data Protection

- a. Subject to clause (b), except as required for the purposes of checking Buyer references, merchant services and the provision of JCL Products, the Buyer's details will not be disclosed to any third parties (except as required by law) unless the Buyer has given their prior written consent to such disclosure.
- b. JCL may use all information obtained in connection with the provision of Products to the Buyer, for the purposes of improving, innovating or designing any JCL Products, without recourse, remedy or compensation of any nature to the Buyer, and the Buyer hereby irrevocably assigns to JCL all intellectual property rights in respect of such information, improvements, innovations and designs.

13. Limitation of Liability

- a. JCL shall not be liable for damage, loss or other expenses resulting from the failure to give advice or information or for the giving of incorrect advice or information (including without limitation advice or information given or not given by or through a JCL technical support facility) whether or not due to JCL's act or omission or that of any of its employees, agents, representatives or sub-contractors.
- b. Except as provided under this Agreement, JCL shall not be liable in any manner in respect of defects in the Products, failure to correspond to specification or sample; or any injury, damage or loss resulting from such defects or failure.
- c. Except as otherwise provided in this Agreement, all warranties, representations, terms, conditions and duties implied by law and relating to the fitness, quality and/or adequacy of the Products are excluded to the fullest extent permitted by law.
- d. JCL shall have no liability to the Buyer if any monies due in respect of the JCL Products have not been paid in full by the due date for Payment.
- e. JCL shall have no liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Buyer's continued use of a defective Product after a defect has become apparent or suspected or should reasonably have become apparent to the Buyer.
- f. The Buyer shall give JCL a reasonable opportunity to remedy any matter for which JCL is liable before the Buyer incurs any costs and/or expenses in remedying the matter itself. If the Buyer does not do so, JCL shall have no liability to the Buyer.
- g. JCL shall have no liability to the Buyer to the extent that the Buyer is covered by any policy of insurance arranged as a result of the contract, this Agreement or the property into which any JCL Products are installed and the Buyer shall ensure that the Buyer's insurers waive any and all rights of subrogation they may have against JCL.
- h. JCL shall have no liability to the Buyer for any: (i) consequential losses (including loss of profits and/or damage to goodwill); (ii) economic and/or other similar losses; (iii) special damages and indirect losses; and/or (iv) business interruption, loss of business, contracts and/or opportunity.
- i. JCL's total liability to the Buyer and/or arising in relation to any contract of this Agreement shall not exceed 5 times the amount of the cost of and charges for the Product under the contract or this Agreement, or the sum of £1,000, whichever is higher. To the extent that any liability of JCL to the Buyer would be met by any insurance of JCL then the liability of JCL shall be extended to the extent that such liability is met by such insurance.
- j. Each of the limitations and/or exclusions in this Agreement shall be deemed to be repeated and apply as a separate provision for each of: (i) liability for breach of contract; and (ii) liability in tort (including negligence); and (iii) liability for breach of statutory duty, except for (i) above which shall apply only in respect of all the said types of liability.
- k. Nothing in this Agreement shall exclude or limit the liability of JCL for the death or personal injury due to its gross negligence or any other liability which it is not permitted to exclude or limit as a matter of law.

14. Force Majeure

- a. JCL shall not be liable for any loss, damage, delay or expenses caused wholly or in part (whether directly or indirectly) by an Act of God, outbreak of war, civil commotion, governmental policies or restrictions or control, including restrictions of export or import or other licences, trade or industrial disputes of whatever nature, whether or not such dispute involves JCL, its employees, agents or representatives or by any other event whatsoever which is beyond JCL's control and in any such circumstance, JCL may omit Products from or cancel the Buyer's order or postpone delivery of the Products ordered.

15. Bankruptcy or Insolvency

- a. If (i) the Buyer makes a proposal for or enters into a scheme of arrangement or a composition with its creditors or fails to comply with a statutory demand for the repayment of a debt within the time therein allowed, or becomes apparently insolvent; or (ii) (where the Buyer is an individual or where the Buyer is a partnership, in the case of an individual partner) an application is made to the court under Part VIII of the Insolvency Act 1986 for an interim order for the purpose of a voluntary arrangement or an order is made for the administration of the Buyer's estate pursuant to Part VI of the County Courts Act 1984 or a bankruptcy petition relating to the Buyer is presented to the court or the Buyer is adjudged bankrupt; or (iii) (where the Buyer is a company) a petition for an administration order is presented to the court pursuant to Part II of the Insolvency Act 1986 or the Buyer passes a resolution or the court makes an order that the Buyer shall be wound up (otherwise than for the purpose of amalgamation or reconstruction) or a receiver or administrative receiver is appointed by any of the Buyer's assets or undertakings or circumstances arise which entitle the court or a creditor to appoint a receiver or administrative receiver; or (iv) (where the Buyer is either a company or a partnership), circumstances arise which entitle the court to make a winding-up order; or (v) (where the Buyer is a company, partnership or individual) the Buyer takes or suffers any similar action in consequence of debt; then JCL may stop any Products in transit and suspend further deliveries and may forthwith terminate the contract and this Agreement without prejudice to the continuation of JCL's rights hereunder and to any existing claims. Where Products have been delivered but not paid for, the price shall become immediately due and payable.

16. Non-waiver of rights

- a. The failure by JCL to exercise or enforce any rights conferred on it by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to prevent the exercise or enforcement of such right at any time thereafter.

17. Health & Safety

- a. Certain Products supplied by JCL could, if incorrectly used or installed, give rise to health and safety risks. The Buyer undertakes to JCL that it will ensure compliance by its employees, agents, licensees, customers, contractors and representatives with any instructions given by JCL or any supplier to JCL for the purposes of ensuring that the Products will be safe and without risk to health when properly used and installed and will take any other steps or precautions, having regard to the nature of the Products, as are necessary to preserve the health and safety of persons handling, using or disposing of them, or being in or about premises in which JCL Products have been installed or stored.

18. Notices

- a. Any notices required under this Agreement may be given in writing, by post, fax or by email and delivered to the party at its principal place of business or last known mail or email address. Any notice hereunder shall be deemed to have been delivered, if sent by post, 2 days after posting, and if sent by fax or email, on the next working day after transmission.

19. Governing Law

- a. This Agreement is governed by English laws and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England.