

# Mark Herring Lighting Limited – Terms and Conditions of Trade

## 1. Definitions

- 1.1. In these terms and conditions:
- 1.1.1. **Company** means Mark Herring Lighting Limited and its successors and assigns.
- 1.1.2. **Customer** means the person or entity purchasing Goods from the Company or any person acting on behalf of or with the authority of that person or entity.
- 1.1.3. **Default** means:
- 1.1.3.1. Any money payable to the Company is not paid when due or, in the Company's opinion, the Customer will be unable to meet its payments as they fall due;
- 1.1.3.2. The Customer does not comply with these Terms or any other contract or agreement with the Company;
- 1.1.3.3. The Customer is in breach of any of its obligations under these Terms;
- 1.1.3.4. The Guarantor (if any) is in breach of any agreement between the Company and the Guarantor;
- 1.1.3.5. The Customer or the Guarantor is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency, receivership or which generally precedes such an event, or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors.
- 1.1.4. **Goods** means the goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services), and includes Goods described on any invoice, quotation, work authorisation or any other forms as provided by the Company to the Customer.
- 1.1.5. **Guarantor** means that person, persons or entity who agrees to be liable for payment of all monies owed to the Company by the Customer, on a principal debtor basis.
- 1.1.6. **Price** shall mean the price payable for the Goods and/or Services as agreed between the Company and the Customer.
- 1.1.7. **Services** means all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.1.8. **Terms** means these Terms and Conditions of Trade as amended, updated or replaced from time to time.

## 2. Acceptance

- 2.1. Any instructions received by the Company from the Customer for the supply of Goods and/or Services, and all Goods and/or Services supplied by the Company to the Customer, shall constitute acceptance of these Terms.
- 2.2. Once accepted these Terms are irrevocable and can only be rescinded with the written consent of the Company.

## 3. Price and payment

- 3.1. The Price for Goods and/or Services will be charged at the price applying to those Goods or the supply of the Services as per the customer's acceptance of a valid quote issued within a 30-day period.
- 3.2. GST and other taxes, duties or charges that may be applicable shall be added to the Price except where they are expressly included in the Price.
- 3.3. At the Company's sole discretion before Goods are supplied, the Company may require the Customer to pay a deposit or progress deposits in accordance with a payment schedule as set out in the quote.
- 3.4. At the Company's sole discretion, full payment shall be due before dispatch of the Goods, or payment for approved Customers shall be due by the 20th day of the month following the date of invoice.
- 3.5. If payment of the Goods are not received by the Company by the due date for payment, the Customer will be in breach of its obligations under these Terms and clause 4 (below) pertaining to default will apply.
- 3.6. The Company (in its discretion) may charge interest on any overdue invoices which shall accrue daily from the due date for payment until the date of payment at a rate of 10% per calendar month on any unpaid balance, compounding per calendar month.
- 3.7. In addition, the Company may pass any outstanding account to its debt collection agent where the Customer will be liable for the total debt due (including interest accrued), collection agency cost and legal and other costs arising from the collection of any amount owing by the Customer to the Company.

## 4. Default and consequence of default

- 4.1. In the event of Default, without prejudice to any other remedies of the Company at law, all amounts owing by the Customer, whether or not due for payment, shall become immediately due and payable and
- 4.1.1. The Company may suspend or terminate the supply of Goods to the Customer and any of its

obligations under the Terms; and

- 4.1.2. The Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled; and
- 4.1.3. The Company may enforce any security interest granted by the Customer.
- 4.2. The Company will not be liable to the Customer for any loss or damage, consequential or otherwise, the Customer suffered because the Company exercised its rights under this clause.
- 4.3. Interest on any overdue invoices shall accrue daily from the due date for payment until the date of payment at a rate of 10% per calendar month on any unpaid balance, compounding per calendar month.
- 4.4. If the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Company.
- 4.5. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt, including legal costs on a solicitor and own Customer basis and the Company's collection agency costs.
- 4.6. The Customer shall not be entitled to make any deduction from the price of the Goods and/or Services in respect of any set-off or counterclaim or withhold any payment by way of retention without the prior written approval of the Company.

## 5. Ownership of the goods

- 5.1. Until payment in full of all indebtedness to the Company in relation to the Goods and/or Services, the Company and the Customer agree that:
- 5.1.1. The title to the Goods supplied remains with the Company;
- 5.1.2. The Customer hereby irrevocably gives the Company, its agents and servants, license upon giving reasonable notice to enter premises occupied by the Customer to search for and remove any of the Goods supplied without in any way being liable to the Customer or any person claiming through the Customer;
- 5.1.3. If the Company exercises its right to reclaim the Goods it shall be entitled to dispose of them for its own benefit and the Customer shall indemnify the Company for:
- 5.1.3.1. Any shortfall incurred by it on realisation against the price at which such Goods were contracted to be bought by the Customer; and
- 5.1.3.2. Any costs incurred by the Company in the exercise of its right to reclaim the Goods, whether relating to the repossession, storage or resale of the Goods (including legal costs as between solicitors and own client);
- 5.1.4. Nothing in this clause shall be construed as permitting the Customer to return the Goods or any part of them for any reason; and
- 5.1.5. If the Goods or any part of them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale will be the property of the Company. The Customer will hold all proceeds of sale or disposition on trust for the Company.

## 6. Risk

- 6.1. All risk in the Goods shall pass to the Customer upon delivery.
- 6.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, without prejudice to its rights under these Terms (including the right to receive payment), the Company is entitled to receive all insurance proceeds payable for the Goods. The Customer acknowledges and agrees that it holds any money received from any insurance payment for the Goods on trust for the Company. The production of these Terms by the Company is enough evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

## 7. Delivery of goods

- 7.1. Delivery shall be deemed to have occurred at the Company's premises upon transfer of possession of the Goods to the Customer or to any agent or carrier and the Customer shall insure the Goods for their full insurable value from the time it takes delivery.
- 7.2. If requested by the Customer and at the Company's sole discretion, the Company may deliver the Goods to the Customer at the Customer's nominated address (if the Goods are delivered by the Company or the Company's nominated carrier).
- 7.3. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, and delivery of the Goods to a carrier, either named by the Customer

or failing such naming to a carrier at the discretion of the Company for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer. If the Customer is unable to take delivery of the Goods as arranged, then the Company shall be entitled to charge a reasonable fee for redelivery.

- 7.4. The costs of carriage and any insurance which the Customer reasonably directs the Company to incur shall be reimbursed by the Customer to the Company (without any set-off to other withholding whatever) and shall be due as indicated in the Company's invoice. The carrier shall be deemed to be the Customer's agent.
- 7.5. If the Customer indicates to the Company that it will refuse to accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery.
- 7.6. The Company reserves the right to deliver the Goods in instalments.
- 7.7. The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
- 7.8. Any dates quoted by the Company for delivery are approximate only. The Company shall use its best endeavours to deliver the Goods by the quoted date, however it shall not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred by the Customer as a result of a delay in delivery.

## 8. Defects

- 8.1. The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way or short in quantity. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that:

- 8.1.1. The Customer has complied with the provisions of clause 8.1; and
- 8.1.2. The Company will not be liable for defective Goods which have not been stored or used in a proper manner or which have not been paid for by the Customer.
- 8.2. The Company may (in its discretion) accept the defective Goods for credit but this may incur a handling fee of 20% of the value of the returned defective Goods plus the full cost of any freight.

## 9. Warranties/liabilities

- 9.1. Except to the extent of written warranties given by the Company to the Customer, the Company gives no representation or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or special use or purpose and the description of the Goods in any contract or other document shall not import any such condition or warranty on the part of the Company. To the extent permissible by law, any implied and statutory warranty on the part of the Company is excluded.
- 9.2. It is the responsibility of the Customer to satisfy itself of the condition, quality, suitability and fitness of the Goods for its purposes and the Customer accepts the Goods on this basis.
- 9.3. The Company shall be under no liability to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these Terms.
- 9.4. The Company's liability under any warranty for defective Goods is limited to the manufacturer's standard warranty.
- 9.5. The Company's maximum liability howsoever arising under these Terms shall not exceed the Price of the Goods in relation to which any liability has arisen.
- 9.6. All costs incurred by the Company in repairing or replacing the defective Goods are payable by the Customer.
- 9.7. If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 shall not apply.

## 10. Guarantee

- 10.1. In consideration of the Company agreeing to supply goods and services to the Customer, the Guarantor jointly and severally agree, guarantee

- and undertake to the Company due payment of all amounts due or at any time owing to the Company by the Customer.
- 10.2. The Guarantor agrees that the Guarantor is liable as a principal debtor as well as a guarantor for all accounts held by the Customer with the Company. Where there is more than one Guarantor, each Guarantor is jointly and severally liable.
- 10.3. As a separate, independent obligation the Guarantor indemnifies and shall keep indemnified the Company, on demand, against all costs (including legal costs on a solicitor-Customer basis), claims, losses, demands, expenses and liabilities of any nature whatsoever which may be made against the Company by third parties or which the Company may sustain, pay or incur as a result of or in connection with the supply of goods and/or services and the granting of credit to the Customer.
- 10.4. This guarantee shall be a continuing guarantee which will not be discharged by any settlement or payment of any account and the Guarantor agrees that the Guarantors liability shall not be discharged, waived or affected by any compromise, granting of credit, extension of former credit, granting of time or waiver, neglect to sue or any other concession given to the Customer.
- 10.5. The Guarantor accepts that the guarantee is unaffected by the unenforceability of any payment of money, by the liquidation or bankruptcy of the customer.
- 10.6. The Guarantor accepts that any demand for payment may be made on it/them by the Company without demand being made on the customer.

#### 11. Customer disclaimer

- 11.1. The Customer hereby disclaims any right to rescind, or cancel any contract with the Company or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgements.

#### 12. Personal Property Security Act (PPSA)

- 12.1. The Customer acknowledges and agrees that:
- 12.1.1. These Terms constitute a security agreement for the purposes of the PPSA as security for payment by the Customer of all amounts due to the Company including any future amounts.
- 12.2. The Customer undertakes to:
- 12.2.1. Sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- 12.2.2. Indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- 12.2.3. Not register a financing change statement or a change demand without the Company's prior written consent of the Company; and
- 12.2.4. Give the Company not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in its details (including, but not limited to, changes in address, trading name or business practice);
- 12.2.5. Not register or agree to register any financing statement granting security over the Goods without the prior express written authority of the Company.
- 12.3. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
- 12.4. To the maximum extent permitted by law the Customer waives its rights and, contracts out of its rights under the sections referred to in sections 116, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148 of the PPSA.
- 12.5. This section 12 survives termination of the arrangements and agreement between the Company and the Customer.

#### 13. Security and charge

- 13.1. Despite anything to the contrary contained herein or any other rights which the Company may have whatsoever, where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these Terms, the said mortgage to be in such form and to contain such covenants, conditions, provisions and powers as are usually inserted in mortgages of land securing funds by solicitors practicing in the Canterbury region. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge a caveat, which caveat shall be withdrawn once all amounts owed by the Customer have been paid in full.
- 13.2. Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own Customer basis.
- 13.3. The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.

#### 14. Cancellation

- 14.1. The Company may cancel any contract to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2. If the Customer cancels delivery of the Goods, the Customer shall be liable for any loss incurred by the Company (including but not limited to, any loss of profits) up to the time of cancellation.
- 14.3. Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will not be accepted, once production has commenced.

#### 15. Force majeure

- 15.1. The Company shall not be liable for any failure or delay in delivering the Goods and/or Services resulting from circumstances beyond its reasonable control (**Force Majeure**). If the Company invokes Force Majeure, it shall do all reasonable things within its power to end the circumstances causing the Force Majeure and to mitigate any losses that the Customer may suffer consequently. However, the Company shall not be liable for any such losses.

#### 16. Privacy Act

- 16.1. For the purposes of the Privacy Act 1993, the Customer and/or Guarantor authorise the Company to:
- 16.1.1. Collect, hold and use any information about the Customer and/or Guarantor, for the purpose of assessing the Customer's and/or the Guarantor's creditworthiness or marketing products and services to the Customer and/or Guarantor; and
- 16.2. Disclose information about the Customer and/or Guarantor, whether collected by the Company from the Customer and/or Guarantor directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantor.
- 16.3. The Customer and/or Guarantor have the right to access correct their respective personal information held by the Company.

#### 17. Severability

- 17.1. If any terms/conditions under these Terms is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of these Terms.

#### 18. Governing law

- 18.1. These Terms shall be governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of New Zealand courts.

Signature of Customer

Date

Signature of Guarantor

Date

Signature of Guarantor

Date