



## **FOTOLEC TECHNOLOGIES LTD**

### **SALE TERMS**

#### **1. DEFINITIONS**

In these conditions the following terms shall have the following meanings described to:

"Agreement" means these Terms and Conditions

"Customer" means the person, firm or organisation placing any order with the Company

"Order" means an order placed by the Customer with the Company and accepted by the Company

"Products" means the lighting, goods and equipment purchased by the Customer from the Company

"Company" means Fotolec Technologies Ltd

#### **2. AGREEMENT**

This Agreement sets out the Terms and Conditions governing the sale of the Products described in the Order. No provision of maintenance or other services is covered by this Agreement.

#### **3. ORDERS AND DELIVERY**

(a) The Company shall use all reasonable endeavours to deliver the Products on the delivery date or as soon as possible thereafter, and it is recognised that time is not of the essence for delivery.

(b) Unless otherwise agreed in writing, the Company may make and the Customer shall accept, partial delivery of Products ordered. Each such partial delivery shall be deemed to be the subject of a separate agreement. Failure by the Company to make deliveries in accordance with an Agreement or any claim by the Customer in respect of any one or more such deliveries, shall not entitle the Customer to treat any other agreement as at an end.

(c) Risk of loss or damage to any Products shall pass to the Customer on delivery to the Customer's premises or other delivery address specified by the Customer or upon collection by the Customer.

(d) The Customer shall ensure that the Products are insured to the value of the full purchase price against any loss or damage by accident, fire, theft, or other risks from the date of delivery by the Company.

(e) Where the Customer requires the Company to deliver and install the Products at the Customer's premises, then the Customer shall ensure that the Customer's premises has been fully prepared to permit the Company to install the Products immediately. The Company shall have no liability to the Customer in respect of late or partial delivery where this has resulted from the Customer's failure to ensure that the premises are ready for installation by the Company.

#### **4. PRICE**

(a) The price payable for the Products shall unless otherwise stated in writing by the Company be the list price of the Company current at the date of delivery, notwithstanding the price quoted at the time of Order. The Customer recognises that prices quoted at the time of Order may differ from the prices at the time of delivery as a result of change in the Company's costs in respect of materials, labour, services, transport, or change in exchange rates that may occur.

(b) All prices quoted are exclusive of VAT, tax, duty, insurance, freight and delivery charges which will be charged at applicable rates. The Customer agrees to pay for any loss or extra costs incurred by the Company through the Customer's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default on the part of the Customer, its servants or employees.

#### **5. TERMS OF PAYMENT**

(a) Payment in full of the purchase price and any substantial costs shall be made without any deduction or set off within 30 days of the date of invoice.

(b) If the Customer fails to pay any invoice in accordance with the Company's payment terms then, without prejudice to any other rights and remedies, the Company shall be entitled to both suspend deliveries due to the Customer under this or any other Agreement until such payment is made in full together with any other amounts owing to the Company whether or not the due date for payment has been reached, and the Company reserves the right to charge interest on any sum due under this Agreement on a day to day basis from the date of invoice until the date payment in full is made at the rate of 3% above the base rate from time to time of National Westminster Bank Plc.

(c) The Customer shall not be entitled to withhold payment of any amount payable under this Agreement by reason of any dispute or claim by the Customer, and the Customer shall not be entitled to set off against any amount payable under this Agreement any amount due by the Company to the Customer under any other Agreement.

(d) The Customer shall reimburse to the Company the entire cost of representing any cheque or other instrument delivered to it in payment of any sum due by the Customer and all direct expenses reasonably incurred in seeking to collect amounts of the outstanding price.

#### **6. WARRANTIES AND LIABILITY**

(a) Subject to the following provisions, the Company warrants that the Products will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of three months from delivery.

(b) The above warranty is given by the Company subject to the following conditions:-

(i) the Company shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Customer;

(ii) the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company instructions (whether oral or in Writing), misuse or alteration or repair of the Products without the Company's approval;

(iii) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Products has not been paid by the due date for payment;

(iv) the above warranty does not extend to parts, materials or equipment not manufactured by the Company in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

(c) Subject as expressly provided in these Terms, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

(d) Where the Products are sold under a consumer transaction (as defined by the Consumer Transaction (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

(e) A claim by the Customer which is based on any defect in the quality or condition of the Products, with the exception of breakage (see 6 (f) below), or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within seven days after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Products and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.



(f) Goods supplied are fragile and must be opened and inspected within 48 hours of delivery to the Customer to check for breakages. No claim for breakage will be considered unless this is notified to the Company and the fact of breakage reported to the Company within 48 hours of delivery. The Company will require photographic evidence of breakage and details of the handling of good at the Customer's premises.

(g) Where a valid claim in respect of any of the Products which is based on a defect in the quality or condition of the Products or their failure to meet specification is notified to the Company in accordance with these Terms, the Company may replace the Products (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Products (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.

(h) Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Customer 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 loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all) or their use or resale by the Customer and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

## **7. ACCEPTANCE OF PRODUCTS**

(a) The Customer shall be deemed to accept the Products upon delivery unless the Company is notified in writing within seven days of the date of delivery of the Products by the Customer that the Products or any part thereof are defective.

(b) From the time of delivery the Products shall be at the risk of the Customer who shall be solely responsible for their custody and maintenance notwithstanding that title in the Products shall not pass to the Customer until the Company has received payment in full for all sums due under this Agreement and any other agreements between the Company and the Customer.

(c) Where Products are to be returned to the Company pursuant to the warranty given in clause 6(a), the Customer shall notify the Company within seven days of the fault complained of arising in writing. After written notification and when returning Products to the Company the Customer must state clearly in writing the full order details and failure to do so will allow the Company to exercise his right to refuse to accept the purported return of goods. If the Company determines that the Products to it are not defective or that the fault is the result of misuse, the Customer shall reimburse the Company all costs of handling, fault diagnosis and transportation.

(d) Any Products replaced under warranty shall become the property of the Company.

## **8. CANCELLATION**

(a) Where an Order has been accepted by the Company for a supply of standard Company Products to the Customer, then that Order or any part thereof may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of a cancellation charge amounting to 15% of the Purchase Price.

(b) Where an order has been accepted by the Company for a supply of products to the Customer which are not standard products of the Company, then that order may not be cancelled except by written agreement of the Company and upon payment to the Company of the Purchase Price.

(c) The Customer may not seek to cancel an Order or any portion thereof after delivery.

## **9. RETENTION OF TITLE**

(a) Title to the Products shall not pass to the Customer until after the full purchase price and any other sums have been received in full by the Company.

(b) Until payment is made in full the Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Products and documentation and the relationship between the Company and the Customer in respect of the Products including any proceeds of sale or other consideration therefore shall be a fiduciary one. The Customer shall hold all such Products as fiduciary agent and bailee and shall keep such Products separate from those of the Customer or any other person stored, protected and identified as the property of the Company.

(c) At all times the Company shall be entitled to require the Customer to deliver up or recover directly the Products and the property which has not passed to the Customer and for that purpose the Customer hereby grants to the Company, its agents and employees an irrevocable licence to enter any premises where such Products are stored in order to repossess those Products.

(d) If the Customer shall sell the Products it shall do so as agent and trustee for the Company and hold in trust absolutely for the Company all the rights and benefits arising under such sale and further out of the proceeds of such sale retain the amount due to the Company in a separate identified bank account as trustee for the Company.

(e) Notwithstanding the property or title in Products has not passed to the Customer the Company shall be entitled to at any time retain an action against the Customer for the price of Products supplied by the Company to the Customer.

## **10. INTELLECTUAL PROPERTY**

(a) The Customer shall notify the Company forthwith in writing if any allegation is made that the Customer's use or resale of the Products infringes Intellectual Property Rights, including without limitation any patent, copyright, trade or service mark or design right (whether registered or unregistered) of any third party.

(b) In the event that any such allegation referred to in clause 10(a) is made (or in the Company's reasonable opinion is likely to be made), the Company shall at its option and expense either procure the right for the Customer to use and resale the Products which are the subject of the allegation or replace or modify the same so they become non-infringing. If none of the above is reasonably feasible the Company shall grant the Customer a credit for the normal depreciated value of the Product.

(c) The Company will not be liable if the alleged infringement is based upon the use of the Products in combination with any Products not sold by the Company or upon the furnishing to the Customer of any information, data, service or application or assistance by a third party. Under this Agreement the liability of the Company to the Customer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances should exceed the Purchase Price payable for the Products.

(d) The Company shall not be liable to the Customer for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

(e) The Company does not limit or exclude its liability to the Customer for personal injury or death of any person resulting from the Company's employees, agents or sub-contractor's negligence.

(f) The Company shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of Company or its employees, agents and sub-contractors but such damages shall be limited to £1m.

## **11. TERMINATION**

(a) The Company may terminate this Agreement forthwith:

(i) if the Customer fails to pay any sum due under this or any other Agreement with the Company within 30 days of any due date;

(ii) if the Customer is involved in any legal proceedings concerning insolvency, or commences liquidation or ceases or threatens to cease trading, or if there are serious doubts arising as to the Customer's solvency.



(b) Upon termination of this Agreement for whatever reason, the Company shall, without prejudice to its other rights and remedies be paid the price of any Products delivered to the Customer prior to the date of termination and the price of any Products ordered by the Company on behalf of the Customer for which the Company has paid or is legally bound to pay.

(c) Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies the Company may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of the Company not the coming in to or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

#### **12. FORCE MAJEURE**

(a) The Company shall not be liable for any breach of its obligations under this Agreement resulting from causes beyond its reasonable control including but not limited to fire, flood, tempest, accidents, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, power failure or breakdown in machinery, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority.

#### **13. GENERAL**

(a) This Agreement represents the entire Agreement between the parties. No statement, description, information, warranty, condition or recommendation contained in any catalogue, advertisement or communication or made verbally by any of the agents or employees of the Company, shall be construed to enlarge, vary or overwrite in any way any of the conditions of the contract.

(b) No failure, delay, relaxation, or indulgence on the part of the Company in exercising any power or right conferred upon it in this Agreement shall operate as a waiver of such power or right.

(c) Any notice given under this Agreement by either party to the other must be in writing and shall be effected by personal delivery, or registered first class mail postage to such address as shall have been notified for the purpose and shall in the case of postage be deemed to be delivered upon the expiration of 48 hours after posting if posted in the United Kingdom.

(d) The provisions of this Agreement are severable and if any provision (not being a fundamental term) is held to be invalid or unenforceable by a Court of competent jurisdiction such invalidity or an unenforceability shall not effect the validity or enforceability of the other provisions. Parties to this Agreement hereby agree to attempt to substitute for an invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of an invalid or an enforceable provision.

(e) This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the jurisdiction to the English Courts.

(f) This Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

Revised January 2009