

TERMS AND CONDITIONS

1. OVERRIDING EFFECTS OF TERMS AND CONDITIONS

- 1.1. Unless otherwise specifically agreed in writing, all existing and future business conducted by Sunbird Lighting (Pty) Ltd shall be on these Terms and Conditions ("**Conditions**").
- 1.2. These Conditions apply to the agreement between Sunbird Lighting (the Seller) and the customer (the Buyer) to the exclusion of any other terms that the Buyer may seek to impose or incorporate, or which are or may be implied by trade, custom, practice or course of dealing.

2. QUOTATIONS

- 2.1. Any quotation issued by Sunbird Lighting in relation to any goods to be purchased from Sunbird Lighting ("**Products**") shall remain valid for acceptance for a period of 30 (thirty) days from the date of quotation, unless amended by Sunbird Lighting prior to the Buyer accepting it.
- 2.2. Unless Sunbird Lighting provides the Buyer with a written quotation, which the Buyer accepts within the period for which the quotation is valid, the price of Products will be price ruling at the date of the supply of the Products.

3. ORDERS

- 3.1. All orders must be placed with Sunbird Lighting in writing ("**Order**"). Sunbird Lighting shall not be responsible for any errors or misunderstandings occasioned by your failure to effect orders in writing.
- 3.2. The Order read with these Conditions shall be known as the "**Contract**" between the Buyer and Sunbird Lighting.
- 3.3. The Order shall be deemed to be accepted on the earlier of the Buyer accepting the quotation; the Buyer paying the Invoiced amount (or any part thereof); and Sunbird Lighting doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 3.4. Any advice or opinion given by Sunbird Lighting's employees is for the Buyers benefit only and Sunbird Lighting accepts no responsibility for any damages that may incur as a result of relying upon such advice.
- 3.5. Any analysis of your lighting requirements, and any lighting simulation generated and supplied to the Buyer in relation to such analysis shall be based on information provided to us by you and offered to the Buyer on the basis that same shall provide an indication only of what possible solutions may be required and should not be considered conclusive evidence of all lighting requirements in the particular space.
- 3.6. It shall be your sole responsibility:
 - 3.6.1. to provide Sunbird Lighting with all the necessary requirements and specifications in relation to the Products ordered.
 - 3.6.2. to establish that the Products requested by you are suitable for its purpose
- 3.7. Sunbird Lighting's acceptance of the Order is subject to, amongst other things, the availability of the Product(s).
- 3.8. Orders that have been accepted by Sunbird Lighting may not be cancelled, varied or withdrawn by the Buyer, unless Sunbird Lighting, in its sole discretion, agrees thereto in writing, failing which you will be liable for the full order value.
- 3.9. Without limiting the generality of the afore going, Sunbird Lighting reserves the right to cancel and withhold your order where the Buyer is placed under business rescue, liquidated, sequestrated, or if the Buyer make any attempt of compromise with your creditors, have a judgment recorded against your name and/or if the Buyer breaches any of the Conditions contained herein.
- 3.10. Due to the enhancement of technology, product specifications may/can change from time to time, without notice, to improve product quality and efficiency.

4. PAYMENT

- 4.1. All payments are to be made in the quoted currency to the address / account stated on Sunbird Lighting's invoice via EFT. We will not accept cheques under any circumstances.
- 4.2. The price of the Products is exclusive of amounts in respect of value added tax (VAT)
- 4.3. The Buyer shall pay to Sunbird Lighting such additional amounts in respect of VAT as are chargeable on the supply of the Products from time to time.
- 4.4. Unless agreed to the contrary by Sunbird Lighting in writing, no Products will be delivered unless and until payment of the full Order Price has been received by Sunbird Lighting.
- 4.5. The Buyer shall not be entitled to withhold, deduct from or defer any amount due by the Buyer to Sunbird Lighting and shall pay all amounts free of any deductions, charges and set-off.
- 4.6. Sunbird Lighting, in its sole discretion, shall be entitled, but not obliged, to set-off against any amounts owed by the Buyer to Sunbird Lighting, any amounts that Sunbird Lighting owes to the Buyer.

- 4.7. Notwithstanding clause 4.4, all goods supplied by Sunbird Lighting remains the property of Sunbird Lighting until such goods have been paid for in full.
- 4.8. If any payment is in arrear, Sunbird Lighting shall be entitled, in its sole discretion, to suspend further deliveries until payment is received, whether such deliveries form part of the same order or other orders.
- 4.9. If the Buyer fails to make any payment due to Sunbird Lighting in terms of this Agreement by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 2% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount (both dates inclusive), whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

5. LEAD TIME

- 5.1. Once an Order has been provided to Sunbird Lighting, it will take approximately 6 – 12 weeks to complete the manufacture of the Products, subject to available stock on hand.
- 5.2. Time shall not be of the essence in respect of any order. The Buyer accepts that the supply of Products will be subject to the availability of capacity and timeous receipt by Sunbird Lighting of any drawings, designs and specifications that Sunbird Lighting may require from the Buyer. Such drawings designs and specifications shall be deemed to have been given to Sunbird Lighting for the purpose of description only and shall not form part of these Conditions.
- 5.3. Lead times may vary, based on availability of raw materials from Sunbird Lighting's suppliers.
- 5.4. All orders are to be collected at Sunbird Lighting's premises, unless otherwise arranged.
- 5.5. No claims for shortages or damaged items will be accepted if the delivery note is signed by the Buyer (or a representative).

6. DELIVERY

- 6.1. Sunbird Lighting shall deliver the Products:
 - 6.1.1. on the date specified in the Order;
 - 6.1.2. to the premises as listed on the Order or such other location as is set out in the Order, or as instructed by the Buyer prior to delivery ("**Delivery Location**"); and
 - 6.1.3. during normal business hours.
- 6.2. Delivery of the Goods shall be completed on the completion of unloading the Products at the Delivery Location.
- 6.3. Where the Buyer fails to take delivery of the Products, Sunbird Lighting shall be entitled to charge the Buyer a reasonable sum for storing the goods and claim damages for any loss incurred as a result of the Buyers failure to take delivery. Any further delivery charges shall also be borne by the Buyer.
- 6.4. Where it is agreed that the Products are to be delivered by instalments, they may be invoiced and paid for separately.
- 6.5. Sunbird Lighting will not be liable, under any circumstances, for any direct, indirect or consequential damages of any nature, whether in the contemplation of the parties or not, which the Buyer may suffer as a result of a delay in delivery of the services or products ordered and the Buyer shall not be entitled to cancel any order by reason of such delay.
- 6.6. Where a time for performance is given, Sunbird Lighting undertakes to use reasonable endeavours to adhere to such date(s) and/or time(s), but the Buyer acknowledges that the delivery date and/or performance time is merely an estimate and Sunbird Lighting shall not be responsible, and shall not incur any liability to the Buyer, in the event that Sunbird Lighting fails to perform on such date(s) and/or during such time(s).
- 6.7. Title and risk in the Products shall pass to the Buyer on the earlier of delivery, or placement with a carrier. The Buyer shall be required to pay all applicable taxes, duties, shipping, and other related costs.
- 6.8. Sunbird Lighting undertakes towards the Buyer to package the goods properly (unless the nature of the goods dictates otherwise) and/or secure them in such a way that they, with normal transport, arrive at their destination in good condition without the Seller accepting any liability after the moment of delivery.
- 6.9. Sunbird Lighting shall deliver the goods, or shall dispatch them for delivery, to the agreed place or places in the manner as determined or agreed in the Agreement. The goods travel for the account and at the risk of the Buyer.
- 6.10. The stated delivery periods are always without obligation and will never be final deadlines, unless explicitly agreed otherwise. If this period is exceeded, the Buyer will be unable to claim compensation of any kind.

7. INSTALLATION

The Buyer shall be responsible for

- 7.1. appointing a qualified electrician to attend to the proper installation of the Products, in accordance with Sunbird Lighting's installation diagrams and instructions; and
- 7.2. ensuring that the wiring of the premises in which the Products are to be installed is adequate and in line with all relevant legislation.

8. RESALE

- 8.1. The Buyer is entitled to display its own trademark on the packaging of the goods, but it is not permitted to do this in such a way that this causes the industrial trademark of Sunbird Lighting to not be fully identifiable.
- 8.2. If the Buyer breaches any of the obligations stated in this article, the Buyer fully indemnifies Sunbird Lighting against claims by the Buyer or third parties.

9. INABILITY TO SUPPLY

If Sunbird Lighting is unable to deliver some or all of the Products for any reason beyond its control, including but not limited to lack of instruction from the Buyer, stock shortage, industrial dispute or break-down, production delays, government action, state of war, riot or civil disturbance, then Sunbird Lighting may, in its sole discretion, cancel the whole or any part of this Contract forthwith, provided that Sunbird Lighting notifies the Buyer with as much advance notice as may be reasonably possible in the circumstances, and provided further that the event giving rise to the delay was not caused by your negligent or intentional act or omission, in the event of such cancellation Sunbird Lighting shall not be liable for any loss whatsoever (including loss of profits) thereby caused.

10. WARRANTY

- 10.1. Sunbird Lighting's Products carry the following guarantees:
 - 10.1.1. 5 years in respect of poultry LED lights
 - 10.1.2. 5 years in respect of Meanwell ELG drivers
 - 10.1.3. 2 years in respect of Repeaters, Dimmers and other electronic components in respect of manufacturing defects only.
- 10.2. Any Products supplied by Sunbird Lighting, which are not manufactured by Sunbird Lighting shall carry their own warranties which shall apply in the circumstances.
- 10.3. Under no circumstances will Sunbird Lighting be liable for damage caused by misuse or abuse of the Product.
- 10.4. The warranty is given in lieu of any liability at common-law, and any other warranties or representations concerning the Products sold, whether express or implied by law, are hereby excluded.
- 10.5. The warranty applies only to manufacturing faults and does not include any other service provided. The warranty does not cover failures caused by but not limited to, any of the following:
 - 10.5.1. Lightning strikes or power surge experienced via the mains network;
 - 10.5.2. Use on incorrect voltage or incorrect voltage selector setting;
 - 10.5.3. Installation of the Product by any person who is not a qualified and practicing electrician, or in a manner which is not in accordance with the installation instructions;
 - 10.5.4. Normal wear and tear;
 - 10.5.5. Accidental breakage, transport damage and/or packing materials;
 - 10.5.6. damage due to neglect, abuse or misuse, vermin infestation, liquid spillage, corrosion, physical breakage of doors and/or flaps;
 - 10.5.7. Product use contrary to the operating instructions
 - 10.5.8. Unauthorised modification or repairs by an unauthorised third party
 - 10.5.9. Failure to maintain as recommended
 - 10.5.10. Force Majeure
 - 10.5.11. Damage caused by leaking batteries
- 10.6. Sunbird Lighting reserves the right to verify and test Products at its premises prior to credit or replacement.
- 10.7. Additional costs for repair / replacement on site and / or by third parties will not be reimbursed, unless explicitly agreed otherwise in writing.
- 10.8. When claiming under the warranty, the Buyer must provide the original tax invoice and order number in relation to the faulty Products. The start date of the warranty is the invoice date.
- 10.9. If the Buyer wishes to claim on the warranty, the Buyer shall be required to deliver all faulty Products to our warehouse, in order that they be tested, in Sunbird Lighting's sole and absolute discretion.

10.10. In the event that the warranty on any particular Product is no longer valid, then all costs of transporting the Product(s) to our warehouse, and the cost of collecting or disposing of same shall be for the Buyers account.

11. INTELLECTUAL PROPERTY

The Buyer hereby acknowledges that information relating to the Products and all rights and interest in and to all components comprising the Products are and shall remain the exclusive property of Sunbird Lighting (or the manufacturer of the Product, if not Sunbird Lighting).

12. LIMITATION OF LIABILITY

12.1. To the extent permissible in law, Sunbird Lighting shall not be liable, whether under contract or delict or otherwise, for all liabilities, costs, expenses, damages, and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Buyer as a result of or in connection with:

12.1.1. any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Products, to the extent that the defects in the Products are attributable to the acts or omissions of the Buyer, their employees, agents, or subcontractors; and

12.1.2. any claim made against Sunbird Lighting by a third party arising out of or in connection with the supply of the Products, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by Sunbird Lighting, its employees, agents or subcontractors.

12.2. Sunbird Lighting will never be liable for any direct or indirect losses of whatever kind, consisting for example of lost profits, business interruption or other consequential losses sustained by the Buyer, unless the loss is a result of an intentional act or gross negligence on the Seller's part.

12.3. This clause 12 shall survive termination of the Contract.

13. BREACH

13.1. In the event that you commit any breach of these Conditions including, but not limited to, the failure to make payment of the Order Price as agreed, Sunbird Lighting shall be entitled forthwith to claim repossession of the goods, for which purpose the Buyer hereby irrevocably authorises Sunbird Lighting, through its duly authorised representative/s, to enter upon the premises where the Products are kept, to take repossession of the Products. The exercise of this right shall not preclude Sunbird Lighting from its right to claim damages from you occasioned by the Buyer's breach.

13.2. Sunbird Lighting shall, in the alternative, be entitled to enforce the provisions of these Conditions and claim payment of the full amount due by the Buyer, any instalments of the price falling due in the future to become due and payable immediately.

13.3. Should Sunbird Lighting take legal action against the Buyer in the event of the Buyer's breach, then the Buyer shall be liable for all legal fees incurred by the Sunbird Lighting in the recovery of any amounts owing, including costs on the attorney and own client scale and collection commission. In the event of a breach of these Conditions by Sunbird Lighting, the provisions of this clause shall apply mutatis mutandis to any legal fees incurred by the Buyer.

13.4. If the Buyer breaches these Conditions and Sunbird Lighting elects not to cancel the Contract, Sunbird Lighting shall be entitled to suspend performance of any of its obligations until the Buyer has complied with its obligations.

14. CONFIDENTIALITY

14.1. A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

14.2. This clause 14 shall survive termination of the Contract.

15. TERMINATION

- 15.1. In the event that the Buyer breaches these Conditions, Sunbird Lighting shall be entitled to demand specific performance in terms of the Contract, including but not limited to immediate payment of the full outstanding balance of the Order Price, or to cancel this Contract immediately and in such event, the Buyer shall be liable to pay to Sunbird Lighting, damages, as a result of your breach and the subsequent cancellation of the Contract. Sunbird Lighting shall be entitled to retain any monies paid by the Buyer, whether to Sunbird Lighting, Sunbird Lighting's attorneys or any other agent whatsoever, as the agreed genuine pre-estimate of Sunbird Lighting's liquidated damages.
- 15.2. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

16. CONSENT

The Buyer specifically consents that Sunbird Lighting:

- 16.1. may carry out a credit enquiry in respect of your financial standing;
- 16.2. may access a Credit Bureau's data base before granting the Buyer credit;
- 16.3. may, where credit is granted, transmit details to a Credit Bureau of how the Buyer has performed in meeting your obligations under the Contract, and share such information with other Credit Bureaus for purposes of assessing further applications for credit by the Buyer (and your members, directors or partners as the case may be) and for occasional debt tracing, debt collection and fraud prevention purposes;
- 16.4. if credit is granted in the Buyers favour and the Buyer fails to meet your financial commitments to Sunbird Lighting, Sunbird Lighting may record the Buyers default with a Credit Bureau; and
- 16.5. may refer information relating to the Buyers credit performance to a Credit Bureau for banking and credit assessment, statistical analysis, and credit scoring purposes and use such information to identify products (including those supplied by third parties) which may be relevant to the Buyer.

17. GENERAL

- 17.1. **Legal Costs.** The Buyer shall be liable for all legal costs incurred by Sunbird Lighting in enforcing the terms of this Contract, on an attorney and own client scale, including collection commission.
- 17.2. **Assignment and other dealings.** The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all your rights or obligations under these Conditions without the prior written consent of Sunbird Lighting.
- 17.3. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.4. **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.5. **Whole Agreement and Variation.** The Contract constitutes the entire agreement between the parties and no other conditions, stipulations, warranties or representatives whatsoever have been made by either party or his agent other than such as are contained herein. No modification, variation or alteration hereto shall be valid unless in writing and signed by both parties or their respective agents.
- 17.6. **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of South Africa.
- 17.7. **Jurisdiction.** Each party irrevocably agrees that the Western Cape High Court shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 17.8. **Authority.** The parties signing this document confirm that they have read and understood all of the terms and conditions contained herein together with any annexures attached and agree that they are bound thereto and, furthermore warrant to each other that they have been duly authorised to sign such Conditions.
- 17.9. **Latitude shall not amount to a waiver.** Any latitude which may have been allowed by Sunbird Lighting in respect of any breach by the Buyer, shall not under any circumstances be deemed to be a waiver of

Sunbird Lighting's rights under this Contract nor a novation hereof, nor shall it prevent Sunbird Lighting from exercising any right nor absolve the Buyer from any obligation under these Conditions.