



General terms and conditions: Veko Lightsystems Ltd.



Solid Solutions. Smart Lighting.

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GENERAL TERMS AND CONDITIONS VEKO LIGHTSYSTEMS LTD

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GENERAL TERMS AND CONDITIONS: VEKO LIGHTSYSTEMS INTERNATIONAL BV

The Purchaser's attention is particularly drawn to the provisions of clause 16.

1 DEFINITIONS

1.1 In these Conditions, the following definitions apply:

"Agreement" the contract between the Vendor and the Purchaser for the supply of Goods in accordance with these Conditions.

"Conditions" these terms and conditions as amended from time to time in accordance with clause 20.6.

"Goods" the goods set out in the Order.

"Order" the Purchaser's order for the supply of Goods or the Purchaser's written acceptance of the Vendor's quotation.

"Purchaser" the person or firm who purchases the Goods from the Vendor.

"Vendor" Veko Lightsystems Ltd registered in England and Wales (company number 09692757) of 1310 Solihull Parkway, Birmingham Business Park, Birmingham B37 7YB.

"Works" any services relating to the Goods (if any) including where relevant design, installation or assembly services.

1.2 In these Conditions a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted.

2 GENERAL

2.1 These Conditions apply to the Agreement, any Order or any subsequent agreement (including where the Vendor uses third party services) to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing unless the Vendor expressly agrees otherwise in writing.

2.2 The Agreement constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Vendor which is not set out in the Agreement.

2.3 If any provision of the Agreement is or becomes invalid, illegal or unenforceable, the relevant provision shall be deemed deleted but this shall not affect the validity and enforceability of the rest of the Agreement.

3 OFFERS, CONTRACTS AND AGREEMENTS

3.1 The Vendor is under no obligation to accept an Order or enter into an Agreement.

3.2 An Agreement shall be formed on the earlier of:-

3.2.1 signature of both parties to a written agreement;

3.2.2 an Order being formed; or

3.2.3 delivery of the Goods or Works by the Vendor.

3.3 If the Vendor receives verbal instructions from an employee

or representative of the Purchaser for additional services at the delivery location and the Purchaser at no time objects to such work then the Vendor may charge for such additional work at rates or prices advised by the Vendor.

3.4 Any samples, drawings, descriptive matter or advertising issued by the Vendor and any descriptions of the Goods or illustrations or descriptions contained in the Vendor's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.

4 PERFORMANCE

4.1 The Vendor shall perform its obligations under the Agreement in accordance with any agreed specification (or good industry practice) and shall determine in its sole discretion how the Agreement shall be executed.

4.2 The Vendor shall have no liability for any breach resulting from the provision of incorrect or incomplete information from the Purchaser or where such breach has been caused or contributed to by any act or omission of the Purchaser.

4.3 The Purchaser shall ensure that all factors for which the Purchaser is responsible, including without limitation data and approvals which the Vendor requires or the Purchaser should be aware are necessary for the execution of the Agreement will be provided to the Vendor in a timely manner.

If such factors are not provided by the Purchaser the Vendor may suspend the Agreement and the Purchaser shall indemnify the Vendor against any additional costs.

4.4 The parties may agree in writing that the Agreement is executed in phases and the Purchaser acknowledges that the Vendor may suspend performance of a phase, without liability, until the Purchaser approves the previous phase in writing.

4.5 The Purchaser shall ensure that if the Vendor, or a subcontractor of the Vendor is performing the Agreement at the premises of the Purchaser or customer of the Purchaser then all necessary facilities, complying with health and safety requirements, shall be provided by the Purchaser without charge. This shall include, without limitation:

4.5.1 paved floors that are freely available for climbing or rolling platforms;

4.5.2 sufficient means for the supply and disposal of materials and equipment via paved roads;

4.5.3 connectivity for devices; and

4.5.4 storage for Goods in the assembly area.

4.6 The Purchaser acknowledges that the assembly only involves assembling of the Goods. Connecting the Goods to the power supply or making connections is outside of the scope of the

Works and the Agreement.

4.7 The Vendor shall only supply lighting technical calculations without obligation and without any warranty as to accuracy. The Purchaser must consider a plus and minus tolerance due to unknown factors, including without limitation light and reflection factors.

4.8 The Purchaser shall indemnify the Vendor against any claims made by third parties, relating to the Goods or Works, which are caused or contributed to by an act or omission of the Purchaser.

5 AMENDMENT

5.1 The parties may agree in writing to amend the Agreement ("**Change**").

5.2 The Vendor shall advise the Purchaser if any Change affects the Goods or completion date of any Works or has any quality or financial consequences.

5.3 If due to a Change the Vendor incurs costs including without limitation producing new drawings, calculations or models then such costs will be for the account of the Purchaser.

5.4 The Vendor reserves the right to amend the Goods or Works if required by any applicable statutory or regulatory requirements.

6 SUPPLY

6.1 Unless otherwise agreed in writing, all Goods shall be delivered FCA (named port or place of departure) except in relation to maritime transport which shall be delivered FOB (named port of shipment) (Incoterms 2010).

6.2 If the Vendor delivers the Goods to the Purchaser this shall be to the location set out in the Order or such other location as the parties may agree in writing.

6.3 Goods shall be delivered at ground floor level and always subject to the provision of paved road accessibility being provided by the Purchaser.

6.4 Delivery of the Goods shall be completed on the Goods' arrival at the delivery location ("**Delivery**") and the Purchaser must ensure that unloading takes place immediately upon Delivery.

6.5 Any dates quoted for Delivery of the Goods are approximate only, and the time of Delivery is not of the essence. The Vendor shall not be liable for any delay in Delivery of the Goods that is caused by a Force Majeure Event or the Purchaser's failure to provide the Vendor with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.6 If the Purchaser fails to accept or take delivery of the Goods then except where such failure or delay is caused by a Force Majeure Event or by the Vendor's failure to comply with its obligations under the Agreement in respect of the Goods:

6.6.1 delivery of the Goods shall be deemed to have been completed upon written notification by the Vendor; and

6.6.2 the Vendor shall store the Goods until Delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance). If the Purchaser fails to take Delivery within

3 weeks then the Vendor may sell the Goods to a third party or destroy the Goods.

6.7 The Purchaser shall indemnify the Vendor for all costs or liability due to failure to take Delivery including without limitation haulage and tankage.

7 DELIVERY AND INSPECTION

7.1 The Purchaser must examine the Goods immediately upon Delivery. Any issues with the Goods ("**Defect**") must be notified to the Vendor by telephone within 2 days of Delivery and confirmed in writing within 5 days of Delivery. Such notification must contain sufficient information for the Vendor to consider the alleged Defect.

7.2 The Purchaser must promptly notify the Vendor in writing of any issue with the packaging and in addition note any such issue on the packing slip/ dispatch note.

7.3 Notification of a Defect shall not relieve the Purchaser from the obligation to pay for the Goods. The Purchaser shall only return Goods with a Defect upon the written approval of the Vendor and such Goods must be returned undamaged and in original packaging.

7.4 The sole remedy of the Purchaser in respect of a Defect shall be at the Vendor's option the replacement of the Goods by the Vendor or a refund for the Goods.

8 TRANSFER OF TITLE AND RISK

8.1 The risk in the Goods shall pass to the Purchaser on Delivery or upon payment in full, whichever the earlier.

8.2 Title to the Goods shall not pass to the Purchaser until the Vendor receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Vendor has supplied to the Purchaser.

8.3 If the Vendor arranges transport on behalf of the Purchaser then such transport shall be at the sole risk and responsibility of the Purchaser who shall ensure that sufficient insurance is in place.

9 FORCE MAJEURE

9.1 For the purposes of this Agreement, "**Force Majeure Event**" means an event beyond the reasonable control of the Vendor including but not limited to strikes, industrial disputes, failure of a utility service or transport network, computer malfunction, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, theft, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

9.2 The Vendor shall not be liable to the Purchaser as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

9.3 If the Force Majeure Event prevents the Vendor from providing any of the Goods or Works for more than two months, the Vendor

shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Purchaser.

10 SUSPENSION AND TERMINATION

10.1 Without limiting its other rights or remedies, the Vendor may suspend or terminate the Agreement with immediate effect by giving written notice to the other party if:

10.1.1 the Purchaser commits a breach of its obligations under this Agreement including without limitation if the Purchaser fails to pay any amount due under this Agreement on the due date for payment; or

10.1.2 the Purchaser enters insolvency; or

10.1.3 the Vendor becomes aware of any circumstance which may affect the performance by the Purchaser of its obligations under the Agreement; or

10.1.4 if security is required under the Agreement and the Purchaser fails to provide adequate security.

10.2 On termination of the Agreement for any reason:

10.2.1 the Purchaser shall immediately pay to the Vendor all of the Vendor's outstanding unpaid invoices and interest and, in respect of Goods and/ or Works supplied but for which no invoice has yet been submitted, the Vendor shall submit an invoice, which shall be payable by the Purchaser immediately on receipt;

10.2.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and

10.2.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11 CANCELLATION

11.1 If the Purchaser cancels the Agreement prior to Delivery then the Purchaser shall pay to the Vendor 20% of the Order amount (excluding VAT) as a cancellation fee together with any costs incurred by the Vendor. This shall be without prejudice to the other rights or remedies of the Vendor.

11.2 If any Goods are not available for any reason then the Vendor will notify the Purchaser within one month of the date of the Order. The Purchaser may in such circumstance cancel the Order without charge and the Vendor shall reimburse payment made in advance (if any) for that specific Order.

12 PRICE AND COSTS

12.1 The price for Goods (and Works if relevant) shall be the price set out in the Order or, if no price is quoted, the price set out in the Vendor's published price list as at the date of Delivery.

The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods.

12.2 The Vendor will annually adjust its prices subject to the higher

of an increase in the Retail Price Index and 1.5%.

12.3 The Vendor reserves the right to increase the price after 3 months following the Order if any factor beyond the control of the Vendor including without limitation, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs increases the Vendors costs by more than 5%.

12.4 The Vendor may charge an administration fee for small orders.

12.5 The Vendor may invoice the Order in several instalments.

13 PAYMENT

13.1 The Purchaser shall pay each invoice submitted by the Vendor within 30 days of the date of the invoice unless otherwise agreed in writing. Time for payment shall be of the essence of the Agreement.

13.2 All amounts payable by the Purchaser under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT").

13.3 If the Purchaser fails to make any payment due to the Vendor under the Agreement by the due date for payment, then the Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.

13.4 The Purchaser shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. The Vendor may, without limiting its other rights or remedies, set off any amount owing to it by the Purchaser against any amount payable by the Vendor to the Purchaser.

13.5 If the Purchaser is in default of its payment obligations under the Agreement, without prejudice to the rights and remedies of the Vendor, the Purchaser shall indemnify the Vendor against all legal fees and costs in recovering the monies due.

14 RETENTION OF TITLE

14.1 Until title to the Goods has passed to the Purchaser in accordance with clause 8, the Purchaser shall:

14.1.1 not sell, pledge or otherwise encumber the Goods;

14.1.2 store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Vendor's property; and

14.1.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Vendor's behalf from the date of delivery.

14.2 The Vendor may at any time:

14.2.1 require the Purchaser to deliver up all Goods in its

possession; and

14.2.2 if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

15 WARRANTY

15.1 The following warranties are provided in respect of the Goods unless otherwise notified by the Vendor:

15.1.1 LED lighting - a maximum of up to 25,000 operating hours or five years from Delivery whichever the earlier; Should the amount of 5,000 operating hours per year be exceeded, the warranty period will be adjusted proportionally.

15.1.2 batteries for decentralised emergency lighting - one year warranty from Delivery; and

15.1.3 all other Goods not covered under clauses 15.1.1 or 15.1.2 will have a two year warranty from Delivery.

15.2 If the Vendor has installed the Goods the Vendor shall, upon request by the Purchaser, perform one inspection between 200 operating hours and 1 year following delivery, and will remedy any apparent defects, if any. This will be subject to the Purchaser

providing an aerial platform and/or the required climbing materials, such as cherry pickers.

15.3 If lighting is equipped with Osram pre-selection switches in combination with Osram fluorescent tube lamps the Purchaser may subject to registration with Osram obtain a manufacturers warranty directly from Osram. Further details can be found on www.osram.com.

15.4 The Goods will comply with all applicable laws.

15.5 The Vendor shall not be liable for the Goods' failure to comply with the warranty in this clause if:

15.5.1 the defect arises because the Purchaser failed to follow the Vendor's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

15.5.2 the defect arises as a result of the Vendor following any drawing, design or Goods specification supplied by the Purchaser;

15.5.3 the Purchaser alters or repairs such Goods without the written consent of the Vendor;

15.5.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

15.5.5 the Goods fall below or above the voltage values or Tc temperatures indicated on the driver or pre-selection switches;

15.5.6 there are abnormal conditions in the power supply, including voltage pulses, overvoltage and under voltage values that exceed the limits of the Goods as shown on the driver or pre-selection switches;

15.5.7 the Goods have had any direct contact with moisture (except IP54 and IP65 goods);

15.5.8 the Goods differ from their description as a result of

changes made to ensure they comply with applicable statutory, environmental or regulatory standards;

15.5.9 the Goods are provided outside of the EU; or

15.5.10 the Purchaser is in breach of any of its obligations under this Agreement.

15.6 The Purchaser must give notice in writing of defective Goods during the warranty period within a reasonable time of discovery of the defect and the Vendor must be given a reasonable opportunity of examining such Goods. The investigation by the Vendor shall determine if the Goods are covered by warranty.

15.7 If the Vendor attends the premises of the Purchaser of the customer of the Purchaser to replace or repair defective Goods then the Purchaser must:-

15.7.1 ensure that the Goods are readily accessible and provide a safe working environment for the Vendor in accordance with all applicable health and safety regulations;

15.7.2 provide access Monday to Friday between 7am and 6pm for inspection and service otherwise additional costs will be charged to the Purchaser;

15.7.3 allow access for the electrical scooters of the Vendor, which operate at the same speed as a lift truck, otherwise additional costs will be payable by the Purchaser

15.8 If the failure rate of the Goods exceeds 5% within 2 years of the delivery date the Vendor shall, if notified by the Purchaser, conduct an investigation to determine the reason for failure. If the Vendor determines that the failure rate is solely due to the Vendor then the Vendor shall replace the Goods without charge. In such circumstances the warranty of the Goods will not be extended.

15.9 For the avoidance of doubt LED lighting is considered defective when in the first 2 years it fails or emits 10% less light flux, in the third and fourth year 20% less light flux and in the fifth year 30% less light flux, provided that the maximum of 25,000 burning hours is not exceeded.

15.10 If the parties agree in writing that the Purchaser may replace the Goods then the labour cost (at the then current rate notified by the Vendor) shall be reimbursed by the Vendor. If the Purchaser instructs the Vendor to replace defective Goods then the Vendor shall charge mileage at its then current rate together with an hourly labour charge.

15.11 Except as provided in this clause 15, the Vendor shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 15.

16 LIMITATION OF LIABILITY: THE PURCHASER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

16.1 Nothing in these Conditions shall limit or exclude the Vendor's liability for death or personal injury caused by its negligence or for any liability which cannot be excluded at law.

16.2 Subject to clause 16.1:

16.2.1 the Vendor shall under no circumstances whatever be liable

to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, advice, business interruption, loss of savings or any indirect or consequential loss arising under or in connection with the Agreement; and

16.2.2 the Vendor's total liability to the Purchaser in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Purchaser to the Vendor under the Agreement.

16.3 This clause 16 shall survive termination of the Agreement.

17 INTELLECTUAL PROPERTY

17.1 For the purpose of this Contract "**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, business names, rights in get-up, goodwill, rights in designs, rights to use, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

17.2 Intellectual Property Rights in or arising out of or in connection with the Goods and Works shall be owned by the Vendor. Unless otherwise agreed in writing the Purchaser shall not obtain any Intellectual Property Rights in the Goods or Works and shall not use any Goods, designs, sketches, drawings, files or brochures for the benefit of a third party without the prior written consent of the Vendor.

18 PACKAGING

18.1 All sustainable wooden pallets provided by the Vendor must be returned empty, clean and undamaged within 30 days following Delivery.

18.2 The Purchaser will be charged for all costs for the repair, replacement or cleaning of the packaging.

18.3 A fee of £25.00 will be charged by the Vendor for every month that the packaging is returned late by the Purchaser.

19 EXPORT

The Purchaser shall be responsible for all export or import requirements (if applicable) and shall indemnify the Vendor for any failure to meet necessary requirements.

20 GENERAL

20.1 **Assignment.** The Vendor may at any time assign, transfer, mortgage, charge or subcontract the Agreement. The Purchaser shall not, without the prior written consent of the Vendor, assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Agreement.

20.2 **Waiver.** A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.

20.3 **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

20.4 **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

20.5 **Notices.** Any notices required under the Agreement shall to be the address stated in the Order or as otherwise notified in writing from time to time.

20.6 **Variation.** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Vendor.

20.7 **Governing law.** This agreement 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 law of England and Wales.

20.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).