

## Terms & Conditions for the Supply of Goods & Services

### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSES

#### 1. INTERPRETATION

##### 1.1. In these Conditions:

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**"Company"** means OrangeTeK Limited (registered in England and Wales with company number 06772086);

**"Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 15;

**"Contract"** means a contract made between the Company and the Customer for the sale and purchase of Goods and/or Services in accordance with these Conditions;

**"Customer"** means the person, firm or company who purchases the Goods and/or Services from the Company;

**"Force Majeure Event"** has the meaning given in clause 13.1;

**"Goods"** means the goods (or any part of them) set out in the Order;

**"Goods Specification"** means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Company;

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Order"** means the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Company's quotation, or overleaf, as the case may be;

**"Order Confirmation"** means confirmation in writing of acceptance of an Order by the Company;

**"Services"** means the services supplied by the Company to the Customer as set out in the Service Specification;

**"Specification"** means the Goods Specification and/or the Service Specification, as the context requires; and

“**Service Specification**” means the description or specification for the Services provided in writing by the Company to the Customer.

- 1.2. In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
  - (c) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - (e) a reference to **writing** or **written** includes faxes and receipted e-mails.

## 2. GENERAL

- 2.1. Unless otherwise specifically agreed in writing by a director of the Company, these Conditions apply to the Contract to the exclusion of any other terms or conditions purportedly stipulated, incorporated or referred to by a Customer however expressed or wherever contained and verbal quotations or undertakings will not be binding on the Company.
- 2.2. A quotation for the Goods and/or Services given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.
- 2.3. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.4. The Order shall only be deemed accepted by the Company when the Company issues an Order Confirmation to the Customer in writing, at which point the Contract shall come into existence.
- 2.5. The Customer is responsible for reviewing the Order Confirmation to ensure that the terms of the Order and any applicable Specification are complete and accurate.
- 2.6. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

## 3. SPECIFICATIONS

- 3.1. All technical information, drawings, illustrations and any descriptive matter or descriptions and illustrations contained in catalogues, price lists or other advertising material are approximate only and by way of

identification only and are intended merely to present a general idea of the Goods described and their use and shall not under any circumstances constitute a trade description and shall not form part of the Contract or have any contractual force unless expressly agreed in writing by the Company. All such information shall be subject to such variation as may be made from time to time by the Company and/or the manufacturers of the Goods.

- 3.2. The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

#### **4. WARRANTY AND EXCLUSIONS**

- 4.1. Unless a separate warranty has been specifically agreed in writing by the Company, the Company warrants that on delivery, and for a period of 12 months from the date of delivery ("**Warranty Period**"), the Goods shall:

- 4.1.1. conform in all material respects with their description and any Goods Description; and

- 4.1.2. be free from defects in design, material and workmanship.

- 4.2. Subject to clause 4.3, if:

- 4.2.1. the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;

- 4.2.2. the Company is given a reasonable opportunity of examining such Goods; and

- 4.2.3. the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost,

the Customer shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 4.3. The Company shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

- 4.3.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2.1;

- 4.3.2. the defect arises because the Customer failed to follow the Company's or the manufacturer'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;

- 4.3.3. the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Customer;

- 4.3.4. the Customer alters or repairs such Goods without the written consent of the Company;

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

- 4.3.6. the defect arises as a result of additional components such as photo electric cells, CMS nodes and external dimming controllers;
  - 4.3.7. the defect arises as a result of use outside of the UK and the Republic of Ireland (unless otherwise expressly agreed in writing by the Company); or
  - 4.3.8. the Goods differ from their description or any Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.4. Except as provided in this clause 4, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in 4.1.
- 4.5. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 4.2.
- 4.6. The Company warrants that on delivery the Goods shall, wherever applicable, comply with the CE marking requirements pursuant to the Construction Products Regulation 2013.

## **5. SUPPLY OF GOODS**

- 5.1. If delivery dates are quoted these are estimates only. Time for delivery is not of the essence. The Company shall not be liable to the Customer for any loss resulting from any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.2. Unless otherwise agreed in writing by the Company, the Company shall deliver the Goods, using the services of a third party courier, to the location set out in the Order or such other location as the parties may agree at any time after the Company notifies the Customer that the Goods are ready.
- 5.3. Delivery of the Goods shall be completed on the completion of the delivery of the Goods to the third party courier.
- 5.4. If the Customer fails to accept delivery of the Goods within three Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- 5.4.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and
  - 5.4.2. the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 5.5. If 10 Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.6. The Customer must advise the Company in the event of any non-delivery, partial non-delivery or damage within the following time limits:
  - 5.6.1. in the event of non-delivery of the whole of any consignment, within five Business Days of the receipt of invoice or delivery note whichever is the earlier; or
  - 5.6.2. in the event of partial non-delivery or damage, within seven days of delivery. Failure by the Customer to comply with these time limits shall be deemed an irrecoverable waiver of any claim in relation to such damage or non-delivery or partial non-delivery.
- 5.7. Each delivery of Goods whether constituting the whole or part of any Order shall be deemed a separate transaction and shall be invoiced and paid for as such. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.8. The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.9. Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
  - 5.9.1. the Goods; and
  - 5.9.2. any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.
- 5.10. Until title to the Goods has passed to the Customer, the Customer shall:
  - 5.10.1. hold the Goods on a fiduciary basis as the Company's bailee;
  - 5.10.2. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - 5.10.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.10.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
  - 5.10.5. notify the Company immediately if it becomes subject to any of the events listed in clause 11.2.2; and
  - 5.10.6. give the Company such information relating to the Goods as the Company may require from time to time,

but the Customer may use the Goods in the ordinary course of its business.

- 5.11. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2.2, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 5.12. The Customer shall insure and keep insured the Goods for the full price and Value Added Tax and/or delivery and other incidental costs against all risks to the Company's reasonable satisfaction from the date risk in the Goods passes to the Customer until the date that title to the Goods passes from the Company and shall, whenever requested by the Company, produce a copy of the policy of insurance and shall stand as the Company's trustee in respect of the rights of the insured under the policy and in respect of any payment out under the policy to the extent (in each case) that the same relates to Goods to which title has not or did not pass to the Customer.

## **6. SUPPLY OF SERVICES**

- 6.1. The Company shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 6.2. The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3. The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 6.4. The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.5. If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
  - 6.5.1. the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the

- Customer Default prevents or delays the Company's performance of any of its obligations;
- 6.5.2. the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 6.5; and
  - 6.5.3. the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 6.6. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 6.7. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.

## **7. PAYMENT**

- 7.1. Unless credit terms are otherwise agreed in writing by the Company payment for all Goods shall be made on delivery.
- 7.2. The Company shall invoice the Customer for Services monthly in arrears. The Customer shall pay each invoice submitted by the Company:
  - 7.2.1. within 30 days of the date of the invoice; and
  - 7.2.2. in full and in cleared funds to a bank account nominated in writing by the Company, andtime for payment shall be of the essence of the Contract.
- 7.3. Settlement discount (other than for cash) may be allowed by the Company of such amount as the Company shall at its option from time to time agree and shall be allowed to credit Customers only and provided that all payments are made by the last day of the month following the month of delivery (or otherwise as agreed). Such discounts shall not extend to Value Added Tax or any items marked 'strictly net' or 'net'.
- 7.4. The Company reserves the right to charge interest at the higher of the statutory rate or the rate of three percent per annum above the base rate of HSBC Bank Plc for the time being for the period from the date when payment was due until payment is received. The payment of such interest shall not affect the rights of the Company to recover any sums immediately they become due.
- 7.5. Unless credit terms are otherwise agreed, the Company shall not be obliged to make delivery of the Goods until payment has been made in accordance with the provisions of the Contract and the Company shall be entitled to refuse to make delivery if any Order or part thereof in the

event that any payment by the Customer on any Contract with the Company is overdue and may refuse to make such delivery until payment is made.

- 7.6. If any sum remains unpaid after the due date in respect of any Contracts or part thereof payment shall become due immediately in respect of all Goods and Services supplied.

## **8. LIMITATION OF LIABILITY**

- 8.1. Nothing in these Conditions shall limit or exclude the Company's liability for:

- 8.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 8.1.2. fraud or fraudulent misrepresentation;
- 8.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 8.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 8.1.5. defective products under the Consumer Protection Act 1987.

- 8.2. Subject to clause 8.1:

- 8.2.1. the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any:

- (a) loss of profit; or
- (b) loss of goodwill; or
- (c) loss of business; or
- (d) loss of business opportunity; or
- (e) loss of anticipated saving; or
- (f) loss or corruption of data or information; or
- (g) special, indirect or consequential damage

suffered by the Customer that arises under or in connection with the Contract; and

- 8.2.2. the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed the price of the Goods and/or Services to which the claim relates.

- 8.3. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 8.4. This clause 8 shall survive termination of the Contract.

## **9. DRAWINGS**



All drawings, models, technical information or descriptive data supplied by the Company and Intellectual Property Rights therein shall remain the Company's sole property. The Customer shall not publish or communicate to a third party the content thereof or any of the particulars of the Goods supplied by the Company without its previous consent in writing.

#### **10. PATENTS, DESIGNS, COPYRIGHTS AND TRADE MARKS**

The Company shall not under any circumstances be liable for any loss, liability or expense suffered or incurred by the Customer by reason of any use or resale of the Goods which constitutes an alleged or actual, infringement of a patent, design, copyright licence agreement or trade mark, foreign or domestic and the Customer shall indemnify the Company against any loss liability or expense suffered or incurred by the Company by reason of any Goods supplied by the Company in accordance with the Customer's specification which constitutes an infringement as aforesaid.

#### **11. TERMINATION OF THE CONTRACT**

11.1. The Customer must notify the Company in writing of errors in the Order Confirmation within five Business Days of receipt and after such time, subject to clause 11.2, the Order may not be cancelled by the Customer except with the Company's written consent.

11.2. Without limiting its other rights or remedies either party may terminate the Contract with immediate effect by giving written notice to the other party if:

11.2.1. the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy such breach within 14 days after receipt of notice to do so; or

11.2.2. the other party proposes or passes a resolution for its winding up, is subject to an order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off, has an administrator appointed in respect of it, proposes, makes or is subject to an arrangement or composition with its creditors generally, applies to a court of competent jurisdiction for protection from its creditors generally or for a scheme of arrangement under the Companies Act 2006 (save in the latter case for the purpose of a voluntary reconstruction or amalgamation) or has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income.

11.3. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

11.4. Without limiting its other rights or remedies, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under this

Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.2.2, or the Company reasonably believes that the Customer is about to become subject to any of them.

- 11.5. On termination of the Contract for any reason:
- 11.5.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 11.5.2. 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 Contract which existed at or before the date of termination or expiry; and
  - 11.5.3. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 12. DATA PROTECTION

The Customer agrees that the Company may hold personal data regarding it and/or its business and staff. Where such data relates to staff the Customer agrees that it will undertake to obtain any consents reasonably required to its usage in accordance with these Conditions. Such data may be kept upon manual filing and/or computer systems and may comprise names, addresses, e-mail addresses, telephone and fax numbers and other relevant contact details together with other miscellaneous personal information about individuals provided to the Company from time to time by the Customer or its staff. Such data will be used by the Company for the purposes of contacting the Customer and its staff and supply of goods and/or services to the Customer or on its behalf in connection with the Company's business purposes. Data will be held at the Company's offices and will not be sold or disclosed to any third party without the express authority of the individual to whom the data relates save where disclosure is reasonably required for business purposes (for example to sub contractors or to auditors or as part of a genuine reconstruction or sale of the whole or a substantial part of our business undertaking).

## 13. FORCE MAJEURE

- 13.1. For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 13.2. The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3. If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than four weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

#### **14. NOTICES**

Any notices given hereunder by the Company may be served personally or left at the residence or place of business of the Customer or may be sent by post, in which case such notice shall be deemed to have been received on the second Business Day after posting.

#### **15. VARIATION**

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

#### **16. SEVERANCE**

Each of the provisions of these Conditions is separate and distinct from the others and if any of them is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

#### **17. LAW APPLICABLE AND JURISDICTION**

The terms and conditions of this Contract shall be subject to and interpreted and construed in accordance with English Law including English conflicts of law and the English Courts shall have exclusive jurisdiction in any dispute which may arise save that the Company may institute and maintain proceedings in respect of this Contract in any country