

## International CONDITIONS OF SALE AND DELIVERY

Valid as of 1 January, 2014 Zumtobel Lighting GmbH, Austria

### 1 Basis and scope

1.1 These general conditions of delivery serve as a basis for all contracts on the delivery of goods and provision of services by Zumtobel Lighting GmbH, 6850 Dornbirn, Austria (hereinafter referred to as "Vendor") and its customers (hereinafter referred to as "Customer").

1.2 Exceptions to these conditions are valid only if acknowledged in writing by the Vendor. Conditions of purchase or other conditions presented by the Customer are expressly excluded.

### 2 Offers

2.1 Offers by the Vendor are considered agreed for a time period of 2 months unless otherwise stipulated in writing. The prices offered do not include value added tax.

2.2 For all offer and project documents including all corresponding annexes and specimens, dimension images and descriptions, intellectual property rights are also reserved in accordance with Section 13.

### 3 Conclusion of contract

3.1 The contract is considered concluded if after receiving the order, the Vendor has sent a written confirmation of order or a delivery to the Customer. However, confirmation from the Vendor regarding receipt of an order does not constitute conclusion of contract.

3.2 Special instructions from the Customer such as delivery requests, deadlines, discounts, etc. are considered extraneous proposals by the Customer. They shall only become a component of the contract if they are expressly recognised as binding by the Vendor in the confirmation of order.

3.3 Upon completion of contract, changes to the order are only possible with the approval of the Vendor and on the condition of indemnity.

3.4 Should events occur after completion of contract that make it no longer possible to fulfill the contract under the stipulated conditions or that make it entirely impossible for the Vendor to fulfill the contract, the Vendor is free to withdraw from the contract.

### 4 Prices

4.1 Prices are valid Free Carrier (FCA) Vendor's warehouse, Incoterms 2010, excluding insurance, duties, taxes, fees and other charges (e.g. value added tax, costs from the EU Directive on waste electrical and electronic equipment (WEEE), transportation costs, or customs duties), assembly, installation, operational setup and other ancillary expenses. Such costs are at the expense of the Customer.

4.2 The offered prices are based on the costs at the time of offer. If the costs increase before the time of conclusion of contract, the Vendor is thus entitled to adjust the prices accordingly.

### 5 Scope of delivery

The Vendor reserves the right to voluntarily modify the form and configuration of goods for technical reasons or due to legal or official requirements.

### 6 Delivery

6.1 Delivery and compliance with the delivery period is generally Free Carrier (FCA) Vendor's warehouse, Incoterms 2010.

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6.2 Unless otherwise stipulated in writing, a specified delivery period serves only as a reference point for the Customer and is not binding.

6.3 The delivery period starts at the latest of the following points in time:  
(I) date of order confirmation; (II) date of fulfillment of all the technical, commercial and other requirements owed to the Customer; (III) date upon which the Vendor receives the payment or deposit to be provided before delivery of goods.

6.4 Approvals from authorities and any approvals required from third parties for export of equipment shall be obtained by the Customer. If such approvals are not obtained in due time, the delivery period is thus extended accordingly.

6.5 The Vendor is entitled to perform and invoice partial or early deliveries. If call-off delivery is agreed to, the goods are considered called-off six months after the date of order at the latest.

6.6 If circumstances which are unforeseeable or independent of the will of the parties, such as any instance of force majeure, and which hinder compliance with a stipulated delivery period arise on the part of the Vendor (including main subcontractors of the Vendor who are difficult to replace), this delivery period shall also be extended by the duration of these circumstances; in particular, this includes without limitation armed conflicts, official interventions and bans, delays in transport and clearance of customs, transport damages, shortages of energy and raw materials, work conflicts, labour disputes and loss of a main subcontractor of the Vendor.

## 7 Services

7.1 Services shall be compensated according to the time expenditure of employees and agents of the Vendor following the corresponding hourly wage rates specified by the Vendor plus actually incurred fees and cost of materials. In any event, the drafting of offers to repair, cost estimates and assessments will incur charges.

7.2 For repair orders, the services identified by the Vendor as being expedient shall be performed and charged. The same applies for services and excess services whose expedience first become evident during the fulfillment of an order, although for additional costs that exceed 15% of the highest agreed budget, approval from the Customer shall be obtained if possible.

## 8 Place of performance (transfer of risk)

8.1 Place of performance for the delivery of goods is always Free Carrier (FCA) Vendor's warehouse, Incoterms 2010, unless otherwise explicitly agreed in writing.

8.2 Place of performance for services (Section 7) is wherever the service is provided; in case of doubt, the Vendor's premises. The risk for a service or partial service is transferred to the Customer upon provision of such service.

## 9 Payment

9.1 Payments shall be provided in the stipulated currency (generally EUR) without any deduction and in advance. Differing payment terms or agreements only apply on the condition of written approval from the Vendor.

9.2 A payment is considered to be paid on the day on which the Vendor can dispose of it.

9.3 The Customer is not entitled to retain or offset payment because of warranty claims or other counterclaims.

9.4 If the due date for payment is exceeded, default interest shall be charged at 8% above the applicable European Central Bank Euribor 3-months interest rate. For payment delay of over 90 days or in the event that insolvency proceedings are initiated, any rebates and or discounts granted are forfeited and the gross invoice amounts shall be paid. In this case, default interest is charged on the gross amount as of the invoice due date.

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9.5 If the Customer is in arrears with a stipulated payment or with other services from this or other transactions, the Vendor can, without prejudice to its other rights, postpone fulfillment of its own obligations until the payment or other services is/are provided and implement an extension of the delivery period and render due all pending bills receivable from this or other transactions and charge default interest for these amounts as of the applicable due date as described above unless the Vendor provides evidence of costs in excess of this. In any event, the Vendor is entitled to bill pretrial costs, dunning fees, operating costs of collection agencies and attorney fees.

## 10 Claims and warranty

10.1 Claims of wrong deliveries or regarding evident defects must be effected within eight days of receipt of the goods. In addition, the warranty period for new goods is a maximum of 24 months after delivery. It begins at the time of transfer of use and risk (Section 8).

10.2 The Vendor exclusively warrants that the goods that it delivers are free of manufacturing and/or material defects. Lamps and electronic wearing parts as well as used goods are exempt from any warranty. Warranted characteristics are only those which are expressly described as such in the product information. A warranty is valid at most until the warranty period has lapsed. Technical or structural modifications to the product intended for improvement or in compliance with changes to legal regulations can be made by the Vendor without any further publications.

10.3 If goods are manufactured by the Vendor based on design specifications, drawings, models or other specifications from the Customer, the Vendor's warranty is limited to careful execution.

10.4 If evidence is provided by the Customer of a manufacturing and/or material defect, the Vendor can at its own discretion either provide a free replacement or remedy the defect.

10.5 All ancillary expenses arising in conjunction with the remedy of defect (e.g. installation and removal, transport, disposal, cost of travel and travel time, lifting equipment, scaffolding) are at the expense of the Customer.

10.6 Invoices for repairs made by the Customer or third parties shall only be honored if the Vendor was previously informed of these costs in writing and the Vendor has confirmed acceptance of the costs in writing. In addition, the warranty immediately lapses if the Customer or a third party makes changes or repairs to the goods without written consent from the Vendor.

## 11 Withdrawal from contract

11.1 A requirement for withdrawal of the Customer from the contract is a delay of delivery that is attributed to gross negligence by the Vendor and also extends beyond the lapse of a reasonable grace period specified in writing by the Customer of at least 30 days. Withdrawal by the Customer can only be declared effective through a registered letter sent to the Vendor.

11.2 In addition to its right under Section 3.4 and its other rights, the Vendor is entitled to withdraw from the contract, (i) if the execution of delivery and/or the start or continuation of the service becomes impossible or is further delayed despite the specification of a reasonable grace period for reasons that the Customer is responsible for; (ii) if in the opinion of the Vendor, justified concerns have arisen as to the Customer's solvency and/or the Customer does not provide prompt prepayment despite the Vendor's request; or (iii) if the Customer is declared or becomes insolvent or convenes a meeting of its creditors or proposes or makes any arrangement or composition with or any assignment for the benefit of its creditors or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or if an incumbrancer takes possession of or a trustee, receiver, liquidator, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the Customer's business or assets. Withdrawal can also be declared with regard to a part of a delivery or service that is still pending for the above reasons.

11.3 Without prejudice to the Vendor's claims for damages including pretrial costs, services or partial services already provided shall be invoiced and paid as per agreement in the event of withdrawal. This also applies as long

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as the delivery or service has not been assumed by the Customer and it also applies to preparatory acts. The Vendor is also entitled to demand return of previously delivered items as credit towards its damages.

## 12 Liability

12.1 Subject to mandatory provisions of law, the Vendor is only liable for damages from its goods and services under this agreement if evidence is provided of its intent or gross negligence. Liability for slight negligence, the compensation of resulting damages and financial losses, indirect or consequential damages, unrealised savings, interest losses and for damages from third-party claims against the client are excluded to the extent permitted by law.

12.2 In the event of non-compliance with any conditions for installation, operational set-up and use (e.g. included in operating instructions) or of violation of regulatory or official conditions of approval, any compensation for damages is excluded to the extent permitted by law.

## 13 Intellectual property rights

13.1 If goods are manufactured by the Vendor based on design specifications, drawings, models or other specifications from the Customer, the Customer shall indemnify the Vendor and hold the Vendor harmless in the event of any violation of proprietary rights and upon request from the Vendor, shall join the corresponding proceedings as a party or intervening party at the expense of the Customer and shall conduct the lawsuit to the Vendor's benefit.

13.2 Offer and project documents as well as performance documents such as plans, sketches, and other technical documents as well as samples, catalogues, prospectuses, illustrations and the like always remain the intellectual property of the Vendor and are subject to the applicable legal requirements as regards copying, reproduction, competition, etc. The Vendor can request the documents at any time, and they shall be returned to him without being requested if an order has been issued to another party.

## 14 Return of goods

14.1 Return deliveries are only processed according to the agreement with the Vendor's responsible sales office which issues a corresponding returned goods slip. Description of goods as well as the information from the reference invoice or delivery receipt must be noted on the returned goods slip.

14.2 The stipulated return delivery with returned goods slip must be sent to Zumtobel Lighting GmbH's central warehouse, Schweizer Strasse 30, 6850 Dornbirn, Austria. All costs associated therewith are at the expense of the Customer.

14.3 Unpacked and or damaged goods as well as individual components of packing units cannot be credited. This also applies for goods that are not in the Vendor's standard delivery programme such as lamps, specially produced items or specially painted goods.

## 15 Online orders

15.1 For Customer orders on the Vendor's electronic ordering platform via the internet (hereinafter referred to as "Online Order System"), the following conditions additionally apply:

15.2 Access to the Online Order System is obtained by anyone who proves his/her identity by entering the user name and password (hereinafter referred to as "login credentials") allocated by the Vendor. The Customer undertakes to immediately change the password after receipt and then at regular intervals and to protect against unauthorized access. To a reasonable extent, separate login credentials will be assigned by the Vendor for each person authorised by the Customer. Login credentials assigned by the Vendor may not under any circumstances be passed on to others by the recipient at the Customer's end, and the Customer is obliged to immediately inform the Vendor of substantial changes to access rights of authorised persons. The Customer is responsible for the consequences of violating this provision by its self or its institutions, employees, proxies and agents.

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15.3 Anyone who signs on to the Online Order System with the Customer's login information is considered by the Vendor to be authorised to conduct all possible legal transactions on behalf of the Customer, regardless of whether said person is actually the Customer itself or a person with authorised access. The Customer accepts all legal transactions conducted in the Vendor's Online Order System using its login information as binding on its part.

15.4 For orders in the Online Order System, the contract can also be concluded by the Vendor's sending of an email in which the order is confirmed. The Confirmation generated by the Online Order System of order receipt does not constitute conclusion of contract.

15.5 The Vendor takes no responsibility for the error-free functioning of its Online Order System and expressly excludes liability for damage through the use of its Online Order System as well as the internet use associated therewith. Any responsibility and liability for interruption of access such as a lack of, or incomplete, availability of the Online Order System or inaccurate transmission of information and statements when using the Online Order System is excluded. By using the Online Order System, the Customer affirms that it is sufficiently informed of the risks of the internet.

15.6 The Customer acknowledges that by using the Online Order System from a foreign country, it can violate foreign law regulations, e.g., through the use of the encryption process of the Online Order System. The Vendor disclaims all liability and responsibility in relation thereto.

## **16 Force majeure**

The Vendor shall not be liable for any failure or delay in performance of the contract which is caused by circumstances beyond the Vendor's reasonable control, including without limitation any labour disputes between the Vendor and its employees.

## **17 Export control and compliance**

17.1 Vendor's obligation to supply the goods does not apply if the required export approvals are not issued for any reason for which the Vendor is not responsible or if there are other export obstacles on account of a relevant export regulation under Austrian, German, U.S., or other law. Customer shall inform the Vendor of any and all export or re-export restrictions and provisions related to the goods or services. Customer guarantees to observe all export and/or re-export restrictions and provisions concerning the goods or services.

17.2 Customer shall comply with all applicable laws, regulations, and other legal requirements regarding the export, import, sale, distribution, marketing, and service of the goods and related technology, including without limitation, tax and foreign exchange legislation or regulations and the obligations under Clause 17.1. In particular, Customer warrants that it will comply with the anticorruption laws and anti-bribery laws of any country having jurisdiction over Customer or the transaction involving the goods or services that are the subject of this document or related technology.

## **18 Severability clause**

Should any individual provisions in this agreement be invalid, the remaining provisions shall not be affected thereby. The invalid provision shall be replaced by a valid provision that comes as close as possible to the intended purpose.

## **19 Judicial venue and applicable law**

Judicial venue is Feldkirch, Austria. The contractual relationship is exclusively governed by Austrian law without regard to its conflict of law provisions. The application of the UNCITRAL Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.