



TERMS AND CONDITIONS OF SALE (Dated January 2010)

1. APPLICATION

- 1.1 All business accepted by us the seller is subject to the following terms which shall be incorporated in and shall constitute the whole of the agreement between the seller and you the buyer as at the date of receiving your official order exclusion of all other agreements (whether oral or written) or documents passing between the parties prior to such date.
- 1.2 In the event of any conflict between the forgoing terms on the one hand and the conditions of business of the buyer on the other hand the foregoing terms shall prevail except to the extent that any departure there from has been agreed in writing signed by a director on the seller's behalf. The foregoing terms shall come into force on the seller's acceptance of an order and apply to all orders.

The waiver by the seller of any breach of any of the foregoing terms or any forbearance shown by the seller shall not prevent the subsequent enforcement of the term in question and shall not be deemed to be a waiver of any subsequent breach.

- 1.3 In the event of goods needing to be returned due to incorrectly ordered items or misordered then we will enforce our handling charge, which covers the cost for, cost, insurance, freight, delivery, packaging & handling of goods. In the event the product or project was custom designed or built then we cannot accept the goods back at all. We also have to consider whether the product has a resaleable value and we have to consider this value as low. Any custom products will be chargeable at 100% the costs.

2. CREDIT ACCOUNTS

- 2.1 Where a ledger account has been opened payment upon order will prevent delivery
- 2.2 Ledger accounts will only be opened on receipt of a satisfactory bank reference and two trade references and upon the buyer giving other such security as the seller may require. Our policy is first two orders are based on pro-forma payment. All accounts are due for payments 30 days date of invoice, any delays will incur interest charges of 2.5% per day over the base rate daily.
- 2.3 In the event of your account or payment terms are breached then we will execute the right to withdraw any warranty claims and therefore the products themselves will be void of any warranty claim irrespective then if the payment is received.

3. PRICES AND QUOTATIONS

- 3.1 all prices quoted are estimates only and are valid for 30 days only and in any event are subject to adjustment upwards to the prices ruling on the date of despatch. All prices quoted are exclusive of VAT unless otherwise stated. Clerical and typing errors are subject to correction. An order place on us the seller is acceptance of our terms and conditions of sale. Once an order has been accepted any quotation given shall lapse.
- 3.2 A contract is made once the seller accepts an order but the seller reserves the right at any time by giving notice to the Customer without explanation to: (1) refuse to accept an order (2) cancel an order (3) suspend deliveries against an order (4) Refuse cancellation of an order (5) Warranty claims are found to be lapsed past 24 hour notice of inspection. No variation of an order will be recognised unless otherwise agreed by the seller in Writing. Written confirmation of telephoned orders must be received by the seller within 3 days of the telephone call and should be clearly marked as such. Otherwise the seller cannot be held responsible should the order be duplicated.

4. OVERDUE ACCOUNTS

- 4.1 The seller shall have the absolute right to refuse further deliveries where the buyer is in breach of any obligation imposed upon it under these conditions including (but not exclusively) failure to pay its accounts by the due date. The seller shall have the right to charge interest at the rate of 2.5% per day over the base rate daily on overdue accounts in addition to any costs to which the seller may be entitled to within court proceedings and the seller shall be deemed to have incurred further charges for court costs which shall be payable by the buyer. Overdue accounts constitutes the need for us to protect ourselves, and therefore payment being extended in 30 days overdue the payment date will automatically use the right to refuse any warranty claims under section 2.3 and 9.6.

5. SUSPENSION AND TERMINATION

Without prejudice to the seller's rights to accept the buyers repudiation of the contract the seller shall be entitled to suspend further performance of any contract to which these terms and conditions shall apply if the buyer is overdue with any payment or has a receiver or liquidator appointed or if the buyer wrongfully fails to take delivery of goods ordered by it or if the buyer is in breach of any of its obligations under these Terms And Conditions.

6. DELIVERY

- 6.1 any delivery date quoted by the seller shall be an estimate only and unless otherwise agreed in writing and duly signed on behalf of the seller time shall not be of the essence in delivery and the buyer shall not be entitled to damages or loss how so ever arising as a result of the seller's failure to deliver by any specified date to any location.
- 6.2 Delivery shall be taken by the buyer within such period (if any) required by the seller and notified to the buyer. In default of acceptance of delivery as aforesaid the seller shall if it thinks fit and if its storage facilities permit store goods which are the subject of the order and take all reasonable steps to prevent deterioration until actual delivery but the buyer shall be liable to the seller for the seller's reasonable costs in respect thereof. The storage of such goods shall be at the absolute discretion of the seller and this condition shall not affect in any way other legal remedies of the seller in connection with the buyer's failure to take delivery at this appropriate date.

7. BREAKAGES, DAMAGES AND APPEARANCE

The buyer/client is required to inspect goods for shortages or apparent defect and damage at the time of delivery. Claims in the respect thereof will not be accepted where the buyer (or anyone apparently having its authority to do so) has signed a delivery note or couriers document accepting the quantity and condition of goods for shortages, defects or damage in other respects must be made in writing to the seller within 24 hours of delivery of advice note by the seller or its supplier (in which respect time shall be of the essence). Delivery or collection is acceptance of our terms and conditions at all times. Failure to advise within 24 hours of any defects of manufacturing issues, or discrepancies of the product we will not be liable for the products warranty period, and any claims thereafter 24 hours will be void. The 24 hour period refers to 24 hours from time of delivery. Appearance of the product must be notified if you are not satisfied within 48 hours from the date/time of the signed delivery, we feel this is adequate time to assess the products appearance. We will not accept any claimed quality issues arising after this time period has lapsed as this could be deemed as poor installation or incorrect handling of the products onsite, therefore Kypai Ltd will not be held liable for issues reported after 48 hours for appearance of the products.

8. DESCRIPTION

Where goods are ordered from the seller's current catalogue or pictorial pricelists it is hereby agreed that the seller cannot accept responsibility howsoever caused arising from any errors or omissions, misdescriptions or illustrations contained in or referred to in the catalogue. The seller reserves the right to make any deletions, alterations, amendments or additions to such catalogue without notice and will not be held liable or responsible.

9. DEFECTIVE GOODS

- 9.1 Where goods sold by the seller are the subject to manufacturers 12 months return to base warranty The buyer shall indemnify the seller against all costs incurred by the seller in connection with warranty claims rejected by manufacturers or products distributed by Kypai Ltd.
- 9.2 The seller shall on request endeavour to give the buyer the best assistance and guidance but in view of the range of the sellers products and the uses to which they may be put is the buyer's responsibility to ascertain quality fitness suitability and durability by means of sampling and trialing.
- 9.3 The seller shall not be liable under this agreement or in any other way for any loss of profit consequential loss or damage, compensation, storage fees or other costs associated howsoever arising by act or omission of the seller or defects in goods sold by the seller.

- 9.4 The seller shall not in any event be liable to the buyer or any other, Third party for any damages arising from any breach of this agreement in excess of the price charged by the seller to the buyer for the goods or services complained of.
- 9.5 Where despite the terms of these conditions the seller is liable to the buyer or any Third Party for damages in excess of the price of the goods or services complained of the buyer shall indemnify the seller against its liability to pay any such excess.
- 9.6 Product suitability, sustainability and performance should be checked in way of samples and trial to ascertain for certain the goods will be fit for purpose and inspection upon receipt of project orders/goods received.

10. RETURNS

- 10.1 We accept no liability if the 9.6 hasn't been implemented and the goods don't perform as you wish, as all orders are built to order, we must enforce our handling fee and stocking fee in section 1.3

No goods may be returned without the seller's prior written consent. Goods returned with the seller's prior agreement must state the seller's original invoice number. The right is reserved to levy a re-stocking charge. Carriage paid will not be refunded. All cancellations of such orders must be confirmed in writing prior to despatch of goods from the supplier. The customer will be liable for the invoice value of the goods where they have been specially made and cannot be cancelled.

- 10.2 Product failure is covered under our warranty this is a return to base warranty only for 12 months. We cannot be liable for faulty product onsite which has developed due to misuse or malfunction, incorrect installation, or improper mounting positions not adhered to in the product datasheets. Products onsite cannot all be sent back if one or two items are failing, there needs to be a greater than 80% failure rate for us to replace the whole project, this must be carried out in our correct procedure of return to base for warranty review. We cannot accept any ongoing costs incurred by you the buyer for installation work, hired equipment as we offer our own full install and commission service. We will advise you of fault once tested. LED Chip failure is not considered a whole product failure and therefore we are not expected to replace the whole product for 1 component issue, we will have to take this up with the relevant Chip manufacturer to identify and test for the fault. Kypai Ltd will not be responsible for any costs associated to damages, loss, storage that may arise for faulty goods, we shall offer a complete return to base warranty where we shall try to economically repair the item, if this is beyond economical repair we will offer a new unit. This new unit will certainly not match the original products chromaticity values due to specific binning regulations applied at the time of manufacturing. Binning is a common issue with White LEDs and again we cannot be held liable for manufacturer's process, we shall try to closely match LEDs where possible.

11. TITLE

The risk in any goods sold by the seller to the buyer shall pass on delivery but the title to any such goods not pass until the purchase price thereof has been received by the seller. The seller may recover or resell such goods or any part thereof in any of the following events:-

1. If the seller has not received payment for the goods by the due date, or
2. If before the due date the buyer commits an act of bankruptcy or has a receiver appointed over all or any part of its business or a petition issued or a resolution passed for the winding up of the buyer or upon the commencement of any other act or proceeding in which the buyer's solvency is involved, or
3. If before the due date the buyer ceases or threatens to cease carrying on his business.

And in any exercise of this right to recovery the seller shall have the right to go upon any premises occupied or used by the buyer or where the goods (or any of them) are situated and even if the goods have been attached or connected to any other goods, products, plants or machinery but are readily removable the seller may remove the same.

Until the seller has been paid in full the relationship of the buyer to the seller shall be fiduciary and the seller shall have the right to trace the proceeds of any disposal of the goods by the buyer or of any insurance covering the same which shall be paid into a separate new account and not into any overdrawn account.

12. FORCE MAJEURE

In the event of war invasion act of foreign enemy hostility (whether war has been declared or not) civil war, rebellion, revolution, insurrection or military or usurped power of the seller will be relieved of liabilities incurred under any contract with the buyer relating to the purchase of the seller's goods wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by any statute rules

regulations issued by any centre or local government or other competent authority or by reason of strikes, lockouts, breakdown of plant or other causes (whether or not of a like nature) beyond the seller's control.

13. GENERAL

The buyer and seller agree that the limitations and exclusions incorporated herein are reasonable in all circumstances but it is agreed that if any such limitation or exclusion would by operation of law be adjudged to be void as going beyond what is reasonable for the protection of the seller's interest but would be valid if part of the wording was deleted or the extent and scope thereof reduced the said limitations and exclusions shall apply with such modifications as may be necessary to make them valid and effective. We retain the right to amend our Terms and conditions at any time. We always upload a copy on the website. Any amendments supercede any prior terms and conditions unconditionally.

14. JURISDICTION

This Agreement shall be governed by and adjudicated under English law only. All contracts to which these Terms & Conditions apply shall be deemed to have made at the Seller's Office located at: Kypai Ltd, The Old Barns, Warrington Farm, Warrington nr Olney, Bucks, MK46 4HN.