

Terms & Conditions

All orders placed with pHive.8 Distribution for goods are governed by the following Conditions of Sale, which shall constitute a binding contract.

Article 1. Scope of application

1.1 These general terms and conditions shall govern all offers, quotations, legal acts and agreements of any nature whatsoever involving Dutch Lighting Innovations (hereinafter referred to as “DLI”) and a Client, as well as any undertakings given pursuant to same, even where a legal act does not result in or is not related to an agreement. Any derogation may only be agreed to with DLI in writing.

1.2 For the purposes of these terms and conditions “Client” is deemed to refer to any client or other party who enters or wishes to enter into an agreement with DLI or to whom the latter presents an offer or effects delivery or performance, as well as their legal successors.

1.3 For the purposes of these terms and conditions “Supplier” is deemed to refer to a person or business who provides services directly or indirectly for the purposes of executing an agreement between a Client and DLI. It is also deemed to refer to a manufacturer of products (or parts thereof) which DLI supplies for the purposes of executing an agreement between a Client and DLI.

1.4 In the event that any provision of these general terms and conditions is invalid or inapplicable for any reason whatsoever, the rest of these general terms and conditions shall continue to apply and the invalid provision shall be interpreted in such a manner that its purpose and purport shall be retained as far as possible. In the event that an such interpretation does not present a solution, DLI and a Client shall enter into consultation with each other to agree on new provisions to replace any invalid ones so as to

ensure that the purpose and purport of the original provisions are retained as far as possible.

1.5 DLI shall at all times be entitled to amend these general terms and conditions. An amendment shall come into effect one (1) month after it is announced.

1.6 The application of any form of general terms and conditions on the part of a Client is explicitly rejected. Any procurement or other terms and conditions which a Client declares to be applicable shall not be binding on DLI, unless the latter consents to them in writing. Such consent may not be adduced from the fact that DLI fails to refute a statement made by a Client to the effect that the latter does not consent to DLI's terms and conditions and declares their own terms and conditions to be applicable.

Article 2.3. Offers

2.1 All offers shall be free of obligation.

2.2 Although the documents constituting part of an offer made by DLI (such as technical specifications, drawings, calculations and so forth) shall be as accurate as possible, they shall not be binding.

2.3 Any prices cited in an offer shall be based on delivery "FCA" (Free Carrier) at DLI's warehouse based in Venhorst in the Netherlands in accordance with Incoterms 2010. Such prices shall be exclusive of value added tax and packaging.

2.4 In the event that a Client does not accept an offer made by DLI, the latter shall be entitled to charge that Client for all of the costs which it has incurred for the purposes of presenting that Client with an offer and the Client shall be required to pay those costs within fourteen (14) days after the relevant invoice date.

2.5 An offer shall have a term of validity of fourteen (14) days, unless DLI gives notice otherwise.

Article 3. Intellectual property rights

3.1 Unless otherwise agreed in writing, DLI shall retain copyright and all other intellectual property rights to any offers made or designs, images, drawings, samples and other models, software and the like.

3.2 The rights to the data referred to in Clause (1) of this article shall remain DLI's property irrespective of whether or not a Client has been charged for their production. Without DLI's prior, written, explicit consent such data may not be copied, used or exhibited to other parties. A Client

shall be liable to pay DLI a penalty, payable with immediate effect, of EUR 25,000.00 (twenty-five thousand euros) for each contravention of this clause. Such penalty may be sought in addition to compensation pursuant to the law.

3.3 When first requested to do so, a Client shall be required to return any data referred to in Clause (1) of this article which has been supplied to them by a deadline stipulated by DLI. In the event of a contravention of this clause, that Client shall be liable to pay DLI a penalty, payable with immediate effect, amounting to EUR 1,000.00 (thousand euros) per day. Such penalty may be sought in addition to compensation pursuant to the law.

3.4 A Client shall indemnify DLI against any claim made by a third party in relation to intellectual property rights to materials or data supplied by that Client which are used for the purposes of executing the relevant contract.

3.5 In the event that a Client supplies data storage media, electronic files or software and so forth, they shall warrant that such media, files or software are free of viruses and defects.

Article 4. Advice and information provided

4.1 A Client may not derive any rights from advice or information that they receive from DLI if it does not relate to the contract concerned.

4.2 In the event that a Client supplies data, drawings, specifications and the like to DLI, the latter may assume that they are complete and correct for the purposes of its offer and when executing the relevant agreement. A Client shall bear any risks involved and be liable for any loss occasioned by any error or defect in drawings, calculations, instructions, specifications and structures that they have supplied.

4.3 A Client shall indemnify DLI against any claim made by a third party in relation to the use of any advice, drawings, calculations, designs, materials, samples, models and the like supplied by or on behalf of that Client.

Article 5. Delivery time and period of execution

5.1 A delivery time and/or period of execution shall be deemed to have been decided on by DLI by way of an estimate and shall under no circumstances be deemed to represent a material deadline.

5.2 When deciding on a delivery time and/or period of execution, DLI shall assume that it is capable of executing the relevant contract in the circumstances of which it is aware at that point in time.

5.3 A delivery time and/or period of execution shall only commence once agreement is reached on all commercial and technical details, and all of the requisite information, final and approved drawings, and the like are in DLI's possession, the agreed payment (or installment) has been received and the conditions which are necessary for the execution of the relevant contract have been satisfied.

- 5.4. a. In the event that circumstances exist other than that DLI was aware of when it decided on a delivery time and/or period of execution by way of an estimate, it may extend such delivery time and/or period of execution by the time that it requires to execute the relevant contract under those circumstances. Where it is impossible to fit any work in DLI's schedule, it shall be carried out as soon as that schedule allows.
- b. Should there be any question of excess work, the delivery time and/or period of execution shall be extended by the time, which DLI requires to supply (or arrange for this to be done) the relevant materials and parts, and to carry out such excess work. Where it is impossible to fit any excess work in DLI's schedule, it shall be carried out as soon as that schedule allows.
- c. In the event that there is any question of DLI's obligations being suspended, the delivery time and/or period of execution shall be extended by the duration of that suspension. Where it is impossible to continue any work in DLI's schedule, it shall be carried out as soon as that schedule allows.
- d. Where delivery by a Supplier is delayed, the delivery time and/or period of execution shall be extended by the delay which occurs as a result and, in the event that the work then cannot fit in DLI's schedule, it shall be carried out as soon as that schedule allows.

5.5 A Client shall have a duty to pay any costs, which DLI incurs as a result of any delay of the delivery time and/or period of execution referred to in Clause (4) of this article. 5.6 Under no circumstances shall a failure to meet a delivery time and/or period of execution confer entitlement to compensation or cancellation on the relevant Client.

Article 6. Passing of risk

6.1 Delivery shall occur FCA (Free Carrier) from the DLI warehouse in Venhorst in accordance with Inco terms 2010. Any risks associated with materials shall pass at such time as delivery is made to the relevant Client.

6.2 Irrespective of what is stipulated in Clause (1) of this article, a Client and DLI may agree that the latter will assume responsibility for transport. In this case the Client concerned shall bear the risks associated with storage, loading, transport and unloading. A Client may insure themselves against such risks.

6.3 Where a trade-in occurs and the relevant Client holds the asset which is to be traded in their possession in anticipation of the delivery of the new assets, that Client shall bear any risks associated with the asset that is to be traded in until such time as they have placed it in DLI's possession. Should a Client be unable to supply an asset that is to be traded in the condition in which it found itself at the time when the relevant agreement was concluded, DLI may cancel that agreement.

Article 7. Price changes

7.1 DLI may pass on an increase due to any changes in cost price determining factors that occur after the relevant agreement has been concluded to the Client concerned.

7.2 A Client shall have a duty to pay any price increase referred to in Clause (1) of this article at any of the following points in time, such to be determined at DLI's discretion: a. when that price increase occurs; b. simultaneously with the payment of the principal sum; c. together with the next agreed installment.

Article 8. Force majeure

8.1 In the event that DLI is prevented from executing an agreement (or continuing to do so) due to force majeure, it shall be entitled to cancel all or part of the relevant agreement (with immediate effect) by means of a written notice to this effect in the absence of any judicial intervention and without any obligation to provide compensation subject to DLI's entitlement to payment by the relevant Client for any performance which DLI had already effected before there was any question of a situation of force majeure, or to suspend the execution of that agreement (or its continued execution). In the event of such suspension DLI shall as yet be entitled to cancel all or part of the relevant agreement.

8.2 DLI shall also be entitled to invoke force majeure in the event that the circumstances which prevent its compliance (or further compliance) occur after it should have complied with its obligations.

8.3 Amongst other things, force majeure is deemed to refer to circumstances where suppliers, contractors working for DLI or transporters whom it has engaged fail to comply with their obligations or to do so on time, the weather, earthquakes, power failures, losses, the theft or loss of equipment or materials, import or trade restrictions, road blockades, strikes or work stoppages affecting it or its Suppliers or any non-compliance on the part of the latter as a result of which DLI cannot (or can no longer) reasonably be expected to comply with its obligations.

Article 9. Changes to the work

9.1 A change to the work may at any rate result in excess work or a work shortfall where: a. a change is made to the design or specifications; b. the information supplied by the relevant Client does not correspond to the actual situation; c. there is a derogation of more than 10% from the estimated quantities.

9.2 Excess work shall be calculated on the basis of those cost determining factors which are applicable when that excess work is carried out. A work shortfall shall be calculated on the basis of the cost determining factors which were applicable at the time when the relevant agreement was concluded.

9.3 A Client shall have a duty to pay the price of any excess work referred to in Clause (1) of this article at any of the following points in time, such to be determined at DLI's discretion: a. when that excess work occurs; b. simultaneously with the payment of the principal sum; c. together with the next agreed installment.

9.4 Should the sum of the work shortfall exceed that of the excess work, DLI may charge the relevant Client 10% of the difference as part of the final bill. This clause shall not apply in the case of a work shortfall which is due to a request made by DLI.

Article 10. Liability

10.1 Under no circumstances shall DLI have a duty to provide compensation for a loss that has been suffered directly or indirectly pursuant or due to defective goods, services or work supplied or performed by DLI, the relevant Client and/or any other party, or the failure of any

goods and/or services supplied or to be supplied by DLI, the Client and/or any other party to function or to do so properly or on time, except in the case of a willful act or omission or gross negligence on the part of DLI.

10.2 In the event that DLI is not entitled to rely on Clause (1) of this article, its duty to provide compensation on any legally stipulated grounds whatsoever shall be confined to the loss against which it is insured pursuant to an insurance policy taken out by or in behalf of it but under no circumstances shall it exceed the amount which is paid out pursuant to that insurance in the relevant case.

10.3 Should DLI not be entitled to rely on the limitation stipulated in Clauses (1) and (2) of this article, its liability for compensation shall remain confined to no more than 15% of the total contract fee (exclusive of VAT). Where an agreement makes provision for parts or part deliveries, its liability for compensation shall be confined to no more than 15% of the contract fee payable for that part or part delivery (exclusive of VAT).

10.4 The following shall not qualify for compensation: a. consequential loss whatsoever may have caused it. "Consequential loss" is deemed to refer to, amongst other things, a delay of the delivery time for goods and services, any loss due to the disruption of business or lost productivity, loss of earnings, transport costs and/or travel and accommodation expenses. A Client may insure themselves against such loss if possible; b. damage to property held in custody. "Damage to property held in custody" is deemed to refer to, amongst other things, any damage that is inflicted on property on which work is performed or which is located within the vicinity of the site where work is carried out as a result of or during the performance of that work. A Client may insure themselves against such loss if required; c. any loss due to a deliberate act or omission, or willful recklessness on the part of DLI's assistants or non-supervisory subordinates; and/or d. loss due to the disruption of business (disruption of business, loss of earnings, and the like).

10.5 DLI shall not be liable for any damage inflicted on materials supplied by or on behalf of a Client as a result of them not being treated properly.

10.6 A Client shall indemnify DLI against any claim made by a third party on the grounds of product liability due to a defect in a product which that Client has supplied to such third party and which consists of (or partly so) products and/or materials supplied by DLI. A Client shall have a duty to provide compensation for any loss which DLI suffers in this respect, including all of the costs involved in defending itself.

10.7 DLI shall not be liable for any harmonic current emissions, inrush peaks or other dirty power in a Client's electrical installation.

10.8 DLI shall not be liable for exceeding the contractual capacity which a Client has agreed on with its energy supplier and/or grid manager.

10.9 DLI shall not be liable for any harm caused to a Client or any other party by its staff and/or any Supplier engaged by it on any grounds or due to any cause whatsoever, except in the case of a culpable, deliberate act or omission, or gross negligence on the part of DLI. Under no circumstances shall its liability extend further than the cover provided by the relevant insurance taken out by DLI.

10.10. DLI shall not be liable for a loss of any nature whatsoever which occurs due to or is the result of the improper, careless or incompetence use of any goods supplied by DLI or their use for anything other than their normal purpose.

Article 11. Warranties and other entitlements (general)

11.1 Unless otherwise agreed in writing, whether in these general terms and conditions or otherwise, and confirmed by DLI in writing, the latter shall warrant proper performance as agreed for a period of six (6) Months after delivery. In the event that a different term of warranty is agreed to and confirmed by DLI in writing, the other clauses of this article shall also apply.

11.2 Should DLI fail to effect performance as agreed, it may elect to ensure that it does so or it may credit the relevant Client for a proportionate part of the invoice concerned. In the event that DLI elects to effect proper performance, it shall itself determine the manner in which and time when this is to occur. Where the agreed performance consisted (partly or otherwise) of the treatment of materials supplied by a Client, that Client shall be required to supply new materials at their own risk and expense.

11.3 A Client shall be, after contact with DLI, required to send DLI any parts or materials which the latter is to repair or replace.

11.4 A Client shall be liable for: a. all transport or shipping costs; b. the costs involved in assembly and disassembly; c. travel and accommodation expenses.

11.5 In all cases a Client shall be required to afford DLI an opportunity to remedy any defect or carry out the relevant treatment again within a reasonable period of time.

11.6 A Client may only invoke a warranty after they have complied with all of their obligations towards DLI.

11.7 a. No warranty shall be provided in the event that a defect is due to: – normal wear and tear; – improper use; – maintenance which has not been carried out or not appropriately; – installation, assembly, alterations or repairs carried out by the relevant Client or any other party; – any defective or unsuitable item sourced from or stipulated by the relevant Client; – any defective or unsuitable ancillary or other materials used by the relevant Client. b. No warranty shall be provided for: – any item supplied that was not new at the time when it was delivered; – the inspection and repair of an item belonging to a Client; – any part in respect of which a manufacturer's warranty has been granted.

11.8 The provisions of Clauses (2) to (7) of this article shall apply mutatis mutandis in the case of a Client's entitlements pursuant to default of performance, non-conformity or any other grounds what so ever.

11.9 A Client may not assign any rights pursuant to this article and

Article 12. Conditions governing the applicability of warranties (in general)

12.1 A warranty shall only apply:

- I. Provided that what has been supplied has been properly wired and installed, and operates in accordance with the relevant electrical parameters, operating range and environmental requirements stipulated in the specifications, instructions, any document supplied with the consignment or in IEC standards;
- II. provided that, where the installation work is carried out by the relevant Client, a certified lowvoltage equipment inspector [Inspector Laagspanningsinstallatie] (ILS) inspects the relevant electrical installation and records their findings in an inspection report;
- III. provided that a consignment has not been incorrectly used, misused or abnormally or improperly used contrary to any applicable standards, codes or instructions, including but not confined to any contained in the most recent electrical and/or safety and industry standards for the relevant region(s); and
- IV. provided that the relevant Client's installation is fitted with a timed meter which DLI deems to be durable. In the event that a complaint is submitted, the relevant Client shall be required to submit convincing

evidence of the number of operating hours and circuits per day at DLI's request.

12.2 The term of the warranty on fixtures stipulated in Articles, 13 and 16 shall commence at the time when it is put into service or by no later than one (1) month after the fixtures have been supplied, whichever occurs first. The underlying principle in this respect is that DLI will supply any fixtures ordered by a Client within a period of two (2) months. In the event that a longer period is required in which to supply them, the warranty shall come into effect at the time when they are put into service or by no later than one (1) month after each part delivery.

12.3 The term of the warranty on parts which are not complete fixtures as referred to in Article 12.2 shall commence at the time when DLI supplies them.

12.4 The remaining term of the relevant warranty shall apply in the case of any fixtures or components which are replaced and/or work that is carried out. Article 13. Warranty on 315 watt, 600 watt, 630 watt, 750 watt and 1,000 Watt model electronic fixtures 13.1 The warranty stipulated in this article shall apply in respect of electronically controlled fixtures fitted with an electronic ballast with a wattage of 315, 600, 630, 750 or 1,000 Watts.

13.2 The term of the warranty on electronic fixtures (with the exception of electronic ballasts and lamps) shall amount to One (1) Year.