

BSS LED LIMITED

TERMS AND CONDITIONS OF SALE

1. **Definitions**

In these terms, the following words shall have the following meanings:

- “Business Day” means any day other than a Saturday or Sunday or a public or bank holiday in England.
- “BSSLED” means BSS LED Limited whose company number is 7235861 and whose registered office is at Unit 5, Ashwood Business Park, Ashington, Northumberland, NE63 0XD.
- “Confidential Information” means any information of a confidential nature embodied in data, technical knowledge, specifications, materials, production methods, process information, test outcomes, know-how, ideas, plans, drawings, designs and/or other communications, in tangible or non-tangible form, relating to or useful in connection with the Goods and/ or the development, processing, the production and/ or marketing and sales of any BSSLED goods and technologies (including the Goods) disclosed or provided by BSSLED to the Purchaser and all information not in the public domain concerning BSSLED, its business and its technical or commercial know-how which the Purchaser may become aware of in connection with the Contract.
- “Contract” means the contract between BSSLED and the Purchaser for the sale and purchase of the Goods incorporating these terms.
- "Delivery Location" means the delivery location set out in the Order.
- "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (other than by the party seeking to rely on this clause), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors

“Goods”	means the goods set out in the Order.
“Incoterms”	means the terms of trade for international sales of goods published by the International Chamber of Commerce applicable at the date of the formation of the Contract.
“Intellectual Property Rights”	means all trade marks, service marks, trade names, logos, get-up, inventions (whether patentable or not), patents, utility models, trade secrets, know-how (including confidential technical, industrial and commercial information in any form), designs, copyright works, as well as any other intellectual property rights of whatever nature which may subsist in any part of the world; and includes, where such rights are obtained or enhanced by registration, any registration of the above and applications and rights to apply for such registration, as well as any confidential information relating to that subject matter.
“Order”	the Purchaser's order for the Goods, as set out in the Purchaser's purchase order form.
“Purchaser”	means the person, firm or company to whom BSSLED sells the Goods under the Contract.
“Specification”	means BSSLED's specification for the Goods or as agreed in writing between BSSLED and the Purchaser or, set out in BSS LED's acceptance of the Order or, in the absence of such agreement or statement, BSSLED's specification prevailing from time to time.

2. **Basis of Contract**

- 2.1. These terms apply to the Contract to the exclusion of any other terms that the Purchaser may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Purchaser to purchase the Goods upon these terms. The Purchaser is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when BSSLED issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4. These terms supersede all prior representations or understandings made in good faith and constitute the entire agreement between the parties in connection with the Goods. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of BSSLED which is not set out in the Contract and, unless an authorised representative of BSSLED otherwise agrees in writing, these terms prevail over and exclude all other terms capable of being lawfully excluded.

- 2.5. Any samples, descriptive matter, or advertising produced by BSSLED and any descriptions contained in BSSLED's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6. A quotation for the Goods given by BSSLED shall not constitute an offer to supply them capable of acceptance. A quotation shall only be valid for a period of 30 days from its date of issue and does not constitute an offer to supply capable of acceptance by the Purchaser.

3. **The Goods**

- 3.1. The Goods are described in BSSLED's catalogue and shall be in accordance with the Specification.
- 3.2. To the extent that the Goods are manufactured in accordance with a specification supplied by the Purchaser, the Purchaser shall indemnify BSSLED against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by BSSLED in connection with any claim made against it for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with BSSLED's use of the specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. BSSLED reserves the right to amend the Specification from time to time (where such amendment will not materially affect the performance of the Goods), or if required by any applicable statutory or regulatory requirements without giving prior notice and shall not be liable for breach of this Contract thereby if the Goods conform to the Specification in all material respects.

4. **Delivery**

- 4.1. BSSLED shall ensure that:
 - 4.1.1. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the relevant reference numbers of BSSLED and the Purchaser, the type and quantity of the Goods and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.2. if BSSLED requires the Purchaser to return any packaging materials, that fact is clearly stated on the delivery note.
- 4.2. Unless otherwise agreed between the parties, BSSLED shall deliver the Goods DAP in accordance with Incoterms to the Delivery Location (carriage to place of destination) at any time after BSSLED notifies the Purchaser that the Goods are ready.
- 4.3. Delivery of the Goods shall be completed upon arrival of the Goods at the Delivery Location. A representative of the Purchaser shall sign to confirm that delivery of the Goods is accepted by the Purchaser.

4.4.

4.4.1. Any dates given by BSSLED for delivery are approximate only, and the time of delivery is not of the essence.

4.4.2. If BSSLED fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods,

and in either case BSSLED shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide BSSLED with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5. If the Purchaser fails to accept delivery of the Goods or indicates that it will refuse to accept delivery following BSSLED notifying the Purchaser that the Goods are ready for delivery or collection, then, except where such failure or delay is caused by a Force Majeure Event or BSSLED's failure to comply with its obligations under the Contract:

4.5.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the day on which BSSLED notified the Purchaser that the Goods were ready or at noon on the day delivery was attempted; and either

4.5.2. BSSLED shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance); or

4.5.3. BSS LED may terminate the Contract in accordance with clause 11.1.4 and claim damages.

4.6. In the event of BSS LED exercising its rights under clause 4.5.2, if 10 Business Days after the day on which BSSLED notified the Purchaser that the Goods were ready for delivery or delivery was rejected, the Purchaser has not accepted delivery of them, BSSLED may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.

4.7. Where an Order provides that BSSLED may deliver the Goods by instalments, these shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

5. **Risk and Title**

5.1. Risk in the Goods shall pass to the Purchaser upon completion of delivery.

5.2. Ownership of the Goods shall not pass to the Purchaser until BSSLED has received in full (in cash or cleared funds) all sums due to it in respect of:

5.2.1. the Goods; and

- 5.2.2. all other sums which are or which become due to BSSLED from the Purchaser on any account.
- 5.3. Until ownership of the Goods has passed to the Purchaser, the Purchaser shall:
 - 5.3.1. hold the Goods on a fiduciary basis as BSSLED's bailee;
 - 5.3.2. store the Goods (at its own cost) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as BSSLED's property;
 - 5.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 5.3.4. maintain the Goods in satisfactory condition and keep the Goods insured on BSSLED's behalf for their full price against all risks to the reasonable satisfaction of BSSLED. On request the Purchaser shall produce the policy of insurance to BSSLED.
- 5.4. Subject to clause 5.5, the Purchaser may resell or use the Goods in the ordinary course of its business (but not otherwise) before ownership has passed to it. However, if the Purchaser resells the Goods before that time:
 - 5.4.1. it does so as principal and not as the agent of BSSLED; and
 - 5.4.2. title of those Goods shall pass from BSSLED to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- 5.5. The Purchaser's right to possession of the Goods shall terminate immediately if:
 - 5.5.1. the Purchaser has a bankruptcy order made against it or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or
 - 5.5.2. the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between BSSLED and the Purchaser, or is unable to pay

its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or

- 5.5.3. the Purchaser encumbers or in any way charges any of the Goods.
- 5.6. BSSLED shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from BSSLED.
- 5.7. The Purchaser grants BSSLED, its agents and employees an irrevocable licence at any time to enter any premises where the Goods may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.
- 5.8. Where BSSLED is unable to determine whether any of the Goods are goods in respect of which the Purchaser's right to possession has terminated, the Purchaser shall be deemed to have sold all goods of the kind sold by BSSLED to the Purchaser in the order in which they were invoiced to the Purchaser.
- 5.9. On termination of the Contract, howsoever caused, BSSLED's (but not the Purchaser's) rights contained in this clause 5 shall remain in effect.

6. **Price**

- 6.1. The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in BSSLED's published price list in force at the date of delivery.

7. **Payment**

- 7.1. BSSLED may require payment on or before delivery. If BSSLED does not do so, then unless otherwise agreed in writing, payment shall be made to BSSLED in full and cleared funds within thirty (30) days of the end of the month in which the invoice was issued regardless of whether delivery shall have taken place. Time of payment is of the essence of the Contract.
- 7.2. Any discount applied to the total amount of the Order is conditional upon full payment of the discounted amount being received by BSSLED by the due date. In the event full payment is not received by the due date, the discount shown on the invoice shall cease to apply and the full amount for the Goods shall be payable immediately.
- 7.3. BSSLED reserves the right to charge interest at the rate of 4% above the base lending rate of the Bank of England in force from time to time, to accrue on a daily basis, on any sum owed to BSSLED which is not paid by the due date. The Purchaser may not withhold payment or make any set-off on any account, but BSSLED may set-off any sums received from the Purchaser against any debt the Purchaser owes to BSSLED.

8. **Quality**

- 8.1. BSSLED warrants that on delivery, and for a period of 60 months from the date of delivery ("Warranty Period"), the Goods shall:

- 8.1.1. conform in all material respects with their applicable Specification;
 - 8.1.2. be free from material defects in design, material and workmanship
 - 8.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 8.1.4. be fit for any purpose held out by BSSLED.
- 8.2. The Purchaser may reject any Goods delivered to it within three Business Days of delivery that do not comply with clause 8.1 and such non compliance is apparent on normal visual inspection, provided non of the events listed in clause 8.4 apply. If the Purchaser fails to give notice of rejection to BSSLED within three Business Days, it shall be deemed to have accepted such Goods.
- 8.3. Subject to clause 8.4, if:
- 8.3.1. the Purchaser gives notice in writing to BSSLED 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 8.1; and
 - 8.3.2. BSSLED is given a reasonable opportunity of examining such Goods and agrees that some or all of the Goods do not comply with the warranty set out in clause 8.1;
- BSSLED shall at its sole option replace the defective Goods or refund the price of the defective Goods in full.
- 8.4. BSSLED shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.1 in any of the following events:
- 8.4.1. the Purchaser makes any further use of such Goods after giving notice in accordance with clause 8.2 or 8.3; or
 - 8.4.2. the defect arises because the Purchaser failed to follow BSSLED's oral or written instructions as to the storage, installation, use and maintenance of the Goods; or
 - 8.4.3. the defect arises as a result of BSSLED following any specification supplied by the Purchaser; or
 - 8.4.4. the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or
 - 8.4.5. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.5. Except as provided in this clause 8, BSSLED shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 8.1.

- 8.6. BSSLED does not provide any warranty as to the level of reduction in energy consumption or that use of the Goods will result in a reduction in energy supply costs.
- 8.7. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.8. These terms shall also apply to any replacement Goods supplied by BSSLED.

9. **Limitation of Liability**

- 9.1. Nothing in these terms shall limit or exclude BSSLED's liability for:
 - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 9.1.2. fraud or fraudulent misrepresentation;
 - 9.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 9.1.4. any matter in respect of which it would be unlawful for BSSLED to exclude or restrict liability.
- 9.2. Subject to clause 8.2 and 9.1:
 - 9.2.1. BSSLED 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, loss of turnover, failure to make savings, damage to goodwill or any indirect or consequential loss arising under or in connection with the Contract (including energy supply costs and any costs associated with installation, removal or replacement of the Goods); and
 - 9.2.2. BSSLED's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10. **Force Majeure**

- 10.1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 10.2. BSSLED may, without liability, where reasonable in all circumstances, suspend or terminate (in whole or in part) its obligations to the Purchaser if BSSLED's ability to manufacture, supply or deliver the Goods or to acquire materials for the production of the Goods, in each case by BSSLED's normal means, is impaired because of a Force Majeure Event or if a Force Majeure Event does or threatens to prevent, hinder or delay the receipt by BSSLED of the full price of any the Goods or which may result in BSSLED bearing any expense or loss which BSSLED would not otherwise have borne.

11. Termination and Suspension

11.1. BSSLED may (without prejudice to any other remedies) terminate or suspend forthwith BSSLED's performance of the whole or any part of its obligations to the Purchaser (without liability for doing so), if:

11.1.1. the Purchaser is a corporation and has a receiver or administrator appointed or passes a resolution for winding-up or suffers an order of court to that effect or applies to a court for an interim order in connection with a voluntary arrangement with its creditors or if the Purchaser is a partnership and the partnership is dissolved or, if the Purchaser is an individual and a bankruptcy order is made against it or;
or

11.1.2. the Purchaser becomes unable to pay its debts as they fall due, or if an encumbrancer or creditor takes any steps to enforce a security given by the Purchaser; or if the Purchaser enters into any composition or arrangement with creditors;

11.1.3. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 11.1.1 to 11.1.2;

11.1.4. the Purchaser fails to take delivery or pay for the Goods on the due date; or

11.1.5. the Purchaser is in material breach of any obligations to BSSLED under the Contract or any other contract with BSSLED; and/or

11.1.6. BSSLED has any reasonable ground for suspecting that any of the circumstances set out in sub-clauses 11.1.1 to 11.1.5 have occurred or may occur.

11.2. On termination of the Contract for any reason the Purchaser shall immediately pay to BSSLED all outstanding unpaid invoices and, where applicable, interest in accordance with clause 7.3.

11.3. Termination of the Contract, however arising, shall not affect either of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

11.4. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. Health and Safety

12.1. BSSLED shall provide the Purchaser with any relevant health and safety information concerning the Goods.

12.2. The Purchaser shall ensure that all appropriate health and safety information relating to the Goods is distributed to its employees and contractors and is observed by those of its employees who require it for installation or use of the Goods.

- 12.3. At all times each of the parties shall comply with all applicable laws and regulations concerning the Goods.
- 12.4. The Purchaser shall inform BSSLED in writing as soon as possible if it becomes aware of any matter which relates to or may impact upon the health and safety obligations of BSSLED in connection with the Goods.

13. **Confidentiality and Intellectual Property Rights**

- 13.1. Save if and to the extent otherwise required by law, the Purchaser shall keep in strict confidence all Confidential Information. The Purchaser shall only use the Confidential Information in connection with the Contract and for no other purpose.
- 13.2. All Intellectual Property Rights in the Goods and any associated literature are owned by BSSLED or its licensors and the Purchaser shall not acquire any such rights.
- 13.3. All Intellectual Property Rights in any Goods manufactured in accordance with a specification supplied by the Purchaser or created in conjunction with the Purchaser will become the property of BSSLED. The Purchaser shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that BSSLED may consider necessary or desirable to perfect the right, title and interest of BSSLED in and to the Intellectual Property Rights in those Goods.

14. **General**

- 14.1. No Contract between BSSLED and the Purchaser shall be assigned by the Purchaser without BSSLED's prior written consent.
- 14.2. No delay or failure by BSSLED to enforce any of its rights shall be construed as a waiver of that right or of any other right nor shall such delay or failure by BSSLED sanction any delay or failure by the Purchaser to comply with its obligations.
- 14.3. Notices shall be in writing and sent by letter addressed to a party at its given address. Notice shall be deemed to have been received at that time at which the letter would have been delivered in the ordinary course of post or at the time of delivery if the notice was delivered personally.
- 14.4. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15. **Law and Jurisdiction**

All disputes arising between BSSLED and the Purchaser in connection with the supply of the Goods shall be settled in accordance with the laws of England and Wales and the courts of England shall have exclusive jurisdiction to settle such disputes.