

Tridonic Distribution Limited: Terms and Conditions of Supply

The Customer's attention is particularly drawn to the provisions of clauses 0 (basis of contract) and 0 (limitation of liability).

Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: as stated in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between Tridonic and the Customer for the supply of Goods in accordance with the Proposal and these Conditions.

Customer: the party that purchases Goods from Tridonic.

Delivery Location: has the meaning given in clause 0.

Force Majeure Event: has the meaning given to it in clause 0.

Goods: the goods to be supplied by Tridonic as stated in the Proposal.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Proposal: a written proposal for the supply of Goods produced by Tridonic (which may be in the form of a quotation or a contract proposal).

Tridonic: Tridonic Distribution UK Limited registered in England and Wales with company number 4321203 and whose registered office is at The Eclipse Industrial Centre, 20 Sandown Road, Watford, Herts, WC24 7AE.

1.2 Interpretation:

1.2.1 A reference to a party includes its successors and permitted assigns.

1.2.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.4 A reference to **writing** or **written** includes email.

Basis of contract

2.1 The Proposal constitutes an offer by Tridonic to supply Goods in accordance with these Conditions.

2.2 The Proposal shall be deemed accepted when the Customer issues written acceptance of the Proposal at which point and on which date the Contract shall come into existence and, unless otherwise stated in a Proposal, the Contract will commence upon that date (**Commencement Date**). If such written acceptance is not issued, but Tridonic and the Customer act in accordance with the terms of the Proposal, the Customer will be deemed to have accepted that the Proposal, including these Conditions, represents the Contract to the exclusion of any other terms.

2.3 Any samples, drawings, descriptive matter or advertising issued by Tridonic and any descriptions of the Goods contained in Tridonic's catalogues or brochures are issued or published 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.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer notifies to Tridonic by any method, or otherwise seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any Proposal issued by Tridonic is open for acceptance within a period of [20] Business Days from its date of issue.

2.6 If there is an inconsistency between any of the provisions of these Conditions and the provisions of a Proposal the provisions of the Proposal shall prevail.

Supply of Goods

The Goods are as described in the Proposal, or otherwise in Tridonic's catalogue.

Delivery of Goods

- 4.1 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location specified in the Proposal or, where the Delivery Location is Tridonic's premises, upon loading of the Goods at Tridonic's premises.
- 4.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Tridonic shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Tridonic with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.3 If Tridonic fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Tridonic 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 Customer's failure to provide Tridonic with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.4 If the Customer fails to take delivery of the Goods within [three] Business Days of Tridonic notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Tridonic's failure to comply with its obligations under the Contract in respect of the Goods:
 - 4.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the [third] Business Day following the day on which Tridonic notified the Customer that the Goods were available; and
 - 4.4.2 Tridonic shall store the Goods until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance).
- 4.5 If the Customer has not taken delivery of the Goods within [ten] Business Days from Tridonic confirming the Goods were available, Tridonic 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.
- 4.6 If Tridonic delivers up to and including [5]% less than the quantity of Goods to be supplied the Customer may not reject them.
- 4.7 Tridonic may deliver the Goods by instalments, which 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 Customer to cancel any other instalment.

Quality of Goods

- 5.1 Tridonic warrants that on delivery the Goods shall:
 - 5.1.1 conform in all material respects with the Proposal;
 - 5.1.2 be free from material defects in design, material and workmanship; and
 - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, Tridonic shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full if:
 - 5.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 Tridonic is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by Tridonic) returns such Goods to Tridonic's place of business at the Customer's cost.
- 5.3 Tridonic shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow Tridonic's verbal or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 5.3.3 the defect arises as a result of Tridonic following any instructions from the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of Tridonic; or
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 5.4 Except as provided in this clause 0, Tridonic shall have no liability to the Customer in respect of the failure of Goods to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any replacement Goods supplied by Tridonic.

Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
 - 6.2.1 Tridonic receiving payment in full (in cash or cleared funds) for the Goods; or

- 6.2.2 the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Tridonic's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Tridonic's behalf from the date of delivery;
- 6.3.4 notify Tridonic immediately if it becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.4; and
- 6.3.5 give Tridonic such information relating to the Goods as Tridonic may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Tridonic receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as Tridonic's agent; and
- 6.4.2 title to the Goods shall pass from Tridonic to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.4 then, without limiting any other right or remedy Tridonic may have:
- 6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 Tridonic may at any time:
- 6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 6.5.2.2 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.
- 6.6 Where Goods are delivered in instalments, each instalment shall be considered to be a separate delivery of Goods for the purposes of this Clause 0 and title to and risk in each instalment of Goods shall pass separately.

Customer obligations

- 7.1 The Customer shall promptly co-operate with Tridonic in all matters relating to the delivery of Goods.
- 7.2 If Tridonic's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 7.2.1 without limiting or affecting any other right or remedy available to it, Tridonic shall have the right to suspend supply of the Goods 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 in each case to the extent the Customer Default prevents or delays Tridonic's performance of any of its obligations;
- 7.2.2 Tridonic shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Tridonic's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- 7.2.3 the Customer shall reimburse Tridonic on written demand for any costs or losses sustained or incurred by Tridonic arising directly or indirectly from the Customer Default.

Price and payment

- 8.1 The price for Goods:
- 8.1.1 shall be the price set out in the Proposal or, if no price is quoted, the price set out in Tridonic's published price list as at the date of the Proposal; and
- 8.1.2 shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods as shown in the Proposal (**Carriage**), which shall be invoiced to the Customer.
- 8.2 Tridonic reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Tridonic that is due to:
- 8.2.1.1 any factor beyond the control of Tridonic (including increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.2.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods to be supplied; or
- 8.2.1.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Tridonic adequate or accurate information or instructions in respect of the Goods.
- 8.3 Subject to Clause 12.1, Tridonic shall invoice according to the Proposal, or otherwise may invoice in respect of Goods on or at any time after completion of delivery of such Goods (including one instalment of the Goods).

- 8.4 The Customer shall pay each invoice submitted by Tridonic:
- 8.4.1 within [30] days of the date of the invoice or in accordance with any credit terms agreed by Tridonic and confirmed in writing to the Customer;
- 8.4.2 in full and in cleared funds to a bank account nominated in writing by Tridonic;
- 8.4.3 and time for payment shall be of the essence of the Contract.
- 8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Tridonic to the Customer, the Customer shall in addition to the invoiced sum, subject to receipt of a valid VAT invoice from Tridonic, pay to Tridonic such sum in respect of VAT as is chargeable on the relevant supply of Goods.
- 8.6 If the Customer fails to make a payment due to Tridonic under the Contract by the due date, then, without limiting Tridonic's remedies under clause 0 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 6% per annum above the Bank of England's base rate from time to time, or at 6% per annum for any period when that base rate is below 0%.
- 8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

Indemnities

- 9.1 The Customer shall indemnify Tridonic against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Tridonic arising out of or in connection with:
- 9.1.1 the Customer's breach or negligent performance or non-performance of the Contract;
- 9.1.2 any claim made against Tridonic for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Customer's use of the Goods;
- 9.1.3 Tridonic's use of any information, instructions, specifications or products supplied by the Customer to Tridonic in respect of the Goods;
- 9.1.4 Any breach by the Customer of anti-slavery legislation;
- 9.1.5 any claim made against Tridonic by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors
- 9.2 If a payment due from the Customer under this clause is subject to tax (whether by way of direct assessment or withholding at its source), Tridonic shall be entitled to receive from the Customer such amounts as shall ensure that the net receipt, after tax, to Tridonic in respect of the payment is the same as it would have been were the payment not subject to tax.

Limitation of liability

- 10.1 Nothing in these Conditions shall limit or exclude Tridonic's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 10.1.2 fraud or fraudulent misrepresentation;
- 10.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 10.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 10.1.5 defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1, Tridonic shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 10.2.1 loss of profits;
- 10.2.2 loss of sales or business;
- 10.2.3 loss of agreements or contracts;
- 10.2.4 loss of anticipated savings;
- 10.2.5 loss of use or corruption of software, data or information;
- 10.2.6 loss of or damage to goodwill; and
- 10.2.7 any indirect or consequential loss.

- 10.3 Subject to clause 10.1, Tridonic's aggregate liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for each and every claim arising under or in connection with the Contract, shall be limited to the total sums paid by the Customer to Tridonic under the Contract.
- 10.4 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.
- 10.5 Any express or implied warranty in relation to the Goods will be void if electric lamps of higher wattage than those shown as appropriate for each fitting are used, or if lamps used do not comply with British Standards 161/1961, 3677/1974, 1853/1979 (including all amendments and modifications thereto).
- 10.6 This clause 0 shall survive termination of the Contract.

Termination

- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing to do so;
- 11.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 11.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 11.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without affecting any other right or remedy available to it, Tridonic may suspend all further deliveries of Goods if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clauses 11.1.2 to 11.1.4, or Tridonic reasonably believes that the Customer is about to become the subject of any of them.

Consequences of termination

- 12.1 On termination of the Contract:
- 12.1.1 the Customer shall immediately pay to Tridonic all of Tridonic's outstanding unpaid invoices and interest
- 12.1.2 in respect of Goods supplied but for which no invoice has been submitted, Tridonic shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.1.3 in respect of Goods due to be supplied as part of any later instalment(s) Tridonic shall submit an invoice, which shall be payable by the Customer immediately on receipt, following payment of which Tridonic shall arrange delivery of the remaining instalment(s) of the Goods in accordance with Clause 4 and at the cost of the Customer.
- 12.1.4 if required to do so by Tridonic, the Customer shall return any Goods which have not been fully paid for and any Tridonic property held by the Customer. If the Customer fails to do so, then Tridonic may enter the Customer's premises and take possession of Goods, and until Goods have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.
- 12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, including Tridonic products that become obsolete or discontinued and impractical to provide.

General

- 14.1 **Assignment and other dealings**
- 14.1.1 Tridonic may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

14.2 Notices

- 14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the email address specified by the receiving party.
- 14.2.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.
- 14.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.3 **Severance.** 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 remaining provisions of the Contract.
- 14.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 14.6 **Entire agreement**
- 14.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 14.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 14.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 14.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.