

## DAYLIGHT DELIVERY SYSTEMS LIMITED

### TERMS AND CONDITIONS OF SALE FOR BUSINESS CUSTOMERS

*These conditions govern your relationship with Daylight Delivery Systems Limited and apply only to Business Customers who are not Consumers. All Orders for Goods or Services accepted by us will be subject to the following Terms & Conditions which will form part of and will govern the Contract of Sale. No variations of these Terms & Conditions will be accepted unless agreed in writing by Daylight Delivery Systems Limited. We will not accept inclusion of any alternative Terms and Conditions by a Business Customer which conflict with, alter or add to these Terms. If you are not a Business Customer then please see our Terms and Conditions for Consumers.*

#### 1. DEFINITIONS

**"Additional Charges"** means the costs of carriage where applicable, any additional packaging, any taxes, duties or other charges levied by any Government or authority in respect of or by reason of the sale, delivery, export or import of the Goods, courier and messenger costs and any other additional charges payable by the Customer in addition to the Price;

**"Business Customer"** (otherwise referred to as "You") means a legal entity who enters into a legal contract with us to buy Goods and Services other than for private use.

**"Conditions"** means the terms and conditions set out in these Terms and Conditions for Business Customers and include any special terms agreed in writing between the Supplier and the Business Customer;

**"Contract"** means each contract for the sale and purchase of the Goods made in accordance with these Conditions;

**"Delivery Address"** means the point to which the Goods are to be delivered as set out in the Order Confirmation or as otherwise agreed between the parties in Writing;

**"Goods"** means the Goods (including any instalment of the Goods or any parts for them) which We supply in accordance with these Conditions;

**"Intellectual Property Rights"** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world

**"Order Confirmation"** means our written acceptance of your order

**"Price"** means the price due from You, plus any Additional Charges, calculated in accordance with Condition 3;

**"Services"** means Services and Support provided by us in accordance with these Conditions;

**"Supplier"** (otherwise referred to as "We") means Daylight Delivery Systems Limited a company registered in England and Wales with company number 3938764 and registered office at 6 Corunna Court, Corunna Road, Warwick, CV34 5HQ;

**"Supplier Materials"** all materials, equipment, documents and other property of the Supplier

**"Working Days"** means a day from Monday to Friday 9.00am to 5.00pm other than a public or bank holiday in England;

**"In Writing"** and any similar expression, includes communications by post facsimile transmission and email but excludes text messages.

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rights. We give no warranty that any Goods based on the specification by You will be fit for their intended purpose.

**3.2** We may make any changes in the specification of the Goods and/or Services which are required to conform to any applicable statutory or EC requirements or which do not materially affect their quality or performance. We shall at our discretion pass on costs to You for such changes requested by You.

**3.3** All drawings, designs, specifications and other information provided by us are confidential and all rights of copyright ownership and other intellectual property rights in respect of them shall remain vested in us and shall not pass You.

#### 4. QUOTATIONS

**4.1** Quotations shall remain open for a period of 30 days from the date of the quotation unless some other period is specified in the quotation and shall not be subject to any retention unless specifically agreed by us in writing.

**4.2** All quotations and price lists shall not constitute offers by us and are subject to withdrawal at any time by us without prior notice.

**4.3** Any acceptance of any quotation or price list will constitute an offer by You to purchase the Goods and the Contract shall only be made when the We issue the Order Confirmation or if no Order Confirmation is issued when the Goods are delivered in accordance with Condition 6 and the Conditions shall be deemed to be incorporated into the Contract.

**4.4** Quotations may be subject to site survey for which we may levy a charge at our discretion.

**4.5** Quotations are issued on the basis that You have carried out a structural survey by a suitably qualified person who has deemed their intended structure to be suitable for the installation of Goods supplied by us.

**4.6** We reserve the right to withdraw or amend a quotation at any time before receipt of an unqualified order from You and each quotation shall be deemed withdrawn unless accepted within the period for acceptance stated on the quotation, or if no such period is stated, 30 days from the date of the quotation.

**4.7** We reserve the right to withdraw or amend a quotation at any time before receipt of an unqualified order from You and each quotation shall be deemed withdrawn unless accepted within the period for acceptance stated on the quotation, or if no such period is stated, 30 days from the date of the quotation.

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**7.3** Offers to supply Goods from stock or on or within a given time period are made subject to the availability of the Goods at a given time. Whilst every effort is made to meet collections, delivery arrangements or performance dates these are approximate only and unless otherwise expressly stated time is not of the essence for delivery or performance

We will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform.

**7.4** No delay shall entitle You to either refuse to take delivery of the Goods or refuse to make payment of any invoice or part of any invoice issued by us or to claim that the Contract has been repudiated.

If You cannot accept delivery, We may re-arrange delivery provided that We reserve the right to charge You for any delivery costs incurred.

**7.5** Upon delivery of the Goods, You will be asked to sign a Proof of Delivery to acknowledge safe receipt. It is your responsibility to ensure that the number of packages delivered corresponds with the number stated on the delivery note. Where a discrepancy occurs or where there is evident damage to the packaging, You should either note this on the Proof of Delivery or refuse delivery of the Goods.

**7.6** We shall not be liable for discrepancies or damage evident on delivery where You accept delivery and sign the Proof of Delivery without amendment.

**7.7** You may request a Proof of Delivery, provided that this request is made within 30 days of the dispatch confirmation and We shall use reasonable endeavours to provide such proof. Thereafter, delivery shall be deemed to have been successfully completed.

**7.8** Where delivery is made by us to You, We will consider a claim by You in respect of loss or damage in transit only if You:

**7.8.1** give Written notice to us within 48 hours after delivery or non-delivery of the Goods; and

**7.8.2** comply in all respects with our carrier's conditions of carriage for notifying claims for loss or damage in transit where the Goods are transported by our carrier.

**7.9** We shall be entitled to make good any shortage or non-delivery of a consignment of the Goods.

**7.10** Should You refuse to take delivery of the goods, We reserve the right to charge You any and all storage costs incurred.

**7.11** Delivery may be made in installments with prior agreement with us, at our discretion.

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## 9. RISK AND TITLE

9.1 Risk in the Goods shall pass to You:

9.1.1 at the time of delivery in accordance with Condition 7; or  
9.1.2 if You wrongfully fail to take delivery, risk shall pass to You at the time when We have tendered delivery of the Goods or where We are not responsible for delivery of the Goods to premises other than its own at the time when We notify You that the Goods are available for collection.  
9.2 Notwithstanding delivery and the earlier passing of risk, title in the Goods supplied by us shall remain with us and shall not pass to You until the Price, any Additional Charges and all sums due under the Contract and any other contract between the parties, including any interest, has been paid in full.

9.3 Until title passes, You shall hold the Goods as fiduciary agent and bailee for us and shall keep the Goods separately and properly stored, protected, insured and marked so that they can at all times be identified as the property for us. You agree not to incorporate the Goods into any structure or building until they are paid for. Subject to this, and until title passes You shall be entitled to resell or use the Goods in the ordinary course of its business, but such permission will cease on termination of the Contract. You shall account to us for the proceeds of sale or otherwise of the Goods pursuant to this permission, on termination of the Contract.

9.4 We may at any time before title passes and without any liability to You:

9.4.1 repossess and dismantle and use or sell all or any of the Goods and by doing so terminate your rights to use sell or otherwise deal in them; and

9.4.2 for the purposes of Condition 9.4.1 or for the purposes or determining what if any Goods are held by You and inspecting them, enter any premises of or occupied by You.

9.5 We can exercise the rights to Goods for which title has not passed to You and hereby grant full and irrevocable rights of way and entry to all parts of any property owned or occupied by You upon which the Goods are situated.

9.6 We may maintain an action for the Price, any Additional Charges and all sums payable under the Contract notwithstanding that title in the Goods may not have passed to You.

9.7 Nothing in the Contract will constitute You to be acting as the agent of us in respect of any re-sale of the Goods by You so as to confer upon a third party rights against us.

## 10. LIMIT OF RESPONSIBILITY AND PRODUCT WARRANTY

10.1 It shall be the responsibility of the Customer to:

10.1.1 carefully inspect and check the Goods as soon as practicable after receipt thereof to ensure that they are in accordance with the order placed by You. This should preferably be done before Proof of Delivery/signature of our delivery note or failing that within 48 hours of receipt of the Goods after which period You shall be deemed to have accepted the Goods and we shall have no liability for any defect or failure (subject to Condition 10.3) and You shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract. You agree that such a period is reasonable. Your rights of acceptance and/or rejection of the Goods shall be constructed in all respects in accordance with this Condition and any other rights for You in respect of acceptance, and/or rejection whether statutory or otherwise are hereby excluded; and

10.1.2 take all steps which are reasonably practicable to mitigate any loss in respect of any Goods which are defective and we shall not be responsible for any loss which would have been avoided if such steps had been taken.

10.2 In the event of any claim being made under this Condition 10 by You, You shall give us reasonable opportunity to inspect the Goods in the same condition as they were at delivery after discovery of the defect with us to be the sole arbiter as to whether the Goods are defective and liability will not be accepted unless this procedure is followed.

10.3 We shall not be liable for breach of warranty under Condition 10.4 if:

10.3.1 You make any further use of the Goods after giving notice under Condition 10.4; or

10.3.2 You alter or repair the Goods without the written consent of us; or

10.3.3 the defect arises after the Goods have been installed, erected, subjected to any process or processes or otherwise used by You or others beyond our control in the manner contrary to our recommendation, or to good practice.

10.4 We will repair or replace (at its sole option) Solatube Daylighting System Components (excluding electrical options) found by us to be faulty or defective within a period of 10 years from the date of sale, but strictly subject to such faulty Products being returned to us. Where products are replaced the warranty period runs from date of sale of the original Products. Solatube electrical components have a similar warranty, but only for a period of 5 years from the date of sale unless otherwise stated. Non-Solatube branded or bespoke products are subject to the manufacturer's warranty. Solatube Daylighting System components consist of roof domes, roof flashing bases onto which the dome is fastened, diffusers and diffuser ceiling mountings, reflective tubing, plastic, rubber or metal seals, gaskets, tapes and fasteners. These warranties are subject to You completing and returning our warranty card or website warranty form promptly after purchase. Statutory rights are not affected.

10.5 To the extent permitted by law we disclaim all other warranties with regards to the Products either expressed or implied including but not limited to any implied warranties of satisfactory quality or fitness for any particular purpose.

10.6 Daylight Delivery Systems Limited is not responsible for nor does this warranty apply to:

- Labour or installation of the products
- Product or performance defects as a result of installation not in Defects or damages arising out of shipment by common carriers, private transportation or other means of transportation
- Defects or damages arising out of improper handling or cleaning, accidents, acts of God, intentional acts, misuse or abuse, or any other circumstances beyond the control of Daylight Delivery Systems Limited
- Condensation or any water damage resulting from condensation
- Products subject to stress resulting from (i) localized application of heat, (ii) movement of building and/or building components, or (iii) expansion or contraction of framing members

f) Accessories, flashing or other installation materials manufactured or sold by persons other than Daylight Delivery Systems Limited

## 11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- fraud or fraudulent misrepresentation;
- breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1

- the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- the Supplier's total liability to the Customer 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 £5,000,000.

11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 this clause 11 shall survive the termination of the Contract.

## 12. TERMINATION

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach.
- the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply.
- the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party.
- a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party
- the other party (being an individual) is the subject of a bankruptcy petition or order.
- a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days
- an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company)
- a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver.
- a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party.
- any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1 (b) to clause 12.1(i) (inclusive).
- the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract

- by giving the Customer one months' written notice
- with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment

12.3 The Customer may terminate the Contract by giving the Supplier not less than three months' written notice.

12.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if

- the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1 (l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 13. CONSEQUENCE OF TERMINATION

On termination of the Contract for any reason: the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they 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;

the accrued rights and remedies of the parties as at termination shall not be affected, 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; and clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 14. FORCE MAJEURE

For the purposes of this Contract, **Force Majeure** Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

We shall not be liable to You as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 12 weeks, We shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to You.

## 15. INTELLECTUAL PROPERTY RIGHTS

15.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier

15.2 You acknowledge that, in respect of any third party Intellectual Property rights in the services, Your use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to You.

15.3 All Supplier Materials are the exclusive property of the Supplier.

## 16. CONFIDENTIALITY

A Party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employee, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 16 shall survive termination of the Contract.

## 17. ASSIGNMENT AND SUBCONTRACTING:

- We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- You shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 18. MISCELLANEOUS

18.1 A person who is not a party to the Contract has no right under the Contract (Right of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is unavailable apart from that Act.

18.2 The validity, construction, and performance of the Contract shall be governed by the Laws of England and Wales and the parties irrevocably agree that any dispute arising in respect of the Contract or its subject matter shall be within the exclusive jurisdiction of the English Courts.

18.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing to that other party at its registered office or principal place of business or such other address as may have been notified in Writing to the other party at the relevant time pursuant to this provision to the party giving the notice. Notices sent by first class delivery mail shall be deemed to have been served on the next Working Day after posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom. Any notice delivered personally or sent by fax or e-mail shall be deemed served at the time of personal delivery or transmission, provided the same occurs on a Working Day. To prove service it shall be sufficient to show that the fax or email was transmitted to the fax or email address of the other party or that the envelope containing the notice was properly addressed and posted.

18.4 The headings of these Conditions are for ease of reference only and do not affect their construction and nor do they limit their scope.

18.5 The singular, where appropriate includes the plural and vice versa.

18.6 If any provision of these Conditions is held by any competent authority to be valid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

18.7 No waiver by us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.

18.8 The Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in Writing between the parties. All other terms and conditions expressed or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

18.9 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.

18.10 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

18.11 We reserve the right to amend these Conditions without prior notice. In any future dealings with us, You will be bound by any amended Conditions upon receipt of a copy of the same.