

TERMS AND CONDITIONS

- 1. DEFINITION** The “Company” shall mean Enigma Electrical Limited
The “Customer” means the person, firm or company who accept a quotation of the Company for the sales goods or whose order for goods is accepted by the Company
- 2. VARIATIONS TO TERMS AND CONDITIONS** – all business accepted or undertaken by the Company will be exclusively subject to these Terms and Conditions which shall take precedence over any variation whatsoever which the Customer may wish to introduce into any contract, unless such variation has been agreed in writing by the Company. Throughout these Conditions, the term “in writing” shall mean written agreement or confirmation signed by a Director of the Company. These Conditions shall prevail over any Terms and Conditions of the Customer. All goods supplied by the Company are supplied on the express understanding that they are supplied in accordance with these Terms and Conditions.
- 3. PRICES** – all prices are subject to VAT at the prevailing rate and may change without notice. Goods will be invoiced at the price ruling at the date of despatch or collection. Quantity discounts may vary if orders are received for quantities differing from those quoted against. All prices quoted by our representatives are subject to verification by head office.
- 4. STANDARD PACKS** – goods are only supplied in multiples of their respective standard pack sizes.
- 5. CARRIAGE** – carriage will be charged extra, except where agreed by the Company in writing, or where goods are collected by the Customer. The Company reserves the right to choose the method of transport if goods are not collected.
- 6. CLAIMS** – no claims in respect of damage or partial loss will be considered unless the Customer has notified the Company and the Courier in writing within 3 days of receipt of goods. In the case of total loss of a consignment, claims will only be considered if advised to the Company and the Courier in writing within 7 days of the date of the relevant invoice.
- 7. DELIVERY** – the Company shall have the right after notice in writing to suspend deliveries under this and/or any other contract the Company have with the Customer if the Customer has failed to make payment on the due date for any goods delivered or (though the Customer is not in arrears with any payment), when the Company considers the amount outstanding on the Customer’s account (whether actually due for payment or not) to be the limit to which the Company is willing to allow credit. Delivery dates given by the Company are estimates only and accepted as such by the Customer and are deemed not to be of the essence of any contract between the Customer and the Company. The Company may at its discretion deliver the goods by instalments in any sequence. Where the goods



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are delivered by instalments each instalment shall be deemed to be the subject of a separate contract and no default or failure by the Company in respect of any one or more instalments shall vitiate the contract in respect of the goods previously delivered or undelivered goods. If the Customer fails to take delivery of the goods or any part of them on the due date or fails to provide any instructions, documents, licenses, consents or authorisations required to enable the goods to be delivered on the due date the Company shall be entitled on giving written notice to the Customer to store or arrange for storage of the goods and then risk in the goods shall pass to the Customer and delivery shall have deemed to have taken place and the Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from its failure. The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance for any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the contract.

8. **RETURNS** – goods delivered correctly against a Customer’s order may only be returned with the written agreement of the Company. Credit in respect of the return of correctly delivered goods shall be subject to a handling charge specified by the Company. Goods rejected as not complying with a Customer’s order must be returned within 7 days of delivery. Goods are not supplied on a Sale or Return basis unless with the written agreement of the Company. Goods that are deemed to be faulty must be returned to the Company for testing. Replacements to be ordered under a new order from the Customer. All goods returned will be inspected and tested if necessary. If product is found to be faulty due to manufacturing defect a credit will be issued for the original order. If a warranty replacement is ordered by the Customer or supplied by the Company, the warranty date is only valid pro rata (ie from the original order date). If goods are found to be working, mistreated, incorrectly installed or failed due to reasons beyond control of the manufacturer, they will be returned to the Customer with an invoice to cover any costs where applicable – including any collection and delivery charges the Company has had to make. With regards to LED products supplied (but not limited to) - performance related characteristics such as flashing or shimmering lamps, non-dimming or short/reduced dimming cycles, loading quantities, compatibility with halogen transformers or drivers, compatibility with dimmers (leading or trailing edge) that cause lamps to be unsuitable to the Customer or end user are not the responsibility of the Company and no returns can be accepted. It is the Customers responsibility to ensure compatibility before ordering the lamps. Goods will not be accepted back for testing unless the Company’s returns form is completed and signed by the Customer.
9. **CANCELLATIONS OF ORDERS** – the written consent of the Company must be obtained before the cancellation of any order is operative and the Company reserves the right to make a handling charge for goods returned to stock. Any cancellation shall be on the terms that the Customer can indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and

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expenses incurred by the Company as a result of cancellation. Under no circumstances may goods be returned without the Company's written consent and when returned must be in their original packing to ensure no damage is sustained during transit.

10. **STORAGE** – where a Customer is advised that goods are ready for collection by the Company or the Company is asked to hold goods for call off on behalf of the Customer, the goods will be protected by the Company's insurance for 7 days. It is up to the Customer to insure these goods after 7 days. The Company reserves the right, at its discretion, to charge for storage at the rate of 3% per month on the value of the goods, if those goods are not collected within 7 days of such advice given.
 11. **SETTLEMENT OF ACCOUNTS** – credit accounts are due for payment, strictly nett 30 days, by the end of the month following the month of delivery unless extended terms are agreed by the Company in writing. Pro Forma accounts must be settled either by cash or by the provision of cleared funds before the order can be confirmed or despatched. All payments are to be made without set off or deduction.
 12. **CREDIT FACILITIES** – these are at the sole discretion of the Company and may be granted to Customers providing satisfactory references (2 Trade & bank), credit checks made by the Company and will continue as long as the conduct of the account conforms totally with these Terms & Conditions. The Company, at its discretion, may decline to grant, or may discontinue, credit facilities at any time, and shall not be obliged to disclose its reasons for so doing. Pending the establishment of a credit account, goods will only be supplied under Pro Forma arrangements (see Settlement of Accounts).
 13. **OVERDUE ACCOUNTS** – the Company reserves the right, without further notice, to take such steps as it sees fit to recover overdue accounts. Interest will be charged at 3% above Barclays Bank Base Rate on overdue accounts, compounded monthly. All costs, charges and expenses incurred by the Company in recovering any debt shall be paid by the Customer on a full indemnity basis. Should payment not be made in accordance with our terms, the Company will be entitled to charge (in addition to interest and any legal costs ordered by the court, and without prejudice to any other rights or remedies available to the Company) the sum of £100.00 + vat by way of liquidated damages and as a contribution to the administrative costs incurred by the Company in taking steps to secure payment. If the Customer fails to make any payment on the due date then without prejudice to any other right of remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries to the Customer.
 14. **DESIGN** – in the light of continuing development, design, materials, finish, colour or packaging may be changed without notice. All sales and promotional literature including but not limited to specification sheets is intended for guidance only and shall not form part of any contract. Illustrations, measurements, lighting designs and descriptions are approximate, for guidance only and subject to alteration and modification.
 15. **RETENTION OF TITLE** – risk in the goods (each order being considered as whole) passes to the Customer at the time of delivery or collection or when the Company has tendered delivery (please refer to Storage). The Company retains full legal ownership of the goods
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until full payment for them and for all other goods agreed to be sold by the Company is received by the Company when title of the goods passes to the Customer. The Customer undertakes to act as the Company's Agent in all matters relating to them, and to store them in such a manner that they can be readily identified. Should the goods become constituents of or converted into other products while legal ownership remains with the Company, the Company shall have the legal ownership in such other products as if they were solely and simply the goods and accordingly the preceding sentence of this clause shall as far as appropriate apply to such other products. If the goods have been resold the Company's beneficial entitlement shall be attached to the proceeds of the re-sale and the Company will be able to claim the full purchase price of the proceeds received. Where ownership of goods supplied remains vested in the Company under the provisions of this Contract then the Company shall be entitled to repossess any goods supplied at any time. For this purpose the Company may at any time enter upon the premises where the goods are reasonably believed to be and remove the goods therefrom or require the Customer to return the goods. Where the Customer has gone into bankruptcy or liquidation or where a Receiver has been appointed, then any documentation evidencing the sale of goods to the Customer shall be good proof of the Company's Title.

16. **FORCE MAJEURE** – the Company shall not be liable for any breach of Contract arising from, or caused by, Act of God, Force Majeure, War, Riot, Civil Commotion, Military or usurped power, Government Order, Direction or Legislation, Fire, Accident, Strike or other Industrial Action, Lock Out, Adverse Weather, Transport Delays or any other occurrence over which the Company has no control.
17. **LIABILITY** – under no circumstances will the Company be liable to the Customer for any loss of profit or other direct, indirect or consequential damage, loss or injury, expenses or any other claims which arise out of or in connection with the supply of the goods or their use or resale by the Customer or otherwise in relation to the performance of any contract between the Company and the Customer. Furthermore, the Customer shall indemnify the Company against any claim made by a Third Party in respect of any such damage, loss or injury. The goods are not manufactured by the Company and the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer, distributor or supplier to the Company or specified by the Company for their own branded products. The Customer must consider the terms of the warranties given by the manufacturers, distributors, suppliers and the Company before ordering the goods and it is the Customer's responsibility to be aware of the conditions attached to such warranties or guarantees. The Company shall under no circumstances have any liability whatsoever for defects in the goods arising from any drawing, design or specification supplied by the Customer or any defect from any instructions or materials provided by the Customer or any defect arising from any fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions or advice (whether oral or in writing), misuse or alteration or repair of the goods without the Company's written approval. Nor shall the Company have any liability for defects arising from the incorrect

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installation of the goods. Except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permissible by law. The Company shall have no liability for the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company.

- 18. RESTRICTIONS** – the Customer will not without the prior written consent of the Managing Director of the Company (such consent not to be withheld other than to protect the legitimate business interests of the Company) directly or indirectly and whether alone or in conjunction with or on behalf of any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise for a period of 12 months from the date that the Customer most recently ordered goods from the Company (“the Last Order Date”) solicit, induce or entice away from the Company from which the Customer has ordered goods at any time during the period of 12 months immediately before the Last Order Date or, in connection with any business in or proposing to be in competition with the Company, employ, engage or appoint or in any way cause to be employed, engaged or appointed any person who as an employee, agent, director, consultant or independent contractor employed, appointed or engaged by the Company, at any time within 12 months from the Last Order Date who by reason of such employment, appointment or engagement and in particular his/her seniority and expertise or knowledge of trade secrets or confidential information of the Company or knowledge of or influence over the clients, customers or suppliers of the Company is likely to be able to assist or benefit a business in or proposing to be in competition with the Company or whose departure from the Company is likely to cause the Company to suffer material damage whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the service of the Company.
- 19. REPRESENTATION** – no employee, agent, shareholder, director, principal, consultant, partner, contractor or third party employed by the Company, other than the Managing Director, is authorised to make any statement, warranty or representation as to the Goods. The Customer therefore shall not be entitled to rely or seek to rely upon any statement made by an employee, agent, shareholder, director, principal, consultant, partner, contractor or third party employed by the Company other than a written statement from the Managing Director of the Company.
- 20. LEGAL CONSTRUCTION** – the contract shall be construed and have effect in all respects in accordance with English Law and any disputes arising therefrom or in connection with these Terms & Conditions and any written special conditions of purchase applicable hereto shall be submitted to the exclusive jurisdiction of the English Courts to which jurisdiction the parties exclusively submit.