

LEDSYS BV
(KTL bright solutions)

TERMS AND CONDITIONS OF SALE January 2010

Any sales of products ("Products") or supply of services ("Services") shall be subject to the terms and conditions below in so far as they do not conflict with any other contractual provisions expressly agreed between Buyer and Seller. No other general terms and conditions that may be referred to in buyer's request for proposal or order shall apply, even if these have not been rejected by Seller.

1. DELIVERY

1.1 Any delivery date mentioned in the order confirmation is for information only. Products shall be delivered in Seller's standard package with Seller's standard labelling and markings. If Seller cannot ship the Products or supply the Services due to Buyer, all costs associated therewith (incl. storage) shall be charged to Buyer.

1.2 Buyer's failure to give notice to Seller of any claim within 8 days after the delivery of the Products or supply of the Services shall constitute an unqualified acceptance thereof. Buyer shall file a claim for loss of or transport damage to the Products against the carrier immediately upon delivery and notify Seller forthwith. Rejected Products must be kept at Seller's disposal and can only be returned with Seller's prior consent.

2. TITLE

Title to the Products shall pass to Buyer after the price thereof has been paid in full to Seller. Until Buyer has obtained title to the Products, Buyer shall ensure that the Products in its possession shall be readily identifiable as Seller's property. At Seller's request, Buyer shall execute all documents and do all acts which may be required to enforce Seller's retention of title.

3. TAXES AND DUTIES

3.1 Any taxes, duties, excises and other charges levied in connection with the sale of the Products or the supply of the Services shall be borne by Buyer, except for those taxes and duties, which are payable by Seller prior to the delivery of the Products pursuant to the agreed upon Incoterm or the supply of the Services.

3.2 If Buyer exports the Products, Seller may charge VAT, which will be credited only upon receipt of valid proof of arrival of the Products in the country of destination.

4. INVOICING - PAYMENT - DEFAULT

4.1 Seller shall invoice Buyer the price of the Products or Services in the currency of Seller's quotation on a shipment per shipment basis or upon the supply thereof respectively.

4.2 Buyer shall pay Seller's invoices within 14 days, or terms agreed, as from the date of Seller's invoice without any deduction or set-off. If Seller cannot complete a milestone in a schedule due to Buyer, the instalment related thereto shall be deemed payable if Buyer fails to enable Seller to complete such milestone within 30 days from Seller's notification.

4.3 If payment is delayed, Buyer shall pay Seller late payment interest at 7% p.a. on any overdue amounts. If Buyer fails to comply with Seller's payment terms or is unable to provide satisfactory security, Seller may, at its option, suspend its obligations until full payment or satisfactory security has been received by Seller, or consider all pending orders cancelled by Buyer. Any claim by Buyer shall not entitle Buyer to delay or withhold payment of the overdue amounts.

5. ON SITE INSTALLATION – ACCEPTANCE TESTS

5.1 Buyer shall carry the Products at its expense from the place of delivery to the site of installation. Buyer shall timely meet Seller's (pre-) installation requirements and perform all works to be carried out by Buyer. Buyer shall inform Seller of the health and safety risks on site at least 30 days prior to the installation and assume health and safety co-ordination between the contractors on site.

5.2 If Seller has agreed that the Products or Services are subject to factory or on-site acceptance tests, Seller and Buyer shall agree on the acceptance procedures and tests. Seller shall accept the Products or Services if the acceptance tests only reveal non-critical issues not preventing the operational use thereof subject to Seller remedying such issues within a reasonable time period. Any operational use of the Products or Services by the Buyer or any other user shall be deemed to constitute a final acceptance. Buyer's failure to complete the tests within 3 months from the delivery shall constitute an unqualified acceptance and a waiver by Buyer of all claims with respect thereto.

6. FORCE MAJEURE

6.1 Neither party shall be liable for default or delay in the performance of any of its obligations (except for any payment obligation) due to Acts of God, fires, explosions, strikes, riots, civil or international wars, invasions, refusal by governments to grant import or export licenses or the cancellation thereof, inability to obtain raw materials, components or parts due to Force Majeure, or a contingency of a supplier of goods and services, or any other event beyond the reasonable control of either party.

6.2 In case of Force Majeure, Seller shall allocate the available Products and supply the Services amongst its Buyers at its discretion.

7. WARRANTY

7.1 Warranty (a) Hardware: Seller warrants that the Products shall (I) conform to the specifications in effect at the delivery and (II) be free from defects in material and workmanship. (b) Software: Seller warrants that software shall perform substantially in accordance with the specifications in effect at the date of delivery. Software is inherently susceptible to bugs and errors. Seller makes no warranty with respect to software which is provided to Buyer on an "as - is" basis and does not warrant uninterrupted or error-free operation of the Products. (c) Services: Seller warrants that it shall supply the Services in a workmanlike manner.

7.2 The Warranty Period (a) Hardware: 24 months commencing on the date of delivery or, if applicable, the date of acceptance as per Article 5.2. (b) Software: 3 months commencing on the date of delivery or, if applicable, the date of acceptance as per Article 5.2. In case of repair or replacement, the warranty period shall continue to run until its expiry or 3 months after the repair or replacement, whichever is longer.

7.3 Conditions precedent for Warranty to apply The Warranty shall apply only to the extent the Products, Services or any parts thereof have: (I) been handled, transported, stored and installed (if and to the extent such activities have not been carried out by Seller) in accordance with Seller's instructions (such as use of original packaging, covered and secure location, minimum temperature, maximum humidity, ...) or, in absence thereof, in a professional and workmanlike manner; (II) not been subject to any unauthorized access, alteration, modification or repair or attempts thereto (such as removal of warning labels, original seals or serial numbers) or any abuse or damage; (III) been at all times "normally used" for the specified purpose and operated and maintained in strict accordance with the instructions set for in the operating and maintenance manual or, in absence thereof, in a professional and workmanlike manner. For the purpose hereof, "normally used" shall mean a regular, ordinary and routine use as intended or as recommended by Seller; (IV) not been connected to or used in combination with other equipment, products or systems (hardware and/or software) not compatible with the Product. CONTINUE 7.4 next page>



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7.4 Exclusions from the Warranty In no event shall Seller be liable for any defects, failures, loss of or damage caused by or resulting from (I) wear and tear, (II) any external cause or event out of Seller's control, (III) use or operation of the Product or Service prior to acceptance, (IV) any act or negligence of Buyer or any third party, or (V) any phenomena inherent to the technology used such as image retention, burn-in, vibrations, etc. The Warranty shall not apply to consumables (lamps, liquids, filters, reflectors, fans, pumps, batteries, etc.). Any third party product or any part thereof which Seller merely resells with the Products or Services, is subject to the original manufacturer's warranty and no separate warranty is given in respect thereof by Seller.

7.5 Claims for repair or replacement under Warranty

Any claim under the Warranty must be notified to Seller in writing within 8 days from the discovery of the defect or failure.

7.6 Remedies under the Warranty. Under the Warranty, Seller shall, at its sole option and cost, and without undue delay, with respect to: (a) Hardware: (I) repair or correct the Product or part; or (II) replace the Product or supply part(s) or component(s). A replacement part shall be at least functionally equivalent to the original part. The replaced Product, parts and/or components shall become the property of Seller and shall, at Seller's request, be returned by Buyer to Seller. (b) Software: amend the software or supply an alternative version of the software. (c) Service: supply the Service again.

7.7 Return of defective Product or parts –Repair -Replacement The repair or replacement under the Warranty only covers the cost of material and labour 'in-house'. The repair or correction shall be carried out at Seller's repair facility, unless Seller has agreed to perform the repair or replacement elsewhere. The travel time and the travel and living expenses of the service engineer shall be payable by Buyer in accordance with Seller's then applicable rates and procedures. Buyer shall not return a defective Product or part thereof without Seller's prior written approval. Upon approval, Seller shall issue to Buyer a Return Material Authorization (RMA) number. The cost of packing, transport and insurance related to shipping the Product or part for repair or replacement shall be borne by Buyer. Buyer shall pack the Products correctly so as to protect them from transport damage.

7.8 The remedies specified in this Article 7 shall constitute Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for Seller's breach of the Warranty hereunder.

7.9 Seller makes nor intends to make any other warranties or representations, express or implied, and it expressly excludes and disclaims any and all warranties which may be implied or otherwise created by operation of law including all implied warranties of uninterrupted or error-free use or operation, merchantability and fitness for a particular purpose.

8. TERMINATION - CANCELLATION

8.1 In the event that (I) a petition in bankruptcy is filed by or against Buyer, or (II) Buyer is declared bankrupt, or (III) Buyer becomes insolvent or his credit becomes impaired in the reasonable opinion of Seller, or (IV) proceedings are initiated by or against Buyer seeking appointment of a receiver, reorganization, liquidation, dissolution, debt rearrangement or any other similar relief, or (v) if Buyer fails to perform or fulfil at any time any material obligation or condition hereunder, Seller, at its discretion, shall have the right to either request the performance of Buyer's obligations or to terminate the order with immediate effect without prior summons or notice period by registered letter. In the latter case, without prejudice to any other remedies, Seller may repossess the Products without the intervention of any court and Buyer shall assist Seller hereto at no charge.

8.2 If Buyer cancels the order, Buyer shall pay Seller a compensation equal to 20% of the order amount, without prejudice to Seller's right to seek reimbursement equal to its actual losses. Advances which have already been paid will accrue definitively to Seller to the extent of the compensation due.

9. LIMITATION OF LIABILITY

9.1 Seller's exclusive liability and Buyer's exclusive remedy for any and all claims as to the Product or Service delivered or for delayed delivery or non-delivery thereof, whether arising out of contract, warranty, negligence, Seller's failure to comply with laws and regulations, strict liability or otherwise, shall be limited to the price of the Product or Service in relation to which the claim is made or, at Seller's option, the replacement thereof.

9.2 In no event shall Seller be liable for special, incidental, punitive, indirect or consequential damages, (including without limitation loss of profits, business, revenue, goodwill or anticipated savings) whether or not caused or resulting from the negligence or wilful misconduct of such party.

10. THIRD PARTY RIGHTS

10.1 Seller shall hold harmless and indemnify Buyer from and against direct damages, losses and expenses arising from infringement of any patent, trademark or copyright of a third party by a Product or Service and defend and settle at its sole expense any claim brought against Buyer, provided that (I) Seller is promptly notified by Buyer in writing after a claim has been asserted against Buyer, and (II) Seller shall assume sole control of the defence and any settlement negotiations, and (iii) Buyer shall not make any representation or concession, negotiate, settle or compromise any claim without the prior written consent of Seller and (iv) Buyer, at its cost, shall provide assistance and support, as Seller may require, in connection with the defence and any settlement negotiations.

10.2 Seller shall have no indemnity obligation for any Product or Service, or any portion thereof, (I) that is based on specifications, drawings, models or other data furnished by Buyer or, (II) that is not provided by Seller or, (III) that is modified by a party other than Seller and not at its direction or, (IV) to the extent Buyer continues the allegedly infringing activity after having been provided modifications that avoid the alleged infringement, or (V) where the use of the Product or Service, or the combination or thereof with other products, processes or materials or the distribution thereof rather than the Product or Service itself is the primary cause of an alleged infringement.

10.3 If it has been determined that Seller has infringed or misappropriated such third party rights, Seller may, at its option and cost, (I) modify the Product or Service in such a way that it shall not infringe upon or misappropriate the rights of the third party or (II) obtain for Buyer a license or other right to use the Product or Service or (iii) replace the Product or Service with a non-infringing Product or Service. If the foregoing options are not available on commercially reasonable terms and conditions, Seller may require the return of the Product and refund to Buyer amounts paid for the Product minus a reasonable allowance for the period during which Buyer has used the Product.

10.4 The remedies set forth in this Article 10 shall constitute Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for a third party claim that the Product infringes or misappropriates any intellectual property right of a third party.

11. SECRECY - INTELLECTUAL PROPERTY RIGHTS

11.1 Buyer shall not disclose any proprietary or confidential information of Seller.

11.2 Any patents, trademarks, copyrights, any other intellectual property rights or any proprietary or confidential information, whether existing prior to the date of Buyer's order or developed as of the date thereof, shall remain the property of Seller or its licensor, as the case may be, and nothing herein shall be construed as conferring on the Buyer by implication or otherwise, any right, title or interest in, or any license under any intellectual property right, confidential information or other trade secret. Seller shall however not enforce its intellectual property rights against Buyer, its successors or assigns who are operating the Products or Services as authorized hereunder.

11.3 The software supplied by Seller to Buyer hereunder shall remain the property of Seller or the licensor at all times. Buyer shall at all times comply with terms and conditions of the (sub)license imposed by Seller or the licensor. Seller hereby grants to Buyer a non-exclusive (sub)license to use the software solely for the purpose of operating the Products delivered hereunder. Seller hereby grants to –NAME-