

BRIGHTWORLD
CONDITIONS OF SALE AGREEMENT
(the/this "Agreement")



with reference to: all project lighting product supply national & international
all lighting supply to construction new builds or renovations across the board

1. Introduction

- 1.1. Brightworld International (Pty) Ltd with Company Registration No. 2020/819360/07 (the "Seller") is a supplier of lighting goods (the "Goods"), as set out in detail in the Quotation.
- 1.2. This Agreement governs the order, sale and delivery of Goods, as well as the risk and benefit in the Goods, with reference to any quotation ("Quotation") of Goods by Seller (and the terms hereof are incorporated therein).
- 1.3. The terms and conditions in this Agreement are binding on, and enforceable against, the signatory (the "Buyer") of this Agreement and/or any Quotation, including if signed by the Buyer's agent or mandatory, or person the Seller can reasonably assume to be so authorised; and the Buyer acknowledges and agrees to be bound hereby.
- 1.4. The Seller shall not provide lighting design, orientation or configuration, or enter into agreement to provide same.
- 1.5. The Seller strongly recommends that **lighting and electrical calculations be overseen and approved by an electrician and/or an electrical engineer**, prior to entering into this Agreement and/or the Quotation; and **Seller shall not be liable for any calculation errors**.
- 1.6. All necessary lighting product data information documentation will be made available by the Seller upon written request.
- 1.7. This Agreement applies to Buyers who may be consumers for purposes of the Consumer Protection Act, 68 of 2008 ("CPA"), and may:
 - 1.7.1. limit the risk and/or liability of the Seller (inclusive of a third party); and/or
 - 1.7.2. transfer risk and/or liability for the Buyer; and/or
 - 1.7.3. act as an acknowledgement of facts by the Buyer, or be deemed as such, but notwithstanding the *above*, nothing herein unlawfully limits, restricts or nullifies any rights / obligations under the CPA of any party hereto.
- 1.8. Any reference in this Agreement to "Business Day" shall mean any day that is not a Saturday, Sunday or public holiday in South Africa.
- 1.9. **PLEASE NOTE: receipt of the Deposit Amount is deemed to be acceptance of the Quotation and of this Agreement by the Buyer.**

2. Validity of the Quotation

- 2.1. Any Quotation is valid for a period of **7 (seven) Business Days**, whereafter prices and stock levels are subject to change.

3. Purchase Price and Price Adjustments

- 3.1. The Buyer purchases the Goods at the price ("Purchase Price") in the Quotation, which price is inclusive of VAT.
- 3.2. If the Buyer (or its agent) makes **any amendments** to the Quotation or the Goods, after the Quotation has been approved, **the Seller reserves the right to unilaterally increase the Purchase Price accordingly** ("Price Adjustments"), subject to any amendments being approved by the Seller.
- 3.3. If, for the duration of this Agreement, there is an increase in the cost of the Goods (including but not limited to currency fluctuations; import costs; taxation or duties costs; and/or transport costs) due to circumstances beyond the Seller's control, the Seller reserves the right to make Price Adjustments, upon notice in writing to the Buyer.
- 3.4. If, due to any agreed any amendments to the Quotation or the Goods, as *above*, there is a decrease in the Purchase Price, the Seller shall credit the Buyer's account and refund any credit to the Buyer within **20 (twenty) Business Days** of the termination of this Agreement.

4. Quotation and Payment Conditions

- 4.1. To place the order for the Goods, the Buyer must make a payment (the "Deposit Amount") of **70% (seventy percent)** of the Purchase Price into the Seller's bank account. Receipt of the Deposit Amount by the Seller is deemed to be placement of the order ("Order Placement"). The balance of 30% will be due prior to the first order consignment delivery to site or stipulated address: _____
- 4.2. On Order Placement, the Seller may notify the Buyer in writing (usually by email).
- 4.3. All payments are to be made into the Seller's bank account:

Account Name: Brightworld International (Pty) Ltd	Bank: Nedbank
Branch Code: 106-909	Chq Acc No: 120 762 8239

- 4.4. Once the Seller has confirmed in writing (by email) that the Goods are ready for delivery, the Buyer shall pay the balance of the Purchase Price (inclusive of any Price Adjustments).
- 4.5. The Seller reserves the right to: (i) correct any (patent or latent) errors; inaccuracies; and/or omissions in the Quotation; and (ii) change or cancel orders, if any information in the Quotation is inaccurate, with prior written notice (by email) to the Buyer (including after the Buyer has signed the Quotation and this Agreement).
- 4.6. **The Seller neither enters into a Joint Building Contracts Committee ("JBCC") contract in any way, nor forms part of any JBCC contractual obligations whatsoever. The Seller and Buyer agree that no retention shall be held.**
- 4.7. **For the avoidance of doubt, the Seller shall not be liable for any insolvency, liquidation, business rescue proceedings or similar of any builder, contractor, sub-contractor, agent, employee, mandatory of the Buyer, or any other party involved with the Buyer's project.**

5. Cancellation of Orders

- 5.1. **Prior to Order Placement:** the Buyer may cancel an order, provided it does so in writing **before Order Placement**.

- 5.2. **After Order Placement:** the Buyer may not cancel an order and, in the event of cancellation after Order Placement, the Buyer forfeits the Deposit Amount to the Seller.
- 5.3. **After delivery of the Goods:** Goods may be only returned to the Seller in accordance with the Returns Policy (*see below*).
- 5.4. If, for whatever reason, Goods are not available after Order Placement, the Buyer is entitled to a refund of all amounts paid by it for such Goods.
6. **Delivery Costs, Times & Dates**
- 6.1. Once payment of the Quotation amount in full is received, the Seller will prepare the Goods for delivery to the Buyer's nominated address.
- 6.2. Delivery costs are as follows:
- 6.2.1. **within 20km (twenty kilometres)** from the Seller: **ZAR350** (three hundred and fifty rand only);
- 6.2.2. **20km-50km (twenty to fifty kilometres)** from the Seller: **ZAR500** (five hundred rand only); and
- 6.2.3. **more than 50km (fifty kilometres)** from the Seller: **delivery cost to be agreed,**
with all distances to be determined using Google Maps, which may not be the shortest route.
- 6.3. **All delivery dates are estimates** and may be delayed by unforeseen circumstances, which are out of the control of the Seller.
- 6.4. All Goods are *ex works* Cape Town, unless otherwise specified. Stock quantities quoted are as at the Quotation date.
- 6.5. **The Buyer is responsible for obtaining insurance for Goods in transit; and the Seller shall not, in any circumstances, be liable for any losses suffered by any party after the Goods have left its premises and/or while the Goods are in transit.**
- 6.6. Receipt of the Goods, which is indicated by a signed delivery note ("**Delivery Note**"), is deemed acceptance of delivery by the Buyer of the Goods in good condition and free of patent defects. Signature of the Delivery Note includes signature by the Buyer's agent or mandatory at the nominated delivery address, or by a person who the Seller can reasonably assume to be so authorised; and the Buyer acknowledges and agrees to be bound thereby.
- 6.7. The Seller's obligation to deliver the Goods is fulfilled when the Delivery Note is signed in accordance with the clause directly *above*; and the Seller is not liable for any damages or losses suffered by the Buyer subsequent to delivery.
- 6.8. The Seller may, in its sole discretion, suspend and/or cancel any delivery (in full or any undelivered portion of the Goods) of any Goods any payment/s is due and unpaid in respect of any Quotation (current or prior).
- 6.9. If delivery is not accepted by the Buyer, or its representative, at the nominated address **after 3 (three) delivery attempts** by the Seller (or its courier), the Goods will be stored by the Seller for a period of 4 (four) weeks at the Buyer's expense, whereafter the Goods will be deemed as having been abandoned by the Buyer and the Seller may sell the Goods to defray expenses incurred.
7. **Risk of Loss and Passing of Ownership**
- 7.1. Ownership in the Goods, inclusive of all risk and benefit, shall pass to the Buyer once payment in full for the Purchase Price reflects in the Seller's bank account.
- 7.2. The Buyer(s) takes possession of the Goods upon signature of the Delivery Note.
8. **Stock Supply**
- 8.1. In the event of Goods being sold-out, discontinued, or unavailable for whatever reason, an alternative product and/or alternative supplier may be recommended in its place by the Seller.
- 8.2. Where the Seller is appointed as a lighting supplier to a construction project, it shall in no way be liable for any additional costs, of whatever nature, incurred by said construction project if those costs are attributable to import delays and/or stock unavailability.
- 8.3. The stock of all Goods offered by the Seller is limited and pricing may change at any time, with notice to the Buyer. While the Seller takes reasonable precaution to maintain stock levels, it cannot guarantee the availability of any Goods.
9. **Guarantee**
- 9.1. In the event of material or manufacturing defect in the Goods, Seller will, subject to a comprehensive technical elevation of the failed item, replace, at its election repair or refund the Goods that have demonstrably failed during the respective period owing to a qualifying fault.
- 9.2. The Seller reserves the right to make a final decision on the validity of any guarantee claim.
- 9.3. This guarantee falls away if: (i) the Buyer altered in any way the Goods, contrary to instructions; (ii) the Buyer tampered with the Goods; (iii) the Goods became defective after leaving the possession of the Seller; (iv) the Goods were damaged due to the actions and/or negligence of a third party, including but not limited to incorrect installation; or (iv) the Buyer is not a "consumer" under the CPA.
- 9.4. Notwithstanding the *above*, all Goods are covered by their respective manufacturer's warranties, as and where applicable.
10. **Returns Policy**
- 10.1. **Damaged and/or Defective Goods**
- 10.1.1. The Seller must be notified in writing **within 2 (two) Business Days of delivery** if any Goods were received in a damaged or defective condition, using the supplied form ("**Returns Form**"), accompanied by photographs clearly indicating the alleged damage or defect.
- 10.1.2. Once the Seller has received the completed Returns Form, it will evaluate the intended return and inform the Buyer of the outcome **within 2 (two) Business Days** of receipt of the Returns Form.
- 10.1.3. If instructed by the Seller, the Seller shall arrange for the Goods to be collected **within 2 (two) Business Days**.
- 10.1.4. Once the Seller has received and inspected the Goods, and determines that they are damaged and/or defective, it will repair the Goods, or replace the Goods with similar or equivalent Goods, **within 2 (two) Business Days**.
- 10.1.5. If, upon inspection, the Seller determines that the Goods are NOT damaged and/or defective, the Goods shall not be repaired or replaced, and the Buyer shall be liable to pay any costs incurred by the Seller.
- 10.1.6. **The Seller shall not be responsible for any damaged or defective Goods not reported to it within 2 (two) Business Days of delivery.**
- 10.2. **Goods Received in Good Order**
- 10.2.1. Any return of Goods received in good order is subject to clauses 10.3 and 10.4 *below*; and the Seller's written acceptance of the return (which acceptance is in the Seller's sole and unfettered discretion).
- 10.2.2. A **20% (twenty percent)** handling fee will be levied on the return of Goods accepted in terms of this clause 0.

- 10.2.3. The Buyer must notify the Seller in writing **within 5 (five) Business Days of delivery** using the supplied form (“Returns Form”), accompanied by photographs of the Goods and reasons for the return.
- 10.2.4. Once the Seller has received the completed Returns Form, it will evaluate the intended return and inform the Buyer of its decision **within 5 (five) Business Days** of receipt of the Returns Form.
- 10.2.5. If instructed so by the Seller, the Buyer shall return the Goods to the Seller at its own expense **within 2 (two) Business Days**.
- 10.2.6. **The Seller’s acceptance of Goods returned under this clause 10.2 is subject all Goods being:**
- 10.2.6.1. unused and undamaged (including packaging);
- 10.2.6.2. in their original packaging;
- 10.2.6.3. free of damage and/or dust;
- 10.2.6.4. never installed;
- 10.2.6.5. complete with all components, parts, accessories and instructions, where applicable, they were supplied with; and
- 10.2.6.6. transported to the Seller at the Buyer’s expense.
- 10.2.7. Any Goods that do not meet the requirements of this clause, clause 10.3 and clause 10.4 will not be accepted for return and the Buyer shall not qualify for a refund or replacement (and the Buyer may be charged a fee to ship the Goods back to the Buyer).

10.3. No returns, replacement or refunds will be considered or accepted where Goods have been:

- 10.3.1. installed, used, and/or damaged;
- 10.3.2. partially or entirely disassembled;
- 10.3.3. altered; and/or
- 10.3.4. added or combined with other Goods or property.

10.4. Packaging of Returns

- 10.4.1. No returns of Goods will be accepted if the Goods in question are not sufficiently packaged.
- 10.4.2. If any Goods being returned are damaged during transit back to the Seller, the Buyer shall not qualify for a refund or replacement (and the Buyer may be charged a fee to ship those damaged Goods back to the Buyer, where applicable).

10.5. Goods Not Inspected by the Buyer Before Purchase / Delivery

- 10.5.1. Where the Buyer is a “consumer” under the CPA and did not have the opportunity to examine or inspect the Goods prior to the purchase, the Buyer is entitled to inspect the Goods on delivery.
- 10.5.2. If, on the initial inspection of the Goods after delivery, the Buyer finds that:
- 10.5.2.1. the Goods do not meet the “type” or “quality” they could reasonably expect from the Quotation; or
- 10.5.2.2. if the Goods were a custom order, the Goods do not reasonably conform to the specifications of the order, then the Buyer may refuse delivery, cancel without penalty, and will receive a full refund of the Purchase Price.
- 10.5.3. The Seller will collect or arrange for the return of the Goods at its expense.

11. Special Provisions and Exclusions relating to Imported Goods (“Imports”); Exported Goods (“Exports”); and Custom Manufactured Goods or Custom Modified Goods (“Custom Goods”)

11.1. Imports

- 11.1.1. DELIVERY: delivery times are affected by influences and/or procedures that are out of the Seller’s control.
- 11.1.2. COSTS: in some cases, the landed cost of Imports may increase, and the Buyer agrees that these costs are for the Buyer’s account.
- 11.1.3. RETURNS: Buyer agrees that there are no returns, replacements or refunds for Imports.

11.2. Exports

- 11.2.1. DELIVERY: where Goods are exported outside the Republic of South Africa, the Buyer (or its contractor, agent or nominee, as applicable) shall be deemed to accept possession of the Goods upon collection by the Buyer’s nominated courier.
- 11.2.2. COSTS: international courier costs and all risks subsequent to collection are for the Buyer’s account.
- 11.2.3. RETURNS: Buyer agrees that there are no returns, replacements or refunds for Exports.

11.3. Custom Goods

- 11.4. The Buyer agrees that there are no returns, replacements or refunds for Custom Goods.

12. Dispute Resolution

- 12.1. Any dispute arising out of this Agreement exists once either party notifies the other party in writing of the nature of the dispute and that the dispute is to be resolved under this clause 12 (Dispute Resolution).
- 12.2. The parties shall refer any dispute to be resolved by negotiation; failing which, mediation; and, failing which, arbitration.
- 12.3. Negotiation: within **10 (ten) Business Days** of notice, the Seller and the Buyer shall seek an amicable resolution to the dispute; by referring it in writing to the Buyer and Seller to negotiate and resolve (in such manner as the Parties agree in writing) **within 10 (ten) Business Days**.
- 12.4. Mediation: If the negotiation referred to in clause 12.3 *above* fails, the parties shall refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) (“AFSA”).
- 12.5. Arbitration: If the mediation referred to in clause 12.4 *above* fails, the parties shall refer the dispute **within 10 (ten) Business Days** for resolution by arbitration: (i) one arbitrator shall be appointed by agreement between the parties or, failing agreement, appointed by the Secretariat of AFSA; (ii) the seat of the arbitration shall be Cape Town; and (iii) it shall be conducted in English as an expedited arbitration under the applicable AFSA rules.
- 12.6. This clause 12 will not preclude either Party from approaching a Court of law for interim relief in respect of urgent matters pending finalisation of this dispute resolution process.
- 12.7. This clause 12 is separate and divisible from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason whatsoever.

13. Breach

- 13.1. In the event that any of the parties breaches a term of this Agreement, and fails to remedy such breach **within 7 (seven) Business Days** of written notice to do so, then the aggrieved party shall be entitled to enforce specific performance hereof, entirely without prejudice to any other rights which the aggrieved party may have in law.
- 13.2. In the event that the Buyer is in breach of any of the terms and conditions, as contained in this Agreement, the Seller will, in addition to any other rights granted to it and which it may have in law, be entitled to suspend supply and delivery of any further Goods to the Buyer.
- 13.3. Buyer will be liable for all costs incurred by Seller in enforcing its rights in terms of this Agreement on an attorney and own client scale.

14. Notice and Addresses (Domicile)

- 14.1. Each of the parties hereto chooses as its respective address (*domicilium citandi et executandi*), as set out in this clause 14, for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of, or in connection with, this Agreement.
- 14.2. Each party shall be entitled from time to time to vary its address by written notice to the other party.
- 14.3. For purposes of this Agreement, the parties' respective addresses shall be the email addresses used in the Quotation.
- 14.4. Any notice given in terms of this Agreement shall be in writing and shall -
 - 14.4.1. if transmitted by email, be deemed to have been delivered to and received by the addressee upon receipt of an automated acknowledgement of receipt by the sender from the addressee; or any conduct of the addressee sufficient to indicate to the sender that the email has been received.
 - 14.4.2. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the parties hereto from the other, including by way of email transmission, shall be adequate written notice or communication to such party.

15. Force Majeure Events

- 15.1. Neither party hereto is liable or responsible to the other party for any failure/delay to fulfil its obligations under the Agreement (with the exclusion of any payment obligations), when and to the extent such failure or delay is caused by or results from events beyond the control of the impacted party (the "**Impacted Party**"), included but not limited to the following events ("**Force Majeure Events**"):
 - 15.1.1. acts of God, including but not limited to fires; earthquake; floods; and natural explosions;
 - 15.1.2. labour strikes; labour interruptions or go-slows; labour stoppages; and/or other industrial actions;
 - 15.1.3. acts of war; invasions; hostilities (whether formal declaration of war or not); acts of terrorism; riots; and civil unrest;
 - 15.1.4. states of disaster (formal or not); emergencies (national, regional, or local), inclusive of epidemics, pandemics, outbreaks, and similar;
 - 15.1.5. any actions by any government or governmental authority;
 - 15.1.6. any shortage of electricity (AKA "**loadshedding**") or transportation delays (whether due to *inter alia* shipping or ports); and
 - 15.1.7. any actions; embargoes; or blockades.
- 15.2. When any Force Majeure Event occurs, Impacted Party shall give the other party written notice thereof **within 20 (twenty) Business Days**.
- 15.3. Impacted Party shall use all reasonable efforts to remedy its inability to perform and to mitigate the effects of the Force Majeure Event.
- 15.4. If the Force Majeure Event exceeds **6 (six) months in duration**, then this Agreement shall automatically terminate, unless agreed otherwise in writing.

16. Acts Or Omissions by the Buyer

- 16.1. If the performance by the Seller of any of its obligations under the Agreement is prevented/delayed by any act/omission of the Buyer (inclusive of its agents, builders, sub-contractors, architects, consultants or other related parties), the Seller shall be deemed to not be in breach of this Agreement and, in addition, the parties hereto agree that the Seller shall not be liable for any costs or losses, including consequential losses suffered by the Buyer, which may arise directly or indirectly therefrom.

17. Power Surge Protection

- 17.1. The Seller strongly recommends that the Buyer installs **Power Surge Protection** to protect the Goods against power surges, which surges negatively affect the lifespan of Goods, including LED lighting and its supporting components.
- 17.2. Failure of any Goods supplied by Seller as a result of damage caused by power surges will not be considered under the guarantee for replacement, return or refund.

18. Limitation of Liability

- 18.1. The Seller shall not be liable for consequential or indirect damages (including but not limited to any loss arising from the Buyer's business delay and/or stoppage of activities (inclusive of any construction site), loss of chances, reputational damages and/or brand damages).
- 18.2. Total liability (in aggregate) for damages suffered by the Buyer shall not exceed the amount of the Quotation giving rise to the alleged liability.
- 18.3. This clause 18 [Limitation of Liability] shall not apply to liability resulting from any gross negligence or wilful misconduct by the Seller.

19. Confidentiality Undertaking and Personal Data Protection

- 19.1. For the purposes of this clause, unless clearly inconsistent with or otherwise indicated by the context, the following terms shall have the meaning ascribed to them below -
 - 19.1.1. "**Confidential Information**" means any information disclosed in any manner (verbal and written, inclusive of any information contained in electronic format) by the Disclosing Party to the Receiving Party in respect of the performance of any actions in terms of this Agreement;
 - 19.1.2. "**Disclosing Party**" means the party disclosing its Confidential Information to the Receiving Party; and
 - 19.1.3. "**Receiving Party**" means the party receiving the Disclosing Party's Confidential Information.
- 19.2. Each party hereby undertakes to the other, for the continuance of the Agreement and for a period of 2 (two) years after the termination hereof to keep confidential and refrain from disclosing the Confidential Information, in the whole or in part, to any other person, save for those of its employees involved in the implementation of this Agreement and those who have a need to know the same.

- 19.3. Seller undertakes to use such endeavours necessary to ensure that it, and all of its employees, agents and contractors, comply with any and all applicable laws relating to private data / consumer protection in its dealings with any data or information that it has received from the Buyer.
- 19.4. Seller undertakes to not share any personal data received from the Buyer, including but not limited to any personal information of the Buyer, its clients, debtors or customers, with any third party, or to use such personal data for any purpose, other than as per this Agreement.

Personal Data Protection and POPIA

- 19.5. The Receiving Party undertakes to use such endeavours necessary to ensure that it, and all of its employees, data operators, agents and contractors, comply with any and all applicable laws relating to private data / consumer protection in its dealings with any such data / information that it has received from the Disclosing Party, including but not limited to POPIA (Protection of Personal Information Act, 4 of 2013).
- 19.6. The Receiving Party undertakes to not share any personal data received from the Disclosing Party, including but not limited to any personal information of the Disclosing Party's clients or customers, with any third party, or to use such personal data for any purpose, other than as per this Agreement.
- 19.7. The Receiving Party shall (and shall ensure that its data operators and others that have access to said data), in terms of applicable privacy legislation, take such security measures as may be necessary to prevent: unauthorised and/or unlawful processing of personal information received from the Disclosing Party; and destruction, accidental loss and damage to any personal information.

20. General

- 20.1. Nothing in this Agreement will, or be deemed to, constitute: (i) a partnership between the parties hereto; or (ii) the parties hereto as agents or employees of one another for any purpose or form, whatsoever.
 - 20.2. No waiver by the Seller of any breach by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other clause.
 - 20.3. If any provision of these Conditions is held by any competent authority to be invalid 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 by this finding.
 - 20.4. This Agreement constitutes the sole record between the parties hereto as to the subject matter hereof.
 - 20.5. No party hereto shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
 - 20.6. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties hereto in respect of its subject matter.
 - 20.7. No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising here from, or its breach or termination, shall be of any force or effect, unless reduced to writing and signed by both the parties hereto or their duly authorised representatives.
 - 20.8. No person who is not a party to this Agreement shall acquire any rights under it or be entitled to benefit from any of its terms; and one of the provisions of this Agreement constitute a *stipulatio alteri* for the benefit of any person not a party hereto.
 - 20.9. Neither party hereto may assign, transfer, novate, charge, or sub-contract any of its rights, or delegate any of its responsibilities, under this Agreement without the express prior written consent of the other party.
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