

# whitegoods

## Whitegoods Lighting Ltd Terms & Conditions of Sale – September 2013

1. Any deliveries and/or services shall be subject to the present conditions and to any specific contractual agreements that may exist between the Seller (Whitegoods) and the Buyer. Deviating conditions of purchase of the Buyer do not become part of the contract even if an order is accepted. Unless otherwise specifically agreed, a contract is concluded when confirmed in writing by the Seller.
2. All types of contract as well as modifications and/or additions must be made in writing. Oral agreements shall only be binding for the Seller if confirmed by the Seller in writing.
3. Every effort is made to avoid errors in websites, catalogues, specifications and other data. Whitegoods hereby disclaims any liability, of any nature whatsoever, for service or labour charges in connection with errors in measurement, prices or specifications. Whitegoods reserves the right to change, without notice, specifications and materials, which in our opinion do not alter the function of the product.
4. Unless otherwise specifically agreed, prices apply EXW (acc. to Incoterms® 2010) at our warehouse in the UK, including loading in the works and excluding packaging and unloading.
5. The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. This however shall not lead to an increase of Supplier's margin. Prices quotations for catalogued, tailored or any specially manufactured items must be issued, in writing, from Whitegoods and are valid for Thirty (30) days from date of issue, unless revoked by Seller prior to acceptance.
6. Unless otherwise specifically agreed, payment shall be made pro-forma without any counterclaim, deduction or set off to our account.
7. Shipping dates are an estimate and will be recognized from the date that seller has all the necessary information available which is required to process the order (release date). If delivery dates are specified, they cannot be guaranteed and are estimates only. Orders are accepted with the understanding that Seller is not obligated to make deliveries by any specific dates and assumes no liability for damages due to delay in filling the order. Seller shall not be liable for late deliveries or non-deliveries due to any cause beyond the Seller's control interfering with production, delivery, transportation or acceptance of its goods. Quantities so affected may be eliminated without liability, but the orders shall otherwise remain unaffected. If by reason of any such cause provided for herein the Seller's supply and materials specified in Buyer's order shall be limited, Seller shall have the right to allocate its available supply to any other purchaser(s), without liability.
8. Should dispatch, or as the case may be, acceptance of the goods, be delayed for reasons for which the Purchaser is responsible, it shall be charged the cost incurred for such delay, starting one month following its declaration of readiness for dispatch or, as the case may be, acceptance.
9. The Purchaser may withdraw from the contract without prior notice if, prior to the passing of risk, it becomes irrevocably impossible for the Supplier to complete the performance. In addition, the Purchaser may withdraw from the contract if performance of a part of the delivery becomes impossible and he has a legitimate interest in rejecting the partial delivery. If this is not the case, the Purchaser shall pay the contractual price attributable to the partial delivery. The same shall apply mutatis mutandis if the Supplier is unable to perform. Furthermore, Article 12 shall apply. If the incapacity materializes during a delay of acceptance or if the responsibility for the circumstances is solely or predominantly with the Purchaser, the latter shall be obliged to pay the agreed price.
10. The risk shall pass on to the Purchaser as soon as the goods have left Supplier's factory site, even if partial deliveries are executed or other obligations have been assumed by the Supplier, e.g. dispatch costs or transportation and installation/assembly. In case the goods are dispatch free of carriage, the shipment shall be on Purchaser's risk and Supplier shall not be obliged to insure the goods (CPT acc. to Incoterms® 2010). The transfer of risk shall pass upon handing over to the carrier.
11. The Supplier reserves the title to the goods until all payments due from the delivery contract, and also with respect to any additional services performed have been fully paid. Unless the purchase price is not fully paid the Purchaser shall neither sell nor pledge the goods nor use them as collateral. He shall notify the Supplier forthwith of any pledges or seizures or other acts of intervention by a third party. Where the Purchaser is in breach of the contract, in particular if he defaults on any payment, the Supplier, following a reminder, is entitled to take back the goods and the Purchaser shall be obliged to return them. To be able to invoke the retention of title and demand the return of the goods, the Supplier shall first have to withdraw from the contract.
12. The goods sold hereunder are sold with all faults and "AS IS". All warranties, express or implied, including any warranties of merchantability, usage of trade and fitness for a particular use are disclaimed, provided however that Whitegoods warrants to the original Buyer that its products have been carefully inspected to be free of defects of workmanship and materials when installed and used as intended. Any alteration or abuse or misuse of the goods shall void this warranty. Whitegoods, at its sole option, will repair or replace, Ex-works our UK warehouse any Whitegoods product that is defective in workmanship or materials. Any such repair or replacement shall be the exclusive remedy against Whitegoods. This warranty is effective for One (1) years from the date of invoice. Any implied warranty, including the warranty of merchantability and/or warranty of fitness for a particular use or purpose are hereby excluded and do not apply to this, or any other sale by Whitegoods. This warranty cannot be modified by any oral agreement or understanding and may only be modified in writing signed by a director of Whitegoods. This warranty is void if the products are repaired or altered outside the Whitegoods factory. Ballasts, drivers, power supplies and other control interfaces are not covered by any warranty by Whitegoods but may be covered by a separate manufacturer's warranty as these components are not manufactured by Whitegoods. For LED fixtures different conditions might apply – see product specifications for details.
13. **No liability is assumed in the following cases without limitation: Unsuitable or inappropriate use (misuse), defective installation and/or putting into operation by the Buyer or a third party, normal wear and tear, inappropriate or careless treatment, faulty maintenance, defective building work, unsuitable building site, or electrical influences as far as not caused by the Seller.**
14. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
15. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
16. **Seller shall not be liable for any charges or costs incurred by Buyer for any cause or reason, including, but not limited to, delay caused by Seller and/or any warranty claim. In no event shall Seller be liable for prospective or speculative profits, or special, indirect or consequential damages. The remedies of Buyer set forth herein are exclusive and the liability of Seller with respect to any contract or sale or anything done in connection therewith, whether in contract, tort (including Seller's negligence), under any warranty or otherwise, shall not exceed the price of the product on which liability is based.**
17. This Agreement and any legal matters that may arise out of or in connection with this Agreement shall be subject to and construed exclusively in accordance with the laws of England & Wales excluding the United Nations Convention on the International Sale of Goods (CISG). The venue shall be the court competent at the place of the Seller's place of business.
18. The costs of any arbitration fees and/or expenses shall be added to the outstanding amount due seller in addition to interest and attorney's fees. In any action commenced by Seller, whether on the arbitrator's award or otherwise, United Kingdom Law shall govern and Buyer waives the defense of lack of personal jurisdiction.
19. To full extent permitted by law, Buyer waives the right to interpose or assert any counterclaim in any action or arbitration by Seller to enforce payment of its invoices.
20. No sales representative of Whitegoods has any authority to alter, vary or waive any of the terms and conditions contained herein. Any other agreements must be made in writing and signed by an officer of Whitegoods.
21. All sales are final and no merchandise may be returned unless consent is given in writing by Seller. Buyer expressly agrees not to back-charge Seller or take a credit against any amount owed Seller for any reason without first obtaining written authorization.
22. We cannot offer refunds on Custom or Tailored products. Returns for standard products will only be accepted if Whitegoods issues a Return Material Authorization form. ("RMA") Any request for a RMA must be made, in writing, within Thirty (30) days of the invoice date. All returns are subject to a minimum 50% restocking charge; all freight and reconditioning charges are the responsibility of Buyer. All original packaging and documentation must be present and goods must be in original, sellable condition. All 'short shipped' or 'damaged' items must be advised to Whitegoods within 24hours of delivery. Whitegoods will not accept responsibility for claims after this time.
23. If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect (i) the validity or enforceability in that jurisdiction of any other provision of this Agreement; or (ii) the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.