

## TERMS AND CONDITIONS OF SALE

**THIS TERMS APPLIES TO YOUR PURCHASE UNLESS YOU NOTIFY THE SELLER WITHIN 10 DAYS AFTER YOU RECEIVE THIS TERMS AND RETURN THE GOODS TO THE SELLER IN THE SAME CONDITION AS YOU RECEIVED THEM FROM THE SELLER. YOU CAN ASK THE SELLER FOR A CHINESE VERSION OF THIS TERMS FOR REFERENCE.**

### 1. INTERPRETATION

1.1 In these Terms:

"Buyer" means the person, firm or company entering into the Contract to purchase the Goods from the Seller;  
"Contract" means the contract for the sale and purchase of the Goods;

"Goods" means the goods (including any installment of the goods or any parts for them) specified on the Seller's quotation, sales order, delivery note or invoice to which these Terms are annexed;

"Seller" means FU SUN LIGHTING LIMITED (富新照明有限公司), a limited company incorporated under the laws of Hong Kong Special Administrative Region having its registered office at Room 302, 3<sup>rd</sup> Floor, Cheong Lee Building, 208 Tsat Tsz Mui Road, North Point, Hong Kong;

"Terms" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Buyer and the Seller; "Written", "in Writing" or any similar expression, includes facsimile transmission but not electronic mail or other forms of electronic communication.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

1.4 In the event of any conflict or inconsistency between Chinese and English versions of any provisions of these Terms, the English version shall prevail.

### 2. BASIS OF THE SALE

2.1 Save where the Buyer shall place an order with the Seller verbally, the Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller's Written quotation (if accepted or purported to be accepted by the Buyer) or sales order subject to these Terms, which shall govern the Contract to the exclusion of any other terms and subject to which any such quotation or sales order is accepted or purported to be accepted by the Buyer.

2.2 The Seller's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liabilities of either party for fraudulent misrepresentation.

2.3 **Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agent as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.**

2.4 Any typographical, clerical or other error or omission in any sales literature, sales order, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by receipt of Written sales order from the Seller, and the issuing of an invoice by the Seller to the Buyer shall constitute an acceptance in Writing.

3.2 The Buyer shall be responsible for ensuring the accuracy of the terms set out in the Seller's Written quotation, sales order, delivery note or invoice (including any applicable specifications submitted by the Buyer), and shall notify the Seller of any typographical, clerical or other error or omission within 7 days from the date of the same.

3.3 The quantity, quality and description of the Goods and any specifications for them shall be as set out in the Seller's Written quotation (if accepted or purported to be accepted by the Buyer) or sales order. In the case that the Seller accepts the Buyer's order by issuing an invoice, they shall be as set out in the Invoice.

3.4 **No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of cancellation.**

### 4. PRICE OF THE GOODS

4.1 The price of the Goods shall be the Seller's quoted price in Writing, or where no price has been quoted or a quoted price is no longer valid, the price set out on the price list of the Seller prevailing at the date on which the Goods are dispatched. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 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), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by the instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Where the Goods are to be delivered to the Buyer's premises located within the Territories of Hong Kong, the price is inclusive of all transport, packaging and insurance. In all other cases, except as otherwise stated in the Seller's Written quotation (if accepted or purported to be accepted by the Buyer) or sales order or otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an EX WORKS basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

### 5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for

collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 **The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) upon presentation of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place or the title in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.**

5.3 **If the Buyer fails to make any payment on or before the due date then, without limiting any other right or remedy available to the Seller, the Seller may:**

- (i) cancel the Contract or suspend any further deliveries to the Buyer;
- (ii) appropriate any payment made by the Buyer (under the Contract or any other contract between the Buyer and the Seller) to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- (iii) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 1.5% per month, until payment in full is made.

### 6. DELIVERY

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises within 7 days after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only to the Seller and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Terms or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods (or any installment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods not so delivered.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (other than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

- (i) store the Goods until delivery or sale of them by the Seller and charge the Buyer for the reasonable cost of storage including insurance;
- (ii) sell the Goods at the best price readily obtainable and (after deducting all costs of storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

### 7. RISK AND TITLE

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer: (i) in the case of the Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

(ii) in the case of the Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until such time as the property in the Goods passes to the Buyer, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall have a fiduciary duty to the Seller to account for the proceeds of sale or otherwise of the Goods.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods, and for that purpose the Buyer hereby authorizes and licences the Seller, its officers, employees and agents to enter upon any premises upon which the Goods are situated to recover the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

### 8. WARRANTIES AND LIABILITY

8.1 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.2 **The Buyer hereby acknowledges that the Seller is not the manufacturer of the Goods. The Seller's liability for the Goods shall be limited to its using reasonable endeavours to pass to the Buyer the benefit of all warranties or guarantee which the Seller may have or received from the manufacturer of the Goods.**

8.3 **The Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal storage or working conditions, failure to follow the instructions of the Seller and/or the manufacturer of the Goods (whether oral or in Writing), misuse or alteration or repair of the Goods without the approval of the Seller and/or the manufacturer of the Goods.**

8.4 **The Seller shall be under no liability under these Terms (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.**

8.5 **Without prejudice to the foregoing clauses, a claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 10 days from the date of delivery. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled**

**to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.**

8.6 Without prejudice to foregoing clauses, where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Seller in accordance with these Terms, **the Seller may replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have NO further liability to the Buyer.**

8.7 Without prejudice to foregoing clauses, where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Seller in accordance with these Terms, **the Buyer may return the Goods or the part in question on the following conditions:**

- (i) the Buyer shall return the Goods or the part in question to the Seller within 10 days from the date of delivery;
- (ii) the Goods or the part in question must be in their new and unused condition together with their original packages, guarantee cards, certificates, tags and stickers and shall be subject to inspection by the Seller for damage or misuse prior to the issuance of a refund or the delivery of a replacement;
- (iii) the Goods or the part in question that have been used or damaged will be returned to the Buyer at the Buyer's expense; and
- (iv) the Buyer shall include a copy of the relevant invoice, clearly indicating the Goods or the part in question being returned.

8.8 The Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and **the entire liability of the Seller under or in connection with the Contract shall NOT exceed the price of the Goods, except as expressly provided in these Terms.**

8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure is due to any cause beyond the Seller's reasonable control.

### 9. INDEMNITY

9.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringe the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

- (i) the Seller is given full control of any proceedings or negotiations in connection with the claim;
- (ii) the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiation;
- (iii) except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- (iv) the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- (v) the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- (vi) without limiting any duty of the Buyer at common law, the Seller may require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

### 10. INSOLVENCY OF THE BUYER

10.1 This clause applies if:

- (i) the Buyer makes a compromise or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (ii) an emburrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (iii) the Buyer ceases, or threatens to cease, to carry on business; or
- (iv) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### 11. GENERAL

11.1 Neither the Buyer nor the Seller shall be entitled to assign the whole or any part of the Contract with the prior Written consent of the other provided that the Seller shall be entitled to subcontract the whole or any part of its obligations.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

11.4 **These Terms shall constitute the entire agreement in relation to the subject matter between the parties and no modification or waiver thereof shall be valid unless made in Writing expressly for the purpose and signed by the authorized representatives of the Buyer and the Seller.**

11.5 The Contract shall be governed by the laws of the Hong Kong Special Administrative Region.