

**GENERAL TERMS & CONDITIONS**  
**(version March 2022)**

**1. General**

1.1. In these Terms and Conditions, the following definitions apply:

Fox: Fox Lighting Europe B.V., Fox Trading Europe B.V. and all its affiliates and companies;

Counterparty: Fox's counterparty;

Parties: the parties to the agreement to be concluded;

Terms and Conditions: these general terms & conditions.

1.2. These Terms and Conditions apply to all negotiations, offers, order confirmations and agreements that Fox enters into or concludes with the Counterparty. They also apply to any additional or follow-up agreements. They also apply to all forms of services provided by (an employee of) Fox to (an employee of) the Counterparty which are (in any way) related to the agreements referred to in the first sentence.

1.3. These Terms and Conditions apply exclusively in the sense that specific stipulations and general terms and conditions of the Counterparty do not apply, unless and insofar as they have been expressly accepted by Fox in writing. A deviating stipulation (condition) only applies if this deviation has been agreed upon in writing.

1.4. In the event of a conflict between the various conditions, the following order of priority applies: 1. the agreement; 2. the order confirmation; 3. the quote; 4. these Terms and Conditions.

**2. Agreements; Offers**

2.1. The agreement between Fox and the Counterparty is only concluded when Fox has sent a written confirmation to the Counterparty by e-mail, or when Fox has started the execution of the agreement.

2.2. Unless expressly stated otherwise, all offers made by Fox, in whatever form, are without obligation in the sense that even after acceptance by the Counterparty of an offer from Fox, Fox is entitled to revoke the offer within three full calendar weeks after the acceptance.

2.3. Unless expressly stated otherwise, statements and specifications with regard to dimensions, weights, capacities, performances or results in images, drawings, catalogues, price lists, advertising material and the like are only approximations which do not bind Fox. The Counterparty cannot derive any rights from such approximations.

2.4. All offers by Fox are based on the information provided by the Counterparty in their request. The Counterparty is responsible for a correct and complete request. Fox is not liable for (the consequences of) any incorrect or incomplete information in that request.

2.5. Unless agreed otherwise, offers remain valid for a maximum of 10 working days after the date of the offer.

**3. Delivery; purchase obligation; time and place of delivery; transfer of risk and ownership**

3.1. Fox is entitled to make partial deliveries.

3.2. The period for delivery or execution of the agreement starts with the conclusion of the agreement or, if payment of an amount to Fox before or at the start of the execution of the agreement has been agreed upon, when full payment of this amount has been received.

3.3. If Fox is partly dependent on the cooperation of the Counterparty for the execution of the agreement and the Counterparty fails to cooperate for whatever reason, the period for execution of the agreement will be extended by as much time as Fox reasonably needs to rectify the delay caused by the failure of the Counterparty. The same applies if delays in execution of the agreement arise as a result of requests from or on behalf of the Counterparty or a government agency to change, adjust or supplement what has been agreed. In addition, the additional costs incurred by Fox in connection with a delay as referred to above will be borne by the Counterparty. Fox will only be in default due to the period being exceeded if the Counterparty sets a reasonable additional period in writing after the expiry of the agreed period — (which period, however, may not be shorter than fourteen calendar days calculated from the day of receipt of the notice) — and Fox also does not meet its delivery obligation within that additional period for reasons attributable to Fox.

3.4. Unless expressly agreed otherwise, delivery takes place at Fox's location and "ex works".

3.5. The risk for an item to be delivered by Fox transfers permanently to the Counterparty at the agreed time of delivery. If the Counterparty does not take delivery at the time of delivery agreed between Fox and the Counterparty for reasons not attributable to Fox, the risk will transfer permanently to the Counterparty at that time. All costs related to storage and transport, which Fox must incur from the time of delivery referred to in the previous sentence with regard to the item, will be fully borne by the Counterparty.

3.6. The ownership of goods supplied by Fox remains with Fox until Fox has received full payment from the Counterparty of any and all amounts owed by the Counterparty to Fox (retention of title all monies clause).

3.7. The Counterparty may only use goods that are still subject to a retention of title by Fox within the framework of its normal business activities. It may not encumber those goods with any encumbrance, security interest or limited real rights whatsoever. If the Counterparty fails to fulfill any payment obligation, Fox is entitled to take possession of goods to which its retention of title applies without the cooperation of the Counterparty being required. Fox is not obliged to compensate the Counterparty for damage it suffers in connection with the repossession. The costs related to repossessing and, if necessary, selling the goods in

question will be fully borne by the Counterparty. The amount still owed to Fox by the Counterparty will be reduced by the market value the repossessed goods represent to Fox. Fox is never required to adhere to a value that is higher than the price agreed upon with the Counterparty for those goods.

#### **4. Price; price adjustment**

4.1. All amounts stated in Fox's offers, agreements, order confirmations, brochures, etc. are in euros, excluding turnover tax and government levies, and in case Fox arranges for the transport of goods, also excluding the costs associated with packaging, transport and insurance. Fox may separately charge the Counterparty in full for the costs referred to in the previous sentence.

4.2. Amounts stated in Fox's offers, quotes, order confirmations, brochures, etc. are based on the most recently known cost components. Fox is entitled to charge changes in taxes, levies, wages, social security charges, exchange rates, material, raw material and energy prices or other circumstances that entail an increase in the costs for Fox, to the Counterparty.

4.3. All prices are subject to typing errors. Fox is never liable for the consequences of typing errors.

#### **5. Payment and performance by the Counterparty**

5.1. Insofar as not expressly agreed otherwise, the agreed price must be paid in full, without any discount and settlement, within 14 days of the invoice date stated on the relevant invoice by transfer to the bank account specified by Fox. Fox is also entitled to send invoices for partial deliveries.

5.2. Unless Fox has agreed in advance in writing to a postponement of payment, the Counterparty is not entitled to suspend payment of the price for any reason, including but not limited to the Counterparty being of the opinion that what has been delivered or performed by Fox is faulty.

5.3. If the Counterparty does not fulfill its obligations or does not do so on time, Fox is entitled to, without prejudice to its other rights under the law or the agreement and without any notice of default being required:

a. suspension of the execution of the agreement in respect of which the Counterparty is in default, as well as any other agreements with the Counterparty

b. compensation for all direct and indirect damage suffered by Fox as a result of non-performance by the Counterparty. Insofar as the non-performance consists of a failure to pay or a late payment, said compensation will in any case consist of the (cumulative) statutory commercial interest (as referred to in Section 6:119a of the Dutch Civil Code and Section 6:120(2) of the Dutch Civil Code). The interest is due from the moment the Counterparty is in default of payment until the Counterparty has fully paid what it owes to Fox;

c. reimbursement of all judicial and extrajudicial costs, the latter costs being deemed to consist of at least 15% of what the Counterparty has not paid on time.

5.4. If Fox has reason to doubt whether the Counterparty will fulfill its obligations - with the following circumstances on the part of the Counterparty in any case constituting sufficient reason for doubt: repeated failure to pay, attachment, suspension of payments, bankruptcy, offering a creditors' agreement, a request for debt restructuring regarding the Counterparty, the Counterparty shutting down, the Counterparty selling a substantial part of its assets, a change of control regarding the Counterparty, or a complete or partial cessation of the Counterparty's business - everything owed to Fox by the Counterparty will be immediately due and payable and Fox will be entitled to suspend the fulfillment of its obligations until the Counterparty has fully fulfilled its obligations, including full payment, or if - to Fox's satisfaction - sufficient security for the payment has been provided. If full payment is not made or sufficient security is not provided within 14 calendar days after the request to that effect, Fox is entitled to rescind the agreement in question without any obligation to pay compensation to the Counterparty and without prejudice to Fox's right to compensation for damage it has or will suffer.

#### **6. Assembly, installation and/or commissioning**

6.1. If Fox delivers goods, Fox will provide for the assembly, installation and/or commissioning if and insofar as this has been expressly agreed.

6.2. If and insofar as Fox provides for the assembly, installation and commissioning, the following applies:

a. The Counterparty will fully cooperate to enable Fox to carry out the assembly, installation and/or commissioning in a timely and proper manner. In any event, the Counterparty will ensure, in a timely manner: good and safe access to the workplace, if necessary also outside of regular working hours of the Counterparty; the presence of permits, insofar as required for the performance of the work; an place to unload as well as sufficient storage space, covered and lockable if necessary; the required energy, water, fuels and lubricants and, unless otherwise agreed, the necessary ladders, scaffolding and other auxiliary materials to be designated by Fox;

b. The Counterparty will ensure that all work required for the assembly, installation and/or commissioning by Fox, of which it has not been agreed that this work will be performed by Fox, is performed in a timely and proper manner. The Counterparty will consult with Fox on a regular basis and provide it with all information necessary for proper coordination of the mutual work;

c. The Counterparty will fully cooperate to achieve and maintain safety in the workplace, also taking into account the applicable legal and company regulations.

#### **7. Quality; repair of defects**

7.1. Fox delivers goods and performs work compliant with the quality requirements that have been expressly agreed and with the legal regulations in force in the relevant country at the time of Fox's last offer. If Fox

becomes aware of new relevant legal regulations after its last offer but before delivery, Fox will notify the Counterparty. Any adjustment of the performance by Fox will take place in mutual consultation. The delivery period will be adjusted as necessary and the additional costs for Fox arising from the adjustment will be borne by the Counterparty. Insofar as quality requirements have not been expressly agreed with regard to the goods to be delivered or work to be performed, the quality of the goods to be delivered and work to be performed shall not fall below good average quality.

7.2. Insofar as a permit for the possession and/or use of goods is required, the Counterparty is responsible for obtaining it.

7.3. After delivery of the goods or after Fox has notified the Counterparty that it has completed the agreed work, the Counterparty must inspect the goods and/or work for completeness and adequacy as soon as possible, but in any event within 3 working days after the delivery or notification by Fox. No claim can be made by the Counterparty against Fox in case of shortages and/or defects, i.e. each failing to comply with what has been agreed, which the Counterparty could have discovered during a careful inspection during the period referred to in the previous sentence or that it has discovered but has not subsequently reported to Fox in writing within 14 calendar days after the delivery or the notification from Fox. This also applies in the case of partial deliveries.

7.4. Shortages or defects, which become apparent during the inspection referred to in 7.3 and have been reported in writing to Fox in a timely manner, as well as defects that could not have been discovered during the inspection referred to in 7.3 that come to light within 2 years after the delivery of the relevant goods or the performance of the relevant work or after a possible recall from Fox and have been reported to Fox in writing within 10 calendar days of discovery, will be rectified by Fox as much as possible by supplementing or – at Fox's option – repair or replacement. Insofar as not otherwise provided in 7.5 hereinafter, such rectification shall be at Fox's expense.

7.5. With regard to the rectification of shortages and defects, the following provisions also apply:

a. Fox will make every effort to carry out the rectification as soon as possible under the given circumstances. The Counterparty will fully cooperate;

b. Rectification will take place in a place to be designated by Fox for this purpose as much as possible. The transport of the goods to and from that place will be at the expense and risk of the Counterparty;

c. Goods or parts that are replaced automatically become the property of Fox. If cooperation from the Counterparty is required for this transfer of ownership, the Counterparty will cooperate at Fox's first request

d. If shortages and/or defects occur with regard to goods that Fox has obtained from third parties or with regard to work that Fox has had performed by third parties, then - without prejudice to the provisions of 7.3 - the rectification thereof will only take place free of charge,

insofar as the third party bears the costs of this rectification;

e. The Counterparty is not entitled to rectification by Fox of shortages and defects that are likely to be the result of: normal wear and tear; of improper or careless use; of use not in accordance with the intended purpose; of maintenance not performed or incorrectly performed; of installation, assembly, modification or repair by the Counterparty or a third party; or from not (correctly) following certain directions or instructions from Fox

f. The Counterparty's right to have Fox rectify shortages and/or defects will lapse if the Counterparty, without Fox's prior consent, carries out the rectification itself or has it carried out by a third party;

g. The occurrence of shortages and/or defects does not constitute a ground for suspension of the Counterparty's payment obligation towards Fox. If the Counterparty does not fulfill its payment obligation even after a written demand to that effect, this will entail forfeiture of its right to rectify shortages and defects.

7.6. If the Counterparty makes a complaint regarding a shortage or defect that cannot be rectified or can only be rectified at a cost that is disproportionately high for Fox, Fox is not obliged to rectify the shortage or defect. In such case, the price for the delivered goods will be reduced, which reduction will be determined as much as possible on the basis of consultation between Fox and the Counterparty and with due observance of the unit prices used when the agreement in question was concluded, or the agreement in question may be rescinded in writing, with the Counterparty only being entitled to rescind the agreement in question if the unrectifiable shortcoming or defect is so objectionable to the Counterparty that, even despite a price reduction, the Counterparty cannot reasonably be expected to adhere to the agreement in question.

7.7. The occurrence of shortages or defects in respect of which Fox has a duty to rectify, can only - apart from the case referred to in 7.6 - constitute a ground for rescission of the agreement in question by the Counterparty if Fox also fails to comply with a written demand to rectify the shortage or defect within a period which, taking into account all circumstances, is reasonable.

7.8. Repair of defects is excluded for goods and/or parts to which a manufacturer's warranty applies.

7.9. Only purchased goods that are in the original, unopened packaging can be returned within 14 days of purchase.

7.10. Any claim by the Counterparty with regard to performance, nullification or rescission of the agreement will lapse if the Counterparty has not initiated legal action against Fox within 6 months after reporting a shortage or defect in a timely manner in accordance with the provisions of 7.3 and 7.4.

## **8. Intellectual Property Rights**

8.1. If Fox makes use of materials, drawings, models, instructions, etc. from or on behalf of the Counterparty in the performance of an agreement with the Counterparty

and a third party sues Fox for infringement of an intellectual property right in connection with the use of materials, drawings, models, instructions, etc. from or on behalf of the Counterparty, Fox will immediately inform the Counterparty. Fox will leave the handling and settlement of the third-party claim to the Counterparty. The Counterparty shall bear all costs and damage, Fox's included, related to the third-party claim, and shall indemnify and hold harmless Fox in this regard. Fox is entitled to suspend the execution of the agreement in question pending the outcome of the actions of the Counterparty against the third party, or to rescind the agreement in question with immediate effect, without being obliged to pay any compensation.

## **9. Force Majeure**

9.1. In case of Fox, force majeure includes all circumstances of a factual, legal or other nature, which - whether or not foreseeable - prevent the timely performance of the agreement through no fault of Fox or, in the opinion of Fox, make the timely performance of the agreement particularly objectionable. Such circumstances include but are not limited to: strikes; business occupations; production interruptions as a result of machine breakdown, failures in the supply of energy and water or fire, etc.; import, export and production bans and other government measures; transportation hindrances; pandemics; and failure of suppliers and auxiliary persons.

9.2. If a circumstance of force majeure occurs on the part of Fox, it will inform the Counterparty of this without delay. Unless it is beyond doubt that the force majeure situation will last thirty full working days or longer, Fox has the right to suspend the performance of its obligations if such performance is prevented by force majeure or, in the opinion of Fox, has become particularly onerous for Fox, without giving rise to any right to compensation. As soon as it is beyond any doubt that the force majeure situation will last longer than thirty full working days, or as soon as the force majeure situation has lasted longer than thirty full working days, each of the parties is entitled to rescind the agreement by means of a written statement to be addressed to the other party, without giving rise to any right to compensation.

## **10. Liability**

10.1. If Fox is liable for whatever reason, the total liability will always be limited to the amount paid out in the relevant case by the (liability) insurer under the applicable liability insurance of Fox, including the deductible borne by Fox in the relevant case in connection with that liability insurance.

10.2. In the event that – for whatever reason – no payment is made under the liability insurance referred to in Clause 10.1, Fox's total liability for direct damage is limited to a maximum of €10,000. The above limitation of liability will not be invoked if damage is the result of intent or gross negligence on the part of Fox.

10.3. Liability for indirect damage, including but not limited to consequential damage, loss of profit, lost savings, loss of data and damage due to business interruption and inactivity, is excluded at all times.

10.4. The possibility to file a claim or initiate any legal action by the Counterparty with regard to or as a result of the agreement between the parties lapses and/or becomes time-barred 1 year after the grounds for said claim or legal action have arisen.

10.5. The Counterparty indemnifies and holds harmless Fox against all claims from third parties, regardless of the grounds on which these are based, in connection with the goods, services and/or work supplied or performed by Fox for the Counterparty. The Counterparty is obliged to compensate all damage suffered by Fox in this regard, including but not limited to the full defense costs.

10.6. The Counterparty indemnifies and holds harmless Fox against all third-party claims based on product liability as a result of a shortcoming or defect in a product that has been delivered and/or was made available to Fox by the Counterparty. The Counterparty is obliged to compensate all damage suffered by Fox in this regard, including but not limited to the full defense costs.

10.7. If the Counterparty sues Fox based on a claim for damages acquired from a third party, with Fox being involved in causing said damage directly or indirectly, Fox is entitled to invoke the above provisions against the Counterparty.

10.8. If the Counterparty sells or resells goods that it has purchased from Fox to a third party, any form of liability on the part of Fox towards the Counterparty will end and the Counterparty will indemnify and hold harmless Fox against claims of the purchasing party and subsequent purchasing parties in connection with the aforementioned goods.

10.9. The above provisions also apply to persons who are in any way involved in the performance of Fox's existing obligations towards the Counterparty.

## **11. Applicable law; competent court**

11.1. The legal relationship(s) between Fox and the Counterparty is exclusively governed by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

11.2. Insofar as mandatory statutory provisions do not decide otherwise and the parties do not subsequently agree to arbitration, the court of the district in which Fox has its principle place of business shall have exclusive jurisdiction with regard to disputes arising between Fox and the Counterparty about or in connection with a legal relationship between them, which cannot be resolved amicably. However, Fox remains entitled to initiate legal proceedings against the Counterparty – at Fox's discretion – before the court of the district in which the Counterparty has an establishment.

11.3. The Dutch text of the Terms and Conditions shall prevail over the text of any translations.