

Article 1: General

All quotations of WESTEND LIGHTING B.V. (hereinafter referred to as Westend Lighting) are revocable, unless a period of validity is specified in the written quotation without prejudice to Article 10. Orders, agreements and arrangements are only binding on WESTEND LIGHTING if and in so far as they have been confirmed in writing by WESTEND LIGHTING.

Delivery times shall be deemed estimates only, unless agreed otherwise in writing.

Customer is prohibited to use or to deliver goods supplied by WESTEND LIGHTING contrary to Regulation 428/2009 EU (dual use goods). All consequences of (a violation of) the Regulation are at the expense and risk of customer and do not discharge customer from any obligation arising from this agreement. In this respect customer indemnifies WESTEND LIGHTING against any fines imposed by the legislative authorities.

Article 2: Prices

Unless expressly stated otherwise in price lists, quotations or order confirmations, the prices quoted by WESTEND LIGHTING are exclusive of Value Added Tax or other levies due in connection with the performance of the agreement. These prices are applicable for ex-works Roosendaal (Incoterms 2010) to an address within the Netherlands, it being understood that a surcharge may be due for supplies not exceeding a certain minimum order value as will be determined by WESTEND LIGHTING.

For quotations where the price is based on exchange rate of foreign currency others than the Euro, we apply following rule: If the difference in exchange rate is higher than 2% on the date of the invoice, these costs will be added.

Article 3: Risk and Delivery

The risk of the goods shall be for WESTEND LIGHTING account until these goods have been brought under actual control of the purchaser or person(s) authorised by the purchaser to accept such control. Damage to the goods caused in transit or shortages thereto shall be noted by the purchaser on the consignment note immediately upon receipt of the goods, with due regard to the applicable instructions or directives of WESTEND LIGHTING or the carrier. Other complaints of errors in the execution of orders shall be made in writing within eight days after receipt of the goods. If the purchaser fails to comply with the above, the purchaser will be liable for the risks. In all cases mentioned in this Article, WESTEND LIGHTING, having due regard to the above, shall at its own option and within a reasonable term, repair or have repaired such defects, make available the parts required or replace the defective goods in their entirety respectively take care of delivery of the missing goods.

Article 4: Payment

Payment shall be made without any deductions or compensation no later than thirty days from invoice date, unless stipulated otherwise. If payment has not been received in time, the purchaser will be considered to be in default. WESTEND LIGHTING will be entitled from that moment on, without prejudice to its other rights, and without serving notice of default, to charge the purchaser for all costs incurred in collecting the debt and in safeguarding its rights such as costs for attorneys as well as additional costs made by WESTEND LIGHTING undertakings such as amongst others, regarding administration, storage, legal advice. The statutory interests on the amounts due will be charged as well. Should the case arise WESTEND LIGHTING reserves the right to abstain from delivery until receipt of the related amounts due.

Article 5: Property

All goods (to be) supplied by WESTEND LIGHTING in accordance with any agreement remain the property of WESTEND LIGHTING until the amounts due for all these goods have been fully paid. If in accordance with this (these) agreement(s) WESTEND LIGHTING carries out activities to be paid by the purchaser, said property retention remains valid until the purchaser has fully paid for these activities as well. The same retention right is applicable for claims, which WESTEND LIGHTING might obtain from the purchaser because of his default in the performance of such agreement(s). Prior to said transfer of property the purchaser shall not be entitled to process the goods, nor to bring the goods beyond his actual control, or to sell or otherwise dispose of or to mortgage or to grant to a third party any other right to the goods.

If the purchaser is in default with respect to payment or gives good reason to WESTEND LIGHTING to fear that he will come in default, the purchaser shall at his own costs return the pertaining goods to WESTEND LIGHTING. Following said return to WESTEND LIGHTING of the goods the purchaser will be credited to an amount equal to the purchase price valid for the purchaser on the day of return, however the amount to be credited shall never exceed the amount invoiced at the time of delivery. WESTEND LIGHTING is entitled to reduce the amount to be credited with a depreciation due to damage, obsolescence, lack of packing and other costs.

At all times the purchaser will give WESTEND LIGHTING or a third party authorized by WESTEND LIGHTING free access to the sites where the goods supplied and still owned by WESTEND LIGHTING are located.

Article 6: Guarantee

WESTEND LIGHTING guarantees that the goods made and supplied by WESTEND LIGHTING are manufactured of sound material and with good workmanship. It nevertheless any goods made and supplied by WESTEND LIGHTING show defects due to faulty materials or manufacture, WESTEND LIGHTING shall at its own costs repair or have repaired such defects, or make available the parts required for such repair or replace the defective goods in their entirety. Unless stipulated otherwise, the guarantee shall be valid during the first six months from delivery. Without prejudice to Article 8 all other liabilities are excluded. Subject always to receipt of a prior written demand by WESTEND LIGHTING to comply with its guarantee obligations in whole, in time or properly, the purchaser shall be entitled to terminate the pertaining agreement for the part in default, without any further liability on the part of WESTEND LIGHTING. Goods or parts thereof that have been replaced under this article shall become, free of charge, the property of WESTEND LIGHTING. WESTEND LIGHTING may require as a condition for performing its guarantee obligations, that the item subject to the guarantee shall be returned delivery duty paid to WESTEND LIGHTING or to an address specified by WESTEND LIGHTING or that an order be given for regular maintenance. For certain goods other guarantees may be applicable.

Article 7: Rights of third parties

1. WESTEND LIGHTING guarantees that the goods made and supplied by WESTEND LIGHTING do not as such infringe intellectual or industrial property or other rights of third parties. If nevertheless WESTEND LIGHTING acknowledges that a good delivered by WESTEND LIGHTING infringes such a right of third parties, or if it is so held in an irrevocable ruling by a Netherlands court of law in a legal action against WESTEND LIGHTING, WESTEND LIGHTING shall at its own option, after consultation with the purchaser, replace the relevant goods with non-infringing goods or shall acquire a licence for the purchaser.
2. The above remedy shall be the sole and exclusive remedy given by WESTEND LIGHTING to purchaser in case of aforesaid infringement. Only after having concluded that replacement of the goods or acquisition of a licence is not reasonably possible, or if WESTEND LIGHTING, subject always to receipt of a prior written demand by WESTEND LIGHTING to comply with its obligation, does not perform its obligation in time or properly, the purchaser shall be entitled to terminate the pertaining agreement for the part in default, without any further liability on the part of WESTEND LIGHTING. In the latter case WESTEND LIGHTING will take back the relevant goods and refund the price paid therefore less such depreciation as considered usual.

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- Where an order has to be executed on the basis of designs, drawings or other instructions given by or on behalf of the purchaser, the purchaser guarantees that no industrial or other rights of third parties are thereby infringed.

Article 8: Liability

- WESTEND LIGHTING accepts liability for damage in consequence of personal injury and for material damage to installations and properties of the purchaser in so far as such damage:
 - has been caused by the performance of activities pursuant to the order or of maintenance or repair activities and is due to negligence on the part of persons used by WESTEND LIGHTING in the performance of such activities;
 - is demonstrated to be the direct consequence of a defect in the goods made and supplied by WESTEND LIGHTING in so far as these goods do not offer the safety as one may expect from such goods, all circumstances considered.
- Damages paid by the purchaser to third parties as a consequence of circumstances as described under 1.a. and 1.b. will only be compensated by WESTEND LIGHTING to the purchaser if and in so far as the purchaser is statutory obliged to pay the damage. Compensation by the purchaser to third parties for any damage as mentioned in the previous sentence is subject to prior consent of WESTEND LIGHTING.
- For the damages described under 8.1. and 8.2. WESTEND LIGHTING accepts no liability for amounts exceeding € 2.5 mln in total per occurrence, with a maximum of € 5.0 mln per year.
- Where WESTEND LIGHTING provides advice it shall be liable for damage that is the direct consequence of a demonstrated deficiency in that advice, if and in so far as the deficiency ought to have been avoided in the given circumstances if normal professional skill and care had been used, up to an amount not exceeding the separate remuneration stipulated for that advice. WESTEND LIGHTING shall not be liable in other cases and for any other damage resulting from such advice.
- WESTEND LIGHTING shall not be liable for any direct or indirect damage for which WESTEND LIGHTING has not explicitly accepted liability in these General Conditions of Sale. The purchaser shall hold WESTEND LIGHTING harmless against all claims for such damages from third parties.

Article 9: Property and use of quotations and documentation

All illustrations, drawings, data concerning weights, dimensions, colours etc. included in price lists and circulars are approximately only. All quotations, drawings, diagrams, designs, lists of materials etc. supplied by WESTEND LIGHTING and software which it makes available remain the property of WESTEND LIGHTING. Without WESTEND LIGHTING consent they may not be copied wholly or partially except one filing copy for purchaser's own use and they may not be shown or placed at the disposal of any third party or made known in any other way, or utilised by the purchaser or made available for any other purpose than that for which they were supplied by WESTEND LIGHTING.

WESTEND LIGHTING will have all legal rights to the Intellectual Property unless specifically mentioned otherwise in this quotation or in the following agreement. The Intellectual Property is valid for the information (background) as given in a previous phase to this assignment as well as for the information (foreground) given during the execution of the assignment at WESTEND LIGHTING. This includes (but is not limited to) a.o. drawings, schedules, designs, bill of materials, firmware, software etc.

Article 10: Price Alterations

Unless expressly agreed otherwise, WESTEND LIGHTING reserves the right to change prices. The purchaser is entitled in such event to cancel orders already placed, but not yet executed, within eight days after receiving notice of these alterations, except where they are to his advantage. If, as a result of any government measure, taxes, levies or import duties are introduced or changed with the effect of increasing costs, WESTEND LIGHTING shall have the right to reflect these changes in its prices, even though it has been agreed that the price shall be fixed, without this leading to any cancellation of orders placed by the purchaser.

Article 11: Suspension and termination

In case of a failure by one of the both parties in the performance of the agreement, for which the party being in failure cannot be blamed, the performance of the relevant part of the agreement shall be suspended. A failure is not to be blamed for, if the failure is not due to the fault of the party being in failure (de facto or de jure). Parties shall inform each other in writing as soon as possible of such circumstances. If the suspension has lasted longer than three months or as soon as it becomes evident that this will last at least three months, either party may terminate the relevant part of the agreement with immediate effect by registered letter and neither party shall be obliged to make good any damages. In the event of partial performance by WESTEND LIGHTING the purchaser shall pay a proportional part of the total price.

Article 12: Cancellation

Should the purchaser fail to comply with any one of his obligations to WESTEND LIGHTING, or files a petition for a moratorium, or is declared bankrupt, WESTEND LIGHTING shall be entitled without serving notice of default, to cancel by means of a written statement, wholly or partially all contracts concluded with the relevant purchaser, without prejudice to its other legal rights.

Article 13: Deviations

Deviations from these General Conditions of Sale and/or from conditions stated in WESTEND LIGHTING price lists, catalogues, circulars etc. are valid only if confirmed in writing by WESTEND LIGHTING. Applicability of a reference to general (purchase) conditions of purchaser are expressly rejected by WESTEND LIGHTING.

Article 14: Applicable law and competent court

On these General Conditions of Sale and the agreements to which these conditions apply, the law of the Netherlands is applicable.

Only the civil court that has jurisdiction in the place of establishment of the contractor may take cognizance of disputes, unless this would be contrary to peremptory law. The contractor may deviate from this rule of jurisdiction and apply the statutory rules governing jurisdiction. The parties may agree a different form of dispute resolution such as arbitration or mediation.

Article 15: Miscellaneous

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1. The Vienna Convention on Contracts for the International Sale of Goods (C.I.G.S.) is not applicable, nor is any other international regulation the exclusion of which is permissible.
2. In case of contradiction between the provisions of this English version of the General Conditions of Sale and those of the original Dutch version thereof, the latter provisions shall prevail.

1 June 2019