

# Novah Ltd Terms and Conditions September 2018

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: Novah Limited of Unit 12 Jensen Court, Astmoor Industrial Estate, Runcom, Cheshire WA7 1SQ. Company Registration Number 3366495

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

## 3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

## 4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

4.2 The buyer shall take delivery of the goods within 7 days of the Company giving it notice that the goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.7 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

## 5. NON-DELIVERY AND GOODS DAMAGED IN TRANSIT

5.1 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) or goods which arrived damaged unless the Buyer gives written notice and photographic evidence in the case of damage to the Company of the non-delivery or damage within forty eight (48) hours of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.4 The Buyer agrees to fill out any claims forms for lost or damaged goods or other insurance documents in compliance with deadlines set out by insurance or other third parties.

## 6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.4 The Buyer's right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

## 7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

## 8. PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods is due in the currency referred to in the Contract Acknowledgement within 30 days following the day of invoice.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 9. QUALITY & EXTENDED WARRANTY

9.1 All products sold are subject to a 12 month warranty on manufacturer's parts starting from the Company invoice date on the basis of correct usage and installation and excluding misuse as outlined in 9.6 and 9.7 unless the Company has explicitly excluded a traded or clearance product from this warranty.

9.2 Products listed on Schedule 1 are sold, **subject to a 60 month warranty, with a 25,000 hour usage limitation**, starting from the Companies invoice date subject to terms and conditions as laid out below unless sold as clearance or replacements for faulty goods. This warranty for products listed in Schedule 1 will terminate 60 months from the invoice date or at 25,000 hours usage, whichever is soonest.

9.3 Products listed on Schedule 2 are sold **subject to a 12 month warranty**, starting from the Companies invoice date subject to terms and conditions as laid out below unless sold as clearance or replacements for faulty goods. This warranty for products listed in Schedule 2 will terminate 12 months from the invoice date.

9.4 Products listed on Schedule 3 are sold **subject to a 36 month warranty, with a 20,000 hour usage limitation**, starting from the Companies invoice date subject to terms and conditions as laid out below unless sold as clearance or replacements for faulty goods. This warranty for products listed in Schedule 3 will terminate 36 months from the invoice date or at 20,000 hours usage, whichever is soonest.

9.5 Products listed on Schedule 4 are sold **subject to a 24 month warranty**, starting from the Companies invoice date subject to terms and conditions as laid out below unless sold as clearance or replacements for faulty goods. This warranty for products listed in Schedule 4 will terminate 24 months from the invoice date.

9.6 The Company will either repair goods on a return to base basis or deliver replacement products free of charge or issue a credit note for the net invoice value of the products with defects that can be verifiably shown to be due to a fault with the manufacturer. The course of action taken will be at the Company's sole discretion.

9.7 The warranty only applies to products that have been installed according to the Company instructions by a qualified installer. The burden of proof of the correct installation rests with the Buyer.

9.8 The warranty only applies to products which have been used according to the Company's set guidelines for hours used per day as per user instructions including a maximum usage of 5000 hours per year. The burden of proof for this usage rests with the Buyer.

9.9 The Buyer must notify the Company in writing and accompanied with a copy of the original Company invoice within 7 working days from discovery of a defect and must ensure that from the time that the defect is noted that the goods are not used.

9.10 The Company reserves the right to decide upon the eligibility of the warranty and this may require the products to be returned to the Company for analysis with the copy of the invoice enclosed.

9.11 In the event that no fault is found or that the Buyer or installer has breached the warranty conditions then the Company may choose to charge the Buyer for any costs associated with investigating the claim.

9.12 In the event of faulty items being replaced it is done so on the basis that there will be no claim for costs of their installation unless agreed in writing by the Company and any replacement goods will only be warranted for the unexpired portion of the original warranty period.

## 10. RETURN OF NON-FAULTY GOODS

10.1 If by mutual agreement goods are returned and found to be not faulty then they will be subject to a 30% administration fee which is to be paid by the buyer within their normal trading terms.

10.2 The Company will not accept returns on any Special Order Product or Modified Product (modified either by the Company or the Buyer at the Buyer's request) or Non Stock Product.

## 11. LIMITATION OF LIABILITY

11.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods or of any product incorporating any of the Goods; and

11.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

11.4 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 12. ASSIGNMENT

12.1 The Company may assign the Contract or any part of it to any person, firm or company.

12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 56 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 14. GENERAL

14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the

Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of English courts.

## 15. COMMUNICATIONS

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

15.2 Communications addressed to the Company shall be marked for the attention of Director.

# Schedule 1 – September 2018

LED Lamp	Product Code
Saturn Glass LED T8 Tube	EL1218GTN, EL1523GTN
Clarion T8 Tube - Replacement	EL610T,EL914T,EL1218T, EL1525T,EL1830T,EL610TN,EL914TN,EL1218TN,EL1525TN,EL1830TN, EL610TNE, EL1218TNE, EL1525TNE, EL1830TNE
Clarion T8 Tube - Emergency	EL418TE**, EL523TE**, EL630TE **
Clarion T8 Tube - Microwave	EL1218TMW, EL1525TMW
Horizon Premium Panel	EL28HPPC,EL28HPPCD,EL28HPPN,EL28HPPND,EL28HPPNA,EL28HPPND,EL28HPPCA,EL28HPPCD,EL36HPCUGR,EL36HPNUGRA,EL36HPNUGRD,EL36HPPC,EL36HPPCD,EL36HPPCA,EL36HPPN,EL36HPPNA,EL36HPPND,EL36HPPND,EL60H612PN,EL60H612PND,EL60H612PC,EL60H612PCD
Ellipse Downlight - 5.6.8.	EL58LPDCW, EL610LPDCW, EL610LPDNW, EL818EDN, EL818EDNA, EL818EDN, EL818EDND, EL818EDC, EL818EDCA, EL818EDCD,EL818ESMDLN,EL818ESMDLC
Barracuda Linear non-corrosive	EL1220BNC,EL1220BNCE**,EL1220BNCM,EL1220BNCEM**,EL1530BNC, EL1530BNCE**,EL1530BNCM, EL1530BNCEM**,EL1240BNC, EL1240BNCE**, EL1240BNCM,EL1240BNCEM**,EL1560BNC,EL1560BNCE**,EL1560BNCM,EL1560BNCEM**,EL1236BNC, EL1236BNCE**, EL1525BNC, EL1525BNCE**,EL1554BNC, EL1554BNCE**, EL1554BNCD, EL1554BNCDÉ**,EL1565BNC, EL1565BNCE**
AVA Wall Pack	EL25WP
Sirius LED Low Bay / Flood	EL100SFLB,EL100SFLBE**,EL100SFLBM,EL100SFLBWB,EL100SFLB80,EL150SFLB,EL150SFLBE**,EL150SFLBM,EL150SFLBWB,EL150SFLB80,EL200SFLB, EL200SFLBM, EL200SFLBWB
Sirius LED High Bay	EL100SHB60,EL100SHB60E**,EL100SHB60M,EL150SHB60,EL150SHB60E**,EL150SHB60M,EL200SHB60,EL200SHB60M
Sirius2 Flood/Low Bay	EL100SFLB2, EL100SFLB2E**, EL100SFLB2M, EL100SFLB2H, EL100SFLB2HM,EL100SFLB2MD,EL100SFLB2EH**, EL150SFLB2, EL150SFLB2E**, EL150SFLB2M,EL150SFLB2H, EL150SFLB2HM,EL150SFLB2MD,EL150SFLB2EH**,EL200SFLB2,EL200SFLB2M, EL200SFLB2H, EL200SFLB2HM
Sirius2 High Bay	EL100SHB260, EL100SHB260E**, EL100SHB260M, EL100SHB260H,EL100SHB260HM, EL100SHB260MD,EL100SHB260EH**, EL150SHB260,EL150SHB260E**, EL150SHB260M,EL150SHB260MD, EL150SHB260H,EL150SHB260HM,EL150SHB260EH**, EL200SHB260, EL200SHB260M,EL200SHB260MD, EL200SHB260H, EL200SHB260HM
Orion LED Rack	EL120RL, EL120RLE**, EL120RLM, EL120RLME**
Solray LED Battens	EL620SRB, EL1240SRB, EL1240SRBE**,EL1530SRB,EL1530SRBE**, EL1560SRB,EL1560SRBE**, EL1840SRB, EL1840SRBE**, EL1870SRB, EL1870SRBE**
Helion Low Bay	EL100HFB, EL100HFBE**, EL100HFBM, EL100HFBEM**, EL100HFBH,EL100HFBEH**, EL150HFB, EL150HFBE**, EL150HFBM, EL150HFBEM**,EL150HFBH, EL150HFBEH**, EL200HFB, EL200HFBE**, EL200HFBM,EL200HFBEM**, EL200HFBH, EL200HFBEH**
Clarion LED T5 Tube	PC170909, PC170910
Solray Select	EL4SRB, EL4SRBE**, EL5SRB, EL5SRBE**, EL6SRB, EL6SRBE**

\*\*See schedule 2

## Schedule 2 – September 2018

The following products are exempt from the 5 year or 25,000 hour warranty, as detailed in clause 9.2 above. These products are subject to our standard 12 month warranty as detailed in clause 9.3 above:

LED Lamp	Product Code
Emergency Packs (All emergency products or emergency elements* of the products)	ELKEL3K, ELKEL4K, ELKEL5K EL418TE*, EL523TE*, EL630TE * EL1220BNCE*, ,EL1220BNCEM*, EL1530BNCE*, EL1530BNCEM*, EL1240BNCE*, EL1240BNCEM*, EL1560BNCE*, EL1560BNCEM*
*Includes emergency pack controller and battery pack only.	EL1236BNCE*, EL1525BNCE*, EL1554BNCE*, EL1554BNCDE*, EL1565BNCE* EL100SFLBE*, EL150SFLBE*, EL100SFLB2E*,EL100SFLB2EH*, EL150SFLBE,EL150SFLB2E*,EL150SFLB2EH, EL100SHB60E*,EL150SHB60E*, EL100SHB260E*, EL150SHB260E*, EL120RLE*, EL120RLME* EL1240SRBE*, EL1560SRBE*, EL1530SRBE*, EL1840SRBE*, EL1870SRBE* EL100HFBE*, EL100HFBEM*,EL100HFBEH, EL150HFBE*, EL150HFBEM*, EL150HFBEH*, EL200HFBE*, EL200HFBEM*, EL200HFBEH* EL4SRBE**, EL5SRBE**, EL6SRBE**

## Schedule 3 – September 2018

The following products are exempt from the 5 year or 25,000 hour warranty, as detailed in clause 9.2 above. These products are subject to our standard 36 month or 20,000 hour warranty as detailed in clause 9.4 above:

LED Lamp	Product Code
Saturn Glass LED T8 Tubes	EL1218GTN, EL1523GTN
Horizon Everyday LED Ceiling Panel	EL28HEPN, EL28HEPC, EL36HEPC, EL36HEPN
Sirius high temperature Low Bay	PC171002
Atlas LED Low Bay	EL75ALB, EL100ALB, EL150ALB

## Schedule 4 – September 2018

The following products are exempt from the 5 year or 25,000 hour warranty, as detailed in clause 9.2 above. These products are subject to our standard 24 month warranty as detailed in clause 9.5 above:

LED Lamp	Product Code
Onyx LED Flood Lights	EL50XF, EL100XF, EL150XF, EL200XF
Onyx LED Mini Flood Lights	EL10XF4, EL20XF4, EL30XF4, EL50XF4
Onyx LED Security Flood Lights	EL10XF4PIR, EL20XF4PIR, EL30XF4PIR, EL50XF4PIR
Solbeam LED Batten	EL1230SBB, EL1540SBB
Ellipse Downlights	EL612ED2W, EL612ED2N, EL818ED2N, EL1224ED2N

