

Manufacturer warranty

SCHMITZ Leuchten GmbH & Co.KG, Niedereimerfeld 29, D-59823 Arnsberg, HRB 5784, (Supplier) grants the following manufacturer's extended warranty of 5 years in respect of all WILA standard products and their variations (except Emergency Components) listed in its catalogues and delivered after 1st December 2018 (Products). In failing to notify attacks a one-year legal warranty.

1. Quality

1.1 Subject to the Customer (as defined in the Supplier's General Terms and Conditions):

- (a) completing the online registration on the homepage [www.schmitz-wila.com] within three month of the invoice date; and
- (b) specifying the installation location as well as the invoice/order number and other data relevant to the supply of Products, the Supplier warrants that all Products sold by the Supplier to the Customer will on delivery, and for a period of 5 years from the date invoice (warranty period) conform in all material respects to the relevant specification in its catalogues (Warranty). All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in this warranty are excluded from this warranty to the fullest extent permitted by law.

1.2 Subject to clauses 3.3 and 3.4, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Products do not comply with the Warranty; and
- (b) the Supplier is given a reasonable opportunity of examining such Products; and
- (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full and in respect of replacement may replace a Product with the same or an equivalent product that is compatible to the technological progress that has taken place in the mean time compared to the original Product.

1.3 The Warranty shall apply to any repaired or replacement Products supplied by the Supplier.

2. Liability

2.1 Nothing in this warranty shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

3. Limitation of liability

3.1 Subject to clause 2 and to the maximum extent permissible by law, the Supplier's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to this warranty shall be limited to the List Price of the Products to which the claim relates.

3.2 The Supplier shall not be liable to the Customer for:

- (a) any indirect, special or consequential loss or damage;
- (b) loss of data or other equipment or property;
- (c) economic loss or damage;
- (d) costs for storage of any defective Products;
- (e) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or

- (f) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill, even if the Supplier is advised in advance of the possibility of any such losses or damages.

3.3 The Supplier shall not be liable for any losses arising from the Customer's subsequent use or misuse of the Products including (without limitation):

- (a) fair wear and tear;
- (b) wilful damage;
- (c) the Customer's negligence, or that of its agents or employees, or any failure to follow the Supplier's instructions as to use of the Products;
- (d) abnormal working conditions beyond those referred to in the relevant Product specification;
- (e) lighting systems which consist of a plurality of system components, the installation and the use of system components, which are not supplied by the manufacturer
- (f) the Customer making any further use of such Goods after giving notice in accordance with clause 1.2;
- (g) the Customer failing to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice;
- (h) the Supplier following any drawing, design or specification supplied by the Customer;
- (i) any alteration or repair of the Products by any manufacturing process or otherwise made without the Supplier's written consent, save for any latent defect which means that the Product did not comply with the specification.

3.4 The Customer acknowledges and agrees that:

- (a) the List Prices reflect the limitations of liability contained in this warranty;
- (b) the Products shall be used in accordance with the specified product and application specification and are installed and put into operation professionally in accordance with the installation guide;
- (c) threshold values for temperatures and voltages shall not be exceeded, and Products shall not be subjected to any mechanical loads that are not in accordance with the specifications;
- (d) lights must be equipped with bulbs that meet the applicable IEC specifications;
- (e) this warranty extends exclusively to Product failures –
 - (i) that have been caused by substantiated material, construction, or production defects; and
 - (ii) exceed nominal failure rate;
- (f) for electronic operating equipment and components such as LEDs, the nominal failure rate is 0.2% / 1000 hours of operation, if the Product and application specifications have not defined something to the contrary in connection with the Product, its components and utilisation;
- (g) for LED modules, a luminous flux drop of 0.6% / 1000 hours of operation is normal and is not covered by the Warranty;
- (h) if LED modules are replaced, then there may be differences in the light properties due to use-related changes to the luminous flux of the LED modules that are in operation and due to technical progress;
- (i) the specified service life will only be reached if the lights are operated in compliance with the conditions specified by the manufacturer, the underlying standards, and the applicable regulations;
- (j) all returns must be reported to the Supplier, whereby the defective parts shall become the property of the Supplier;
- (k) the Supplier has the right to charge for any consequential damages if any complaint turns out to not be a valid Warranty claim;
- (l) any standard guarantee and/or warranty of the Customer or its re-sellers shall remain unchanged and continue in addition to this manufacturer's warranty which is for the benefit of the Customer only;
- (m) this warranty is supplemental to the Supplier's "General Terms and Conditions".

4. Assignment

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge or deal in any other similar manner with this warranty or its rights or any part of them under this warranty or purport to do any of the same.

5. Disputes

5.1 Subject as may be provided elsewhere in this agreement, all disputes, differences or questions arising in relation to this warranty shall be referred in the first instance to the sales director of the Supplier and the procurement director of the Customer, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.

5.2 If the sales director and the procurement director fail to resolve the dispute, it shall be referred to the managing director of each of the Supplier and the Customer, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.

5.3 If the managing directors fail to resolve the matter within one calendar month, then either party may refer the dispute to an appropriate court or tribunal, or may (at its discretion) opt for mediation (in which case such an election shall bind the other party until a conclusion is made or the mediator rejects the case).

6. Severance

The invalidity, illegality or unenforceability of any provision of this warranty shall not affect the other provisions and the warranty shall be given effect as if the invalid, illegal or unenforceable provision had been deleted and replaced with a provision with a similar economic effect to that intended by the parties if this can be achieved by another clause.

7. Third party rights

No person who is not party to this warranty shall have any right to enforce any term of this warranty.

8. Notices

8.1 Any notice or other communication to be given under this agreement shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to the relevant party at that party's registered office or last-known trading address and marked for the attention of the sales director in relation to the Supplier and the procurement director in relation to the Customer.

8.2 Notices under this agreement shall not be validly served by e-mail.

9. Governing law and jurisdiction

9.1 This warranty shall be governed by and construed in all respects in accordance with German law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this warranty. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with this warranty, this agreement shall prevail.

9.2 Subject to clause 5, the parties submit to the exclusive jurisdiction of the courts of Germany and agree that, in respect of proceedings in Germany and in any other jurisdiction, process may be served on either of them in the manner specified for notices in clause 8.