

TERMS OF GUARANTEE

Site furnishings – Hess GmbH Licht + Form

.hess

with the “Vulkan” brand

GENERAL TERMS OF GUARANTEE

Hess GmbH Licht + Form with the “Vulkan” brand (in the following referred to as “Hess”), as a manufacturer of site furnishings, assumes a guarantee within the framework of the following terms of guarantee. These terms of guarantee apply exclusively to the site furnishings listed in section A.

Any performance arising from the guarantee shall apply in addition to the statutory warranty claims for defects, product liability claims and other statutory claims.

Unless otherwise specified by Hess, the guarantee period shall begin on the date of delivery of the product.

A. SCOPE OF VALIDITY

The guarantee described in the following is granted by Hess for site furnishings (of the brand Hess and Vulkan), for use in urban spaces (in the following referred to as “products”) to the customers of the company. Any customer who has any claims arising from this guarantee shall exclusively be the direct contractual partner of Hess (in the following referred to as “customer(s)”).

This guarantee covers the purchase of products with a delivery date after 31 July 2020.

Used site furnishings and site furnishings with built-in lighting and sample furnishings, intended not for sale but for exhibition purposes, are excluded from the guarantee.

B. SCOPE

- 1) In regard to the customer, Hess guarantees that from the date of delivery all products are free from defects in function, material, and workmanship which a) either reduce the “mechanical stability” specified in the technical data sheet of the site furnishings by at least $\pm 10\%$ or b) otherwise substantially affect the function of the products for a period of FIVE (5) years (in the following referred to as “guarantee period”) in accordance with the following conditions and restrictions (in the following referred to as the “guarantee case”). The data sheets are published on the website of Hess and Vulkan or, upon request, they will be sent to the customer. The guarantee expressly does not apply to the aesthetic wear caused by use of the site furnishings in private as well as public use due to abrasion, vandalism, being run into, fading and weathering of wood, scratches, stickers, and so on.
- 2) This guarantee is granted for products that are used in accordance with the technical specifications and installation instructions.
- 3) If the parties do not agree on the cause of the mechanical damage to the site furnishings, an expert will be jointly commissioned. The costs of the expert shall be borne by the party to whose detriment the expert decides. If the parties do not agree upon an inspection body within four (4) weeks, the expert shall be determined with binding effect by the IHK (Chamber of Commerce) Schwarzwald-Baar-Heuberg, Romäusring 4, 78050 Villingen-Schwenningen, Germany.

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C. GUARANTEE SERVICE

If a product has a problem that is a guarantee case according to these terms of guarantee, Hess shall repair or replace the returned product at its own discretion within the framework of the guarantee. If the product is no longer manufactured or not available for any other reason, Hess may offer an alternative product that is comparable to the faulty product.

Further claims within the framework of this guarantee, in particular claims for damages, shall be excluded.

D. EXCEPTIONS AND RESTRICTIONS

- 1) This guarantee is exclusively limited to the guarantee service of Hess that is conclusively regulated in section C for the products delivered by Hess. Additional costs, such as costs for the dispatch of defective parts or products, disassembly, reassembly, transport time, lifting platforms and scaffolding, or other costs due to a breakdown of the installation and/or costs in connection with any consequential, special or incidental damage or mere financial damage, such as lost earnings/profits, property damage, strike, unused assets, production losses, costs for road closures, traffic signs, detours, etc., shall not be covered by this guarantee. Furthermore, Hess shall not be liable due to this guarantee for the compensation of persons for such losses or damage to persons or property. Consequently, Hess is not liable for claims for damages due to failure of performance or for any consequential damage.
- 2) The customer must demonstrate that the errors, defects or any damage to the product or parts thereof are not a direct or indirect result of negligence, misuse, abuse or misappropriation by the customer and that in particular the following conditions and requirements have been fulfilled without restriction:
 - a. The customer transported the product properly and in the original packaging;
 - b. The customer stored, installed, used and maintained the product in accordance with the specifications, guidelines, and instructions of Hess and with the IEC standards, if applicable;
 - c. The product was used for one of the purposes intended by Hess;
 - d. The product was installed and operated within the framework of the operating range and the environmental conditions in accordance with the specifications from Hess, the operating instructions, the IEC standards, the European Directives or other documents attached to the products;
 - e. The product was not exposed to any mechanical load that is not compatible with the intended purpose;
 - f. The product was not exposed to ambient temperatures exceeding the value of $T_a = 35^{\circ}\text{C}$ (integrity, safety temperature). If a lower nominal ambient temperature is regulated in the data sheet for the product, this nominal ambient temperature must not be exceeded when the product is used;
 - g. The product and/or parts thereof were not repaired, replaced, adjusted or changed by the customer or any other person without the prior written consent of Hess;
 - h. The inaccessible/sealed off parts (e.g. of the product) were not opened by the customer without the prior written consent of Hess;

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- i. The product was not handled improperly and/or brought into contact with chemicals;
 - j. The product was continuously operated at the same place where the product was initially installed.
- 3) The terms of guarantee of Hess shall not apply for:
- a. Any damage or non-compliance due to force majeure or the violation of applicable standards or regulations, including but not limited to those contained in the latest safety, industry and/or electrical standards and in the regulations that apply to the customer;
 - b. Any non-compliance, construction errors or malfunctions if Hess completely adhered to the written descriptions, drawings or specifications of the customer and it is later determined that they were unsuitable, incomplete or incorrect;
 - c. Forces of nature, such as lightning damage or corrosion if the corrosion results from external causes or factors (e.g. chemicals, dog urine, salt or pigeon droppings) or other elementary risks;
 - d. Mechanical and/or material damage, especially due to vandalism, weather, sand or scratches;
 - e. Surface damage to less than 5% of the total area of the luminaire;
 - f. The colour tolerance of LED modules is not covered by the guarantee. Luminous flux and power are subject to a tolerance of $\pm 10\%$. All relevant technical data is listed in the product and application specifications. Due to technical innovations and changes in the luminous flux and light colour of products caused by use, deviations in the properties of the light compared to the original products may come about in subsequent deliveries of LED modules.
 - g. Wear parts;
 - h. Discolouration and embrittlement of plastic parts (e.g. polycarbonate parts) caused by the ageing process;
 - i. Changes to the colour and surface of luminaires that are mounted outdoors in a location less than 5 km from a coastline;
 - j. Electronic components, products and luminaires that Hess sells as merchandise under third-party labels as well as luminaires from other manufacturers;
 - k. Adjustment values or parameter settings on devices that change due to wear, material fatigue or contamination;
 - l. Product defects due to software errors, bugs, viruses or the like;
 - m. Required recommissioning, software updates, and so on;
 - n. All incidental costs incurred in conjunction with the remedying of defects (fulfilment of the guarantee), such as those for installation and removal, transport of the defective and repaired or new product, disposal, travel and handling time, lifting gear and scaffolding, shall be borne by the purchaser;
 - o. If only individual LED components are defective, LED luminaires are not considered defective if the number of non-functional components is less than ten percent (10%) of the total number of LED components in the LED luminaire;
 - p. Additional control devices, such as telemanagement;

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- q. Parts, elements and/or accessories which were added to the product after delivery and/or consequential damages arising from these additions;
- r. Normal wear and tear of the product;
- s. Third-party parts and/or accessories as well as components provided by the customer which are subject to the legal guarantee, such as drivers, electrics, luminaire glass, WiFi modules and so on.

If the product is assembled in a corrosive environment, in particular by the sea, or at another chemically contaminated place, the customer shall inform Hess about this before conclusion of the contract. Hess will then give instructions concerning the necessary measures to be followed by the customer (e.g. special treatment, varnishing, etc.). This shall also apply for the regular performance of the provided maintenance activities for the duration of the operating period.

E. NO IMPLIED OR OTHER GUARANTEES

- 1) This guarantee does not contain a guarantee that the products are suitable for a specific purpose or that the violation of rights of a third party is excluded.
- 2) No representative, dealer or seller shall be entitled to change, restrict or extend these terms of guarantee on behalf of Hess.

F. CLAIMS FOR GUARANTEE SERVICES

- 1) The guarantee requires the invoice to be paid by the due date. Additionally, the customer shall immediately inform Hess about any possible claim under the guarantee and send a description of the possible guarantee case to the address named under number 2 at the latest within thirty (30) days after determination of the possible guarantee case and in any case within the guarantee period. In this written assertion of the possible guarantee case, the customer shall provide the following information:
 - Commission and invoice number and item code
 - Installation characteristics (location, street, number of affected products, application details, hours of illumination and switching cycles, as well as other relevant installation details)
 - Circumstances and environmental conditions in which the products were used
 - Name, model and number of allegedly defective products
 - Copy of invoice and delivery note
 - Date of installation
 - Detailed description of the problem.

Additionally, the customer must be indicated as receiver in the original invoice or the delivery note.

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- 2) The documents mentioned in section F, number 1 shall be addressed to:
Hess GmbH Licht+Form
QM Abteilung
Lantwattenstr. 22
78050 Villingen-Schwenningen
E-mail: qualitymanagement@hess.eu
- 3) After submission of the documents mentioned in number 2, Hess will assign a QM number (in the following referred to as “QM notice”) in order to be able to allocate the claim accordingly. After notification of the QM number, the customer shall send the product concerned to the address specified in the QM notice at their own expense.
- 4) Possible defective products will become property of Hess as soon as they are replaced.
- 5) In the case that Hess should determine after issuance of a QM number that the product or the products of the customer which were sent under this QM number are not covered by the guarantee, Hess shall be entitled to charge the customer for the costs arising from the examination of this product or these products regarding a claim under guarantee.
- 6) For parts or products which were replaced or repaired during the guarantee period, a guarantee for the remainder of the original guarantee period of these parts or products shall apply, if any.
- 7) All measures shall be taken with the exclusion of goodwill and warranty claims.

G. FINAL PROVISIONS

- 1) The place of fulfilment and jurisdiction for disputes with entrepreneurs, bodies corporate organised under public law and public-law special funds shall be at our registered office; In addition, we are also entitled to sue the customer in the jurisdiction of their place of business.
- 2) The law of the Federal Republic of Germany shall apply; CISG application shall be excluded.
- 3) Should any of the above provisions be or become invalid, this shall not affect validity of the remaining provisions.

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