

LIGHTING AUSTRALIA PTY LTD

ABN 65 001 830 619

TERMS AND CONDITIONS OF SALE

EFFECTIVE 01 DECEMBER 2002

1. DEFINITIONS:

In the following Terms and Conditions of Sale:-

"the Company" shall mean Lighting Australia Pty Ltd, ABN 65 001 830 619;

"the Purchaser" shall mean the entity purchasing the goods the subject of these Terms and Conditions of Sale;

"the Goods" shall mean any products purchased by the Purchaser from the Company from time to time;

"the Invoice" shall mean the invoice issued by the Company in response to the Purchaser's order.

2. APPLICATION:

- 2.1 The only contractual terms which are binding on the Company are those set out in these Terms and Conditions of Sale or otherwise agreed to in writing by the Company and those, if any, which are imposed by law and cannot be excluded.
- 2.2 These Terms and Conditions of Sale apply to all sales of Goods by the Company to the Purchaser. The Purchaser shall be deemed to have read and agreed to these Terms and Conditions of Sale prior to the placing of any order for the Goods.
- 2.3 The Company reserves the right to vary add or substitute these Terms and Conditions of Sale from time to time and any such changes to these Terms and Conditions of Sale shall have effect from the date of publication by the Company.
- 2.4 Any terms of the Purchaser's order deviating from or inconsistent with these Terms and Conditions of Sale (including any statement by the Purchaser that the Purchaser's terms shall prevail) are expressly excluded.

3. QUOTATIONS AND ORDERS:

- 3.1 Any quotation given by the Company to the Purchaser is not an offer or obligation to sell but an invitation to treat only. A quotation is open for acceptance within the period stated in the quotation or within 30 days if no period is stated.
- 3.2 Orders are not binding until accepted in writing by the Company. The Company reserves the right to accept or reject any order it receives. Once accepted, orders may not be cancelled by the Purchaser except with the consent in writing of the Company and on the condition that the Purchaser will indemnify the Company against all losses resulting from such cancellation.
- 3.3 No description or other particulars of the Goods which are contained in promotional materials and which deal with matters other than the general nature of the Goods shall bind the Company.
- 3.4 If the Purchaser defaults under these Terms and Conditions of Sale, the Company may cancel, suspend or vary the terms and conditions of any incomplete order that has been accepted by the Company without notice to the Purchaser and without being liable to the Purchaser.
- 3.5 Goods offered ex stock by the Company are subject to prior sale.
- 3.6 Any delivery times notified to the Purchaser are estimates only. The Company is not responsible to the Purchaser for a breach of its obligation to supply the Goods pursuant to an order the Company has accepted, or for any delay in delivery, if the failure to supply or the delay in delivery is caused by matters beyond the reasonable control of the Company (including, without limitation, acts of God, acts of government, war or other hostility, national or international disaster, fire, explosion, power failure, equipment failure, strike or lockout, inability to obtain necessary supplies or transport facilities and any other force majeure occurrence).
- 3.7 The Company reserves the right to deliver by portion and delivery by portion shall not entitle the Purchaser to repudiate the contract.
- 3.8 If the Purchaser requests the Company to postpone delivery of the Goods beyond the delivery date or dates specified in the order, the Company may agree to do so if the Purchaser pays an additional fee for such postponement and for storage charges.
- 3.9 Under no circumstances is the Company liable for any consequential loss or damage resulting from any breach of contract or warranty, including breach of an essential term, and the Company's liability is limited to the order price of the Goods (subject to clause 11).

4. PRICE:

- 4.1 Prices are, subject to Clauses 4.2, 4.3 and 4.4, as set out in any specific valid quotation made by the Company or, if none, the Company's price list in place when the order is accepted.
- 4.2 Orders placed as a result of the Company's valid written or verbal quotation will be invoiced at the price(s) quoted if delivery of the order is to be made within 30 days of such quotation or within any extended period of validity as may be advised in writing by the Company.

- 4.3 All prices for imported Goods are quoted based upon the F.O.B price of the Company's source and the rates of exchange, freight, insurance and Customs or primage duty ruling at the date of quotation. The Company's quoted prices may be varied by the same amount by which the Company's actual costs have been varied as a result of any change in the said rates.
- 4.4 Unless otherwise stated, all prices include packing in accordance with the Company's standard practice, but other packing requested by the Purchaser and all costs incurred in connection with the delivery of the Goods to the Purchaser will be charged for in addition to the price.

5. GOODS AND SERVICES TAX:

- 5.1 Unless otherwise stated all prices quoted by the Company are nett, exclusive of Goods and Services Tax (GST) which will be charged at the ruling rate when applicable. GST amounts will be displayed as separate line items on each invoice issued.

6. DELIVERIES:

- 6.1 Subject to Clause 7, prices include the cost of delivery of the Goods to the premises specified by the Purchaser if such premises are in an Australian mainland capital city. The choice of carrier and type of service for such deliveries, will be made by the Company. If a delivery request is made for a location other than an Australian mainland capital city, freight will be paid for by the Purchaser. Goods for such other areas will be despatched by the Purchaser's nominated carrier with all freight charges to the Purchaser's account. Prepayment of freight by the Company on the Purchaser's account will be subject to a 10% surcharge.
- 6.2 Any delivery times advised to the Purchaser are estimates only and under no circumstances shall the Company be liable for any loss, damage or delay occasioned to the Purchaser or its customers arising from late or non-delivery of the Goods. Any delay in delivery shall not excuse or relieve the Purchaser from obligation to accept or pay for the Goods.
- 6.3 Delivery will be taken to have occurred when the Goods are off-loaded at the Purchaser's premises or (where Goods are collected from the Company) upon collection by the Purchaser or its agent.
- 6.4 If the Purchaser neglects, fails or refuses to accept delivery of the Goods or any part thereof, the Company shall be entitled to present invoices to the Purchaser for payment and, at its option, to arrange suitable storage of such Goods at its premises or elsewhere and all costs of and incidental to such storage including the cost of storage, insurance, demurrage, handling and other charges shall, in addition to the price, be paid by the Purchaser to the Company upon demand.

7. MINIMUM ORDERS:

- 7.1 A minimum value of \$25.00 (excluding GST) will apply to all orders.
- 7.2 Orders received for delivery to an Australian mainland capital city will be charged freight at cost when the nett invoice value of each requested delivery is less than \$200.00.

8. PAYMENT:

- 8.1 Payment for approved credit accounts is due 30 days after the date of the Company's statement. The Company reserves the right to suspend credit facilities for Purchasers' accounts exceeding the agreed payment period or credit limit. If a credit account has not been established or approved, payment is due on the date of the Company's invoice. Payment must be made in the currency nominated on the Company's invoice.
- 8.2 Any fluctuations in the value of the Australian currency as from the date of Company's invoice shall be the responsibility of the Purchaser.
- 8.3 If the Purchaser fails to make any payment when due then, without affecting any other rights which it may have, the Company may:
- (a) suspend deliveries until paid; and/or
 - (b) deduct outstanding sums from any sums owed by the Company to the Purchaser under this contract or otherwise; and/or
 - (c) require the Purchaser to pay any costs of storage of the Goods; and/or
 - (d) charge interest on any unpaid amount at rate of 2% above the corporate loan reference rate (monthly charging cycle) from time to time of the Commonwealth Bank to run from day to day (both before and after any judgment) from the due date until payment in full is received; and/or
 - (e) treat this Contract as repudiated and terminated; and/or
 - (f) resell any goods not yet delivered to the Purchaser; and/or
 - (g) retain any sums paid as deposit for the Goods.
- 8.4 The Purchaser agrees to pay the Company any expenses (including legal costs) incurred in collecting any outstanding debts due by the Purchaser to the Company.
- 8.5 The Purchaser may not withhold, make deductions from or set-off against payments for any reason.

9. RETURN OF GOODS SOLD:

- 9.1 Return of Goods for credit will only be accepted with the prior agreement of the Company, evidenced by a Goods Return Authorisation Number issued by the Company.
- 9.2 A re-stocking charge of 15% of the invoiced price of the Goods returned will be charged to the Purchaser. All Goods accepted for return must be unused and in prime condition in their original packaging.
- 9.3 Return freight must be prepaid by the Purchaser.

10. EXAMINATION AND CLAIMS:

- 10.1 The Purchaser shall inspect the Goods upon delivery and shall within 7 days from the date of delivery give a written notice to the Company of any matter or thing by reason whereof the Purchaser may allege that the Goods are not in accordance with the contract. If the Purchaser fails to give such notice then the Goods shall be deemed to have been accepted by the Purchaser.
- 10.2 Claims for transit damage must be notified within 7 days of delivery of the Goods. The Company's liability to the Purchaser for transit damage shall be limited to and be completely discharged by either the replacement or the repair of such Goods.

11. WARRANTIES:

- 11.1 The Company warrants that the Goods are free from defects in workmanship and materials provided that:-
- (a) the Goods are installed in accordance with the relevant specifications, are not altered or otherwise maltreated and are not used in an application for which they were not intended or designed;
 - (b) the Purchaser immediately notifies the Company in writing setting out full particulars of the alleged defect;
 - (c) the Company reserves the right to inspect the Goods on site or to require the Purchaser to send a sample of the allegedly defective Goods to the Company. If the Goods are defective, the Company will reimburse the Purchaser for the freight costs of returning the sample; and
 - (d) this warranty shall cease to apply 12 months after delivery of the Goods.
- 11.2 The Company's liability under the warranty in Clause 11.1 is limited to either the replacement or repair by the Company of the Goods and does not extend to rectification costs or consequential loss or damage.
- 11.3 The Purchaser acknowledges and agrees that the Company is not liable for any advice given by its agents or employees in relation to the suitability for any purpose of the Goods and all such advice relied upon is at the Purchaser's risk.
- 11.4
- (a) Nothing in these Terms of Sale shall be read or applied so as to have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied or granted by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified;
 - (b) where a condition or warranty is implied by statute and cannot be excluded, to the extent permitted by that statute any liability of the Company arising out of a breach of that condition or warranty is limited to replacement or repair by the Company of the Goods concerned;
 - (c) except as provided in this Clause 11.4 and in Clause 11.1, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and the Company shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, assembly, installation or operation of the Goods or arising out of the Company's negligence or in any other way whatsoever.
- 11.5 Any obligation that arises under Clauses 11.1 or 11.4 for the Company to replace the Goods shall be satisfied by the delivery of the Goods to the Purchaser at the premises specified in the Company's invoice.

12. RISK:

- 12.1 The risk of loss or damage to the Goods passes to the Purchaser on the date and at the time that the Goods are removed from storage for the purpose of delivery to Purchaser.

13. RETENTION OF TITLE:

- 13.1 It is expressly agreed and declared that the Goods delivered by the Company to the Purchaser remain the sole and absolute property of the Company as legal and equitable owner until all money due to the Company has been paid to the Company, but such Goods will be at the Purchaser's risk from the time of delivery of the Goods to the Purchaser. Payment shall not be taken to occur until all cheques tendered in discharge of sums owing to the Company have been presented and cleared in full.
- 13.2 The Purchaser undertakes to store the Goods on its premises separately from its own goods or those of any other person and in a manner which makes the Goods readily identifiable as the Company's Goods, until delivery of the Goods to a third party.
- 13.3 The Purchaser may sell the Goods, but only as a fiduciary agent of the Company.
- 13.4 The Purchaser must keep an amount from the proceeds of sale which is equal to the debt owed to the Company in a separate identifiable account as the beneficial property of the Company and must immediately pay such amount to the Company upon request.
- 13.5 The Purchaser's right to possession of the Goods ceases if it does anything or fails to do anything which would entitle a receiver, a receiver and manager, an administrator or a trustee to be appointed in respect of the Purchaser, its undertaking or property or any part thereof, or entitle a person to present a creditor's petition for winding up of the Purchaser.
- 13.6 The Company or its authorised agent may for purpose of examination or recovery of the Goods enter upon any premises where the Goods are stored or where the Goods may reasonably be thought to be stored.
- 13.7 If the Purchaser uses the Goods in some manufacturing or construction process of its own or of some third party, then the Purchaser must hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for the Company.
- 13.8 These provisions apply notwithstanding any arrangement under which the Company provides credit to the Purchaser. To the extent that there is any inconsistency these conditions prevail.

14. SHORTAGE:

- 14.1 The Purchaser waives any claim for short delivery of any Goods if a claim in respect thereof has not been lodged with the Company within seven (7) days from the date of delivery of the Goods by the Company.

15. WAIVER:

- 15.1 No waiver by the Company of any breach of these Terms of Sale operates as a waiver of any other breach, and the doing and / or omission of any act, matter or thing whatsoever by the Company, its employees or agents (which but for this clause ought or might amount to a waiver of the Company's rights in respect of any such breach or default) does not operate as a waiver in any way of the Company's rights and powers in respect of such breach or default.

16. NOTICES:

- 16.1 Any notice required under these Terms of Sale must be in writing and given by post, facsimile or hand to the Company at the Company's registered office, or if to the Purchaser, at the address set out on an order, or at such other address or facsimile number as is notified in writing by one party to the other.

17. TERMINATION:

- 17.1 Any contract may at the Company's option be terminated in the event of:-
- (a) the insolvency of the Purchaser; or
 - (b) execution being levied against any of the Goods of the Purchaser; or
 - (c) the Purchaser being placed in liquidation (whether voluntary or otherwise), administration, receivership or the like or proceedings for such an order being commenced against the Purchaser; or
 - (d) the Purchaser breaches any terms of or purports to cancel any contract with the Company.
- 17.2 Upon such termination all sums outstanding shall be immediately due and payable, the Company shall be entitled to repossess at the cost of the Purchaser all Goods which remain the property of the Company and the Company may dispose of such Goods as it wishes and the Purchaser shall reimburse the Company for any losses or expenses incurred by it in connection with the contract, without prejudice to any other right conferred upon the Company by law.

18. GOVERNING LAW:

- 18.1 These Terms and Conditions of Sale are governed by the laws of the State of New South Wales notwithstanding the place in which the Goods or any of them are to be delivered. The Purchaser and the Company irrevocably submit to the exclusive jurisdiction of the courts of the state of New South Wales.

19. WHOLE AGREEMENT:

- 19.1 These Terms and Conditions of Sale and any warranties implied by law which are not capable of being excluded or modified embody the whole agreement between the parties and, subject to the express terms contained in any written order and written acceptance thereof (which will only apply to that particular order), all previous negotiations, representations, warranties, arrangements and statements (if any), whether expressed or implied, including any collateral agreement or warranty, regarding the subject matter or the intentions of either of the parties are merged in the these Terms and Conditions of Sale and otherwise are hereby excluded and cancelled. The Purchaser acknowledges that it has not been induced to enter into this agreement by any representation, advice or information given or made by or on behalf of the Company.

20. PRIVACY ACT AUTHORITY:

- 20.1 For the purposes of assessing the credit-worthiness of the Purchaser from time to time and the collection of payments, the Purchaser authorises the Company, its employees and agents to make such enquiries as they deem necessary including, without limitation, making enquiries of and obtaining reports (as may be allowed by law) from persons nominated by the Purchaser as trade referees, the Purchaser's creditors, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies ('the information sources'). The Purchaser consents to the information sources providing to the Company such information as is requested by the Company and permitted to be given by law. The Purchaser also consents to the Company disclosing personal information or the contents of any credit report to a credit reporting agency for the purpose of that credit reporting agency creating or adding to any credit information file in relation to the Purchaser.