

TERMS AND CONDITIONS OF SALES FOR E&E LIGHTING AUSTRALIA PTY LTD

1. General Formation & Scope of Contract

- (a) These terms and conditions together with any modifications or deviations contained within any written offer of sale constitute the whole Contract between E&E Lighting Australia Pty Ltd ABN 516 201 906 32 ("the Company") and the Buyer and supersede all previous communication either written or oral. Any quotation or tender submitted by the Company shall be deemed to be subject to these terms and conditions. No terms or conditions implied or contained in the Buyer's enquiry, specification, acceptance or order shall add to, amend or delete these terms and conditions unless expressly agreed to in writing by a duly authorised representative of the Company.
- (b) It is the responsibility of the Buyer when signing any documentation to which these terms and conditions apply to ensure that any Goods ordered under a non-Consumer Contract comply with and conform to the Buyer's requirements and are suitable and sufficient for the Buyer's purpose.
- (c) All offers of sale remain valid for acceptance for 30 days from date of offer only, unless expressly varied in writing.
- (d) The Buyer acknowledges the Company's licence to use or ownership of the Intellectual Property contained within the Goods manufactured or supplied by the Company and in particular acknowledges that any attempt by the Buyer, its servants or agents to copy in whole or any part of the Intellectual Property or misuse any of the Intellectual Property will render it liable to the Company for the violation or infringement of its Intellectual Property.
- (e) Failure by the Company to insist upon strict performance of any term warranty or condition of a Contract to which these terms and conditions apply shall not be deemed to be a waiver thereof of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- (f) Any tender or quotation by the Company includes only such goods, accessories and works as are specified therein. Unless otherwise specified, all specifications, drawings, descriptive matters and particulars of weights and dimensions submitted with such quotation, are approximate only and the description and illustrations contained in Company catalogues, price lists and other advertising matter are intended merely to present a general idea of the Goods described therein and none of these shall form part of the Contract arising from acceptance of any quotation.
- (g) Goods will be carefully inspected and where practicable subjected to standard tests at the Company's works before dispatch. If special tests or tests in the presence of the Buyer or its representative are required these, unless otherwise agreed, will be carried out at the Company's works and may be charged for as an extra. In the event of the Buyer, after seven (7) days notice in writing of the time and place of any such test, not being present or represented, the tests will proceed and in that event shall be deemed to have been made in the presence of the Buyer.
- (h) Any performance figures included in any quotation are based on experience, and as such are expected to be obtained on test. No liability is accepted by the Company if these figures are not obtained unless they are specifically guaranteed and then are subject to recognised tolerances and rejection limits applicable to such figures. Reasonable time and opportunity must be given to comply with the terms of any such guarantee before the Company can incur liability. The Buyer assumes responsibility for the capacity and performance of the Goods supplied by the Company under a non-Consumer Contract being sufficient and suitable for the Buyer's purpose and for the Goods being of acceptable quality.
- (i) In the event of the cancellation or suspension of the manufacture of Goods on the Buyer's instruction or the suspension of the work because of the lack of instruction from the Buyer, the Contract price shall be increased to cover any consequential extra expenses incurred by the Company.
- (j) The Company reserves the right to incorporate minor modifications affecting electrical performance, physical factors, material and components, provided that changes made will not serve or degrade performance and /or quality below the level specified in the quotation.

2. Price

- (a) The Company shall be entitled to adjust any price quoted by it or stated in any documents forming the Contract between it and the Buyer to take account of variations in the cost of the Goods and services ordered by reason of variations in exchange rates, the cost of materials, costs of complying with any new requirement imposed by Statute or Regulation, rates of wages and hours of working and any other condition of employment required by law or by any award, determination or agreement, the cost of services including freight, cartage, insurance, customs duty, and tariff classifications, statutory and government or local government authority charges.
- (b) All orders will be invoiced at the prices in effect at the time of delivery.
- (c) All prices unless otherwise expressly stated are ex-warehouse. The Buyer shall be responsible for the cost of freight and insurance.
- (d) For Goods to be supplied outside of Australia, prices do not include any duty, customs, fees or other impost on the Goods or on the equipment, property or activities of the Company, its subcontractors or any of their respective employees in relation to the Contract levied outside of Australia or any tax on or withholding from any payment to the Company or on the Contract levied outside Australia and the same shall be for the account of the Buyer.
- (e) All prices quoted are subject to these terms and conditions.
- (f) No retentions shall be made by the Buyer unless provided for in any quotation or tender submitted by the Company.
- (g) Unless otherwise stated in any quotation or tender, no provision is made for erection, installation or commissioning of Goods.
- (h) When installation, erection or commissioning is included in a quotation, such work is to be completed within the time limit stated in the quotation, provided that the Buyer is able to give the Company access to the site and proper facilities for carrying out the work for a reasonable time or as otherwise stipulated prior to the date of completion. Written notification shall be given when the premises are ready for the Company to begin work. If there is any delay in completion of the work caused through the Buyer's failure to do anything which the Buyer should do, then all expenses incidental to such delays shall be paid by the Buyer. When installation, erection or commissioning is carried out by the Company, the Company accepts no responsibility whatsoever for the condition of the site or premises where the Goods are to be installed. Any damage caused to the Goods as a result of the condition of the site or premises shall be the Buyer's responsibility and is specifically excluded from the warranty provisions hereinafter appearing.

3. Payment

- (a) For account customers payment terms are strictly 30 days from date of invoice or as otherwise agreed in writing.
- (b) The Company reserves the right to charge interest on any amounts outstanding beyond the due date for payment at the Bank Overdraft Rate applying at the date of the outstanding amount first becoming due for payment.
- (c) The Company may refuse delivery of additional orders if outstanding amounts are overdue beyond 30 days from invoice date.
- (d) The Company reserves the right to submit progress payments against works completed and the value of materials.

4. Good and Services Tax

- (a) All prices referred to in the Contract are exclusive of GST.
- (b) If GST is payable in respect of any supply made under or in connection with the Contract, the recipient of the supply must reimburse the supplier for the amount of that GST, PROVIDED THAT the supplier must first issue a tax invoice for the supply to the recipient of the supply.
- (c) If the amount payable for any supply made under or in connection with the Contract is calculated by reference to any cost or expense incurred by the supplier, the amount payable is to be calculated using the GST-exclusive amount of that cost or expense.
- (d) If there is an adjustment event in relation to a supply made under or in connection with the Contract (i) the supplier must refund to the recipient of the supply the amount by which any GST reimbursed pursuant to clause 4(b) exceeds the adjusted GST; or
(ii) the recipient of the supply must pay the supplier the amount by which the adjusted GST exceeds the GST reimbursed pursuant to clause 4(b).
- (e) For the purpose of calculating the GST to be reimbursed to the supplier pursuant to clause 4(b), the amount payable for the supply or any part thereof which is expressed or calculated in a currency other than Australian dollars shall be converted into Australian dollars:
- (i) using the method required to be used by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any relevant regulation, ruling or determination under that Act; or
- (ii) if no method is specified by that Act or any such regulation, ruling or determination, using the relevant mid-market exchange rate quoted by the Company's principal bank for the date on which the supplier issues an invoice or receives payment for the supply, whichever is earlier.
- (f) In this clause 4, "GST" means goods and services tax levied pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the expressions "supply", "tax invoice", "input tax credit" and "adjustment event" have the same meanings as in that Act.

5. Delivery, Title and Risk

- (a) For delivery of Goods delivered in Australia:
 - (i) except as provided elsewhere in the Contract the Buyer shall take delivery from the Company's premises. All risks of loss and damage to the Goods shall transfer to the Buyer upon delivery;
 - (ii) title (legal and beneficial ownership) in the Goods shall not pass to the Buyer until the Company has been paid the contract price in full for them.
- (b) For exports of Goods delivered in Australia:
 - (i) except as otherwise expressly provided elsewhere in the Contract, the Company shall deliver the goods FOB at the port of dispatch and the Buyer shall obtain any necessary import clearances;
 - (ii) title (legal and beneficial ownership) in the Goods and (as provided in the INCOTERMS 2000) all risks of loss or damage to the Goods shall pass to the Buyer upon loading on board the transportation vehicle at the port or depot or other point of export unless provided otherwise in the Contract.
- (c) Until title in the Goods shall pass to the Buyer, the Buyer shall hold the Goods as trustee for the Company and as bailee of the Company
- (d) It is further agreed that in addition to any rights the Company may have under Chapter 4 of the Personal Property and Securities Act 2009 (the "PPSA"), until title in the Goods shall pass to the Buyer, the Buyer shall:
 - (i) store separately Goods which have not been paid for;
 - (ii) when reasonably practicable, mark and identify the Goods as being the property of the Company;
 - (iii) keep separate records in relation to the proceeds of sale of any Goods which have not been paid for, bank the proceeds of any such sale in a separate ADI Account (as defined in the PPSA) and immediately remit such funds to the credit of the Company and until payment is forwarded to the Company, shall hold such funds as trustee for the Company. The Buyer must not allow any person to have control of, or grant a security interest over, the proceeds or the account in which they are held;
 - (iv) if any Goods are used in a manufacturing process or mixed with other materials, or are commingled goods or are accession goods for the purposes of the PPSA, the parties agree that the Company will be the owner of the end product and any proceeds associated with those Goods and the Buyer shall record the value of the Goods so consumed in relation to each unit of finished product and upon sale of any unit of the finished product immediately remit that amount from the proceeds of sale to the Company;
 - (v) until title in the Goods passes to the Buyer, the Buyer will keep and maintain the Goods free of any charge, lien or security interest (as defined in the PPSA) except as created under the Contract with the Company and the Buyer must not otherwise deal with the Goods in a way that will prejudice the rights of the Company under the Contract.
- (e) If the Buyer does not pay for the Goods on the due date specified on the invoice, where title has not passed to the Buyer the Company is hereby irrevocably authorised by the Buyer to enter into the Buyer's premises (or any premises under control of the Buyer or as agent of the Buyer if the Goods are stored at such premises without prior notice) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever. The Company may exercise this right without prejudice to any other right it may have against the Buyer.
- (f) Notwithstanding the provisions above, the Company retains the right to take any such further action as it considers necessary against the Buyer for the recovery of the purchase price.
- (g) Any time quoted for the dispatch of Goods shall run from the receipt by the Company of a written order to proceed with manufacture or supply and the provision to the Company of all information required by it to proceed with the manufacture or supply of the order forthwith. All dates of dispatch are to be treated as estimates only and do not constitute any contractual obligation unless the Company has service in connection with the installation, erection, commissioning or fixing.
- (k) Save for the express conditions and warranties herein contained all other conditions or warranties (whether as to the quality, fitness for purpose, merchantable quality or any other matter) expressed or implied by statute, common law, equity, trade custom, usage or otherwise are hereby expressly excluded provided that nothing in these terms and conditions shall exclude or limit any breach of a term or condition implied by law, the exclusion or limitation of which is not permitted by law.
- (l) The Company may vary these warranty conditions from time to time in part or in whole. Any such variations will only be recognised in writing by a duly authorised officer of the Company.

6. Claims and Return of Goods

- (a) No claims will be recognised in respect of any mistake, damage, shortage or oversupply of Goods after 7 days from invoice date.
- (b) Unless otherwise expressly agreed in writing the Company shall not accept any conditions providing for the payment by it of liquidated damages or other penalties for delayed delivery of Goods or provision of information, for delayed erection programs or any reason whatsoever.
- (c) The Company will not accept return of Goods for credit unless prior approval is granted by the Company. Goods returned without approval will not be received.
- (d) Goods approved for return for credit must be received in good order and condition, be in saleable condition and be returned within 7 days from invoice date.
- (e) The Buyer must provide invoice number when returning Goods approved by the Company.
- (f) The Buyer shall pay a 20% restocking fee for handling.

7. Limitations of Rights and Remedies

- (a) The Company's liability for Goods supplied under a Consumer Contract only is governed by the Australian Consumer Law.
- (b) In relation to Goods supplied under a Consumer Contract that are not of a kind ordinarily acquired for personal domestic or household use or consumption, the Company's liability for breach of a guarantee implied into a Consumer Contract by sections 54 to 63 inclusive is limited, at the Company's option, to: (i) in the case of the provision of goods, the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or
- (ii) in the case of services, the supplying of services again, or the payment of the cost of having services supplied again.
- (c) Buyer may cancel an order for services purchased under a Consumer Contract if the Company is unable to supply the services within a reasonable time.
- (d) In respect of non-Consumer Contracts the Company's liability will be limited as set forth in clauses (d) to (g) below and that these provisions will survive notwithstanding the Buyer's election if so entitled to otherwise cancel or be discharged from the Contract. (e) The Company's liability for Goods supplied under a non-Consumer Contract, whether arising under the provisions headed "Product Warranty" or otherwise howsoever, including breach or default entitling the Buyer to cancel or otherwise be discharged as aforesaid and whether in the nature of a breach of conditions or fundamental term or fundamental breach or breaches, the Buyer's exclusive remedies shall be: (i) Election if so entitled to cancel or be discharged as aforesaid; or
- (ii) Payment by the Company of the Buyer's damages to a maximum of the purchase price stated in the quotation for the specific Goods that cause the damage, or that is the subject of, or that is directly related to, the breach or default.
- In no event shall such damages include, nor shall the Company be liable for, any specific, indirect, consequential damages even if the Company has been advised of the possibility thereof or ought to have been aware of the possibility thereof, including but not limited to the amounts representing loss of profits, loss of business revenue, failure to realise expected savings, amounts arising from the Buyer's failure to perform the Buyer's obligation to any other party, amounts arising from any claim against the Buyer by any other party or any other commercial or economic loss of any kind, or any other amounts howsoever calculated.
- (e) Notwithstanding the foregoing, excluding the Company's obligations under Consumer Contracts as set out in clauses 8(a) and (b), in no event shall the Company be liable for any loss, injury or damages arising from the Buyer's responsibilities as set forth in a Contract, or from the omission of any other party
- (f) The foregoing shall apply in respect of any claim, demand or action by the Buyer irrespective of the nature of the cause of action underlying the same, including but not limited to breach of contract or tort including negligence or misrepresentation.
- (g) The Company shall have no liability for liquidated damages for delayed delivery of Goods or delayed erection programmes or for any other reason whatsoever.
- (h) The Company does not accept conditions imposing penalties of any type for delayed delivery of Goods or delayed erection programmes or for any other reason whatsoever.

8. Governing Law

Any Contract between the Company and the Buyer shall be subject to the laws of Australia and the parties submit to the jurisdiction of the Australian Courts.

9. Personal Property Securities Act (PPSA)

- (a) The Buyer acknowledges that the PPSA applies to any contract between the Company and the Buyer to which these terms and conditions apply
- (b) The Buyer grants the Company a purchase money security interest (PMSI) in all Goods and any proceeds of the sale of Goods supplied by the Company to the Buyer.
- (c) The Buyer acknowledges and agrees that the security interest:
- (i) arising under the Contract may be perfected by the Company prior to the Buyer obtaining possession of the Goods; and
- (ii) is a continuing and subsisting interest in the Goods with priority over any other security interest of any unsecured creditor of the Buyer.
- (d) The Buyer will do everything required of it to enable the Company to register and maintain its security interest with the priority the Company requires.
- (e) The Company does not need to give the Buyer any notice under the PPSA unless the notice is required by the PPSA and that requirement cannot be excluded under the PPSA.
- (f) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under the Contract, the Buyer agrees that the following provisions of the PPSA will not apply, except where the Goods forming the collateral are used predominantly for personal, domestic or household purposes:
- (i) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Buyer;
- (ii) section 121(4) (enforcement of liquid assets – notice to grantor);
- (iii) section 125 (obligations to dispose of or retain collateral);
- (iv) section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Buyer;
- (v) section 132(3)(d) (contents of statement of account if no disposal);
- (vi) section 132(4) (statement of account if no disposal);
- (vii) section 135 (notice of retention);
- (viii) section 142 (redemption of collateral); and
- (ix) section 143 (reinstatement of security agreement).
- (g) The Buyer agrees not to disclose to an interested person (as defined in the PPSA) or any other person, any information of the kind described in section 275(1) of the PPSA.
- (h) The Buyer must notify the Company immediately in writing of any changes to its name, address, contact details or data required to register a financing statement under the PPSA.

10. Personal Property Securities Act (PPSA)

- (b) The product warranty given in clause 6(b) will be valid when the Buyer has paid for the Goods in full.
- (c) To claim under the product warranty, the Buyer must contact the Company at the following address:
E&E Lighting Australia Pty. Ltd.
Address: 31 Nicholas Dr, Dandenong Sth, Vic 3175
Telephone: +61487 248 481
- (d) In respect of any Goods supplied by the Company, the product warranty will be valid for 12 months from the date of invoice for those Goods (i) Our goods come with consumer guarantees that cannot be excluded under the Australian Consumer Law (ACL). You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (ii) Your warranty rights are in addition to your statutory rights as a consumer.
- (e) The product warranty is provided by E&E Lighting Australia Pty. Ltd.
Address: 31 Nicholas Dr, Dandenong Sth, Vic 3175
Telephone: +61487 248 481

11. Force Majeure

(a) If performance by a party of any obligation under the Contract (other than an obligation of the Buyer to make payment) is prevented, restricted or delayed by Force Majeure then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 12(b).

(b) If performance is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may after that period and while the cause of the non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.

(c) In these terms and conditions, "Force Majeure" means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather, and (except where restricted to employees of the Company) industrial action, sabotage or commotion, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected.

12. Set off

The Buyer waives all existing and future claims and set-offs against any payment due under the Contract and agrees to pay the amounts payable under these terms and conditions on the due date regardless of any equity, set-off or cross claim on the part of the Buyer against the Company.

13. Severance

If any provision or part or any provision of these terms and conditions is invalid, illegal or unenforceable, such provision or part thereof shall be severed herefrom and the remainder shall continue in full force and effect.

14. Definitions and Interpretation

(a) Definitions

In these terms and conditions:

Australian Consumer Law means the law set out in Schedule 2 of the Competition and Consumer Act 2010.

Bank Overdraft Rate at any time means the overdraft rate charged by the Company's principal bank at that time on overdrafts up to \$100,000.

Buyer or You means a person, firm or corporation, jointly or severally if there is more than one, acquiring Goods from the Company.

Company or We means E&E Lighting Australia Pty. Ltd. ABN 516 201 906 32.

Contract means any agreement, order, contract or security agreement entered into for the provision of Goods by the Company to the Buyer which will be bound by these terms and conditions.

Consumer Contract means a contract for the acquisition of goods or services as a "consumer" as that term is defined in section 3 of the Australian Consumer Law.

Goods means the goods or services supplied by the Company to the Buyer.

GST has the meaning given in clause 4(f).

Intellectual Property means all copyright, patents, trademarks, designs, formulae, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registrable or not) owned by or licensed to the Company and used in respect of the Goods.

PPSA means the Personal Property Securities Act 1999.

(b) Interpretation

(i) Clause headings shall not form part of, and shall not be used in the interpretation of, these terms and conditions or the Contract.

(ii) Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

(iii) Words importing a gender include every gender.

(iv) Delivery acronyms such as FCA, FOB and CIF used in the Contract shall be interpreted in accordance with the INCOTERMS 2000 edition.

(v) An expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate.

(vi) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances and by-laws issued under that statute.

(vii) Other parts of speech and grammatical forms of a word or phrase defined in these terms and conditions have a corresponding meaning.

(viii) A variation of any term of these terms and conditions or the Contract must be in writing and signed by the parties.