

## 1. DEFINITIONS

**Agreement** means these terms and conditions.

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Authorised Officer** means a director of the Seller.

**Consequential Loss** means any loss or damage suffered by a party or any other person which is indirect or consequential, or which relates to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity.

**Customer** means the purchaser specified in the Order.

**Delivery Date** has the meaning given to it in clause 5.3.

**Goods** means all goods or services including lights and goods relating to lights and parts and accessories supplied by the Seller to the Customer from time to time under this Agreement.

**Order** means any order for Goods placed by the Customer with the Seller, in whatever form.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Privacy Act** means the Privacy Act 1988 (Cth).

**Seller** means **EST LIGHTING PTY LTD ABN 90 613 752 560** of 479 Bourke St, Surry Hills NSW 2010.

## 2. GENERAL

2.1. This Agreement supersedes any earlier terms or conditions wherever published or applying between the Seller and the Customer, and will be deemed to override all oral and written agreements negotiated by either the Seller or the Customer prior to this Agreement.

2.2. This Agreement applies to all Orders placed by the Customer with the Seller unless otherwise agreed in writing by the Authorised Officer.

2.3. By accepting any quotation from, or placing any Order with the Seller, the Customer accepts this Agreement.

## 3. ORDERS & PAYMENT

3.1. The Customer may submit an Order to the Seller from time to time. Unless otherwise agreed, the Customer requests the Seller to supply the Goods listed in the Order on the terms of this Agreement.

3.2. It is the Customer's responsibility to check quantities, lengths, finish, colour temperature, dimming requirements and any other specific information recorded on the order.

3.3. The Seller may accept or reject any Order or any variation or modification of an Order requested by the Customer at the Seller's sole discretion. Once accepted by the Seller, this Agreement will apply to the Goods the subject of the Order.

3.4. The Seller reserves the right to upgrade and/or change product designs where necessary without notification to the Customer.

3.5. Any Order accepted by the Seller cannot be cancelled by the Customer without the Seller's consent.

3.6. The Seller is not required to accept or execute the Order unless the Customer has placed a written Order in terms acceptable to the Seller.

3.7. Notwithstanding any other term in this Agreement, the Seller may refuse to accept or execute any Order or requests submitted by the Customer by giving notice to the Customer of such rejection within 14 days of receipt of the Order.

3.8. Unless the Customer has written approval for credit, payment in full is required for orders below \$5,000 or a 50% deposit is required for orders above \$5,000 (balance to be paid prior to delivery) for the Seller to proceed with order.

## 4. PRICE

4.1. Where the Seller has provided the price of Goods in a quote, the Seller agrees to supply the Goods in accordance with the quote, subject to the Seller making any necessary adjustments to accommodate any increase in the prices due to an actual increase in the Seller's costs arising from changes in the rates of exchange, freight, insurance and customs or primage duty since the date of the quote;

4.2. Where the Seller provides the Customer with a quote for the prices at which it would be willing to supply particular Goods, that quote will remain valid for 30 days from the date on which it is given to the Customer. Otherwise, all prices published by the Seller from time to time are subject to change without notice.

- 4.3. All prices are exclusive of GST, unless otherwise specified in the Order.
- 4.4. The price is subject to the Customer's order being for the whole quantity stated in the quote.
- 5. DELIVERY & SUPPLY**
- 5.1. Unless otherwise agreed in writing, the Goods will be delivered to the Customer from the Seller's warehouse to the Customer's address nominated on the Order and packaged in accordance with the Seller's standard practice.
- 5.2. The Customer will be responsible for inspecting all goods delivered and to report any damage within 1 week of receiving delivery.
- 5.3. Where the Customer fails to take delivery for the Goods, the Customer agrees to pay the Seller all reasonable storage costs.
- 5.4. The Seller may specify a date on which particular Goods will be delivered (**Delivery Date**).
- 5.5. The Customer acknowledges that the Delivery Date and time is an estimate only and the Seller will use reasonable endeavours to meet the Delivery Date.
- 5.6. The Seller will not be liable for any delay in the delivery of the Goods, howsoever caused.
- 5.7. If, due to an event beyond the Seller's reasonable control, the Seller is unable to deliver Goods by the Delivery Date:
- (a) the Seller may deliver to the Customer part of the Order that is capable of delivery and notify the Customer until such time as the cause of the delay is remedied to deliver the remaining part of the Order; or
  - (b) the Seller may extend the Delivery Date for part or all of the Order during which the cause of the delay operates.
- 6. RISK AND TITLE**
- 6.1. Unless otherwise agreed in writing, all risk in and to the Goods purchased will pass to the Customer when the Goods are loaded at the Seller's warehouse for delivery to the Customer.
- 6.2. Legal and equitable title in and to the Goods does not pass to the Customer until payment in full for all the Goods.
- 6.3. Until the Customer has paid all sums owing in cleared funds to the Seller:
- (a) the Customer must store the Goods separately and in a manner such that they can be clearly identifiable as the Seller's property;
  - (b) the Customer must ensure that the Goods are properly stored, protected and insured;
  - (c) the Customer must not sell the Goods except with the Supplier's prior written consent;
  - (d) the Customer will hold and agrees to hold the proceeds of any sale, lease or other dealings of the Goods in trust for the Seller in a separate bank account with a bank over which the Customer has not given any security;
  - (e) in addition to any rights the Seller may have under Chapter 4 of the PPSA, until title in and to the Goods passes to the Customer, the Seller is entitled at any time to demand return of the Goods and is entitled without notice and liability to the Customer, to enter or cause an agent of the Seller to enter any premises occupied by the Customer or any premises holding the Goods in order to recover possession of the Goods and for this purpose, the Customer agrees that the Seller and its agent has an irrevocable licence to enter such premises and indemnifies the Seller from and against all loss suffered or incurred by the Customer as a result of Customer exercising its rights under this clause. To the extent permitted by law, if there is any inconsistency between the Seller's rights under this clause and the Seller's rights under Chapter 4 of the PPSA, this clause will prevail;
  - (f) if required, the Customer will assign to the Seller any rights of

- the Customer to any outstanding money relating to the re-supply of the Goods. The Customer irrevocably appoints the Seller or its nominee as its attorney to sign all documents and do all things necessary to assign the debts to the Seller under this clause, where the Customer has failed to do so within 7 days of receiving written notice to do so, and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of debts; and
- (g) the Customer acknowledges and warrants that the Seller has a security interest in the Goods and any proceeds of the Goods until title passes to the Customer in accordance with this clause.
- 6.4. The Customer must not dispose or purport to dispose of, or create or purpose to create or permit to be created any Security Interest in the Goods other than with the written consent of the Seller.
- 7. WARRANTIES AND LIABILITY**
- 7.1. Subject to clauses 7.2 and 7.5, no warranties, conditions, representations and guarantees, whether express or implied by contract, trade or otherwise are given by the Seller in respect of Goods or services supplied.
- 7.2. Subject to the warranty provided by the Seller's partnering manufacturer, the Seller provides a minimum 12-month warranty from the date of purchase or supply to the Customer of the Goods. Any breach of condition or warranty is limited to the repair or replacement of the Goods at the Seller's premises or the supply of equivalent Goods, as determined by the Seller. All Goods must be installed in accordance with the installation instructions provided from the manufacturer and all Goods must be installed by a qualified person.
- 7.3. In the event that some of the Seller's product/s are faulty or defective, unless otherwise agreed in writing, the Seller will engage its own or arrange for qualified personnel to remedy any problem reported. The Customer acknowledges that it must not attempt to or arrange for any personnel to remedy a fault or defect.
- 7.4. Notwithstanding any other term in this Agreement, the Seller excludes liability whatsoever to the Customer for any Consequential Loss (including any electrical costs incurred if the Goods are deemed faulty after installation) relating in any way to the supply of the Goods to the Customer.
- 7.5. In addition to the Customer's rights under this Agreement, if the Australian Consumer Law confers certain rights, guarantees or remedies on the Customer which are not able to be excluded, restricted or modified except in limited circumstances, the Seller's liability for breach of any such right, guarantee or remedy is limited to the Seller (at its election):
- (a) replacing the Goods or supplying equivalent Goods;
  - (b) repairing the Goods;
  - (c) paying the cost of replacing the Goods or of acquiring equivalent goods; or
  - (d) paying the cost of having the Goods repaired.
- 7.6. To the extent permitted by law, any typographical, clerical or other error or omission in a quotation, price list, sales literature, acceptance of offer, invoice or other documents or information issued by the Seller will be subject to correction without any liability on the part of the Seller.
- 8. CANCELLATIONS, RETURNS & CREDIT CLAIMS**
- 8.1. No cancellation or partial cancellation for any Goods ordered will be permitted.
- 8.2. Subject to clause 8.3, no return of Goods ordered in error or no longer required will be permitted.
- 8.3. It will be at the Seller's discretion to determine whether a return of goods will be accepted. If the Seller decides to accept a return of Goods ordered in error or no longer required, the Customer:
- (a) will incur a 50% re-stocking fee; and;

- (b) will be liable for freight on costs and any damage incurred during the return shipment, and;
- (c) must include a copy of the relevant invoice with the returned Goods, and;
- (d) must pack the Goods in its original packaging and the Goods must not have previously been installed.

other action or remedy. In such circumstances, all moneys owing and outstanding to the Seller on any invoice, irrespective of whether the due date on the invoice has occurred or passed shall become immediately due and payable, and additionally, the Seller reserves the right to charge the Customer all reasonable expenses incurred by it in order to recover the outstanding monies owed pursuant to this clause.

## **9. PAYMENT AND DEFAULT**

- 9.1. Unless the Customer has an account with the Seller, Goods will only be released when payment terms in 3.6 are met. Unless otherwise agreed in writing, account holders must pay their invoice in full within 30 days of delivery of the Goods.
- 9.2. The Seller reserves the right to charge interest on any overdue amount at a rate of 2.5% per month from the due date until payment is made in full.
- 9.3. If:
  - (a) the Customer defaults on any payments or is unable or states that it is unable to pay its debts as and when they fall due;
  - (b) (where the Customer is an individual) the Customer commits an act of bankruptcy or has a controller or trustee appointed in respect of its estate or any part of its property or assets;
  - (c) (where the Customer is a company) the Customer passes a resolution for the winding up or enters into liquidation or has an application for winding up filed against it;
  - (d) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the Customer's property or assets;
  - (e) the Customer experiences any analogous event having substantially similar effect to any of the events specified in this clause,

then the Seller may, at its option, withhold further deliveries or cancel any Order without notice and without prejudice to any

## **10. PRIVACY**

- 10.1. To enable the Seller to assess the Customer's application for credit, the Customer authorises the Seller:
  - (a) to obtain from a credit reporting agency a credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1)(b) of the Privacy Act,
  - (b) to obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities.
  - (c) to give to a credit reporting agency/body information including identity particulars and application details.
- 10.2. In accordance with Section 18N (1)(b) of the Privacy Act the Customer authorises the Seller to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be names in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing; credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. The Customer understands the information can be used for the purposes of assessing its application for credit (Section 18L(4) Privacy Act), assisting it to avoid defaulting on its credit obligations, notifying other credit providers of a default by it and assessing its credit worthiness.

**11. NOTIFICATION**

The Customer must notify the Seller in writing within seven (7) days of:

- (a) any alteration of the name or ownership of the Customer;
- (b) the issue of any legal proceedings against the Customer;
- (c) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- (d) any change in ownership of the business name of the Customer. The Customer agrees that it shall be liable to the Seller for all Goods supplied to the new owner by the Seller until notice of such change is received.

**12. GOVERNING LAW**

This Agreement is governing by the law of New South Wales. The Seller and the Customer submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia.

**13. SEVERANCE**

If any provision of this Agreement or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision will, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, the provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired.

**14. GST AND TAXES**

- 14.1. Despite any other clause in this Agreement, to the extent that any supply made under or in connection with this Agreement is a taxable supply (as that term is defined by the GST Law), the Customer must pay the Seller, in addition to the consideration provided for under this Agreement for that supply (unless expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of that

supply. The Customer must pay the additional amount at the same time as the consideration to which it is referable.

- 14.2. Where an adjustment event occurs in relation to any taxable supply to which clause 15.1 applies:
- (a) the Seller must determine the amount of GST component of the consideration payable; and
  - (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the Customer, as applicable.
- 14.3. Other than expressly stated otherwise under this Agreement, the Customer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable) in relation to the Goods.

**15. WAIVER**

Waiver by the Seller of a breach of this Agreement of any right or power arising on a breach of this Agreement must be in writing and signed by the Seller. A right or power created or arising on a breach of this Agreement is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

**16. INTELLECTUAL PROPERTY**

The purchase of Goods under this Agreement does not confer on the Customer any licence or assignment of any copyright, patent, design or trade mark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods

**17. CONFIDENTIALITY**

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence of or contents of this Agreement) except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this Agreement in connection with preparatory steps such as negotiating with any potential transferee or any other person

- who is considering contracting with the Seller in connection with this Agreement;
- (b) to officers, employees, agents, contractors, legal and other advisers and auditors of any party to this Agreement;
  - (c) to any party to this Agreement or any related entity of any of them, provided the recipient agrees to act consistently with this clause;
  - (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
  - (e) any disclosure the disclosing party reasonably believes is required by any law, stock exchange or rating agency (except this paragraph does not permit the Seller to disclose any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies).

**18. OFFSET**

No amount owing, whether present or future, actual, contingent or prospective and on any account whatsoever by the Customer to the Seller may be offset against any amount owing whether present, future, actual, contingent or prospective of the Customer to the Seller hereunder or on any other account whatsoever.