

# TRADING TERMS AND CONDITIONS

EFFECTIVE: March 2020

## 1. Definitions

1.1 In these Terms unless the context requires otherwise, the following expressions shall have the following meanings respectively:

- (a) "Company" means Eye Lighting Australia Pty Ltd ACN 061 900 525 and any other related companies.
- (b) "Contract" means all those documents comprising the agreed terms of sale of Goods by the Company to the Customer including, but not limited to, purchase orders, invoices, these Terms and such other written material of the Company relating to the Goods and which is issued to or brought to the notice of the Customer and any writing of the Customer issued to the Company and accepted by the Company as constituting a term or condition of the Contract.
- (c) "Credit Account Customer" means a Customer which has established a commercial credit account with the Company, on terms approved by the Company.
- (d) "Customer" means the Customer which purchases the Goods.
- (e) "delivery" means the date and time that the Goods are delivered to the Customer's nominated premises.
- (f) "Extended Warranty" means any specific written warranty offered by the Company to Customer in respect of any defects in the Goods the terms of which exceed any warranty given under these Terms and are set out in the Extended Warranty Document.
- (g) "Extended Warranty Document" means the document given by the Company to the Customer in which the specific terms of the Extended Warranty and the Goods to which they apply, are set out.
- (h) "Goods" means any goods and/or services supplied by the Company to the Customer.
- (i) "PPSA" means the *Personal Property Securities Act 2009*. If a term used in these Terms has a particular meaning in the PPSA, it has the same meaning in these Terms.
- (j) "Terms" means these Trading Terms and Conditions.

## 2. Quotations, Proposals, Contracts and Terms

- 2.1 A quotation or proposal given by the Company does not constitute an offer to provide any Goods.
- 2.2 A quotation or proposal is valid for the period specified in the quotation or proposal or, if no period is described, sixty (60) days only and the Company reserves the right to withdraw or amend it at any time before acceptance.
- 2.3 A Contract will only be formed after the Company accepts an order from a Customer (whether by issue of the Company's standard work order, performance of the Goods set out in the order or otherwise) and will be subject to these Terms.
- 2.4 These Terms replace all trading terms and conditions which may have applied between the Company and the Customer.
- 2.5 These Terms apply to the exclusion of any conditions or terms of purchase which the Customer may use or purport to apply to the Contract.

2.6 The Company may vary these Terms at any time by giving notice to the Customer.

2.7 Nothing in these terms obliges the Company to supply Goods to the Customer and the Company may at any time decline to provide Goods to the Customer.

## 3. Description of the Goods

3.1 Any quantities, weights or dimensions included in any quotation, proposal, catalogue, advertisement, illustrated matter or price list are approximate or recommended only and will not be binding unless and to the extent only that such details are specified in a contract with a Customer.

## 4. Ownership of Documents

4.1 Technical documents, specifications, formulae, data or drawings submitted to a Customer before or at any time after a Contract is formed remain the property of the Company at all times and may not be transmitted to a third party, copied, reproduced or used by the Customer unless the terms of the Contract permit it or the prior written permission of the Company is obtained.

## 5. General Warranties Excluded

5.1 The Goods comprise the Company's assessment of the best way to manage the Customer's requirements as detailed to the Company at the time. Unless a specific representation about performance or outcome is made part of the Contract, any expected results from the Goods communicated by the Company to the Customer are the Company's best assessment of the most likely outcome for the Customer and do not and shall not be deemed to constitute a warranty or guarantee by the Company that any expected results will in fact be achieved by the Goods.

5.2 Subject to the provisions of the Contract, all and any express or implied terms, conditions, warranties and representations with respect to the standard, quality, condition, fitness, durability or suitability of the Goods (except those expressly contained in these Terms or otherwise expressly agreed to in writing by the Company) are, to the extent that the same may be excluded by law, hereby expressly negated and excluded.

5.3 The Customer must satisfy itself as to the standard, quality and suitability of the Goods and the fitness of the Goods for the purpose(s) for which the Goods are being purchased and as to its compliance with the description (if any) of such Goods. Any description shall be by way of identification only and the use of a description shall not of itself make any Contract a contract of sale by description.

5.4 These Terms shall not exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to a Contract of all or any of the provisions of Division 1 of Part 3–2 of Schedule 2 to the *Competition and Consumer Act 2010* or the exercise of a right conferred by such a provision or any liability of the Company for breach of a guarantee implied by such a provision. All other guarantees, conditions or warranties which would or might otherwise be implied are hereby expressly excluded and negated.

5.5 To the extent that the *Competition and Consumer Act 2010* permits the Company to limit its liability for a breach of a guarantee implied pursuant to Division 1 of Part 3–2 of Schedule 2 of the Act, then unless Part 6 applies, the Company's liability for such breach including any consequential loss which the Customer or any third party may sustain or incur shall be limited, at the option of the Company, to:

- (a) the replacement or repair of the Goods supplied to the Customer;
- (b) the supply to the Customer of equivalent Goods; or
- (c) the payment of the cost of replacing or repairing the Goods or of having the equivalent Goods supplied again,

whichever may be determined in the absolute discretion of the Company to be appropriate in the circumstances.

**5.6** The Customer must, within seven (7) days of the Customer first becoming aware of any facts giving rise to a claim against the Company under Part 5 or Part 6 of these Terms, inform the Company in writing, setting out the full particulars of the claim and deliver freight prepaid to the Company, any allegedly defective Goods so as to enable them to be examined by the Company.

**5.7** The benefits of any warranty contained in these Terms shall not apply in the case of:

- (a) defects in any Goods made known to the Customer before entering into the Contract;
- (b) defects in any Goods caused by inappropriate storage or the Customer's misuse or neglect;
- (c) defects generally in any Goods which become apparent more than 12 months after the date the Goods are despatched to the Customer (unless a longer period is considered reasonable in the circumstances);
- (d) Goods which have been altered or added to or otherwise modified without the prior written consent of the Company; or
- (e) Goods which are discontinued or sold on a non-returnable basis;

## **6. Warranty Service**

**6.1** This Part 6 applies to the extent the Contract grants to the Customer an Extended Warranty in respect of the Goods as a term of the Contract and has provided to the Customer an Extended Warranty Document.

**6.2** Before the Company offers any Extended Warranty, an inspection of the Customer's premises and an assessment of the effectiveness of the Goods may be carried out by the Company by arrangement with the Customer, at the Company's expense.

**6.3** Notwithstanding any Extended Warranty Document, if the Goods comprise LED lighting products, then Goods will only be considered to be defective if:

- (a) They fail to emit 70% or more of their specified lumen output value; or
- (b) more than 10% of the individual LEDs in the Goods fail to emit any light at all.

**6.4** If an Extended Warranty applies, the Customer must allow the Company access to the Customer's premises at all reasonable times as required by the Company to undertake any warranty work.

**6.5** If the Customer is in default under the terms of any Contract with the Company including, but not limited to, a failure to pay any invoice in the time required by the Contract or these Terms, the Company may at its option terminate, suspend or vary any Extended Warranty period which applies under that Contract.

**6.6** Unless the Extended Warranty Document provides to the contrary:

- (a) the Extended Warranty will not extend to any consumable components of any Goods (such as batteries, fluorescent lamps and discharge lamps); and
- (b) the period of any warranty offered under these Terms or any Extended Warranty for any Goods will not exceed the period of 60 months from the date the Goods are despatched to the Customer.

## **7. Release and Indemnity**

**7.1** After delivery of the Goods to the Customer, the Company shall not be responsible or liable to the Customer, and the Customer releases and discharges the Company (in the absence of any wilful or negligent act or omission on the part of the Company) for and from any liability, claim, loss, damage or expense of any kind or nature (including but not limited to loss of profits, earnings or income, direct, indirect, consequential, contingent or resulting liability, loss or damage whether to persons, property or otherwise) or death or injury caused by or arising out of or relating in any manner or incidental to the use of the Goods or the delivery of the Goods.

## **8. Price and Delivery Costs**

**8.1** The price payable for the Goods is the price or prices stated or otherwise set out in the Contract, the Company's standard price list or as otherwise notified to the Customer in writing.

**8.2** If the quotation or proposal specifies that a deposit is payable, the Customer must pay the deposit to the Company when accepting the quotation.

**8.3** Unless otherwise specified in the Contract, prices are quoted on a Free Carrier (FCA) basis to the Customer or the Customer's carrier:

- (a) for orders delivered to Queensland, New South Wales, ACT, Victoria, South Australia and Western Australia where the order value exceeds \$250.00; and
- (b) for orders delivered to Tasmania and the Northern Territory where the order value exceeds \$750.00.

The Customer must pay the freight costs for orders with a value of less than the amounts set out above.

**8.4** Unless otherwise specified in the Contract, all prices are strictly net and exclusive of GST.

**8.5** The Customer must pay any GST applicable to the supply by the Company of the Goods. The Company must provide a tax invoice to the Customer.

**8.6** Any prices quoted by the Company include the Company's standard packaging costs. If the Customer requires a different type of packaging, the Company will invoice the Customer for any additional packaging costs.

**8.7** If the Company offers a discount to the Customer in respect of Goods the subject of a Contract:

- (a) the Company is not bound to give any similar discount in respect of Goods the subject of any other Contract; and
- (b) the Company may withdraw the discount in the event the Customer does not meet the payment terms applicable to the Contract.

## **9. Payment Terms**

- 9.1** Subject to clause 9.2, payment for Goods must be made in immediately available funds no later than the time the Goods are ready for delivery to the Customer.
- 9.2** If the Customer is a Credit Account Customer, payment terms are as set out in the Contract or in the credit application for the Customer approved by the Company.
- 9.3** If payment is not made in the times specified in clauses 9.1 and 9.2 (as the case may be), the Customer will be in default under the Contract and the Company may do any or all of the following:
- (a) charge interest on overdue amounts at the rate of 18% per annum, calculated on daily balances until payment is made in full;
  - (b) terminate any Contract;
  - (c) decline to supply any further Goods to the Customer;
  - (d) revoke the Customer's credit account;
  - (e) change the terms on which any future Goods are provided, including to a cash on delivery basis; and
  - (f) demand payment of all monies payable by the Customer to the Company on any account whatsoever, whether or not the amounts claimed are due and payable.
- 9.4** The Customer, as beneficial owner, charges in favour of the Company all of its interest in all of the present and future real property of the Customer as security for the due and punctual payment of all debts and monetary liabilities owed by the Customer to the Company pursuant to a Contract. The Customer consents to the Company lodging a caveat to note its interest. Upon demand by the Company, the Customer agrees to immediately execute a mortgage on terms satisfactory to the Company to more particularly describe the security interest conferred by this clause. Should the Customer fail, within a reasonable time of such demand to execute such mortgage, then the Customer irrevocably appoints the Company as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to sign any document and to take possession of, use, sell or otherwise dispose of any real property of the Customer.

## **10. Application of the PPSA**

- 10.1** This clause applies to the extent that the Company's interest in any Goods is a security interest.
- 10.2** The Customer acknowledges and agrees that the Company may apply to register a security interest in the Goods at any time before or after delivery of the Goods.
- 10.3** The Customer waives its right under section 157 of the PPSA to receive notice of any verification of the registration.
- 10.4** The Company can apply amounts it receives from the Customer towards amounts owing to it in such order as the Company chooses.
- 10.5** If the Customer defaults in the performance of any obligation owed to the Company under any Contract or any other agreement for the Company to supply Goods to the Customer, the Company may enforce its security interest in any Goods by exercising all or any of its rights under these Terms or the PPSA. To the maximum extent permitted by law, the Customer and the Company agree that the following provisions of the PPSA do not apply to the enforcement by the Company of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

- 10.6** The Customer and the Company agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)–(e) of the PPSA.

- 10.7** The Customer must promptly do anything required by the Company to ensure that the Company's security interest is a perfected security interest and has priority over all other security interests in the Goods.

- 10.8** Nothing in this clause 10 is limited by any other provision of these Terms or any other agreement between the parties.

## **11. Credit Account Customers**

- 11.1** The Company may, by notice in writing to a Credit Account Customer, at any time:
- (a) change or revoke the limit of the credit account facility extended to a Credit Account Customer; or
  - (b) change or revoke the payment terms extended to a Credit Account Customer.

## **12. Deliveries**

- 12.1** Any delivery times which may be contained in any quotation are estimates only and are calculated from the date the Customer's order is accepted by the Company and the Customer provides to the Company all information required by the Company to commence work to fill the order.

- 12.2** The Company shall not be liable for any loss or damage suffered by a Customer by reason of a delay, suspension or cancellation of any orders in part or in whole for any reason beyond the control of the Company, breakage or failure of any machinery or apparatus required to deliver the Goods or labour trouble, strikes, lockouts or injunctions. Orders delayed, suspended or cancelled under this clause may, at the option of the Company, be cancelled completely or delivered at a later time (without any liability attaching to the Company as a consequence) and, in either case, the Company shall notify the Customer in writing accordingly.

## **13. Risk and Title**

- 13.1** Title to any Goods supplied by the Company to the Customer as part of the order shall not pass to the Customer until such time ("the specified time") as the cost of the Goods and all other moneys (if any) due from the Customer to the Company in respect of the Goods or under any Contract between the Company and the Customer shall have been paid to the Company in full.

- 13.2** Until the specified time, the Customer shall be only a bailee of any Goods for the Company and the Customer shall:

- (a) hold the Goods and maintain them in good order and condition until the specified time as to enable them always readily to be identified as the property of the Company;
- (b) (where the Goods have become incorporated into other chattels), pass title to the chattels to the Company and hold any such chattels as bailee;
- (c) in the event the Goods or any chattels referred to in clause 13.2(b) are sold, hold the proceeds of sale for the Company as its property; and
- (d) upon written demand, re-deliver the Goods or materials to the Company or allow the Company by its servants or agents to enter upon any premises where the Goods are stored to recover the same.

- 13.3** Any Goods shall be at the Company's risk until the time they are delivered to the Customer, when risk passes to the Customer.

#### 14. Cancellation and Returns

14.1 Any request for cancellation of an order for Goods must be made in writing and shall not be binding on the Company unless and until the request for cancellation is accepted by the Company in writing. Consent to a request for cancellation of any order for Goods shall be at the sole and absolute discretion of the Company.

#### 15. Governing Law

15.1 Any Contract is governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the courts of that State.

#### 16. Waiver

16.1 A party does not waive a right or power simply because it fails to exercise or delays exercising that right or power. A single exercise or power does not prevent in exercising it again or exercising any other right or power. A right or power may only be waived in writing signed by the party to be bound by the waiver.

#### 17. Severability

17.1 Any provision in these Terms which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable. Otherwise, the offending provision may be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms.

#### 18. Notices

18.1 Any notice to be given or an invoice to be issued by the Company under these Terms must be signed or given on the Company's behalf by a person authorised to do so and may be given or issued by:

- (a) leaving it at, or posting it to, the Customer's address last notified in writing to the Company;
- (b) emailing it to the Customer's last known email address; or
- (c) faxing it to the Customer's last fax number, last notified in writing to the Company.

18.2 Any notice posted to the Customer will be deemed to have been received by the Customer three business days after the date on which the notice was posted.

18.3 Any notice emailed to a Customer will be deemed to have been received at the time it is sent from the Company's server unless the Company receives an email bounce back indicating the email could not be delivered.

18.4 Any notice faxed to a Customer will be deemed to have been received by the Customer when transmitted to the Customer and the Company has received a successful facsimile transmission report.

#### 19. Assignment

19.1 The Customer may not assign any of its rights or obligations under any Contract without the Company's prior written consent, which may be given or refused in the Company's absolute discretion.

#### 20. Privacy

20.1 The Company discloses that certain items of personal information about the Customer contained in any credit application by the Customer may be disclosed to a credit reporting agency if the Company forms the view that is reasonably necessary to do so.

20.2 The Customer consents to disclosure of the personal information pursuant to clause 20.1 and consents to the Company disclosing any information derived from any credit application and any other information relating to the Customer which the Company may hold to any other credit provider for the purpose of providing a reference to the Company in relation to the Customer.

20.3 The Customer acknowledges and consents to the Company obtaining a consumer credit report about the Customer from a credit reporting agency.

20.4 The Customer agrees that personal credit information provided may be retained, used and disclosed by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:

- (a) the Company providing services and Goods to the Customer;
- (b) the Company marketing the services offered by the Company; or
- (c) processing any payment instructions, direct debit facilities and/or credit facilities requested by the Customer.

#### 21. Intellectual Property Rights

21.1 All intellectual property rights (including brand names, logos and trademarks) in the manufacture, distribution and sale of the Goods (including packaging) belongs to the Company and nothing in these Terms or any Contract confers on the Customer any rights of use or ownership.

21.2 Notwithstanding clause 21.1, the Company grants to the Customer a limited non-exclusive licence to use the Company's brand names and logos (as applied to the Goods) for the purpose of marketing the Goods to its customers and potential customers.

21.3 The licence in clause 21.2 ends when the Customer is no longer a customer of the Company.

#### 22. Interpretation

22.1 In these Terms, unless the context otherwise requires:

- (a) if the Customer comprises more than one person, any promise or agreement by the Customer binds each person individually and all of them jointly;
- (b) a reference to the Customer includes the Customer's legal personal representatives, administrators and successors;
- (c) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it and any subordinate legislation made under it;
- (d) words employing the singular number or plural number will be deemed to include the plural number and the singular number respectively; and
- (e) any words importing any gender will include every gender.