

ENERGY LIGHT LIMITED - TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 These terms and conditions of sale are entered into on behalf of and are intended to bind the Supplier and the Buyer and their successors and permitted assigns.

1.2 In these conditions:

"Buyer" means the person, firm or company buying the goods from the Supplier or the credit amount applicant.

"contract" means the contract between the Supplier and the Buyer for the purchase of the goods and any orders made in accordance with clause 3.

"contract price" means the price of the goods as agreed between the Supplier and the Buyer, subject to any variation in accordance with clauses 4 or 5.

"force majeure event" means an event that is beyond the reasonable control of the party immediately effected by the event, including but not limited to:

- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics, epidemics and any natural disaster;
- b. acts of government authority, whether lawful or unlawful;
- c. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- d. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; or
- e. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

For the avoidance of doubt, a force majeure event does not include any risk or event that the party claiming could have prevented or overcome by taking reasonable care.

"goods" means the goods being purchased by the Buyer from the Supplier which are the subject of the contract.

"guarantee" means a guarantee in a form requested by the Supplier from time to time.

"person" includes a corporation, association, firm, Supplier, partnership or individual.

"Supplier" means Energy Light Limited.

1.3 Headings are used as a matter of convenience only and shall not affect the interpretation of these conditions.

2. Quotations and Tenders

2.1 A tender or quotation submitted by the Supplier may, at any time prior to acceptance of an offer by the Supplier in respect of the supply of goods be varied or withdrawn by the Supplier.

2.2 The Supplier shall not be liable for any loss caused as a result of any clerical, typing or other errors made in relation to any tender or quotation which error shall be subject to correction by the Supplier and the corrected tender or quotation shall apply.

2.3 Subject to clauses 2.1 and 2.2, a quotation or tender submitted by the Supplier shall remain valid for 30 days from the date of such quotation or tender.

2.4 The prices quoted by the Supplier shall only apply to the specific goods and quantities of goods specified in any quotation or tender or accepted offer.

2.5 The prices quoted by the Supplier are on the basis of information provided to it by the Buyer. The Supplier will take all care when preparing tenders or quotations but shall not be responsible for any loss associated with the same.

3. Orders and application of terms and conditions

3.1 All orders must be made in writing. Regardless of whether the Buyer has signed these terms and conditions, the Buyer will be deemed to have accepted these terms and conditions by placing an order or otherwise requesting that the Supplier supply goods to the Buyer.

3.2 Orders will be subject to approval and acceptance by the Supplier. Subject to clause 3.4, a contract is formed when the Supplier accepts an order placed by the Buyer. The Supplier can accept an order verbally, in writing or by delivery of the goods. In addition to these terms and conditions, a contract includes the terms of each order and any specifications unique to an order.

3.3 Any variation, waiver or cancellation of the Buyer's order has no effect unless agreed to in writing by the Supplier.

3.4 Despite any other provision in these terms and conditions:

- a. If the Supplier and the Buyer have entered into a contract for the supply of the goods which has been subject to effective negotiation between the parties ("**Negotiated Contract**"), the terms of that Negotiated Contract will apply and prevail over any other terms and conditions (including these terms and conditions).
- b. In the absence of a Negotiated Contract, these terms and conditions will apply and will prevail over any other terms and conditions in existence, unless otherwise agreed between the parties in writing. The Supplier will not supply the goods on any other terms and conditions unless otherwise agreed in writing, including any Buyer's terms and conditions.

3.5 The Supplier may, at its sole discretion, require the Buyer to provide a guarantee at any time. The Supplier reserves the right to not commence work on any order unless and until the fully executed guarantee has been provided by the Buyer to the Supplier.

4. Price

4.1 The price contained in the contract is based upon rates and costs as at the date of the contract or where the contract arises from a quotation or estimated price list given by the Supplier, as at the data of quotation or estimated price list of materials, transport, labour, customs duty, insurance, exchange rates and other rates and costs. The price may be increased by the amount of any increase in the cost of any such items or any other factors between the above-mentioned date and the date of delivery.

5. Taxes and Duties

5.1 Unless expressly included in any estimate or quotation given by the Supplier, sales tax, goods and services and other taxes, duties assessed or levied in connection with the supply of the goods to the Buyer are not included in the price and are the responsibility of the Buyer or, whether or not the Supplier or Buyer is liable at law, the price will be increased by the amount of such taxes or duties payable as at the delivery date.

6. Payment

6.1 Subject to any provision to the contrary in the contract, all payments for goods are due (without deduction) on the **20TH OF THE MONTH FOLLOWING** either:

- a. the date of delivery of the goods in accordance with clause 8; or
- b. the date the Supplier invoices the Buyer for the goods (time being of the essence),

whichever is the earliest. Such payment in full shall be made notwithstanding the application of clauses 9, 10, 11.

6.2 Any additional payments due by the Buyer pursuant to any of the provisions of the contract must be paid at the time provided in the contract or, if no time is provided, within 7 days of the date the Supplier invoices the Buyer (time being of the essence).

6.3 At all times, the Supplier shall be entitled to recover the value of the goods (as invoiced) as a liquidated sum from the Buyer.

6.4 If the Supplier at any time deems the creditworthiness of the Buyer to be unsatisfactory, it may reduce the Buyer's credit limit, stop credit or require security for payment. If the Supplier requires further security, it may suspend performance of its obligations under the contract until the Buyer has provided sufficient security. All costs and expenses of or incurred by the Supplier as a result of such suspension and any re-commencement are payable by the Buyer upon demand.

6.5 **The Buyer is not entitled to withhold payment or to make any deductions from the contract price without the prior written consent of the Supplier.**

6.6 All payments must be made by direct credit to the Supplier's bank account, in New Zealand dollars. However, transmission of payment into that account will not constitute payment and the Buyer remains liable for the full amount payable until the Supplier's bank acknowledges to the Supplier that the payment has been cleared.

7. Interest for Late Payment

7.1 Interest at 15% per annum calculated on a daily basis is payable on any moneys outstanding under the contract from the date payment was due until the date payment is received by the Supplier whether before or after judgment but without prejudice to the Supplier's other rights in respect of non-payment or late payment.

7.2 The Buyer is also liable to pay the Supplier a payment collection fee of \$250.00, being the Supplier's estimate of its initial costs in seeking payment from the Buyer, and any additional expenses and legal costs of the Supplier in relation to taking any steps to enforce the contract and obtaining payment if the Buyer breaches its payment obligations.

8. Delivery

8.1 Delivery is to be made at the place indicated in the contract or, if no place is indicated in the contract, delivery is to be made at the Buyer's premises. If the Buyer fails or refuses or indicates to the Supplier that it will fail or refuse to take or accept delivery, then the goods are deemed to have been delivered when the Supplier was willing to deliver them.

8.2 Where the Buyer requests a carrier other than a contracted carrier to the Supplier, the Supplier must approve the alternate carrier and the Buyer shall be responsible for the charges incurred. The Supplier reserves the right, in its reasonable discretion, to withhold such approval.

8.3 The Supplier reserves the right to deliver the goods by instalments and each instalment is deemed to be a separate contract under the same provisions as the main contract and will be invoiced separately. In such case, the contract is divisible. Should the Supplier fail to deliver or make defective delivery of one or more instalments this shall not entitle the Buyer to repudiate the main contract.

8.4 Goods provided under any contract may be invoiced on a progressive basis. In such cases the contract is divisible. Each delivery made under such contract will be deemed to arise from a separate contract and will be separately invoiced. Each invoice for goods delivered will be payable in full in accordance with the payment terms of these terms and conditions of sale without reference to and despite any defect or default in the delivery of any other goods.

8.5 Without prejudice to any other rights and remedies which it may have, the Supplier may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery at the time specified in the contract or at any other times as the Supplier is able to deliver the goods.

8.6 The Supplier will use its best endeavours to deliver the goods on or before the estimated delivery date but time of delivery shall not be of the essence and the Supplier will have no liability to the Buyer if there is a delay whatsoever.

9. Inspection

9 The Buyer must inspect the goods within 2 days of the date of delivery, and inform the Supplier of any shortfall or damage to the goods otherwise the Buyer will be deemed to have accepted the goods as complying to its order and the Supplier will be under no liability to the Buyer.

9.2 In respect of any shortfall the Supplier's liability to the Buyer is limited to making up that shortfall.

9.3 In respect of any damage to the goods, the Supplier's liability to the Buyer is limited to either replacing the goods or (at its discretion and if the goods are capable of repair) repairing them.

10. Returns Policy

10 The Supplier is not obliged to accept the return of any goods for credit. Goods may only be returned for credit upon the prior written agreement of the Supplier. In all such cases, the original invoice or delivery docket must be quoted by the Buyer.

10.2 Non-standard goods or goods specifically ordered by the Supplier for the Buyer will not be accepted for credit.

10.3 All goods returned for credit must be in their original packaging and in a completely resaleable condition.

10.4 The Supplier reserves the right to charge a restocking fee on goods accepted for credit.

11. Warranties

11.1 Subject to clause 11.2, if a defect in or failure of any goods delivered occurs within one year from the date of delivery (or any extended warranty period, provided the extended warranty period is agreed in writing with the Supplier and in all cases will only apply to the specific order) so that those goods are not of merchantable quality, and this defect or failure has not resulted from any action or inaction of the Buyer or its employees, agents, customers or other third parties, the Supplier at its option will:

- a. Repair those goods so that they are of merchantable quality; or
- b. Replace the volume or number of goods affected; or
- c. Refund the amount paid on account of the contract price in respect of the volume or number affected.

11.2 The warranty referred to in clause 11.1 applies only to the said failed component and does not apply to any other aspect or entire fixture or device, including installation, freight, labour, lamps. That warranty is only available where the goods have been installed by a suitably qualified person according to the manufacturer's instructions. The Supplier reserves the right to inspect goods subject to a warranty claim (including at the place of installation for which access shall be granted by the

- Buyer) and the final decision as to acceptance of any warranty claim rests with the Supplier.
- 11.3 Any warranty is also conditional upon payment for the goods having been received in accordance with the payment terms of these Conditions of Sale.
12. **Risk**
- 12.1 Risk of any loss, damage or deterioration of or to the goods is to be borne by the Buyer from the date of delivery of the goods.
13. **Retention of Title**
- 13.1 The legal and equitable ownership of the goods supplied will remain with the Supplier until payment has been made in full of the contract price for the goods, and of all moneys for the time being due and owing to the Supplier.
- 13.2 If the goods have been mixed with or incorporated into other goods or products so that it is impossible or impracticable to remove the goods supplied then the Supplier will be co-owner of the mixed goods or new products in proportion to the contribution calculated by reference to the price of the Supplier's goods to the mixed goods or new products.
- 13.3 If the Buyer resells the goods, regardless of any period of credit, before payment is made of all sums owing (or payment simply incorporating those goods) to the Supplier, then:
- As between the Buyer and its purchaser, the Buyer is a principal and not the agent of the Supplier.
 - The Buyer will pay all proceeds of sale of the goods to its account with the Supplier, and the Buyer will pay or deal with the proceeds in accordance with any directions given by the Supplier. This will occur whether the account is in credit or debit at the relevant time.
 - Until the Buyer accounts to the Supplier, the proceeds of sale are deemed to be held by the Buyer in trust for the Supplier.
 - The Supplier is entitled to demand that the Buyer exercise all of its available rights to enforce payment by the person or persons to whom the goods have been or will be sold or supplied. However, that will not affect any other rights and remedies of the Supplier as against the Buyer.
- 13.4 If default is made in the payment of the contract price of the goods or of the other money referred to, the Supplier may repossess the goods and dispose of them as it sees fit, may stop any further deliveries, and may cancel any contract with the Buyer. For the purposes of repossession the Supplier and its agents are irrevocably authorised to enter any premises of the Buyer or any third party and the Buyer agrees to indemnify the Supplier and its agents for any liability arising from any act or trespass committed by such entry. If before or after default the goods are incorporated in other goods, but in either case remain identifiable and can be removed (with or without damage to the goods or other things) the Supplier's right of removal shall not be extinguished by their being so incorporated or attached.
- 13.5 The Buyer will store the goods, until payment or their resale, in such a way as clearly to indicate that they are the Supplier's goods.
14. **Drawings and Materials Supplied by Supplier**
- 14.1 All drawings and ideas (whether verbal, written, electronic or drawn) provided by the Supplier to the Buyer (whether for consideration or not) remain the intellectual property of the Supplier and the Supplier holds copyright therein.
- 14.2 The Buyer may only use the drawings and ideas for the express purpose permitted by the Supplier. Such drawings and ideas remain the confidential information of the Supplier and the Buyer shall not provide the same to the third parties, nor shall it adapt or attempt to adapt the drawings or ideas for use with alternative goods or products without the Supplier's express written approval.
- 14.3 The Supplier reserves the right to charge the Buyer for the drawings or ideas at current market rates, at the Supplier's discretion.
- 14.4 The Supplier shall not be liable to the Buyer for any error or omission contained within the said drawings or ideas.
15. **Delay**
- 15.1 If the supply or delivery of the goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Supplier may, without prejudice to its other right and remedies, require payment by the Buyer of such portion of the contract price as represents the extent to which the Supplier has performed the contract up to the date such payment is required together with any expenses or additional costs incurred by the Supplier as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Supplier may, without prejudice to its other remedies, terminate the contract.
16. **Force majeure**
- 16.1 Neither party shall be liable to the other party, or be deemed to be in breach of this agreement, as a result of any delay or failure to perform its obligations due to any force majeure event, provide that it:
- takes all reasonable steps to perform its obligations and/or alleviate the delay; and
 - provides written notice of the nature and extent of the force majeure event and the likely delay to the other party as soon as reasonably practicable.
17. **Exclusion of Warranty & Liability**
- 17.1 Except as expressly set out in this document, all representations, conditions and warranties (express or implied) applying between the Supplier and the Buyer, whether statutory or otherwise are excluded as far as the law allows.
- 17.2 The entire liability of the Supplier to the Buyer, or any other person, whether statutory, contractual, tortious or otherwise, is limited to the cost of repair or replacement of the goods, with such remedy being at the option of the Supplier.
- 17.3 In the event that the goods or any of their components are not manufactured by the Supplier, then the foregoing warranty does not apply to such goods components as are not manufactured by the Supplier and no warranties are given by the Supplier in respect of such goods or components, in the case where the manufacturer or supplier of any such goods or components provides any warranty, then the Supplier (to the extent that it is able to do so) will make such warranty available to the Buyer.
18. **Default**
- 18.1 If the Buyer defaults in the due payment of any moneys payable to the Supplier under the contract or if the Buyer commits any act of bankruptcy, enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be placed into liquidation or have a receiver appointed over its property, the Supplier, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the contract, and payment for the goods delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder will immediately become due and payable.
- 18.2 The Buyer shall be liable for and shall pay all costs (including legal

costs on a solicitor-client basis and collection costs) and other expenses of and incidental to the enforcement or attempted enforcement of the Supplier's rights, remedies and powers under this contract.

19. **Contract**

19.1 The items contained in the Supplier's confirmation of order (where the contract arises from an order by the Buyer) together with these terms and conditions are the conditions of the contract.

19.2 The Buyer acknowledges and agrees that in the case of any conflict between an order submitted by the Buyer and the Supplier's confirmation of order and these terms and conditions, the Suppliers confirmation of order and these terms and conditions prevail.

20. **Waiver**

20.1 All the original rights, powers, exemptions and remedies of the Supplier remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.

20.2 The Supplier is not deemed to have waived any condition unless such waiver is in writing under signature of the Supplier or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.

21. **No Assignment**

21.1 The Buyer may not assign all or any of the Buyer's rights or obligations under the contract without the prior written consent of the Supplier.

22. **Law and Jurisdiction**

22.1 The contract in all respects is deemed to be a contract made in New Zealand and is governed exclusively by New Zealand law.

23. **Consumer Guarantees Act 1993**

23.1 If the Buyer is acquiring the goods for the purposes of a business, the parties acknowledge and agree that, pursuant to sections 2 and 43(2) of the Consumer Guarantees Act 1993 ("CGA"), the Buyer is acquiring the goods for the purposes of a business and accordingly the CGA will not apply.

24. **Privacy Act 2020**

24.1 The Buyer consents to the Supplier's collection, use and disclosure of the Buyer's personal information for purposes in connection with the Supplier's provision of the goods including, but not limited to, carrying out credit checks on the Buyer with a credit reporting agency. The Supplier will comply with its obligations under the Privacy Act 2020 in respect of its collection, use and disclosure of the Buyer's personal information.

I / We have read, understood and agree to be bound by these terms and conditions of sale which includes Page 1 and Page 2 as amended from time to time and are authorised to sign on behalf of the Buyer.

Buyer:

Signed on behalf of the Buyer:

Print Name:

Position:

Date:

____/____/____