

TERMS OF TRADING

LUCIAN ARCHITECTURAL LIGHTING**TERMS OF TRADING****ABN: 47 639 378 439****DEFINITIONS**

"Agreement" means this agreement, which applies between the Supplier and the Customer whenever the Supplier supplies Goods or other services to the Customer.

"Claim" includes any actions, liabilities, suits, causes of action, proceedings, arbitrations, accounts, rights, entitlements, obligations, interests (whether legal or equitable), demands, costs and expenses, whether currently known or not and whether presently in existence or arising in the future.

"Consumer Law" means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

"Customer" refers to the person or company that engages the services of Lucian Architectural Lighting Pty Ltd.

"Force Majeure Event":

- (i) Means any circumstance or delay beyond the reasonable control of a party which prevents that party from performing or carrying out any obligation under this Agreement, either indefinitely or within the time required in this Agreement; and
- (ii) Includes any circumstance or delay arising out of any industrial action, fire, war, terrorist act, explosion, civil commotion, change of government, malicious damage, storm, flood, tempest, earthquake, tidal wave or legal enactment.

"Goods" means those items that the Supplier sells to the customer, including architectural lighting Luminaires.

"Intellectual Property" means all rights in relation to all intellectual property throughout the world (whether registered or unregistered), including but not limited to:

- (i) Copyright, designs, formulas and processes (whether registrable);
- (ii) Rights in respect of inventions (whether patentable);
- (iii) Business names and trademarks (whether registrable);
- (iv) Domain names and websites;

- (v) Databases;
- (vi) Confidential Information; and
- (vii) Know-how,
- (viii) Any other rights relating to: "literary, artistic and scientific works; performances of performing artists, phonograms and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields" as adopted by the Convention Establishing the World Intellectual Property Organisation (14 July 1967, art 2, para viii) (the WIPO Agreement),

together with the right to apply for and be granted registration, if registration is required or available to reflect or protect those rights.

"Insolvent" means when an entity (including an individual or corporation):

- (i) Commits an act of bankruptcy;
- (ii) Becomes insolvent;
- (iii) Enters any scheme of receivership or administration;
- (iv) Goes into liquidation;
- (v) Makes a voluntary or involuntary assignment of a substantial portion of their assets; or
- (vi) Is subject to an application for winding up or bankruptcy that is not reasonably substantiated as frivolous or vexatious within 10 business days.

"Order" means the specific order for Goods submitted by the Customer to the Supplier.

"Order Date" means the date that the Order has been either explicitly submitting or requested by the Customer in writing or orally (or by some other method), or otherwise the date on which the deemed submitting of the Order takes place under clause 8.

"Parties" collectively, the Supplier and the Customer.

"Supplier" means Lucian Architectural Lighting Pty Ltd.

TERMS OF TRADING

SUBSTANTIVE PROVISIONS**Acceptance of Terms:**

1. These Terms of Trading are binding on the Customer, if:
 - a. The Customer signs and returns these Terms of Trading;
 - b. The Customer otherwise makes clear in writing, orally or by conduct that the Terms of Trading are accepted; or
 - c. After receiving the Terms of Trading from the Supplier (either in hard copy or a link to access via soft copy), the Customer accepts a quotation or places an Order for Goods from the Supplier.

Supply of the Goods

2. The Supplier agrees to supply the Goods to the Customer in accordance with these Terms of Trading.
3. The Supplier will quote its pricing for the Goods to the Customer in accordance with clause 7.
4. The Customer agrees to make payment for the Goods in accordance with clause 16.
5. The Supplier will deliver the Goods to the Customer in accordance with clause 24.
6. The Supplier will provide warranties in relation to the supply of the Goods as set out in clause 49.

Quotation and pricing

7. The Supplier will provide a quotation to the Customer for the supply of the Goods within a reasonable time of a request from the Customer (the **Quotation**) unless the Supplier is not able to do so for any reason.
8. When the Customer accepts a Quotation this will be considered to be submitting an Order to the Supplier for the relevant Goods for the purposes of clause 16 (which relates to payment).
9. The Customer accepts that the Supplier is under no obligation to provide any Goods until the Customer accepts a Quotation of the Goods provided by the Supplier.

10. For the avoidance of doubt, a Quotation is the Supplier's best attempt to provide pricing for the Goods but the Supplier is not at any time legally bound to provide the Goods for that Quotation.
11. Despite clause 9, the Supplier may decide to provide Goods at its absolute discretion even if the Customer has not clearly accepted a Quotation.
12. Subject to clause 13, any Quotation provided by the Supplier is valid for thirty (30) days from the date it is provided to the Customer, unless otherwise specified by the Supplier (whether in writing or by some other method) (the **Quote Date**).
13. The Customer acknowledges and agrees that, although the Supplier will do its best to provide as accurate a quotation as possible, the Supplier may vary the price of the Goods subject to the quotation by providing written notice to the Customer, if:
 - a. the supply of the quoted Goods does not commence within thirty (30) days of the Customer's acceptance of the Quotation;
 - b. there is an increase in the rates of labour or the costs of materials between the Quote Date and the date of completion for the Order;
 - c. the supply of the Goods and/or the installation of the Goods is suspended or delayed as a result of instructions or lack of instructions from the Customer or its representatives; or
 - d. some other event happens over which the Supplier has no reasonable control (including currency exchange rates) which is reasonably likely to have a material impact on the cost and ability of the Supplier to supply the Goods as originally intended.
14. A variation in the pricing of Goods by the Supplier under clause 13 may be done at the discretion of the Supplier acting reasonably.
15. Any Quotation or other pricing is strictly **exclusive of GST** and any other duty or tax that may be payable unless specifically stated by the Supplier in writing. When and where applicable these additional

TERMS OF TRADING

amounts will be charged to the Customer separately.

Payment by Customer

16. Subject to clause 17, the Customer must make payment for the Goods on the following basis:
 - a. 50% paid immediately upon submitting the Order for the Goods to the Supplier; and
 - b. The remaining 50% when the Supplier notifies the Customer that the relevant Goods and materials have been sourced by its manufacturer or wholesaler.
17. The Supplier may decide at its absolute discretion to provide a 'credit account' to the Customer in which these standard payment terms in clause 16 are varied. A 'credit account' under this clause 17 will only apply if the Supplier has specifically confirmed it in writing to the Customer.
18. The Customer may not withhold any payment due to the Supplier for any reason including a dispute or Claim raised by the Customer.
19. The Supplier has no obligation to supply any Goods to the Customer in cases where:
 - a. the Customer does not pay any amount under this Agreement by its due date; and/or
 - b. the Customer becomes Insolvent.

Cancellations

20. An Order cannot be cancelled unless the cancellation is otherwise specifically agreed in writing by the Supplier.
21. Subject to clause 22, in the case of a valid cancellation under clause then the Customer is not required to make any payment, and any payment already made by the Customer will be refunded by the Supplier within 14 days.
22. Notwithstanding any cancellation the Customer must pay the Supplier in full for any Goods which were especially procured for it, imported, manufactured, customised or custom ordered or made to order at the Customer's request or of a

particular nature not normally stocked by the Supplier.

23. The Supplier reserves the right to cancel any Orders or balance of Orders in the event of any failure on the Customer adhering to these Terms of Trading.

Delivery of Goods

24. The Supplier will supply the Goods to the Customer in accordance with clauses 25 to 28 (inclusive).
25. Delivery of the Goods by the Supplier will take place at a location reasonably specified by the Customer within Australia.
26. The Supplier will provide an estimated time until delivery. While every effort will be by the Supplier to adhere to the required delivery times the Supplier is not liable for any failure to procure or deliver, or for any delay in procurement or delivery of Goods, to the Customer for any reason whatsoever.
27. Where the Customer requests delivery to any site including the Customer's premises, the Supplier will deliver the Goods to that location. If the location is unattended at the time of delivery, the Supplier will not be responsible for any damage to or loss of the Goods how ever it arises.
28. Notwithstanding anything to the contrary contained in this Agreement, risk in the Goods passes to the Customer from the earlier of:
 - a. receipt of delivery to the Customer; or
 - b. the time the Goods are delivered to a carrier or other bailee (whether named by the Customer or not) for transportation to the Customer or the goods being within the customers control or direction.

Return of Goods

29. Goods may only be returned by the Customer upon the prior written consent of the Supplier.
30. The Supplier is not liable for any expenses in relation to the Customer's return of the Goods, unless otherwise agreed by the Supplier.

TERMS OF TRADING

Claims by Customer

31. If the Supplier, within 5 days do not receive in a manner of formal writing from the Customer, that in their view, the Goods are not in accordance with the Agreement with these terms then the Supplier is not liable for any Claim relating to the Goods.
32. Any Claim against the Supplier for damage or short delivery of Goods must be served on the Supplier within five (5) working days of delivery and in the case of damage, Goods must be safely stored and made available for inspection by the Supplier.
33. Any Claim as above must advise the Supplier of the following details:
 - a. Quote or Order reference
 - b. The date the Goods were delivered
 - c. The carrier's name (if not the Supplier)
 - d. The condition of delivered Goods and alleged; and
 - e. Extent of damage or shortage.
34. The Purchaser will be deemed to have waived any Claim for damage or short delivery not complying strictly and in every respect with the foregoing procedure.
35. Any and all of the Goods ordered in excess or error cannot not be returned, be refunded, credited or changed for other goods unless by specific written agreement given by the Supplier.
36. In the event that the Supplier agrees in writing to issue a credit note, this will involve a restocking fee of 50% of the agreed price. In these circumstances, the Goods will only be accepted for return if returned in their original packaging, saleable condition, and received at the Supplier's warehouse within 14 days from the date of delivery, quoting invoice number and date of receipt. The Customer must prepay for freight on any authorised returns.
37. In the unlikely event of an over delivery in quantity of the Goods. The customer must accept their order quantity and may reject the remainder of the delivery.

Retention of title

38. All rights set out in clauses 39 to 45 (inclusive) are subject to the *Personal Property Securities Act 2009* (Cth) (the **PPSA**) to the extent this Agreement is unable to override or replace provisions of the PPSA.
39. Until payment in full has been made to the Supplier, the Customer will hold the Goods in a fiduciary capacity for the Supplier and agrees to retain the Goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
40. If the Customer sells the goods in the ordinary course of its business and has not made full payment for the goods to the Supplier, the Customer is deemed to be selling as agent and bailee for the Supplier and the proceeds of sale of the Goods will be held on trust for the Supplier absolutely, and recoverable by the Supplier upon request.
41. The Customer's indebtedness to the Supplier, whether in full or part, will not be discharged by the operation of clause 40, unless and until the funds held on trust are remitted to the Supplier.
42. The Customer agrees that whilst property and title in the Goods remain with the Supplier, the Supplier, has the right, with prior notice to the Customer, to enter upon any premises by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect and repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue.
43. The Customer will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 42.
44. The Customer agrees that where the Goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable license to the Supplier to do all things necessary to sell the Goods bearing the name or trademark of the Customer.

TERMS OF TRADING

45. For avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

are not exposed to any unintended mechanical and/or chemical stresses during their supply or installation as required.

Indemnity and release

46. The Customer agrees to indemnify and keep indemnified the Supplier against any Claim that arises out of the Goods and services supplied under this agreement. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.
47. The Customer agrees to indemnify and keep indemnified the Supplier from any damages, costs, liabilities or penalties, which the Supplier may suffer or incur from the Customer's failure to pay to the Supplier all sums outstanding from the Customer to the Supplier.
48. All costs (including but not limited to legal costs on a full indemnity basis) incurred by the Supplier in order to obtain payment from the Customer or endeavoring to trace the whereabouts of the Goods or obtaining or endeavoring to obtain possession thereof, whether by action or suit or otherwise, and all other repossession, transport, storage, sale and like expenses will be recoverable by the Supplier from the Customer in addition to, and without prejudice to, the Supplier's other rights under this Agreement.

Customer obligations

50. The warranties provided by the Supplier will not apply to the Goods unless the Customer complies with each of the following:
- The Goods are used in conformity with the stated product and usage specifications (particularly according to the specification sheet, product brochure, product label and the like).
 - Services such as software upgrades or added functionality in relation to the Goods, have been performed exclusively by the manufacturer or third party named by the manufacturer;
 - The Goods must only be used within the acceptable limits for temperatures and voltages according to the relevant technical and product-specific standards indicated are not exceeded.
 - Any maintenance and repair services on the Goods have been performed subject to clause 51 and exclusively in accordance with the manufacturer's specifications.

Supplier Warranties

49. The Supplier provides the following warranties in relation to its supply of the Goods:
- The Supplier will undertake all reasonable care to ensure that all the Goods are to be free from defects in workmanship and materials provided the luminaires are installed correctly by a licensed electrician in accordance with the relevant Australian standard.
 - All the Goods are to be installed correctly by the Supplier or its agents taking reasonable care and following a reasonable interpretation of the installation instructions provided by the manufacturer and the fittings have not been subjected to misuse.
 - The Supplier will undertake all reasonable care to ensure the Goods

51. Any warranty provided by the Supplier under this Agreement expires immediately if the Customer or third parties make or perform changes, repairs, service work or troubleshooting to the Goods without the prior written consent of the Supplier.
52. Subject to the Consumer Law, damaged or lost orders must be reported within five (5) days of delivery to qualify for replacement or refund. Replacement of damaged or lost items not reported within the specified timeframe will be made at the discretion of the Supplier.
53. The warranty exclusively covers product failures that are caused by proven material, design or manufacturing flaws and exceeds the mean nominal failure rate. In the case of controllers or components such as LED modules, the mean nominal failure rate is 0.2%/1000 hours of operation, unless the median nominal service life and nominal failure

TERMS OF TRADING

rate of the controllers or components are otherwise defined in the product and usage specifications (particularly according to the specification sheet, product brochure and the like).

Limit on Supplier Warranties

54. The Supplier only provides warranties in relation to the Goods and any services in accordance with this Agreement.
55. The terms of any warranty provided by the Supplier under this Agreement will prevail over and supersede any other representations, negotiations, agreements and communications, whether oral or written, between the Parties regarding its subject matter.
56. Any warranty for a specific item of the Goods is only provided by the Supplier up to a maximum period of the warranty period provided by the original manufacturer for the relevant Good and/or its related materials.
57. The liability of the Supplier under this warranty is limited to making all necessary replacements of faulty component parts of luminaires during the warranty period without charge provided the Customer returns the relevant Goods to the Supplier's nominated address at that time.
58. The Supplier reserves the right to carry out rectification at its discretion and place of choice if a repair is reasonably requested by the Customer.
59. The Supplier will not be liable for charges incurred by the Customer for rectification of the Goods during either the installation period or the maintenance period unless the Supplier has previously approved the charges in writing.

General limitation of liability

60. The Supplier also excludes its liability for negligence and limits its liability for any breach of these Terms of Trading to the price of the Goods or services supplied.
61. The Supplier will not be liable for any economic or financial loss or damage, nor for any consequential or indirect loss or damage, directly or indirectly caused by the Supplier or its goods or services.

62. Any recommendation, service, advice or information provided by the Supplier, its employees, contractors or agents regarding the goods sold and their use will not be construed as contractual guarantees, warranties or conditions and is provided to the customer at the customer's own risk.
63. To the extent permitted by the laws governing these Terms of Trading, all guarantees, conditions or warranties expressed or implied by statute, the common law, equity, trade, custom, use or otherwise are expressly excluded by the Supplier.
64. The Supplier shall not be liable for any injury, loss or damage to persons or to property (including injury, loss or damage caused by or attributable to the negligence of the Supplier, its officers, servants and agents) arising out of or in any way as a consequence of work performed or Goods supplied by the Supplier under this Agreement.
65. All warranties, conditions or statements as to the service and/or maintenance of the Goods supplied by the Supplier and spare or replacement parts therefore whether express or implied and whether as to condition description, merchantable quality, fitness for any purpose or any particular purpose or otherwise are hereby expressly excluded including any statutory warranties and conditions permitted by law.
66. The Supplier is not liable for and has no responsibility whatsoever for any consequential loss or damage arising out of or in any way as a consequence of work performed or the Goods supplied by the Supplier (including financial loss or damage and including loss of profits) under this Agreement whether suffered directly or indirectly by the person accepting the Customer or any other person as a result of or as a consequence of any negligent or defective manufacture and/or service and/or maintenance of the Goods supplied by the Supplier or its agents or of any spare or replacement parts for those Goods.

TERMS OF TRADING

GENERAL PROVISIONS**Entire Agreement**

67. Subject to clause 69, this Agreement:
- a. Constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement; and
 - b. Supersedes all prior negotiations, understandings, agreements, representations, warranties and correspondence prior to the execution of this Agreement, which now cease to have any force or effect.
68. Each of the Parties undertakes and acknowledges that they are not relying on any representations or warranties made prior to this Agreement in entering into this Agreement.
69. Clause 67 is in all respects subject to the operation of the Consumer Law, and does not apply to the extent of any statutory representations or warranties arising under the Consumer Law that cannot be excluded by contract.

Force Majeure

70. If a Force Majeure Event happens then the Supplier will be entitled either to rescind this Agreement (without being liable for damages) or to extend delivery or time for performance by a reasonable period of not less than the duration of such event and the Supplier will have no liability under any contract, including liability for damages whether specified or otherwise.

Intellectual Property

71. Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
72. Under no circumstances will the Customer take any ownership interest or right as licensee in the Supplier's Intellectual Property, and the Supplier reserves all of

its rights in respect of the Supplier's Intellectual Property.

73. The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or similar material and information which the Supplier has created for the Customer.

Severance of invalid provisions

74. If any provision of this Agreement (or part of a provision) is deemed or held to be illegal, invalid or unenforceable (an **Invalid Part**):
- a. This Agreement is to be considered divisible and inoperative to the extent of the Invalid Part. In all other respects, this Agreement remains in full force and effect; and
 - b. There must be added automatically a provision as similar as possible to the Invalid Part which is legal, valid and enforceable.
75. Should any provision contained in this Agreement ever be reformed or rewritten by a judicial body of competent jurisdiction, the provision so reformed or rewritten is legally binding on all the Parties.

Amendment

76. No variation of or addition to this Agreement will be binding unless the variation is in writing and is authorized by both Parties.

Late payment and Interest

77. All sums due by the Customer to the Supplier which are not paid on the due date bear interest from day to day (and accrued monthly) at the annual rate of 4% above the current indicated target cash rate set by the Reserve Bank of Australia from time to time, with a minimum of 8% per annum. This obligation is without prejudice to the rights of the parties under this Agreement.
78. In addition to interest under clause 77, if the Supplier has to recover any debt owed by the Customer by engaging a debt collection agency then the Supplier reserves the right to charge an additional

TERMS OF TRADING

fee up to 18% fee (plus GST) for the amount of the debt.

Notice

79. Any notice or other notification required to be given under this Agreement must be in writing and will be deemed duly served by either party as follows:
- a. If sent by post, the notice will be deemed duly served three (3) days after it is mailed (either by registered mail or security post) to the other party's last known business address; or
 - b. If sent by email, the notice will be deemed duly served one (1) day after transmission by email to the other party's last known email address.

Goods and services tax (GST)

80. If, pursuant to or in connection with this Agreement, any payment or other consideration is to be made or furnished by the Supplier to a person other than the Customer, then the Supplier may require an additional amount to be payable by the customer by reference to (or as a result of any increase in the rate of) any GST and the Customer must pay to the Supplier on demand an amount equal to that increase or the value of that addition.
81. Where the Supplier has become subject to any penalties or interest as a result of late payment of GST, where that late payment is a result of the failure of the Customer to comply with this Agreement, then the Customer indemnifies the Supplier for those costs.

Disclosures

82. The Supplier may disclose any personal information in its possession relating to the Customer to any credit reporting agency or similar body, for the purpose of assessing the Customer's creditworthiness. The Customer consents to such disclosure, and also consents to the Supplier receiving information from credit reporting agencies or similar bodies regarding the Customer's commercial activities or creditworthiness.

General

83. Any reference to 'dollars' and '\$' is to Australian currency.

Governing Law

84. This Agreement is governed by the laws in force in New South Wales from time to time. The parties agree to submit to the jurisdiction of the courts of New South Wales.

SIGNATURE AND DECLARATION

I, being the Customer or an authorised representative of the Customer, have read and understand these terms and conditions and agree to abide by them until such time as this Agreement is terminated by either party.

Signature.....

Name.....

Date.....