

## **GENERAL CONDITIONS OF SALE**

### **1. INTERPRETATION**

#### 1.1. In these Conditions:

- 1.1.1. Australian Consumer Law means the law as set out in Schedule 2 of the Competition and Consumer Act 2010;
- 1.1.2. Company means Gerard Lighting Pty Limited (ABN 71 115 184 999);
- 1.1.3. Contract means any contract for the sale and purchase of the Goods evidenced by acceptance of any order from the Customer by the Company, which contract will incorporate the provisions of this TTA;
- 1.1.4. Customer means the purchaser of any goods from the Company;
- 1.1.5. Consumer means a "consumer" as that term is defined in Section 3 of the Australian Consumer Law;
- 1.1.6. Consumer Contract means a contract for the purchase of Goods by the Customer as a Consumer;
- 1.1.7. Consumer Guarantees means the guarantees under the Australian Consumer Law;
- 1.1.8. Goods mean any products purchased by the Customer from the Company from time to time including any components of such products;
- 1.1.9. Owner has the meaning set out in clause 7.4;
- 1.1.10. Gerard Lighting Warranty means the warranty given by the Company in clauses 7 and 8;
- 1.1.11. PPSA means the Personal Property Securities Act 2009;
- 1.1.12. any expressions defined in the A New Tax System (Goods and Services Tax Act) 1999 has the meaning given to it in that Act.

1.2. Nothing in these Conditions excludes, restricts or modifies any conditions, warranty, guarantee, right or remedy implied by law (including under the Competition and Consumer Act 2010) except to the extent permitted by law.

### **2. APPLICATION**

- 2.1. These Conditions apply to all orders placed with the Company as from the Start Date on page 1 and the Customer is deemed to have read and agreed to these conditions prior to the placing of any order for the Goods.
- 2.2. These Conditions prevail over all inconsistent conditions or documents issued or made by the Customer, unless the Company expressly agrees otherwise in writing.
- 2.3. The Company reserves the right to vary these Conditions with effect from the date of notification of such variations to its customers.

### **3. SHORTAGES AND TRANSIT DAMAGE, ETC**

The Customer waives any claim for shortage of any Goods delivered or for any damage caused to the Goods prior to and while in transit to the Customer, if a claim is not lodged with the Company within seven days from the date of receipt of the Goods by the Customer.

### **4. SPECIFICATIONS, DRAWINGS, ETC**

Without limiting any rights of the Customer under the Australian Consumer Law, all specifications, drawings, data and particulars regarding the Goods provided by the Company are approximate only and the Customer waives any claim for failure of the Goods to conform to such specifications, drawings, data or other material. The Customer acknowledges that the Company may quote and take orders based on specifications, drawings, data and plans provided by the Customer ("**Customer Specifications**"). The Company is under no obligation to vary or cancel orders or reduce order quantities if Customer Specifications change.

### **5. DELIVERY OF GOODS**

- 5.1. Any delivery times advised by the Company to the Customer are estimates only and not of the essence. The Company is not liable for late delivery or non-delivery.
- 5.2. Except as set out in clause 19:
  - 5.2.1. no delay in delivery or despatch of the Goods shall relieve the Customer of its obligations to accept or pay for the Goods;

- 5.2.2. The Company reserves the right to deliver by portion and delivery by portion shall not entitle the Customer to repudiate the Contract.
- 5.3. Delivery will be taken to have occurred when the Goods are off-loaded at the Customer's premises or at such other delivery address as may be specified by the Customer or, where Goods are collected from the Company, upon collection by the Customer or the Customer's agent.
- 5.4. If the Company in its absolute discretion agrees to deliver the Goods to a delivery address specified by the Customer which is not the address of the Customer's premises, then the Customer must ensure that someone is present at the delivery address to unload and verify delivery of the Goods, otherwise the Company may in its discretion unload the Goods and leave them at the premises in which case the Goods will be deemed delivered, or the Company may retain the Goods and the Customer will be liable for any costs incurred including freight and holding charges.

## **6. RISK**

All Goods are at the risk of the Customer after delivery in accordance with clause 5.3.

## **7. Gerard Lighting WARRANTY**

- 7.1. Nothing in this clause 7 affects any person's rights under the Australian Consumer Law. The benefits to any person under the Gerard lighting Warranty are in addition to the rights and remedies available under any Consumer Guarantees.
- 7.2. If the Company is not the actual or the deemed manufacturer of the Goods (other than lamps) under the Australian Consumer Law, then the warranty of the actual manufacturer of the Goods is the only warranty given to any person in respect of the Goods and the Gerard Lighting Warranty in this clause 7 does not apply.
- 7.3. Subject to the other subclauses of this clause 7 and to clause 8, the Company warrants that the Goods will be free of manufacturing defects and will perform to the Company's specifications subject to the following clauses.
- 7.4. The benefit of the Gerard Lighting Warranty extends only to the owner of the property in which the Goods are installed (Owner) for the duration of the relevant Warranty Period under clause 7.5.
- 7.5. The Gerard Lighting Warranty commences on the date of purchase of the Goods and continues for the benefit of the Owner until the expiry of the following period (Warranty Period) according to the nature of the relevant Goods:
- 7.5.1. For lamps of any kind the expiry of one (1) year after the date of purchase or the expiry of the manufacturer's rated average lamp life whichever first occurs;
- 7.5.2. For all luminaire products the expiry of one (1) year after the date of purchase, unless specifically nominated otherwise in the installation and warranty instructions.
- 7.6. If within the Warranty Period a manufacturing defect is discovered in the Goods or the Goods fail to perform to the Company's specifications as a result of some defect in material or workmanship then the Company will, at its option, repair the Goods, or supply replacement Goods free of charge, or issue a credit note for the Goods.
- 7.7. The Gerard Lighting Warranty will not apply to Goods:
- 7.7.1. installed by any person other than a qualified tradesperson; or
- 7.7.2. subjected to misuse, neglect, negligence or accidental damage; or
- 7.7.3. operated, installed or maintained in any way contrary to any operating or maintenance instructions; or
- 7.7.4. altered or modified prior to or after installation.
- 7.8. The Gerard Lighting Warranty does not apply to faulty or defective design of Goods unless the Company has designed the Goods and the Company expressly accepts responsibility for such design in writing.

The Australian Consumer Law requires the inclusion of the following statement with the Gerard Lighting Warranty in any Consumer Contract:

*Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.*

## **8. CLAIMING UNDER THE Gerard Lighting WARRANTY**

- 8.1. In order to make a claim under the Gerard Lighting Warranty, the Owner must:

8.1.1. Contact the Company to obtain a Returned Goods Authorisation Number for the Goods and to be notified of the Company's return address for the Goods by:

8.1.1.1. Calling Gerard Lighting 1300 556 765; or

8.1.1.2. Faxing to the attention of the applicable Gerard Lighting on 02 9708 5285

8.1.1.3. Emailing to; [aftersales@gerardlighting.com.au](mailto:aftersales@gerardlighting.com.au)

8.1.2. Unless waived by the Company in its discretion, return the Goods to the return address notified by the Company as noted on the RGA together with all accessories, instructions, specifications or other material supplied with the Goods and a notice in writing:

8.1.2.1. Stating the Returned Goods Authorisation Number for the Goods;

8.1.2.2. describing in detail the defect or fault in the Goods;

8.1.2.3. setting out the Owner's contact details (including postal address, email address and telephone numbers at which the Owner can be contacted during usual business hours).

8.2. The Company will examine any returned Goods and if the Company determines that they are defective through no fault of the Owner and are otherwise undamaged, the Company will repair or replace or issue a credit note for the Goods in accordance with the Gerard lighting Warranty.

8.3. The Company will not accept any returned Goods which have not been returned strictly in accordance with the Gerard Lighting Warranty.

8.4. The Company will notify the Owner whether it accepts the return of any defective Goods within a reasonable time of return.

8.5. The Owner will be responsible for all costs of returning Goods to the Company and for redelivery of the Goods (whether original or repaired and/or replacement Goods) by the Company and any other expenses of the Owner in claiming under the Gerard Lighting Warranty.

8.6. The Company will not be responsible for any loss or damage to the Goods occurring while the Goods are in transit (either on return to the Company or upon redelivery to the Owner of the original or repaired and/or replacement Goods).

## **9. GENERAL LIMITATION ON LIABILITY**

9.1. This clause 9 does not apply to Consumer Contracts.

9.2. The Company makes no guarantee, warranty or representation as to the quality, performance, specifications and fitness for purpose or otherwise of any Goods unless expressed in writing in this TTA except to the extent that such liability cannot be lawfully excluded. Without limiting the foregoing, any drawings, specifications or performance characteristics provided in connection with any Goods are approximate only and the Company disclaims all liability if the Goods fail to meet those drawings, specifications or characteristics.

9.3. The Company's liability for breach of any Contract or any other loss or damage suffered by the Customer in relation to Goods which by force of law cannot be excluded is limited at the option of the Company to repairing or replacing the relevant Goods, or paying the cost of repairing or replacing the relevant Goods.

9.4. The Company is not liable in tort for any loss or damage suffered by the Customer or by any third party in connection with the supply of any Goods.

9.5. In no circumstance is the Company liable to the Customer or to any third party for any loss of profits, loss of anticipated savings, economic loss or interruption of business or for any indirect or consequential loss (Consequential Loss) arising out of the late delivery of Goods or any breach of the Company's obligations under any Contract and the Customer will keep the Company fully indemnified against any claim made against the Company for any Consequential Loss.

## **10. AUSTRALIAN CONSUMER LAW**

10.1. Where the Contract under which the Customer purchases the Goods is a Consumer Contract :

10.1.1. the Goods are purchased subject to the Consumer Guarantees;

10.1.2. where the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then, unless the Company is the manufacturer of the Goods under the Australian Consumer Law, the Company's liability for breach of an Consumer Guarantee is limited at the Company's option to repairing or replacing the

Goods, supplying equivalent goods or paying the costs of the repair or replacement of the Goods or of acquiring equivalent goods.

10.2. Where the Customer acquires goods for resupply to a Consumer the Company's liability to the Customer in connection with any breach of a Consumer Guarantee in respect of the Goods is excluded to the maximum extent permitted by law, but where such liability may not be excluded, it is limited to paying to the Customer an amount equal to the cost of replacing the Goods, supplying equivalent goods or having the Goods repaired, whichever is the lower amount.

## **11. QUOTATIONS**

11.1. All prices quoted for Goods are valid quotes for 30 days from the date of quotation and only for delivery and invoicing of the Goods within 60 days maximum from the date of acceptance of the quotation.

11.2. The Company reserves the right to charge the Customer for any work undertaken and/or costs incurred as a result of the Customer varying its order or the Contract, correcting any errors or omissions referred to in clause 11.3, or requiring Goods urgently.

11.3. The Company will supply the Goods on the basis of the Customer's order (whether written or oral). The Company will not be responsible for any errors or omissions in the supply of the Goods where those errors or omissions result wholly or partially from incomplete or unclear instructions in the Customer's order.

11.4. Should there be any adjustments in quantities above or below the quantities ordered by the Customer and those set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to the unit price set out on the invoice.

## **12. GST**

12.1. Unless otherwise stated, all prices quoted by the Company are exclusive of GST.

12.2. Subject to the Company providing a tax invoice, the Customer must pay to the Company the amount of any GST payable in respect of the supply of the Goods to the Customer at the same time that the purchase price for the Goods is payable.

## **13. CASH SALES**

Where no Credit Application has been approved for the Customer, or approval of the Credit Application is withdrawn, the purchase price of the Goods must be paid in full on the date of order.

## **14. PAYMENT**

14.1. The purchase price of the Goods is payable as set out in the TTA Schedule.

14.2. The Company reserves the right to request such security or additional security for any credit arrangements with the Customer as the Company in its discretion thinks fit and is entitled to withhold supply of any Goods or credit arrangements until such security or additional security is provided by the Customer.

## **15. ADMINISTRATION FEE**

The Company reserves the right to charge the Customer a reasonable administration fee for issuing duplicate invoices, statements or other documents requested by the Customer.

## **16. PAYMENT**

16.1. All amounts payable to the Company by the Customer must be paid in Australian dollars in any manner required by the Company in writing and in full in cleared funds without set-off on or before the due date for payment.

16.2. Any fluctuations in the value of Australian currency as from the date of invoice for the Goods are the responsibility of the Customer.

16.3. The Company reserves the right to charge interest at the rate of 12% per annum on all overdue amounts owing to it. Such interest will accrue daily and is payable on demand.

16.4. Any costs incurred by the Company in collecting or attempting to collect any overdue amounts (including any fees payable to a collection agency) must be paid by the Customer to the Company on demand.

16.5. The Company may set-off any amounts owed to the Customer (whether as rebates or otherwise) against any monies owed by the Customer to it.

16.6. A 1.5% fee added to the overall payment amount if made by credit card (Amex not accepted). GL reserves the right to increase credit card surcharge should associated merchant fees change.

16.7. Any Settlement discount is to be deducted from the net value of invoices due for payment in accordance with trading terms. For the avoidance of any doubt the net value of invoices is calculated as the total value of invoices due less the value of any credits and or returns included to determine the net amount payable. Settlement discount deducted in excess of the percentage agreed or allowable in accordance with agreed trading terms will be deducted from the value of any quarterly rebate that may become payable.

## **17. TITLE TO GOODS**

17.1. The legal and equitable title to the Goods will not pass until the Customer has paid all moneys owed to the Company on any account whatsoever.

17.2. Until the Customer has paid all moneys owed to the Company in cleared funds:

17.2.1. the Company retains a purchase money security interest in the Goods and the proceeds of sale of the Goods under the PPSA;

17.2.2. the relationship of the Customer to the Company is as a fiduciary and bailee in respect of the Goods and accordingly:

17.2.2.1. the Customer must store the Goods in such a way that they can be recognised as the property of the Company;

17.2.2.2. upon re-sale of the Goods by the Customer, the Company will have the right to trace the full proceeds of sale, and the Customer will hold all book debts and proceeds in respect of such sales in trust for the Company and must keep such proceeds of sale in a separate account and not mix such proceeds with any other funds; and

17.2.2.3. the Customer must account to the Company for such proceeds of sale and the Company may recover from such proceeds of sale any moneys then owing to the Company on any account whatsoever;

17.2.3. the Company reserves the right to enter upon any premises for the purpose of repossessing the Goods without prejudice to any other rights of recovery available and the Customer grants the Company a licence to enter such premises for the purpose of exercising such right.

17.2.4. where the Company takes possession of the Goods as a result of the Customer being in default, the Company may, should it choose to do, so sell the Goods by any means and at any time, deduct from any proceeds of sale all costs incurred in relation to the sale, retain for its own use and benefit any part of the purchase price for the Goods which remains outstanding, and apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Company has priority over other security interests.

17.3. The Customer must do all things reasonably required by the Company in respect of the registration or perfection of the Company's interest in the Goods under this clause or the enforcement of the Company's rights under the PPSA in respect of the Goods.

## **18. DEFAULT BY THE CUSTOMER**

18.1. If the Customer makes default in any payment, commits any act of bankruptcy, becomes insolvent, or if any administrator, receiver, liquidator or other external controller is appointed to the Customer or any applications or actions are taken by any person to do so, whether voluntary or involuntary, or if the Customer makes or proposes any compromise with any or all of its creditors, the Company may at its discretion suspend deliveries or cancel any Contract so far as it remains unperformed without prejudice to its rights thereunder.

18.2. The occurrence of any such default will not prejudice the rights of the Company to recover any amounts due for Goods previously supplied to the Customer.

## **19. CANCELLATION OF ORDERS**

19.1. The Company may cancel any Contract any time before Goods are delivered by giving written notice to the Customer. On giving such notice, the Company will repay to the Customer any sums paid in respect of the Goods. The Company will not have any other liability in respect of such cancellation.

19.2. The Customer may cancel an order for Goods purchased under a Consumer Contract if the Company is unable to deliver the Goods within 30 days of any agreed delivery date. Where Goods are purchased other than under a Consumer Contract the Customer may only cancel an order with the agreement in writing of the Company.

19.3. In the event that the Customer cancels a Contract otherwise than under clause 19.2, without limiting the Company's rights:

19.3.1. the Company may retain any deposit or other sums paid on account of the Goods; and

19.3.2. if payment for the Goods is not already made in full, the Customer will be responsible for any losses incurred by the Company in respect of such cancellation (including loss of profits, loss of anticipated savings, economic loss or interruption of business loss or other incidental, consequential or indirect damages).

19.4. In the event the Customer cancels a Contract under clause 19.2 the Company will repay to the Customer any sums paid in respect of the Goods. The Company will not have any other liability in respect of such cancellation.

## **20. GOVERNING LAW AND JURISDICTION**

Every Contract (wherever made) is governed by the laws of New South Wales and the parties submit to the jurisdiction of the courts of New South Wales and the Federal Court of Australia (Sydney Registry).

## **21. MISCELLANEOUS**

21.1. A Contract may be altered only in writing signed by each party.

21.2. The Customer must not assign or otherwise deal with a Contract or any right under it without the written consent of the Company.

21.3. A Contract constitutes the entire agreement between the parties about its subject matter and supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

21.4. A waiver of a provision of or right under a Contract must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

21.5. The failure, delay, relaxation or indulgence by a party in exercising a power or right under a Contract is not a waiver of that power or right.

21.6. An exercise of a power or right under a Contract does not preclude a further exercise of it or the exercise of another right or power.

21.7. The terms of this clause 21 also apply to this TTA itself, and a reference to a Contract above will include a reference to the TTA.

## **22. INTERPRETATION**

In these Conditions, unless the context otherwise requires:

22.1. headings do not affect interpretation;

22.2. singular includes plural and plural includes singular;

22.3. a reference to a party includes its executors, administrators, successors and permitted assigns;

22.4. a reference to a person includes a partnership, corporation, association, government body and any other entity;

22.5. a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

22.6. a provision is not construed against a party only because that party drafted it;

22.7. an unenforceable provision or part of a provision may be severed, and the remainder of these Conditions continues in force, unless this would materially change the intended effect of these Conditions;

22.8. the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.