

Lightup NZ Limited (Trading as "Lightup") TERMS AND CONDITIONS

1. APPLICATION OF TERMS

- 1.1 These terms apply whenever Lightup NZ Limited (trading as "Lightup") ("Supplier") supplies goods or services of any kind, gives any quotation or accepts any order for goods or services.
- 1.2 Where a customer seeks to impose terms and conditions for a supply of goods or services by the Supplier, whether in a purchase order, specification or otherwise, such terms and conditions will not be binding on the Supplier unless the Supplier specifically agrees in writing to such terms and then only on the condition that in the event of a conflict these terms and conditions shall prevail.
- 1.3 These terms and conditions (and any variation or amendment to which the Supplier agrees to in writing) constitute the entire understanding of the parties and replaces all proposals, prior agreements and terms, warranties or representations, whether oral or in writing, relating to the subject matter of these terms and conditions.

2. PROMOTIONS, QUOTATIONS, OFFERS AND ACCEPTANCE

- 2.1 Unless withdrawn in writing the Supplier's quotation is available for acceptance for 30 days (or any longer period stated in the quotation) from the date of quotation, and thereafter is subject to confirmation. The customer's acceptance should be confirmed in writing prior to commencement of work, but in the absence of written acceptance the Supplier's commencement of work will be taken as the Customer's acceptance by conduct.
- 2.2 The Supplier's quotation is based on costs and charges at the date of quotation. Unless the quotation states that it is a fixed price any changes in costs arising from sources beyond our control, including without limitation fluctuation in labour costs, prices of materials and services, or government charges, regulations or exchange rate fluctuation, shall be a variation.
- 2.3 By acceptance of the Supplier's quotation the Customer represents that the Customer will have sufficient funds to pay for the goods and/or services as it is provided, and undertake to provide reasonable proof of capability to make such payment if so requested by the Supplier. The Customer authorises the Supplier to use information collected from the Customer and to collect information that the Supplier may reasonably require from third parties for credit references or otherwise relating to the performance of this contract, and the Supplier reserve the right to decline acceptance if credit checks are unsatisfactory.
- 2.4 An order or written confirmation of acceptance that contains terms or conditions in conflict with the Supplier's quotation or these terms and conditions will not establish a binding contract except at our sole discretion.
- 2.5 The Supplier reserves the rights to final interpretation and/or variation and/or cancellation of any of its promotional material.

3. PRICE AND PAYMENT

- 3.1 Prices for goods and services which are quoted or published in price lists or otherwise provided by representatives of the Supplier are subject to change without notice and are not binding on the Supplier. The Supplier specifically reserves the right to increase the prices of goods and services at any time prior to supply.
- 3.2 All prices for goods and services are net of Goods and Services Tax (as defined by the Goods and Services Tax Act 1985 or any statute in substitution for that Act) ("GST"), other applicable taxes or duties, freight and packaging charges which may be added to the price to be paid by the customer.
- 3.3 All sums owing to the Supplier are required to be paid by the customer in the following manner/in accordance with the Contract:
Unless specified otherwise on the Supplier's order form or quotation form, a deposit of 50% of the Contract Price is payable on execution of the Contract by the Customer, the balance of the Contract Price is payable on completion of installation. If no installation is required such amount is payable on delivery of the Goods.
- 3.4 The customer waives any right of set off or counterclaim in respect of amounts owed to the Supplier
- 3.5 The Supplier may charge interest on any unpaid amount at an annual rate of 10% calculated daily from the due date to the date of payment of such amount.
- 3.6 The Supplier may charge the customer the cost of recovering any outstanding amount including legal costs, disbursements and any bank charges incurred by the Supplier as a result of the customer's late payment.

4. PERSONAL PROPERTY SECURITIES ACT 1999

- 4.1 Title to all goods supplied to the customer by the Supplier will be retained by the Supplier until payment in full is made for such goods. All risk of loss of, or damage to, the goods passes to the customer on delivery of the goods to the customer in accordance with these terms and conditions.
- 4.2 These terms and conditions constitute a Security Agreement which provides for a security interest in favour of the Supplier in all of the customer's present and after acquired property except for any item of personal property or proceeds of any item of personal property which is not supplied by the Supplier to the customer under these Terms and Conditions.

- 4.3 The Customer shall promptly do all things (including signing any other documents) and provide all information necessary to enable the Supplier to perfect and maintain the perfection of any security interest granted under these terms and conditions including registration of a financing statement.
- 4.4 The Customer waives any right to receive a copy of any verification statement in respect of a financing statement registered by the Supplier and the customer agrees to indemnify the Supplier, upon demand, for all costs and expenses incurred in registering and maintaining any financing statements.
- 4.5 If the Customer fails to make payment or is in breach of these terms and conditions then the Supplier or its agents may enter the customer's premises whether or not anyone is present and retake possession of the goods and the customer waives, where permitted by law, any rights that may arise as a result of this removal. Any shortfall on the sale of the goods will be paid by the customer and/or the guarantor to the Supplier.
- 4.6 In this clause words and phrases shall have the meanings given to them in the PPSA.

5. DELIVERY

- 5.1 Delivery shall be made at the place indicated in the Contract, or, if no place is indicated delivery shall be deemed complete when the Supplier has advised the Customer that the Goods are available for collection.
- 5.2 All delivery dates given by the Supplier are estimated delivery dates. The Supplier will use its reasonable endeavours to meet such estimated delivery date or any delivery date requested by the Customer but shall not be liable to the Customer for any loss or damage whatsoever for any delay in delivering any goods or services nor the right to cancel the order.
- 5.3 If the Supplier is unable to perform any of its obligations due to any cause or circumstances beyond its reasonable control, then:
 - (a) If the Supplier is still able to perform its obligation within a reasonable time of the due date for performance, then the time for performance of its obligations will be deferred for a period at least equal to the time lost by reason of the intervening cause or circumstance; or
 - (b) If the Supplier is unable to perform its obligations under the contract within a reasonable time then the Supplier may give notice to the Customer that the contract is at an end and the Supplier will return any part of the purchase price paid by the customer but otherwise neither party will have any further obligations to the other; and
 - (c) the Supplier reserves the right for payment of the price of any goods delivered to the customer any time prior to its inability to perform.

6. INSTALLATION

- 6.1 Where installation is required the Customer will give the Supplier unimpeded access to the Site to carry out installation work in an efficient and safe manner, and unless otherwise agreed in writing the Customer will provide without limitation the following (where relevant):
 - (a) proper facilities for carryout the installation work including use of goods or passenger lifts, cranes, rubbish removal facilities, temporary power and water supply, storage space, ablutions and safety lighting to allow the work to be installed safely and efficiently.
 - (b) all work including penetrations and structural supports or any alterations may be required to any part of the building to allow work to proceed;
 - (c) any required consent or other authority necessary for the work, including approvals from owners, occupiers and others.
- 6.2 If special hardware is required in order to complete installation, an additional fee such as special hardware rental fee or extra labour costs shall be payable by the Customer to the Supplier prior to installation. The Supplier shall endeavour to notify the amount of such additional fee to the Customer prior to installation where possible.
- 6.3 The Supplier will provide reasonable protection for its work and equipment while the Goods are being installed but the Supplier does not accept responsibility for any damage caused to the Goods or equipment by anyone not engaged by the Supplier or otherwise under the Supplier's direct control. The repair of any damage to the Goods and equipment shall be a variation.

7. CLAIMS

It is the customer's responsibility to inspect all goods and services promptly upon delivery. The Supplier will only be liable for damage or incomplete delivery of goods where the customer submits a written claim to the Supplier detailing the reasons for the claim within seven (7) days of the delivery date of the goods or services to which the claim relates.

8. CANCELLATION AND RETURNS

- 8.1 The Supplier may, at its entire discretion, accept from the customer a return for credit (against subsequent orders) of any goods provided the following conditions are satisfied:
 - (a) the Supplier's written approval to acceptance for return has first been obtained in respect of an original invoice number and date for such goods; and
 - (b) The goods are returned in their original condition and remain saleable; and
 - (c) The goods and services are returned on or before the expiry

- of ten (10) days after the date of the applicable invoice.
- 8.2 The Supplier reserves the right to immediately cancel any order or suspend any delivery without incurring any liability to the customer if the customer is:
- in breach of these terms and conditions; or
 - is overdue with any payment due to the Supplier.
- 8.3 In addition to any other breach of these terms and conditions, the customer will be deemed to be in breach of these terms and conditions if the customer:
- is in bankruptcy or proceedings have been commenced for bankruptcy; or
 - is in liquidation or proceedings have been commenced for liquidation; or
 - has entered into an arrangement with its creditors; or
 - has had a receiver or manager appointed over all or any part of its assets or is otherwise insolvent or unable to pay its debts as they fall due.

9. WARRANTY

- 9.1 Where the Consumer Guarantees Act 1993 applies, the Goods and Services are subject to the guarantees provided by the Act. If the Goods and Services do not comply with the guarantees provided under the Act, the Customer can require the Supplier to remedy the failure. If the failure can be repaired, the Supplier will either repair or replace the Goods or at the Supplier's option. Refund the Customer the money. If the failure cannot be repaired or is of a substantial character, the Customer can reject the Goods and the Customer may choose to have the goods replaced with goods of the same type and similar value (where such goods are reasonably available), or alternatively a refund of the purchase price.
- 9.2 In addition to all rights and remedies to which the Customer may be entitled under the Consumer Guarantees Act 1993 and any other relevant legislation, the Supplier will at its sole discretion, elect to either provide a one (1) year warranty or two (2) year warranty in respect of the Goods supplied and manufactured by the Supplier.
- 9.3 In order to claim under this warranty the Customer will need to bring the Goods to the Supplier's office, along with proof of purchase. Any cost incurred by the Customer in bringing the Goods to the Supplier to activate his/her rights under this manufacturer's warranty will be borne by the Customer. The Supplier will then, at the Supplier's option, either repair or replace the Goods, or refund the Customer's money and take back the Goods.
- 9.4 The Supplier's liability under the warranty is subject to the Supplier being satisfied that a defect was caused by defective workmanship or materials, and was not caused by or substantially contributed to by other factors, or circumstances beyond the Supplier's control, including (but not limited to) defective installation, maintenance or repair, alteration or modification of the Goods in a manner not recommended by the Supplier or any neglect, misuse or excessive use.
- 9.5 The benefits conferred by warranty are in addition to and in no way exclude, restrict or modify all rights and remedies conveyed by the Consumer Guarantees Act 1993 and any other statutory rights to which the customer may already be entitled or any such rights or remedies that are implied by law.
- 9.6 The Supplier may from time to time, at its sole discretion, offer the Customer the services of recycling their old lamps free of any charge.

10. LIMITATION OF LIABILITY

- 10.1 To the fullest extent permitted by law, and subject only to express exceptions contained in these terms and conditions, the Supplier excludes all liability that it or any of its employees or suppliers may have to a customer whatsoever including without limitation for any loss, damage or expense sustained or incurred by the customer or any party in consequence of or resulting directly or indirectly out of the supply, performance or use of any goods and services or for any negligence by the Supplier or its employees or suppliers whatsoever.
- 10.2 In the event that the Supplier cannot rely on the exclusion in Clause 10.1 or if in any other circumstances the customer is entitled to compensation from the Supplier, its employees or suppliers, the maximum combined amount of all of their liability to the customer is the price that the customer has paid for the goods and services to which such compensation relates or the statutory minimum (whichever is the lower).

11. NON AVAILABILITY OF GOODS

While every effort is made to fulfil a customer's order for goods and services, the Supplier will not be liable for loss or damage arising out of non-availability of such goods and services.

12. CONSUMER GUARANTEES ACT 1993

Where the customer is a business customer, it agrees that is acquiring the goods and services for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply.

13. CREDIT REFERENCES

The Customer warrants and represents that the all information provided to the Supplier, whether for opening any account with

the Supplier, in respect of any request for credit facilities or for any other purpose, is true, correct and not misleading. The customer authorizes the Supplier to make enquiries of any referees provided to the Supplier.

14. VARIATIONS

These terms and conditions supersede any previous agreement or understanding and any contract to which these terms and conditions apply may not be varied without the Supplier's prior written agreement and in any event shall incorporate these terms and conditions.

15. INDEMNITY

Where the customer fails to meet its responsibility to the Supplier under these terms and conditions or is otherwise in breach of these terms and conditions, the customer must pay any reasonable expenses incurred by the Supplier in collecting any money owed to it or in exercising any of its other legal rights against the customer.

16. INFORMATION

16.1 The Customer agrees that the Supplier and associated companies of the Supplier may collect information about the Customer. The information may be obtained from the customer and others. The Customer may refuse to provide any information sought by the Supplier but if the Customer fails to provide the information, the Supplier may refuse to provide goods or services or any credit.

16.2 The Customer may ask to see any information held by the Supplier as long as it is readily retrievable and the customer may ask for any details that are wrong to be corrected.

16.3 Supplier and its associated companies may also hold the information; share it with associated companies, employees and contractors, with credit reference agencies and with collection agencies. This enables the Supplier and associated companies to:

- provide services to the customer and others;
- send invoices and recover money owed to the Supplier and associated companies;
- keep the Customer informed of goods and services available from the Supplier and other people;
- exercise any lawful right that the Supplier has (which includes registration and maintenance or financing statements under the Personal Property Securities Act 1999).

17. GUARANTEE

17.1 In consideration of the Supplier having provided or providing goods and services to the Customer, at the guarantor's request (as is hereby acknowledged by the guarantor), the guarantor unconditionally and irrevocably guarantees to the Supplier the payment of all moneys which may be now or in the future owing by the Customer to the Supplier for the supply of goods and services and the performance of all other obligations by the Customer hereunder. The guarantor's liability to the Supplier shall be that of principal debtor and shall not be affected by any indulgence, grant of time, waiver or any other act or thing on the Supplier's part, which may affect the guarantor's liability if the guarantor was a surety only.

18. INTERPRETATION

18.1 For the purposes of these terms and conditions, (unless the context otherwise requires):

- Where the singular is used that includes the plural and vice versa, a reference to any person includes an individual, a company and a body of persons (whether incorporated or not);
- "Contract" means the schedule/quotation/order form and these terms and conditions;
- "Customer" means any customer of the Supplier and includes that person's executors, administrators and assigns;
- "Goods" means all goods supplied from time to time by the Supplier or its related companies to the customer provided that (but solely for the purpose of application of the PPSA):
 - where goods supplied are inventory of the customer, then all references to goods shall, in respect of those goods, be references to inventory for so long as they are held as inventory;
 - where the goods supplied are not inventory of the customer, then all references to goods shall mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by the Supplier and relating to those goods on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be accented to by the customer, incorporated in and form part of these terms and conditions; and
 - goods includes all proceeds of such goods and any product of which the goods subsequently become part; and
- "PPSA" means the Personal Property Securities Act 1999.
- "Site" means the address for installation of the goods as provided by the customer.