



OZ LED LIGHTING TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **The Supplier** is Industrial Engineered Supplies Pty Ltd (ACN 128 763 851) as trustee for Industrial Engineered Supplies trading as Oz Led Lighting.
- 1.2. **The Customer** includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.
- 1.3. **The Order** is defined as any request for the supply of Goods by the Customer to the Supplier which has been accepted by the Supplier.
- 1.4. **The Goods** are the LED lighting, power supplies, control gear for signage and decorative lighting and/or associated goods supplied by the Supplier.
- 1.5. **The Services** include any consultation services and/or the delivery of the Goods to the Customer including any loading, packing, unloading or unpacking.
- 1.6. Any Reference to “**loss and damage**” includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.7. **Major failure** is as defined under the *Competition and Consumer Act 2010 (Cth)*.
- 1.8. A reference to “**GST**” refers to goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. GENERAL

- 2.1. These terms and conditions together with the Supplier’s quotation, credit application form and the Customer’s written order or purchase order document (if any) constitutes the agreement between the Supplier and the Customer (“**the agreement**”).
- 2.2. Any Order is deemed to incorporate these terms and conditions; which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Customer, and the Customer’s heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.5. Where more than one Customer completes this agreement, each shall be liable jointly and severally.
- 2.6. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these terms and conditions.

- 2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent, but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.
- 2.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.9. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

3. QUOTATIONS AND PLACEMENT OF ORDERS

- 3.1. Any quotation for the supply of Goods and/or the provision of the Services given by the Supplier will expire after thirty (30) days.
- 3.2. The Supplier does not represent that it will provide any Goods and/or Services unless such Goods and/or Services are included in the quotation or the Order.
- 3.3. A request for Goods and/or Services may be placed by the Customer with the Supplier either verbally or in writing however the Supplier may require the Customer to provide a written order or purchase order document prior to any Services being rendered and/or Goods being released or dispatched by the Supplier.
- 3.4. As a condition of acceptance, the Supplier may require the payment of a deposit in respect of the Price of the Goods and in this event the Supplier may not be deemed to have accepted the Customer's request for the Goods unless or until such deposit has been paid.
- 3.5. The Supplier may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the quotation given or in the Customer's Order. In this event, the Supplier shall be entitled to make an additional charge.
- 3.6. All prices quoted or advertised by the Supplier are based on taxes and statutory charges current at that time. Should these vary during the date of the Order to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE

- 4.1. GST will be charged on the Goods and/or Services provided by the Supplier that attract GST at the applicable rate.
- 4.2. At the Supplier's sole discretion, the Price shall be either:
 - 4.2.1. The Supplier's quoted or advertised Price for the Order; or
 - 4.2.2. As detailed on invoices provided by the Supplier to the Customer in respect of Goods and/or Services provided.

5. PROVISION OF THE GOODS AND SERVICES

- 5.1. The Supplier reserves its right to:
 - 5.1.1. Decline requests for the supply of any Goods and/or Services requested by the Customer;
 - 5.1.2. Cancel or postpone the delivery of the Goods at its discretion.
- 5.2. Unless specified by the Supplier to the contrary in the Order or quotation, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of the agreement.
- 5.3. Subject to otherwise complying with its obligations under the agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.

- 5.4. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer, the Customer's agent or to the carrier as nominated by the Supplier and/or Customer.
- 5.5. If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier, be liable for a \$33.00 non-delivery fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage of the Goods.
- 5.6. Unless specified to the contrary in the quotation or the Order, the Supplier does not warrant that it will be capable of delivering the Goods and/or Services on a specific day or at a specific time requested by the Customer.
- 5.7. Subject to otherwise complying with its obligations the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of delivering the Goods to the Customer.

6. PAYMENT AND CREDIT POLICY

- 6.1. **Non-Account Customers** must make full payment to the Supplier on delivery of the Goods unless otherwise specified or agreed between the parties in writing.

Credit

- 6.2. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed credit application form.
- 6.3. On the acceptance by the Supplier of a completed credit application form, **Account Customers** must make full payment to the Supplier within thirty (30) days from the date of issue of the Supplier's invoice for the Goods, unless otherwise specified in the credit application form or agreed between the parties in writing.
- 6.4. Any credit, or credit limit granted by the Supplier may be revised by the Supplier at any time and at its discretion.
- 6.5. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these terms and conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 6.6. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

Account Customer's Privacy

- 6.7. The Customer agrees:
 - 6.7.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
 - 6.7.2. That the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
 - 6.7.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (pursuant to the *Privacy Act 1988*).

7. DEFAULT

- 7.1. In this clause the "**default date**" is:
 - 7.1.1. The day after the date of delivery of the Goods to the Non-Account Customer; or
 - 7.1.2. The day after the date by which payment of the Supplier's invoice(s) was due to be made by the Account Customer to the Supplier.
- 7.2. In this clause the "**outstanding balance**" is:
 - 7.2.1. The Price of the Order, less any payments made by the Non-Account Customer prior to the default date; or

- 7.2.2. The sum of the Supplier's invoices to the Account Customer less any payments made by the Account Customer prior to the default date.
- 7.3. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier's bank.
- 7.4. A signed statement from a duly authorised representative stating the amount due by the Customer is sufficient proof of the amount owing by the Customer to the Supplier unless proven otherwise by the Customer.
- 7.5. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:
 - 7.5.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
 - 7.5.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
 - 7.5.3. Any debt collection or recovery costs incurred by the Supplier; and if the Supplier's debt collection agency ("**the agency**") charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Supplier to the agency, at the agency's prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:

$$\begin{array}{r}
 \text{Total Debt including} \\
 \text{Commission and GST}
 \end{array}
 =
 \frac{\text{Original Debt} \times 100}{100 - \text{Commission \% charged by the agency (including GST)}}$$

(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au).

- 7.5.4. Any charges reasonably made or claimed by the Supplier's or the agency's lawyer for legal costs on the indemnity basis.

8. RISK AND LIABILITY

- 8.1. The Customer will ensure that there is sufficient and accurate information to enable the Supplier to execute the Order, including any special instructions for the storage, packing or delivery of the Goods.
- 8.2. The Supplier takes no responsibility and will not be liable for any loss and damage or costs as a result of the Goods and/or Services being faulty or not fit for purpose due to insufficient or inaccurate information provided by the Customer.
- 8.3. The Customer accepts all risk in relation to the Goods (including all risks associated with unloading or unpacking) when the Goods pass into the Customer's care or control; or that of its nominated carrier or agent.
- 8.4. The Supplier takes no responsibility for representations made in relation to the Goods by any third party or any delay in the delivery of the Goods by a third party carrier nominated by the Customer.
- 8.5. The Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of delay, or failure to provide the Goods and/or Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 8.6. Subject to the Supplier's warranty for defective Goods and/or Services, the Supplier's liability for any loss and damage associated with, arising from or in connection with the supply of the Goods and/or the provision of Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

9. WARRANTY

9.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.

9.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.

Warranty for Goods and Services

9.3. Provided that the Customer reports any defect in any Goods and/or Services supplied, preferably within fourteen (14) days from the date that the defect became apparent, the Supplier will rectify the defect within a reasonable period of time.

9.4. The Supplier provides the following warranty to Customers in respect of Goods and Services provided:

"Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- *To cancel your service contract with us; and*
- *To a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to choose a refund or replacement for major failure with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service."

9.5. In respect of all claims under warranty, the Supplier reserves its right to inspect Goods alleged to be defective.

9.6. To the extent permitted by law the Supplier's liability in respect of defective Goods that does not constitute a major failure will be limited to:

9.7. The resupply by the Supplier of the defective Goods; or

9.8. The refund of the Price paid by the Customer in respect of the defective Goods.

9.9. The Supplier shall not be liable to compensate the Customer for any reasonable delay in rectifying Goods found to be defective or any defective Services, or in assessing the Customer's claim.

9.10. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.

Claims made under Warranty

9.11. Claims for warranty should be made in one of the following ways:

9.11.1. The Customer must send the claim in writing to the Supplier's address PO Box 54, Concord West 2138 in the State of New South Wales.

9.11.2. The Customer must email the claim to the Supplier to robert@ozledlighting.com.au.

9.11.3. The Customer must contact the Supplier on the Supplier's business number (02) 9743 3448.

10. TERMINATION AND CANCELLATION

Cancellation by Supplier

- 10.1. The Supplier may cancel any Order to which these terms and conditions apply at any time before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
- 10.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 10.2.1. Any money payable to the Supplier becomes overdue for payment; or
 - 10.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

- 10.3. The Customer may cancel any Order prior to receiving the provision of Services and/or the notification of the dispatch of the Goods by providing written notice to the Supplier. Once the Goods are dispatched to the Customer, the Customer may not cancel the Order.

11. RETURN OF GOODS

- 11.1. The Supplier may, at its discretion accept the return of Goods it has supplied to the Customer and that the Customer has accepted on the basis that Goods are no longer required by the Customer or are otherwise unwanted subject to:
 - 11.1.1. The request for the return of Goods being made by the Customer within fourteen (14) days of acceptance of the Goods by the Customer;
 - 11.1.2. The Price of the Goods having been paid in full by the Customer; and
 - 11.1.3. The Goods being returned and accepted by the Supplier in their original condition and being fit for resale.
- 11.2. The Customer acknowledges that it may incur a restocking fee of twenty per centum (20%) of the Price paid in respect of any Goods so returned and the Supplier may:
 - 11.2.1. Withhold any applicable re-stocking fee from any refund due to the Customer in respect of the Goods so returned;
 - 11.2.2. Apply any refund due to the Customer in respect of Goods returned as a credit to the trading account of the Customer less the applicable re-stocking fee.
- 11.3. The Customer is at all times responsible for the Goods until accepted as returned by the Supplier pursuant to this clause and the Customer accepts that it will bear any relevant freight or associated cost of returning any Goods.

12. SECURITY AND CHARGE

- 12.1. The Customer hereby charges in favour of the Supplier all his/her estates and interests in real property, including present and future estates or interests, to secure the obligations of the debtor under the agreement.
- 12.2. The Customer consents to the Supplier lodging a caveat or registering a mortgage over the real property to secure the obligations of the debtor under the agreement.
- 12.3. The Customer irrevocably appoints the Supplier as the duly constituted attorney of the Customer and to execute in his/her name any documents, including any mortgage of real property or caveat in registrable form.

13. ENTIRE AGREEMENT

- 13.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 13.2. The agreement is deemed to be made in the State of New South Wales and all disputes hereunder shall be determined by the appropriate courts of New South Wales.
- 13.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 13.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:

NAME:

POSITION HELD:.....

POSITION HELD:.....

SIGNATURE:

SIGNATURE:

DATE:/...../20...

DATE:/...../20...

