

Terms of Sale

1 April 2020

1. GENERAL

- 1.1. These Terms of Sale (“Terms”) apply to the supply of a Goods by enLighten Australia Pty Ltd (ABN 20 134 272 745) (“enLighten”) and the party placing an order for the purchase or supply of Goods from enLighten (“you” or the “Purchaser”).
- 1.2. Each time you request enLighten to supply Goods to you, these Terms will apply, and must be read in conjunction with any additional written terms of sale offered by enLighten (including, but not limited to, any additional terms which may appear in the enLighten quotation and/or Price List current as at the date of supply of the Goods). Acceptance of Goods by a Purchaser constitutes acceptance of these terms.
- 1.3. Except as otherwise expressly agreed in writing between enLighten and the Purchaser, if there is any conflict or inconsistency between these Terms and any additional terms referenced in clause 1.2 above, these Terms shall prevail. No course of dealing, trade usage or performance will be relevant to explain or supplement any of these Terms. enLighten hereby rejects any different terms proposed by the Purchaser, including those contained in any purchase order or in any other writing not expressly incorporated herein.
- 1.4. These terms may only be waived or modified by written agreement by an authorised representative of enLighten.
- 1.5. To assist us in reconciling and maintaining your account, please direct all queries to our office as soon as possible after receipt of your invoice, and quote your invoice number and order date on all queries.

2. CONDITIONS OF SALE

- 2.1. A minimum order value of \$250.00 (excluding GST) applies to all orders.
- 2.2. Cancellations or partial cancellations of orders are subject to written consent by enLighten, which may be withheld in its absolute discretion.
- 2.3. Back Orders will be dispatched by enLighten as soon as possible after the order is placed, unless enLighten is advised that the order is subject to delivery on a certain date.
- 2.4. Risk in any Goods ordered by the Purchaser shall pass on delivery, irrespective of when payment for the Goods is made. Title to the Goods shall remain with enLighten until such time as payment for the Goods is made in full in accordance with clause 3 below and enLighten may take any steps necessary to protect its title to the Goods under the *Personal Property Securities Act 2009 (Cth)* without notice to the Purchaser.
- 2.5. Should you fail to pay for the Goods in accordance with clause 3 below, enLighten shall be entitled to retake possession of the Goods, resell them and keep the proceeds of sale. Any shortfall remaining in the amount owing after resale will remain a debt owed by you. Where Goods have been on-sold to a third party by you, all amounts owing will remain a debt owed by you and enLighten may seek to recover that debt accordingly.

3. PRICE AND PAYMENT TERMS

- 3.1. All prices in enLighten’s published Price List are a fixed price and exclude GST. Prices are not subject to any further discount unless specifically agreed to in accordance with these Terms.
- 3.2. The Purchaser agrees to pay the price for the Goods and/or services as set out in the relevant invoice. The price is payable in full and without any deduction, withholding or set-off for any reason, unless otherwise explicitly agreed in writing by enLighten.
- 3.3. Payment of the price is required within the period stated on the official enLighten invoice.

- 3.4. Late payments attract an interest charge at a rate equivalent to the Reserve Bank of Australia's published cash rate plus four percent (4%) calculated from the date of the relevant invoice until payment is received in full. Any payment by the Purchaser will be credited first against the interest accrued to the date of payment and then to the amounts outstanding. enLighten may set off any amounts due to the Purchaser under clause 4 against any outstanding amounts owed by the Purchaser.
- 3.5. In addition to the rights set out in clause 3.4, enLighten shall be entitled to withhold supply of Goods and/or services for so long as payment of any prior invoice remains overdue for sixty (60) days or more, without notice to the Purchaser.
- 3.6. Credit card payments are subject to a surcharge fee. Visa/mastercard at 1.2% of transaction value, and Amex at 2.7% of transaction value.

4. DISCOUNTS

- 4.1. A Purchaser that is a Qualifying Purchaser is entitled to a Discount on all Products.
- 4.2. Discount will be disallowed on all invoices not paid within the period stated on the official enLighten quotation, and pricing will revert to enLighten's published Price List.

5. DELIVERY

- 5.1 Unless otherwise agreed, Goods will be supplied FOB ex enLighten warehouse.
- 5.2 enLighten will take all reasonable efforts to ensure that delivery is effected within the timeframe stipulated, however enLighten shall not be responsible for any failure or delay in the procurement or delivery of Goods resulting from any cause outside enLighten's reasonable control, including but not limited to manufacturing delays and delays in deliveries by third parties.

6. RETURNS POLICY

- 6.1 A request to return products may only be made within 14 days of the date of the original order and:
- 6.2 where Goods are lost or damaged in transit, within four (4) days of dispatch of the Goods to the Purchaser (or a third party authorised to receive Goods on behalf of the Purchaser);
- 6.3 if the Goods delivered to the Purchaser were incorrect, within seven (7) days of receipt of the Goods, and all freight charges for the return of the Goods shall be at enLighten's cost;
- 6.4 if the Purchaser no longer requires the Goods, and those Goods were shipped within the Sydney metropolitan area, within two (2) days of receipt of the Goods, and all freight charges for the return of the Goods shall be at the Purchaser's cost; or if the Purchaser no longer requires the Goods, and those Goods were shipped outside the Sydney metropolitan area, within seven (7) days of receipt of the Goods, and all freight charges for the return of the Goods shall be at the Purchaser's cost.
- 6.5 All Goods to be returned must be in their original packaging, unsoiled and undamaged. Goods which are returned and which do not meet the requirements of this clause will be returned to the Purchaser at their expense.
- 6.6 The Purchaser acknowledges that should enLighten agree to accept the return of Goods in accordance with clause 6.2(c) and (d) above, the return of Goods will be subject to a 10% restocking fee, which represents a genuine pre-estimate of enLighten's reasonable costs in accepting and restocking returned Goods.
- 6.7 Subject to a Purchaser's compliance with the terms set out in this clause 6, enLighten may (in its absolute discretion) issue a credit note or refund the price for returned Goods.
- 6.8 Subject to clause 7 below, Goods that are imported especially for a Purchaser, or non-standard Goods made to special order, cannot be returned under any circumstances.

7. WARRANTIES AND INDEMNITIES

- 7.1 To the extent that the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law confers rights on the Purchaser as a "consumer" ("consumer guarantees regime"), enLighten does not seek to exclude

these rights. To the extent permitted by law, all other conditions and warranties implied by statute, custom or the common law in respect of the state, quality or condition of the said Goods are hereby expressly excluded.

7.2 To the extent the consumer guarantees regime does not apply:

- enLighten does not warrant that the products will be complete or free from Defects;
- where the Goods are the subject of any other Defect, the Purchaser shall be entitled to, at enLighten's option, replacement or repair of the Goods, or the cost of their replacement or repair; and
- all representations made by enLighten are expressly excluded and the Purchaser has not relied on any representations (including, but not limited to, descriptive and forwarding specifications, drawings, particulars, dimensions, weight, publicity and promotional material) in ordering the Goods from enLighten.

7.3 Any claims for defective product must be submitted in accordance with enLighten's Warranty statement which is available for download at www.enlighten.com.au/our-policies

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Purchaser shall not alter or remove any copyright, trade mark or other notices which appear on the Goods.

8.2 Subject to Clause 9, enLighten shall indemnify and hold the Purchaser harmless against a claim from a third party for infringement of any patent or other intellectual property right, provided the Purchaser gives enLighten immediate notice, and sole control of the defense, of any such claim.

9. LIMITATION OF LIABILITY

9.1 To the extent permitted by law and notwithstanding any other provisions contained in these Terms, enLighten's maximum aggregate liability arising in connection with the supply of Goods under these Terms shall be limited to the total Price of Goods ordered.

9.2 Nothing express or implied in these terms will confer any liability on enLighten in respect of indirect, consequential or special loss; or loss, damage, costs or expenses suffered or incurred by the Purchaser which result from any act or omission of the Purchaser.

10. GENERAL

10.1 If it becomes necessary to institute legal proceedings to recover unpaid debts owing to enLighten, all discounts showing on unpaid invoices shall become null and void.

10.2 Goods shown in enLighten's Price List or catalogue are current as at the date of publication. enLighten reserves the right to add and delete products at its discretion and does not warrant the availability, whether express or implied, or any lines it may advertise from time to time.

10.3 In these Terms, the following words have the corresponding meanings as set out below:

- "Additional Options" means products listed on the Price List under the heading 'additional products'.
- "Back Orders" means any orders for Goods which are not able to be fulfilled at the time the order is placed by the Purchaser with enLighten.
- "Days" means calendar days and includes Saturdays, Sundays and public holidays.
- "Defect" means Goods which are physically damaged or do not operate in accordance with any corresponding specification provided by enLighten and for the avoidance of doubt excludes defects caused by or resulting from acts of God, accidental damage, malicious damage, abuse, misuse, abnormal use or use contrary to any of the specifications, maintenance requirements, product installation procedures as advised by enLighten, or any applicable standard or code.
- "GST" means Goods and services tax as levied under A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.
- "Price List" means the fixed price list in effect as at the date of purchase.

- “Products” means all LED light products but excludes Additional Options.
- “Qualifying Purchaser” means a Purchaser who meets enLighten’s credit check requirements and is approved as a Purchaser entitled to qualify for discounts and incentives, as determined by enLighten in its absolute discretion.
- “Discount” means a discount off the fixed price published in the current Price List to be negotiated between the parties and confirmed by enLighten in writing. The Purchaser acknowledges that it:
 - is a commercial buyer and not a consumer; and
 - is acting as principal in its dealings with its own customers and not as an agent of enLighten.
 - These Terms shall be governed by the laws of New South Wales, Australia.