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## **CONDITIONS OF TRADE**

### **Terms and Conditions**

1. These Conditions apply to the sale of Goods by APS LIGHTING & SAFETY PRODUCTS CO. to the Customer.
2. APS LIGHTING & SAFETY PRODUCTS CO. reserves the right at any time to refuse to sell Goods to the Customer. This discussion does not affect the credit terms which apply to any amounts the Customer then owes APS LIGHTING & SAFETY PRODUCTS CO.

### **Quotation & Pricing:**

3. Quoted price is exclusive of GST and freight and subject to correction or change without notice. Unless otherwise stated quotation is valid for 30 days from date of creation. APS reserves the right to accept or decline any order.
4. A delivery charge per order, charged at the rate applicable at the time of delivery, will be applied on all Ex-store customer orders. This amount will be shown separately on all invoices and due and payable at the same time the payment for the goods sold is due and payable.

### **Payments:**

5. The Customer agrees to pay the price invoiced by APS LIGHTING & SAFETY PRODUCTS CO. for the Goods including GST and any freight or charges applicable without deduction or set off of any kind within 30 calendar days of the end of the invoice month or terms as advised by APS in writing.

### **Overdue Accounts and Security:**

6. APS LIGHTING & SAFETY PRODUCTS CO. may require the Customer to pay a credit card surcharge of up to 3% plus GST of the invoice total if the Customer elects to pay by credit card.
7. The Customer agrees to pay APS LIGHTING & SAFETY PRODUCTS CO. a \$50 dishonour fee if any payment is dishonoured which is in addition to any fee charged to APS LIGHTING & SAFETY PRODUCTS CO. by its financial institution.
8. Any amount not paid by the due date will incur interest at the rate of 12% per annum.
9. As security for all amounts owing to APS LIGHTING & SAFETY PRODUCTS CO., the Customer charges all of its legal and equitable interest (both future and present) held in any and all property to APS LIGHTING & SAFETY PRODUCTS CO.
10. The Customer consents unconditionally to APS LIGHTING & SAFETY PRODUCTS CO. lodging a caveat over any property of the Customer noting its intent.

### **Retention of Title:**

11. APS LIGHTING & SAFETY PRODUCTS CO. retains legal and equitable title in the Goods until payment in full has been received by APS LIGHTING & SAFETY PRODUCTS CO.
12. APS LIGHTING & SAFETY PRODUCTS CO. reserves the right to take possession of the Goods and dispose of them if APS LIGHTING & SAFETY PRODUCTS CO. deems fit until payment is made in full. The Customer grants APS LIGHTING & SAFETY PRODUCTS CO. and its contractors entry on to any property where any Goods are located to enable their removal and agrees to obtain the consent of any third party to such entry if required.

13. APS LIGHTING & SAFETY PRODUCTS CO. will not be liable for any damage or injury to such premises caused by the removal of Goods.
14. The reservation of title is effective notwithstanding that the Goods may be co-mingled with other Goods.
15. Until full payment is made for the Goods, the Customer must keep the Goods safe and free from loss or harm and clearly identified as goods of APS LIGHTING & SAFETY PRODUCTS CO.

**Returned Goods:**

16. APS may at its discretion accept the return of goods for credit with the payment of restocking fee of 30% of original invoice value (or as agreed by APS) provided that: Goods are returned referencing APS original invoice number and Return Goods Authorisation from APS; Goods are returned within 30 days of delivery at purchaser's cost; goods are returned in an unsoiled, undamaged and resalable condition and in their original packaging. Goods specially ordered, made, or purchased for the customer or altered by the Customer or the Customer's Customer cannot be returned for credit.

**Damaged in Transit:**

17. Unless the carriage is the responsibility of APS, APS bears no liability whatsoever for the damage occurred beyond the contractual point of delivery or in the process of unpacking shipment in the warehouse or store by Customer.

**Security Interest:**

18. Defined terms have the same means as given in the PPSA.
19. For the purposes of the PPSA it is the intention of the parties that a Purchase Monies Security Interest is created in the Goods for the benefit of APS LIGHTING & SAFETY PRODUCTS CO..
20. The Customer agrees that APS LIGHTING & SAFETY PRODUCTS CO. is entitled to register its interest in the Goods under the Terms and Conditions on the PPSA Register as collateral.
21. The Customer waives its right to issue a Verification Statement in respect of any Financing Statement or Financing Charge Statement registered by APS LIGHTING & SAFETY PRODUCTS CO. in the respect of any personal property of the Customer.
22. The parties agree that insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place obligation on APS LIGHTING & SAFETY PRODUCTS CO., they shall apply only to the extent that they cannot be contracted out of.

**Risk:**

23. Risk to the Goods passes to the Customer on delivery of the Goods. Delivery of Goods will be at APS LIGHTING & SAFETY PRODUCTS CO.'s premises on collection of the Goods by the Customer, its employer, agent or contractor. If APS LIGHTING & SAFETY PRODUCTS CO. has agreed to deliver the Goods risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery.

**Warranty:**

24. Goods supplied by APS are the products of reputable manufacturers sold under their respective brand or trade names. Warranty is therefore strictly limited to APS efforts to obtain from each manufacturer, in accordance with the manufacturer's warranty (copies of which will be furnished upon request) or customary practice, the repair or replacement of products that may prove defective in material or workmanship. Except as to title, THERE ARE NO WARRANTIES, WRITTEN, ORAL, IMPLIED, OR STATUTORY relating to the described material or equipment, which extend beyond that described in this paragraph. NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY

**Limitation of Liability:**

25. APS LIGHTING & SAFETY PRODUCTS CO.'s liability in respect to a consumer guarantee for Goods not of a kind ordinarily acquired for personal, domestic or household use is limited to the extent permitted by law, manufacturer terms and at APS LIGHTING & SAFETY PRODUCTS CO.'s option in respect to the Goods-
- a. the replacement of those Goods or similar Goods;
  - b. the payment of the cost of the Goods or similar Goods;
  - c. the cost of having the Goods repaired; or
  - d. the repair of the Goods.
26. Subject to Clause 25 to the maximum extent permitted by law, APS LIGHTING & SAFETY PRODUCTS CO.'s total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions or the supply of the Goods is limited as follows:
- a. APS LIGHTING & SAFETY PRODUCTS CO. shall have no liability for consequential loss or increased costs or expenses; and
  - b. APS LIGHTING & SAFETY PRODUCTS CO. shall have no liability for a claim by a third party.

**Default:**

27. If a Default Event Occurs:-
- a. APS LIGHTING & SAFETY PRODUCTS CO. may suspend the supply of Goods;
  - b. All unpaid monies become due and payable;
  - c. APS LIGHTING & SAFETY PRODUCTS CO. may retake possession of the Goods;
  - d. APS LIGHTING & SAFETY PRODUCTS CO. may exercise all of its right title and interest in the Goods;
  - e. The Customer is liable to reimburse APS LIGHTING & SAFETY PRODUCTS CO. for all legal costs, enforcement costs and disbursements on a full indemnity basis incurred by APS LIGHTING & SAFETY PRODUCTS CO. arising from or as a result of APS LIGHTING & SAFETY PRODUCTS CO. exercising or enforcing its rights in these conditions or at law.

**Privacy:**

28. The Customer authorises APS LIGHTING & SAFETY PRODUCTS CO. and its servants and agents to obtain information and make such enquiries as they deem necessary to investigate the credit worthiness of the Customer (and its directors if a company) including making enquiries of trade references, the bankers of the customer, any credit provider or credit reporting agency.

**No Set Off:**

29. No set-off or counter claim will be made or applied by the Customer until payment in full of all invoices of APS LIGHTING & SAFETY PRODUCTS CO. is made and this clause may be pleaded as a bar to any action taken prior to payment in full.

**Governing Law:**

30. The conditions will be governed by the Laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts operating in the Perth Central Business District.

**No Waiver:**

31. APS LIGHTING & SAFETY PRODUCTS CO.'s failure to exercise any rights under the Conditions or failure to insist on strict compliance with these conditions does not operate as a waiver.

**Notices:**

32. Any notice must be in writing and sent to APS LIGHTING & SAFETY PRODUCTS CO. at its address and to the Customer at its last known address.

**Severance:**

33. If any term of these Conditions becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect.

**Definitions:**

In these Conditions:

“**Credit Limit**” means the maximum amount agreed by APS LIGHTING & SAFETY PRODUCTS CO. from time to time. This amount may change at any time as notified to the Customer by APS LIGHTING & SAFETY PRODUCTS CO..

“**PPSA**” means the Personal Property Securities Act 2009 (Cth).

“**Goods**” means any goods supplied by APS LIGHTING & SAFETY PRODUCTS CO. being Electrical Lighting and Vehicle Safety Products and all related and ancillary goods.

“**Default Event**” means:-

- a. Payment remains outstanding more than 30 days from the date of invoice;
- b. The Customer is unable to pay its debts when they fall due;
- c. The Customer threatens to or ceases conduct of its business;
- d. An administrator, receiver and/or manager or any other form of administrator or controller is appointed
- e. The Customer goes into bankruptcy, dies, commits an act of bankruptcy or its partnership is dissolved;
- f. A judgement for an amount in excess of \$5,000 is entered against the Customer.