



## CREATE LED LIGHTING

### CONDITIONS OF SALE

#### 1. Definitions

All contracts entered into by Create Security Pty Ltd trading as Create LED Lighting are subject to these Conditions of Sale ("Conditions").

In these Conditions unless the context otherwise requires:

**"Buyer"** means the purchaser of the Goods pursuant to the contract of which these Conditions form part;

**"Company"** means Create Security Pty Ltd trading as Create LED Lighting;

**"Contract Price"** wherever it appears in these Conditions means the agreed price plus GST;

**"Goods"** means the goods, items, materials and services (or any one or combination of these) to be supplied pursuant to the contract between the Buyer and the Company of which these Conditions form part.

#### 2. General

- 2.1 These Conditions apply to the sale of all Goods by the Company to the Buyer whether the sale is verbal, over the counter or in writing.
- 2.2 Any quotation by the Company is not an offer, and no contract shall come into existence unless and until the Company has accepted in writing or by conduct the Buyer's purchase order to supply the Goods specified in any quotation. Any quotation provided by the Company is valid for a period of thirty (30) days from the quotation date after which it may be subject to review.
- 2.3 In the case of a verbal order or over the counter order a contract shall come into existence between the Buyer and the Company at the time the Goods are collected or dispatched from the Company's premises (whichever is applicable).
- 2.4 These Conditions prevail over the provisions contained in any other document which may conflict with these provisions. Notwithstanding anything contained in any Buyer's conditions of contract relating to any contract between themselves and the Company, the Company's Conditions shall apply and take precedence over all other conditions.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, catalogue, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company. Specifications, illustrations, drawings, data, weights, measures, performance capabilities, application suitability information and other data set out in sales literature, price lists and other advertising matter of the Company are provided for information only and are intended to be by way of a general description of the Goods and form no part of the contract between the Buyer and the Company unless confirmed by the Company in writing in which case they shall be subject to recognized tolerances.
- 2.6 These Conditions contain the whole of the terms upon which the Goods are supplied (subject only to any express special term or variations given in writing by the Company) and constitutes the entire agreement between the parties. These Conditions shall supersede all previous and other communications and representations either oral or in writing.
- 2.7 All references in these Conditions to "orders" means a verbal order, over the counter order or written order, whichever is applicable.

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## Prices

- 2.8 The Company reserves the right, by giving notice to the Buyer at any time, to increase the Contract Price of the Goods to reflect any increase in cost to the Company which is due to any factor beyond the control of the Company (for example, but without limitation, any new or additional duties, increase in labour, any foreign exchange fluctuation, increase in materials or other costs of manufacture, any change in delivery dates, quantity or specifications of the Goods which are requested by the Buyer, any delay caused by any instructions of the Buyer or failure by the Buyer to give the Company adequate information or instructions, or additional costs incurred prior to delivery).
- 2.9 All prices quoted are based upon the quantity referred to in a quotation and if there is any variation in the total quantity of Goods ordered from the quotation the Company reserves the right to vary the price quoted.
- 2.10 Unless otherwise stated in a quotation the price quoted includes packaging in accordance with the Company's standard practice. Any other packaging requested by the Buyer or deemed necessary by the Company will be charged to the Buyer in addition to the price quoted.
- 2.11 In no circumstances will the Buyer be entitled to withhold payment (or part thereof) of the Contract Price or to raise any deduction, set off or counterclaim in respect thereof relating to the contract.
- 2.12 All pricing does not include GST. GST will be charged at the rate current at the time the Goods are supplied.
- 2.13 Any government charges which may be incurred or become payable in respect of the Goods will be the responsibility of the Buyer.

## 3. Ordering and Acceptance of Goods

- 3.1 The Company's obligation to supply the Goods is subject to the availability of those Goods at the date the delivery is required by the Buyer.
- 3.2 The Buyer is responsible for ensuring all quotations and orders are accurate. Orders once received from a Buyer are irrevocable. The Company may withdraw from the supply of Goods ordered at any time up to delivery.
- 3.3 Acceptance of the Goods delivered shall be deemed for all purposes to be acceptance of the condition and correctness of the Goods ordered, unless otherwise notified to the Company in writing within twenty-four (24) hours from the date of delivery.

## 4. Delivery

- 4.1 The place for delivery of the Goods shall be at the Company's premises unless the Company agrees at the Buyer's cost and risk to arrange delivery to the location nominated by the Buyer. It shall be the Buyer's responsibility to be at the place and at the time arranged for delivery, and to make available a suitable area at which to off-load the Goods. In the event that the Buyer or the Buyer's agent is not in attendance at the site and at the time arranged for delivery, or in the event that there is no suitable area to off-load the Goods, the Company reserves the right to:
- (a) Off-load the Goods at the nearest point suitable to off-load the Goods, in which such case the Company shall not be responsible for any loss of or damage to the Goods arising thereafter; or
  - (b) Store the Goods at an alternative site (at the Company's discretion) in which such case the Buyer shall be responsible to pay for attempted delivery and all additional costs associated with the additional storage and further delivery charges.
- 4.2 The Company reserves the right to supply or deliver the Goods by installments. Failure to supply or deliver any installment will not entitle the Buyer to terminate any order.

## 5. Time for Delivery

- 5.1 The Company does not warrant delivery of the Goods by any date and shall not be liable in damages or otherwise by reason of any delay in delivery of whatsoever nature and for whatever reason.
- 5.2 If it has been expressly agreed by the Company that delivery of the Goods shall be made by a particular date or within a particular timeframe, then subject to the provisos in this clause, the Company will use best

endeavors to arrange delivery by that date or within that timeframe, provided always that the Company shall not be responsible for delays or non delivery due to an act of God, explosion, flood, tempest, fire or accident, war, labour disputes or shortages, strikes, lock-outs, site conditions, availability of materials, legislative prohibition or restrictions, or any other cause beyond the control of the Company. In the event of failure by the Company to deliver by a particular date or within a particular timeframe, the Company shall not be liable to the Buyer for any amounts payable by the Buyer by way of damages (whether liquidated or otherwise) under its contract with the Buyer or under any contract entered into by the Buyer with a third party for the purpose of which or in connection with which the Goods are supplied.

5.3 The Buyer agrees that any expressed time for delivery by the Company shall not be of the essence of the contract.

5.4 The Company will endeavor to comply with any reasonable request by the Buyer for postponement of delivery but shall be under no obligation to do so and the Buyer is obliged to take delivery as agreed under the contract. Where postponement is agreed by the Company, the Buyer shall pay all costs and expenses occasioned by the delay, including all reasonable charges for storage and any increased costs of delivery.

## 6. Tests

6.1 If the Company makes any Goods available for the carrying out of tests or certification processes then such tests or certification processes are carried out by the Buyer at the Buyer's cost and risk. The Company expressly does not assume any responsibility or liability for the Goods whatsoever in the testing or other certification processes.

## 7. Payment

7.1 Payment must be made by the due date shown on the tax invoice ("due date"). In the event payment is not received by the due date the Company reserves the right (in addition to all other rights available to the Company at law) to charge interest on the overdue amount at the rate of 12% per annum calculated from the due date until the date payment is received in full.

7.2 Where the Contract Price exceeds \$5,000 (excluding GST) a deposit of 20% of the Contract Price will be payable within 7 days of the date of the tax invoice for the deposit. The balance of 80% will be invoiced upon supply of the Goods and will be payable by the due date shown on the tax invoice. However if for any reason the supply or delivery of the Goods is delayed due to any factor beyond the control of the Company, the Company reserves the right to issue a tax invoice for the balance of the Contract Price.

7.3 All payments must be made by the Buyer without deduction or set-off. The Company may at any time within its absolute discretion deduct any amount payable for the Goods from any other account between the Buyer and the Company.

## 8. Title

8.1 Notwithstanding delivery of the Goods, no title in the Goods whether legal or equitable shall pass to the Buyer until the full amount of the Contract Price of the Goods has been paid.

8.2 Where any payment is made by cheque, the payment shall not have been made until the cheque has been honoured upon presentation.

8.3 Pending payment as provided for in this clause, the Buyer agrees to hold the goods as bailee of the Company and shall re-deliver the goods to the Company in the event that the Buyer makes default in making any of the payments required under the contract.

8.4 At all times the Buyer will allow the Company access to the Goods in order to inspect the Goods and retake possession of the Goods at any time prior to payment of the full Contract Price. The Buyer acknowledges that this access shall be full, free and unhindered and shall not be or constitute trespass by the Company. The Buyer indemnifies the Company for any liability or loss it suffers seeking to exercise its rights of access and retaking possession.

8.5 In the event that (notwithstanding the provisions if this clause) title in the Goods has passed to a third party, then the proceeds of sale of the Goods to the third party shall be the property of the Company to the extent of the outstanding Contract Price.

## 9. Risk

9.1 Where delivery is included in the Contract Price, the Goods shall be at the Buyer's risk from the time the Goods are delivered to the place of delivery of the Goods.

- 9.2 When delivery of the Goods is arranged by the Buyer, the Goods shall be at the Buyer's risk from the time the Goods are loaded at the Company's collection point, notwithstanding that title and/or property in the Goods may not have passed to the Buyer. It shall be the Buyer's obligation to effect full insurance upon the Goods from such time as the Goods are at the Buyer's risk. The Company shall not be responsible for loss of, damage to, or destruction of Goods during transit or otherwise whilst the Goods are at the Buyer's risk.
- 10. Warranty**
- 10.1 The Buyer acknowledges that the Company is a wholesaler and it does not manufacture nor warrant products sold by it nor does it hold sufficient technical expertise or skills to evaluate the Buyer's requirements or orders.
- 10.2 Subject to clause 22.1 the Company gives no warranty whatsoever in relation to the Goods sold to the Buyer, whether in regard to the quality of the Goods, fitness of the Goods for any purpose or the compliance of the Goods sold with any description or sample produced by either party to the other at any time, whether prior to, at the time of or subsequent to the Buyer placing an order for the Goods with the Company, or otherwise.
- 10.3 The Buyer warrants that the Goods will be used:
- (a) only in applications for which the Goods were manufactured; and
  - (b) in accordance with all manufacturer's instructions and good and usual industry standards including being fully tested as safe prior to use.
- 10.4 Subject to clause 22.1 any liability of the Company (if any) arising from the supply of Goods by the Company or pursuant to any contract whether the liability arises for breach of contract or at common law, including the law relating to negligence by the Company, is limited to repair by the Company of the Goods, the resupply by the Company of replacement Goods at no additional charge or the refund of the Contract Price paid by the Buyer for the Goods giving rise to the liability, whichever the Company deems appropriate within a period of twelve (24) calendar months after the date of delivery of the Goods and only in circumstances of faulty design or workmanship. In no case will the Company incur liability for any loss or damage exceeding the Contract Price of the Goods paid by the Buyer for the Goods nor on account of losses or damages suffered by the Buyer including loss of profit, damage to property or personal injury arising from that supply or that agreement, whether arising directly, incidentally or consequentially.
- 10.5 Any warranty is negated and will not apply in the following circumstances:
- (a) Acts of God, explosion, flood, tempest, fire, accident, war or terrorism;
  - (b) If the Goods are altered, tampered with, mistreated or repaired by personnel not authorized by the Company;
  - (c) If loss or damage is caused by interference by external factors (for example, power surges, direct heat, humidity, non IP rated enclosures, no air ventilation) or nature for example (ants and other animals);
  - (d) Fair wear and tear;
  - (e) If the Goods are not used and maintained in accordance with the manufacturer's instructions.
- 10.6 All Goods must be returned to the Company or its authorized representative for testing and repair or replacement. It is the responsibility of the Buyer to transport the items, products or materials and all freight costs are the responsibility of the Buyer.
- 11. Force Majeure**
- 11.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the contract between the Buyer and the Company by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control, for example but without limitation:
- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, mud slides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war, terrorism, acts of public enemies, riots, civil commotion, malicious damage, sabotage, blockades and revolutions;
  - (b) strikes, lockouts, industrial disputes or difficulties, labour disputes or difficulties, work bans, pickets or blockades.

**12. Cancellation**

- 12.1 Cancellation of orders cannot be accepted without the consent in writing of the Company and on the condition that all costs and expenses incurred by the Company up to the time of cancellation, and/or all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be reimbursed by the Buyer to the Company. Return freight charges must be paid by the Buyer and the Buyer is responsible for Goods lost or damaged in transit during return to the Company.
- 12.2 Goods accepted for return must be in the original packing or as supplied and remain in good condition and in a completely resalable condition.
- 12.3 Non stock and special order items are non returnable.
- 12.4 Where the Company agrees to accept Goods for return, a minimum re-stocking charge of 15% of the agreed price of the item returned will be charged.

**13. Return of Goods**

- 13.1 The Company may accept the return of Goods which were incorrectly delivered, damaged prior to risk passing to the Buyer or which are defective and the manufacturer's warranty covers the defect and the manufacturer agrees to replace or resupply the Goods. Any acceptance of delivery back from the Buyer by the Company prior to the Company accepting responsibility for incorrect delivery or damage pre risk passing or the manufacturer accepting responsibility for the defective Goods will be by the Company as agents for the Buyer and is not to be taken as any acceptance of any liability by the Company or on behalf of the manufacturer.
- 13.2 Claims for damaged or defective goods or incorrect delivery must be made within 24 hours of delivery failing which the Buyer is barred from disputing the delivery or condition of the Goods and is deemed to have accepted liability for those Goods in accordance with the terms of these conditions. Where any Goods are returned to the manufacturer or supplier they remain at the Buyer's risk pending acceptance of liability by the manufacturer. The Buyer is to pay the freight and other cost of returning the Goods and the Buyer is responsible for Goods lost or damaged in transit during return to the Company or manufacturer.

**14. Default**

- 14.1 On happening of any one or more of the following events, namely the Buyer:

- (a) Fails to make payment to the Company on the due date; or
- (b) Refuses or neglects to take delivery of the Goods; or
- (c) (Being a company) has an administrator or liquidator appointed over all or any of the assets of the Buyer or enters into a scheme of arrangement for the benefit of its creditors, resolves that it be wound up or have a petition for its winding up presented against it or (being an individual) an application is made for the winding up of the Buyer or a petition for bankruptcy is presented or the Buyer petitions for his bankruptcy; or
- (d) Ceases, or threatens to cease, to carry on business; or
- (e) Fails to comply with any obligations herein contained,

then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the Contract Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**15. Confidentiality**

- 15.1 Any quotation prepared by the Company together with these Conditions and any other documentation related to a quotation is strictly confidential. The Buyer must not, and must ensure its representatives do not disclose in any way any quotation or furnish a copy of a quotation to any other entity without the approval in writing of the Company.

**16. Intellectual Property**

- 16.1 The Company reserves all copyright in all documents, drawing and specifications produced by the Company or on the Company's behalf in connection with the Goods.
- 16.2 The Buyer must not refer to the Company in any advertising material without first obtaining the prior written consent of the Company.
- 16.3 The Buyer must not reproduce, modify, amend or publish, or allow to be reproduced, modified, amended or published, the Company's registered or unregistered trade marks, names or logos without first obtaining the prior written consent of the Company.

**17. Limitation of Liability**

- 17.1 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not confirmed in writing.
- 17.2 The Company accepts no liability of any kind where any Goods have been misused or damaged by any person in any manner following delivery.
- 17.3 The Company shall not be liable for any direct or indirect costs, loss, damages or expenses or consequential loss relating to damage to property or injury or loss to any person, firm or company, or for any loss of profits or production due to any cause whatsoever, except to the extent the Company caused the damage, injury or loss by an act of negligence.

**18. Indemnity and Release**

- 18.1 The Buyer indemnifies the Company from and against any liability, claim, action, loss, damage, cost and expense the Company sustains or incurs arising out of or in any way connected with the performance of the Company's obligations under the contract with the Buyer.
- 18.2 The Buyer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and demands in respect of any infringement or alleged infringement of patent rights, registered design or similar protective rights resulting from compliance with the Buyer's instructions, requirements or specifications, whether express or implied.
- 18.3 The Buyer releases the Company from all actions, claims, demands, losses, liabilities, damages and expenses arising from or in relation the supply of the Goods and indemnifies the Company for any loss or liability that the Company may suffer (including legal costs on an indemnity basis in defending or prosecuting any claim) arising from the use or sale by the Buyer of the Goods or a breach of these terms including warranties by the Buyer.

**19. Waiver**

- 19.1 The failure of the Company at any time to:
- (a) Enforce or require the strict observance of or compliance with any provision of the contract of which these Conditions form part; or
- (b) Exercise any election or discretion under the contract of which these Conditions form part,

will not operate as a waiver of them or the rights of the Company, whether express or implied, arising under the contract.

**20. Severability**

- 20.1 If any part of these Conditions is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of the Conditions will not be affected and the Conditions will be read as if the part had been deleted in that jurisdiction only.

**21. Trade Practices Act 1974**

- 21.1 Warranties and provisions that may be implied by the *Trade Practices Act 1974* and any other legislation are expressly excluded except to the extent that exclusion is prohibited by the legislation.

**22. Jurisdiction**

- 22.1 All contracts between the Buyer and the Company will be governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.
23. **Variation**
- 23.1 The Company may vary these Conditions at any time by notice to the Buyer.
24. **Dispute**
- 24.1 If any dispute arises in relation to Goods supplied by the Company to the Buyer the Company may by notice to the Buyer at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration according to law. The arbitration is to be conducted in accordance with the *Commercial Arbitration Act 1990 (Qld)*. The Company may give notice that any dispute with the Buyer is arbitrated with any other dispute relating to the same Goods or issues. There is to be a single arbitrator appointed by agreement or failing agreement by the president of the Queensland Law Society. The arbitrator's decision is final and binding (except in the case of manifest error) and subject to any right of appeal under the *Commercial Arbitration Act 1990 (Qld)*. Each party will bear their own costs associated with the dispute.

