

ENERGETIC LIGHTING - GENERAL TERMS AND CONDITIONS OF SUPPLY**1. GENERAL**

- a) These terms and conditions apply to all supplies of goods and services by ENERGETIC LIGHTING AUSTRALIA PTY LTD ABN 62 168 714 145 ("ENERGETIC LIGHTING") to the Customer.
- b) No variation or waiver of these terms and conditions and no terms and conditions put forward by the Customer or printed on the Customers purchase order to ENERGETIC LIGHTING for the supply of goods or services will have any effect unless expressly agreed in writing by both parties.
- c) These terms and conditions supersede all previous negotiations and conditions, whether oral or written.
- d) These terms and conditions supersede and override any earlier set of terms and conditions issued by ENERGETIC LIGHTING.
- e) Headings are for convenience only and do not affect interpretation.
- f) Each party must pay its own costs in respect of this Agreement and the documents and transactions contemplated by this Agreement.
- g) If a provision is invalid or unenforceable in a jurisdiction, it is to be read down or severed to the extent of the invalidity or unenforceability, and that fact does not affect the validity or enforceability of that provision or the remaining provisions. All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination.
- h) In interpreting any agreement between ENERGETIC LIGHTING and the Customer no rules of construction shall apply to the disadvantage of ENERGETIC LIGHTING on the basis that ENERGETIC LIGHTING put forward the agreement, or any part thereof.
- i) These terms and conditions are governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.
- j) The application of the Sales of Goods (Vienna Convention) Act 1986 is excluded
- k) Energetic Lighting appoints _____ as a Distributor to market segment of the Australian lighting industry and authorises the distributor to resell the products to installers in _____ industry.
- l) The distributor is not authorised to advertise Energetic branded products into the Wholesale market nor is it authorised to publish price on website.

2. INVOICES AND PAYMENT

- a) The prices for the supply of goods are as set out in ENERGETIC LIGHTING's price list as varied by ENERGETIC LIGHTING from time to time. The prices are exclusive of GST and other taxes, duties and other such levies which will be payable by the Customer. The Customer must keep confidential all prices, rebates and other discounts offered or paid by ENERGETIC LIGHTING.
- b) ENERGETIC LIGHTING reserves the right, at its absolute discretion, to add to or remove from the range of goods offered to the Customer and may do so immediately at any time without notice to the Customer.
- c) The Customer must pay for all goods supplied by ENERGETIC LIGHTING within 30 days of invoice date.
- d) The Customer must notify ENERGETIC LIGHTING immediately of any error on an invoice.
- e) ENERGETIC LIGHTING's preferred method of payment is electronic transfer of funds. If you do not use this methods, ENERGETIC LIGHTING may charge an administration fee for the extra cost of processing.

- f) Except where goods delivered are not in accordance with Customer's order, or are defective, the return of goods for credit is at the absolute discretion of ENERGETIC LIGHTING. Where credits are granted they may be subject to charges for handling, repacking or testing.
- g) If any payment is overdue ENERGETIC LIGHTING may stop the delivery of goods or provision of services to the Customer and payment will become immediately due for all goods and services supplied under any contract with the Customer.
- h) If any amounts are overdue the Customer must pay charges and interest in accordance with ENERGETIC LIGHTING's then current rates.
- i) In these terms and conditions GST, Tax Invoice, Input Tax Credit and Consideration have the meaning given in the GST Act. GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).
- j) Unless expressly provided for otherwise the consideration specified does not include any amount for GST.
- k) If a supply is subject to GST, the recipient must pay to ENERGETIC LIGHTING an additional amount equal to the amount of the Consideration multiplied by the applicable GST rate.
- l) The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.
- m) If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.
- n) If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.
- o) If at any time ENERGETIC LIGHTING's costs change due to government action or to a change in the law ENERGETIC LIGHTING reserves the right to adjust its prices to take account of such change in its costs.
- p) If ENERGETIC LIGHTING suffers a significant and unexpected cost increase it may for a reasonable time period apply a surcharge.
- q) If the Customer orders goods from Energetic Lighting for an OEM brand then such orders may not be cancelled or revised without written agreement by Energetic Lighting and the goods are considered as delivered upon arrival at the agreed port in China. Any change or cancellation will incur costs which are to be paid by the customer.

3. LIABILITY AND EXCLUSIONS

- a) Nothing in any agreement between ENERGETIC LIGHTING and the Customer excludes, restricts or modifies any terms, conditions or warranties or ENERGETIC LIGHTING's liability for them which are imposed or implied by any statute, including but not limited to the Competition and Consumer Act 2010 (Commonwealth) and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that ENERGETIC LIGHTING may legally do so.
- b) ENERGETIC LIGHTING's liability for all kinds of loss or damage suffered by the Customer in the context of a supply of goods and services (or an agreement to make such a supply) from ENERGETIC LIGHTING to the Customer, irrespective of whether such liability arises in or is claimed on the basis of ENERGETIC LIGHTING's breach of contract, breach of a term, warranty, or condition or guarantee implied by statute, negligence or other tort, or breach of any statutory or equitable duty, and whether the act or omission of ENERGETIC LIGHTING is willful or otherwise, is excluded and/or limited (as the case may be) as set below:
 - (i) ENERGETIC LIGHTING's liability for personal injury or death is excluded;

- (ii) ENERGETIC LIGHTING's liability for damage to or loss of property is excluded;
 - (iii) ENERGETIC LIGHTING's liability for loss incurred in respect of the goods and/or services themselves supplied (or agreed to be supplied) by ENERGETIC LIGHTING to the Customer shall be limited to:
 - A. in the case of goods, at ENERGETIC LIGHTING's option,
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of the goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - the payment of the cost of having the goods repaired; and
 - B. in the case of services, at ENERGETIC LIGHTING's option,
 - supplying the services again; or
 - paying the cost of having the services supplied again.
 - (iv) ENERGETIC LIGHTING's liability for indirect loss, economic loss, consequential loss, loss of profit and loss of business opportunity is excluded.
- c) If the supply of goods and services is a supply to which Schedule 2 of the Competition and Consumer Act 2013 (Cth) applies (guarantees, conditions and warranties in consumer transactions) and the goods or services supplied are not of a kind ordinarily acquired for personal domestic or household use or consumption, ENERGETIC LIGHTING's liability for a breach of a guarantee, condition or warranty implied by that legislation is limited in the manner set out in paragraph (b)(iii).
- d) The Customer indemnifies ENERGETIC LIGHTING against any loss, damage or claims arising from ENERGETIC LIGHTING's presence on a Customer site.
- e) If ENERGETIC LIGHTING's performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond ENERGETIC LIGHTING's control that contract obligation will be suspended during the period ENERGETIC LIGHTING is affected by such cause.

4. THE CUSTOMER WILL:

The Customer will:

- a) provide free of charge adequate and safe access to the Customer's premises, information and facilities (including labour for loading and unloading of goods, and utilities supply) or ENERGETIC LIGHTING to carry out its duties and rights under any agreement with the Customer ;
- b) ensure that all works and materials for which the Customer is responsible comply with industry standards and all legal and statutory requirements and with any specifications provided by ENERGETIC LIGHTING;
- c) obtain all necessary consents and comply with all legal obligations in connection with installation or use of any goods supplied;
- d) not disclose any of the technology contained in ENERGETIC LIGHTING equipment or made available to the Customer, nor infringe ENERGETIC LIGHTING's rights in such technology;
- e) notify ENERGETIC LIGHTING in writing if the Customer intends to sell its business, with such notice being provided not less than twenty-one (21) days before any such sale takes place.
- f) notify ENERGETIC LIGHTING in writing as soon as reasonably practicable after the Customer becomes aware of any defect in goods or services supplied by ENERGETIC LIGHTING, any alleged breach of contract on the part of ENERGETIC LIGHTING, any negligence or other tort on the part of ENERGETIC LIGHTING or any breach of statutory duty by ENERGETIC LIGHTING. The Customer acknowledges and agrees that prompt notification may enable ENERGETIC LIGHTING to mitigate the loss or damage suffered by the Customer as a result of the alleged act or omission or to assist the Customer in doing so. Prompt notification may also enable ENERGETIC LIGHTING to identify

defective goods and services and prevent other customers from suffering loss or injury.

- g) indemnify and hold harmless ENERGETIC LIGHTING against all claims, proceedings, costs, damages, losses and expenses whatsoever arising directly or indirectly out of the possession, re-sale, supply or use of any good supplied by ENERGETIC LIGHTING.

5. DELIVERY/COLLECTION

- a) ENERGETIC LIGHTING's weights, records and measurements will be accepted as prima facie evidence of the quantities of goods delivered to the Customer.
- b) Failure by ENERGETIC LIGHTING to deliver or perform by any time specified will not entitle the Customer to terminate any agreement or make any claim against ENERGETIC LIGHTING.
- c) Whilst ENERGETIC LIGHTING will make reasonable efforts to have goods ordered delivered to you on the date agreed, ENERGETIC LIGHTING to the fullest extent permitted by law will not have any liability whatsoever should delivery not be made on or within a reasonable period of such date.
- d) If full delivery cannot be made due to the Customer's act or omission ENERGETIC LIGHTING may charge for abortive journeys or part deliveries.

6. ENERGETIC LIGHTING EQUIPMENT

- a) ENERGETIC LIGHTING does not warrant that the equipment is suitable for your intended use or process.
- b) The Customer will comply with any manual (or other instructions) provided, and will not otherwise adjust, repair or interfere with ENERGETIC LIGHTING equipment. If the Customer does not comply with this clause then ENERGETIC LIGHTING may charge the Customer for additional service parts and/or maintenance and repair charges as appropriate.

7. TITLE AND RISK

- a) All risk in respect of and goods supplied by ENERGETIC LIGHTING to the Customer shall pass to the Customer upon delivery or collection (this includes the risks associated with collection and loading of goods by the Customer from ENERGETIC LIGHTING depot or other collection points).
- b) Property and title in any goods supplied by ENERGETIC LIGHTING to the Customer remain with ENERGETIC LIGHTING until the Customer has paid for them in full and has also paid all other outstanding amounts due and payable to ENERGETIC LIGHTING by the Customer.
- c) All ENERGETIC LIGHTING equipment and containers provided to the Customer remain at all times the property of ENERGETIC LIGHTING and the Customer shall be a bailee of any such equipment and containers and shall not sell, offer for sale, mortgage, charge, or create any lien or other encumbrance over such equipment and containers and will keep the same in its own possession and control

8. BREACH AND TERMINATION

- a) In these terms and conditions "Insolvency Event" means circumstances in which the Customer is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for (i) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by ENERGETIC LIGHTING; (ii) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or if (iii) Customer seeks protection or is granted protection from its creditors, under any applicable legislation;
- b) If the Customer (being an individual) commits any act of bankruptcy or (being a partnership) any of the partners commits any act of bankruptcy, or (being a company), suffers and Insolvency Event , or if the Customer commits any breach of any provision of any agreement with ENERGETIC LIGHTING then ENERGETIC LIGHTING may by written notice to the Customer either:
 - terminate the agreement breached or any part, or

-suspend performance of all or any of its obligations, and at any time during such suspension terminate the agreement breached or any part.

- c) Termination will be without prejudice to any accrued rights of either party.
- d) On suspension or termination ENERGETIC LIGHTING may recover possession of any goods belonging to it (and, where relevant, possession and title to any of the Customer's gas in ENERGETIC LIGHTING equipment or gas containers at no charge to ENERGETIC LIGHTING), and the Customer irrevocably authorises ENERGETIC LIGHTING to enter its premises for this purpose.
- e) On termination under any circumstances the Customer must pay ENERGETIC LIGHTING's charges for the costs of removal of ENERGETIC LIGHTING goods.

9. PRIVACY

- a) The Customer agrees that ENERGETIC LIGHTING may obtain from and provide to third parties information about the Customer's creditworthiness and payment record.
- b) The Customer agrees that ENERGETIC LIGHTING may use any personal information held on the Customer for any purpose.
- c) ENERGETIC LIGHTING advises the Customer that any personal information is generally collected for the primary purposes of: maintaining customer records, delivery, supply of goods and services, account keeping, invoicing, debt collection, locating and/or retrieving ENERGETIC LIGHTING equipment and gas containers, credit reference checks, credit listing and for the secondary purposes of: marketing activities, marketing planning, product development, customer and market research, product recalls.
- d) A Customer's personal information may be disclosed to ENERGETIC LIGHTING's agents, distributors, contractors and related entities, to facilitate the primary and secondary purposes mentioned above, or as otherwise required by law, including for the purposes of storing such personal information in an overseas location for business purposes.

10. TECHNICAL ADVICE

- a) ENERGETIC LIGHTING gives no warranty and makes no representations as to the correctness, compliance, adequacy or otherwise of any technical advice, recommendation, information or assistance given (collectively referred to as "Technical Advice") and the Customer agrees that it uses the Technical Advice at its own risk.
- b) Subject to the extent permitted by law, the Customer has no right of action or claim for any cost, expense, loss or damage caused either directly or indirectly by the provision of the Technical Advice.

11. USE OF PRODUCT

- a) ENERGETIC LIGHTING gives no warranty and makes no representations as to the suitability of goods sold to the Customer

for any particular application or use and the Customer agrees that it buys, uses and re-sells the goods at its own risk.

- b) Subject to the extent permitted by law, the Customer has no right of action or claim for any cost, expense, loss or damage caused either directly or indirectly by the ineffectiveness, effectiveness or consequence of product or gas usage.
- c) The Customer indemnifies ENERGETIC LIGHTING, its servants, agents, contractors, directors from and against all claims, proceedings, suits, causes of action, costs, expenses, loss and damages arising directly or indirectly out of the ownership, re-sale, possession or use of the goods by the Customer or any other person.

12. PPSA (PERSONAL PROPERTY'S SECURITY ACT)

- a) Until the goods supplied to the Customer by ENERGETIC LIGHTING have been paid for in full, the Customer must not: (i) sell the goods other than in the ordinary course of business, in which case the Customer grants to the Supplier a *security interest* in either every payment to the Customer for the goods or the portion of every payment for the manufactured product that relates to the goods (both as *proceeds* of the goods and as original *collateral*); and (ii) sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to ENERGETIC LIGHTING as a result of the use, manufacture or resale of the goods.
- b) The Customer irrevocably authorises ENERGETIC LIGHTING at any time, to enter any premises upon which the goods are stored to enable ENERGETIC LIGHTING to inspect goods supplied by ENERGETIC LIGHTING and, if the Customer has breached these terms and conditions or suffers an Insolvency Event, to reclaim possession of the Products. The Customer indemnifies ENERGETIC LIGHTING against any liability to any person in connection with the entry or reclamation.
- c) The Customer acknowledges and agrees that: (i) this condition 12 creates a *security interest* in all present and after acquired goods and any *proceeds* as security for the Customer's obligations to ENERGETIC LIGHTING; (ii) ENERGETIC LIGHTING is a *secured party* in relation to the goods and any *proceeds* of the goods, and is entitled to register its interest on the *register* as a *security interest*, and if applicable, a *purchase money security interest*; (iii) ENERGETIC LIGHTING may, by notice to the Customer, require the Customer to take all steps requested by ENERGETIC LIGHTING to ensure its *security interest* in the goods and the *proceeds* is enforceable, and to perfect, or better secure the position of ENERGETIC LIGHTING and the Customer must comply with that notice; and (iv) ENERGETIC LIGHTING is not obligated to give any notice, document or information under the PPSA, unless the provision of that notice, document or information is required by the PPSA and cannot be excluded.
- d) The parties may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.
- e) A term in italics in this condition 12 has the same meaning as in the PPSA.