

TERMS AND CONDITIONS OF TRADE

1. Contract and Acceptance

- (a) These terms and conditions (**terms**) constitute an agreement between Ark Lighting Pty Ltd (ABN 27 161 838 777 (**ARK** or **we**) and the customer (**Customer** or **you**) in relation to any goods provided to the Customer by ARK. The Customer is taken to have accepted and be bound by these terms if it instructs ARK to provide any goods, accepts such goods or accepts these terms in any other manner recognised by law. These terms may only be amended by written agreement between the parties.
- (b) The Customer acknowledges and agrees that these terms and conditions shall be read together with any quote that may have been provided by ARK to the Customer.

2. Definitions

- (a) "ARK" means Ark Lighting Pty Ltd of 22 Ceylon Street, Nunawading, Victoria 3131 and includes any agents, contractors, sub-contractors and employees of the company.
- (b) "Customer" means the Customer or entity purchasing goods from ARK, its successors and assigns or any person acting on behalf of and with the authority of the Customer, as described in any application, quote, work authorisation or other form.
- (c) "Guarantor" means any person or persons, or entity, who agrees to be jointly and severally liable for the debts of the Customer in accordance with these terms.
- (d) "Goods" means any goods provided by ARK to the Customer in accordance with these terms.

3. Price and Payment

- (a) The price payable for the goods shall be either:
 - (i) the amount indicated on invoices provided to the Customer, or
 - (ii) the price quoted by ARK, provided the Customer accepts such quotation in writing within 10 calendar days.
- (b) ARK requires payment in full in advance for all goods, unless prior credit arrangements have been agreed in writing in advance between ARK and the Customer, in which case credit may be given for a maximum of 30 days from date of invoice. Payments by credit card shall be subject to payment of any surcharge charged by the financial institution to ARK. Even if credit arrangements are agreed a 50% deposit will be required for any custom will made or special overseas orders.
- (c) All goods and services are subject to payment of Goods and Services Tax (GST).
- (d) Unless agreed to the contrary in writing, any amounts not paid within 14 days of due date shall be liable for payment of interest at the rate stipulated in terms of the Penalty Interest Rates Act (Vic), as varied from time to time, with effect from the due date.

4. Delivery

- (a) Goods are sold "ex-store" and a delivery charge will apply to cover freight. Any special road or rail transport costs will likewise be payable by the Customer.
- (b) ARK will endeavour to deliver goods promptly, but all delivery times quoted are estimates only and are not legally binding on ARK.
- (c) Ark will not be liable for any loss or damage whatsoever arising out of a delay in delivery of goods, where ARK has been prevented or delayed from delivering the goods or otherwise performing any of its contractual obligations, as a result of force majeure or other circumstances beyond its control.

- (d) ARK may decline to deliver goods if it believes that it would be unsafe, unlawful or unreasonably difficult to do so or the delivery location or access to it is unsuitable, in which case the Customer will collect the goods from ARK's premises.
- (e) If the Customer accepts delivery of the goods after the estimated delivery time, it will be on the basis that they have no claim against ARK for delay (including indirect or consequential loss, or increase in the price of the goods).
- (f) In the event of a variation to an order of goods, ARK may change the price of the goods and may charge a fee for additional administration costs.
- (g) ARK may charge an additional cost for delivering any goods to the Customer.
- (h) Every care is used in packing of the goods, but unless otherwise agreed in writing, ARK will not be liable for any loss or damage of the goods in transit.

5. Title and Risk

- (a) While the goods remain the property of ARK, the Customer may not grant an encumbrance or charge over the goods or transfer any interest in the goods and shall furthermore store the goods in such a manner as to show clearly that they are the property of ARK.
- (b) ARK may request return of the goods and in the event of the Customer failing to return the goods, then the Customer irrevocably authorises ARK or its agent to enter land and premises owned, occupied or used by the Customer or its agent, when and where any goods may be situated and take possession of the goods. If ARK is unable to recover the goods, then it may institute proceedings for the recovery of such goods.
- (c) Although ARK retains ownership of the goods until all goods and/or services have been paid in full, full risk for the goods passes to the Customer on delivery. Delivery shall be when the Customer takes possession of the goods at the Customer's nominated address (where delivery is effected by ARK or its nominated carrier), or when the goods are collected by the Customer or its agent from ARK or its supplier. In the event of the Customer being unable to take delivery of any goods at a specified time, then ARK shall be entitled to charge a fee for redelivery of the goods.
- (d) The Customer must insure the goods against loss, until such time as the goods have been paid for in full.

6. Defects and Warranties

- (a) The Customer shall inspect the goods on delivery and report any defective goods in writing to ARK within 7 working days. That report shall clearly specify any alleged defects, shortage in quantity or damage. The Customer shall afford ARK an opportunity to inspect the alleged damage or defect within 14 working days from date of written notification and give ARK the opportunity to make good any defective goods within 14 working days of the inspection by ARK.
- (b) To the extent required by statute and subject to clause 6(c) ARK warrants that if any defect in the goods is apparent and is reported to ARK within twelve (12) months of the date of delivery then the ARK, in its sole discretion, will either:
 - (i) repair or replace the goods or supply equivalent goods, or
 - (ii) pay the cost of replacing the goods or acquiring equivalent goods, or
 - (iii) pay the cost of repairing or replacing the goods,
 in all cases, where payment in full has been made by the Customer.
- (c) The warranty in this clause 6 shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by ARK or the manufacturer; or
 - (iii) any unauthorised or incorrect use or installation of any goods, or

- (iv) the continued use of any goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or force majeure.
- (d) The warranty shall cease and ARK shall thereafter in no circumstances be liable under the terms of the warranty if the goods are repaired, altered or overhauled without the consent of ARK.
- (e) ARK will not be liable for any charges incurred by the Customer for rectification of luminaires, either during the installation or warranty period, unless such charges have approved in writing in advance by ARK.
- (f) This warranty shall not apply to light sources (lamps/globes) whether supplied separately or as part of a luminaire, unless a manufacturer's warranty applies, in which case the Customer shall claim directly from the manufacturer.
- (g) For goods not manufactured by ARK the warranty shall be the current warranty provided by the manufacturer of the goods. ARK shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- (h) Nothing in these terms is intended to have the effect of enabling ARK to contract out of 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, except to the extent permitted by those Acts. The Customer's attention is drawn to the following mandatory wording in terms of the Australian Consumer Law:
 - (i) "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

7. Goods Returned for Credit

- (a) Goods may not be returned for credit, except as agreed in writing between the parties in accordance with a Goods Returned Authority (GRA). A claim for credit must be made within 21 days of date of invoice and include the original invoice number and delivery date and the goods must then be returned to Ark's premises within 30 days of date of invoice, failing which goods will not be accepted for credit. The Customer must arrange and pay for freight of the goods to ARK's premises.
- (b) All goods returned for credit must be in their original containers and should not be shop soiled, damaged or obsolete, as such goods may not be accepted for credit, or credited at a reduced price.
- (c) A 30% restocking charge may be applied to all goods returned for credit, except in the case of faulty or incorrectly supplied goods.
- (d) In the case of a return of goods which have been specially ordered for the Customer, credit will only be allowed if the original manufacturer or supplier also accepts the return of the goods.
- (e) Specialised, custom-made or modified products ordered by customers will not be accepted for credit under any circumstances.

8. Personal Property Securities Act, 2009 (PPSA)

- (a) The Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all goods that have previously been supplied and that will be supplied in the future by ARK to the Customer.
- (b) The Customer undertakes to:

- (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ARK may reasonably require to;
 - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA ; or
 - (c) correct a defect in a statement referred to in clause 9(b)(i)(a) or (b);
 - (ii) indemnify, and upon demand reimburse, ARK for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any goods and/or services charged thereby;
 - (iii) not register a financing change statement in respect of a security interest without the prior written consent of ARK;
 - (iv) not register, or permit to be registered, a financing statement or financing charge statement in relation to the goods and/or services in favour of a third party, without the prior written consent of ARK.
- (c) ARK and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - (d) The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - (e) The Customer waives their rights as a grantor and/or a debtor under section 142 and 143 of the PPSA.
 - (f) Unless otherwise agreed to in writing by ARK, the Customer waives the right to receive a verification statement in accordance with section 157 of the PPSA.
 - (g) If it is held that section 125 of the PPSA must apply, the Customer agrees that at any time after any security interest provided for by these terms and conditions has become enforceable, ARK may delay taking action to retain the whole or part of the collateral, to the extent permitted by law.
 - (h) The Customers right to possession of goods still owned by ARK shall cease if:
 - (i) the Customer being an individual, commits an act of bankruptcy;
 - (ii) the Customer being a company, circumstances arise where a receiver, manager, administrator, liquidator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer enters into a deed of arrangement ;
 - (iii) the Customer ceases or threatens to cease conducting business in the normal manner, or applies for deregistration or receives a deregistration notice;
 - (iv) any cheque the Customer provides to ARK is dishonoured;
 - (v) the Customer fails to comply with any demand for payment issued by ARK, or
 - (vi) the Customer breaches any of these terms and conditions.
 - (i) The Customer must unconditionally ratify any actions taken by in terms of this clause.
 - (j) Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

9. Default

- (a) If the Customer breaches the provisions of these terms and conditions, ARK may suspend or terminate the supply of goods to the Customer and ARK will not be liable to the Customer for any loss or damage the Customer suffers, because ARK has exercised its rights in terms of this clause.
- (b) In the event of the Customer failing to pay any amount due in terms of these terms and conditions, the Customer becoming insolvent, convening a meeting with its creditors, entering into a deed of arrangement with creditors or making an assignment for the benefit of its creditors, or a receiver, manager, liquidator or similar person being appointed in respect of the Customer, then, without prejudice to any other remedies at law, ARK will be entitled to cancel the agreement entered into in accordance with these terms and conditions and claim all amounts owing to ARK.
- (c) In the event of ARK incurring any costs (including legal costs) in order to recover any amount owing in terms of these terms, or to enforce its rights in accordance with these terms, the Customer agrees that it will be liable for the legal costs of ARK on a solicitor and own client basis and/or any collection agency costs. Failure to comply with the terms of payment shall constitute a material breach of contract and ARK may treat the contract as repudiated and enforce its contractual rights.

10. Corporate Entity, Guarantee and Joint and Several Liability

- (a) If the Customer is a corporate entity the person acting on behalf of that entity warrants that they are a duly authorised representative of the entity and that person hereby personally guarantees performance by the Customer of all its obligations as specified in these terms and conditions and agrees to be jointly and severally liable for the debts of the Customer on a principal/debtor basis.

11. Limitation of liability

- (a) In the event of any breach of these terms and conditions by ARK, the remedies of the Customer shall be limited to damages, which shall not exceed the price of the goods and/or services under any circumstances. ARK shall furthermore not be liable for any indirect loss and/or expense (including loss of profits) suffered by the Customer, as a result of a breach of these terms and conditions by ARK.
- (b) Neither party shall be liable for any breach of contract, or liable for any default, delays or failure to perform any of that party's obligations in terms of these terms and conditions, due to force majeure or other event beyond the reasonable control of that party.

12. Dispute

- (a) If any dispute arises out of this agreement, other than in respect of a payment due to ARK, the parties will attempt to resolve the dispute informally. If the parties have not resolved their dispute within 10 business days of one party notifying the other party in writing of the nature of the dispute, then the parties agree to:
 - (i) engage a mediator selected by agreement or, failing agreement within 5 business days after one party nominates a mediator in writing, selected by the President of the Law institute of Victoria; and
 - (ii) conduct a mediation in respect of the dispute within 20 business days after the mediator is appointed.
- (b) The parties agree to each pay half of the mediator's fees.

- (c) A party must not commence court proceedings, except proceedings seeking interlocutory relief, in respect of a dispute arising out of these terms and conditions, unless it has complied with this clause.

13. Privacy

- (a) These terms and conditions are subject to, and should be read with, ARK's privacy policy, which is available on request or on ARK's website.

14. General

- (a) These terms and conditions and the agreement entered into between the parties shall be governed by the laws of the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that state.
- (b) In the event that any of these terms and conditions are found to be invalid, illegal or unenforceable, such validity, legality and enforceability shall not affect the validity of any other remaining provisions of these terms and conditions.
- (c) ARK reserves the right to alter these terms and conditions at any time.

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