

TERMS OF TRADING OF NOCTURNAL LIGHTING

ABN 74 169 640 466

“Customer” refers to the person or company to whom Nocturnal Lighting has agreed to supply goods or services;

“Goods” includes services;

“Agreement” means the agreement between Nocturnal Lighting and the customer, which includes these terms of trading, which terms apply whenever Nocturnal Lighting supplies goods or services to the Customer.

“Nocturnal Lighting Intellectual Property” means all intellectual property owned by Nocturnal Lighting, and includes without limitation the NOCTURNAL LIGHTING trade mark and any other trade marks used by Nocturnal Lighting to sell or market any goods or services from time to time.

1. This agreement supersedes any earlier terms and conditions wherever published or applying between Nocturnal Lighting and its Customer, and shall be deemed to override all oral and written agreements, negotiations by either party prior to or at the time of the making of the agreement. The customer will be deemed to have accepted these terms of trading if the customer places any order or otherwise deals with Nocturnal Lighting after receiving notice of these terms of trading, or if the customer makes payment of any invoices to which these terms of trading are attached. The customer will be deemed to have accepted these terms of trading in the foregoing circumstances, despite any request by Nocturnal Lighting for the customer to sign a copy of the terms of trading or otherwise acknowledge the customer's acceptance of the agreement, and despite any omission or refusal of the customer to do so.
2. Any oral representation, warranty or promise whatsoever (other than those obtained herein) made by any servant or agent of Nocturnal Lighting to the customer does not form any part of the agreement nor the consideration for or basis of any collateral contract.
3. Any recommended wholesale or retail prices on any Nocturnal Lighting products
Are recommended only and all prices and specifications are subject to change without notice.
4. The agreement is not an unconditional sale of goods to the customer. No title to the goods shall pass to the customer by reason of the delivery of the goods or the acceptance by Nocturnal Lighting of the customer's request to purchase the goods.
5. Goods supplied to the customer by Nocturnal Lighting shall remain the sole and absolute property of Nocturnal Lighting until such time as Nocturnal Lighting has been paid by the customer all monies due and owing to it by the customer on any and all accounts whatsoever.
6. Nocturnal Lighting is entitled to take possession of and dispose of any goods supplied to the customer as Nocturnal Lighting sees fit at any time until Nocturnal Lighting has received payment in full of all monies owing to it on any and all accounts whatsoever.
7. The customer grants permissions to Nocturnal Lighting to enter any property where any goods supplied by Nocturnal Lighting to the customer are stored.
8. Upon the sale to the third parties of any goods supplied by Nocturnal Lighting to the customer prior to the full payment of all monies owing to Nocturnal Lighting, the customer agrees to deposit all proceeds in a separate bank account and agrees to not mix the proceeds with any other monies and shall account to Nocturnal Lighting upon demand.
9. Until Nocturnal Lighting has been paid all money due and owing to it the customer agrees: (a) to keep all goods supplied by Nocturnal Lighting as fiduciary and trustee for Nocturnal Lighting and to store the goods in a manner that expressly discloses that Nocturnal Lighting is the owner of the goods; and (b) to only sell the goods supplied by Nocturnal Lighting in the usual course of business on the condition that the customer holds all proceeds on trust for Nocturnal Lighting.
10. If the customer sells, disposes of, or otherwise deals with the goods or any part thereof before the full payment has been received by Nocturnal Lighting, the customer must advise Nocturnal Lighting in writing, at such times as Nocturnal Lighting may request, specifying the batch or order numbers of the relevant goods. The customer will indemnify Nocturnal Lighting from any damages, costs, liabilities or penalties which Nocturnal Lighting may suffer or incur from the customer's failure to provide information or from relying on the information provided by the customer.
11. Notwithstanding anything to the contrary contained in this agreement, all goods shall be at risk of the customer from the earlier of the time the goods are put in a deliverable state, or the goods are delivered to a carrier or other bailee (whether named by the customer or not) for transmission to the customer.
12. The customer's rights to possession of the goods shall cease at the earliest of:
 - 12.1.1. The expiration of the time given by Nocturnal Lighting for payment in full for the goods.
 - 12.1.2. The customer, if a natural person, committing an act of bankruptcy or compounding or making any arrangement with his creditors or executing a bill of sale or any execution or distress being levied upon any goods of the customer; or
 - 12.1.3. The customer, if a company, being wound up, or a meeting being called to consider such a proposition, or a receiver and/or manager being appointed.
13. Upon the cessation of the customer's rights to possession of the goods, Nocturnal Lighting's representatives or agents may for the purpose of recovery of the goods enter upon any premises where the goods are stored or where they are reasonably thought to be stored and may repossess the same.
14. All costs (including but not limited to legal costs on an indemnity basis) incurred by Nocturnal Lighting in obtaining payment from the customer or in endeavouring to trace the whereabouts of the goods or obtaining or endeavouring to obtain possession thereof, whether by action or suit or otherwise,

- and all other transport, storage, sale, repossession and like expenses shall all be recoverable by Nocturnal Lighting from the customer in addition to and without prejudice to Nocturnal Lighting's other rights under this agreement.
15. If the customer on-sells prior to payment of the agreed price to Nocturnal Lighting, he shall sell as agent bailee of Nocturnal Lighting in law and in equity and shall hold the proceeds thereof in trust for Nocturnal Lighting and shall not mingle the proceeds with other monies or pay them into an overdrawn bank account.
 16. All orders are accepted on the condition that goods and services will be invoiced at prices ruling at the date of dispatch ("the agreed price"). All prices are strictly net and do not include sales taxes and where applicable these will be charged separately. The customer shall pay for all freight, shipping, and air cargo, insurance and courier charges unless otherwise specified in writing in the original account application.
 17. The agreed price is subject to variation (occurring after the date of agreement) in the event of changes in duty exchange rates, or the prices of materials or labour conditions.
 18. Unless the customer has written approval for credit, the customer will pay 50% deposit upon placement of order and shall pay the remaining 50% prior to delivery. All payments are to be made in cash or bank cheque. If the customer has credit approval, payment must be within 30 days of invoice failing which interest is payable by the customer thereafter on demand at the rate of 18% per annum calculated daily until the date of payment of the balance outstanding from time to time. The customer acknowledges and agrees that this rate and the amount chargeable represent the minimum loss and liquidated damages, which will be sustained by Nocturnal Lighting in the event of non-payment. Nocturnal Lighting has the right to withdraw credit at any time prior to the delivery of the whole of any order.
 19. Orders cannot be cancelled except by arrangement in writing by Nocturnal Lighting. Goods ordered in error or in excess cannot be returned for credit or exchange except by special arrangement agreed to in writing by Nocturnal Lighting and where Nocturnal Lighting has issued a credit note, which will involve a handling fee of 25%. In these circumstances goods will only be accepted if returned in their original packaging, by Nocturnal Lighting's nominated carrier in saleable condition, and received at Nocturnal Lighting's store within 7 days from the date of delivery, quoting invoice number and date of receipt. Orders or balance of orders may be cancelled by Nocturnal Lighting in the event of any failure by the customer to adhere to the terms of the agreement of the product, Nocturnal Lighting suspects the credit worthiness of any customer.
 20. Nocturnal Lighting has the right to fulfil any order by progressive deliveries, each of which must be paid for as a separate liability whether invoiced separately or not. Failure on the part of the customer to make any payment on the due date shall constitute a breach of an essential term of the Agreement and Nocturnal Lighting shall be entitled to treat such failure as a repudiation of the contract by the customer and Nocturnal Lighting shall be relieved of any further performances thereof.
 21. If goods ordered by the customer are not available at the time of order they will be supplied by Nocturnal Lighting when available, and Nocturnal Lighting shall not be liable to the customer to make good any damage or loss whether arising directly or indirectly as a result of any ensuing delay in delivery. The customer shall pay the price as provided for in Nocturnal Lighting's price list current as at the date of the supplying of the goods.
 22. Offers made by Nocturnal Lighting from delivery from stock are made on the express understanding that the offer stands only if the articles concerned are unsold at the time of the customer's acceptance.
 23. Any times quoted for delivery are treated as estimates only involving no contractual obligation and Nocturnal Lighting shall not be liable to the customer to make good any damage or loss whether arising directly or indirectly out of the delay in delivery.
 24. In the event of any over-delivery in quantity of goods to the customer, the customer must accept the goods ordered and may reject the rest. The estimated quantities shown in any quotation are not guaranteed and the customer will be charged for actual lesser quantity supplied unless Nocturnal Lighting has indicated in writing to the contrary.
 25. Without prejudice clause 11 of these terms of trading, where the customer requests delivery to any site including the customer's premises Nocturnal Lighting can elect to deliver the goods to that location but, if the location is unattended at the time of delivery, shall not be responsible for any damage or loss of the goods after delivery howsoever arising.
 26. Unless otherwise agreed in writing Nocturnal Lighting shall not affect insurance on goods forwarded from its premises.
 27. Goods for transportation will be dispatched without special casing or packaging. Should special casing or packaging be required this will be charged to the customer. No responsibility will be accepted for breakage, damage or loss in transit.
 28. In the event of a "force majeure" event Nocturnal Lighting shall be entitled either to rescind the agreement (without being liable for damages) or to extend delivery or time for performance by a reasonable period of not less than the duration of such event and all liability under any contract, including liability for damages whether specified or otherwise, shall be modified or adjusted accordingly. "Force majeure" shall include all happenings beyond Nocturnal Lighting's control or in consequence of which Nocturnal Lighting is hindered in executing its obligations and shall include all strikes, trade disputes, fire, accidents and supply, import or export delays.
 29. Nocturnal Lighting shall not be liable for any costs, expenses, loss or damage of whatsoever nature and whether direct, indirect or consequential caused by or contributed to by any error, misrepresentations or misleading information supplied by or contained by manufacturers or suppliers packaging, labels, specifications, brochures, pamphlets, advertising or other media.
 30. The customer shall indemnify Nocturnal Lighting against all claims, costs, liability arising out of any infringement or alleged infringement of any patent design or formula in connection with the supply of goods at the customer's request or specification.
 31. Except for such conditions or warranties as are required by law to be implied, no condition, warranty or representation of any kind is given by Nocturnal Lighting to the customer whether in relation to the condition or suitability of the goods, the date of delivery, the quality, fitness, safety, quiet enjoyment or otherwise of the goods and all warranties conditions and representations are hereby excluded to the maximum extent permitted by law. Furthermore, Nocturnal Lighting's liability for the breach of any conditions or warrant implied by the law is limited to the maximum extent permitted by law and to the extent permitted is limited at the option of Nocturnal Lighting to replacement of the goods or supply of equivalent goods or repair of the goods or payment of the costs of such replacement supply or repair. The customer acknowledges that, except for aforesaid, Nocturnal Lighting is not liable for any cost expenses loss or damage of whatsoever nature, whether direct, indirect or consequential, caused by or resulting from breach of any conditions or warranty. Nocturnal Lighting wishes to advise that all products come with an explicit installation guides for both structural installation and wiring diagrams. Please ensure your contractor has the level of expertise to undertake the installation and follows the specified guidelines provided, as Nocturnal Lighting will not be held liable for defective products on the basis of installation.
 32. Any issues regarding the products are to be brought to Nocturnal Lighting's attention as soon as the customer becomes aware of it. Nocturnal Lighting will endeavour to send a representative of their company within 72 hours of the issue being raised. No repairs are to be undertaken to any Nocturnal Lightings products without the consent of Nocturnal Lightings. Nocturnal Lighting will not be liable for the cost of repair without their consent.
 33. The Agreement shall be deemed to have been entered into the state of New South Wales and the customer agrees to submit to the exclusive jurisdiction of the courts of that state.

34. The customer acknowledges and agrees that under no circumstances will they take any interest in the Nocturnal Lighting Intellectual property, and Nocturnal Lighting reserves all of its rights in respect of the Nocturnal Lighting Intellectual property.
35. If any items in this agreement shall for any reason be declared or become unenforceable, invalid or illegal for any reason, the other terms and provisions of this agreement shall remain in full force and effect as if the agreement never includes unenforceable, invalid or illegal terms.
36. Nocturnal Lighting's failure to exercise or delay in exercising any right, power or privilege will not operate as a waiver of any such right, power or privilege.
37. Any leniency, indulgence or extension of time which may be granted by Nocturnal Lighting to the customer will not be prejudice any of Nocturnal Lighting's rights in any way, nor will they constitute a waiver of any of Nocturnal Lighting's rights.
38. No variation of or addition to this agreement will be binding unless this agreement must be in writing and will be deemed duly authorised representatives.
39. Any notice or other notification required to be given under this agreement must be in writing and will be deemed duly served three days after it is mailed postage prepaid or by registered mail or by security post, or one day after transmission by facsimile by either party to the other party as its address shown herein or last known business address or relevant facsimile number.
40. If Nocturnal Lighting makes any taxable supply to the customer under this agreement, the customer shall pay to Nocturnal Lighting, on provision of a valid tax invoice, an amount equal to the GST which is payable in respect of that taxable supply.
41. If and to the extent that any payment or other consideration to be made or furnished by Nocturnal Lighting to a person other than the customer, pursuant to or in connection with this agreement, may be increased or added to by reference to (or as a result of any increase in the rate of) any GST for which Nocturnal Lighting is not entitled to receive and retain an "Input Tax Credit" (as defined in *A New Tax System (Goods and Services Tax) Act 1999*), the customer shall pay to Nocturnal Lighting on demand an amount equal to that increase or the value of that addition.
42. Where Nocturnal Lighting has become subject to nay penalties or interest as a result of late payment of GST, where that late payment is a result of the failure of the customer to comply with this agreement, then the customer shall pay to Nocturnal Lighting an additional amount on demand equal to the amount of those penalties and interest.
43. Nocturnal Lighting may disclose any personal information in its possession relating to the customer to any credit reporting agency or similar body, for the purpose of assessing the customer's creditworthiness. The customer consents to such disclosure, and also consents to Nocturnal Lighting receiving information from credit reporting agencies or similar bodies regarding the customer's commercial activities or creditworthiness.

I have read and understand these terms and conditions and agree to abide by them until such time as this agreement is cancelled by either party.

Signature..... Name..... Date.....