



TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. **DEFINITIONS:** Words used in these Terms and Conditions have the following meanings:
 - i. **3S** means 3S Lighting Pty Ltd (ACN 118 362 842) and its related entities;
 - ii. **Claim** means any claim, demand, debt, account, action, expense, loss, cost, lien, liability (including legal costs), judgment, damages and proceedings of any nature whatsoever;
 - iii. **Charges** means the charges for the Supply detailed in the relevant Order Confirmation issued to You by 3S;
 - iv. **Contract** means the agreement between 3S and You comprising, in decreasing order of priority to the extent of any inconsistency, these Terms and Condition, the Order Confirmation and the Quotation;
 - v. **Delivery Point** means the location where the Goods will be delivered to You or the Services will be performed, as specified on the Order Confirmation;
 - vi. **Economic Loss** means any special, indirect, consequential or economic loss, including without limitation any loss of revenue, loss of profit, loss of custom, loss of goodwill, loss of overhead recovery, loss of business opportunity, loss of the use of money, loss of use of property, loss of contract, loss of production, loss or payment of financing charges or cost recovery, opportunity cost, payment of liquidated sums, payment of damages (whether under any other agreement or otherwise);
 - vii. **Force Majeure Event** means any act, omission or circumstance over which 3S could not reasonably have exercised control, including without limitation delay in delivery of materials required for the Supply, breakdown of plant, machinery or equipment, strike or other labour difficulty (whether or not involving employees of 3S);
 - viii. **Goods** means the goods supplied by 3S under this Contract, as detailed in the Order Confirmation issued by 3S to You;
 - ix. **Intellectual Property** means trade marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;
 - x. **Law** includes any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise;
 - xi. **Services** means the services supplied by 3S under this Contract, as detailed in the Order Confirmation issued by 3S to You;
 - xii. **Supply** means the provision of the Goods or Services, or both, by 3S under the terms of this Contract;
 - xiii. **Tax** includes any GST, sales tax, levy, charge, impost, duty, fee, deduction, customs duty or any other tax or charge or duty which is assessed by any authority or Government agency;
 - xiv. **Terms and Conditions** means these Terms and Conditions for the Supply of Goods and Services;
 - xv. **Warranty Terms and Conditions** means the warranty terms and conditions governing the terms of 3S's additional warranty, located at www.3slighting.com as amended by 3S from time to time;
 - xvi. **You** means the purchaser of the Supply from 3S under this Contract, as specified in the Order Confirmation relating to the Supply; and
 - xvii. **Your People** include employees, agents, consultants and subcontractors of You.

2. THE CONTRACT

- i. These Terms and Conditions prevail over all of Your terms and conditions.
- ii. Any order, request or other document provided by You that purports to vary or supersede these Terms and Conditions is of no effect.
- iii. You agree that by requesting 3S to provide the Supply, You agree to be bound exclusively by these Terms and Conditions in relation to the Supply.
- iv. This Contract constitutes the entire agreement between You and 3S about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. This Contract may only be amended by written agreement between You and 3S.
- v. A minimum price of \$250 (excluding GST) applies to all orders for the Supply.

3. CANCELLING ORDERS

- i. You may not vary or cancel an order for the Supply without 3S's prior written consent, which may be withheld in 3S's absolute discretion.
- ii. Despite clause 3.i and to the maximum extent permitted by Law, You must indemnify 3S against all costs, expenses and losses (including loss of profit) incurred directly or indirectly by 3S as a result of any cancelled order or part thereof (including where 3S consents to such cancellation).

4. TIMING

- i. Any times for the delivery of Goods made known to, or requested by, You are estimates only.
- ii. 3S will not be liable for, and You release 3S from, any Claim for late or non-delivery of the Supply.

5. RISK AND TITLE

- i. Risk in the Goods passes to You when the Goods are loaded onto transport for delivery to You.
- ii. Title in the Goods does not pass to You until You have paid 3S for the Goods in full.
- iii. You acknowledge and agree that these Terms and Conditions constitute a security agreement which creates a security interest in favour of 3S in relation to all Goods previously supplied by 3S to You (if any) and all future Goods to be supplied by 3S to You, to secure Your payment obligations to 3S in relation to those Goods. By ordering Goods from 3S, You agree to be bound by these Terms and Conditions and in doing so, agree to grant a security interest to 3S in relation to all Goods supplied by 3S to You.
- iv. You must take out and maintain an insurance policy covering loss of or damage to the Goods for their full replacement value at all times when the Goods are at Your risk until 3S receives payment (including while the Goods are in transit).
- v. You must indemnify 3S for any loss or damage arising as a result of Your failure to comply with clause 5.iv.

6. ACCEPTANCE OF GOODS

- i. You must check the condition and quantity of Goods delivered as soon as possible following delivery.
- ii. You will be taken to have accepted the Goods in full and in good condition, unless you notify 3S in writing detailing the shortages or damage within 48 hours of the Goods being delivered to You. Delivery will be taken to have occurred from the earlier of when:
 - a) You or any of Your People sign any delivery receipt issued by the transport provider;
 - b) You or any of Your People accept the Goods at the Delivery Point; and
 - c) if You or Your People are not available to receive the Goods at the Delivery Point, the time that the Goods are unloaded at the Delivery Point.
- iii. You agree that 3S is not liable for any damage or shortages in Goods that are not notified to 3S in writing within 48 hours of the Goods being delivered to You.

7. RETURN OF GOODS

- i. To the maximum extent permitted by Law, 3S will not accept the return of any Goods if You have simply changed Your mind.
- ii. Despite clause 7.i, 3S may agree to accept the return of Goods at its absolute discretion and on any terms and conditions 3S sees fit.
- iii. If You wish to return any Goods to 3S, You must strictly comply with the following procedure:
 - a) notify 3S in writing of the reason you want to return the Goods and provide details of the Goods;
 - b) if 3S agrees to accept the return of Your Goods, 3S will issue you with a signed Goods Return Authority. To the maximum extent permitted by law, You are not permitted to return, and 3S is not obliged to accept the return of, any Goods without a Goods Return Authority signed by 3S;
 - c) if You receive a signed Goods Return Authority from 3S, you may return the Goods to 3S at Your expense:
 - 1. in their original packaging and condition, and in a re-saleable state; and
 - 2. with the signed Goods Return Authority; and
 - d) You must pay 3S a restocking handling fee of 40% of the total value of the Goods being returned.
- iv. You acknowledge and agree that if You return any Goods to 3S without strictly complying with the procedure in clause 7.iii, then:
 - a) 3S accepts no responsibility for the returned Goods and they will be at Your risk;
 - b) You must pay any costs or expenses incurred by 3S as a result of or in connection with processing, handling and returning the Goods to You; and
 - c) You must promptly arrange for the Goods to be collected from 3S's premises and delivered back to You at Your expense.

- v. You acknowledge and agree that any receipt or acceptance by 3S or any of its employees, agents, contractors or any other third party of any Goods that are returned to 3S's premises will not waive, derogate or reduce 3S's rights or Your obligations under clause 7.iv.
- vi. Despite any other clause in this Contract and to the maximum extent permitted by Law, 3S will not be liable to accept the return of any Goods that have been specifically manufactured or imported at Your request.

8. WARRANTIES

- i. Except as otherwise expressly stated in these Terms and Conditions, all terms, conditions, warranties, guarantees, undertakings, inducements or representations, whether express, implied, statutory or otherwise, relating in any way to the Supply are excluded to the fullest extent permitted by Law.
- ii. In addition to any rights or remedies that You may be entitled to under Law in relation to the Goods (including the Consumer and Competition Act 2010), 3S will provide the warranty detailed in the Warranty Terms and Conditions in relation to Goods manufactured by 3S (the **Additional Warranty**), subject to the terms of this Contract and the Warranty Terms and Conditions. You should refer to the Warranty Terms and Conditions for full details of the Additional Warranty.
- iii. To the maximum extent permitted by Law, the Additional Warranty does not apply to, and 3S will not be liable in respect of:
 - a) any parts or components of the Goods that have not been manufactured by 3S (including without limitation, lamps and control gear);
 - b) Goods that have not been installed by a suitably qualified tradesperson in accordance with the original manufacturer's instructions (if any);
 - c) Goods that have been used, applied, installed, connected or operated in any way other than in accordance with the relevant operating, installation and maintenance instructions;
 - d) Goods that have been misused, neglected or improperly handled, installed, stored or maintained;
 - e) fair wear and tear on Goods;
 - f) wear parts of Goods;
 - g) Goods that have been altered or modified;
 - h) any loss or damage caused to any goods or personal property used with or in conjunction with any Goods.
- iv. To the maximum extent permitted by law, the Additional Warranty does not apply to, and 3S will not be liable to You, in relation to Goods, parts or components of Goods that are not 3S branded and manufactured by 3S.
- v. Despite any other clause in these Terms and Conditions to the contrary and to the maximum extent permitted by Law, You acknowledge and agree that 3S will not be responsible for any costs, losses or expenses directly or indirectly incurred by You (or any party claiming through You) as a result of or in connection with the accessing (including without limitation the use of scaffolding, cranes, cherry pickers or lifts) removal, de-installation, transport, re-connection or re-installation of any Goods claimed by You to be faulty, defective or the subject of a warranty claim under this Contract, the Additional Warranty or any Law.
- vi. To make a warranty claim in relation to any faulty or defective Goods, You must arrange at Your expense for the relevant Goods to be disconnected, de-installed and returned to 3S's premises in the physical condition and configuration in which they were delivered to You (to the extent reasonably possible in light of the alleged defect). Details of the procedure for making a claim under the Additional Warranty are set out in the Warranty Terms and Conditions
- vii. If the Goods are repaired or replaced by 3S, You acknowledge and agree that You will be responsible for arranging the re-installation, re-connection of the Goods and any other associated costs at Your expense.

9. DRAWINGS AND SPECIFICATIONS

- i. You acknowledge that any specifications, drawings, dimensions or other information relating to the Supply (**Specifications**) are approximate only and to the maximum extent permitted by Law, You release 3S from any Claims relating to failure of the Supply to comply with any Specifications.
- ii. You acknowledge that any Specifications, description or illustration contained in any catalogues, price lists and other advertising material do not form part of this Contract.
- iii. 3S reserves the right to modify or make technical changes to the Supply in whole or part from time to time without prior notice to You, and You release 3S from any Claims in relation to any such modifications or changes.

10. PAYMENT

- i. Unless otherwise stated by 3S in writing, 3S will invoice You for the Supply at the time the Goods are dispatched.
- ii. Unless otherwise stated by 3S in writing, the Charges include freight costs.

- iii. Despite clause 10.i, if You do not have a credit account with 3S, 3S may issue an invoice or order confirmation and You must pay to 3S the amount of that invoice or order confirmation prior to 3S commencing the manufacture or performance of the Supply.
- iv. If you have a credit account with 3S, You must pay the amount of any invoice within 30 days after the end of the month the invoice was dated.
- v. Despite clause 10.iv or any other agreement between 3S and You regarding payment, 3S may demand immediate payment in cash of all amounts outstanding (whether then due and payable or not) if 3S considers in its reasonable opinion that Your creditworthiness has become unsatisfactory.
- vi. 3S may charge You interest on any overdue amounts at a rate of 2% per annum and such interest will accrue daily.
- vii. If You do not pay any money due in accordance with these Terms and Conditions, 3S may, without prejudice to any other remedies available to it:
 - a) withhold supply of the Goods, including warranty and other replacement goods, until You pay all amounts payable to 3S under the Contract; and
 - b) terminate Your credit account (if any) with 3S.
- viii. Unless, otherwise specified, Charges under this Contract do not include GST. You will pay to 3S the amount of GST for which 3S becomes liable for the Goods and such payment must be made at the time when You are required to pay any amount relating to the Supply or on demand by 3S.
- ix. Any other Tax imposed in relation to the Goods must be paid by You in addition to and with the Charges payable for the relevant Goods.
- x. 3S may vary the Charges by providing 10 days written notice by reason of any:
 - a) variation in the cost of labour, materials or transport;
 - b) variation in exchange rates, customs duty, freight insurance, shipping expenses and cartage;
 - c) variation in the amount of work required to provide the Supply due to a variation in specification approved by You and 3S;
 - d) other charges affecting the cost of production or performance;
 - e) change to the Delivery Point.
- xi. You acknowledge that the Charges identified in the Order Confirmation are based on You agreeing to purchase the quantities specified in the Quotation or Order Confirmation. If the quantities actually ordered by You are less than the quantities specified in the Quotation or Order Confirmation, then 3S may vary the Charges at any time with immediate effect by giving written notice to You.

11. YOUR OBLIGATIONS

- i. You must:
 - a) take reasonable steps at Your expense to comply with any recall programs initiated by 3S or any Government agency in relation to the Goods;
 - b) not incur any liability or accept any obligation on behalf of 3S;
 - c) not make any representation or give any warranty in relation to the Goods that is not expressly authorised in writing by 3S or the original manufacturer of the Goods; and
 - d) not do anything which might adversely affect the reputation of 3S or the Goods.

12. INTELLECTUAL PROPERTY

- i. You agree that all Intellectual Property arising out of or in connection with the Contract, the design or manufacture of the Goods or performance of the Services will vest in 3S immediately upon creation.

13. LIABILITY AND INDEMNITY

- i. To the maximum extent permitted by Law, You must indemnify 3S from and against all Claims arising as a result of or in connection with:
 - a) any breach of this Contract by You or Your People;
 - b) any act or omission of You or Your People (including, but not limited to any representations given by You in relation to the Goods);
 - c) use or on-supply of the Goods.
- ii. Despite any other provision of this Contract and to the maximum extent permitted by Law, 3S's liability to You (including any party claiming through You) for any Claim for loss or damages incurred in connection with the Goods or this Contract (whether under contract, in tort (including negligence), in equity, under statute or otherwise) will be strictly limited to the replacement of the defective Goods or Services, repair of the defective Goods or Services or the repayment (or allowance) of the invoice price of the defective Goods or Services, at 3S's option.
- iii. Despite any other provision in this Contract, 3S will not be liable to You (or any Party claiming through You), and You release 3S from any liability, in relation to any Economic Loss, whether arising under contract, in tort (including negligence), in equity, under statute or otherwise.

14. CONFIDENTIALITY

- i. If You or Your People receive any confidential information from 3S, You and Your People must not use or disclose such information unless:
 - a) 3S gives its written consent to disclosure of the information;
 - b) the information enters the public domain (otherwise than as a result of a breach of an obligation of confidentiality, including this clause, by You or Your People); or
 - c) the use or disclosure is required by Law.

15. TERMINATION

- i. 3S may cancel any order for the Supply (in full or in part) made under this Contract at its absolute discretion by providing written notice to you at any time.
- ii. 3S will not be liable to You for (or any parting claiming through You), and You release 3S from, any Claims for loss or damage arising as a result of or in connection with 3S cancelling any order for the Supply under clause 15.i.

16. FORCE MAJEURE

- i. 3S will not be liable for any delay or failure to provide the Supply if such failure or delay is due to a Force Majeure Event.
- ii. 3S may terminate the Contract by written notice to You if the Force Majeure Event continues for more than 30 consecutive days.

17. NO WAIVER

- i. Just because 3S does not insist on You performing a term of the Contract that does not mean that 3S cannot later insist on You performing that term or another term.
- ii. If 3S waives a breach of contract by You, the waiver only applies to the particular breach and 3S can continue to insist on You performing the same obligation when it has to be performed again.
- iii. A waiver by 3S is only effective if it is in writing and signed by 3S.

18. SEVERENCE

- i. If any clause in this Contract is held to be void, unenforceable or illegal, it may be severed to the extent it is void, unenforceable or illegal without affecting the enforceability of any other clause in this Contract.

19. LIMITATIONS IMPOSED BY LAW

- i. The rights, duties and remedies granted or imposed under these Terms and Conditions operate to the extent not excluded by Law.
- ii. Nothing in these Terms and Conditions is intended to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by Law, which cannot by Law be excluded, restricted or modified.

20. GOVERNING LAW

- i. The Contract is governed by the Law applicable in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

21. DISPUTE RESOLUTION

- i. If a dispute arises under this Contract, the party alleging the dispute must notify the other party in writing, detailing the particulars of the dispute.
- ii. On receipt of a written notice under clause 21.i, senior personnel from each party must attempt to resolve the dispute promptly by negotiation in good faith before referring the dispute to conciliation or arbitration or commencing court proceedings.
- iii. If the dispute is not resolved within 30 days of the commencement of negotiation, either party may commence court proceedings by notifying the other party in writing.

22. SURVIVAL OF INDEMNITIES

- i. Each indemnity under this Contract survives the expiration or termination of this Contract.