

TERMS AND CONDITIONS

1. General

(1) In these terms and conditions, “we” “us” and “our” refers to 101 PTY LTD ACN 147 222 286 Trading as Lightsearch, and “you” or the “Customer” refers to a purchaser or prospective purchaser of goods and/or services from us. It is acknowledged that we are a reseller of goods manufactured by others. Your access to and use of all information on this website including purchase of our product/s is provided subject to the following terms and conditions. These Terms and conditions apply to Orders placed via our online website (**Site**) and for Orders placed via other means, including telephone, fax or email. We are not bound by any terms and conditions contained in any document issued by the customer.

(2) We reserve the right to amend this Notice at any time and your use of the website following any amendments will represent your agreement to be bound by these terms and conditions as amended. We therefore recommend that each time you access our website you read these terms and conditions.

(3) All descriptive and forwarding specifications, drawings, particulars, dimension, weights, and all publicity and promotional material issued by us is intended to be illustrative only. None of the foregoing nor any particulars or representations contained therein shall form part of and not be deemed to have been incorporated in any contract with us.

(4) Goods shown on our Site will change as our suppliers will change. We reserve the right to add and delete product lines at our discretion and does not warrant the availability whether expresses or implied, or any lines it may from time to time advertise.

2. Product Orders

(1) All prices displayed on the Site are inclusive of GST. GST may be separately itemised on other quotations. GST has the meaning given in the GST Act and GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(2) Where GST is not included in respect of any supply of goods or services, the Customer must pay to us any amount which is payable by us for GST as a consequence of any supply made by us to the Customer under this Agreement, such payment on account of GST to be made by the Customer at the same time as payment is made for the relevant supply.

(3) If at any time an adjustment is made as between us and the relevant taxing authority of an amount paid on account of GST on any supply made by us to the Customer under this Agreement, a corresponding adjustment must be made as between us and the Customer and any payments required to give effect to the adjustment must be made.

(4) We must provide to the Customer a tax invoice complying with any legislation under which GST is imposed.

(5) The Customer will pay on demand to us any interest or penalties incurred by us as a result of the Customer’s failure to make a payment under this clause

(6) You may place an Order by email, via our Site or by telephone. No Order shall be binding on us until it has been accepted by us, which we will confirm by email to you.

(7) Once an Order has been accepted by us, it cannot be varied, cancelled or partially cancelled by the Customer unless we consent in writing to such change, cancellation or partial cancellation.

(8) Where a written quotation has been given by us for goods and services, the selling price is the price specified in the quotation. The unit price of goods or the price of services contained in any quotation shall be based on the quantities of goods and services referred to in the quotation. Should there be any variation in the total quantity of goods ordered or the actual services from that quoted, we reserve the right to amend the quote. All prices quoted are current at the time they are provided, and are subject to change without notice.

(9) Where no written quotation has been given for goods or services, our selling price of goods or services is the price specified on the Site as at the date of order. We may at any time change these Terms and/or our pricing to reflect, among other things, changes in supplier costs, exchange rates, imposition of any duties, levies or other taxes and the Customer is bound by those changes. Once an Order has been accepted by us, we will not change the pricing unless due to a change request initiated by the Customer.

(10) Orders will not be processed for any Customer account which has amounts outstanding.

3. Delivery

(1) The Customer must inspect the goods or performance of services immediately on delivery or on completion of services (as the case may be).

(2) All Orders will attract a quoted delivery fee or be despatched to you via your nominated carrier at your cost. We accept no responsibility for deliveries to Customers via our nominated carrier.

(3) If a delivery date is specified, that date is an estimate only and we are not liable for any delay in delivery. Time is not of the essence in relation to delivery and the Customer must accept delivery and pay for the goods delivered, including transport costs if applicable, even if they are delivered after any specified delivery date.

(4) Back Orders are Orders for goods not currently in stock. Back Orders will be despatched by us as soon as possible and the Customer will accept delivery when received unless we are advised when the Order is placed that the Order is subject to delivery within a certain period.

(5) Back Orders will be held at our discretion unless advised otherwise. Back Orders having below the Minimum Order Value will be forwarded with the next Order placed by the Customer, or a handling fee or delivery charge may be applied at our absolute discretion.

(6) Short Deliveries are deliveries where not all goods or services specified in an Order are delivered/performed. In the case of a Short Delivery where we have not provided prior notice that the delivery would be a Short Delivery and that the short goods were on Back Order, Customer must make a claim of a Short Delivery to us within 48 hours from receipt of goods or completion of the services. Invoice number and date must be quoted on all claims. Valid claims for incorrect goods sent will be credited in full provided we are notified within 48 hours of delivery of the goods.

(7) Valid claims for incorrect goods sent will be credited in full provided we are notified within 48 hours of delivery of the goods.

(8) To assist us in reconciling and maintaining the Customer's purchase, any Customer queries regarding their invoice (such as pricing, discount or sales tax), should be forwarded to our office as quickly as possible after receipt of their invoice at sales@lightsearch.com.au.

(9) We may, in our sole discretion:

- a. accept an Order by supplying the goods specified in that Order (each an accepted Order);
or
- b. decline an Order (without being obliged to give reason for doing so) by giving notice to that effect to the Customer.

(10) If we are unable to supply the quantity of a good specified in an Order but are able to supply a lesser quantity, we may give notice to that effect to the Customer. If the Customer does not wish to accept the lesser quantity, the Customer must notify us in writing by 5.00pm AEST on the following business day from the date upon which we first notify the Customer, otherwise the reduced quantity will be deemed accepted by the Customer and the Customer will be bound by that amended Order.

(11) We reserve the right to stipulate a minimum order quantity (in addition to the Minimum Order Value for delivery) at any time for any goods and a minimum service value for any services.

4. Order Cancellation

(1) Prior to the dispatch of an Order, we may cancel all or any part of an Order (including any Orders that we have accepted) without any liability to you for that cancellation if:

- a. the requested goods or services in that Order are not available or where the Order is unavailable due to a Force Majeure Event;
- b. there is an error in the price or the description posted on the Site or in any other sales platform in relation to the relevant goods or services in that Order; or
- c. that Order has been placed in breach of these Terms; or
- d. an insolvency event in respect of the Customer arises or is reasonably suspected by us.

(2) If we cancel your Order, then we will endeavour to provide you with reasonable notice of that cancellation, and will not charge you for the cancelled Order if you are not at fault or in breach of these Terms.

5. Product Returns

(1) If Customer wishes to return goods for change of mind in exchange for a credit note (or credit to the Customer's account where an account has been created), they must request a Goods Return Authority form from our office within 7 days of receiving the goods. Any returns for change of mind after 7 days are at our sole discretion. No goods will be accepted without a Goods Return Authority and original invoice number and date are required on all claims. If invoice number cannot be quoted, goods will be credited at current price less 10 per cent to cover any possible price increase since date of purchase and less the restocking/handling charges referred to below. If we agree to accept goods back, we will advise the mode of transport/delivery acceptable, at the Customer's cost.

(2) All returns are subject to a minimum 25% surcharge (calculated on the total Order value) for handling/restocking unless otherwise advised by us. Goods returned must be in original packing, unsoiled, undamaged, resalable and still current catalogue items.

- (3) Goods returned in an unsaleable condition - (i.e other than as above) cannot be accepted back for credit and will be returned "freight-on" (i.e. freight payable by the Customer) to the Customer.
- (4) Goods imported specifically for customer, or non-standard goods made to special order, cannot be returned and/or credited under any circumstances.
- (5) Claims in respect of faulty or defective goods or services must be made by the Customer and the original invoice number or some other valid proof of purchase acceptable to us must be provided.
- (6) Except for goods or services which are determined by us in writing to be defective or which are otherwise returnable under these Terms, all sales are final and goods are not returnable.
- (7) Upon receipt of goods returned for repair or replacement, we will determine whether those goods qualify for a remedy in accordance with these Terms and any law, and if they do not, we will notify the Customer of the estimated costs of repair or replacement involved and will obtain the Customer's authorisation prior to proceeding. We shall have no liability to pay any costs of repair performed by anyone other than us, unless in each instance we have given prior written approval of such repair.

6. Site Access

- (1) You agree that:
 - a. all information and data provided by you to us through the Site (including as part of the customer registration process) or otherwise is true, accurate, complete and up to date;
 - b. the person receiving the goods or services at the delivery address is authorised by you to do so;
 - c. you have and will comply with all relevant laws relating to your use of the Site and your placement of any Order to us;
 - d. you are responsible for any costs associated with your access to or use of the Site, including Internet access fees;
 - e. you will check the labels and instructions in respect of goods before use.
- (2) You must not:
 - a. use the Site for any activities that breach any laws, infringe a third party's rights or are contrary to any relevant standards or codes;
 - b. use the Site in a manner or way, or post to or transmit to or via the Site any material, which interferes with other users or our other customers or defames, harasses, threatens, menaces or offends any person or which prevents any other person from using or enjoying the Site;
 - c. make fraudulent or speculative enquiries, purchases or requests through the Site;
 - d. use another person's details without their permission or impersonate another person when using the Site;
 - e. knowingly transmit any viruses, worms, defects, trojan horses or similar disabling or malicious code to the Site;
 - f. use any robot, spider, site search and retrieval application or other mechanism to retrieve or index any portion of the Site;
 - g. modify, adapt, translate or reverse engineer any portion of the Site;
 - h. remove any copyright, trade mark or other proprietary rights notices contained in or on the Site;

- i. reformat or frame any portion of the web pages that are part of the Site;
- j. create accounts by automated means or under false or fraudulent pretences;
- k. use the Site other than in accordance with these Terms; or
- l. attempt any of the above acts or engage or permit another person to do any of the above acts.

(3) When you visit our website, we give you a limited licence to access and use our information for personal use.

(4) You are permitted to download a copy of the information on this website to your computer for your personal use only provided that you do not delete or change any copyright symbol, trade mark or other proprietary notice. Your use of our content in any other way infringes our intellectual property rights.

(5) Except as permitted under the *Copyright Act 1968 (Cth)*, you are not permitted to copy, reproduce, republish, distribute or display any of the information on this website without our prior written permission.

(6) The licence to access and use the information on our website does not include the right to use any data mining robots or other extraction tools. The licence also does not permit you to metatag or mirror our website without our prior written permission. We reserve the right to serve you with notice if we become aware of your metatag or mirroring of our website.

(7) By accessing our website, you agree to indemnify and hold us harmless from all claims, actions, damages, costs and expenses including legal fees arising from or in connection with your use of our website.

7. Hyperlinks

(1) This website may from time to time contain hyperlinks to other websites. Such links are provided for convenience only and we take no responsibility for the content and maintenance of or privacy compliance by any linked website. Any hyperlink on our website to another website does not imply our endorsement, support, or sponsorship of the operator of that website nor of the information and/or products which they provide.

(2) Linking our website is not permitted. We reserve the right to serve you with notice if we become aware of such linking.

8. Payment

(1) Unless otherwise agreed in writing all goods and services are to be paid for in full prior to despatch. Time is of the essence in respect of the Customer's obligation to make payment for goods or services supplied by us to the Customer in accordance with these Terms.

(2) Payment for goods or services must be made via the methods set out on the Site or in the relevant quotation.

(3) If you are paying by credit card, you authorise us to debit the nominated card for an amount equivalent to the price of the goods or services together with any delivery charges (if applicable) and/or other applicable fees and charges.

(4) Unless we have, at our total discretion, approved a Customer for a credit account with us, Orders will not be processed until payment is received in full.

(5) Where a Customer has been granted a credit account with us, they will be required to complete our Credit Application and associated Deed of Continuing Guarantee. Credit Customers acknowledge and agree that we are authorised to receive a report from consumer credit agencies and may impose or revise a credit limit at any time.

9. Default and Termination

(1) If the Customer is granted credit and does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions, or an insolvency event in respect of the Customer arises or is reasonably suspected by us, we may (without limiting any other right or claim it may have against the Customer) do any or all of the following:

- a. charge the Customer interest calculated on a daily basis on any portion of the Customer's account that is overdue at the Australian & New Zealand Banking Group's reference rate for business loans, available to prime commercial customers, plus 7% calculated from the date the payment was due until the date payment is made (both dates inclusive). Any payment made by the Customer will be credited first against the interest accrued to date of payment. This is a genuine pre-estimate of the additional finance and administrative costs related to managing overdue accounts.
- b. vary or withdraw any approved credit limit and/or terms of trade;
- c. cancel or suspend any unfilled Orders or cease providing the goods or services;
- d. terminate any contracts between us and the Customer and demand immediate payment of any moneys due and outstanding under those contracts;
- e. cancel any rebate, discount or allowance due or payable by us as at the date of the event;
- f. enter (at any time) any premises in which our goods (including any merchandising materials) are stored, to enable us to inspect the goods and to reclaim possession of the goods, for which the Customer irrevocably authorises and licenses us and our servants and agents to do, without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever;
- g. institute any recovery process as we in our discretion decide at the Customer's cost and expense. In this case all discounts showing on unpaid invoices become null and void and the total list prices showing become payable.

(2) In the event that payment is not made by the Customer on the due date, the Customer authorises us to set-off any amounts due by us to the Customer against the oldest amounts outstanding by the Customer. Clause 9(1) a. will then only be applicable to any remaining amounts outstanding

10. Risk and Title

(1) Notwithstanding delivery of the goods or provision of the services to the Customer, until the Customer has effected full payment for the goods or services and any other goods or services previously supplied by us:

- a. legal title to the goods and services will remain with us;
- b. the risk in the goods and services will pass to the Customer on delivery to the Customer or its agent;
- c. the relationship between us and the Customer will be fiduciary;
- d. the Customer will:

- i. hold the goods as bailee for us;
- ii. keep the goods separate from other goods;
- iii. label the goods so that they are identifiable as the goods of us; and
- iv. maintain insurance for the replacement value of all goods in its possession;

(2) with our consent (which is given), the Customer is at liberty to sell the goods and use the services, in the ordinary course of the Customer's business, provided that the money resulting from the sale or benefit of such goods or services will:

- a. be held in a separate account in trust for us;
- b. not be mingled with other money;
- c. not be placed into an overdrawn account; and

(3) in the event that the Customer uses the goods in some manufacturing or construction process of its own or of some third party then the Customer will hold such part of the proceeds of such manufacturing or construction process as relates to the goods in trust for us. Such part will be deemed to equal in dollar terms the amount owing by the Customer to us at the time of receipt of such proceeds.

(4) The Customer is not an agent of us in any sale of the Goods by the Customer.

(5) After the happening of an event of default specified in clause 9(1) we may without demand retake possession of the goods and may without notice sell the goods on such terms and in such manner as it determines and will be entitled to deduct all expenses incurred. For the purposes of recovering possession and without limiting the generality of the foregoing, the Customer irrevocably authorises and licenses us and its servants and agents to enter any premises where any goods may be stored and to take possession of the goods.

(6) In this clause and clause 11, references to goods are also taken to mean goods used in the provision of services or goods produced as a result of the outcome of the services.

11. Personal Property Securities Act Registration

(1) The Customer acknowledges that we have or will have a Security Interest in the goods and the proceeds from the sale of the goods for the purposes of the PPSA.

(2) The Customer acknowledges that we may do anything reasonably necessary, including but not limited to registering its Security Interest on the personal property securities register established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Customer agrees to do all things reasonably necessary to assist us to achieve perfection of this Security Interest under the PPSA.

(3) The Customer agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to this Security Interest to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):

- a. section 117 (obligations secured by interests in personal property and land);
- b. section 118 (enforcing Security Interest in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;
- c. section 125 (obligation to dispose of or retain collateral);
- d. section 129 (disposal by purchase);

- e. section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
 - f. paragraph 132(3)(d) (contents of statement of account after disposal);
 - g. subsection 132(4) (statement of account if no disposal);
 - h. section 142 (redemption of collateral); and
 - i. section 143 (reinstatement of security agreement).
- (4) The Customer waives its right to receive a verification statement under section 157 of the PPSA.

12. Intellectual Property Rights

- (1) The copyright to all content on our website including applets, graphics, images, layouts and text belongs to us or we have a licence to use those materials.
- (2) All trade marks, brands and logos generally identified either with the symbols TM or ® which are used on our website are either owned by us or we have a licence to use them. Your access to our website does not license you to use those marks in any commercial way without our prior written permission.
- (3) Where we have followed a design or instruction furnished by or on behalf of the Customer, the Customer indemnifies and will keep us indemnified against all claims, damages, losses, penalties, costs and expenses, including legal costs related to preparation of possible litigation, to which we may become liable by reason of any work required to be done in accordance with those instructions or design including any infringement of any patent, registered design, copyright or any other right of a third party including moral rights.

13. Disclaimers

- (1) We are not a manufacturer of any goods. All manufacturer warranties in respect of goods are set as per the warranty of the manufacturer and are not endorsed by us.
- (2) For goods that are assembled but not manufactured by us, any assembly by us of third party goods is warranted for a period of 90 days from delivery only.
- (3) Whilst we have taken all due care in providing the information on our website, we do not provide any warranty either express or implied including without limitation warranties of title or implied warranties of merchantability or fitness for a particular purpose. The information on our Site or otherwise provided by us is provided on a “good faith” and “as is” basis. We do not represent the accuracy or completeness of information on this Site or otherwise provided.
- (4) To the maximum extent permitted by law, , in particular the Australian Consumer Law, any condition or warranty which would otherwise be implied into these terms and conditions is excluded. We are not architects or lighting designers and accordingly any advice provided is general only – customers should seek professional advice from a qualified person as regards their lighting requirements, including concerning health and safety obligations.
- (5) We also take all due care in ensuring that our website is free of any virus, worm, Trojan horse and/or malware, however we are not responsible for any damage to your computer system which arises in connection with your use of our website or any linked website. You are responsible for scanning such information for viruses.

(6) From time to time we may host third party content on our website such as advertisements and endorsements belonging to other traders. Responsibility for the content of such material rests with the owners of that material and we are not responsible for any errors or omissions in such material.

14. Limitation of Liability

(1) It is agreed and declared that we are not a common carrier and that in the event of loss or damage in transit as a result of a negligent act or default attributable to us, our liability to the Customer shall be limited to and completely discharged by either the replacement or the repair of any goods so lost or damaged. Any claims against us for such loss or damage to the goods during transit must be made within forty-eight (48) hours of the date of delivery in accordance with these Terms.

(2) To the maximum extent permitted by law, in particular the Australian Consumer Law, these Terms exclude all other conditions, warranties, liabilities or representations in relation to the goods and/or services. Where legislation implies in these Terms any condition or warranty relating to the supply of goods that cannot be excluded or modified, to the extent permitted by law our liability for a breach of any such condition or warranty is limited at our option to any one or more of the following at our discretion:

- a. replacement of the goods or the supply of equivalent goods;
- b. repair of the goods;
- c. payment of the cost of replacing the goods or of acquiring equivalent goods, by credit to the Customer's account, in cash or by cheque at our discretion; or
- d. repayment of any part of the purchase price of the goods which has been paid by the Customer, by credit to the Customer's account, in cash, electronic funds transfer or by cheque at our discretion.

(3) To the maximum extent permitted by law, in particular the Australian Consumer Law, we are not liable to the Customer or any person for any indirect or consequential loss (including without limitation loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings), arising out of or in connection with the supply of goods or services, including claims in relation to intellectual property infringement in respect of the goods or services, even where claims are due or partially due to our negligence or any of our employees or agents.

(4) To the maximum extent permitted by law, in particular the Australian Consumer Law, our liability to you in respect of the supply of any goods is capped at the price of the goods in question.

(5) The Customer releases, indemnifies and holds harmless us and our employees, contractors, agents and assigns to the fullest extent permitted by law for any loss or damage whatsoever arising in connection with the supply of goods or services by us to the Customer other than to the extent the loss or damage arises directly due to our fraud, wilful default or gross negligence.

15. Other terms

(1) No waiver or modification of any of the Terms shall be effective unless such waiver or modification is in writing and signed by representative authorised by us. Should you have any query please discuss with our representative or contact any of our phone sales department at sales@lightsearch.com.au or on 02 4381 2244.

(2) The entire understanding of the parties in relation to their agreement is contained in the following documents, and in the case of inconsistency between the documents, the order of precedent shall apply in descending order to the extent of the inconsistency as follows:

- a. these Terms;
- b. the Credit Application completed by the Customer as Applicant (if applicable);
- c. the Deed of Continuing Guarantee and Indemnity signed in accordance with the Credit Application (if applicable).

(3) If any provision of these Terms is unenforceable, illegal or void, that provision is severed and the other provisions remain in force.

(4) We may assign and novate our rights and obligations under these Terms (including the Credit Application and Deed of Continuing Guarantee) to a third party at any time. We will provide reasonable notice to the Customer of any assignment.

(5) The Customer must not assign its rights pursuant to these Terms or allow a change of 50% or more to the control or beneficial ownership of itself, without the prior written consent from us, whose consent must not be unreasonably withheld.

(6) Refer to our Privacy Policy, which forms part of these Terms for information about how we collect, use and store your personal information.

16. Force Majeure

(1) We will not be liable nor deemed to be liable to the Customer for failure or delay in meeting any obligation due a Force Majeure Event.

(2) If a Force Majeure Event occurs, the time for performance of the obligations under these Terms will be extended by the same period or periods (as the case may be) for which performance is delayed. We will use our best endeavours to avoid or remove such causes of non-performance and will continue performance under these Terms with the utmost despatch as soon as such causes are removed. Nothing in this clause will be construed as requiring us to settle any industrial dispute.

(3) If a Force Majeure Event causing delay continues for more than Thirty (30) days, we may terminate this Agreement by giving at least Seven (7) days' Notice to you.

17. Jurisdiction

(1) These terms and conditions are to be governed by and construed in accordance with the laws of New South Wales and any claim made by either party against the other which in any way arises out of these terms and conditions will be heard in New South Wales and you agree to submit to the jurisdiction of those Courts.

(2) If any provision in these terms and conditions is invalid under any law the provision will be limited, narrowed, construed or altered as necessary to render it valid but only to the extent necessary to achieve such validity. If necessary, the invalid provision will be deleted from these terms and conditions and the remaining provisions will remain in full force and effect.

18. Privacy

(1) We undertake to take all due care with any information which you may provide to us when accessing our website. However, we do not warrant and cannot ensure the security of any information which you may provide to us. Information you transmit to us is entirely at your own risk although we undertake to take reasonable steps to preserve such information in a secure manner.

(2) Our compliance with privacy legislation is set out in our separate Privacy Policy which may be accessed from our home page.

19. Definitions

(1) “business day” means a day (other than a Saturday or Sunday) on which banks are open for general business in Sydney.

(2) “Force Majeure Event” means strikes and/or lockouts (whether of our own employees or those of others and whether or not the party against whom such action is taken could have avoided the same by acceding to the demands of the employees responsible for such action) Acts of God, war, fire, flood, embargo, litigation, acts of government or any agency instrumentality or any political subdivision thereof or any other act, circumstance or omission over which we could not reasonably have exercised control.