

light-ctrl Pty Ltd
ACN 652772499
A: 117-119 Arundel Road, Park Orchards Victoria 3114
P: +61 433 730 645
E: info@light-ctrl.com.au



TERMS & CONDITIONS

Conditions of sale

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods, whose details are set out in the quote and/or invoice.

Background IP means Intellectual Property of the Supplier which was in existence prior to the commencement of this agreement or which is subsequently developed by the Supplier independently of and for purposes unconnected with this agreement.

Contract IP means Intellectual Property created by the Supplier in the course of performing its obligations under this agreement.

Deliverables means the goods or services to be supplied by the Supplier pursuant to this agreement.

Goods means the products (including any digital products) specified in the quote and/or invoice.

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business and domain names, database rights, confidential information, know how, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and any applications, renewals and extensions of such rights.

Seller means the seller of the Goods whose details are set out in the quote and/or invoice.

Services means the services specified in the quote and/or invoice.

1.2 Interpretation

Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the consumer guarantee provisions in the ACL) and which by law cannot be excluded, restricted or modified.

2 General

These conditions (which will only be waived in writing signed by the Seller) will prevail over all conditions of any Buyer's order, to the extent of any inconsistency.

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3 Terms of sale

The **Services** provided and **Goods** and all other products sold by Seller are sold on these terms and conditions and except as only may be varied in writing by the Seller in its discretion.

4 Seller's quotations

Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 14 days only after its date. The Seller reserves the right to refuse any order based on this quotation within 14 days after the receipt of the order.

5 Packing

The cost of any special packing and packing materials used in relation to the **Goods** and **Services** are at the Buyer's expense, even if that cost has been omitted from any quotation.

6 Shortage

The Buyer waives any claim for shortage of any **Goods** delivered if a claim in respect for short delivery has not been lodged in writing with the Seller within 5 days from the date of receipt of **Goods** by the Buyer.

7 Specifications

- (a) All specifications, drawings, and particulars of weights and dimensions submitted to or by the Seller are approximate only and any minor deviations from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.
- (b) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the **Goods** or of the description applied to the **Goods**.

8 Performance

Any performance figures or attributes given by the Seller are estimates only. The Seller is under no liability for damages for failure of the **Goods** to attain such performance figures or other attributes unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised or other specified tolerances or variances applicable to such figures.

9 Delivery

- (a) The delivery times made known to the Buyer are estimates only and the Seller is not liable in any way for late delivery or non-delivery.
- (b) The Seller will not be liable in any circumstances for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the **Goods**.
- (c) The Seller may at its option deliver the **Goods** to the Buyer in any number of instalments unless there is an endorsement by the Seller to the effect that the Buyer will not take delivery by instalments.
- (d) If the Seller delivers any of the **Goods** by instalments, and any one of those instalments is defective for any reason:
 - (i) this does not constitute a repudiation of the contract of sale formed by these conditions; and
 - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.

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10 Loss or damage in transit

- (a) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to **Goods** in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
- (b) The Seller must provide the Buyer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to **Goods** in transit so long as the Buyer:
- (i) has notified the Seller and the carrier in writing immediately after loss or damage is discovered by the Buyer on receipt of **Goods**; and
 - (ii) serves a claim for compensation on the carrier within 5 days of the date of receipt of the **Goods**.

11 Guarantee

- (a) The Seller's liability for **Goods** manufactured by it is limited to making good any defects. This must be done by repairing the defects or, at the Seller's option, by replacement, within a period not exceeding 12 calendar months after the **Goods** have been dispatched from the Seller's possession or as otherwise agreed in writing by the parties. This applies so long as:
- (i) the defects have arisen solely from faulty materials or workmanship;
 - (ii) the **Goods** have not received maltreatment, inattention or interference;
 - (iii) accessories of any kind used by the Buyer are manufactured by or approved by Seller;
 - (iv) the seals of any kind on the **Goods** remain unbroken; and
 - (v) the defective parts are promptly returned free of cost to the Seller.
- (b) If the **Goods** are not manufactured by the Seller, the guarantee of the manufacturer of those **Goods** is accepted by the Buyer and is the only guarantee given to the Buyer for the **Goods**. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the **Goods** that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (c) The Seller is not liable for, and the Buyer releases the Seller from, any claims in respect of faulty or defective design of any **Goods supplied**. This is unless the design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing.
- (d) The Seller's liability under clause 11(c) is limited strictly to the replacement of defective parts in accordance with clause 11(a) of these conditions.
- (e) Except as provided in these conditions and to the fullest extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the **Goods** for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the **supply**, layout, assembly, installation or operation of the **Goods** or arising out of the Seller's negligence or in any way.
- (f) If the **Goods** are not manufactured by the Seller, the Buyer releases the Seller for any and all costs arising in relation to the return of any defective **Goods**.

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12 Consumer guarantees

The Seller's liability for a breach of a condition or warranty necessarily implied by chapter 3, part 3-2, division 1 of the Australian Consumer Law (**ACL**) is limited to:

- (a) in the case of **Goods**, any one or more of:
 - (i) the replacement of the **Goods** or the **supply** of equivalent **goods**;
 - (ii) the repair of the **Goods**;
 - (iii) the payment of the cost of replacing the **Goods** or of acquiring equivalent **goods**; and
 - (iv) the payment of the cost of having the **Goods** repaired; or
- (b) in the case of **Services**:
 - (i) the **supplying** of the services again; or
 - (ii) the payment of the cost of having the services **supplied** again.

13 Indemnification of suppliers by manufacturers

The Buyer releases the Seller and acknowledges that the Seller of **Goods** is indemnified by the manufacturer under section 274 of the ACL if the Seller:

- (a) is liable to pay damages under section 259(4) of the ACL to the consumer for loss or damage suffered by the consumer; and
- (b) the manufacturer is or would be liable under section 271 of the ACL to pay damages to the consumer for the same loss or damage.

14 Prices

- (a) Unless otherwise stated all prices quoted by Seller are exclusive of **Goods** and Services Tax (**GST**).
- (b) All prices quoted for **Goods** are determined and dependent on the quantity ordered. Should the quantity vary, the Seller will provide the Buyer with an updated quote.
- (c) Unless otherwise stated, any prices quoted for **Goods** do not include customisation (i.e. non-standard cable lengths, colour variations). The Seller may approve or reject any request for Customisation at their sole discretion. Any approved customisation will be charged in addition to the quoted price and may alter delivery times.
- (d) All prices quoted for **Services** including labour are estimates only. Should the actual labour costs exceed the estimated costs the price for the **Services** will be adjusted.
- (e) Should any **Services** need or are requested by the Buyer to be provided outside the hours of 7.30am to 5.30pm on business days then the price for those **Services** will be charged at a higher rate.
- (f) Unless specified, any prices quoted do not include the provision of **Services** outside of Melbourne Metropolitan area. The cost of any delays, site allowance, per diem and travel allowances will be quoted and charged separately.

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- (g) Prices quoted are calculated at the date of issue of a relevant quotation and include rates and/or costs provided by third parties providers. These third party rates are estimates only and may include the cost of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production (**Third Party Rates**). Third Party Rates may vary from the date of the quotation to the time of delivery of the **Goods**. The Buyer will be primarily liable for any increase in the Third Party Rates.
- (h) Any quoted hardware or consumables allowance is an estimate only. The Buyer acknowledges and agrees that the allowance will be adjusted by the Seller where necessary. Where a project includes hardware or consumables allowance the allowance will be invoiced on the first issued Invoice where multiple Invoices are issued.

15 Payment

- (a) The purchase price for the **Goods** for orders exceeding a value of \$10,000 excluding GST is payable by the Buyer in the following instalments:
 - (i) 50% of the purchase price is payable on or before placement of order; and
 - (ii) 50% of the purchase price is immediately payable upon notification that the Goods are ready for dispatch. (**Goods Payment Due Date**).
- (b) The purchase price for the **Goods** for orders to the value of \$10,000 excluding GST or less is payable by the Buyer on or before placement of order.
- (c) The price for any **Services** is payable by the Buyer in the following instalments:
 - (i) 50% of the price is payable upon the Buyer accepting the quote; and
 - (ii) 50% of the price is payable within 7 days of the Buyer receiving the Sellers invoice. (**Service Payment Due Date**)
- (d) The Buyer must pay interest on any outstanding amount not paid by either the Goods Payment Due Date or the Service Payment Due Date (as applicable). Interest will be calculated at a rate of 2% per annum plus the rate for the time being fixed by Section 2 of the Penalty Interest Rates Act 1983. Interest will accrue daily from the due date until the outstanding amount is paid in full.
- (e) Without limiting any other rights the Seller may have, should any amount owing from the Buyer be outstanding for a period greater than 60 days the Seller may at their discretion refer the outstanding Buyer's account to a third party collections agency.
- (f) Any early agreed early payment discounts will lapse and not apply should early payment not be made and received by any agreed early payment due date.

16 Rights in relation to **Goods** and **Services**

- (a) The Seller reserves the following rights in relation to the **Goods** until all accounts owed by the Buyer to the Seller are fully paid:
 - (i) ownership of the **Goods**;

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(ii) to enter the Buyer's premises (or the premises of any associated company or agent where the **Goods** are located) without liability for trespass or any resulting damage and retake possession of the **Goods**;

(iii) to enter the Buyer's premises (or the premises of any associated company or agent where the **Goods** are located) without liability for trespass or any resulting damage and access any electronic system holding any digital **Goods** (or suspected of holding any digital **Goods**) and remove or delete the digital **Goods**;

(iv) to remotely access any of the Buyer's electronic systems to remove or delete the digital **Goods**;

(v) subject to, and in accordance with, the PPSA, to keep or resell any **Goods** repossessed pursuant to clause 16(a)(ii).

(b) If the **Goods** are resold, or products manufactured using the **Goods** are sold, by the Buyer, the Buyer will hold such part of the proceeds of any such sale as represents the invoice price of the **Goods** sold or used in the manufacture of the **Goods** sold in a separate identifiable account. This will be held the beneficial property of the Seller and the Buyer will pay such amount to the Seller upon request. Despite the provisions above, the Seller will be entitled to maintain an action against the Buyer for the purchase price and the risk of the **Goods** shall pass to the Buyer upon delivery.

17 Buyer's property

Any property of the Buyer or **Goods** owned by the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

18 Storage

The Seller reserves the right to charge a fee for storage if delivery instructions are not provided by the Buyer within 2 days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions. Should the agreed delivery date be delayed by the client, the Seller will charge a Storage fee of \$50 plus GST per pallet (or part thereof) per week.

19 Returned Goods

(a) Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept **Goods** returned by the Buyer. The Seller will do so only on terms to be agreed in writing in each individual case.

(b) If the Seller agrees to accept returned **Goods** from the Buyer under clause 19(a) of this clause, the Buyer must return the **Goods** to the Seller at the Seller's place of business referred to at the head of these conditions.

20 Goods sold

All **Goods** to be **supplied** by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order as so agreed prevails over all other descriptions of the **Goods** including any specification or enquiry of the Buyer.

21 Cancellation

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No order may be cancelled by the Buyer except with the prior written consent of the Seller in its discretion. If there is a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation or repudiation.

22 Personal Property Securities Act 2009 (Cth) (PPSA)

- (a) This agreement is a security agreement.
- (b) The interest of the Seller in the **Goods** and all proceeds from the sale of the **Goods** by the Buyer to a third party is a security interest.
- (c) The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration.
- (d) Until title in the **Goods** has passed to the Buyer as contemplated by clause 16 of this agreement, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the **Goods** in such a manner as to create, a security interest over, the **Goods** in favour of the Buyer or any third party. The parties agree that this clause will not prohibit the Buyer from selling the **Goods** in the ordinary course of business.
- (e) The Buyer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (f) The Seller and Buyer agree that this agreement and all related information and documents are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under [section 275\(1\)](#) of the PPSA.
- (g) Unless the **Goods** are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree that each of the following requirements or rights under the PPSA does not apply to the enforcement of the Seller's security interest in the **Goods** or of this agreement:
 - (i) any requirement for the seller to give the Buyer a notice of removal of accession;
 - (ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the **goods**;
 - (iii) any requirement for the Seller to include in a statement of account, after disposal of the **Goods**, the details of any amounts paid to other secured parties;
 - (iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the **Goods**;
 - (v) any right the Buyer has to redeem the **Goods** before the Seller exercises a right of disposal; and
 - (vi) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the **Goods**.
- (h) Expressions defined in the PPSA have the same meaning when used in this agreement.

23 Termination

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(a) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for amalgamation or reconstruction).

(b) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of 14 days after receipt of a written notice by the other party requiring rectification of the breach.

(c) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement and whether arising prior to or following or as a result of termination of this agreement.

(d) The obligations of the parties that by their nature could be reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

24 Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations under these terms and conditions due to circumstances beyond their reasonable control, including but not limited to acts of God, war, terrorism, strikes, and natural disasters.

25 Place of contract

This agreement shall be governed by and construed in accordance with Victorian law. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or Federal Circuit Court of Australia.

26 Indemnity

The Buyer indemnifies and agrees to keep the Seller indemnified and against all claims from any third party, arising from or in connection with:

- (a) a breach by the Buyer of these Terms and Conditions;
- (b) any loss of or damage to property in connection with the **Goods** and **Services**;
- (c) any personal injury or death related to the **Goods** and **Services**; and
- (d) any negligent or fraudulent act or omission of the Buyer.

27 Limitation on liability

- (a) The liability of the Seller under or in connection with this agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the price paid by the Buyer to the Seller for in respect of the relevant Goods the subject of such liability under this agreement.

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- (b) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. For the purposes of this sub-clause, “consequential loss or damage” means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of this agreement or other event giving rise to such Loss, whether or not such Loss may reasonably be supposed to have been in the contemplation of the Parties at the time they made this agreement.

28 Variations

Any variations to an order must be agreed and confirmed in writing by both parties.

29 Samples

Any agreed samples will be supplied by the Seller for a maximum of 1 week. The Buyer must return any samples in the same condition as when they were supplied and in a timely fashion. In the event that any samples are damaged, or not returned upon request, the Buyer will be charged the samples full replacement cost.

30 Errors and Omissions

The Seller is not responsible for any transcribing errors in quantities or prices in orders. The Buyer acknowledges that they have checked quantities required before placement of the order.

31 Publicity

The Buyer agrees that we may advertise or publicise the broad nature of our provision of the Goods and Services to you, including on our website, social media or in other promotional materials.

32 Disclosure and ownership of Intellectual Property

- (a) The parties agree that, other than as expressly provided in this clause, nothing in this agreement transfers or grants to any party any right, title or interest in or to any Intellectual Property in any Background IP. The Seller grants to the Buyer a worldwide, royalty free, perpetual, irrevocable, non-transferable, non-exclusive licence to use the Background IP to the extent necessary for the Buyer to derive full benefit from its acquisition of the Deliverables.
- (b) The Buyer acknowledges that ownership of the Contact IP remains vested in the Seller. The Seller grants to the Buyer an exclusive, perpetual, fully paid-up, irrevocable, worldwide licence to use the Contract IP for the sole purpose of enabling the Buyer to derive full benefit from its acquisition of the Deliverables.
- (c) The obligations accepted by the Parties under this clause 31 survive termination or expiry of this agreement.

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BY PLACING AN ORDER WITH THE SELLER, THE BUYER ACKNOWLEDGES AND ACCEPTS THESE TERMS AND CONDITIONS OF SALE. THESE TERMS AND CONDITIONS ARE SUBJECT TO CHANGE.

CONTACT INFORMATION

For questions regarding these Terms and Conditions of Sale, please contact:

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