

# Terms of Trade

## 0.0 General

0.1 The following terms of trade between Advanced Lighting Technologies NZ Ltd (“ADLT”) and the Buyer (the “Buyer”) shall apply to all contracts involving either goods and/or services supplied to the Buyer by ADLT.

0.2 The Buyer and ADLT acknowledge that these Terms of Trade constitute a Security Agreement as defined by the Personal Property Securities Act 1999 (“PPSA”). For the purposes of the PPSA, Collateral shall include all and any Goods supplied by ADLT and the proceeds from the sale of all Goods. The Buyer also agrees not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of ADLT.

## 1.0 Acceptance of Offer to Supply/ Orders

1.1 Any tender or quotation made by ADLT is open for acceptance within the period which is stated on the offer document, or, if no period is stated, 30 days from the date of the offer.

1.2 Offers to supply may be received or withdrawn by ADLT at any time prior to ADLT’s express acceptance in writing of an order based on the offer to supply.

1.3 No order shall be binding on ADLT until it is expressly accepted in writing.

1.4 No order may be varied, modified or cancelled without the approval in writing of ADLT. In accepting any variation or modification, ADLT may adjust the price.

1.5 In accepting any cancellation ADLT may require payment of a handling and cancellation charge of no more than 10% of the order price.

## 2.0 Prices

2.1 All prices are exclusive of GST, duties, insurance and handling charges (if any).

2.2 Freight is prepaid by ADLT on all orders in excess of \$200.00 with delivery to the normal trading location of the customer by bulk freight service. Any special delivery requirements will be paid for by the customer.

2.3 Prices are based on the cost at quotation date of materials, labour, rates of exchange, insurance, freight duty, taxes and other cost items over which ADLT has no control. Any increase in price caused by these factors will be added to the price and become payable by the purchaser unless ADLT has agreed in writing to waive this provision.

2.4 Prices are subject to change without notice. The price to be paid by the customer will be the price current at the time the goods are dispatched to the customer unless ADLT has agreed in writing that the goods are to be supplied at a fixed price.

## 3.0 Financial

3.1 Unless other arrangements have been made in writing with ADLT, payment is to be made in cash without deduction or set off of any kind on the 20th day of the month immediately following the month in which ADLT issues an invoice.

3.2 Where payment is not made on the due date then ADLT may, in addition to other remedies it might have: –

3.2.1 Charge interest at a rate equivalent to its trading bank; i.e. overdraft rate plus 5% to be calculated on a daily basis from the due date until payment.

3.2.2 Cancel the contract, retain any monies paid and sue for damages

3.2.3 Restrict or withhold the supply of further goods to the customer without being liable for any losses the customer may suffer.

#### **4.0 Delivery**

4.1 ADLT will use its best endeavours to provide the goods at the time requested by the customer. If for any reason the goods are not made available then ADLT shall not be responsible for any indirect loss or damage suffered by the customer by reason of that delay.

4.2 Delay in supply shall not entitle the customer to cancel the contract provided such delay is beyond the control of ADLT. If this is the case, the delivery times shall be extended accordingly.

4.3 Delivery may be made on an instalment basis. Each delivery of an instalment will constitute a separate order unless ADLT has agreed, in writing to the contrary. Delay in delivery of an instalment shall not entitle the customer to cancel the contract or any remaining instalments.

4.4 All claims for short supply, damage or faulty goods must be made to ADLT in writing within 7 days of receipt of order by the customer.

4.5 No return of goods supplied will be accepted by ADLT without the written authorisation of ADLT. All returns accepted by ADLT may be subject to a 20% handling, inspection, repackaging and freight fee.

4.6 Pole unloading at delivery site is the receiver's responsibility.

4.7 ADLT will provide the freight consignment details on the dispatch of goods. It is the purchaser's responsibility to liaise with the transporter for final delivery details.

#### **5.0 Reservation of title**

5.1 Ownership and title of the goods remains with ADLT until the purchase price and all other monies owing by the Buyer, under the contract or any other contract to ADLT, have been paid in full.

5.2 ADLT shall have the right at any time after payment is due, and not made, to enter the premises occupied by the customer and take possession of the goods. The customer indemnifies ADLT for all the costs and expenses which ADLT may incur in effecting the recovery of possession and removal.

5.3 If the customer resells the goods or any part of them or if they have become constituent parts of any other goods sold by the customer before payment is made to ADLT for them, then the customer shall ensure that he holds the sale proceeds in an account for ADLT. If the amount owing to the customer as of such a resale becomes a book debt in the accounts of the customer then the customer shall, if called upon to do so, assign to ADLT the debt and all other rights and remedies it might have in respect to the debt.

5.4 If the customer shall cease trading, be placed into receivership or liquidation, become bankrupt or permit the customer's goods to be taken in execution or compound or make an arrangement with the customer's creditors then, in addition to and without prejudice to, any other rights or remedies ADLT might have, the following shall occur:

5.4.1 All unpaid amounts in respect to the goods supplied by ADLT to the customer shall become immediately due and payable, and

5.4.2 The provisions of clause 6.3 relating to ADLT's right of entry, repossession and recovery of the goods shall apply.

5.4.3 Recover from the customer all legal and other costs incurred by ADLT arising from the collection of the debt.

#### **6.0 Risk**

6.1 Risk, including insurance and responsibility, shall pass to the customer from time of delivery of the Goods into the Buyer's care and control.

## **7.0 Personal Property Securities Act**

7.1 The Buyer shall inform its creditors of the terms upon which it buys Goods from ADLT and that ADLT may create and register a Purchase Money Security Interest under the PPSA for any and all Goods and that the Buyer agrees to waive the right to receive a verification statement for purposes of s.148 of the Act. The Buyer shall inform any Trustee in Bankruptcy or Liquidator of the Buyer or any Receiver of the Buyer's business or assets of the rights of ADLT and title to the proceeds of sale. 7.2 The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by ADLT. The security interest granted in the Collateral has the same priority in relation to any and all of the Goods supplied to the Buyer at any time.

## **8.0 Application of the Consumer Guarantees Act**

8.1 Where the Buyer acquires the Goods for the business purposes of a business the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by the Act.

## **9.0 Limitation of Liability**

9.1 ADLT shall not be liable to the purchaser or any other person for the indirect or consequential loss arising out of or caused by the breach of the contract by ADLT, negligence by ADLT or any act or thing done, or not done by ADLT. Indirect consequential loss shall include, but with limitation, loss of use of goods, loss of profit or income, loss or damage to persons or property.

9.2 All warranties which appear hereafter are personal to the purchaser of the goods and no assignment of those warranties shall be effective unless the prior written consent of ADLT has been obtained.

9.3 ADLT's liability will not, regardless of the basis of the claim made against it, exceed the contract price originally paid for the goods supplied by ADLT which gave rise to the claim.

## **10.0 Warranty**

10.1 For current warranty terms and conditions please refer to our website [www.adlt.co.nz/warranty/](http://www.adlt.co.nz/warranty/)

## **11.0 General Lien**

11.1 In addition to any other lien to which ADLT may be by law entitled, ADLT shall be entitled to a general lien.

11.2 ADLT shall be free to sell (either privately, by auction or by tender) all or any part of those goods and retain the sales proceeds of, if after receiving 28 days prior notice of the intension to sell, the purchaser fails to pay such amounts to ADLT.

## **12.0 Infringement of Proprietary Rights**

12.1 Where goods or works are manufactured or carried out to the purchaser's specification, the purchaser warrants that neither the manufacture or the carrying out nor the sale by ADLT nor the use or sale by purchaser of the goods or works is an infringement of any patent, trademark, registered design copyright or other industrial or intellectual property right.

12.2 The purchaser shall indemnify ADLT against any claim, suits, actions, demands, costs or liability whatsoever (including solicitor-client costs in defending the same) which ADLT may incur or become liable for in the event of any breach of this warranty by the purchaser.

### **13.0 Compliance with Laws**

13.1 The purchaser shall be solely responsible for obtaining any necessary permits in complying with all legislation, regulations, bylaws and rules relating to the installation and operation of goods/ works manufactured.

13.2 ADLT shall not be responsible for ensuring that goods supplied by it comply with the requirements by any legislation relating to the marketing and/ or the labelling and/ or packaging of goods. Compliance with the requirements of such legislation shall be the sole responsibility of the purchaser.

### **14.0 Waiver/ Modification / Notice**

14.1 All the rights and powers of ADLT shall remain in the force notwithstanding forbearance or delay in enforcement. ADLT shall not have waived any right unless such waiver has been expressly agreed to in writing by ADLT.

14.2 The terms and conditions may not be amended or modified in any way unless such amendments or modification is expressly agreed to in writing by ADLT.

14.3 Any notice or any other document required to be in writing under these terms and conditions shall only be enforceable against ADLT if signed by the secretary, a director or the general manager of ADLT.

### **15.0 Dispute Resolution**

15.1 In the event of any dispute arising between the parties to this deed in respect of or in connection with the property or other assets, or compliance with the provisions of this deed, the parties shall, without prejudice to any other right or entitlement they may have pursuant to this deed or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique.

15.2 In the event that the dispute is not resolved by such agreement within 14 days of written notice by one party to the other of the dispute (or such further period agreed in writing) either party may refer that dispute to arbitration.

15.3 In the event that arbitration is not appropriate then by reference to a Court of competent jurisdiction.

15.4 The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement the arbitrator shall be appointed by the President of the Waikato Bay of Plenty District Law Society.

15.5 In any event the arbitrator shall not be a person who has participated in an informal resolution procedure in respect of the dispute.

### **16.0 Interpretation**

16.1 Goods shall be deemed to be made available when they are removed from ADLT's premises for delivery to the purchaser in accordance with the purchaser's instructions.

16.2 These terms and conditions will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the products and/or services of these Terms of Trade.