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## Koala Lights Pty Ltd t/as Koala Wholesale Electrical Supplies

### Standard Terms and Conditions of Sale

“Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer, the reference is to each Customer jointly and severally from the Seller.

“Delivery” means the delivery of Goods as defined in clause 9(a).

“Goods” means all goods or services including lights and goods relating to lights and parts and accessories supplied by the Seller at the Customer’s request from time to time.

“Order” means a written or verbal order from the Customer to the Seller.

“Seller” means Koala Lights Pty Ltd t/as Koala Wholesale Electrical Supplies.

### 1. Acceptance

(a) The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods. The Seller agrees to supply Goods on these terms and conditions.

(b) All other terms and conditions, express or implied, are excluded to the fullest extent permitted by law, including any terms and conditions sought to be imposed by the Customer, except with Seller’s consent in writing. These terms and conditions shall prevail to the extent of any inconsistencies with any other document or agreement between the customer and the seller.

### 2. Change in Control

The Customer shall give the Seller no less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone number, email contacts or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer’s failure to comply with this clause.

### 3. Orders

Orders will be binding on the Seller under this terms and conditions once that Order has been accepted by the Seller, either in writing or by the Seller’s performance. The Seller reserves the right to refuse an Order either in whole or in part. Any Order or part of an Order not accepted by the Seller will be regarded as having been refused by the Seller. Once the Seller has accepted an Order, the Customer may not alter or modify the Order without the prior written consent of the Seller.

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#### 4.Prices

The price for Goods is subject to withdrawal, correcting or alteration at any time before acceptance of an Order by the Seller. In the absence of written tender or pricing agreement by the Seller the goods will be supplied at the prices, and where applicable at the rates of discount specified by the Seller applicable at the date of acceptance of Order by the Seller. If in the period between acceptance of Order and first available delivery by the Seller there is an increase in the Seller's prices for those goods, the Seller will be entitled to charge the higher price and any Order shall be deemed to have been varied in that respect. Unless otherwise stated in an Order, all prices are in Australian dollars and do not include any goods and services tax, stamp duty and other excises and duties that may be imposed in relation to this agreement or the supply of goods. Each of these taxes, duties and excises is payable by the Customer, and if paid by the Seller must be reimbursed on demand.

#### 5.Payment and Credit

- (a) Subject to the Customer being issued a Tax Invoice, and unless the Seller gives the Customer credit via a Trade Account, the Customer must pay for all Orders prior to the delivery of the Goods.
- (b) The Seller may decide to give credit to the Customer, but it is not obliged to, even if it has previously given the Customer credit. If the Seller decides to give the Customer credit, then the Customer must pay the Seller's invoices within THIRTY (30) DAYS of the date the invoice is issued. The Customer is bound by these terms and conditions, and any additional terms and conditions that the Seller may set for giving the Customer credit. The Seller may decline to give the Customer further credit at any time. If the Seller does so, all money that the Customer owes the Seller on any account becomes immediately payable.
- (c) Payment of Trade Account Invoices and/or Statement Balances is by Bank Transfer/EFT
- (d) Payment of Trade Account Invoices and/or Statement Balances may be made by Mastercard & VISA Only, and will attract a 1.5% Credit Card Service Fee.

#### 6.Overdue Payments

If any amount the Customer owes the Seller is not paid by the due date then:

- (a) all money that the Customer owes the Seller on any account becomes immediately payable despite any previously agreed credit terms;
- (b) the Seller may suspend or cancel any outstanding Order it has accepted from the Customer;
- (c) the Seller may charge the Customer interest on any amount outstanding from the due date until payment is made, calculated daily, at an annual rate equal to 5% per annum plus the cash target rate specified by the Reserve Bank of Australia;
- (d) if the Seller charges interest under this clause, it will credit any part payment first against the interest;
- (e) the Customer agrees that it is liable for all the Seller's costs, losses and

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expenses relating to recovering the overdue payments from the Customer, including mercantile agents' and lawyers' fees and expenses on a full indemnity basis.

## **7. Cancellation**

(a) The Customer may not:

- (i) Cancel, or defer delivery of, an Order or part of an Order after it has been accepted by the Seller; or
- (ii) Return Goods already delivered, except with the written consent of Seller and upon terms that reimburse and indemnify the Seller against all loss including cartage, bank charges and other incidental expenses.

(b) Where the Seller agrees to accept Goods for return a re-stocking charge of 20% of the price of the Goods returned must be paid by the Customer to the Seller.

## **8. Acceptance and Claims**

Acceptance of the Goods by the Customer delivered shall be deemed for all purposes – to have taken place at the expiration of seven days from Delivery.

## **9. Delivery**

(a) The delivery arrangements set out in this clause apply to all Orders unless otherwise agreed by the Seller in writing. For the purposes of this clause "Delivery" occurs at the time:

- (i) When the Goods are left by the Seller ( or Seller's nominated carrier) at the delivery address specified in the relevant Order even if the Customer is not present at the address; or
- (ii) The Customer or the Customer's nominated carrier takes possession of the Goods at Seller's warehouse.

(b) The Customer may, by written notice to the Seller, elect to make its own arrangements at its own cost to take Delivery of the Goods from the Seller's warehouse.

(c) At Seller's sole discretion the cost of delivery is either included in the Price or is in addition to the Price. Unless the Customer makes an election under the preceding clause, the Seller will make the delivery of the Goods the subject of an accepted Order to the delivery address specified in the Order or to such other delivery address as the Seller may agree from time to time in writing in its absolute discretion. The Seller may engage a sub-contractor or carrier to make the Delivery.

(d) The Customer shall provide or cause to be provided full and clear access for delivery and will at its own expense provide all necessary assistance in unloading the Goods at the nominated delivery address.

(e) The Customer must notify the Seller in writing within seven (7) work days of delivery of any shortages, damage or defects in the Goods which the Customer considers to have been sustained prior to Delivery. In the case of damage, goods

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must be safely stored and made available for inspection by the Seller. Any claim being brought under this clause must advise the details regarding the advice note number, date consignment received, carrier's name, date carrier advised, condition of package, extent of damage or shortage. The Customer will be deemed to have waived any claim for damage or short delivery not complying strictly and in every respect with the procedure set out in this clause.

(f) Availability, shipment dates, any preferred delivery dates and delivery costs given by the Seller are estimates given in good faith but are not binding on the Seller and the Seller shall have no liability to the Customer for any loss incurred by the Customer for any failure or delay in Delivery.

(g) The Seller may deliver the Goods by instalment or partial shipments and the Customer will accept each delivery.

(h) If Delivery is delayed for a cause other than the Seller's own negligence, the Customer shall be liable for any extra charges, or any losses or expense incurred by the Seller, and the Customer shall not be entitled to cancel the Order by reason thereof.

### **10.Retention of Title & Passage of Risk**

(a) The Seller remains the legal and beneficial owner of all Goods sold by the Seller to the Customer until all amounts due in respect of all Goods have been received by the Seller in cleared funds. This applies even if the Customer installs the Goods or commingles the Goods with other goods.

(b) Risk in all Goods will pass to the Customer on Delivery. The Customer's obligation to insure Goods commences when risk passes to the Customer.

### **11 Privacy Act 1988**

(a) The Customer agrees that the Seller may exchange information about the Customer with those credit providers named as trade referees by the Customer for the purposes of:

- (i) To assess an application by the Customer; and/or
- (ii) To notify other credit providers of a default by the Customer; and/or
- (iii) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (iv) To assess the creditworthiness of the Customer.

The Customer understands that the information exchanged may include the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

(b) The Customer consents that personal credit information provided may be used and retained by the Seller for the following purposes:

- (i) The provision of Goods; and/or
- (ii) The marketing of Goods by the Seller, its agents or distributors; and/or
- (iii) Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (iv) Processing of any payment instructions, direct debit facilities and/or credit

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facilities requested by the Customer; and/or  
(v) Enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

### **12. Implied Warranties & Guarantees**

- (a) Terms, conditions, warranties and guarantees implied by law (including, without limitation the Competition and Consumer Act 2010, CCA) which cannot be excluded, restricted or modified ( Non-Excluding Guarantees) may apply to the supply of the Goods to the extent required by that law but otherwise are excluded to the extent they can be.
- (b) The Customer does not rely on any representation, warranty or other provision made by or for the Seller which is not expressly stated in these terms and conditions.

### **13. Limitation of Liability**

- (a) Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of warranties is limited to the full extent permitted by law.
- (b) Except as required by law, the Seller will not be liable for any indirect or consequential loss or damage, loss of profit or loss of revenue whether suffered or incurred by the Customer or another person or legal entity, irrespective of whether such loss or damage arises directly or indirectly from Goods supplied by the Seller to the Customer.
- (c) If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Customer has originally paid to the Seller for the Goods.
- (d) If the Customer is not a consumer within the meaning of the CCA and as stated in Clause 12(a), the Seller's liability for any defect or damage in the Goods is:
- (i) Limited to the value of any express warranty or warranty card provided to the Customer by the Seller at Seller's sole discretion;
  - (ii) Limited to any warranty to which the Seller is entitled if the Seller is not the manufacture of the Goods;
  - (iii) Otherwise negated absolutely.

### **15. Modifications**

These terms and conditions may be changed by the Seller from time to time by the Seller giving notice of the change to the Customer. Notice is deemed given (whether or not actually received) when the Seller sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; or  
(b) publishes the amended terms on its website and/or general Customer communications.

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## 16. General

(a) If any of the provisions of this agreement are unlawful or invalid by reason of any applicable statute or rule of law, then such provision shall be severed from the rest of this Contract which shall remain valid and binding on the parties. A reference to any statutory provision includes reference to that provision as amended or replaced. The law of New South Wales governs this agreement and each party submits to the non-exclusive jurisdiction of that State.

(b) The failure by the Seller to enforce any clauses of these terms and conditions shall not be treated as a waiver of that clause, nor shall it affect the Seller's right to subsequently enforce that clause.

Koala Lights Pty Ltd t/as Koala Wholesale Electrical Supplies  
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