

GERARD LIGHTING(NZ)LIMITED

TERMS AND CONDITIONS OF SALE

These are the general terms and conditions of sale applying to the sale of goods by Gerard Lighting (NZ) Limited. Goods are only sold in accordance with these terms and conditions of sale, and any terms and conditions expressed in your order are expressly excluded. Further to, all terms and conditions implied by law are excluded to the fullest extent permitted by law, and we will not accept any liability to you for any losses or expenses whatsoever (such as loss of use, damage to property, or consequential damages) other than as set out in these terms and conditions.

1. REASON FOR SUPPLY

It is acknowledged that you are ordering the goods to re-supply them in trade, to consume them in the course of a process of production or manufacture, or to repair or treat in trade other goods or fixtures on land, and accordingly the provisions of the Consumer Guarantees Act 1993 do not apply to the sale of the goods by us to you. Furthermore, if we deliver the goods to you for the purpose of your business, it is a condition of the provision of that delivery service that the Consumer Guarantees Act 1993 will not apply to the provision of that service by us to you.

2. RIGHT TO SUPPLY

You acknowledge that we may supply goods of the same type ordered by you to any other wholesaler in the industry or any original equipment manufacturer that wishes to be supplied with our goods for manufacturing purposes.

3. MINIMUM ORDER VALUE

The value of the goods (not including any amount which may be payable for goods and services tax) ordered by you at any one time must equal or exceed \$150.00 or any amount specified by us from time to time.

4. PRICE AND OTHER CHARGES

Prices as listed in any of our pricing guides are subject to change without notice, and are also subject to the addition of goods and services tax if goods and services tax is applicable. Orders are accepted by us on the condition that you must pay the price applicable to the goods on the delivery date. Where we have previously been provided with and agreed to a list specifying your major warehouses in New Zealand, all prices include usual costs for standard delivery to those major warehouses. If we have not agreed to a list specifying your major warehouses, or delivery is required to be made to some other place, we may charge any reasonable amount for delivery costs. We may also charge you any other reasonable costs incurred by us in the fulfillment of your order (including, without limitation, costs incurred over and above usual costs for standard delivery).

5. PERFORMANCE

Any performance figures given by the Company in relation to the Goods are estimates only. The Company shall be under no liability to the Customer for failure to attain such figures unless the performance of the Goods is specifically guaranteed in writing and any such written guarantee shall be subject to recognized manufacturing variations and tolerances applicable to the Goods.

6. PAYMENT

- 6.1 Payment in full must be made to us no later than the 20th day of the month following delivery.
- 6.2 The Company reserves the right to charge interest at the rate of two percent (2%) per month on overdue accounts.
- 6.3 Any charges incurred by the Company in collecting or attempting to collect any overdue account (including the charges of a collection agency) shall be paid by the Customer on demand.

7. ABILITY TO SUPPLY

Unless any amount you owe us is overdue for payment, you have a petition presented or any order made or an effective resolution passed for your liquidation, dissolution or winding up, you are subject to an order of adjudication in bankruptcy, or we are reasonably of the view that you will be unlikely for any reason to be able to meet the payments which would be required to be made to us, we will make every effort to fulfill your order. However, we will not accept any liability to you if we are unable to fulfill your order for any reason whatsoever, including without limitation, any change that may occur at any time to our product lines (such as for example, the discontinuance of products or the modification of product designs) or product specifications and we may make such changes at any time without notifying you.

8. DELIVERY

We will deliver the goods to you, to any one of your major warehouses specified by you or to some other place agreed with you. Any date and time we specify for delivery shall be during normal working hours unless otherwise agreed with you, and shall be regarded as an estimated date and time only. We will not accept any liability to you if, for any cause beyond our control, we are unable to meet any estimated delivery schedules. We may deliver portions of the goods ordered at

different times. If we do so, each separate delivery shall be deemed to be a separate contract for the sale of those delivered goods embodying these terms and conditions of sale.

9. RISK AND PROPERTY

- 9.1 Goods are at your risk from the moment they arrive at their delivery destination unless you arrange your own transport of the goods from our works, in which case they are at your risk upon loading of the vehicle. Unloading of the goods, whether done by us or by you, is at your risk.
- 9.2 Ownership of the goods will not pass to you until you have discharged all outstanding indebtedness to us whatsoever.
- 9.3 Until payment in full of all such outstanding indebtedness has been made, you acknowledge and agree that:
 - 9.3.1 If you sell the goods, they are sold by you as agent for and on behalf of us.
 - 9.3.2 You will store the goods separately, in a clearly identifiable manner:
 - 9.3.3 We or our agents and employees may, without giving any notice, enter any premises occupied by you to search for and remove any goods supplied to you or in which we have ownership, without in any way being liable to you or any person or entity claiming through you:
 - 9.3.4 If the goods have been sold or otherwise disposed of, then the proceeds of such resale shall be our property, and you will hold the proceeds on trust for us and will be accountable to us for those proceeds until payment has been made in full.
 - 9.3.5 If the goods in which we have ownership are admixed with, processed with, or incorporated in any of your property, the product thereof shall become and/or shall be deemed to be our sole and exclusive property. If the goods in which we have ownership are admixed with, processed with, or incorporated in any property, which is not owned by you, but by some other person, the product thereof shall become and/or shall be deemed to be owned in common with that person in shares appropriate to their contribution and value of the finished product. You will notify in writing immediately, any person whomsoever (including, without limitation, the person with whom we co-own the finished product), who may have any interest whatsoever in the finished product and to which our goods have been admixed, processed or incorporated, and whose rights or interests may be affected by the existence of our rights under this clause.
When notifying such co-owners, you will make clear to them that, when the finished product is sold, they must hold on trust for us, set aside in a separate account, such portion of the proceeds of sale as we are entitled to, having regard to the proportion of our interest in the finished product.

10. PRODUCT SPECIFICATIONS AND REPRESENTATIONS

- 10.1 Our goods should not be stored, fixed or used other than in accordance with our current published product specifications (which are available by mail upon any telephone request), nor should they be stored, fixed or used in an improper or unworkmanlike manner. You acknowledge that we have not made any representation as to the fitness of the goods for any particular purpose other than as set out in our current published product specifications. We will not accept any liability to you if the goods are stored, fixed or used outside of our published specifications, or stored, fixed or used in an improper or unworkmanlike manner.
- 10.2 Where specifications, drawings or other particulars are supplied by the Customer, the Company's price is based on estimates of quantities required. Should there be any adjustments in quantities above or below the quantities ordered by the Customer and set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to unit price set out on this invoice.

11. SPECIAL ORDER GOODS

Where your order is for goods not included in our standard product range as specified by us from time to time ("special order goods"), you warrant to us that any design or instruction (whether verbal or written) given to us for the special order goods, and the fulfillment by us of your order for such goods, will not cause us to infringe any rights of, nor make us liable for any reason whatsoever to any other person.

12. PRODUCT WARRANTY

The Company warrants that light fittings supplied by Gerard will be free of manufacturing defects and will perform to Gerard's specifications subject to the following terms and conditions:

- 12.1 Extent of Warranty – This warranty extends only to the owner of the property in which the light fitting is installed ("Owner") for the duration of the Warranty Period.

12.2 Warranty Period – This warranty commences on the date of the installation of the light fitting and continues for the benefit of the Owner for a period of one (1) year from the date of installation (“Warranty Period”).

12.3 Nature and Ambit of Warranty – If within the Warranty Period either a manufacturing defect is discovered in a light fitting or a light fitting fails to perform to Gerard’s specifications as a result of some defect in material or workmanship on Gerard’s part (“Defect”) then Gerard will, at its option, either repair the light fitting at no cost to the Owner or supply a replacement light fitting on an F.I.S. basis.

12.4 Warranty Limitations

- (a) This warranty will not apply and, subject to paragraphs 4(c) and (d), Gerard will be under no liability whatsoever if the light fitting:
- (i) has not been installed by a qualified tradesperson; or
 - (ii) has been subject to misuse, neglect, negligence or accident; or
 - (iii) has been operated in any way contrary to any operating or maintenance instructions; or
 - (iv) has been improperly handled, installed or maintained, or
 - (v) has been altered or modified.
- (b) This warranty does not cover any lamps, tubes, starters, control gear or other components of light fittings that are subject to manufacturers’ guarantees.
- (c) To the extent that the law permits or allows Gerard to exclude or limit its liability, Gerard under this warranty:
- (i) will accept no responsibility for loss or damage (including consequential or special loss or damage) howsoever caused (whether by negligence or otherwise) which may be suffered or incurred or arise directly or indirectly in respect of any Defect; and;
 - (ii) Where warranties or conditions are implied by law, limits its liability to repair or replacement of the light fitting.
- (d) To the extent that the law permits or allows Gerard to exclude or limit its liability:
- (i) Gerard’s undertaking in paragraph 3 is the sole extent of Gerard’s liability in respect of any Defect in a light fitting; and
 - (ii) Except as expressly provided in this warranty, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, are excluded.

12.5 The Company shall not be liable for and the Customer releases the Company from any claims in respect of faulty or defective design of Goods supplied unless such design been wholly prepared by the Company and the responsibility for any claim has been specifically accepted by the Company in writing. In any event the Company’s liability hereunder shall be strictly limited to the replacement of defective parts in accordance with these Conditions.

12.6 Subject to these Conditions, 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 hereby expressly excluded and the Company shall not be 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 Company’s negligence or in any other way whatsoever.

13. CLAIMS FOR DAMAGED OR DEFECTIVE GOODS OR SHORTAGE IN QUANTITIES

Any claim for goods received by you in a damaged condition, or goods which are defective and fail to meet our warranty, or any claim for any shortage in the quantity of goods supplied, must be made in writing to us, in the case of goods damaged on receipt or shortages in the quantity of goods supplied, within 7 days of delivery, and in the case of defective goods, within 7 days of the date on which you could reasonably have established the goods were defective or that there was a shortage in the quantity of the goods supplied, as the case may be. Accordingly, you must inspect goods as soon as they are delivered to you, and notify us of any damage or defect or quantity shortage apparent at that time.

Where any of our goods are so damaged or defective, or there is a shortage in the quantity of goods supplied, we may, at our option, replace or repair the damaged or defective goods, supply you with further goods to make up the shortage in quantity, or credit you with the cost of the damaged or defective goods or the goods required to make up the shortage, and having done so, we will not accept any further liability to you of any nature whatsoever. Where damaged or defective goods are capable of repair, we will not meet any of the cost of repair unless we have inspected the goods and consented to the repairs prior to any repairs being carried out.

14. RETURN OF GOODS SOLD

14.1 The Company shall not be bound to accept Goods returned by the Customer

14.2 The return of Goods specifically manufactured to the Customer’s order will not be accepted under any circumstances.

14.3 Catalogue items may be accepted for credit if returned within thirty (30) days from the date of delivery under cover of a Goods Return Note issued by the Company unused and in prime condition in their original packaging.

A handling fee of fifteen percent (15%) of the invoiced price of the Goods returned will be charged to the Customer. The invoice number and delivery date of Goods returned must be supplied to the Company at the time of their return. Should the Company agree to returns of goods outside of 30 days from date of delivery then the Company reserves the right to charge a handling fee in excess of 15% depending on the time and condition of goods returned.

14.4 All goods are to be returned at the Customer’s expense to the nearest Gerard National Distribution Store.

15. DEFAULT BY THE CUSTOMER

15.1 If the Customer makes default in any payment, commits any act of bankruptcy or enters into liquidation whether voluntary or involuntary, the Company may at its discretion suspend deliveries or cancel any Contract so far as it remains unperformed without prejudice to its rights hereunder.

15.2 The occurrence of any such default shall in no way prejudice the rights of the Company to recover any amounts due for Goods previously supplied to the Customer.

16. CANCELLATION OF ORDERS

No order may be cancelled by the Customer except with the consent in writing of the Company and on the condition that the Customer will indemnify the Company against all losses resulting from such cancellation.

17. OBLIGATION ON RESALE OF GOODS

When you sell any of our goods to any other person, you must ensure that:

17.1 A purchaser is made aware of our current published product specifications that apply to those goods:

17.2 You make no representations to a purchaser about how our goods may be fixed, stored or used, other than in accordance with our current published product specifications, without our consent:

17.3 You do no other act or thing, nor permit any act or thing to be done, which would detrimentally affect our liability to any other person:

17.4 Where the provisions of the Consumer Guarantees Act 1993 would apply to the sale; any agreement entered into by you with any purchaser of our goods contains a term contracting out of the Consumer Guarantees Act 1993 (in the manner prescribed by the Consumer Guarantees Act 1993) where goods are used for business purposes:

17.5 You make any other notifications to a purchaser in respect of our goods which are required by us (for example, and without limitation, notifications of any defects in our goods, and notifications of any limitations on our guarantee to consumers under the Consumer Guarantees Act 1993 of the availability of repairs and spare parts):

17.6 Where you sell any of our goods to someone who intends to re-supply those goods in trade, that person is obliged to follow the above requirements.

18. INDEMNITY

You will indemnify us in respect of any claim, action, damage, expense, costs or damages incurred by us as a consequence of any breach by you of any of your obligations or warranties contained in these terms and conditions.

19. WAIVER

Should we fail to insist in any one or more instances upon a strict performance of any term contained in these terms and conditions, or fail to exercise any of our rights under these terms and conditions, it shall not be deemed a waiver of such term or right, nor shall it be deemed as a waiver of such term or right in the future.

Gerard Lighting (NZ) Limited
1 Prosser Street
Porirua
PO Box 50516, Porirua

Telephone No: 0508 743 754 or 04 237 2636
Fax No: 0508 743 755 or 04 237 2632

GERARD
LIGHTING