

TERMS & CONDITIONS



General

These Standard Terms and Conditions of sale ("the Conditions") apply to any sale of items, equipment or services of LED Light Works Pty Ltd trading as Empyrean Lighting ("Empyrean") or, where a quotation is made, shall form part of that quotation.

Empyrean may vary the Conditions from time to time, and the Conditions as varied shall be published on the Empyrean website. The purchaser agrees that the ordering of any goods or services after the publication of the variation of the Conditions on the website will be an acceptance by the purchaser of the varied Conditions.

No variation or cancellation of any of the Conditions shall be binding on Empyrean unless agreed by a responsible officer of Empyrean in writing. No agent or representative has the authority to waive or alter the Conditions.

The purchaser or anyone purporting to act on behalf of the purchaser may place orders for goods or services with Empyrean by telephone, email, or in writing.

Precedence

In the event of a conflict between the Conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, order or contract then the Conditions shall prevail unless they are expressly varied by Empyrean in writing. If any Condition is contrary to or excluded by law then the Conditions shall be modified but only to the extent of excluding that part of the Conditions so affected.

Acceptance

A quotation is not to be construed as an offer or obligation to sell and Empyrean reserves the right to decline any order for goods or services (either wholly or partially) at any time prior to the delivery of the goods or services, in which case Empyrean shall be under no obligation in respect of such order.

Prices

All prices are subject to change without notice and orders are accepted by Empyrean on the condition that they will be invoiced at the prices ruling at the date of dispatch, but every endeavour will be made to give 30 days' notice of any increase.

All prices shown in the published catalogues or price lists are recommended selling prices only and there is no obligation on the part of any reseller to maintain such prices.

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A quotation includes only such goods as are specified therein. Empyrean reserves the right to cancel any sale where goods offered ex stock have been previously sold or otherwise committed.

Terms of Payment

The purchaser agrees to comply with the Conditions and payment for goods and services shall be made by the purchaser to Empyrean – 60% deposit on receipt of purchase order with 40% balance due on delivery, unless otherwise agreed in writing by Empyrean (credit account).

Delivery

Empyrean will endeavour to comply with the time of delivery of goods and services requested by the purchaser but delivery time is not guaranteed nor is time of the essence of the contract of sale of the goods and services. Empyrean will not be liable for any loss or damage of whatsoever nature arising out of a delay in delivery of goods or services. The delivery period quoted commences from the date Empyrean receives sufficient information to proceed with the supply or from the date Empyrean receives the purchaser's written order, whichever is the later. Quoted delivery dates are subject to confirmation when placing the order.

Goods Returned for Credit

Goods will not be accepted for credit without prior approval of personnel at Empyrean's office. All goods returned should be in their original containers and should not be shop soiled, obsolete or shop damaged. All such goods may be rejected or credited at a reduced rate. Cut lengths of cable will not be accepted for return under any circumstances. All goods approved for return shall be returned freight pre-paid and may be subject to a 50% restocking charge.

Cancellation

Cancellation of project orders made after production begins, will result in a forfeit of deposit unless otherwise authorised by Empyrean Lighting.

Variation

A variation or cancellation of any order by the purchaser is subject to acceptance by Empyrean of such variation or cancellation and in the event of such agreement the purchaser hereby indemnifies Empyrean against any loss or damage as a result of such variation or cancellation.

Warranties Limited

Empyrean warrants that the goods it supplies shall be of good and merchantable quality and its liability shall be limited only to the repair or replacement of any faulty or defective goods in terms of the manufacturer's

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warranty and Empyrean does not, unless specifically required by law, give any warranty beyond the manufacturer's warranty, and in no event shall Empyrean be liable either under statute, in equity, in contract or tort (including in negligence) or otherwise for any direct or indirect special consequential or punitive loss or damages (including loss of income, profits or business, loss of goodwill or reputation or loss of value of intellectual property) to persons or property, whether foreseeable or unforeseeable, arising from or caused in any way by such goods.

Inspection

The purchaser has seven (7) days from the date of delivery of the goods within which to provide Empyrean with written notice of any claim for alleged failure to comply with an order whether due to a shortfall, defect, incorrect delivery or otherwise. Should the purchaser fail to provide such written notice within the stipulated time period then Empyrean shall be deemed to have complied the purchaser's order in all respects including delivery, quality and quantity.

Packing, Damage or Loss in Transit

Empyrean uses every care in packing but, unless otherwise agreed, shall not be liable for any loss or damage in transit, and any claim in relation to such loss or damage shall not be accepted by Empyrean and shall be a matter between the purchaser and the railway, shipping company or carrier. The purchaser shall inspect and check all goods received as soon as practicable upon unloading.

Purchaser's Specifications

Empyrean shall be under no obligation to comply with any specification or drawings referred to in any order as mentioned on all sales quotes (responsibility of the purchaser to ensure all design specifications are met). Empyrean is therefore not liable for incorrect products supplied.

Risk

All goods sold shall be at the risk of the purchaser from the time of dispatch of the goods by Empyrean for delivery to the purchaser and the purchaser shall be solely responsible for insuring the goods in transit.

Credit

Empyrean may at any time suspend or vary any credit extended to the purchaser or withhold the delivery of goods or services already ordered as Empyrean in its sole and absolute discretion determines.

Default of Purchaser

The purchaser expressly agrees that if the purchaser fails to pay Empyrean the invoiced price of any goods and services by the due date for payment, then Empyrean:

Shall have the immediate right to bring an action against the purchaser for payment of the invoice price of the said goods and services, notwithstanding that ownership and property in the said goods and services shall not have passed to the customer;

May refuse to supply any other goods and services to the purchaser;

May claim the return of any goods in the possession of the purchaser where title in such goods has not passed to the purchaser;

May determine the contract and/or suspend manufacture or delivery, installation, commissioning or testing of any goods then outstanding;

May retain any security given or money paid by the purchaser or available through enforcement of guarantee or security bonds lodged and may apply such security or money against the loss and damages incurred by the failure of the purchaser to pay;

May withdraw or vary any credit extended to the purchaser without notice to the purchaser;

May without notice make all moneys owing by the purchaser to Empyrean on any account immediately due and payable

May take such steps as it deems necessary to mitigate any damage suffered including the putting to use, hiring out, sale or disposal of any goods in its possession supplied or to be supplied to the purchaser;

And, may charge interest on overdue accounts at the rate not exceeding the standard overdraft rate offered by the National Bank of Australia on the day of calculation.

Retention of Title

- a) Defined terms used in this clause have the same meaning as given to them in the Personal Property Securities Act 2009 (Cwth),(“PPSA”).
- b) Empyrean and purchaser acknowledge that a contract constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of Empyrean over the goods supplied to the purchaser, as Grantor, pursuant to a contract, and over the Proceeds (including any sale monies or an account for such monies and insurance monies).

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- c) The goods supplied or to be supplied under a contract fall within the PPSA classification of "other Goods" acquired by the purchaser pursuant to these Conditions.
- d) The purchaser acknowledges that Empyrean, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the purchaser, as Grantor, under a contract on the PPSA Register as Collateral.
- e) The purchaser waives its right to any of the following under the PPSA:
 - I. receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Purchaser, as Grantor, to Empyrean;
 - II. Receive notice of removal of an Accession under section 95;
 - III. Receive notice of an intention to seize Collateral under section 123;
 - IV. Receive notice of disposal of Collateral under section 130;
 - V. Receive a Statement of Account if there is no disposal under section 130(4);
 - VI. Receive notice of retention of Collateral under section 135;
 - VII. Redeem the Collateral under section 142;
 - VIII. Reinstate the Security Agreement under section 143;
 - IX. Object to the purchase of the Collateral by the Secured Party under section 129;
 - X. Receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- f) The purchaser agrees that, to the extent permitted by law, nothing in sections 130 to 143 of the PPSA will apply to, or the Security under, these Conditions.
- g) The legal and equitable title in the goods will only pass to the purchaser when all moneys owing by the purchaser to Empyrean on any account whatsoever have been paid in full. The purchaser must not do or permit anything to be done which may result in the purchase money security interest granted to Empyrean ranking in priority behind any other security interest. .
 - I. Until such payment in full, the purchaser acknowledges that the goods are held by the purchaser as Bailee for Empyrean and that a fiduciary relationship exists between Empyrean and the purchaser in relation to the goods, which must be stored separately as a fiduciary of Empyrean in good condition and in such a way which clearly indicates the ownership of Empyrean in the goods.
 - II. While Empyrean retains title in the goods the purchaser shall not bail, pledge, mortgage, charge, obtain or grant a lien over, lease or assign by any other way the goods or any security in the goods.
 - III. The purchaser irrevocably authorizes Empyrean by its servants or agents to enter upon any site where the goods are located to take possession of the goods without any prior notice or for any purpose connected with or in relation to the protection or enforcement of the rights of Empyrean to the goods.
 - IV. The purchaser shall be liable for the payment of all costs, charges and expenses incurred by Empyrean on a full indemnity basis (including legal costs, repossession costs and the cost of any mercantile agent) in the recovery or attempted recovery of the goods or of

payment of any moneys owing by the purchaser to Empyrean or in the protection or enforcement of its rights in relation to the goods.

- V. To secure payment of all moneys which may become payable by the purchaser to Empyrean on any account whatsoever the purchaser hereby charges with the due payment of all moneys payable by the purchaser to Empyrean all of the purchaser's beneficial interests in freehold or leasehold property held by it now or in the future as security for payment of all and any moneys payable by the purchaser to Empyrean and consents to Empyrean lodging a caveat or caveats noting its interest in such property, and upon demand by Empyrean the purchaser agrees to immediately execute a mortgage or other instrument in terms satisfactory to Empyrean to further secure payment of such moneys. The purchaser hereby and by way of security irrevocably appoints every officer and legal practitioner of Empyrean jointly and each of them severally as the purchaser's lawful attorney with the power and for the purpose of executing (including as a deed) a mortgage or other instrument of security in any form as determined by such attorney over any real property of the purchaser to secure such moneys.

Disputes

If the purchaser disputes any charge appearing on an invoice then the purchaser shall give written notice of such dispute to Empyrean immediately upon receipt of invoice and shall pay all other charges not in dispute on the invoice pending an investigation of the dispute.

Opening a Trading Account

IT IS AGREED: By signing the application form the applicant certifies that the information supplied to Empyrean for the purpose of assessing the suitability for providing the applicant with a 30 Day Credit Facilities is correct at time of writing, and is authorized on behalf of the applicant to make this application and contract on behalf of the applicant and give the warranties outlined in this application.

Empyrean reserves the right to withdraw credit facilities at any time without notice.

The Purchaser will be liable for any costs incurred in enforcing payment of the account.

Should the amount owing under the credit facility at any time exceed the limit mentioned on this application,

Empyrean reserves the right to suspend credit facilities until such time as the amount outstanding is reduced below the limit established.

Terms are strictly 30 DAYS from Invoice date. Failure to pay within these terms could result in suspension of Credit Facilities until ALL outstanding amounts are paid in FULL.

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Empyrean reserves the right to charge interest on overdue amounts at the rate not exceeding the standard overdraft rate offered by the National Bank of Australia on the day of calculation. Such interest if applied shall be charged direct to your account.

All goods shall be sold in accordance with all other terms and conditions.

Should any changes take place affecting the legal entity, structure or management control of the applicant, then Empyrean will be notified immediately in writing.

That unless otherwise stated in this application, the applicant declares that is not structured on a trusteeship involving discretionary, unit or family trusts

Notice of disclosure of your credit information to a credit reporting agency

Under Section 18E (8) (c) of the Privacy Act Empyrean is allowed to give a credit reporting agency personal information about the applicant's credit application. The information which may be given to an agency is covered by Section 18E (1) of the Act and includes:

- Identity particulars (as permitted by the Privacy Commissioner's determination issued under s.18E(3));
- The fact that the applicant has applied for credit and the amount;
- The fact that Empyrean is a current credit provider to the applicant;
- Payments which become overdue more than 60 days, and for which collection action has commenced;
- Advice that payments are no longer overdue;
- Cheques drawn by the applicant which have been dishonoured more than once;
- In specified circumstances, that in the opinion of Empyrean the applicant has committed a serious credit infringement
- That credit provided to the applicant by Empyrean has been paid or otherwise discharged.
- Please refer to the Privacy Policy for further information

The jurisdiction for any legal claim arising from any default will always remain in the State of Queensland.

Costs associated with the collection of any overdue account will be the responsibility of the credit applicant.

If Empyrean considers it relevant to assessing any application for commercial credit, Empyrean may obtain from a credit reporting agency a credit report containing personal information about the applicant in relation to commercial credit provided by Empyrean

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Your Credit Limit

To help manage your account, for future transactions, Empyrean reserves the right to reassess customer's credit limit at any time for reasons such as outstanding balance exceeding the current limit currently in place or payments received outside our terms and conditions. It is agreed for Empyrean to assess the account at any time to change credit limit if needed without authorisation based on trading history.