

TRADING TERMS AND CONDITIONS ("Trading Terms"), September 2020
Rakumba Lighting Pty Ltd ATF Rakumba Trust ABN 11 877 210 219 ("Rakumba")

DEFINITIONS

1. 'Goods' means all products and services agreed to be supplied by Rakumba to the Purchaser under any Contract; 'Purchaser' means any person who acquires Goods from Rakumba under a Contract, and includes the customer of the Purchaser or their customers and so on; 'Contract' means any order or contract for the supply of Goods entered into between Rakumba and the Purchaser at the Purchaser's request; 'Quotation' means a quote or proforma invoice provided in writing by Rakumba to supply the Goods;
2. 'Australian Consumer Law' ("ACL") refers to the provisions as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
3. 'PPSA' has the meaning as set out in Personal Properties and Securities Act 2009 (Cth).
4. 'GST Act' means the A New Tax System (Goods and Services Act) Act 1999 (Cth), as amended;
5. 'GST' means the Goods and Services Tax as levied under the GST Act.

GENERAL

6. These terms and conditions of sale apply to all sales of goods by Rakumba to the Purchaser, unless expressly varied by Rakumba in writing.
7. These terms and conditions may only be amended with Rakumba's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Purchaser and Rakumba.
8. Rakumba reserves the right to amend these terms and conditions without notice.
9. This agreement is personal to the Client and the Client shall not assign or transfer any of its rights or sub contract any of its obligations under this agreement.
10. Any notice or other communication under this agreement shall be given in writing
11. If any provision of this agreement is held to be invalid, illegal or unenforceable, it will be severed and the remainder of the agreement will remain in full force and effect.

ACCEPTANCE

12. Any order of Goods and/or any payment made by the Purchaser, represents the Purchaser's unequivocal and irrevocable acceptance of these Terms & Conditions and acts as a legally binding contract between Rakumba and the Purchaser.

QUOTATION

13. Rakumba's Quotation shall be deemed to have interpreted correctly the Purchaser's instructions.
14. Provided that Rakumba correctly follows the Quotation, any alterations or additions to the Purchaser's order will automatically alter the Quotation and will be charged in addition to the amount stated in the Quotation.
15. The price of goods in a Quotation issued by Rakumba is current as at the date of Quotation and is valid until the quotation expiry date stated on the quotation or for 30 days after the date of issue of the quotation if no quotation expiry is explicitly stated. Alternative Quotation validity periods are only valid if agreed in writing by Rakumba.
16. Rakumba reserves the right to amend the price if the Contract varies from the Quotation.
17. The price of goods in a Quotation issued by Rakumba is only valid if the Quotation is provided by Rakumba in writing. Any price information provided or implied by Rakumba verbally is considered indicative and does not constitute a valid Quotation.
18. The price of goods in a Quotation issued by Rakumba excludes light globes, installation, installation supervision and onsite assembly unless otherwise stated.
19. All prices exclude freight and delivery charges unless expressly stated otherwise on the written Quotation.
20. All prices are exclusive of Australian GST. The Purchaser must pay all GST subject to receipt of a tax invoice. The Purchaser must also pay all other applicable duties, taxes and levies in connection with the supply of goods. Without limitation, the Purchaser is responsible for any increases in duties, taxes or levies after the date of Quotation.

CONTRACT

21. A Quotation in writing by Rakumba constitutes an invitation to the Purchaser to submit an order for the Goods in the Quotation. Rakumba may accept or reject an order and does not have any obligation to supply Goods to the Purchaser until it has accepted the order for the Goods from the Purchaser.
22. The Purchaser is responsible for providing orders to Rakumba in writing. Written orders include orders received by email where the email content indicates to Rakumba to proceed with manufacture or supply of goods.
23. Rakumba's acceptance of an order is only valid if that acceptance is provided in writing as an email or other written confirmation that indicates Rakumba has accepted the order.

24. Once an order has been accepted by Rakumba, the Purchaser can not cancel the order without the prior consent of Rakumba. If Rakumba consents to the cancellation of an order, that consent is given on the condition that the Purchaser reimburse Rakumba for any costs, charges, expenses, loss of profit and consequential damage that Rakumba has or may suffer in relation to such cancellation.
25. Rakumba may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Purchaser. On giving such notice Rakumba shall repay to the Purchaser any money paid by the Purchaser for the Goods. Rakumba shall not be liable for any loss or damage whatsoever arising from such cancellation.

PURCHASER-SUPPLIED MATERIALS OR COMPONENTS

26. Materials or components provided by the Purchaser are provided at the Purchaser's risk of damage or loss due to any reason whatsoever and the Purchaser expressly accepts this risk. The Purchaser has the obligation to insure materials or components provided by the Purchaser if insurance cover is required.
27. Materials or components provided by the Purchaser will be used in the condition in which they are provided to fabricate the goods. Rakumba accepts no liability for inspecting or selecting materials or components provided by the Purchaser.

RAKUMBA MATERIALS

28. Materials provided by Rakumba and used to fabricate the goods may vary reasonably from samples provided by Rakumba.
29. Materials samples provided by Rakumba and selected by the Purchaser may not be available to fulfill the Purchaser's order. In the case where the material is unavailable, the Purchaser is responsible for selecting alternative materials for Rakumba to use in fabricating the goods.
30. Fabric-based materials included in Rakumba's standard fabric swatch range are suitable for illumination with incandescent light globes of maximum 75 watts. Rakumba does not warrant that fabrics will illuminate correctly when higher wattage globes (or higher equivalent wattage of different technology) are used.
31. The Purchaser is responsible for confirming with Rakumba any particular technical properties of Rakumba materials that are important for the Goods, prior to placing an order for the Goods.

FREIGHT

32. Goods are sold to the Purchaser on ex-Factory terms unless stated explicitly as "DAP" or "Delivery at Place" or words explicitly stating that delivery is included are included on the Quotation or invoice.
33. Delivery of Goods will use a standard (non-priority) freight service selected by Rakumba.
34. Additional freight charges due to express delivery requirements, difficult or delayed delivery access, special delivery requirements, special vehicle requirements or other non-standard freight charges incurred by Rakumba are at the Purchaser's account regardless of whether the goods are sold DAP or ex-Factory.
35. Delivery of the Goods to a third party nominated by the Purchaser is deemed to be delivery to the Purchaser for the purposes of this agreement.
36. If the Purchaser requests Rakumba to leave Goods outside Rakumba's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Purchaser's sole risk.

DELIVERY DATE

37. An order completion or order delivery date specified by Rakumba is the date the Goods will be finished in production. The Goods will be available for dispatch from Rakumba's premises the following business day. This date does not include transportation time to deliver to the Purchaser's nominated delivery address.
38. An order completion or order delivery date specified by Rakumba or agreed between the Purchaser and Rakumba is indicative only and while Rakumba will make best endeavours to meet the date so specified, in no circumstances will Rakumba be liable for any loss or damage of any kind whatsoever caused directly or indirectly by the failure to meet the date. In addition, the Purchaser must still accept delivery of the Goods even if late.

PAYMENT

39. At Rakumba's sole discretion a deposit may be required to confirm the Purchaser's order. The deposit amount or percentage of the Price due will be stipulated on Rakumba's Quotation for the Goods and shall become immediately due and payable. Rakumba is under no obligation to followup an unpaid deposit or to commence producing the Goods prior to the deposit being received. The deposit is non-refundable, particularly in the case where Goods are manufactured to order. Any deposit refund is at the sole discretion of Rakumba.
40. The Purchaser must pay the purchase price of goods in full before delivery unless Rakumba has previously agreed to supply those goods on different payment terms. The payment terms will be specified on Rakumba's Quotation or invoice and these apply regardless of whether the Purchaser has any other credit account arrangements in place with Rakumba.
41. The Purchaser must pay the purchase price of the goods on or before

the date when payment is due according to the invoice. Rakumba reserves the right to charge a late payment fee of 2% per annum more than the rate from time to time fixed by the Penalty Interest Rates Act 1983 (Vic) of the amount outstanding per month on overdue invoices.

42. Rakumba may discontinue or vary credit account arrangements at any time.

DEFECTS, WARRANTIES

43. The warranties and undertakings which apply to the Goods supplied by Rakumba to the Purchaser are those applied by the ACL, as amended and in force from time to time. All other warranties and undertakings are expressly excluded.
44. The liability of Rakumba to the Purchaser in connection with the supply of Goods, including liability for defective Goods, is limited to whichever of the following Rakumba may elect, namely, the replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, the refund of the purchase cost of the Goods, the payment of the cost of replacing the Goods or acquiring equivalent Goods, or the payment of the cost of having the Goods repaired. To the extent permitted by law, Rakumba excludes all other liability, including liability in negligence. Without limitation, Rakumba will not in any circumstances be liable for any consequential or special damages, losses, expenses or costs.
45. Rakumba's warranty expressly excludes all and any costs associated with installation or repair or defect rectification or removal of Goods in particular where the Goods are installed or will be installed in positions above heights accessible using a commonly available ladder or in locations where special access equipment or other asset protection is required or where standard lighting installation occupational health and safety equipment and guidelines would not reasonably be considered to apply.
46. To the extent permitted by law, Rakumba does not warrant that materials or components provided or specified by the Purchaser from outside Rakumba's standard range of materials or components are suitable for use in manufacturing the Goods using Rakumba's fabrication techniques or materials. Rakumba accepts no liability in connection with the use of materials or components specified or provided by the Purchaser in this case. Any rectification or re-manufacture of the Goods in this case will be at the Purchaser's sole cost.
47. The Purchaser acknowledges that it has not relied on the skill or judgment of Rakumba, its employees or agents in determining whether the Goods to be supplied are fit for any particular purpose or any design issues related to the use of the Goods. To the extent permitted by law, Rakumba excludes all liability to the Purchaser in connection with the Purchaser's use of the Goods or the suitability of the Goods for that use.
48. The Purchaser acknowledges that where it has provided or specified or requested specific design of the Goods or where Rakumba has provided fabrication drawings or information that has been accepted by the Purchaser, Rakumba excludes all liability to the Purchaser in connection with the Purchaser's use of the Goods or the suitability of the goods for that use. Furthermore, Rakumba excludes all liability to the Purchaser in connection with the suitability of fabrication methods or materials used in manufacturing the Goods.
49. Rakumba warrants that all Goods supplied by it, other than light globes, are free from defects in materials and workmanship for a period of twenty four months from the date of supply with the exception of fabric-based products and timber-based products where a warranty period of twelve months applies.
50. Rakumba's warranty will cease to apply if the Goods are subject to anything other than ordinary usage or are used in a manner that is not consistent with the manufacturers directions or if since the date of delivery to the Purchaser the Goods have not been properly maintained, stored and housed or if repairs or alterations have been carried out on or to the Goods without Rakumba's written consent.
51. Rakumba's warranty explicitly excludes defects that arise due to the Goods being used in moist, humid, salty, exterior or other environments that are likely to cause damage to lighting products, with the exception of Goods that are explicitly certified by Rakumba as being suitable for use in the specific environment in which they are installed.
52. Rakumba's warranty explicitly excludes the finish on materials for which surface finishes naturally change over time and finish and workmanship that reasonably varies due to the hand made nature of the Goods.
53. Rakumba shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Purchaser failing to properly maintain or store any Goods;
 - the Purchaser using the Goods for any purpose other than that for which they were designed;
 - the Purchaser continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - the Purchaser failing to follow any instructions or guidelines provided by Rakumba;

e. fair wear and tear, any accident, or act of God.

54. For the purposes of payment and warranty, where collection or delivery has been delayed by the Purchaser, the Purchaser shall be deemed to have taken delivery of the goods from the delivery date previously agreed between the Purchaser and Rakumba, and the payment due date and the start of the warranty period are deemed to be the date of deemed delivery.

RISK

55. Risk in the Goods supplied by Rakumba will pass to the Purchaser immediately upon the Goods being collected from Rakumba's premises for all ex-works purchases, or immediately upon the Goods being delivered to the Purchaser for all DAP purchases.
56. For all ex-works sales of Goods, transportation is at the Purchaser's risk regardless of whether delivery is performed by Rakumba, Rakumba's agent, Rakumba's selected transportation company or the Purchaser or the Purchaser's agent or the Purchaser's selected transportation company. The Purchaser has the obligation to insure the Goods if insurance cover is required.
57. Where the Purchaser is to supply Rakumba with any data or design specifications (including, but not limited to, CAD drawings) then the Purchaser shall be responsible for ensuring that the same is correct in all aspects. Rakumba shall not be held liable in any way whatsoever for any errors in the Goods that are caused by incorrect or inaccurate drawings or data supplied by the Purchaser.

CLAIMS AND CREDITS

58. Rakumba will not allow credit on the return of custom fabricated, specialised or modified products.
59. The Purchaser must inspect the Goods on delivery and must within seven (7) days of delivery notify Rakumba in writing of any evident defect/damage, shortage in quantity, or failure to comply with the contract. This notice will, where applicable, include relevant images, footage or other evidence reasonably requested by Rakumba to assess the claim. The Purchaser must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Purchaser must allow Rakumba to inspect the Goods.
60. The Purchaser will be deemed to have accepted goods in good condition and as being fully in accordance with the Purchaser's order unless it notifies Rakumba of receipt of goods to the contrary.
61. If damaged packaging is evident upon delivery, the Purchaser is responsible for noting this on the transport company's proof of delivery when accepting delivery. If a claim on Goods relates to damage caused during transportation, the Purchaser is responsible for providing photographs of damaged packaging prior to opening and photographs of damaged Goods, and these photographs are required by Rakumba within seven (7) days of receipt of Goods.
62. If a claim relates to defective Goods, Rakumba must be provided with reasonable time for rectification prior to installation of the goods.
63. Subject to the obligations of Rakumba under these terms and conditions in relation to defective goods, all returns of goods and the credit allowed upon the return of goods is at the absolute discretion of Rakumba. Without limiting this discretion of Rakumba:
- A re-stocking charge may be applied to goods that Rakumba allows a Purchaser to return for credit and the amount of this charge will be at Rakumba's sole discretion but will not exceed the purchase price of the goods;
 - goods will not be accepted for credit beyond 30 days from the date of supply;
 - the original invoice number must be quoted in relation to the return;
 - If Rakumba agrees to accept the return of goods (other than defective goods), it is a condition of that return that the goods be in their original containers and not be shop soiled or damaged in any way. Returned goods may be rejected or credited at a reduced rate by Rakumba if this condition is not satisfied.
64. The Purchaser is responsible for all freight and other charges associated with the return of goods to Rakumba, except in relation to defective goods sold on a DAP basis.
65. In the case of defective goods provided by Rakumba on a DAP basis, goods must only be returned by Rakumba's nominated carrier/s and service/s, otherwise any freight charges will not be paid by Rakumba and must be paid by the Purchaser.
66. Before returning or requesting rectification of any defective goods, the Purchaser must contact Rakumba and comply with the directions of Rakumba in relation to the return or rectification procedure determined by Rakumba. All returns including defective merchandise must have an approved return authorisation in writing from Rakumba before being returned. Unauthorised returns will be refused and not accepted and will be returned to the Purchaser at the Purchaser's expense.
67. All costs associated with the installation and removal of any defective

goods installed or removed (whether at the request of Rakumba or not) shall be at the Purchaser's sole cost.

GENERAL LIEN

68. Rakumba shall have a general lien on all goods sold to the Purchaser which are in the possession of the Purchaser for all sums owing to Rakumba by the Purchaser and for that purpose, Rakumba shall have the right to sell any such goods by public auction or private treaty and out of the moneys arising from the sale, may retain the sum so payable and all charges and expenses relating to the detention and sale, until all sums owing to Rakumba have been paid by the Purchaser whether under this or any other contract.

RETENTION OF TITLE AND THE PPSA

69. The terms which are defined in the PPSA have the meaning given to them in the PPSA.
70. By agreeing to these Trading Terms, the Purchaser:
- Agrees that these Trading Terms will take effect as a Security Agreement for the purposes of the PPSA.
 - Grants to Rakumba a Purchase Money Security Interest (PMSI), as defined by the PPSA in the Goods.
 - Agrees that the PMSI in the Goods is granted at the time of entering in to this agreement.
 - Acknowledges and agrees that Rakumba has the right to register a Financing Statement with the Personal Property Securities Register.
 - Agrees to provide all information to Rakumba which may be required for the purpose of the Financing Statement and to promptly do all things and sign all documents necessary to enable Rakumba to ensure that the PMSI created by these Trading Terms constitutes a perfected security interest for the purposes of the PPSA.
 - Acknowledges that it is Rakumba's intention that the PMSI over the Goods will have priority over other security interests in the Goods and the Purchaser agrees not to knowingly allow any other person or company to register a security interest over the Goods without the prior written consent of Rakumba.
 - Agrees to allow Rakumba to do all things necessary and provided for under the enforcement provisions of the PPSA and the Purchaser indemnifies Rakumba from any claims made by any third party as a result of such action.
 - Title in and ownership of the Goods delivered by Rakumba to the Purchaser is only transferred to the Purchaser when all sums owing to Rakumba by the Purchaser have been paid, whether under this or any other Agreement.
 - Until such time as all sums owing to Rakumba are paid in full, the Purchaser agrees that Rakumba has an enforceable security interest in the Goods and until such time as all sums owing are paid in full, Rakumba has the irrevocable right to call for or recover the goods (for which purpose Rakumba may enter the Purchaser's premises by its servants or agents) to collect the Goods and the Purchaser is under an obligation to deliver up the Goods to Rakumba in the same condition as the Goods were when delivered to the Purchaser.
 - The Purchaser waives their right to receive a verification statement under the PPSA but must be provided with confirmation of discharge of any registered securities, once payment(s) of any outstanding sums owing to Rakumba have been made in full.
 - The Purchaser and Rakumba agree to exclude the following provisions of the PPSA in accordance with the right to do so under section 115:
 - o Section 95
 - o Section 125
 - o Section 130
 - o Section 132(3)(d)
 - o Section 132(4)
 - o Section 135
 - The Purchaser agrees that these provisions apply notwithstanding any other agreement or arrangement, whether subject to these Trading Terms or not, between the parties under which Rakumba gives the Purchaser credit.
 - The Purchaser waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - Unless otherwise agreed to in writing by Rakumba, the Purchaser waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - The Purchaser agrees that when placing any orders with Rakumba it does so on the basis that it accepts all of the above conditions.

INTELLECTUAL PROPERTY

71. The Purchaser acknowledges that designs and know-hows developed by Rakumba during the course of quoting to provide Goods to the Purchaser or providing Goods to the Purchaser remain the property of Rakumba and are not to be used by the Purchaser for any purposes including seeking alternative quotation or manufacture without first gaining permission from Rakumba in writing.
72. Rakumba reserves the right to re-use designs and know-hows attained during the course of providing Goods to the Purchaser, unless Rakumba has explicitly agreed otherwise in writing with the Purchaser.
73. Where Rakumba has designed, drawn or developed Goods for the

Purchaser, then the copyright in any designs and drawings and documents shall remain the property of Rakumba.

74. The Purchaser warrants that all designs, specifications or instructions given to Rakumba will not cause Rakumba to infringe any patent, registered design or trademark in the execution of the Purchaser's order and the Purchaser agrees to indemnify Rakumba against any action taken by a third party against Rakumba in respect of any such infringement.
75. The Purchaser agrees that Rakumba may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, photographs or Goods which Rakumba has created for the Purchaser.

DEFAULT

76. If the Purchaser does not pay Rakumba for goods on the due date for payment, an administrator, liquidator, receiver or receiver and manager is appointed to the Purchaser or any of its assets, a resolution is passed or an application is presented for the winding up of the Purchaser, the Purchaser becomes insolvent or enters into any arrangement with its creditors or the Purchaser commits any act of bankruptcy, Rakumba may do any of the following without prejudice to any other rights it has:
- (a) withhold delivery of goods;
 - (b) require the Purchaser to immediately pay Rakumba all amounts for goods supplied;
 - (c) retake possession of any goods on which title has not passed to the Purchaser and for that purpose the Purchaser authorizes Rakumba by its employees or agents, to enter any premises where the goods may be situated;
77. The Purchaser indemnifies Rakumba against all costs and expenses (including legal costs on an indemnity basis) incurred by Rakumba in connection with the recovery or attempted recovery of amounts owing to it by the Purchaser.
78. The Purchaser agrees to immediately pay upon demand interest to Rakumba on all amounts owing to Rakumba from the date the amounts are due until full payment is made at the rate specified from time to time pursuant to Section 2 of the Penalty Interest Rates Act 1983.

WAIVER

79. Subject to any express consent in writing of the parties, no waiver, delay, omission, relaxation, indulgence or forbearance on the part of any party in respect of any right or power conferred upon such party by these terms shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude such party or future exercise of such power or right, or the exercise of any other power or right under these Trading Terms.

INVALIDITY

80. In the event of the invalidity of any part or provision of these Trading Terms, such invalidity shall not affect the enforceability of any other part or provision of this agreement. The several covenants and conditions and each and every part of the several covenants and conditions contained in these Trading Terms shall be construed so as not to infringe the provisions of any Act whether State or Federal but if any such covenant or condition on its true interpretation does infringe any such provision or if any provision of these Trading Terms is invalid, that covenant or condition or part of the covenant and condition shall be read down to such extent as may be necessary to ensure that it does not so infringe and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character and in the event that such infringing covenant or condition cannot be so read down it shall be deemed to be void and severable.

SEVERANCE

81. If any provision of this agreement is found by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of the other provisions of this agreement shall not be affected and shall continue to be valid

FORCE MAJEURE

82. Neither party shall be deemed to be in breach of this agreement by reason of delay or failure in performing obligations (other than payment obligations), if the delay or failure was due to an act of force majeure or otherwise beyond that party's control.

JURISDICTION

83. The contract for the sale and purchase of goods between Rakumba and the Purchaser shall be deemed to be made in the State of Victoria, Australia and shall be governed by the law of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts of Victoria, Australia.