

TERMS AND CONDITIONS

Last updated: 7 May 2022.

These terms and conditions relate to, as applicable:

- (a) the sales of lighting goods ("**Lighting Goods**");
- (b) the installation of Lighting Goods supplied ("**Lighting Services**"); and
- (c) the sale of StrikeHold products including StrikeHold and StrikeHold Marine and other non-StrikeHold maintenance products which are offered from time to time ("**SHA Goods**"),

each as provided by **Alpha LED LIGHTING PTY LTD ABN: 68 123 685 003** trading as either Alpha LED or StrikeHold Australia ("**Alpha LED**") to customers ("**Customer**").

In these Terms and Conditions, the Lighting Goods and SHA Goods are, together, referred as the "**Goods**".

These Terms and Conditions supersede all previous terms and conditions imposed by Alpha LED and may only be varied in writing by Alpha LED.

1. SALE OF GOODS (LIGHTING GOODS AND SHA GOODS)

1.1. Quotation or Estimate

- a) Alpha LED may provide a quotation or estimate for Goods to a Customer on an official Alpha LED quotation, via email or in hard copy.
- b) Quotations and / or pricelists provided by Alpha LED to a Customer are an invitation to the Customer to place an order for Lighting Goods only and do not constitute an offer to enter into a contract with Alpha LED.
- c) Quotations are valid for 28 days from the date of issue.

1.2. Purchase Order

- a) A contract will only be made between Alpha LED and the Customer for the sale and purchase of Goods upon receipt of a purchase order to Alpha LED in writing in accordance with clause 1.2 b) and c) and acceptance of that order by Alpha LED in writing in accordance with clause 1.3.
- b) Purchase orders are to be made via purchase order (on Customer letterhead, if the Customer is a company) or by email.
- c) The purchase order must include the following details in the form specified in the quotation or as otherwise agreed in writing (including by email) with Alpha LED:
 - order number / reference
 - goods to be supplied;
 - order quantities;
 - shipping method;
 - Customer delivery address or address from which Customer will collect (**Delivery Address**);
 - proposed date for delivery of the order or each instalment of the order to the Delivery Address (each a **Delivery Date**)
 - delivery charges;



- total price, including delivery charges and GST; and
- confirmation of any special payment terms as specified in the quotation.

1.3. Tax Invoice

- a) Alpha LED will confirm acceptance of the order in writing with the production of a sales invoice, stating purchase order number or reference, description, prices of goods, GST, payment details and terms (**Tax Invoice**).

1.4. Delivery of Goods

- a) The Customer is solely responsible for all costs associated with the delivery of the Goods to the Delivery Address, including freight, insurance and other charges.
- b) If Alpha LED delivers the Goods in instalments, each instalment will be treated as a separate delivery.
- c) As soon as reasonably practicable after receipt of a purchase order, Alpha LED will notify the Customer of an estimated date for delivery or collection at the Delivery Address. This is an indicative date only and is not binding.
- d) While Alpha LED will endeavour to adhere to stipulated delivery dates, where the Goods are delivered via a third party freight company, Alpha LED is not liable for any direct or indirect loss incurred by the Customer arising from the late, partial or non-delivery of Goods to the Delivery Address by the Delivery Date.
- e) Alpha LED may withdraw a confirmed order on or before the Delivery Date in its absolute discretion. Alpha LED will not be entitled to payment in respect of any such withdrawn orders and will reimburse to the Customer any pre-payment made in respect of such order without interest.
- f) In the event that a Customer cancels, suspends or varies any or all of a confirmed order, the Customer may be liable for an administration fee at Alpha LED's discretion, if the cancellation, suspension or variation occurs as follows:
 - within 7 days of the Delivery Date: 50% of the total order amount;
 - between 7 - 14 days of the Delivery Date: 25% of the total order amount;
 - between the date of the order and 15 days of the Delivery Date: 10% of the total order amount.

In calculating the administration fee outstanding, Alpha LED will take into account any amounts already paid by the Customer, including any deposit paid pursuant to clause 2.4.

- g) Where a Customer fails to collect or take delivery of the Goods within ten Business Days of Alpha LED notifying the Customer that the Goods are ready for collection, then, except where that failure or delay is caused by Alpha LED to comply with its obligations under these terms and conditions:
 - delivery of the Goods (at law) is deemed to be complete at 9.00 am on the date on the tenth Business Day following the day on which Alpha LED notified the Customer that the order was ready for collection; and
 - Alpha LED will store the order until delivery or collection takes place, and may charge the Customer for all related costs and expenses.
- h) If 30 Business Days after the day on which Alpha LED notified the Customer that the Goods were ready for delivery or collection, the Customer has not collected or (as applicable) accepted delivery of them, Alpha LED may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

1.5. Payment Terms

- a) Unless an application has been made in advance for credit facilities, orders of Lighting Goods in excess of \$400.00 inclusive of GST will require a 50% deposit of the total order amount to be paid to the bank account specified in the Tax Invoice upon acceptance of the order and before delivery of the Lighting Goods.
- b) The customer acknowledges and agrees each Contract constitutes a security agreement for the purposes of the Personal Property Securities Act (PPSA) and Alpha LED will register its security interest in the goods and in the proceeds of the sale of the goods as a Purchase Money Security Interest on the Personal Property Securities Register.
- c) Unless an application has been made in advance for credit facilities, the Customer agrees to pay any amount or balance due for the Lighting Goods in full to Alpha LED upon the delivery or collection of the Lighting Goods at the Delivery Address, in accordance with, and to the bank account specified in, the Tax Invoice.
- d) Subject to the other provisions of this clause, tax invoices in respect of SHA Goods shall be payable prior to delivery and, for the avoidance of any doubt (and without prejudice to any other remedies available), Alpha LED shall be under no obligation to deliver or make available for collection the SHA Goods until payment of the invoice has been received in cleared funds in full and without any deductions.
- e) Payment by credit card may attract the bank's surcharge fees for which the Customer is solely liable.
- f) Alpha LED is registered for Goods and Services Tax (GST) and the Customer will be charged GST at the prevailing rate.

1.6. Late Payment and Non-Payment

- a) Invoices remaining outstanding after 30 days will be subject to interest which will accrue at 10% per month, calculated on a daily basis, until the invoice and the additional late fees are paid in full.
- b) In the event that an invoice remains unpaid and is referred to a credit collections agency and/or law firm, the Customer will be liable for all legal and administrative costs incurred in recovering the debt in full.

1.7. Title and Risk of Loss

- a) Title to the Goods does not pass to the Customer until the Tax Invoice in respect of such Goods has been paid to Alpha LED in full. Pending such payment, the Customer holds the goods as bailee for Alpha LED and must return the goods to Alpha LED if so requested.
- b) The customer acknowledges and agrees each Contract constitutes a security agreement for the purposes of the Personal Property Securities Act (PPSA) and Alpha LED will register its security interest in the goods and in the proceeds of the sale of the goods as a Purchase Money Security Interest on the Personal Property Securities Register.
- c) Risk of loss or damage to the Goods passes to the Customer immediately upon the earlier of the date of delivery to the Delivery Address or date of delivery by Alpha LED to a courier or third party carrier.
- d) Where a courier or other third party carrier is engaged to deliver the Goods to the Customer, the courier or other third party carrier is deemed to be engaged by the Customer as agent, even if Alpha LED arranges the courier or carrier on your behalf and clause 1.4.d) will apply.

1.8. Inspection, Acceptance of Goods and Customer's Obligations

- a) The Customer must inspect the Goods and notify Alpha LED within three (3) business days of receipt of the Goods at the Delivery Address of any shortage or defect claims.
- b) If no inspection or notification is made within that time, the Customer will be deemed to have accepted the Goods to be in accordance with the contract.
- c) If the Customer rejects the Goods under clause 1.8.a), then Alpha LED may, at its option:
 - in the case of Lighting Services, resupply of the Lighting Services or reimburse the Customer for the cost of having Lighting Services supplied again; and
 - in the case of Goods, replace the Goods or supply Goods, repair such Goods, reimburse the Customer for the cost of replacing the Goods or acquiring equivalent Goods, reimburse the Customer for the cost of having the Goods repaired, or if the Customer has not paid the price for the relevant Goods, release of the Customer from any obligation to pay the price for the Goods, or if the Customer has already paid the price for the relevant Goods, refund to the Customer the price for the relevant Goods.
- d) Alpha LED will only accept the return of Goods from the Customer where:
 - the Customer has complied with clause 1.1.7 a) and Alpha LED is satisfied as to the claim by the Customer;
 - the Goods are returned to ALPHA LED in the same condition as when first delivered to or collected by the Customer at the Delivery Address; and
 - If the Customer does not return Goods using Alpha LED's carrier, the Customer must bear the freight costs.
- e) Alpha LED will not accept return of the Goods from the Customer where any defect arises because the Customer failed to follow Alpha LED's oral or written instructions for the storage, commissioning, installation, use or maintenance of the Goods or best industry practice.
- f) The Customer must not alter or interfere in any way with the Goods or their original packaging including removing any labelling or instructions provided with the Goods.

1.9. Suitability and Warranty

- a) All Lighting Goods supplied by Alpha LED are of merchantable quality, fit for purpose as held out by Alpha LED and conform to Australian standards. Pool lights are leakproof and have an IP68 rating.
- b) Lighting Goods are covered by manufacturers' warranties for repair and replacement only if installed by a registered tradesperson or Alpha LED as specified by the user manual or otherwise. The Lighting Goods must not have been subject to careless handling, improper maintenance, negligence, faulty installation, unauthorised service, modification, or alterations, misuse, abuse or failure.
- c) Service costs, including labour, transportation and travelling are excluded from the warranty.
- d) SHA Goods are of merchantable quality and fit for purpose as held out by Alpha LED.

2. ADDITIONAL CONDITIONS - LIGHTING SERVICES

2.1. Quotation or Estimate

- a) Alpha LED may provide a quotation or estimate to a Customer for Lighting Services on an official Alpha LED quotation, via email or in hard copy.



- b) Quotations and / or pricelists provided by Alpha LED to a Customer are an invitation to the Customer to place an order for Lighting Services only and do not constitute an offer to enter into a contract with Alpha LED.
- c) Quotations are valid for 28 days from the date of issue.

2.2. Purchase Order

- a) A contract will only be made between Alpha LED and the Customer for the supply of Lighting Services upon receipt of a purchase order to Alpha LED in writing in accordance with clause 2.2.2. b) and (c) and acceptance of that order by Alpha LED, in writing in accordance with clause 2.3.
- b) Purchase orders are to be made via purchase order (on Customer letterhead, if the Customer is a company) or by email.
- c) The purchase order must include the following details:
 - order number / reference
 - Lighting Services to be supplied
 - Goods to be supplied in connection with the Lighting Services;
 - order quantities;
 - installation details;
 - cost of special equipment hire;
 - installation address;
 - total price, including GST; and
 - confirmation of any special payment terms as specified in the quotation.

2.3. Tax Invoice

- a) Alpha LED will confirm acceptance of the order for Lighting Services in writing with the production of a sales invoice, stating purchase order number or reference, description, prices of Lighting Services and accompanying Goods, cost of equipment hire, installation, GST, payment details and terms (**Tax Invoice**).

2.4. Payment Terms

- a) Unless an application has been made in advance for credit facilities, orders of Lighting Services in excess of \$400.00 inclusive of GST will require a 50% deposit of the total order amount and to the bank account specified in the Tax Invoice upon acceptance of the order and before delivery of the Lighting Services.
- b) The customer acknowledges and agrees each Contract constitutes a security agreement for the purposes of the Personal Property Securities Act (PPSA) and Alpha LED will register its security interest in the goods and lighting services, and in the proceeds of the sale of the goods, as a Purchase Money Security Interest on the Personal Property Securities Register.
- c) Payment by credit card may attract the bank's surcharge fees for which the Customer is solely liable.
- d) Alpha LED is registered for Goods and Services Tax (**GST**) and the Customer will be charged GST at the prevailing rate.

2.5. Variations

- a) A Customer seeking a variation to the contract shall notify Alpha LED in writing, setting out in full the details of the required changes to the Lighting Services.
- b) Alpha LED will provide the Customer with details of the required variation work and their cost to the Customer's order in writing.

- c) Upon the acceptance of the variation work and cost by the Customer (which acceptance may be given in writing or by permitting Alpha LED to commence the work), the variation will be added to the final tax invoice or a separate invoice provided.

2.6. Access, Delays and Nightwork

- a) The Customer must grant reasonable access to the work site, otherwise delays may result. This may include arranging for Alpha LED employees or contractors to work alongside other trades people and the use and hire of specific equipment such as scissor lifts, elevated work platforms, manual scaffolds, temporary fencing etc which may impact installation completion.
- b) Any delays resulting from access to site or delays by other tradesman may result in further equipment hire fees and labour fees which, where possible, will be identified in the relevant quotation but, in every case, will be on-charged to the Customer and not borne by Alpha LED.
- c) If Alpha LED is required to hire equipment or provide Lighting Services between the hours of 4pm and 7am, higher fees and labour charges may be incurred, which will be on charged to the Customer and not borne by Alpha LED.

2.7. Electrical Works

- a) Installations above 12 volt will be completed by Alpha LED's preferred, licensed electrician. Work performed on 12 volt or less installations may be performed by Alpha LED or Alpha LED's preferred, licensed electrician. Any fees for works to be performed by Alpha LED's preferred, licensed electrician will be included in the relevant quotation and are payable by the Customer.
- b) All electrical works and installations will be compliant to Australian electrical safety standards.
- c) When retrofitting or replacing existing pool lights, Alpha LED must handle and move electrical cables supplying power to the pool light. Such movement of a cable can cause the cable to break or stop working. The Customer agrees that, unless specifically included in the quotation as forming part of the work, Alpha LED is not responsible or liable for any loss or cost associated with electrical cable detection, repair or replacement.
- d) New LED transformers and drivers are required for most installations. Alpha LED does not offer any warranty on our work when the Customer requires us to use old or existing transformers or power supplies.

2.8. Leak Detection

- a) Whilst all reasonable care will be taken to prevent leaks when retrofitting or replacing existing pool lights, the movement of a cable which is already installed can occasionally break the original seal and cause a leak. The Customer agrees that Alpha LED is not responsible or liable for any loss or cost associated with the detection, repair or replacement work associated with any leak.

2.9. Force Majeure

- a) In this clause 2.2.9, **Force Majeure Event** means any circumstance not in a party's reasonable control including, without limitation:
 - acts of God, flood, drought, earthquake or other natural disaster;
 - epidemic or pandemic;
 - terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;

- nuclear, chemical or biological contamination, or sonic boom;
 - any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - collapse of buildings, fire, explosion or accident;
 - any labour or trade dispute, strikes, industrial action or lockouts; or
 - non-performance by other suppliers or subcontractors upon which our work is conditional; and
 - interruption or failure of utility service.
- b) If Alpha LED is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event, it will:
- as soon as reasonably practicable after the start of the Force Majeure Event, notify the Customer of the Force Majeure Event, the date on which it started, its likely or potential duration and the effect of the Force Majeure Event on its ability to perform any of its obligations under these terms and conditions; and
 - use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- c) Alpha LED will not be in breach of these terms and conditions or otherwise liable for any such failure or delay in the performance of its obligations due to a Force Majeure Event.
- d) If the Force Majeure Event prevents, hinders or delays the Alpha LED's performance of its obligations for a continuous period of more than 60 days, either the Customer or Alpha LED may terminate this agreement immediately upon written notice to the other party.

3. ADDITIONAL CONDITIONS - SHA GOODS

3.1. Safety Data Sheets (SDS)

- a) The SHA Products may, in certain circumstances or quantities, constitute a hazardous substance and are sold to the Customer subject to information on the label and the SDS provided to the Customer with delivery of the SHA Products and SDS available at StrikeHold Australia's website (www.strikehold.com.au) (**Safety Data Sheets**).
- b) The Customer must read and comply with the directions on the label and terms of any SDS applicable to the SHA Product the Customer purchases and agrees that Alpha LED is not responsible or liable for any loss arising from the Customer or any of its officers, employees, contractors or agents failing to read or comply with the terms of any label or relevant SDS.

4. Limitation of liability

4.1. To the maximum extent permitted by law, all express or implied guarantees, warranties, representations and other terms and conditions of any kind not contained in these Terms and Conditions are expressly excluded.

4.2. To the maximum extent permitted by law:

- a) Alpha LED will not be liable to the Customer for any indirect, special, incidental or consequential loss or damage or damages for loss of profits, goodwill, revenue, savings or opportunity arising under or in connection with these Terms and Conditions or its subject matter;
- b) Alpha LED's maximum aggregate liability for all claims under or in connection with these Terms and Conditions or its subject matter is limited to the remedies in clause 1.8.c) in respect of defective Goods rejected by the customer under clause 1.8.a); and

an amount equal to the price payable by the Customer under the relevant Purchase Order or Purchase Orders for any other loss or damage or injury arising out of or in connection with these Terms and Conditions; and

- c) Alpha LED's liability under these Terms and Conditions is diminished to the extent that the Customer's acts or omissions (or, unless otherwise stated in these Terms and Conditions, those of a third party) contribute to or cause the loss or liability, whether in contract, tort (including negligence), in equity, under statute or otherwise, whether or not such loss or damage was foreseeable and even if Alpha LED was advised of the possibility of the loss or damage.

- 4.3. Nothing in this agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Supplier in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

5. GENERAL

- 5.1. These Terms and Conditions are governed by and will be construed in accordance with the laws of the State of Queensland, Australia.
- 5.2. The parties agree that any action arising out of or relating to these Terms and Conditions may only be brought by a court of jurisdiction in the State of Queensland, Australia.
- 5.3. These Terms and Conditions are subject to change by Alpha LED from time to time, by posting the revised version of the Terms and Conditions on the Alpha LED site at <https://www.alphaledlighting.com.au/>. These changes will be effective as of the date the revised version is posted at <https://www.alphaledlighting.com.au/>, and will apply to all Purchase Orders made and accepted in accordance with clause 1.2 or clause 2.2 after this date.
- 5.4. If any of these Terms and Conditions are found by a court of jurisdiction to be invalid or unenforceable, it will be struck out and the remaining terms and conditions will remain in force.
- 5.5. The Customer may not assign or transfer any rights or benefits under these Terms and Conditions to any other person or entity without the prior written consent of Alpha LED.
- 5.6. Unless otherwise agreed in writing, these Terms and Conditions supersede and invalidate all other commitments, representations and warranties relating to the subject matter.
- 5.7. The Customer agrees that it has not relied on any statement, representation, assurance or warranty made or given by Alpha LED, except as expressly set out in these Terms and Conditions.

6. SPECIAL TERMS

Please refer to quotation, covering email and purchase order for special terms.