

DAVEX AUSTRALIA PTY LTD (Davis Lighting)

TERMS & CONDITIONS OF SALE – JANUARY 2020

DEFINITIONS

“Approved Buyer” means a buyer having an account in good standing with Davis Lighting.

“Buyer” means the person or company placing an order with Davis Lighting for the purchase Of Goods.

“Conditions” or “these Conditions” means these Conditions of Sale

“Consumer” means a person who acquires Goods from Davis Lighting where:

- (i) The amount paid and payable for the goods do not exceed \$40,000; or
- (ii) The Goods were of a kind ordinarily acquired for personal, domestic or household use or consumption.

However, a person will not be a Consumer if the person acquired the Goods or held themselves out as acquiring the goods:

- (iii) For the purpose of re-supply; or
- (iv) For the purpose of using them up or transforming them, in trade or commerce:
 - a. In the course of a process of the production or manufacture; or
 - b. In the course of repairing or treating others goods or fixtures on land.

“Goods” means all goods, merchandise and services supplied pursuant to these Conditions to Buyer,

“Davis Lighting” means DAVEX AUSTRALIA PTY LTD ABN 49 052 491 657

“Written” means any information which can be printed on any material, including information data stored in a computer or any information retrieval system or any form of information stored by any technical means.

1. ALTERATION OF CONDITIONS

These Conditions shall apply to all orders for Goods placed by the Buyer with Davis Lighting to the exclusion of the others terms or conditions and shall prevail over all other terms, conditions or representations including and without limitation any terms container on the Buyers purchase order. These conditions may only be varied in writing, signed by both parties.

2. ORDERS

2a Davis Lighting may decline to accept any order.

Davis Lighting reserves the right to accept, or to decline, in whole or part any order and any order or part order not accepted is deemed cancelled.

A quotation made by Davis Lighting is not to be construed as an offer to sell, and Davis Lighting reserves the right to accept or reject in whole or in part any order derived via the quotation process.

2b Cancellation of Orders

Once lodged with Davis Lighting an order may only be cancelled with the written consent of Davis Lighting. If the Buyer cancels an order, the Buyer must indemnify Davis Lighting for any loss or damage Davis Lighting suffers as a result.

Orders for non standard goods, or goods made to special request may not be cancelled.

2c Acceptance of orders

Davis Lighting may accept orders placed by intangible (including electronic and verbal) means. The Buyer hereby releases Davis Lighting from any loss or damage the Buyer may suffer due to errors or omissions arising from the transmission (or failure of transmission) of the order.

2d Minimum Orders

All orders must be for a minimum quantity or multiples thereof as stipulated by Davis Lighting from time to time. A minimum invoice charge of \$20.00 will be charged for all orders not meeting the minimum order of \$100.00 net of discounts and taxes.

2e Special prices and quotations

Davis Lighting or its representatives or agents may from time to time quote the Buyer special net prices on goods. It is the Buyers responsibility to ensure that Davis Lighting quotation number is clearly indicated on the order to avoid invoicing errors. No credit will be issued, and no claim accepted should Davis Lighting quotation number be missing from the order.

Unless otherwise expressly stated in writing in the quotation, net prices will have a validity of 30 days from date of quotation and shall be subject to variation within this period at the discretion of Davis Lighting due to exchange rate fluctuation.

3. GOVERNING LAW AND SUBMISSION TO JURISDICTION

These Conditions and any contract incorporating them shall be governed by the laws of the State of Queensland and the parties submit to the nonexclusive jurisdiction of courts having jurisdiction in that State.

4. TERMS OF PAYMENT - INVOICE - MONTHLY STATEMENT

4a Terms of Payment

- (i) The extension of the credit to the Buyer and the terms upon which it is provided remain at all times at the absolute discretion of Davis Lighting.
- (ii) Unless Davis Lighting agrees to extend credit to the Buyer, all payment for Goods shall be made in full within 30 days of invoice,
- (iii) Davis Lighting retains the right to withdraw Credit facilities at any time for reasons of non-payment, or if the purchaser commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event.

4b Late payments

Davis Lighting, at its discretion, may charge the Buyer interest on late payments at the rate charged by Westpac Banking Corporation to its customers on overdrafts in excess of \$100,000 plus 2% from the date when such payment fell due until paid and notwithstanding any agreement for extension of time for payment, Where payments are overdue Davis Lighting may at its option either cancel uncompleted contracts or orders forthwith or suspend delivery of goods yet to be delivered, without prejudice to any other remedy,

4c Invoice claims and disputes

The Buyer shall notify Davis Lighting in writing within seven (7) days of the date of receipt of goods of any objection or discrepancy as to the invoice, in the event that no written objection is received by Davis Lighting within seven (70) days of the date of receipt of the goods, the invoice shall be conclusive evidence between the Buyer and Davis Lighting, and the Buyer waives any rights of objection or query with respect to such invoice.

5. SPECIFICATION

5a Davis Lighting will supply the Goods in compliance with the manufacturer's specifications in effect at the time of delivery.

5b The Specifications and description of Goods are subject to change without notice and Davis Lighting will not be required to supply superseded or discontinued goods, nor will it be liable for any loss or damage suffered by the Buyer as a result of any change of the specifications or description of Goods.

6. DELAYS AND NONDELIVERY

The date for delivery (if any) is the estimated and tentative date for delivery only and Davis Lighting shall be under no liability for any loss or damage howsoever arising if the Goods are not delivered by that date.

7. POINT OF DELIVERY AND PASSING OF RISK

Where Goods are conveyed by Davis Lighting's nominated carrier passing of risk will be on arrival at the buyer's nominated address. Davis Lighting will accept no liability for damage to Goods in transit not notified in writing to it and to the carrier concerned within seven (7) days after delivery and Davis Lighting liability, if any, shall be limited to repair or replacement of the Goods within a reasonable time.

Where Goods are conveyed by the Buyer's nominated carrier risk shall pass upon collection of the Goods from Davis Lighting.

8. TITLE

Until payment in full to Davis Lighting for the Goods:

(i) property in the Goods (including Commingled Goods as defined in section 10 of the Personal Property Securities Act 2009) remains with Davis Lighting and Buyer will hold the Goods as bailee for Davis Lighting (however risk in the goods passes pursuant to clause 7 of this agreement);

(ii) Davis Lighting may at any time terminate any Contract relating to the Goods and the bailment without notice to Buyer and may thereupon take possession of the Goods;

(iii) upon demand by Davis Lighting, the Buyer shall deliver up forthwith the Goods to Davis Lighting and if the Buyer fails to do so, Buyer authorizes Davis Lighting by its servants or agents to enter any premises owned, leased or otherwise occupied by the Buyer for the purpose of taking possession of the Goods and authorizes Davis Lighting by its servants or agents to use all reasonable force to obtain such possession; and the cost of retaking possession of the Goods as above shall constitute additional charges payable by the Buyer to Davis Lighting. In the event that Davis Lighting elects to retake possession of the Goods as above and the Goods at such time are not situated at the Buyer's premises, the Buyer shall so arrange it that Davis Lighting is entitled to and may collect the Goods wherever they are situated;

(iv) if the Goods are sold by the Buyer, the Buyer acknowledges that such sale is by the Buyer as bailee for and on behalf of Davis Lighting and agrees to hold the proceeds of sale on trust for Davis Lighting in a separate account until payment in full to Davis Lighting for the Goods, and Davis Lighting is entitled to receive forthwith upon demand from such proceeds, payment of the total purchase price outstanding to Davis Lighting. The proceeds of a sub-sale (to the extent of the amount of the total purchase price outstanding to Davis Lighting shall be held on trust by Buyer for Davis Lighting even if the Buyer fails to keep such proceeds in a separate account; and

(v) until payment of the purchase price in full, Buyer shall store the Goods in a manner that clearly enables them to be identified as the property of Davis Lighting

8A APPLICATION OF PERSONAL PROPERTY SECURITIES ACT 2009 (“PPSA”)

8Aa If a term used in this clause 8A has a particular meaning in the PPSA, it has the same meaning in this clause.

8Ab The parties acknowledge Davis Lighting's interest in any Goods (including any Commingled Goods and any Proceeds (as defined in section 31 of PPSA)) is a security interest.

8Ac The Buyer acknowledges and agrees that Davis Lighting may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Buyer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.

8Ad To the extent permitted by law, the Buyer and Davis Lighting agree that the following provisions of the PPSA do not apply to the enforcement by Davis Lighting of its security interest in the Goods: sections 95, 121(4) and 132(3)(d).

8Ae The Buyer and Davis Lighting agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.

8Af The Buyer must promptly do anything required by Davis Lighting to ensure that Davis Lighting's security interest is a perfected security interest and has priority over all other security interests in the Goods.

8Ag. The Buyer must pay the costs of registering the financing statement on the Personal Properties Securities Register.

9. WARRANTIES - EXCLUSIONS AND LIMITATIONS

9a (i) Davis Lighting warrants that each of the Goods and its components directly supplied by Davis Lighting will conform to the applicable manufacturer's specifications for a period of one year from the date of delivery.

(ii) The warranty given in clause 9a will not apply if:

(a) the Goods are damaged in transit;
(b) the Buyer interferes with, modifies or damages the Goods or uses the Goods in connection with other products or in any way not authorized by Davis Lighting; or

(c) the Goods are exposed to harsh or unusual environmental conditions (outside their performance specifications),

9b All claims under this warranty should be made by the following procedure:

(i) The Buyer shall return, freight prepaid at the Buyer's expense, to Davis Lighting any defective Goods and components on which a warranty claim exists and shall permit Davis Lighting to make tests on site in relation to such Goods or components. The goods must be sent to the address in clause 9c.

(ii) If any Goods are returned under the warranty in this clause, Davis Lighting will use its best efforts to repair or replace the defective component. Davis Lighting's total obligation under the warranty is limited to the replacement or repair of the Goods or their defective components.

9c The person giving the warranty is:

Davex Australia Pty Ltd ABN 49 052 491 657 trading as Davis Lighting
Business address: 123 Gardens Drive, Willawong, Queensland, 4110
Telephone: (07) 3712 8988
Email: australia@davislighting.com

9d If the goods are purchased by a Consumer, then they come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9e The warranty in this clause is in addition to any other rights or remedies under any other laws, and which are not excluded in clause 9A.

9A. EXCLUSIONS AND LIMITATIONS

9Aa This clause 9A does not exclude or limit the application of any provision of any statute (including the Australian Consumer Law) where to do so would:

(i) contravene that statute; or
(ii) cause any part of this clause to be void.

9Ab Other than the warranty in clause 9, Davis Lighting excludes all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would cause this clause to be void.

9Ac Davis Lighting's total liability to the Buyer, in tort, under statute or for breach of any express provision of a Contract is limited to the lesser of:

(i) the Price of the Goods supplied under that Contract in respect of which the breach occurred; and
(ii) the cost of supplying those Goods again.

9B Manufacturer's liability

In the event that the Buyer calls upon Davis Lighting to indemnify the Buyer pursuant to a right accruing to Buyer under section 274 of the Australian Consumer Law, then, under section 276A of the Australian Consumer Law if the goods were not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of Davis Lighting under section 274 of the Australian Consumer Law to the Buyer is limited to a liability to pay the Buyer an amount equal to the lowest amount of the following:

(i) the cost of replacing the Goods; or
(ii) the cost of obtaining equivalent Goods; or
(iii) the cost of having the Goods repaired.

10. RETURN OF GOODS

10a Return Not Generally Accepted

Unless the buyer is a Consumer or a warranty under these terms and conditions applies, then no Goods shall be returned without the prior consent in writing of Davis Lighting and in conformity with all Davis Lighting's Goods Return Authorization. Where Goods are returned without such consent, they will not be accepted and returned to Buyer at the Buyer's expense.

10b Manner of Return

Unless otherwise agreed in writing by Davis Lighting, all returns must be made freight prepaid at the Buyer's expense and at Buyer's risk pending final inspection by Davis Lighting. The Goods must be properly and adequately set in their original and specific packaging materials (goods fully secured), and suitable for immediate resale.

All returned Goods must be accompanied by an itemized credit claim signed by an officer of the Buyer

with copy of the invoice, date of purchase, Davis Lighting's return approval reference, and reason for the return of Goods. An intention to return Goods must be notified to Davis Lighting within seven (7) days of delivery to Buyer and return must be to Davis Lighting's warehouse within seven (7) days of Goods Return Authorization(GRA) being issued. Goods returned to Davis Lighting without a Goods Return Authorization(GRA) number authorizing the return, will be immediately be sent back to the buyer at their expense.

10c Returnable Goods

Unless otherwise agreed, Goods returned will be subject to a minimum 20% restocking and handling fee. In the event of a stock cleanse returned goods must be replaced by like for like product or same value replacement order.

10d Non-returnable Goods

Return shall not be accepted under any circumstances of any of the following:

(i) Goods which are custom made or per Buyer's specifications or non-standard Goods, or made by special orders;
(ii) Goods which are not in their original shape, form or condition;
(iii) Goods damaged by abnormal use, or faulty maintenance, or when Goods have not been used or maintained according to manufacturer or Davis Lighting's instruction;
(iv) Goods expressly sold on a non-return basis;
(v) Goods damaged during installation or fitting process,

11. GOODS AND SERVICES TAX (GST)

All published prices are exclusive of GST, which will be added to the invoice at time of sale. All goods and services taxes, and all other taxes of whatsoever nature shall be added to the account of the buyer and be payable by the buyer in addition to any purchase price. The buyer agrees to indemnify Davis Lighting against any and all such taxes.

12. INTELLECTUAL PROPERTY

All brand names of goods sold to the Buyer remain the property of Davis Lighting.

Davis Lighting gives no rights to the Buyer to use or to exploit any of its trademarks or any other intellectual property without its express written consent.

13. GENERAL TERMS

13a Any claims for errors must be made within seven (7) days of receipt of Goods, by written notice to Davis Lighting,

13b Errors or omissions of a clerical or mechanical nature appearing on the face hereof are subject to correction by Davis Lighting.

13c In the event that the Buyer instructs Davis Lighting to debit its account with a paying agent and to send invoices to be paid by a paying agent acting on behalf of the Buyer, the same terms and conditions shall be applicable to the paying agent, unless otherwise agreed in writing by Davis Lighting, the Buyer and the paying agent, The appointment of a paying agent or any agent does not affect in any event Davis Lighting's rights or remedies it has herein or under law.

13d In the event the Buyer's financial condition shall become impaired prior to delivery or fully payment to Davis Lighting, Buyer shall notify Davis Lighting immediately.

13e In the event that Davis Lighting, in its sole and unfettered discretion, finds the financial condition of the Buyer or its paying agent unsatisfactory (with or without notice from the Buyer) Davis Lighting may exercise any or all of the following options; demand immediate payment; suspend all further deliveries; terminate any agreement upon 2 days written notice to the Buyer, without limitation of any other rights or remedies it has herein or under law.

13f The Buyer, in the event of its default hereunder, either directly, indirectly or through agent, shall be liable for Davis Lighting's damages including expenses, cost of collections, in addition to other remedies a company shall have under law.

13g Davis Lighting's obligation to perform will be suspended for the duration of any delay arising out of anything outside Davis Lighting's control, including but not limited to, fire, storm, flood, earthquake, accident, war, labour dispute, materials or labour shortage, failure or delay in transportation and act or omission of the Buyer or any third person.

13h Davis Lighting's failure to insist upon strict performance of any of the terms herein shall not be deemed a waiver of any rights or remedies that Davis Lighting may have, and shall not be deemed a waiver of any subsequent breach or default in their terms, conditions, and covenants herein contained,

13i Headings are for convenience only and shall not be used in construing and interpreting these conditions.

13j These terms and conditions supersede any previously published terms and conditions.