

Lumen Electronics N.Z Terms and Conditions of Sale.

Price 1.1 LUMEN reserves the right to vary the price of the goods (from any published and/ or quoted) in accordance with any variation in exchange rates, costs of labour, materials, transport, freight and insurances, customs, duties, sales tax, Goods and Services tax and other duties, imports and surcharges and all other expenses incurred or arising due to circumstances beyond the control of LUMEN between the date of acceptance of the order by LUMEN and the date of delivery. **1.2** Any changes in prices after the acceptance of the order by LUMEN will be to the customer's account and the price of the goods will be that ruling at the date of delivery. **1.3** Verbal quotations are subject to written confirmation by LUMEN. **1.4** Prices published are exclusive to customers deemed by LUMEN to qualify for wholesale pricing. LUMEN reserves the right to deny Customers based on criteria set by management.. **Payment 2.1** Payment shall be made by the 20th of the month following the date of delivery of the goods (or any of the goods), unless otherwise agreed in writing. **2.2** LUMEN may, at its option, deliver the goods by installments and the customer shall be invoiced for each installment and shall be Liable to pay for each installment delivered on the 20th of the month following delivery. **2.3** Should payment in full not be made to LUMEN by the due date, then: (a) the customer shall be liable to pay interest on the moneys outstanding at LUMEN's current market overdraft rate, such interest to accrue on a daily basis until the outstanding account is settled in full. (b) the customer shall also be liable to pay all expenses and legal cost of LUMEN (calculated on a solicitor and client basis) in relation to obtaining or seeking to obtain remedy of default in payment by the customer. If debt collection is contracted out the customer shall be also liable for any commissions charged by such Collection agency over and above the defaulted amount/s. (c) LUMEN has the option of suspending further deliveries of the goods to the customer until the customer has effected payment in full. **No Deductions 3 1** The customer will make all payments due to LUMEN whether in respect of the contract price or otherwise in full without deduction of any nature whatsoever by way of set off, counterclaim or other equitable or lawful claim or otherwise howsoever. **Delivery 4.1** The company is not a common carrier and does not undertake the obligations or liabilities of a common carrier **4.2** The cost of delivery of goods provided will be deemed in accordance with either LUMEN's price list, Any changes in freight charges made by the carrier will be passed on to the customer without notice unless known of by LUMEN at the time of published rates of carriage. individual contracts or supply contracts negotiated for the sale of the product. **4.3** The cost of delivery of the goods is to be borne by the customer. Risk in the goods shall pass to the customer upon dispatch of the goods by LUMEN. Otherwise risk in the goods passes to the customer upon delivery of the goods to the customer. **4.4** Any specified dates for delivery and installation are estimates only and LUMEN shall not be liable for failure to deliver or install on the estimated date or dates. **4.5** Where the customer does not take the goods at the time and place provided herein for any reason other than LUMEN default, then delivery shall be deemed to have been made when LUMEN is willing to deliver and the customer shall nevertheless make any payment provided herein upon the basis that the goods have been delivered. **Returns & Credits 5.1** Returns and credits are only permitted on goods if agreed to by the management of LUMEN because one of the following events has occurred. (a) the sales staff have over-estimated the quantity required and such estimate is noted in the written order. (b) the goods have proven faulty of defective (c) the goods have been incorrectly charged or priced. (d) the items price was changed since the order was made (as per section 1.1 – 1.2) **5.2** No returns are permitted on goods which are made to the customer's specifications or which are otherwise not of a stock nature. **5.3** The original freight charges will not be reversed except where delivery was in error at the fault of LUMEN. **Property 6.1** Notwithstanding clause 4.3 and 4.5 hereof until payment to LUMEN of all amounts by the Purchaser to LUMEN: (a) Full legal and beneficial title in the goods shall remain with LUMEN and the Purchaser shall hold them only as bailee in a fiduciary capacity for the Supplier. (b) All of the goods supplied shall be stored by the Purchaser in a manner that they are separately identifiable as the property of LUMEN and safe from all risks. Any goods used in Production or installation becoming the subject of defaulted payment shall be deemed non returnable to LUMEN and therefore must be replaced with goods or equipment of equal value, subject to the choosing of LUMEN. (c) If at any time before any credit is, pursuant to Sub clause (1) hereof, cancelled the Purchaser may sell the goods at full market value but only on the condition that such goods are sold as agent for LUMEN and the full proceeds to the Purchaser's bank the Purchaser shall notify such bank that the proceeds are held on trust for LUMEN and direct that they be so held in a separate account. The Purchaser shall not assign, nor enter into any arrangement to assign, or purport to assign, to any other person the right to receive any such proceeds (whether by the way of a factoring arrangement or otherwise) and any such assignment or purported assignment shall not operate but shall be void as between the parties hereto and any assignee or intended assignee. (d) If any credit is extended to the purchaser for payment of the goods such credit shall not affect the operation of this clause 7.1 but such

credit shall be deemed automatically cancelled immediately upon happening of the following events: If the purchaser shall suffer appointment of any Receiver of its assets or undertaking, or (if an individual) commits any act of bankruptcy, or (if a company) a winding up order is made against it or goes into voluntary liquidation (other than for the purposes of reconstruction) or it calls a meeting of creditors or makes any composition with creditors or it permits any of the conditions enabling a company to be wound up to exist or if the Securities Commission pursuant to Section 38 of the Corporations (Investigation and Management) Act 1989 makes a recommendation that the Purchaser be placed under statutory management or if the Registrar of Companies pursuant to Section 30 of the same Act notifies the Purchaser that it is considered to be a corporation at risk. Notwithstanding the above, LUMEN may, if it has any doubts about the creditworthiness of the Purchaser, cancel any credit provided. (e) If any of the event specified in Clause (a) hereof occur, or for any reason, LUMEN may at any time, (and without notice) enter any premises at which the goods are stored to inspect or repossess them. Any costs incurred by LUMEN in the exercise or attempted exercise of its powers hereunder shall constitute a debt immediately due and payable by the Purchaser **6.2** Nothing in the clause shall be constructed to authorise the Purchaser to return any goods supplied, whether because they are surplus to requirements or otherwise. Notwithstanding that goods may be returned to, or recovered by LUMEN the Purchaser shall remain liable for payment of the full purchase price thereof after taking into account any amount recovered by LUMEN on resale, or any credit allowed by LUMEN, for the returned value thereof.

Description 7 Any description of the goods contained in or for the purposes of this contract is given by the way of identification only and use of such description shall not constitute a sale by description.

Warranty 8.1 LUMEN warrants that the goods or goods reasonably considered to be of a similar nature have been manufactured and tested in accordance with LUMEN's internal quality control standards. **8.2** No conditions or warranties expressed or implied and no representations or statements are binding upon LUMEN unless set out in the Contract.

Liability 9.1 No claims by the customer may be made unless made in writing and received by LUMEN: (a) in the case of defects which are reasonably upon examination of the goods, within (7) days of delivery of the goods; or (b) in the case of other defects, within seven (7) days of the date when such defect is reasonably discovered and in any event within six (6) months after delivery. **9.2** The liability of LUMEN whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in the goods or any other breach of LUMEN's obligations hereunder shall not in any event exceed the contract price. LUMEN shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever nor shall LUMEN be liable for any damage or loss caused by the customer's servants, agents, buyers or other persons whatsoever (where similar or not to the foregoing). **9.3** No liability will be accepted by LUMEN or any failure of or delay in supply, manufacture or delivery where such supply, manufacture or delivery is wholly or partially delayed, hindered prevented by any circumstances which is not within LUMEN's control including, but not by the way of limitation, strikes, lockout, difficulty in procuring suitable materials, goods or substances required for the manufacture of the goods, act of God, shortage of stocks, shortage of labour, lack of skilled labour, delays in transit, shortage of fuel, legislative governmental, other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever beyond the control of LUMEN.

9.4 Should the customer issue proceedings against LUMEN, its officers or employees upon the basis of any act of Parliament or regulations made thereunder, the amount which the customer may recover shall be limited to damage or loss arising directly from supply of the goods and shall not in any case include any consequential indirect or special damage or loss. Nothing in this contact shall be taken as an acceptance that any such proceedings can be brought.

Patents 10.1 The customer warrants that any design or instruction furnished by LUMEN will not be such as will cause LUMEN to infringe any patent, registered design of trademark in the execution of the customers order. **10.2** The customer agrees to indemnify LUMEN against infringement or unauthorised use of patents, trademarks, designs or copyrights arising out of the manufacture and use of the goods and it is specially agreed that the sale and purchase of the goods does not confer on the customer any license or rights under any patents, trademarks, design or copyrights the property of LUMEN.

Waiver 11 Failure by LUMEN to insist in any one or more instances upon a strict performances of any of the terms of this Agreement or the waiver by LUMEN of any terms or right hereunder or of any default by the customer shall not be deemed or construed as a waiver by LUMEN of any such term or right of default in the future. THE ABOVE TERMS OF SALE RELATE ONLY TO ACCOUNTS HELD WITH LUMEN ELECTRONICS, P.O. BOX 90439 AMSC AUCKLAND. FIRST PRINTED 1/7/2000, SUBJECT TO CHANGE.