1 Definitions and interpretation

1.1 In these terms and conditions:

Agreement means an agreement between Legrand Australia ABN 31 000 102 661 and the Purchaser comprising these terms and conditions and any other document which Legrand Australia supplies to the Purchaser and which is expressed to include or be subject to these terms and conditions.

Australian Consumer Law means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Consumer means a “Consumer” as that term is defined in section 3 of the Australian Consumer Law.

Consumer Contract means a contract for the supply of goods or services to a Consumer.

Legrand Australia means Legrand Australia Pty Limited (ABN31 000 102 661) and, unless otherwise stated or the context otherwise makes clear, includes its Related Bodies Corporate.

Order means the meaning given in clause 3.1. Order Confirmation has the meaning given in clause 3.1.

Products means all goods offered to or supplied to the Purchaser by Legrand Australia.

Purchaser means any person or entity to whom Legrand Australia supplies or offers to supply Products.

Related Bodies Corporate has the same meaning as in section 50 of the Corporations Act 2001 (Cth).

Standard means an applicable standard or specification for a particular Product that is published by Legrand Australia or mandatory under applicable laws or both.

Taxation includes all taxes, duties, levies, fees, government charges and expenses payable in connection with the supply of the Products.

Warranty Information Sheet means the document which forms part of these terms and conditions and which contains information Legrand Australia provides to Purchasers which applies to Products.

2 Application of terms and conditions

2.1 These terms and conditions apply to all quotations, offers and purchase orders made or accepted by Legrand Australia and to all Products sold or otherwise supplied by Legrand Australia to a Purchaser.

2.2 So far as applicable, these terms and conditions also apply to the provision of any services accompanying the supply of, or in connection with, Products and, where the context allows, any reference to the sale or supply of Products includes the provision of such services.

2.3 These terms and conditions may not be varied or be cancelled unless agreed in writing by Legrand Australia.

2.4 Other than these terms and conditions, any conditions or other terms which are set out in any offer, purchase order or other document submitted by or on behalf of the Purchaser are expressly excluded.

3 Orders

3.1 Each Purchaser’s order must be in writing (Order) and will be binding on Legrand Australia only if Legrand Australia gives written acknowledgement of its acceptance on these terms and conditions (Order Confirmation).

3.2 Despite clause 3.1, if Products are supplied by Legrand Australia without an Order Confirmation, Legrand Australia’s conduct in accepting and fulfilling an Order will be deemed to constitute the Order Confirmation and Legrand Australia’s invoice will constitute evidence of the Order Confirmation.

4 Prices and payment

4.1 The prices of the Products are those set out in Legrand Australia’s then-current applicable price list at the date of their dispatch, unless otherwise specified in the Order Confirmation.

4.2 Unless otherwise specified, all prices are the right to change prices for its Products and any applicable price list without notice to the Purchaser.

4.3 Unless otherwise agreed or specified by Legrand Australia, all taxes, duties, levies, fees, government charges and expenses payable in connection with the supply of, or in connection with, Products are otherwise proven to Legrand Australia’s satisfaction to be defective or are supplied in breach of clause 10 apply.

4.4 Legrand Australia may at its discretion charge a minimum order fee of 25% for any orders below $150 excluding GST.

4.5 Legrand Australia may refuse, extend or withdraw credit to the Purchaser at any time and on such terms as it considers appropriate, in each case at its absolute discretion.

4.6 The Purchaser will pay all amounts due under these terms and conditions to Legrand Australia by direct transfer to Legrand Australia’s nominated bank account or in any other manner specified by Legrand Australia from time to time.

4.7 Legrand Australia may charge interest up to a rate which is 2% higher than that applied to commercial overdraft by Legrand Australia’s principal bank on the amount outstanding after expiry of the due date for payment until it has been paid in full.

4.8 If payment is not made in accordance with clause 4.3, 4.4 or 4.6, or if at any time the credit standing of the Purchaser, in the opinion of Legrand Australia, is at risk or has been impaired Legrand Australia may suspend or cancel an Order or delivery of any Products until alternative arrangements as to payment or credit in terms satisfactory to Legrand Australia have been agreed.

4.9 Despite any other provision of this clause 4, the Purchaser must pay or reimburse Legrand Australia all Taxes. Without limiting that obligation, if GST is payable on any supply made by Legrand Australia under these terms and conditions, the Purchaser must pay Legrand Australia an additional amount equivalent to the GST at the time the relevant payment to Legrand Australia is due. Legrand Australia will provide a tax invoice.

4.10 The Purchaser may not withhold or set off any payment or make deductions from any amount owing to Legrand Australia without Legrand Australia’s prior written consent.

5 Cancellation and variation of Orders

5.1 Notices of cancellation or variation of Orders submitted by the Purchaser must be in writing and may be accepted or rejected by Legrand Australia at its discretion.

5.2 If a Purchaser gives a notice under clause 5.1, without prejudice to its other rights, Legrand Australia reserves the right to charge for all work it has performed and will need to perform in fulfilling an Order or, if the work is substantially complete or the Products were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for the full amount set out in the applicable Order Confirmation in addition to any other costs it incurs on the Purchaser’s behalf.

6 Delivery and return

6.1 Legrand Australia will deliver the Products to the Purchaser by means of Legrand Australia’s preferred carriers. If the Purchaser wishes the Products to be delivered by another carrier, that delivery will be at the Purchaser’s cost and risk.

6.2 Unless Legrand Australia otherwise agrees, and subject to any additional charges incurred in delivery and transport, delivery of Products will be made to the delivery point in Australia specified in the applicable Order.

6.3 Stated delivery times are no more than an estimate by Legrand Australia and will not be binding upon Legrand Australia. Legrand Australia is not liable for any costs or other loss caused by reason of any delay in delivery.

6.4 If the quantity of Products delivered does not correspond with the quantity stated in an Order the Purchaser will only be liable to pay for the quantity delivered in the case of short-delivery and for the contract price in the case of over-delivery (subject in the latter case to permitting Legrand Australia to collect the surplus Products) provided that in no event will such short or over-delivery entitle the Purchaser to damages or give the Purchaser a right to rescind the Agreement.

6.5 Any surplus Products delivered to the Purchaser will remain the property of Legrand Australia and the Purchaser will take all necessary precautions for the safe custody and protection of such surplus Products until the time of their collection by Legrand Australia.

6.6 If the Purchaser refuses or fails to take delivery of Products Legrand Australia may, at its discretion and without prejudice to any of its other rights, store those Products at the Purchaser’s risk and expense.

6.7 Except as specified in clause 6.5 Products may only be returned to Legrand Australia with its prior written consent and subject to the following:

(a) all returned Products must be delivered to Legrand Australia at the Purchaser’s cost within 21 days of their receipt by the Purchaser in good order and condition, unused and in their original packaging together with a despatch note stating the original Order and invoice numbers and the date of purchase;

(b) Legrand Australia may at its discretion charge the Purchaser a restocking fee of up to 20% of the original net invoice price of any Products returned to it pursuant to this clause 6.7; and

(c) Legrand Australia will generally not accept for return Products which have been manufactured to order unless those Products do not conform to an applicable Standard, are otherwise proven to Legrand Australia’s satisfaction to be defective or are supplied under a Consumer Contract and the provisions of clause 10 apply.

7 Passing of risk and title

7.1 In the case of delivery to the Purchaser when the Purchaser are delivered for delivery at the delivery point specified in an Order or when the Products are collected by the Purchaser for loading into the vehicle of the Purchaser, its carrier or other agent, the Purchaser will take all necessary precautions for the safe custody and movement of the Products; and

7.2 Legal and beneficial title (ownership) in the Products will remain with Legrand Australia until:

(a) all amounts in respect of the Products under an applicable Order; and

(b) any other amounts the Purchaser may owe Legrand Australia, whether under these terms and conditions, under any other agreement or pursuant to any other Order, have been paid in full.

7.3 Until such time as ownership in the Products passes to the Purchaser, the Purchaser will:

(a) store the Products in a manner which makes them readily identifiable as the property of Legrand Australia;

(b) hold the Products as bailee of Legrand Australia;

(c) keep, and provide Legrand Australia at any time on reasonable request, proper and accurate stock records covering the receipt, identification, storage, location, sale and movement of the Products; and

(d) keep the Products insured against theft, damage and destruction.

7.4 Despite clauses 7.2 and 7.3 the Purchaser is entitled, until notified by Legrand Australia or until the happening of any of the events set out in clause 7.7, to sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for Legrand Australia in a separate account.

7.5 Legrand Australia is entitled, at any time while any debt remains outstanding by the Purchaser beyond its due date of payment in respect of the amounts referred to in clause 7.2(a) and clause 7.2(b), to notify the Purchaser of its intention to take possession of the Products and for this purpose to enter upon the land and buildings of the Purchaser with all necessary equipment to take possession of the Products.
7.4 On receipt of notice from Legrand Australia or on the happening of any of the events set out in clause 7.7, the Purchaser’s authority to sell or otherwise dispose of the Products as set out in clause 7.4 is withdrawn.

7.7 The Purchaser will give immediate notice to Legrand Australia of:
(a) any notice to the Purchaser that a receiver or manager is to be or has been appointed over any of its assets or any part of them;
(b) any notice to the Purchaser that a petition to wind up the Purchaser is to be or has been presented or any notice of a resolution to wind up the Purchaser;
(c) a decision by the Purchaser that it intends to make any arrangements with its creditors; or
(d) if its insolvency as defined under section 95A of the Corporations Act 2001 or deemed to be insolvent under that Act or any act of bankruptcy by the Purchaser as defined in section 40 of the Bankruptcy Act 1966 (Cth).

8 Personal Property Securities Act 2009 (Cth) (PPSA)

8.1 The Purchaser acknowledges and agrees that:
(a) by agreeing to the terms and conditions of any invoice, letter or note (including, in particular, by virtue of clause 7) the Purchaser grants a security interest pursuant to the PPSA to Legrand Australia in any Products supplied by Legrand Australia to the Purchaser and any person that will acquire title to any of such Products;
(b) Legrand Australia may register on the Personal Property Securities Register ("PPS Register") a security interest or purchase money security interest in any Products;
(c) Legrand Australia may, on demand, obtain reimbursement from the Purchaser for all costs and expenses incurred by Legrand Australia in relation to registering, maintaining or releasing any financial statement or financing change statement (each as defined in the PPSA) in respect of any security interest or PMSI under these terms and conditions.

8.2 The Parties undertake:
(a) promptly to do all things, sign any further documents and provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) which Legrand Australia may reasonably require to enable it to perfect, and maintain the perfection of, its security interest or PMSI (including by registration of a financing statement or financing change statement on the PPS Register);
(b) not to register a financing statement or financing change statement in respect of the Products without Legrand Australia’s prior written consent; and
(c) to give Legrand Australia no less than 14 days’ prior written notice of any proposed change in the Purchaser’s name or any other change in the Purchaser’s details (including, but not limited to, changes in its address, facsimile number or trading name).

8.3 The Purchaser waives its right under section 157 of the PPSA to receive notice of any verification of any registration pursuant to the PPSA.

8.4 The Purchaser agrees that pursuant to section 115(1) of the PPSA and to the extent permitted by law (in particular, in accordance with section 495-10 of the PPSA), the Purchaser waives its rights under, and with Legrand Australia’s agreement, to conduct any auction under sections 95, 118, 121(4), 125, 129(2) and (3), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.

9 Warranty for defective Products

9.1 Legrand Australia undertakes that if Products are found upon inspection by or on behalf of Legrand Australia not to conform to a Standard or are otherwise defective in materials or workmanship, Legrand Australia will, at its option:
(a) replace or repair the Products;
(b) bring the Products into conformity with the Standard;
(c) take back the Products found not to conform to the Standard or which are otherwise defective and refund the appropriate part of the purchase price; or
(d) pay for the cost of replacement or repair of the Products.

9.2 If any alleged defect or damage to the Products occurred within 12 months of the date of their installation or 18 months from the date of their purchase from Legrand Australia, whichever is the earlier:
(a) any alleged defect or damage to the Products was discovered;
(b) the Purchaser has performed all its contractual obligations.

9.3 If any Products are damaged during transportation or delivery by Legrand Australia’s carrier or do not comply with the description on the relevant Ordinary Order (which Legrand Australia does not warrant and will not in any circumstance be liable for defects or failures in any such Products or for any reduction in any such Products’ nominal life or rating attributable to external factors such as vibration, interrupted or uneven power supply or excessive voltage), the Purchaser must immediately inform Legrand Australia.

9.4 If the Purchaser is a Consumer and the goods or services supplied under a Contract are defective in respect of the Products, such notice to be received by Legrand Australia in any Products supplied by Legrand Australia or any one of its Related Bodies Corporate within 6 months of the date in all respects) which Legrand Australia reasonably requires to enable it to perfect, and maintain the perfection of, its security interest or PMSI under these terms and conditions.

9.5 Certain Products manufactured and supplied by Legrand Australia (including lamps) are specified to have a nominal life or rating. Legrand Australia does not warrant and will not in any circumstance be liable for defects or failures in such Products or for any reduction in any such Products’ nominal life or rating attributable to external factors such as vibration, interrupted or uneven power supply or excessive voltage.

9.6 The warranty contained in this clause 9 is personal to the Purchaser and may not be assigned except with the prior written consent of Legrand Australia. In particular, it is hereby stated and acknowledged by the Purchaser that the warranty contained in this clause 9 confers no rights and is not intended to benefit end-users of Products who are Consumers.

9.7 Legrand Australia does not warrant and will not in any circumstance be liable for defects or failures in any such Products or for any reduction in any such Products’ nominal life or rating attributable to external factors such as vibration, interrupted or uneven power supply or excessive voltage.

9.8 The warranty in this clause 9 covers:
(a) to the extent the Products are damaged after risk passes to the Purchaser in accordance with clause 7.1;
(b) to the extent the Products have been subjected to abnormal use (including excessive vibration, short circuiting, excessive voltage, interrupted or uneven power supply and negligent operation);
(c) to the extent any Product has been repaired, altered or replaced by anyone other than Legrand Australia or its authorised representatives;
(d) to the extent defects or damage to any Products are attributable to their installation or assembly by any third party;
(e) to defects or damage arising from normal wear and tear; and
(f) to any components of the Products which are not manufactured or supplied by Legrand Australia or any one of its Related Bodies Corporate.

9.9 Certain Products manufactured and supplied by Legrand Australia (including lamps) are specified to have a nominal life or rating. Legrand Australia does not warrant and will not in any circumstance be liable for defects or failures in such Products or for any reduction in any such Products’ nominal life or rating attributable to external factors such as vibration, interrupted or uneven power supply or excessive voltage.

9.10 The warranty in this clause 9 covers:
(a) to the extent the Products are damaged after risk passes to the Purchaser in accordance with clause 7.1;
(b) to the extent the Products have been subjected to abnormal use (including excessive vibration, short circuiting, excessive voltage, interrupted or uneven power supply and negligent operation);
(c) to the extent any Product has been repaired, altered or replaced by anyone other than Legrand Australia or its authorised representatives;
(d) to the extent defects or damage to any Products are attributable to their installation or assembly by any third party;
(e) to defects or damage arising from normal wear and tear; and
(f) to any components of the Products which are not manufactured or supplied by Legrand Australia or any one of its Related Bodies Corporate.
15 Assignment

This Agreement is personal to Legrand Australia and the Purchaser and any rights and obligations under this Agreement may be assigned by the Purchaser with the prior written consent of Legrand Australia.

16 Waiver

No neglect, delay or indulgence on the part of Legrand Australia in enforcing these terms and conditions will prejudice the rights of Legrand Australia or be construed as a waiver of any such rights.

17 Severability

If any part of these terms and conditions (including any provision, part, paragraph, phrase or word) is illegal, invalid or unenforceable it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these terms and conditions, but in any event the remaining provisions will remain in full force and effect.

18 Governing law

This Agreement and these terms and conditions are governed by and must be construed in accordance with the laws which apply in the State of New South Wales. The parties will submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of these terms and conditions and any other provision of this Agreement.

19 Privacy policy

Legrand Australia’s Privacy Policy and Credit Reporting Policy are on our website at legrand.com.au. The Purchaser and its directors, partners or proprietors:

(a) consent to the collection, use and disclosure of the personal information and credit information for the purpose of Legrand Australia supplying the Products and managing the Purchaser’s account, assessing the credit risk of the Purchaser to Legrand Australia and Legrand Australia’s security interests on the PPSR and otherwise implementing these terms and conditions and for any other purpose described in the Privacy Policy and Credit Reporting Policy and warrant that all data provided by the Purchaser is accurate; and

(b) consent to any personal information collected by Legrand Australia being disclosed to third parties operating outside Australia including New Zealand, France, and other European countries, United States of America, and any other country where Legrand Australia or its related third parties have a presence or engage third parties, acknowledge and agree that Australian Privacy Principle 6.1 will not apply to such disclosures, that Legrand Australia will not be required to take such steps as are reasonable in the circumstances to ensure such third parties outside of Australia comply with the Australian Privacy Principles and will not be accountable under the Privacy Act (Cth) and the individual will not be able to seek redress against Legrand Australia under the Privacy Act (Cth) in the event such overseas third parties do not comply.

20 Exports and Embargoes

20.1 This section applies where the Purchaser undertakes export, re-export or resale of the Products or where our commercial arrangement is not restricted solely to the Australian market (Exports).

The Purchaser warrants and undertakes to Legrand Australia:

(a) The Purchaser shall comply with all the (re-) export control regulations of Australia, France, the EU and the USA and those of any other applicable jurisdiction and it shall obtain all necessary licences, shipping documents and authorisations required under such legislation in respect of such Exports.

(b) The Purchaser shall not export or re-export the Products to a country that is subject to embargo or sanction without having obtained all necessary authorisations from Australian, French, European or American authorities, the United Nations or any other country or organisation that imposes such restrictions.

(c) The Purchaser shall not supply the Products to parties, organisations or entities subject to embargoes, sanctions or other restrictions imposed by Australia, France, the EU, the USA, the United Nations or by any other country, or to parties, organisations or entities if there is reason to believe that they fail to fully comply with all applicable national or international regulations, sanctions and embargoes.

(d) The Products are not intended to be used in connection with any sectors or use that is banned or subject to restrictions under any laws or regulations, unless all required authorisation by the relevant bodies have been obtained.

(e) All transfer and receipt of funds by the Purchaser comply with all national and international regulations.

(f) To enable authorities or Legrand Australia to conduct compliance audits, the Purchaser upon request by Legrand Australia, shall promptly provide Legrand Australia with all relevant licences, shipping documents and authorisations required under such legislation in respect of the Products.

14 Intellectual property

14.1 Legrand Australia for and on behalf of itself, its Related Bodies Corporate and its licensees (if any) reserves ownership and intellectual property rights in all inventions, names, illustrations, drawings, plans, specifications, processes, documents and other subject matter relating to the Products. Nothing in these terms and conditions operates or is intended to deny Legrand Australia, its Related Bodies Corporate or its licensees, or confer on the Purchaser any such rights or any other intellectual property rights in the Products.

14.2 If a third party asserts a claim for breach of its intellectual property rights arising from the supply or use of the Products the Purchaser will immediately inform Legrand Australia and Legrand Australia will be solely responsible for the defence, resolution and settlement of any such claim. The Purchaser will at Legrand Australia’s cost and request render such reasonable assistance as Legrand Australia requires in defending any such claim. In no circumstances will the Purchaser acknowledge or concede the validity of any such claim except with Legrand Australia’s express written consent. If any such claim against Legrand Australia succeeds, Legrand Australia will in its option use its best endeavours to obtain a right to use or licence any such intellectual property rights or modify the Products or replace them at its cost.

14.3 The Purchaser will indemnify Legrand Australia for and in respect of any claims by any third party in relation to the Products which arise from or can be attributed to the special processes, requirements or specifications of the Purchaser, including the use or transfer of designs, logos, trade marks, and other intellectual property rights in connection with the manufacture, production and labelling of the Products.

14.4 In this clause 14 a reference to intellectual property rights includes patents, trade marks, copyright, registered designs and licences and applications in respect of any of the above.

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any agreement would constitute a breach of any national or international regulations or any embargo or sanction and Legrand Australia shall have no liability to the Purchaser or any third party by way of damages or otherwise in respect of such suspension or termination.

21 Online Apps
Where an online app is used in conjunction with a product supplied under these terms and conditions:
(a) The app will be licensed separately under the licence agreement accompanying that app but this agreement shall otherwise apply to any use of the app in connection with the product, including without limitation in relation to any liability of Legrand Australia under the Australian Consumer Law or otherwise.
(b) Legrand Australia warrants that it has used its best endeavours to ensure that the functionality provided by the app is as publicly represented by that app and/or by Legrand Australia but otherwise, to the maximum extent permitted by law, disclaims all liability for such representations.

(c) Where an app advises that it collects personal data, any consent you provide to the collection of that data is taken to be a consent for the collection and use of that data by Legrand Australia under the Privacy Act (Cth). You also consent to that data being stored in the jurisdiction(s) stipulated by the app.

22. Repair Facilities and Spare Parts
If Legrand Australia or one of its Related Bodies Corporate is deemed the manufacturer of the Products under the Australian Consumer Law then to the extent permitted by law Legrand Australia and/or its Related Body Corporate hereby provides written notice pursuant to s 58(2) of the Australian Consumer Law that it does not guarantee that facilities for the repair of the Products are available; and/or parts for the Products are available.

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