

TERMS AND CONDITIONS



Parties

1. The **Seller** means Regal Electro Pty Ltd (ACN 134 028 961).
2. The **Buyer** means the person or entity whose order for the purchase of goods is accepted by the Seller.

Applicability

3. The Buyer's application for a credit facility (**Application**) shall be considered to have been accepted upon notification in writing by the Seller to the Buyer.
4. For the purpose of the Application and during the term of these Terms and Conditions, the Buyer expressly authorises the Seller to make such lawful enquiries as it may require to satisfy itself as to the creditworthiness of the Buyer and undertakes to provide signed written authorities addressed to the Buyer's bank or other credit providers as the Seller may require for this purpose.
5. The Buyer warrants that all statements made and documents provided by it in or in connection with this Application are true and correct. The Buyer acknowledges that the Seller has relied on the statements made and documents provided by the Buyer in approving the operation of a credit facility and will continue to do so in respect of the provision of credit to the Buyer.
6. The Buyer must advise the Seller of any change of any details submitted by the Buyer to the Seller as soon as they become known. The Buyer must also advise the Seller within 7 days of any change in the ownership or control of the Buyer. In the event of any such changes the Seller may require a new Application to be completed and signed by the Buyer and may suspend or cease provision of credit to the Buyer pending its assessment of the new Application.
7. Any order for goods placed with or submitted to the Seller by the Buyer, orally or in writing, will be subject to these Terms and Conditions.

Jurisdiction

8. The Buyer acknowledges and agrees that these Terms and Conditions shall be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
9. The Buyer acknowledges and agrees that any agreement between the Seller and the Buyer is formed at the address of the Seller.
10. The parties to these Terms and Conditions submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Purpose of credit

11. The Buyer acknowledges and agrees that the credit to be provided to the Buyer by the Seller is to be applied wholly or predominantly for commercial purposes.

Price

12. The prices for goods payable by the Buyer will be the prices quoted to the Buyer by the Seller prior to delivery of the goods.
13. All prices are exclusive of GST and any Australian or overseas taxes or duties. GST will be charged at the prevailing rate.
14. All prices and quotations are in Australian dollars unless stated otherwise.
15. The quoted prices are valid for a period of thirty (30) days, unless notified otherwise by the Seller to the Buyer.
16. The quoted prices are based on, amongst other things, the cost of material, labour, the exchange rate and lead times to the Seller, as at the date of such quotation. In the event of any increase in the cost of any such item, the Seller shall be entitled to increase the quote accordingly.
17. Prices and quotations do not include freight and insurance costs unless stated otherwise. The Buyer is liable for any and all freight and insurance costs unless stated otherwise.
18. In addition to clause 16, the Seller may vary the price of goods supplied to the Buyer by giving the Buyer written notice of the variation. Any such variation will not apply to goods ordered and paid for by the Buyer prior to the date of written notice of the variation.

Delivery

19. Delivery of goods to the Buyer occurs when the goods are actually delivered by the Seller, regardless of whether the Buyer accepts delivery.
20. The Seller will advise the Buyer of the estimated delivery date that applies to each order. Any time of which the Seller advises the Buyer for delivery is an estimate only.
21. The Seller may cancel an order placed by the Buyer if it determines that it will be unable to deliver the goods within a reasonable time. In the event that the Seller cancels an order pursuant to this clause it will notify the Buyer of such cancellation within seven (7) days.
22. The Seller will use all reasonable endeavours to meet the delivery date but does not guarantee the delivery date and is not and will not be liable for any loss or damage, including consequential loss, however it arises, if the goods are not delivered by the delivery date.
23. Where the goods are delivered by another party, other than the Seller, the Seller shall not be liable for any damages or loss of goods in the course of such delivery.
24. The Seller reserves the right to deliver the goods in one delivery or by instalments, as agreed between the parties.
25. The Seller will add a delivery fee to the price of the goods being delivered and the Buyer will pay such delivery fee, unless agreed otherwise by the Seller.

Payment

26. Subject to clause 27, the terms of payment are strictly seven (7) days (or such other period as nominated by the Seller herein) from the date of invoice and payment is due and payable on that date (**Payment Date**). The Seller may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
27. If the Seller has extended credit to the Buyer, payment for all goods will be within thirty (30) days from the last day of the month in which each delivery was made.
28. The Seller may require the Buyer to pay cash in full prior to delivery if, in the Seller's opinion, the creditworthiness of the Buyer is or has become unsatisfactory.

29. Should the Buyer not pay for the goods or services supplied by the Seller in accordance with the credit terms as provided herein or as agreed in writing by the Seller from time to time, the Seller shall be entitled to charge interest of 2% per month (or any other rate notified in writing by the Seller to the Buyer from time to time) of the amount of the invoice, calculated daily from the Payment Date until the date of payment in full by the Buyer to the Seller.
30. The Buyer must pay the Seller in full for the goods delivered even if:
 - (a) there was a delay in delivery of the goods; or
 - (b) the Buyer disputes the quality, quantity or condition of the goods delivered.
31. All payments must be made in Australian dollars, unless agreed otherwise between the parties.

Cancellation of Orders

32. The Buyer may cancel all or any part of an order provided that the Buyer gives the Seller at least thirty (30) days written notice of the cancellation prior to the delivery date. If an order is cancelled within thirty (30) days of the delivery date, the Buyer will be liable to pay the full amount of the agreed price or quotation unless the Seller agrees otherwise in writing.

Retention of title

33. Whilst the Buyer has not paid for the goods supplied in full at any time, the Buyer agrees that property and title in the goods shall not pass to the Buyer and the Seller retains the legal and equitable title in those goods supplied and not yet sold.
34. Until payment in full has been made to the Seller, the Buyer will hold the goods in a fiduciary capacity for the Seller and agrees to store the goods in such a manner that they can be identified as the property of the Seller, and shall not mix the goods with other similar goods.
35. The Buyer shall be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Seller, the Buyer shall sell as agent and bailee for the Seller and the proceeds of sale of the goods shall be held by the Buyer on trust for the Seller absolutely.
36. The Buyer's indebtedness to the Seller, whether in full or in part, shall not be discharged by the operation of clause 35 hereof unless and until the funds held on trust are remitted to the Seller.
37. The Buyer agrees that whilst property and title in the goods remains with the Seller, the Seller has the right, with or without prior notice to the Buyer, to enter upon any premises occupied by the Buyer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Buyer) to inspect the goods and to repossess the goods which may be in the Seller's possession, custody or control when payment is overdue.
38. The Buyer will be responsible for the Seller's costs and expenses in exercising its rights under clause 37.
39. The Buyer agrees that where the goods have been retaken into the possession of the Seller, the Seller has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Buyer on those goods, and the Buyer hereby grants an irrevocable licence to the Seller to do all things necessary to sell the goods bearing the name or trademark of the Buyer.

Personal Property Securities Act

40. The Buyer acknowledges and agrees that, until the Seller has received payment in full from the Buyer for the goods; the Seller's interest in the goods is a Purchase Money Security Interest (**PMSI**) for the purposes of the *Personal Property Securities Act 2009 (Cth)* (**PPSA**).
41. The Seller's PMSI is effective and attaches to the goods immediately upon the Buyer taking delivery of the goods. The Seller may take all necessary steps to perfect, record, register, amend or remove the registration of the PMSI on the Personal Property Securities Register (**PPSR**).
42. The Buyer must, at its own cost, do anything which the Seller considers reasonably necessary to:
 - (a) ensure that the Seller's PMSI in the goods attaches to the goods and is enforceable, perfected and otherwise effective under the PPSA;
 - (b) enable the Seller to exercise or enforce any of its rights in relation to its PMSI; and
 - (c) enable the Seller to prepare, register or renew a financing statement or these terms on the PPSR.
43. The Buyer must not:
 - (a) otherwise than in accordance with these Terms and Conditions, create any security interest in the goods, or any property which constitutes personal property under the PPSA and becomes an accession to the goods, without the prior written consent of the Seller; or
 - (b) change its name without first giving the Seller fifteen (15) business days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
44. To the extent permitted under the PPSA, the Seller need not give any notice, including without limitation, a notice of the receipt of a verification statement, to the Buyer under the PPSA.
45. Neither the Seller nor the Buyer shall disclose information of the kind mentioned in section 275(1) of the PPSA and the Buyer will not authorise, and will ensure that no other party authorises, the disclosure of such information.

Risk and Insurance

46. The risk in any goods delivered will, unless otherwise agreed in writing, pass to the Buyer upon delivery.
47. The Buyer must take out and maintain all policies of insurance with a reputable insurer which a prudent business person in the position of the Buyer would reasonably maintain including, without limitation, product and public liability insurance policies which give coverage against all usual risks for a reasonable amount.

Return of the Goods

48. Except as required by law, the Buyer agrees that the Seller is not required to accept the return of any goods for credit and any return of goods must be made in accordance with these Terms and Conditions.
49. The Buyer is deemed to have accepted delivery of the goods:

- (a) upon delivery of the goods by the Seller, unless prior to that time the Buyer has notified the Seller in writing of its rejection of that delivery and the reasons for the rejection are accepted by the Seller; or
- (b) immediately upon use or opening of the goods; whichever is earlier.
50. Subject to these Terms and Conditions, the Seller will not accept any goods returned by the Buyer or allow any credit for them unless:
- (a) a claim is notified in writing by the Buyer to the Seller within (48) hours after the Seller delivers the goods to the Buyer (or the Buyer collects the goods);
- (b) the goods returned are accompanied by the Seller's packing reference and original invoice or the original invoice number; and
- (c) the goods are returned in the condition in which they were delivered or collected.
51. The Seller will not be liable for any damage to the goods that are caused by any act or omission of the Buyer after the goods have been delivered to the Buyer. The Seller may grant or refuse any request to return the goods at its sole discretion.

Installation of Goods

52. The Buyer shall ensure that the technician engaged in the installation of the goods is adequately trained and is fully cognisant of the manner and method of operation and installation of the goods.
53. The Seller nor its personnel nor agents accept no responsibility for any loss or damages which might arise by reason of the death or personal injury to any person engaged in the installation or use of the goods.
54. Subject to these Terms and Conditions, neither the Seller nor its personnel nor agents will be liable in respect of defects of goods delivered or any injury, damage or loss resulting from such defects whatsoever and howsoever caused whether such injury, damage or loss be direct or consequential and notwithstanding that the same may be due to the negligent act or omission of the Seller or its personnel or agents and their liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of such goods.

Default

55. The Buyer agrees that if the Buyer commits an act of default; including, without limitation:
- (a) if the Buyer breaches any of these Terms and Conditions without remedy upon five (5) days' notice in writing from the Seller;
- (b) if the Buyer fails to pay any amount due and payable under these Terms and Conditions;
- (c) if any step is taken to enter into any agreement between the Buyer and its creditors;
- (d) if the Buyer ceases to be able to pay its debts as they become due or ceases to carry on business;
- (e) if any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of the Buyer's assets or business; or
- (f) in the Seller's opinion the Buyer's credit standing or financial circumstances have materially changed;
- the Seller may do any or all of the following (in addition to any other rights the Seller may have):
- (g) require the Buyer to immediately pay all amounts that are invoiced but unpaid and/or to pay in advance for any further delivery of goods (even if specified otherwise in any invoice or confirmation of order given by the Seller to the Buyer);
- (h) commence proceedings to recover all amounts due and owing;
- (i) suspend or cease supplying goods to the Buyer (whether or not the Buyer has ordered goods that have not yet been supplied);
- (j) demand that the goods for which the Seller has not received payment be immediately returned to the Seller at the Buyer's expense;
- (k) take possession of the goods for which monies are due and owing to the Seller and resell the goods; and
- (l) cancel these Terms and Conditions or any other contract with the Buyer as the Seller sees fit.
56. These rights are without prejudice to any other right or remedy available to the Seller.
57. The Buyer authorises and grants an irrevocable licence to the Seller and its authorised agents or representatives to enter the premises where the goods are kept in order to repossess the goods. The Buyer indemnifies the Seller against all claims arising out of the entry by the Seller to the premises to take possession of the goods.

Cancellation of terms of credit

58. The Seller reserves the right to withdraw credit at any time, whether the Buyer is in default under these Terms and Conditions or not.
59. Either party may, at any time, suspend or terminate the credit facility on seven (7) days' written notice to the other party.
60. Upon cancellation with or without notice all liabilities incurred by the Buyer become immediately due and payable to the Seller.

Indemnity

61. The Buyer indemnifies the Seller against all costs and expenses including legal expenses on a full indemnity basis incurred by the Seller in connection with:
- (a) any default by the Buyer under these Terms and Conditions;
- (b) the recovery of any monies due and payable to the Seller by the Buyer but unpaid by the Buyer;
- (c) the recovery of unpaid goods or otherwise arising from or related to, directly or indirectly, a result of non-payment of goods; and
- (d) the exercise or attempted exercise by the Seller of any power conferred on it by these Terms and Conditions.

Provision of further information

62. The Buyer undertakes to comply with any request by the Seller to provide further information for the purpose of assessing the Buyer's creditworthiness, including an updated credit application.

63. If the Buyer is a corporation (with the exception of a public listed company), it must advise the Seller of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Seller may ask for new guarantors to sign a guarantee and indemnity.

Clerical errors

64. Clerical errors in computation, typing or otherwise of the catalogue, quotation, acceptance offer, invoice, delivery docket or credit note specification of the Seller is subject to correction.

Waiver

65. A waiver of any provision or breach of these Terms and Conditions by the Seller must be made by an authorised officer of the Seller in writing. A waiver of any provision or breach of these Terms and Conditions by the Buyer must be made by the Buyer's authorised officer in writing.

Costs

66. The Buyer acknowledges and agrees that payments by the Buyer will be applied by the Seller as follows.
- (a) firstly in payment of any and all collection costs and legal costs in accordance with clauses 38 and 61;
- (a) secondly in payment of any interest incurred in accordance with clause 69; and
- (b) thirdly in payment of the outstanding invoice(s).

Taxes and duty

67. The Buyer must pay GST on any taxable supply made by the Seller to the Buyer under these Terms and Conditions. The payment of GST is in addition to any other consideration payable by the Buyer for a taxable supply.
68. If as a result of:
- (a) any legislation becoming applicable to the subject matter of these Terms and Conditions; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Seller becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Buyer, then the Buyer must pay the Seller these additional amounts on demand.

Interest rates

69. The interest rate on any outstanding debts is a fixed rate of 2% per month.

Set-off

70. All payments required to be made by the Buyer under these Terms and Conditions will be made free of any set-off or counterclaim and without deduction or withholding.
71. Any amount due to the Seller from time to time may be deducted from any monies which may be or may become payable to the Buyer by the Seller.

Warranty and Limitation of Liability

72. To the full extent permitted law, the Seller excludes all conditions and warranties implied by statute, general law or custom except any implied condition or warranty that cannot be excluded by law.
73. The goods come with guarantees that cannot be excluded under the *Competition and Consumer Act 2010* (Cth) (CCA). A consumer is entitled to a replacement or refund for a major failure and to compensation for any other foreseeable loss or damage. A consumer is 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.
74. To the full extent permitted by law, the Seller limits its liability for breach of any express provision of these Terms and Conditions, warranties or other statutory condition to replacement of the goods or the payment of the cost of replacing the goods.
75. The Seller is not liable for any loss or damage caused to the Buyer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Seller's control.
76. In the event of any claim in relation to the supply of goods, the Seller's liability is limited to:
- (a) replacing the goods or supplying similar goods;
- (b) repairing the goods;
- (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
- (d) providing the cost for having the goods repaired.

Intellectual Property + Confidentiality

77. the Seller owns and reserves all of its intellectual property rights in any information and/or materials which are notified to or provided to the Buyer. For the purposes of these Terms and Conditions, intellectual property rights includes all forms of intellectual property rights throughout the world, whether or not registered including without limitation; copyright, patent, design, trade mark, business name, domain name and confidential information including know-how and trade secrets. If the Seller makes available or introduces to the Buyer any of its intellectual property for which the Seller has intellectual property rights, then all proprietary rights to that intellectual property and the intellectual property rights shall remain solely with the Seller.
78. The Buyer shall keep confidential and shall not use any confidential information communicated by the Seller to the Buyer without the Seller's prior written consent.

Privacy and Personal Information

79. Any personal information that is collected, used or disclosed by the Seller for the purposes of the sale or supply of goods to the Buyer, or the provision of credit to the Buyer, is treated as confidential and will only be used or disclosed in the following manner:
- (a) for the purposes of meeting the obligations under these terms;
- (b) to respond to any queries that the Buyer may have;
- (c) to recover any goods or money owing to the Seller; and
- (d) in compliance with any legislative requirements including the *Privacy Act 1988* (Cth) as amended from time to time.

80. The Buyer agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.

Severance

81. If any term of these Terms and Conditions is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
82. If any part of these Terms and Conditions is invalid or unenforceable, that part is deleted and the remainder of the terms remain effective.

Variation

83. The Buyer agrees that these Terms and Conditions may be varied, added to, or amended by an authorised officer of the Seller at any time, and, such varied Terms and Conditions will be published on the Seller's website
84. Any proposed variation to these Terms and Conditions by the Buyer must be requested in writing. The Seller may refuse any such request without providing reasons either orally or in writing.

Notice

85. Any notice given by the Seller or the Buyer to the other must be given in writing and may be given by facsimile, email, post or hand delivered to the other party's business address.
86. A notice:

- (a) sent by facsimile shall be deemed to be given on the business day following the day it is sent;
- (b) sent by pre-paid post shall be deemed to be given on the business day following the day on which it was posted;
- (c) delivered by hand shall be deemed to be given when delivered; and
- (d) sent by email shall be deemed to be given on sending of the email to a valid email address.



Entire agreement

87. These Terms and Conditions constitute the entire agreement or contract between the Seller and the Buyer for the supply of goods by the Seller.
88. These Terms and Conditions prevail over any written or oral representations or other conditions that may be or have been communicated between the Buyer and the Seller.
89. The Buyer acknowledges that neither the Seller nor anyone purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to fitness of the goods for any particular purpose or any other matter.