

## Terms and Conditions

### 1. GENERAL DEFINITIONS.

Detailed below is a summary of key terms used in this document, as well as their definition.

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010.

**Group** - means Scholz Industries Group trading as Scholz Electric Climate. The group includes the following companies and brands referred to in this document: Scholz Industries Pty Ltd, SolarSpec Pty Ltd, Lumex, Air Additions Air Conditioning Supplies, Managed Marketing and Sales, OpalAir and Rayson Industries. Scholz Group is also the accredited distributor for EzyDuct in Australia.

**Customer** - refers to any purchaser of goods from a Group company.

**Consumer** - means a customer as defined in Section 3 of the Australian Consumer Law.

**Faulty Goods** - any good supplied by Scholz that is defective resulting from faulty workmanship or materials, poor design and defective manufacturing.

**GST** - this refers to the Goods and Services Tax as legislated by the Australian Government.

**Price** - this refers to either a price quoted in this Price Guide, or any price quoted, or sale price applicable, as determined and set by the Group.

**Purchaser** - refer Customer as above.

**Sale** - this refers to the sale of products by the Group to the customer.

**The Conditions** - term used to describe this document

### 2. GENERAL

These Standard Terms and Conditions of Sale ("the Conditions") apply to any sale of products/items, equipment or services of Scholz or, where a quotation is made, shall form part of that quotation. Scholz may vary the Conditions from time to time, and the Conditions as varied shall be published on the Scholz website ([www.scholzgroup.com.au](http://www.scholzgroup.com.au)). The purchaser agrees that the ordering of any goods or services after the publication of the variation of the Conditions on the website will be an acceptance by the purchaser of the varied Conditions. No variation or cancellation of any of the Conditions shall be binding on Scholz unless first agreed by a responsible officer of Scholz in writing. No agent, or representative has the authority to waive or alter these Conditions.

The purchaser or anyone purporting to act on behalf of the purchaser may place orders for goods or services with Scholz by telephone, email, EDI, in writing, or by facsimile transmission.

### 3. PRECEDENCE

In the event of a conflict between the Conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, order or contract then the Conditions shall prevail unless they are expressly varied by Scholz in writing. If any Condition is contrary to or excluded by law then the Conditions shall be modified but only to the extent of excluding that part of the Conditions so affected.

### 4. ACCEPTANCE

A quotation is not to be construed as an offer or obligation to sell and Scholz reserves the right to decline any order for goods or services, either wholly or partially, at any time prior to the delivery of the goods or services, in which case Scholz shall be under no obligation in respect of such order.

### 5. PRICES

All prices are subject to change without notice and orders are accepted by Scholz on the condition that they will be invoiced at the prices ruling at the date of dispatch, but every endeavour will be made to give 30 days' notice of any increase. All prices shown in the published catalogues or price lists are recommended selling prices only and there is no obligation on the part of any reseller to maintain such prices.

### 6. TERMS OF PAYMENT

The purchaser agrees to comply with the Conditions and payment for goods and services shall be made by the purchaser to Scholz within 30 days from the end of the month of purchase, unless otherwise agreed to in writing by Scholz. Note, Scholz reserves the right to provide terms of payment at its discretion, to qualifying purchasers.

### 7. DELIVERY

Scholz will endeavour to comply with the time of delivery of goods and services requested by the purchaser but delivery time is not guaranteed nor is time of the essence of the contract of sale of the goods and services. Scholz will not be liable for any loss or damage of whatsoever nature arising out of a delay in the delivery of goods and services. The delivery period quoted commences from the date Scholz receives sufficient information to proceed with the supply or from the date Scholz receives the purchaser's written order, whichever is the later. Quoted delivery dates are subject to confirmation when placing the order. Goods to most Scholz Industries customer locations are delivered 'Free Into Store' for orders in excess of \$250+GST. Orders that fall below this minimum value will incur a minimum \$100 surcharge per order at the discretion of Scholz Industries. 'Free Into Store' relates to carriage by 'general road freight only'. Scholz Industries will not be responsible for costs incurred where freight is carried by on-forwarders. If delivery point is not accessible by road, goods will remain in the nominated transport depot until roads reopen or be moved at the sole discretion and cost of the purchaser. Scholz Industries reserves the right to charge delivery costs at its discretion, including but not limited to a 'remote area surcharge' where applicable and in agreement with the purchaser.

### 8. GOODS RETURNED FOR CREDIT (not applicable to any warranty claim. Please refer to Clause 11 for return of products for Warranty purposes.)

Goods will not be accepted for return and credit without the prior approval of Scholz Management in writing. A goods return consent (GRC) will be provided, and the GRC number must be quoted. Any goods returned must be delivered free into store, and in undamaged condition, in the original packaging, and the GRC quoted.

The purchaser cannot return goods that exceed 30 days from the date they received them. Obsolete or specially built products will not be accepted for return.

A standard 15% restocking fee applies to any accepted return. No product made specifically to customer's requirements or that are in Scholz Industries opinion

superseded or special may be returned for credit unless not to specifications or otherwise no in accordance with any expenses or implied term of the contract of sale.

#### **9. CANCELLATION**

Any order may, at the option of Scholz, be terminated in the event of insolvency of the purchaser or of execution being levied against any of the goods of the purchaser or the purchaser being placed into administration or liquidation, whether voluntary or otherwise, or of a mortgage entering into possession of any assets of the purchaser or the purchaser's credit worthiness or credit standing alters, in the opinion of Scholz, from that disclosed in its application for credit.

If a purchaser cancels an order for a non stocked item, or a specially manufactured item, without the prior written consent of Scholz, a cancellation fee of 100% of the value of the order applies.

#### **10. VARIATION**

A variation or cancellation of any order by the purchaser is subject to acceptance by Scholz of such variation or cancellation and in the event of such agreement the purchaser hereby indemnifies Scholz against any loss or damage as a result of such variation or cancellation.

#### **11. Scholz Seven Year Warranty against defects.**

##### **Applicable Product Ranges**

a. This warranty applies to the following Lumex LED product ranges.

- NovaLED Series downlight kit complete with Lamp, fixture and driver (LL1N11 Series)
- NovaLED Series downlight module kit complete with driver (LL1NM Series)
- NovaLed Architectural Series downlight kit complete with Lamp, fixture and driver LL1N10 and LL1N12 Series)
- Silica Series downlight kit complete with Lamp, fixture and driver (LL1NSF Series)
- NovaLed LED Maxi Series downlight kit complete with Lamp, Fixture and driver ( LL1NM4, LL1NM5, LL1NM6, LL1NM8, and LL1NM8H Series)
- Novablade LED Panel Series, together with all related mounting accessories (LL9P Series)
- Skybay Series (LL1HLB Series)
- NovaRay LED Floodlight Series (LL3NF Series)
- Light Rack LED Floodlight Series (LL3LRF Series)
- AR111 Series (LL4.A and LL9AN Series)
- Rigid LED Strips (LL9LR Series)

b. Warranty Period and Details

The products detailed above are covered by a seven (7) year warranty against manufacturing faults and defects, provided that:

- The product is properly installed, and installation is consistent with the manufacturer's instructions, and is installed by suitably trained and qualified installer.
- The product is not subjected to any unauthorized modifications.
- The product is only used for the purpose of illumination, in line with its designated purpose or the designated purpose of a luminaire of its general type.
- The product use is in normal conditions and not exceeding a total of 35,000 hours over the warranty period.
- Any faults or defects attributable to the misuse, abuse, accident or non-observance of the manufacturer's instructions on the part of the user are specifically excluded.

c. Extent of the Warranty

- Goods that prove defective within the Warranty Period by reason or improper workmanship or faulty material, we may, at our own discretion, either repair or replace the Goods without charge.
- This warranty does not cover any cost related to removal, shipping to or from the return point, or reinstallation of the replaced or repair item.
- Any parts of the Goods replaced during repairs or any product replaced remain the property of the Scholz Industries.
- In the event of the Goods being replaced during the Warranty Period, the warranty on the replacement Goods will expire on the same date as the Warranty. Period of the original Goods they are replacing.

d. Applicable Date/Commencement of Warranty

This warranty commences from the date of purchase from the point of purchase from Scholz Industries Pty Ltd.

The details of the point of purchase, as well as all contact information for warranty claims and queries, are detailed below; Contact, Scholz Customer Service.

Scholz Industries Pty Ltd.

203 Princes Highway, Hallam, Victoria. 3803

Phone 1300 897 287

Fax 1300 774 349

Email [sales@scholzgroup.com.au](mailto:sales@scholzgroup.com.au)

#### e. Claim Process

The customer claim process is as follows;

1. The customer can make a claim, or enquire about the claim process, by contacting the company as detailed above.
2. The customer must provide a valid proof of purchase.
3. Before returning any goods for a warranty claim, the customer must obtain authorization and a Scholz Goods Return Consent (GRC) number.
4. The customer, at their own expense, then forwards the goods, clearly marked with the GDC number and with provision for return freight, to Scholz Customer Service (see above).
5. Upon receipt of the goods, Scholz Industries will review the claim, and proof of purchase.
6. If accepted as a valid warranty claim within the terms as described in this document, Scholz Industries will either make suitable repairs or provide an equivalent replacement product.
7. If the claim is rejected, the customer will be provided with a full explanation, and, if requested, the goods will be returned.

#### **IMPORTANT**

**Our goods 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 for 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.**

#### **12. INSPECTION** (not applicable to any warranty claim. Please refer to clause 11 for return of products for Warranty purposes)

The purchaser has seven (7) days from the date of delivery of the goods within which to provide Scholz with written notice of any claim for alleged failure to comply with an order whether due to a shortfall, defect, incorrect delivery or otherwise. Shall the purchaser fail to provide such written notice within the stipulated time period then Scholz shall be deemed to have complied with the purchaser's order in all respects including delivery, quality and quantity.

#### **13. PACKING, DAMAGE OR LOSS IN TRANSIT**

Scholz uses every care in packing but, unless otherwise agreed, shall not be liable for any loss or damage in transit, and any claim in relation to such loss or damage shall not be accepted by Scholz and shall be a matter between the purchaser and the shipping company or carrier. The purchaser shall inspect and check all goods received as soon as practicable upon unloading. No claim for shortage of goods shall be made to Scholz after 48 hours of such inspection, and while Scholz shall endeavour to rectify any shortage as soon as practicable after receipt of any claim, it shall not be liable in respect of such rectification.

#### **14. PURCHASER'S SPECIFICATIONS**

Scholz shall be under no obligation to comply with any specification or drawings referred to in any order unless such specifications or drawings have been produced to Scholz prior to delivery of goods and signed by Scholz. Otherwise Scholz does not warrant nor represent that the goods are fit for a particular purpose and the purchaser agrees that it does not rely on the skill and judgment of Scholz in relation to the suitability of the goods for a particular purpose. All such warranties are hereby excluded to the maximum extent permitted by law.

#### **15. RISK**

All goods sold shall be at the risk of the purchaser from the time of dispatch of the goods by Scholz for delivery to the purchaser and the purchaser shall be solely responsible for insuring the goods in transit.

#### **16. CREDIT**

Any credit provided by Scholz is totally at its discretion. Scholz may at any time suspend or vary any credit extended to the purchaser or withhold the delivery of goods or services already ordered as Scholz in its sole and absolute discretion determines.

#### **17. DEFAULT OF PURCHASER**

The purchaser expressly agrees that if the purchaser fails to pay Scholz the invoiced price of any goods and services by the due date for payment then Scholz;

- a. shall have the immediate right to bring an action against the purchaser for payment of the invoice price of the said goods and services, notwithstanding that ownership and property in the said goods and services shall not have passed to the customer;
- b. may refuse to supply any such goods and services to the purchaser;
- c. may claim the return of any goods in the possession of the purchaser where title in such goods has not passed to the purchaser;
- d. may determine the contract and/or suspend manufacture or delivery, installation, commissioning or testing of any goods then outstanding;
- e. may retain any security given or money paid by the purchaser or available through enforcement of guarantee or security bonds lodged and may apply such security or money against the loss and damages incurred by the failure of the purchaser to pay;
- f. may withdraw or vary any credit extended to the purchaser without notice to the purchaser;
- g. may without notice make all moneys owing by the purchaser to Scholz on any account immediately due and payable;
- h. may take such steps as it deems necessary to mitigate any damage suffered including the putting to use, hiring out, sale or disposal of any goods in its possession supplied or to be supplied to the purchaser; and
- i. may charge interest on overdue accounts at the rate not exceeding the standard overdraft rate offered by the Commonwealth Bank of Australia on the day of the calculation.
- j. may list any defaulting accounts with VEDA, this will remain on your credit for a period of 5 years.

#### **18. RETENTION OF TITLE**

The following applies;

- a. the legal and equitable title in the goods will only pass to the purchaser when all moneys owing by the purchaser to Scholz on any account whatsoever have been paid in full.
- b. Until such payment in full, the purchaser acknowledges that the goods are held by the purchaser as bailee for Scholz and that a fiduciary relationship exists between Scholz and the purchaser in relation to the goods, which must be stored separately as a fiduciary of Scholz in good condition and in such a way which clearly indicates the ownership of Scholz in the goods.
- c. While Scholz retains title in the goods the purchaser shall not bail, pledge, mortgage, charge, obtain or grant a lien over, lease or assign by any other way the goods or any security in the goods.
- d. The purchaser irrevocably authorizes Scholz by its servants or agents to enter upon any site where the goods are located to take possession of the goods without any prior notice or for any purpose connected with or in relation to the protection or enforcement of the rights of Scholz to the goods and indemnifies Scholz against any loss or liability arising from the exercise of its rights to so enter and to take possession of the goods.
- e. If the purchaser pays for the goods by cheque then payment only occurs when the cheque or cheques have been presented, and cleared in full.

#### **19. CONTRACTING OUT OF THE PPSA**

The Customer and Scholz Industries agree to contract-out of the PPSA in accordance with the Sec – 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on Scholz Industries. The Customer waives its rights to receive a copy of any Financial Statement or any financing Change Statement registered by Scholz Industries in respect of the security interest created by these terms and conditions.

#### **20. DISPUTES**

If the purchaser disputes any charge appearing on an invoice then the purchaser shall give written notice of such dispute to Scholz immediately upon receipt of invoice and shall pay all other charges not in dispute on the invoice pending an investigation of the dispute.

10<sup>th</sup> May 2013