

SERRATA GROUP PTY LTD - ABN 35 131 274 176

TERMS AND CONDITIONS OF SALE

Gardens at Night is a business of Serrata Group.

“Serrata Group” refers to the Company and any of our affiliated Companies, Businesses, Brands and Trademarks.

1. Definitions

“ACL” means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;

“Client” means the person, jointly and severally if more than one, acquiring goods or services from Serrata Group;

“consumer” is as defined in the ACL;

“contract” means the contract for the provision of goods and services by Serrata Group to the Client;

“Serrata Group” means Serrata Group Pty Ltd (ABN 35 131 274 176);

“goods” means all lighting goods provided by Serrata Group to the Client;

“GST” means any applicable goods and services sales tax, broad-based consumption or value-added tax in relation to the goods, and all other applicable taxes, duties or imposts;

“PPSA” means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended;

“Quotation” means a written quotation provided by Serrata Group to the Client concerning the proposed supply of goods or services;

“services” means installation, design and other services provided by Serrata Group to the Client;

“T+Cs” means these Terms and Conditions of Sale.

2. Basis of Contract

2.1 Unless otherwise agreed by Serrata Group in writing, these T+Cs apply exclusively to every contract and cannot be varied or replaced by any other conditions.

2.2 Any Quotation is valid for 60 days, is an invitation to treat only.

2.3 A contract is formed when Serrata Group confirms its acceptance of an order from the Client.

2.4 Serrata Group may in its discretion refuse to accept any order.

2.5 Goods and services displayed are subject to availability. If any goods or services are not available, Serrata Group will inform the Client within 3 working days. In the case of non-availability of goods or services:

(a) The Client may request the provision of available substitute or similar goods or services; or

(b) The Client may cancel its order; or

(c) Serrata Group will make the appropriate adjustment to, or refund of, the purchase price.

2.6 The Client must provide Serrata Group with specific requirements, if any, in relation to the goods or services.

2.7 Serrata Group may, where reasonably necessary, vary or amend these T+Cs by written notice to the Client. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 Prices quoted or displayed for the supply of goods and services include GST and any other taxes or duties imposed on or in relation to the goods and services.

3.2 If the Client requests any variation to the contract, Serrata Group may vary the price to account for the variation.

3.3 Where there is any change in the costs incurred by Serrata Group in relation to goods or services, Serrata Group may seek to vary its price for the goods or services to take account of any such change, by notifying the Client.

3.4 If Serrata Group provides the Client with notice of the kind referred to in clause 3.3, the Client may:

(a) agree to pay the increased price, and continue with the order; or

(b) cancel the order, in which case Serrata Group will refund to the Client any monies paid by the Client to Serrata Group in respect of any goods or services that will not be supplied by reason of the cancellation.

4. Payment

4.1 Unless credit is provided under clause 4.2, payment for goods and services must be made in full upon placement of order. Goods will not be dispatched until full payment has been confirmed.

4.2 If credit is offered, payment for goods and services must be made by the end of the month following the month in which the goods or services are invoiced.

4.3 Serrata Group reserves the right to require payment of a deposit.

- 4.4 Payments must be made to Serrata Group without set-off.
- 4.5 Payment terms may, where reasonably necessary, be revoked or amended by Serrata Group upon giving the Client written notice.
- 4.6 The time for payment is of the essence.
- 5. Payment Default**
- 5.1 If the Client defaults in payment by the due date of any amount payable to Serrata Group, then all money which would become payable by the Client to Serrata Group at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Client, and Serrata Group may, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Client interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 2% for the period from the due date until the date of payment in full;
 - (b) charge the Client for, and the Client must indemnify Serrata Group from, all expenses and costs (including legal costs and expenses) arising from the default;
 - (c) cease or suspend supply of any further goods or services to the Client;
 - (d) by written notice to the Client, terminate any uncompleted contract with the Client.
- 5.2 Clauses 5.1(c) and 5.1(d) may also be relied upon, at Serrata Group's option where the Client becomes bankrupt or insolvent or enters into any scheme of arrangement or with or for the benefit of its creditors.
- 6. Passing of Property**
- 6.1 Until Serrata Group receives full payment in cleared funds for all goods and services supplied by it to the Client, as well as all other amounts owing to Serrata Group by the Client:
- (a) title and property in all goods remain vested in Serrata Group and does not pass to the Client;
 - (b) the Client must hold the goods as fiduciary bailee and agent for Serrata Group;
 - (c) the Client must keep the goods separate from its goods and maintain Serrata Group's labelling and packaging;
 - (d) the Client must hold the proceeds of any sale of the goods on trust for Serrata Group in a separate account with a bank whom the Client has not given security however failure to do so will not affect the Client's obligation to deal with the proceeds as trustee;
 - (e) in addition to its rights under the PPSA, Serrata Group may without notice, enter any premises where it reasonably suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Serrata Group, and for this purpose the Client irrevocably licences Serrata Group to enter such premises .
- 6.2 Serrata Group will exercise its right of entry (including the use and extent of force) under subclause 6.1(e) in accordance with applicable laws.
- 6.3 Serrata Group retains all intellectual property rights concerning the copyright, designs and other creative works, including but not limited to printed materials, designs, graphics and artwork used in connection with the provision of the goods.
- 7. Personal Property Securities Act**
- 7.1 The PPSA applies to these T+Cs.
- (a) For the purposes of the PPSA: terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and the Supplier has a Purchase Money Security Interest in all present and future goods supplied by the Supplier to the Customer and the proceeds of the goods; and
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time.
- 7.2 Where permitted by the PPSA, the Client waives any rights to receive the documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 7.3 Serrata Group and the Client agree to contract out of sections 96, 125, 129, 142 and 143 of the PPSA.
- 7.4 To the extent permitted by the PPSA, the Client agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for its benefit or which place obligations on Serrata Group will apply only to the extent that they are mandatory or Serrata Group agrees to their application in writing; and
 - (b) where Serrata Group has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

8. Risk and Insurance

- 8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Client immediately from the point at which the goods are dispatched from Serrata Group's premises, or otherwise taken from Serrata Group's premises by the Client.
- 8.2 The Client assumes all risk and liability for loss, damage or injury to persons or to property of the Client, or third parties, arising out of the installation, possession or use of the goods or services sold by Serrata Group, unless recoverable from Serrata Group on failure of any statutory guarantee under the ACL.
- 8.3 The Client acknowledges that the goods are provided for aesthetic purposes only and may not comply with Australian Standards. Compliance with Australian Standards is the Client's responsibility.

9. Performance of Agreement

- 9.1 Any period or date for delivery of goods specified by Serrata Group is an estimate only and not a contractual commitment.
- 9.2 Subject to any liability imposed under the ACL, Serrata Group will not be liable for any loss or damage suffered by the Client or any third party for failure to meet any estimated delivery date.
- 9.3 If Serrata Group cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- 9.4 The Client is responsible to ensure that the goods are used in accordance with all applicable electrical safety laws.

10. Delivery

- 10.1 Subject to clause 10.6 Serrata Group will arrange for the delivery of goods to the Client at a nominated delivery address within Australia.
- 10.2 The Client will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch to the point of delivery.
- 10.3 Serrata Group will designate the method of delivery of the goods. If the Client requires a more costly method of delivery, the Client must reimburse Serrata Group for the extra cost involved.
- 10.4 Serrata Group may make part delivery of goods or provision of services. Serrata Group may invoice the Client for the goods or services delivered.
- 10.5 The Client indemnifies Serrata Group against loss or damage suffered by Serrata Group, its subcontractors or employees as a result of delivery, except where the Client is a consumer and Serrata Group has not used due care and skill.
- 10.6 If delivery is attempted and is unable to be completed, the Client is deemed to have taken delivery of the goods. The Client is liable for storage charges payable monthly on demand.
- 10.7 If agreed that the Client will collect the goods:
- (a) the Client must collect the goods within 7 days of being advised they are ready;
 - (b) if the Client does not collect the goods within this time, it is deemed to have taken delivery of the goods and is liable for storage charges payable weekly on demand.
- 10.8 The Client must notify Serrata Group within [48 hours] of delivery:
- (a) of the non-arrival of any or all of the goods;
 - (b) if there is damage to the goods;
 - (c) that the wrong goods have been received; or
 - (d) that the quantity of goods is incorrect.

11. Liability

- 11.1 Except as the T+Cs specifically state, or as contained in any express warranty provided in relation to the goods or services, the contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 11.2 If the Client is a consumer nothing in these T+Cs restricts, limits or modifies the Client's rights or remedies against Serrata Group for a failure of a statutory guarantee under the ACL.
- 11.3 If the Client on-supplies goods to a person who is a consumer:
- (a) if the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Serrata Group's liability to the Client;

- (b) otherwise, payment of any amount required under Section 274 of the ACL is the absolute limit of Serrata Group's liability to the Client; howsoever arising under or in connection with the sale, installation, use of, storage or other dealings with the goods or services by the Client or any third party.
- 11.4 If clause 11.2 or 11.3 do not apply, then other than stated in the Terms or any written warranty statement Serrata Group is not liable to the Client in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Client or any third party.
- 11.5 Serrata Group is not liable for any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party except to the extent of any liability imposed by the ACL.
- 11.6 The Client acknowledges that:
- (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by Serrata Group in relation to the goods or services or their use or application; and
 - (b) it has not made known, either expressly or by implication, to Serrata Group any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the Client's use.
- 11.7 Nothing in the T+Cs excludes or displaces any applicable State or Federal legislation which cannot be excluded.
- 11.8 Any description of the goods provided in a Quotation or invoice is given by way of identification only and does not constitute a contract of sale by description.
- 11.9 Serrata Group may, where reasonably necessary, provide the Client with written notice of any change to the specifications of the goods.
- 12. Cancellation and Returns**
- 12.1 If Serrata Group is unable to deliver or provide the goods or services, then Serrata Group may cancel the Client's order (even if it has been accepted) by written notice.
- 12.2 No purported cancellation or suspension of an order or part of it by the Client is binding on Serrata Group once the order has been accepted and processed by Serrata Group.
- 12.3 Where Serrata Group agrees to accept a return of non-defective goods for change-of-mind reasons:
- (a) The Client must follow the returns procedure set out at <https://www.gan.com.au/content/returns-policy>; and
 - (b) The Client will be credited the value of the goods (less a restocking fee of up to 15%); and
 - (c) The credit note will be valid for 12 months from date of issue.
- 13. Miscellaneous**
- 13.1 The law of Victoria from time to time governs these T+Cs.
- 13.2 Serrata Group's failure to enforce any of these T+Cs shall not be construed as a waiver of any of Serrata Group's rights.
- 13.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the clause must be severed from these T+Cs without affecting the enforceability of the remaining terms.
- 13.4 A notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.