

ENERGIZER AUSTRALIA PTY LIMITED

TERMS AND CONDITIONS OF SALE OF GOODS

1. These Terms and Conditions apply to all products sold and delivered by Energizer to Customer (the "Products").
2. The credit terms set out in the Customer's Credit Application, form part of these Conditions. Energizer reserves the right to withdraw credit at any time.
3. Payment must be made in accordance with the terms of the Credit Application or otherwise within 30 days from the end of the month in which the invoice is raised.
4. Upon Customer reaching its Credit limit, or at any time if Customer's account is overdue, Energizer may cease supply without further notice until such time as payment is made for the amount then outstanding.
5. Price Lists are subject to change without notice. All Products are sold at the price notified to Customer from time to time and applicable at the date of invoice, but before making delivery at a price in excess of that accepted by Customers, Energizer will notify Customer of the price increase and Customer has the right to cancel the delivery to which the price increase applies.
6. Customer shall have no right of set-off in respect of any claim against Energizer.
7. Ownership of and title to the Products remains with Energizer until all moneys owing to Energizer in respect of any Products (including moneys owing but not yet payable under credit terms) and on any other account whatsoever have been paid in full. Customer has the right to sell the Products in the ordinary course of its business.
8. Until all moneys owing to Energizer have been paid in full, Customer shall hold the Products as bailee only of Energizer. Customer will keep the Products in good order and condition within the containers in which they are packed, until placed upon display or sale.
9. In the event Customer owes Energizer any moneys, as described in clause 8 above, and:
 - a) Customer ceases, suspends or threatens to cease or suspend its business or disposes of or threatens to dispose of its assets other than in the ordinary course of its business:
 - b) Energizer forms the view, in its absolute discretion, that Customer is unable to pay its debts when they fall due;
 - c) A receiver, a receiver and manager, administrator or similar office is appointed to Customer or any part of its property.
 - d) Customer becomes insolvent, compounds with its creditors, is the subject of an application for winding up or is wound up or goes into liquidation or enters into a scheme of arrangement,

then Energizer may at any time, without notice to Customer and without prejudice to any other rights which it may have against Customer terminate any contract relating to the Products, retrieve, and subsequently dispose of the Products at Energizer's discretion.

10. Risk in the products shall pass to the buyer on delivery, or on collection by Customer's nominated carrier, should Customer choose to engage their own Carrier.

11. Energizer reserves the right to make delivery in installments unless otherwise expressly agreed in writing to the contrary by Energizer. All such installments, when separately invoiced, shall be paid for when due in accordance with the invoice, without regard to subsequent deliveries.

12. While every effort shall be made to meet Customers' requested delivery dates, Energizer shall not be liable for any loss or damage (including consequential loss) should it be delayed or prevented from delivering any Products due to any cause or circumstance beyond its control, including non-availability of stock.

13. Delivery of Products to a carrier nominated by Customer shall constitute delivery to Customer.

14. Energizer reserves the right to accept or decline any order from Customer in whole or in part.

15. Each part supply shall constitute a separate contract.

16. Customer may claim a credit for the return of Products which are fault or damaged (unless caused by Customer's carrier) provided that Customer notifies Energizer in writing of its claim within 7 days of the date of delivery. No return of Products or any part thereof will be accepted by Energizer unless authorized in writing by a senior officer of Energizer.

17. In the case of shortages, Customer will only be entitled to claim a credit if it notifies Energizer, orally or in writing, of the shortage within 2 days of the day of delivery, and if such notice is given orally, confirms its claim in writing within 7 days of the date of delivery.

18. Energizer will replace any Products not of merchantable quality which are returned to Energizer within the warranty period. In order to obtain replacement under this warranty, Customer must present satisfactory evidence of purchase. Customer bears the cost of transportation of Products to and from Energizer's premises.

19. Energizer's warranty is conditional upon:

a) the use by date not having expired;

b) the Product having been stored in accordance with notified storage conditions including those marked on Product packaging; and

c) no modification or adulteration of the Product having been undertaken or attempted.

20. These conditions must be read and construed subject to any statutory provisions which imply warranties or conditions which cannot be excluded, restricted or modified. If such statutory provision

apply, to the extent to which Energizer is entitled to do so, its liability shall be limited at its option to: the replacement of the Products or the supply of equivalent Products; the payment of the cost of replacing the Products or acquiring equivalent products; the payment of the cost of having the Products repaired; or the repair of the Products and the repair or replacement at Energizer's option of any device damaged by the Products under normal conditions of use.

21. To the extent permitted by law, Energizer hereby excludes all other warranties, conditions, representations and guarantees in respect of any characteristics of the Products.

22. Where the goods have been entered under Australian Customs Service ("Customs") security for specified use, Customer will indemnify Energizer against payment of duties, penalties, claims, or costs incurred or payable by Energizer as a result of its inability to prove to Customs that the goods have been used as specified.

23. These conditions shall be governed by the laws of the State of New South Wales and Customer accepts the exclusive jurisdiction of the courts of that State.

24. Energizer's failure to enforce or exercise, any term of these Conditions shall not constitute a waiver and shall in no way affect Energizer's right to later enforce or exercise such terms.

25. The invalidity or unenforceability of any of these Conditions or any part thereof shall not affect the enforceability of the remainder of these Conditions.

26. This contract is not assignable or transferable by Customer or by operation of law.

27. Products are sold by Energizer only pursuant to these terms and conditions and any purported exclusion or variation of these terms and conditions is ineffective, unless previously authorized in writing by a senior officer of Energizer.