

# Famco Standard Terms and Conditions

Terms and Conditions of Purchase.

## 1. Interpretation

1.1 In these terms and conditions:

- (a) "Famco" means Famco Lighting Pty Limited (ABN 22 091 160 440) trading as Famco and any of its related bodies corporate.
- (b) "Seller" means the seller of the goods.
- (c) "Goods" means the products and, if any, services.
- (d) "Order" means the Order for the Goods constituted by this document.
- (e) "Agreement" means the agreement between the Seller and Famco set out in the Order and these terms and conditions.

## 2. General

2.1 The acceptance of an Order by the Seller, will be deemed to occur when the supplier responds with a confirmation date and includes acceptance of these terms and conditions as the sole basis of the sale to the exclusion of any conditions of sale appearing on any document of the Seller. Modification of these terms and conditions expressed in any document of the Seller does not apply to an Order unless expressly accepted in writing by the Famco.

## 3. Alterations

3.1 No changes to this Order are to be made by the Seller without the written agreement of the Famco.

## 4. Price

- 4.1 This Order is placed on a firm price basis and is not subject to increases in price without the Famco's prior approval in writing and includes all GST, excises, duties and delivery to the destination stated in this Order and the off-loading of the Goods by the Supplier at the point of destination.
- 4.2 All invoices for the Goods must include Famco's Order number.
- 4.3 Unless otherwise agreed in writing by Famco, or provided herein, the Seller's tax invoice for the Goods is payable within 60 days from the end of the month in which the tax invoice was received by Famco.
- 4.4 Famco is entitled to set off from any amount payable to the Seller any amount the Seller

owes to Famco, whether under this Agreement or otherwise.

4.5 In the event any dispute arises in relation to the Goods, Famco may withhold payment for the Goods until the dispute has been resolved.

## 5. Standard to conform to specifications

5.1 The Seller must ensure that the Goods are in accordance with and conform to any specifications, drawings, samples or other description (if any) furnished by the Famco to the Seller. Any in-progress inspection by the Famco's employees or agents or other representative does not affect this requirement.

## 6. Warranties

6.1 The Seller warrants that the Goods:

- (a) are fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Seller;
- (b) are of merchantable quality and to be free from defect in material and workmanship;
- (c) comply to any sample of the Goods provided to Famco;
- (d) Comply with any design or specifications required by Famco.
- (e) are made with new high quality materials and are free from any hazardous substances;
- (f) comply with all applicable standards, safety standards, laws and regulations of Australia including all its States and Territories and any other country to which the Goods are being delivered;
- (g) are made with a high level of care, skill and diligence and in accordance with industry best practices;
- (h) are free from any lien, charge or encumbrance of any kind, third party rights or claims;
- (i) and the promotion, sale and distribution of the Goods by Famco or the Seller shall not infringe any trade mark, patent, registered design, copyright or similar or other industrial commercial property rights of any person, nor give rise to payment by Famco or any other person of any royalty to any third party or to any liability to pay compensation.
- (j) carry any applicable manufacturer's warranty which passes on to any Famco and to its customers from the Famco without liability to the Famco. The Seller must assign to the Famco at the request of the Famco the benefit of any warranty or guarantee that the Seller has received from any supplier

(whether under contract or by implication or operation of law).

6.2 The Seller warrants:

- (a) the Seller, its officers, employees, agents and contractors have the necessary skill, experience and ability to properly fulfil the Seller's obligations under each Order.
- (b) all services provided by the Seller will be performed with a high level of skill, care and diligence and in accordance with industry best practices and in accordance with all relevant standards, laws and regulations. The Seller acknowledges that Famco is relying on the Seller's skill care and diligence in carrying out such services.
- (c) the Seller has all consents, licences or permits required for the supply of the Goods to Famco.

6.3 The warranties given by the Seller under this clause are in addition to any shall not derogate from any conditions or warranties of the Seller implied by any relevant law.

6.4 The Seller acknowledges that Famco has entered into this Agreement in reliance of the representations and warranties in this clause. For the avoidance of doubt a breach of any of the warranties set out in this clause will be a material breach of this Agreement.

**7. Delivery, Inspection and return**

- 7.1 The Seller must deliver the Goods to the delivery locations and any within time specified in the Order or as directed by Famco and in this respect time shall be of the essence.
- 7.2 The Seller must ensure that a delivery docket which includes Famco's Order number and any other information required by Famco is provided to Famco with the Goods. Famco may refuse to accept delivery of Goods without such delivery docket.
- 7.3 Famco may inspect the Goods at its discretion before or after delivery and the Seller must facilitate such inspection on request by Famco.
- 7.4 All Goods are received subject to inspection by Famco. Signed delivery dockets do not mean acceptance by the Famco of Goods delivered.
- 7.5 If on inspection Famco considers the Goods do not conform to the Order or the requirements of this Agreement or are otherwise defective Famco may reject the Goods.
- 7.6 Famco shall notify the Seller if the Goods are rejected pursuant to clause 7.5, and hold such Goods for the Seller's instructions and at the Seller's risk for a reasonable period not exceeding 60 days. If the Seller's instructions

are not received within that period, Famco may return the Goods to the Seller's premises at the Seller's expense and risk and any expense incurred by the Famco in such return is payable forthwith by the Seller and may be set off by the Famco against any moneys otherwise due by the Famco to the Seller.

7.7 For local suppliers delivery of goods is deemed only to have occurred after unloading to Famco's delivery location and acceptance of the Goods by Famco in accordance with this clause 7.

7.8 For International suppliers, ownership is deemed to have occurred as a result of the relevant Incoterm being completed by the seller.

**8. Royalties**

8.1 Goods are for the use of or re-sale by the Famco or its associated companies and may be incorporated in any products (whether owned or used or possessed by the Famco). The Seller is not entitled to and must not make any claim for royalties or other additional compensation from the Famco by reason of or connected with such use, re-sale or manufacture.

**9. Patent rights**

9.1 The Seller agrees to defend, protect and completely indemnify the Famco, its successors, assigns, customers and the users of the Goods from and against any claim arising by reason of the use of the Goods, including all claims for actual or alleged infringement of any letters patent, trademarks, copyright, design, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law.

9.2 If the Seller makes any representation or statement directly or indirectly to the Famco that the Goods Ordered are protected by one or more patents and any such patent is found to be invalid, the Famco may forthwith cancel this Order or any contract arising from this Order and recover any money paid to the Seller under this Agreement as a liquidated debt.

**10. Special dies, etc to remain purchaser's property**

10.1 Special dies, tools, patterns and drawings (each a "tool") used in manufacture of the Goods, the cost of which is met by Famco, remain Famco's property whether during or after the termination of this Agreement.

10.2 The Seller must keep the tools in good condition and when necessary the tool without expense to the Famco.

10.3 The Seller agrees that it will not use any tool in the production, manufacture or design of any

other articles, nor of larger quantities than those required on this Order, except with the Famco's prior written consent and at the termination of this contract each tool must be disposed of as the Famco directs.

10.4 While the Seller is in possession of the Famco's tools, it acknowledges that it is a bailee of them and owes the Famco the duties, responsibilities and liabilities of a bailee.

#### **11. Designs and specifications to be retained in confidence**

11.1 Any Goods or work made or done according to the Famco's design or specifications or developed for the Famco or at the direction of the Famco, or any original or copy designs or specifications supplied by the Famco are held by the Seller on the Famco's behalf and at the Famco's disposal and must not be disclosed or furnished to any other person, firm or government without the Famco's prior written consent. The Seller must take all reasonable precautions to protect such confidentiality.

#### **12. Packing costs and standard**

12.1 The Seller must bear the costs for all labelling, wrapping, packing, cartons or crating of the Goods including any such costs claimed by their agents or suppliers, unless otherwise agreed in writing by Famco.

12.2 The Seller must ensure that all Goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with carriers' requirements.

#### **13. Advertising**

13.1 The Seller must not, without the Famco's prior written consent, in any manner advertise or publish the fact that the Seller has contracted to the Famco with the Goods.

#### **14. Delivery documents**

14.1 The Seller must invoice the Famco promptly, followed by monthly statements of account.

14.2 The Seller must dispatch packing lists, shipping documents and certified invoices to the Famco's office by direct mail on the day of shipment unless a different method or date of dispatch (or both) is agreed by the Famco.

#### **15. Cancellations of Order**

15.1 Famco may immediately cancel this Order for any reason by the giving of written notice to the Seller.

15.2 If this Order is cancelled under clause 15.1, the Seller shall:

- (i) immediately cease carrying out this Order;
- (ii) promptly return to Famco all property, documentation or information provided by Famco to the Seller in connection with this Order; and
- (iii) use best endeavours to mitigate all costs in connection with the cancellation of this Order.

15.3 If this Order is cancelled under clause 15.1, the Seller shall only be entitled to claim from Famco the amount determined by Famco to be payable for any Goods already delivered to Famco up to the date of cancellation and the Seller shall not have and may not prosecute any claim whatsoever at law or in equity against the Famco in relation to such cancellation including any claim for loss of profits, costs, losses, damages or expenses suffered or incurred by the Seller.

#### **16. Termination for Breach**

16.1 Without prejudice to any other rights or remedies to which it may be entitled, Famco may terminate an Order by notice to the Seller if:

- (a) the Seller becomes or is in jeopardy of becoming insolvent or going to liquidation, having a receiver or administrator appointed to it or any part of its assets or it entered into any scheme or arrangement with creditors;
- (b) the Seller commits a breach of its obligations under this Agreement including but not limited to a breach of any warranty under clause 6;
- (c) If the Seller does not deliver Goods on time in accordance with an Order, Famco may cancel the Order in whole or in part. Famco will be deemed not to have waived any rights under this Agreement with respect to a delay notwithstanding its failure to exercise its rights upon being made aware of the delay.
- (d) In the event that Famco terminates an Order pursuant to this clause, without limiting any other rights it may have, Famco may at its discretion engage others to, or itself, carry out any part or the whole of the Seller's obligations under this Agreement and determine the reasonable costs so incurred by Famco and other loss or damage sustained by Famco as a consequence and the same will constitute a debt due and owing by the Seller to Famco.

16.2 If Famco terminates an Order under this clause it will have the same entitlements and the Seller will have the same liabilities as each would at law, had the Seller repudiated the Agreement

and Famco terminated this Agreement by acceptance of the Seller's repudiation.

- 16.3 Without limitations, the Seller must, in addition to any other liability, pay the costs of removing any defective Goods, or Goods not supplied in accordance with the Order or the terms and conditions of this Agreement or rejected by Famco pursuant to clause 7, from the Famco's premises, including any the costs of packing, storage, transport or shipping .

#### 17. Title and Risk

- 17.1 Risk and title to the Goods passes to Famco on delivery of the Goods in accordance with clause 7. The Goods are at the Seller's risk until such delivery occurs.
- 17.2 Nothing in the conduct of the Famco or the transfer of property in the Goods (including delay that is or is not the fault of the Famco or of any person who represents the Famco) alters the incidence of risk under this clause.

#### 18. Liability and Indemnity

- The Seller is liable for and shall indemnify and hold harmless Famco, its directors, officers, employees and agents, against all claims, costs, losses and damages of whatever nature, including in relation to third party claims, which Famco incurs as a result of breach of the Seller's warranties under clause 7, or other breach of this Agreement or occurring or arising out of or incidental to or relating directly or indirectly to the promotion, distribution, sale, installation and use of the Goods or any representation made or information provided by the Seller.
- 18.1 Famco will not under any circumstances be liable to the Seller for any loss of profit or for any loss of a consequential nature whatsoever by the Seller.

#### 19. Insurance (for Australian suppliers)

- 19.1 In addition to any insurance which the Seller is by law obliged to effect, the Seller must procure and maintain at its own expense, with an insurer registered as an "Authorised Insurer" by the Australian Prudential Regulation Authority, such policies of insurance, including:
- (a) public liability insurance to cover loss or damage in relation to personal injury (including illness), or damage to property including property belonging to third parties;

(b) product liability insurance, to cover loss or damage in relation to defective Goods that cause personal injury, property damage and losses such as delay and rectification costs in relation to defective Goods;

(c) professional indemnity insurance.

- 19.2 Each policy must be for an amount of not less than \$20 million (AUD) per occurrence for public liability insurance and in aggregate from product liability insurance. The Seller must ensure that Famco is named as or falls with the definition of an insured party in respect of any liability arising out of or by reason of the supply of the Goods.
- 19.3 The Seller must provide Famco copies of certificates of insurance for the insurances required by this clause if requested by Famco. The Seller is responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required of the seller under this clause.

#### 20 Imports and Embargoes

This section applies where the Seller undertakes imports of the goods or services (Goods) it supplies to Famco or where our commercial arrangement is not restricted solely to the Australian market (Imports).

- 20.1 The Seller warrants and undertakes to Famco:
- (a) The Seller shall comply with all the import 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 Imports.
- (b) The Seller shall not Import or re-Import the Goods from 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 Seller shall not obtain supply of the Goods from 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 payments received for the Goods 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 Seller comply with all national and international regulations.
- (f) To enable authorities or Famco to conduct compliance audits, the Seller upon request by Famco, shall promptly provide Famco with all relevant licences and authorisations, information as to the identity of the customer from whom the Goods are obtained, the destination and intended use of the payments for the Goods and the financial institutions or entities used to collect and issue payments.
- (g) The Seller shall notify Famco if the Seller suspects that any person the Seller has obtained the Goods from may not be complying with any embargo, sanction or Import control regulation.
- (h) Seller shall indemnify and hold harmless Famco from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Seller with any of the above undertakings or breach of any relevant Import control regulations or sanction or embargo.

20.2 The Seller's compliance with all the above undertakings is a condition of Famco continuing purchase the Goods from the Seller and Famco has the right to suspend such purchase and terminate any agreement where we have a reasonable belief that the above undertakings are not being complied with or if any obligation under any agreement would constitute a breach of any national or international regulations or any embargo or sanction and Famco shall have no liability to the Seller or any third party by way of damages or otherwise in respect of such suspension or termination.

## 21 General

21.2 The Seller must not subcontract, assign or novate an Order or any obligations or rights under this Agreement without the prior written consent of Famco. Famco may assign or novate its rights under this Agreement at any time without notice to the Seller.

21.3 No neglect, delay or indulgence on the part of Famco in enforcing these terms and conditions

will prejudice the rights of Famco or be construed as a waiver of any such rights.

21.4 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.

21.5 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 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.