

Famco Lighting Pty Ltd
ABN 22 091 160 440
Conditions of Sale

1. GENERAL

The following Conditions of Sale apply to all supplies by us to the Purchaser of goods or services and form part of any quotation given by us. Where there is any inconsistency between these Conditions of Sale and any Conditions which the Purchaser seeks to impose, these Conditions of Sale shall prevail unless specifically agreed to by us in writing.

2. VALIDITY OF QUOTATIONS

We reserve the right to refuse acceptance by the Purchaser of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn in such period.

3. PRICES AND DISCOUNTS

Published prices and discounts applicable are subject to alteration without notice.

An additional charge may be made for orders of low value or small quantity.

4. PAYMENT AND/OR NEW ACCOUNTS.

All goods must be paid for in cash on delivery, or cash with order for special products or circumstances as deemed necessary by us, unless the Purchaser has a credit account with us, which we may establish or withdraw at any time in our absolute discretion. When a settlement discount is offered, it is available only if the account is paid within the specified period and the account is up to date within agreed trading terms. Unless otherwise specified by us, payment must be made within 30 days. Overdue accounts are subject to a surcharge of 2% per month.

5. GOODS & SERVICES TAX.

Unless otherwise indicated, all prices are quoted exclusive of Goods & Services Tax, which will be added when applicable.

6. CARRIAGE AND DELIVERY.

6.1 Unless specified by us, goods are quoted ex works. If delivery is included it is at ground floor within easy access. We reserve the right to send goods by the most economical means available. When special delivery arrangements are requested, all special delivery rates will be at the expense of the Purchaser.

6.2 Deliveries of goods will be effected in maximum quantities per load or whatever is available at time of despatch. If part deliveries in uneconomical quantities are required by the Purchaser, a charge for freight will be made for each delivery in addition to the first delivery .

6.3 If we deliver goods in instalments, we may invoice the Purchaser on a pro rata basis as and when delivery of an instalment has been made, and payments shall be due in respect of each instalment delivered notwithstanding whether other instalments have not been, or will not be, delivered.

6.4 All products shall be at the Purchaser's risk immediately upon delivery to the Purchaser or the Purchaser's nominee or carrier.

6.5 If the Purchaser fails or refuses to take delivery of products then we may, in our sole discretion and without prejudice to any of our other rights, store those goods at the Purchaser's risk and expense.

7. PACKING

The Purchaser must pay for any special cases, crates, etc where goods must be dispatched in such packing. No charge

will be made for our standard packing and no credit will be allowed for the return of special or standard packing.

8. LOSS OR DAMAGE IN TRANSIT AND RELEASE

8.1 The Purchaser must provide us with a legible receipt, which identifies the signatory, when goods are examined on receipt.

8.2 In the event of short delivery or damage in transit, any claim must be made in writing to us and to our Carriers within 3 days of receipt of goods. Goods or packing should be held irrespective of condition for inspection by our Carriers before inspection by us, our insurance assessors or return. In the event of any claim, the following information should be sent to us; delivery docket number; date Carrier was advised; date consignment received; condition of packing; name of Carrier; extent of damage or shortage. In the event of non-delivery, our Carriers and our Despatch should be advised within 7 days of receipt of our packing advice note or invoice.

8.3 If goods are supplied on the basis of price ex works or FOB/FOR, our responsibility ceases upon delivery to the Purchaser's carriers or agents and all freight charges and insurance are to be borne by the Purchaser.

8.4 If the Purchaser does not satisfy all of the requirements in this clause 8, then to the extent permitted by law we will have no liability in respect of any short delivery, damage in transit or non-delivery and the Purchaser shall be deemed to have unconditionally and irrevocably released us from all claims thereof.

9. DELIVERY.

The estimated time or times for delivery or completion are:

- (a) from date of acceptance of our offer; or from receipt by us of all necessary drawings, information or samples to be supplied by the Purchaser, whichever is the latter;
- (b) in the case of imported goods, subject to the availability of the subject goods in the country of origin or manufacture;
- (c) in the case of goods not of our manufacture, subject to availability of the subject goods from our supplier;
- (d) subject to no delays being incurred by reason of strikes, lockouts, industrial disputes or breakdowns of or damage to the plant, equipment or property of us or any subsidiary company, supplier or outside contractor; and
- (e) estimates only and subject to prolongation by reason of any cause beyond our reasonable control.

We shall endeavour to meet estimated delivery dates at all times but we shall not be liable for any loss or damage or consequential loss or costs of any kind or description whatsoever suffered by the Purchaser by reason of any delay in delivery of goods regardless of the cause of such delay.

10. ACCEPTANCE OF GOODS

10.1 The Purchaser shall inspect the goods immediately upon delivery to the Purchaser or upon collection of that order by the Purchaser, Purchaser's agent or courier as the case may be.

10.2 Subject to clause 8.2, to the extent permitted by law, all claims against us regarding the quantity, quality, nature, fitness, suitability, conformance with description or defects of the goods must be made in writing to us within 7 days of delivery, failing which the Purchaser shall be deemed to have unconditionally and irrevocably released us from all such claims.

11. DEFAULT.

We shall have the right to discontinue the delivery and also to terminate the contract in respect of any undelivered goods at our discretion should the Purchaser default in payment, whether or not such default relates to the undelivered goods,

with no liability to the Purchaser. However, if we exercise these rights, the Purchaser shall be liable to pay for all goods made or partly made or obtained and costs incurred in preparation of any order.

12. RETENTION OF OWNERSHIP

12.1 Notwithstanding clause 6.4, we shall retain property in, and ownership of, all goods supplied by us to the Purchaser until we have received payment in full of all sums due in connection with the supply of all goods to the Purchaser and all other amounts owing on any account whatsoever by the Purchaser. In the case of payment by cheque, bill of exchange or note, title shall not pass to the Purchaser until the same is honoured.

12.2 In relation to any and all goods in which, from time to time, property in, and ownership of, has not passed to the Purchaser ("Goods"), the Purchaser:

(a) will, from the time the Goods are delivered, take custody of the Goods and retain them as our fiduciary agent and bailee;

(b) will store the Goods in a secure place in such a way that they are clearly identifiable as our property and shall properly insure (including against fire, theft, burglary, vandalism and flood), maintain and allow us to inspect the Goods and all records relating to the Goods at any time free from trespass; and

(c) may re-sell the Goods but only as our fiduciary agent, at arm's length, on market terms and in the course of the Purchaser's business.

The Purchaser cannot, however, incur any liability for us or on our behalf to any third party by contract or otherwise.

12.3 Without prejudice to any of our other rights and remedies, we may repossess the Goods and enter into any premises upon which Goods are stored, without notice, free from trespass for this purpose if payment for any of the Goods is overdue, an Insolvency Event occurs or the Purchaser parts with possession of any of the Goods in other than by way of sale in the course of the Purchaser's business.

12.4 Until such time as we receive payment in full for any of the Goods:

(a) if the Purchaser sells or receives any payment from a customer or insurer in respect of those Goods, the proceeds of any such sale or disposition and any insurance proceeds (or claim thereto); or

(b) if the Purchaser uses those Goods in some manufacturing or construction process of its own or some third party, then such part of the proceeds of the manufacturing or construction process as is equal to all monies owing by the Purchaser to us at the time of the receipt of such proceeds or, if that amount is greater than the total proceeds received by the Purchaser, the total proceeds, shall be held by the Purchaser on trust for us and paid into a separate bank account which shall not be overdrawn or otherwise dealt with without our prior written consent. The receipt on trust of such proceeds in respect of certain Goods discharges, by the amount received, the Purchaser's debt to us in respect of those Goods.

12.5 Nothing in this clause 12 shall affect our rights as an unpaid seller.

12.6 "Insolvency Event" means any of the following events:

(a) the Purchaser becomes insolvent (or insolvent under administration) as defined in the Corporations Act 2001 (Cth), states that it is insolvent or is presumed insolvent under an applicable law;

(b) the Purchaser is wound up, dissolved or declared bankrupt or commits an act of bankruptcy;

(c) a liquidator, provisional liquidator, controller, administrator, receiver, receiver and manager, encumbrancer, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the Purchaser's assets or undertakings;

(d) the Purchaser enters into or becomes subject to: (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or (ii) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors; or

(e) the Purchaser suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due.

13. WARRANTY AND EXCLUSION OF LIABILITY.

13.1 We will make good, at our option, by repair or replacement, any defect caused by faulty workmanship, materials or design in goods manufactured by us that arises in the period of:

(a) 12 months after supply; or

(b) 15 months from the date of notification of readiness for despatch,

whichever is the earlier, provided that the goods have not been used improperly or contrary to our instructions, that we are permitted to inspect defects before repair and that such defective goods are returned free into our store.

13.2 Save as expressly provided herein, to the extent permitted by law, all warranties, representations, terms and conditions concerning goods or services supplied by us are hereby expressly excluded.

13.3 Save as expressly provided herein, to the extent permitted by law, we shall have no responsibility or liability whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss, damage, cost or expense of any kind whether direct, indirect or consequential (including for loss of profits, business or anticipated savings), nor shall the Purchaser have any entitlement to treat the contract of sale as repudiated, arising directly or indirectly out of or in respect of: (a) the delivery of goods by us or our contractor(s), including any loss or damage during delivery or delay in delivery;

(b) the use, custody or supply of goods supplied by us; or
(c) the inadequacy of goods supplied by us for any purpose or any defect in such goods;

whether or not caused by the negligent or wilful act or omission of us or our contractor(s) and the Purchaser releases and forever discharges us from all such liabilities and any claims in respect thereof.

13.4 To the extent permitted by law, our liability (if any) arising out of or in relation to goods or services supplied by us shall be limited, at our option, to:

(a) in the case of goods:

(i) the replacement or repair of the goods or the supply of equivalent goods; or

(ii) payment of the cost of replacing the goods, having the goods repaired or of acquiring equivalent goods;

(b) in the case of services:

(i) the supply of the services again; or

(ii) payment of the cost of having the services supplied again.

14. SPECIAL ORDERS. Where we produce goods that are non-standard or not included in our ordinary publications or catalogues, such goods may not be returned for credit unless the Purchaser is entitled to by law. We may, in our

absolute discretion, require a deposit for the whole or part of the order value for such goods.

15. CANCELLATION AND RETURN OF GOODS.

Under no circumstances may goods supplied under orders be returned or deliveries or orders cancelled by the Purchaser without having first applied for and obtained our written consent. If that consent is given, we will deduct a handling charge, the amount of which we may determine in our absolute discretion, from any credit allowed. Any goods not in original unopened and unmarked packing can not be returned unless the Purchaser is entitled to by law.

We may resend to the Purchaser freight collect any unauthorised returns.

16. DESCRIPTIVE MATTER AND ILLUSTRATIONS.

All descriptive and forwarding specifications, drawings and particulars of weights and dimensions issued by us are approximate only, are intended only to present a general idea of the goods to which they refer and, to the extent permitted by law, shall not form part of a contract and the Purchaser shall not be entitled to rely upon them. We reserve the right to change the design to allow progress and development and the use of new materials and techniques.

17. GOVERNING LAW AND ARBITRATION.

These Conditions of Sale shall be governed by, and construed in accordance with, the laws of the state of Victoria.

In the event of any dispute as to the interpretation of these Conditions of Sale, or the parties rights or obligations thereunder, the dispute shall be referred to an Arbitrator agreed upon by the parties or failing agreement to an Arbitrator nominated by the President for the time being of the Law Institute of Victoria. The decision of such Arbitrator shall be final and binding on the parties.

18. DRAWINGS, DIMENSIONS AND SAMPLES.

All drawings and printed matter accompanying a quotation or in the Purchaser's possession before or after acceptance of an order are informative only.

Where a sample is requested by the Purchaser, we will manufacture it in accordance with any such drawings and when the sample is approved it shall be accepted in writing as a final prototype for subsequent production, unless the parties subsequently agree to an alteration, in which case we may alter the price quoted. If the altered quotation is accepted by the Purchaser, the approved sample will form part of the total quantity to be supplied.

19. PERFORMANCE

Any performance figures provided by us are based on our experience and are such as we expect to obtain on test. To the extent permitted by law, we shall have no liability for a failure to meet performance figures unless those figures were specifically guaranteed by us in writing. The Purchaser shall assume responsibility for the capacity and performance of the goods being sufficient and suitable.

19 Exports and Embargoes

This section applies where the Purchaser undertakes export, re-export or resale of the Products or where our commercial arrangement is not restricted solely to the Australian market (Exports).

19.1 The Purchaser warrants and undertakes to Famco Lighting Pty Ltd

- (a) The Purchaser shall comply with all the (re-) export 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 Exports.

- (b) The Purchaser shall not export or re-export the Products to 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 Purchaser shall not supply the Products to 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 Products 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 Purchaser comply with all national and international regulations.
 - (f) To enable authorities or Legrand to conduct compliance audits, the Purchaser upon request by HPM Legrand, shall promptly provide Famco Lighting Pty Ltd with all relevant licences and authorisations, information as to the identity of the customer to whom the Products are supplied, the destination and intended use of the Products and the financial institutions or entities used to collect and issue payments.
 - (g) The Purchaser shall notify Famco Lighting Pty Ltd if the Purchaser suspects that any person the Purchaser has supplied the Products to may not be complying with any embargo, sanction or export control regulation.
 - (h) Purchaser shall indemnify and hold harmless Famco Lighting Pty Ltd from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Purchaser with any of the above undertakings or breach of any relevant export control regulations or sanction or embargo.
- 19.2 The Purchaser's compliance with all the above undertakings is a condition of Famco Lighting Pty Ltd continuing to supply the Products to the Purchaser and Famco Lighting Pty Ltd has the right to suspend such supply 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 Lighting Pty Ltd shall have no liability to the Purchaser or any third party by way of damages or otherwise in respect of such suspension or termination.