

Starco Lighting Terms and Conditions of Sales

Version dated June 21st, 2017



1) QUOTATION, CONFIRMATION, OR AGREEMENT

- a) These terms and conditions (the "Terms and Conditions") of commercial sale for certain lamp products of Starco Lighting Inc. ("Starco Lighting") apply to and form part of all quotations and estimates made by Starco Lighting, all acceptances, acknowledgements, and confirmations by Starco Lighting of any purchase orders by Buyer and any agreements ("Agreements") regarding the sale by Starco Lighting and purchase by Buyer of certain lamp products ("Products"), unless and to the extent Starco Lighting explicitly agrees otherwise in writing.
- b) Any terms or conditions set forth on any document or documents issued by Buyer shall be wholly inapplicable to any sale of the Products made by Starco Lighting to Buyer and shall not be binding in any way on Starco Lighting.
- c) Starco Lighting's quotation is open for acceptance for thirty (30) days from the date of the -quotation, unless stated otherwise, but any quotation may be modified, withdrawn, or revoked by Starco Lighting at any time prior to the actual receipt and confirmation by Starco Lighting of Buyer's acceptance thereof.

2) CANCELLATIONS

- a) Standard product orders cannot be canceled within ten (10) business days (i.e., Mon.-Fri.) from the scheduled ship date.
- b) Buyer must submit cancellations for a standard product order in writing.
- c) Starco Lighting will not accept cancellations for standard products after product shipment.
- d) Non-standard products are non-cancellable by Buyer.

3) PRICING

Pricing for the goods sold hereunder shall be determined by Starco Lighting in its sole discretion and may be changed at any time by Starco Lighting on notice to Buyer subject to these Terms and Conditions. Unless otherwise specified by Starco Lighting, prices for such Products are for the quantity specified and do not include charges for transportation, insurance, special packaging, marking, taxes, including value added taxes, export or import licenses, fees, duties and the like; Buyer shall bear the cost of such charges in addition to the prices invoiced. Price quotations are in U.S. Dollars and are valid for delivery only to locations within the United States or delivery as referenced in Starco Lighting's sales order acknowledgment by Starco Lighting. Starco Lighting reserves the right to make substitutions and modifications in the specifications of Products sold by it if such substitutions or modifications do not cause a material adverse effect on overall performance. Starco Lighting further reserves the right to discontinue any Products.

4) PAYMENT

Unless the Buyer's credit is pre-approved by Starco Lighting in writing, Buyer will pre-pay for all accepted purchase orders for the Products invoiced by Starco Lighting. For all credit approved invoices, net payment is due within thirty (30) days of date of invoice. In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, Starco Lighting shall have the right to refuse performance and/or delivery of any Products for any purchase orders until payments are brought current, and Starco Lighting may suspend, delay or cancel any credit, delivery or any other performance by Starco Lighting. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

5) DELIVERY AND QUANTITIES

- a) Products shall be delivered in accordance with Starco Lighting's sales order acknowledgement, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by Starco Lighting are approximate only, and Starco Lighting shall not be liable for, nor shall Starco Lighting be in breach of its obligations to Buyer, for any delivery made within a reasonable time taking into consideration current standards before or after the communicated delivery date. Starco Lighting agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary purchase order and delivery information sufficiently prior to the delivery date.
- b) In the event of any delay in providing the Products, Buyer will

give Starco Lighting written notice of such delay and a mutually agreed upon time period within which to cure. If Starco Lighting does not provide the Products within such time period, Buyer's sole and exclusive remedy is to cancel the affected portions of the Agreement. Starco Lighting will have no liability associated with the failure to provide Products.

- c) Title in the Products shall pass to Buyer upon the earlier of when the Products are made available to Buyer or upon placing the Products into the custody of a shipper.
- d) If Buyer fails to take delivery of Products ordered, then Starco Lighting may place the Products in consignment at Buyer's cost.
- e) In the event Starco Lighting's production is curtailed for any reason, Starco Lighting shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and provide to Buyer fewer Products than specified in the Agreement, as the case may be, which Buyer will accept.
- f) Starco Lighting has the right to provide all or some of the Products to the Buyer. All payments remain fully enforceable and due to Buyer regardless of any delay or state of the delivery or partial delivery of the Products. In addition to any other rights and remedies Starco Lighting may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum, or the maximum allowed by law statutory rate, whichever is lower, from the due date until payment has been made in full.

6) OWNERSHIP RIGHTS

Starco Lighting's design, development, manufacture, or sale of the Products to Buyer shall not be deemed to produce a work made for hire and shall not give a Buyer any intellectual property right interest in the Products or any portion thereof. Such rights shall remain Starco Lighting's sole property. All equipment, materials, software and other proprietary information of Starco Lighting whether or not made for, obtained or developed by Starco Lighting for the performance of this Agreement, shall remain Starco Lighting's sole property. Buyer's payment of any costs or expenses relating to any of the foregoing shall not be deemed to grant Buyer any ownership interest therein. Any transactions related to the Products hereunder do not convey any license, expressly or by implication, estoppel or otherwise under any patent, copyright, mask work or the like with respect to which Starco Lighting can grant a license covering complete equipment, or any compilation, assembly, combination, method or process in which any such goods are used as components. Starco Lighting reserves its rights under any such patent, copyright, mask work or the like.

7) FORCE MAJEURE

- a) Starco Lighting shall not be liable for any failure or delay in performance if:
 - i) such failure or delay results from interruptions in the Product manufacturing and/or delivery process; or
 - ii) such failure or delay is caused by Force Majeure as defined below or by law.
- b) In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without Starco Lighting being responsible or liable to Buyer for any damage resulting therefrom.
- c) The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond Starco Lighting's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which Starco Lighting cannot reasonably be required to execute its obligations including, but not limited to force majeure, default by one of Starco Lighting's suppliers, strikes or other labor disputes, riots or civil unrest, any breakage, malfunction or delay in delivery of any components, equipment or materials, earthquakes, floods, acts of terrorism, or other unforeseeable or unexpected events that substantially influence performance of the Agreement.

8) LIMITED WARRANTY AND DISCLAIMER

- a) Starco Lighting warrants that under normal use in accordance with the intended use, the Products, at the time of delivery to Buyer and for a period specified by the warranty, be free from defects in material or workmanship and shall substantially conform to Starco

Lighting's specifications for such Product or such other specifications as Starco Lighting has agreed to in writing, as applicable.

- b) Buyer may ship Products that do not comply with the warranty to Starco Lighting's designated facility only in conformance with Starco Lighting's then-current return material authorization policy.
- c) Notwithstanding the foregoing, Starco Lighting shall have no obligations under warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, use other than as set forth in the user manual, neglect, improper installation or accident, or as a result of improper repair, alteration, modification, storage, transportation or improper handling.

9) LIMITATION OF LIABILITY

- a) IN NO EVENT SHALL STARCO LIGHTING BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES BY BUYER. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF USE, PROMOTION OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS) HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY WAS NOTIFIED OR AWARE OF THE POTENTIAL OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, THIS EXCLUSION INCLUDES LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER. SUBJECT TO ANY OTHER LIMITATIONS ON STARCO LIGHTING'S LIABILITY IN THIS AGREEMENT, STARCO LIGHTING'S MAXIMUM LIABILITY, WHETHER RESULTING FROM BREACH OF CONTRACT OR NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE SPECIFIC GOODS AS TO WHICH THE CLAIM IS MADE. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER ANY TERM OF THIS AGREEMENT. SINCE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN DAMAGES, THE LIMITATIONS CONTAINED IN THIS SECTION MAY NOT APPLY TO THE PARTIES.
- b) Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. After the one-year term, Buyer waives any and all rights to such claims and any claims that have been brought or filed not in accordance with the preceding sentence are null and void.
- c) The limitations and exclusions set forth above in this Section shall apply only to the extent permitted by applicable mandatory law.

10) ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of Starco Lighting. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer may have with Starco Lighting and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

11) TERMINATION

- a) Without prejudice to any rights or remedies Starco Lighting may have under the Agreement or at law, Starco Lighting may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:
 - i) Buyer violates or breaches any of the provisions of the Agreement;
 - ii) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed

over Buyer, or any assignment is made for the benefit of creditors of Buyer.

- b) Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.
- c) In the event of cancellation, termination or expiration of an Agreement the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

12) GENERAL

This Agreement constitutes the entire understanding between Buyer and Starco Lighting with respect to the subject matter hereof and supersedes prior agreements, discussions and understandings between Buyer and Starco Lighting relating to the subject matter hereof. This Agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not set forth herein. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, and this agreement shall be construed, enforced and governed in accordance with New York state laws without giving effect to its choice of law provisions. The parties agree and submit to the exclusive jurisdiction of the New York State Court, 8th judicial district or the U.S. District Court for the Western District of New York. If any term or provision of this Agreement is held to be invalid or unenforceable, this agreement shall continue in force without such provision or as changed and interpreted to give best effect to the parties' intentions. Laws, regulations, orders or other restrictions on the export from the U.S.A. of any technology, products incorporating technology or information pertaining thereto that may be imposed by the U.S.A. government or any agency thereof apply. Notwithstanding anything else to the contrary, Buyer shall not export or re-export, directly or indirectly, any technology, products incorporating technology or information pertaining thereto to any country for which the U.S.A. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval. Starco Lighting shall provide information under its control for Buyer to obtain any import or export licenses required for Buyer to receive or ship goods sold. If goods purchased by Buyer are sold, or are incorporated into products that are sold, Starco Lighting rejects provisions or clauses required to be passed on to Starco Lighting pursuant to said contract and such provisions or clauses shall not be deemed included or binding on Starco Lighting unless accepted in writing by Starco Lighting's authorized representative. This Agreement may be amended, changed, modified, waived or discharged only by a writing signed by the party against whom enforcement is sought. No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default of the other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default. Waiver, permit, consent or approval of any kind or character of any breach or default must be in writing signed by the party against whom enforcement is sought. If any dispute arises out of or is related to this Agreement, the parties shall first try in good faith to settle the dispute by mediation in Erie County, New York. Either party may initiate mediation by delivering a written request to the other party. Within 10 calendar days of such request, the parties shall confer to select a mediator. If the parties fail to agree upon a mediator, either party may request that the Judicial Arbitration and Mediation Services (JAMS) appoint a mediator. The prevailing party in any action or proceeding to enforce or interpret this Agreement shall be entitled to recover its reasonable expenses including without limitation attorney's fees.