

# ERCO

General Terms and Conditions of Sale  
ERCO Lighting Inc.  
Effective January 1<sup>st</sup>, 2006

## 1. Standard Payment Terms

Net 30 days pending credit approval.  
2 % monthly service charge after 30 days.  
ERCO reserves the right to extend credit terms at their own discretion.

## 2. Prices, Quotations, Trade Descriptions, Specifications

Unless otherwise indicated, all prices and quotations shall be valid for a period of up to 90 days from the date of quotation and are subject to these Terms and Conditions. ERCO reserves the right to withdraw or change any quotation at any time for any reason prior to ERCO's written acknowledgment of any purchase order. Possession of the distributor net price list does not constitute in itself an offer to sell or a current price. All prices quoted shall be exclusive of lamps. ERCO takes all reasonable precautions to ensure that the price quotations, descriptions, illustrations, and technical data in ERCO's catalogs, distributor net price lists, and any of its other publications (collectively, "ERCO Information") are correct at the time of printing, but shall not be responsible for any errors or omissions. All ERCO Information is intended as guidance only and ERCO reserves the right to change such information at any time. ERCO endeavors to correctly ship quantities ordered. It shall be the responsibility of the buyer to verify quantities against drawings and final specification.

## 3. Purchase Orders

Purchase orders shall be made out to and sent to ERCO Lighting, Inc., 160 Raritan Center Parkway Suite 10, Edison, NJ 08837, and shall be deemed accepted only upon issuance of a written acknowledgement of such order by ERCO. Acceptance of any purchase order placed by buyer shall automatically bind buyer to these Terms and Conditions and such purchase order shall become a part hereof. ERCO agrees to furnish the merchandise covered by its distributor net price list only subject to these Terms and Conditions.

## 4. Minimum Order

Any purchase order of less than US\$ 100 net value shall be subject to a minimum billing of US\$ 100.

## 5. Shipments

Freight on individual shipments of US\$ 2,500 or more are FOB shipping point, prepaid and allowed. Freight on individual shipments of US\$ 2,499.99 or less to a destination within the Continental USA shall be prepaid by ERCO and billed to buyer (at a rate of 25% of the cost of goods sold). Freight on shipments (of or exceeding US\$ 2,500) made to a destination outside the Continental USA including, but not limited to, Hawaii, Alaska, Puerto Rico, or any foreign country, are paid by ERCO to a Continental USA forwarder's warehouse determined by the buyer and such shipments are the buyer's responsibility beyond such point (including, without limitation, cost for export packing and handling and customs or taxes and tariffs). Shipments of US\$ 2,499.99 or less to a destination outside Continental USA are buyer's sole responsibility (including, without limi-

tation, freight, insurance, cost for export packing and handling, and customs or taxes and tariffs). All shipments are FOB shipping point. In all events, ERCO retains the right to select the carrier, method, and route of shipment for which it bears the cost. ERCO reserves the right to make partial shipments unless otherwise stipulated in buyer's purchase order. Each such partial shipment will be invoiced by ERCO at time of shipping and shall be paid by buyer when due, without regard to subsequent shipments. Delay in any partial shipment shall not relieve buyer of its obligation to accept the remaining shipments of the order. ERCO shall have the right to stop delivery at any time and the discretion to terminate any order if buyer defaults on payment of any shipment after it has become past due for payment. Special methods of shipment such as, but not limited to, overnight courier, any other express delivery, or shipments in any specified manner upon buyer's request, shall be buyer's sole responsibility. If ERCO is notified by buyer not to deliver merchandise after said merchandise has already been fabricated according to buyer's order and is ready for shipment, then buyer shall pay reasonable storage charges until such merchandise is released and accepted by buyer. If any shipment made in accordance with buyer's instructions is refused for any reason, then buyer shall be responsible for payment as if goods were accepted at time of delivery and buyer shall pay for any rehandling and reshipping charges and all reasonable storage charges as they are incurred.

The customer shall undertake to ensure the disposal of the products supplied. In case of a resale, the customer shall pass this obligation on to its buyer.

## 6. Title, Risk of Loss, and Delayed Shipments

Regardless of the shipping arrangements made, title and risk of loss to the products shall pass to buyer upon delivery to a carrier. ERCO shall not be liable for any loss of or damage to the products resulting after delivery to such carrier. The carrier shall be liable for any loss, damage, or shortage, whether apparent or concealed, which occurs during transit. Unless products have been checked on receipt they shall be signed as "Unexamined." Claims for loss, damage or shortage in transit shall be made by buyer to carrier directly.

Any delivery dates quoted are given and intended as estimates only and ERCO shall not be liable for any loss or damage resulting from delayed shipments on a later date than the date quoted. Any claims regarding alleged shortages or alleged shipping errors must be made within 30 days of receipt of goods in writing to ERCO, or else such Claims will be waived.

## 7. Warranty, Disclaimer and Remedies

ERCO warrants for a period of 24 months from the shipment date ("Warranty Period") that the products are free from any manufacturing defects so long as the same are utilized in accordance with the final specifications. Lamps are expressly excluded from this warranty. Ballasts, transformers and dimmers are warranted separately by their respective manufacturers and only to the extent of their individual warranty. **IT IS EXPRESSLY UNDERSTOOD THAT ERCO MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. SPECIFICALLY, ERCO MAKES NO REPRESENTATIONS OR WARRANTIES**

**AS TO THE APPLICATION OR USE OF THE PRODUCTS FOR A PARTICULAR PURPOSE. INSTALLATION OR SERVICE BY A NON-LICENSED ELECTRICAL CONTRACTOR, REPAIRS OR ALTERATIONS OUTSIDE OF ERCO'S FACTORY, ABUSE, NEGLIGENCE OR ACCIDENT AS WELL AS ANY OTHER IMPROPER INSTALLATION, APPLICATION OR USAGE OR THE USE CONTRARY TO ERCO'S PRINTED INSTRUCTIONS, IF ANY, OF ANY PRODUCT OR PARTS OF PRODUCTS VOIDS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED.**

Any manufacturing defect shall be proven and notified in writing to ERCO. Defective products must be returned to ERCO Lighting, Inc., 160 Raritan Center Parkway, Suite 10, Edison, NJ 08837, during the Warranty Period. ERCO may, at its option, repair the defective products or replace such products with conforming products of like size and quantity and in conformity with the specifications as set forth on the purchase order. Repaired products or new replacement products will be shipped to buyer in accordance with the shipment provisions contained herein.

**ERCO'S LIABILITY TO BUYER SHALL IN NO EVENT EXCEED 100 % OF THE AMOUNT HAVING BEEN ACTUALLY PAID TO ERCO WITH RESPECT TO THE SUBJECT PRODUCT. BUYER ACKNOWLEDGES AND AGREES THAT ERCO SHALL IN NO EVENT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR, AND BUYER HEREBY WAIVES ANY RIGHT TO CLAIM, ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EXPENSES, LOST PROFITS, LOST SAVINGS OR OTHER DAMAGES ARISING OUT OF THE USE OR INTENDED USE OR OTHERWISE IN CONNECTION WITH THE PRODUCTS.**

## 8. Cancellations and Returns

Merchandise may not be cancelled or returned without written authorization from ERCO. ERCO reserves the right to charge for costs involved in accepting any such cancellation or return. Custom products (manufactured to special non-standard design) may not be cancelled or returned under any circumstances.

Any request to return products must be submitted to ERCO within 60 days of shipment. Any such request may be approved by ERCO only and subsequent returns are subject to a written Returned Goods Authorization (R.G.A.) issued by ERCO. Products shall be returned within 30 days from issuance of the R.G.A., if any, shipment paid by buyer, to ERCO's location in Edison, NJ, in the original, unopened packing. All returns are subject to inspection. A restocking charge of 25% up to 100% of invoice value shall be incurred upon receipt of product.

## 9. Copyright

All trademarks, drawings, descriptions, and other information issued by ERCO shall remain the property of ERCO together with the copyright and patents therein.

## 10. Force Majeure

ERCO shall not be responsible or liable for any delay or failure to deliver any of the products if such delay or failure results directly or indirectly from any act of God, war, riot, insurrection, embargoes, acts of civil or military authorities, fires, floods, explosions, accidents, strikes, lockouts, differences with workmen, delays in transportation, shortage of fuel, labor or materials, delays of suppliers, capacity short-

tages, infringement claims that cannot be resolved or can only be resolved through the payment of royalties or incurrence of other monetary obligations by ERCO, governmental restrictions, prohibitions or allocations (including any statute, ordinance, regulation, or order of any governmental body), or any other cause beyond the reasonable control of ERCO. Any such event or circumstance shall release ERCO without penalty from performance, in whole or in part, of its obligations hereunder.

## 11. Indemnification

Buyer hereby indemnifies and holds harmless ERCO, its directors, officers, employees, agents and its affiliates and their respective directors, officers, employees, and agents from and against any and all injuries, damages, costs, losses, penalties, demands, claims, actions, causes of action, judgements, assessments, obligations, liabilities, and expenses, including, without limitation, attorneys' fees, which in any way arise out of, or by reason of, or are claimed to arise out of, or by reason of, the use or misuse of the products hereunder, excepting only such injuries, damages, costs, losses, penalties, demands, claims, actions, causes of action, judgements, assessments, obligations, liabilities, and expenses which have been demonstrated and proven to be resulting from the sole gross negligence or willful misconduct of ERCO. The intent hereof is that the buyer shall indemnify and hold harmless ERCO, its directors, officers, employees, agents and its affiliates and their respective directors, officers, employees, and agents to the maximum extent permitted by law. Buyer shall pay ERCO's expenses, including, without limitation, reasonable attorneys' fees, incurred as a result of buyer's default in the performance of any of the buyer's obligations hereunder.

## 12. Applicable Law

The validity, interpretation, and legal effect of these Terms and Conditions shall be governed and construed in all respects by the laws of the State of New Jersey, without regard to the conflict of laws provisions thereof.

## 13. Arbitration

Any controversy or claim arising out of or relating to these Terms and Conditions or the validity or breach hereof, shall be settled by arbitration in New York, NY, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgement upon the award rendered may be entered in any court of competent jurisdiction.

## 14. Severability

In the event that any provision of these Terms and Conditions shall be found to lack validity or become void, the remaining provisions hereof shall remain in force. ERCO Lighting USA reserves the right to make any changes as it deems suitable.

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