

STANDARD TERMS AND CONDITIONS OF SALE

1. Applicable Contract Provisions. These terms and conditions, together with any documents referred to herein, are the sole and complete agreement ("Agreement") between US Luminaire, LLC ("Seller") and you, the person or entity ordering Products from Seller ("Buyer"), respecting your purchase of the Products and supersede all prior oral and written understandings. Unless otherwise expressly agreed to by Seller in writing, any different or additional terms and conditions proposed by Buyer are hereby objected to and rejected and shall be of no effect. Neither Seller's delivery of the Products nor any other action at any time on the part of Seller shall constitute acceptance of such additional or different terms. Buyer shall be bound by all the terms of this Agreement when Buyer accepts this Agreement by any statement, act or course of conduct which constitutes acceptance under applicable law, including failure to object in writing hereto within a reasonable time and acceptance of delivery of the Products.
2. Description of Products. The products subject hereto are those described on your invoice or your order confirmation (the "Products").
3. Purchase Price and Terms of Payment.
 - a) Price. The price of the Products shall be the price quoted by Seller as of the time of Seller's acceptance of the order as to each applicable Product being purchased. Unless otherwise specified by Seller, prices are in United States currency. Price quotations are subject to change without notice. Typographic or other clerical errors in stated prices are subject to correction by Seller. A service charge of \$25 will be assessed for any order less than \$200.
 - b) Credit and Terms of Payment. Acceptance of any order is subject to the discretion of Seller. Unless otherwise provided in writing by Seller, payment in full is due thirty (30) days from invoice date if Seller has extended credit to Buyer (acting in Seller's sole and exclusive discretion) and prior to or on delivery in all other circumstances. Seller may alter or revoke credit terms at any time without notice. If Buyer makes payment via credit card, Seller has the right to charge a three and a half percent (3.5%) convenience fee. Orders being paid via credit card may experience a delay in delivery for processing.
 - c) Buyer's Financial Condition; Insecurity. If, in Seller's sole judgment, Buyer's financial condition or any other circumstance causes Seller to be insecure with respect to Buyer's performance of any obligation under this Agreement, Seller may accelerate, and demand immediate payment of any amounts owed Seller, cancel this Agreement and/or suspend performance.
 - d) Sales and Similar Taxes; Shipping Costs; Insurance. The purchase price does not include, and the Buyer shall pay (or reimburse Seller on Seller's demand for), a) delivery, freight and associated charges, b) insurance, and c) all excise, sales, use, personal property, inventory or similar taxes, charges or levies imposed on or in connection with the sale or use of Products.
 - e) Late Payment Fee. Any amount not paid when due will be subject to a late payment fee computed daily at a rate equal to four percent (4%) per month, or the maximum permitted by law, whichever is less, and will be added to the unpaid balance on all amounts not paid on or before the due date, and any such late payment fee shall be payable on demand in full. Without limiting its rights and remedies, Seller may reject purchase orders in whole or in part and recall any goods in transit, until Buyer's account, including all costs of collection and late charges, is paid in full.
 - f) Stock Availability. Orders are subject to stock availability.
 - g) Purchase for Resale. Buyer represents and warrants to Seller that Buyer is a retailer of Products and is purchasing Products for resale in the ordinary course of its business and that it shall furnish Seller with a resale certificate upon request for each State in which it operates, and that Buyer is properly registered with each such State as a retailer.
4. Shipment Delivery and Terms of Acceptance.
 - a) Shipment. Seller will package the Products for shipment in accordance with its standard practices. All shipments shall be delivered by Seller to the Buyer's designated point of delivery at the Buyer's expense. The carrier shall be deemed to be Buyer's agent, and Buyer shall make all claims with respect to damage in transit against the responsible carrier. Freight will be prepaid and allowed by Seller on any order totaling \$2,000 or more, in one shipment to one location within the limits of the continental United States.
 - b) Title to Products, Risk of Loss. Title to and all risk of loss concerning the Products shall pass to Buyer upon delivery to a common carrier, or to any private carrier designated by Buyer. Buyer's rejection of any Products shall not shall not shift such risk until the Products are returned to Seller, freight prepaid, pursuant to Seller's written authorization. Buyer hereby expressly acknowledges and agrees that California Commercial Code Section 2510 shall not apply to this Agreement.
 - c) Delivery Schedule. Any delivery dates are estimates only based on prevailing conditions and Seller's failure to meet the same shall not be deemed a breach of this Agreement.
 - d) Force Majeure. Seller shall not be liable to Buyer for any delay or failure of delivery or of any other performance caused in or in part by any contingency beyond Seller's reasonable control, including, without limitation, acts of any government or any agency or subdivision thereof or shortage of or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices or from regular sources.

- e) Inspection and Acceptance. Buyer shall inspect all shipments upon arrival and shall notify Seller in writing of any shortages or other failures to conform to this Agreement which are reasonably discoverable within seven (7) days upon arrival.
 - f) Cancellation or Modification of Order. Buyer may not cancel or modify any order accepted by Seller, unless Seller consents in writing to such cancellation or modification (acting in Seller's sole and exclusive discretion) and Buyer pays Seller for all damages incurred by Seller due to such cancellation. Seller shall have the right to make partial deliveries and to ship up to forty (40) days in advance of shipping date.
 - g) Returns. Products may not be returned to Seller unless Seller consents in writing (acting in Seller's sole and exclusive discretion) and assigns a Return Material Authorization (RMA) number. Any unauthorized returns or shipping containers which do not bear a Return Material Authorization number will be returned to the Buyer at the Buyer's expense. Return shipments must be prepaid, insured, and shipped at the Buyer's expense. Returned merchandise must be in its original sealed cartons. All returned merchandise must be in salable condition to qualify for credit. All returns will be subject to inspection prior to receipt and credit once the product arrives at the Seller's facility. No special products, non-stocked products, custom-made products, outdated or modified version of cataloged Seller stocking items may be returned by the Buyer. Except for products considered by Seller to be defective in workmanship or materials, all returns will be subject to a minimum 35% handling and inspection charge, and a deduction will be made for freight expense of the original shipment. Merchandise accepted for return must be shipped prepaid to the destination specified by Seller.
5. WARRANTIES LIMITATIONS OF WARRANTIES, DISCLAIMER OF WARRANTIES AND LIMITATION OF DAMAGES.
- a) Limited Warranty to Buyer. Seller's sole warranty to Buyer as to Products is the limited warranty set forth in Seller's US Luminaire LLC Limited Warranty Policy ("Limited Warranty Policy") published at its website <http://usluminaire.com/Resources/warranty-terms>. The terms and conditions of the limited warranty are set forth in the Limited Warranty Policy. Seller may amend its Limited Warranty Policy at any time, acting in its sole and exclusive discretion and Buyer hereby agrees all such amendments.
 - b) DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SUBPARAGRAPH A ABOVE, SELLER PROVIDES PRODUCTS AS-IS AND MAKES NO OTHER REPRESENTATIONS OF WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THEIR MERCHANTABILITY, THEIR QUALITY, THEIR NONINFRINGEMENT, OR OTHERWISE.
 - c) LIMITATION OF REMEDIES. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, COMPENSATORY, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, PROFITS, BUSINESS OR GOODWILL WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. SELLER IS ONLY BOUND TO THE WARRANTY DESCRIBED IN SUBPARAGRAPH A ABOVE. NO OTHER WARRANTY OR GUARANTEE GIVEN BY ANY PERSON OR ENTITY WITH RESPECT TO ANY PRODUCT SHALL BIND SELLER. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY WITH REGARD TO THE SALE OR USE OF ANY PRODUCT EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCT IN QUESTION. BUYER AGREES THAT, UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY ACTION BY BUYER, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT OR THE SALE OF THE PRODUCTS MUST BE BROUGHT WITHIN ONE YEAR AFTER THE DATE ON WHICH THE PRODUCTS IN QUESTION WERE DELIVERED TO BUYER OR THE DATE ON WHICH THE EVENT GIVING RISE TO THE ACTION OCCURRED, WHICHEVER IS EARLIER.
6. Default. In the event of any default by Buyer, Seller may exercise any and all rights and remedies provided by law and such rights and remedies shall be cumulative. Buyer shall pay to Seller on demand all losses, costs, damages and expenses (including without limitation reasonable attorney's fees and court costs), incurred by Seller in collecting any amounts owed by Buyer hereunder or arising from the inaccuracy of any representation or warranty of Buyer hereunder or breach of any obligation of Buyer hereunder.
7. Confidentiality.
- a) Buyer may acquire knowledge of Seller Confidential Information (as defined below) in connection with Products and/or its performance hereunder and agrees to keep Seller Confidential Information in confidence during and following termination or expiration of this Agreement. "Seller Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, pricing, personnel data, Work Product, and other material or information considered proprietary by Seller relating to the current or anticipated business or affairs of Seller that is disclosed directly or indirectly to Buyer. In addition, Seller Confidential Information means any third party's proprietary or confidential information disclosed to Buyer while providing Products to Buyer.
 - b) Buyer agrees not to copy, alter or directly or indirectly disclose any Seller Confidential Information. Additionally, Buyer agrees to limit its internal distribution of Seller Confidential Information to Buyer's employees who have a need to know, and to take steps to ensure that the dissemination is so limited. In no event will Buyer use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Seller Confidential Information. Buyer may disclose Seller Confidential Information that is required to be disclosed pursuant to a requirement of a government agency or law but only after Buyer provides prompt notice to Seller of such requirement and gives Seller the opportunity to challenge or limit the scope of the disclosure.
 - c) Buyer further agrees not to use Seller Confidential Information except while performing hereunder and will not use such Seller Confidential Information for its own benefit or for the benefit of any third party. All Seller Confidential Information is and shall remain the property of Seller. Upon Seller's written request, Buyer shall return, transfer or assign to Seller all Seller Confidential Information, including all Work Product, and all copies containing Seller Confidential Information.

- d) Work Product. "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, special tooling, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others that result from or relate to the Products. All Work Product shall at all times be and remain the sole and exclusive property of Seller. Buyer hereby agrees to irrevocably assign and transfer to Seller all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Buyer hereby waives any and all moral and other rights in any Work Product or any other intellectual property created, developed or acquired in respect of the Products. Seller will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Seller deems appropriate. All tools and equipment supplied by Buyer to Seller shall remain the sole property of Seller.
8. Patent Indemnity. In the event any Product is made in accordance with drawings, samples, specifications or manufacturing processes designated by Buyer, Buyer agrees to indemnify, defend and hold Seller harmless from any and all damages, costs and expenses (including attorney' s fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished to Buyer by Seller, or the use thereof, infringes any claim of any patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Seller brought upon such claim or claims.
9. Changes in Product Design or Manufacture. Seller shall have the right to change, discontinue or modify the design and construction of any of its products and to substitute material equal to or superior to that originally specified.
10. General Provisions.
- a) Applicable Law. The validity, performance and construction of this Agreement shall be governed by the laws of the State of Minnesota, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- b) Assignment. Buyer shall not assign or delegate any or all of its rights or obligations under this Agreement without the prior written consent of Seller, and any attempt to do so shall be null and void and constitute a material breach.
- c) Independent Parties. Seller and Buyer are independent parties and nothing in this Agreement shall make either party an agent, partner, joint venturer, or legal representative of the other. No party shall hold itself out contrary to the terms of this Section and no party shall become liable by any representation, act or omission of the other contrary to these provisions.
- d) No Third-Party Rights. This Agreement is for the sole and exclusive benefit of the parties hereto and their permitted successors and assigns. Nothing expressed or referred to in this Agreement will be construed to give any other person any legal or equitable right, remedy or claim under or with respect this Agreement.
- e) Exclusive Jurisdiction. The state and federal courts of the State of Minnesota shall have exclusive jurisdiction over any lawsuit or other legal proceeding arising out of this Agreement or relating to the Products. Seller and Buyer hereby consent to the jurisdiction of such courts.
- f) Modification and Waiver. No addition to or modification of this Agreement shall be binding upon Seller, and Seller shall not be deemed to have waived any provision of this Agreement, except pursuant to a written document signed by a duly authorized officer of Seller. Any party' s failure to take advantage of any default or breach of these Terms and Conditions by the other party shall not be, and not be construed to be, a waiver of said default, or waiver of any covenant, promise, term or condition on the part of said party to be kept and performed. A waiver of a particular default or breach shall not be deemed to be a waiver of the same or any other subsequent default or breach.
- g) Severability. If any provision of this Agreement is held to be unenforceable by final order of any court of competent jurisdiction, that provision shall be severed from this Agreement, and shall not affect the interpretation or enforceability of the remaining provisions of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding of the court.
- h) Debt Disputes. Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements or documents, shall be applied by Seller against the amount owing by Buyer with full reservation of all of Seller' s rights and without an accord and satisfaction of Buyer' s liability.
- i) Intellectual Property. Nothing in this Agreement is to be construed as a grant or assignment of any license or other right to Buyer of any of Seller' s intellectual property rights, whether patent, trademark, trade secret, copyright or otherwise. All improvements and developments related to the Products or the efforts of Seller and Buyer will be owned exclusively by Seller, and Buyer shall reasonably cooperate with Seller in confirming that result.
- j) Language. The parties have expressly required that these terms and conditions be prepared in the English language.
- k) Headings. The headings contained in these items and conditions are for convenience only and do not in any way interpret, limit or amplify the scope, extent or intent of any of the provisions.
- l) Amendments. Seller may amend this Agreement from time to time acting in its sole and exclusive discretion and the terms of this Agreement (as amended) that are in effect as of the date of Seller' s acceptance of an order of Products shall apply to such order. Buyer hereby accepts all such amendments.