



TERMS AND CONDITIONS OF SALE

1. General Terms

- a. These terms and conditions apply to the sale of the products described in the attached invoice (the "Products") by No. 8 Lighting Company ("Seller") to the Buyer specified on the attached invoice ("Buyer").
- b. Buyer agrees that these terms and conditions apply to the exclusion of any additional or different terms on any purchase order, acceptance form or any other communication submitted by Buyer.
- c. The invoice incorporating these terms and conditions, constitutes Seller's offer to sell the Products to the Buyer on the terms specified and, once accepted by Seller, constitutes the entire integrated agreement between Seller and Buyer relating to the sale of the Products and replaces and supersedes all previous negotiations, understandings, representations or agreements between Seller and Buyer relating thereto, whether written or oral or express or implied. Until accepted by Buyer, Seller may withdraw, cancel or amend the offer at any time and in any manner by notice in writing to Buyer. If not accepted by Buyer within thirty (30) days the offer shall be deemed to have unconditionally expired. Once accepted, Buyer may only cancel this order with Seller's prior written consent.
- d. No change or modification of any of these terms and conditions shall be valid or binding unless in writing and signed by an authorized representative of the party to be bound by such change or modification. Buyer is not entitled to assign any of its rights or obligations hereunder without the prior written consent of Seller.
- e. If there is any inconsistency or ambiguity between these terms and conditions and any other terms wherever specified, these terms and conditions shall prevail. In particular, Buyer acknowledges that any and all information contained in any catalogue or other marketing materials published by Seller is expressly subject to these terms and conditions and does not and will not give rise to any separate or additional liability on the part of Seller.
- f. Seller shall have no liability to Buyer arising out of any delay or other non-performance by Seller if such delay or non-performance is caused by circumstances beyond the reasonable control of Seller, including, without limitation, strikes or other work stoppages or lock-outs, fires, earthquakes, carrier delays, government interference, inclement weather, acts of God, war, riot, civil disobedience or terrorism.
- g. The agreement between Buyer and Seller shall be governed by the laws of the State of California.

2. Payment

- a. Unless otherwise specified in the invoice or Credit Terms have been established, a deposit of fifty percent (50%) of the specified contract price for the Products is payable with Buyer's acceptance of this offer. If not so paid, Buyer shall not be considered to have accepted Seller's offer. Payment of such deposit constitutes an unqualified acceptance of Seller's offer on these terms and conditions. The balance of the contract price (plus all freight, taxes and other costs payable by Buyer) will be invoiced by Seller prior to shipment and all such amounts are payable upon receipt of invoice. Products will not be shipped unless all sums have been paid in full. All payments are due in full and not by installments and are payable in U.S. dollars.

- b. Buyer is not entitled to any discount for early payment unless specifically agreed in writing by Seller.
- c. If payment is not received when due, Buyer will be liable to a late payment charge equal to one and one half percent (1.5%) per month of the overdue balance to compensate Seller for the cost of collection and its loss of the use of the money due. Buyer acknowledges that such late charges are reasonable and do not constitute a penalty. Additionally, returned checks will be subject to \$80 canceled check fee, collections costs and a 1.5% per month charge accrued on the last day of the month.
- d. Prices quoted do not include taxes. Unless Buyer pays applicable sales, use, excise, gross receipts, transaction privilege, retailers occupation or any similar tax on the purchase of Products (the "Applicable Taxes"), Buyer represents and warrants that it is purchasing the Products for resale and that Buyer possesses a currently valid resale permit or other tax exemption permit. Liability for any Applicable Taxes levied in connection with sales arising pursuant to these terms and conditions, or any penalty or interest charged due on such Applicable Taxes, will be the sole responsibility of, and be payable by, Buyer even if not collected originally by Seller. If Seller pays any Applicable Taxes, Buyer will immediately reimburse Seller for such amounts. Any withholding, value added or any similar tax of any foreign government levied in connection with any sale arising out of this contract will be the responsibility of and will be paid or reimbursed by the Buyer.
- e. If Buyer fails to make payment on the due date, Seller may in its sole discretion, and without waiving any other rights or remedies that Seller may have, suspend delivery on any unfilled orders placed by Buyer and/or cancel any such orders. Suspension of delivery or cancellation of such orders in these circumstances shall not constitute a breach of contract by Seller. Buyer agrees that the timely payment of all invoices by Buyer is a necessary condition precedent to any obligations of Seller to Buyer in connection with the sale of any Products.
- f. Notwithstanding Section 5 below, Buyer agrees that Seller may bring any proceedings in connection with the non-payment of any sums owed by Buyer to Seller in any federal or state court in Sonoma County, California. The prevailing party in any such proceedings shall be entitled to an award of reasonable attorneys' fees and costs in connection therewith.

3. Delivery

- a. The Products are sold FOB Seller's place of business (the "FOB Cotati"). In the absence of specific written instructions from Buyer, Seller will select a carrier from Cotati to the delivery address specified by Buyer. All risks associated with such shipments shall be borne by Buyer and the Seller shall have no liability with respect thereto. Buyer is responsible for all transportation, handling, insurance and other costs, expenses or charges connected with shipment of the Products to Buyer.
- b. Risk of loss or damage from any cause will pass to Buyer at FOB Cotati. Buyer is solely responsible for taking out such insurance as it may deem necessary or desirable.
- c. If Buyer requests Seller to postpone delivery, upon written agreement from Seller, Seller will store the Products at Buyer's expense in accordance with Seller's customary terms and conditions for such services. Buyer acknowledges that postponement of delivery will not change the due date for payment.
- d. Any delivery or shipping dates specified in the invoice are agreed to be estimates only. Buyer will have no claim against Seller as the result of any failure by Seller to deliver the Products by any specific date. Partial shipments will not be made by Seller unless expressly authorized in writing by Buyer.
- e. All claims for damages shall be waived unless presented in writing within ten (10) days of the actual delivery date together with reasonable supporting evidence.
- f. All claims for shortages shall be waived unless presented in writing within 24 hours of the actual delivery together with reasonable supporting evidence.
- g. All shipments must be verified upon receipt and signatures of acceptance from freight provider are considering acceptance of goods in good order unless action is taken as specified in 3(e) & 3(f).

4. Will Call

- a. All will call items are EX Works unless arranged in writing with Seller for FOB
- b. If FOB is arranged for Will Call orders title and liability for goods transfers to Buyer once goods are over the rail or through the gate of Buyers Vehicle.

5. Warranties and Limitations

- a. All Products will conform to sample and/or current specification sheets in terms of form, fit and function. Seller accepts no responsibility, express or implied, for voltage determination.
- b. All Products are warranted from manufacturer defects for five years from installation. Any claims regarding the Products must be made in writing addressed to Seller. Upon written notice from Buyer, the Seller, at its sole discretion may, repair in place, repair at factory or replace the defective product. Under this Warranty the Seller, at its sole discretion, may select and contract with local professionals to assist any work required in connection with assessment, repairs and/or replacement under this warranty. This warranty does not extend to any loss or damage caused by installation, alteration or repairs, or the use of the Products in connection with other equipment, installation or products that have not been specifically approved or authorized by Seller. Under no circumstances does this warranty extend to products that have not been supplied by Seller.
- c. SELLER'S LIABILITY WITH RESPECT TO ANY DEFECTIVE PRODUCTS UNDER THESE TERMS AND CONDITIONS WILL BE LIMITED TO THE REPAIR OR REPLACEMENT, WITHOUT CHARGE, OF THE DEFECTIVE PRODUCTS PROVIDED SUCH PRODUCTS ARE RETURNED TO SELLER AT BUYER'S EXPENSE OR, AT SELLER'S OPTION, THE CONTRACT PRICE FOR THE PRODUCTS IN QUESTION.
- d. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, WITH REGARD TO THE PRODUCTS EXCEPT AS SPECIFICALLY STATED ABOVE. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY OF THE PRODUCTS OR FITNESS FOR BUYER'S PURPOSE.
- e. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, DIRECT OR INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES INCURRED OR ALLEGEDLY INCURRED BY BUYER (OR ANY THIRD PARTY), INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS OR REVENUES, LOSS OR DAMAGE TO PROPERTY OR EQUIPMENT, LOSS OF CUSTOMERS OR ANY PUNITIVE DAMAGES ARISING OR IN ANY WAY RELATED TO THE SALE OF PRODUCTS WHETHER OR NOT SELLER MAY HAVE BEEN AWARE OF THE POSSIBILITY OF THE SAME.

6. Disputes

- a. ANY DISPUTES BETWEEN BUYER AND SELLER RELATING TO THE PHYSICAL CONDITION OF THE PRODUCTS SOLD BY SELLER TO BUYER HEREUNDER SHALL BE RESOLVED BY A SINGLE ARBITRATOR ACCORDING TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. ARBITRATION SHALL TAKE PLACE IN SONOMA COUNTY, CALIFORNIA. ALL DECISIONS OF THE ARBITRATOR SHALL BE FINAL, BINDING AND CONCLUSIVE ON THE PARTIES AND ARBITRATION SHALL BE THE ONLY METHOD OF RESOLVING SUCH DISPUTES. EACH PARTY WILL BEAR ITS OWN COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) IN CONNECTION WITH ANY SUCH ARBITRATION.



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