

NO. 8 LIGHTING - TERMS AND CONDITIONS OF SALE

1. General Terms.

- a. These terms and conditions ("Terms") apply to the sale of the merchandise described in the attached invoice (the "Products") by No. Eight Lighting Company, a California corporation, doing business as No. 8 Lighting ("Seller") to the Buyer specified on the attached invoice ("Buyer").
- b. These Terms 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 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 Seller's offer at any time and in any manner by notice in writing to Buyer. If not accepted by Buyer within 30 days, Seller's offer automatically and irrevocably expires.
- d. No change or modification of any of these Terms 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 may not assign any of Buyer's rights or obligations hereunder without the prior written consent of Seller.
- e. If there is any inconsistency or ambiguity between these Terms and any other provisions wherever specified, these Terms shall control and prevail.
- f. 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 does not and will not give rise to any separate or additional obligation or liability on the part of Seller.
- g. 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, failure to receive Buyer's timely payment, strikes or other work stoppages or lock-outs, fires, earthquakes, outages, carrier delays, government interference, road blocks, weather, acts of God, war, riot, civil disobedience, pandemics, or terrorism.
- h. The agreement between Buyer and Seller shall be governed by the laws of the State of California.
- i. Shipping and handling charges are subject to change.

2. Payment.

- a. Unless otherwise specified in the invoice, or credit terms have been approved in writing by Seller, payment of 50% of the specified invoice price for the Products is payable at the time of 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. The balance of the invoice 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 amounts 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 signed by Seller.
- c. If payment is not received when due, Buyer will be liable to a late payment charge equal to 1.5% per month of the overdue balance to compensate Seller for the cost of collection and its loss of the use of the amount 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, 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 these Terms 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 or these Terms 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 (Warranties and Limitations) and Section 8 (Disputes), Buyer understands and 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 any other associated expenses, fees, and/or costs arising 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 passes to Buyer at FOB Cotati and Buyer is responsible for purchasing adequate insurance policies and coverage.
- c. If Buyer requests Seller to postpone delivery, upon written agreement from Seller, Seller will store the Products for Buyer in exchange for a storage fee in the monthly amount of 5% of the purchase order. 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 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 considered acceptance of goods in good order unless action is taken by Buyer in keeping with clauses 3(e) & 3(f) above and these Terms.

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 Buyer's vehicle.

5. Warranties and Limitations.

- a. All Products will conform to sample and/or current specification sheets concerning form, fit, and function. Seller accepts no responsibility, express or implied, for voltage determination.
- b. All Products listed on the Seller's website at the time of purchase (other than LEDs and Power Supplies) are warranted for a period of 3 years from the original shipment date. All LEDs and Power Supplies listed on the Seller's website at the time of purchase are warranted for a period of 5 years from the original shipment date. Products that are not listed on the Seller's website at the time of purchase (including any LEDs and/or Power Supplies) are warranted for a period of 6 months from the original shipment date. Notices and claims regarding the Products must be made in writing addressed to Seller and delivered to customerservice@8lighting.com. Delivery of any such notice or claim shall be deemed received only upon reply email from Seller to Buyer. Following timely receipt of written notice from Buyer, the Seller, at its sole discretion, may repair in place, repair at factory, or replace any defective Product. Under this warranty, the Seller, at its sole discretion, may select and contract with local professional contractors to assist with all or 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 merchandise that have not been supplied by Seller.
- c. Seller's liability concerning any defective Product under these Terms is limited to the repair or replacement, without charge, of the defective Product, provided such Product(s) are returned to Seller at Buyer's expense or, at the Seller's option, the invoice price for such Products.
- d. Seller makes no representations or warranties, expressed or implied, with regard to the Products except as specifically stated in these Terms.
- e. Seller makes no other warranties or representations, expressed or implied, regarding the merchantability of the Products or fitness for Buyer's purpose.
- f. 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 Buyer 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. Cancellations.

- Orders for custom or specialty Products may not be cancelled. Otherwise, if, after Buyer has accepted Seller's offer and complied with Seller's offer provisions (including payment of 50% of the specified invoice price for the Products), Buyer then notifies Seller in writing of Buyer's intent to cancel Buyer's order:
- a. If Seller has commenced fulfilling Buyer's order, then Buyer is obligated to fulfill all of the provisions of the purchase order including final payment under these Terms.
 - b. If Seller has not commenced fulfilling Buyer's order, then Buyer's payment of up to 50% of the specified invoice price is not refundable, but Buyer has no further payment obligations to Seller.

7. Returns.

- a. No Product(s) may be returned by Buyer without prior written authorization in the form of a Return Merchandise Authorization (RMA) which has been issued by Seller expressly for the Product(s) to be returned.
- b. An RMA will be issued at the sole discretion of Seller and must be requested within 90 days of the original shipment date.
- c. In order to receive full credit, returned (non-defective) Products must be in their original sealed cartons and shipped to Seller at Buyer's expense.
- d. An RMA is only valid for 30 days and thereafter automatically and irrevocably expires.
- e. A 30% restocking fee may apply to all returned Products that Seller stocks.
- f. Custom or specialty Products are not returnable or refundable.

8. Disputes.

Any disputes between Buyer and Seller relating to the physical conditions of the Products sold by the Seller to Buyer hereunder shall be resolved by a single arbitrator according to the commercial arbitrator rules of the American Arbitration Association. Arbitration shall take place in Sonoma County, California. All decisions 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 such disputes.