

NO. 8 LIGHTING - TERMS AND CONDITIONS OF SALE AND WARRANTY

1. General Terms.

- a. These terms and conditions ("Terms") apply to the sale of the merchandise described in the attached invoice (the "Products") by Number Eight Lighting Company, a California corporation, doing business as No. 8 Lighting ("Seller") to the party 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 (individually and collectively, "Buyer Terms"), in the event of a conflict between the terms and conditions set forth herein and any Buyer Terms, these Terms shall control and prevail.
- c. The invoice incorporating these Terms constitutes Seller's offer to sell the Products to 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, warranties, 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 to any of these Terms shall be valid or binding unless in writing and signed by Seller and Buyer. In addition, the observance of any term of these Terms may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of Seller and Buyer. No failure on the part of a party hereto or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall constitute a waiver thereof and the waiver by any party of any right or remedy under these Terms on any one occasion shall not be deemed a waiver of such right or remedy on any subsequent occasion.
- e. Buyer may not, by operation of law or otherwise, assign any of Buyer's rights or obligations hereunder without the prior written consent of Seller.
- 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. In addition, Buyer acknowledges that Seller's catalogue and other marketing materials may be modified at any time without prior notice to Buyer.
- 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, governmental orders, outages, carrier delays, government interference, road blocks, weather, acts of God, war, riot, civil disobedience, pandemics, or terrorism.
- h. Shipping, freight, and handling fees and charges are subject to change.
- i. No provision of these Terms shall create a third-party beneficiary relationship or otherwise confer any benefit, entitlement or right upon any person or entity other than Seller and Buyer.
- j. These Terms shall be governed by the laws of the State of California. Each party hereby agrees that the venue for any action arising out of these Terms or related to the Products, or any portion thereof, shall be in Sonoma County in the State of California. The prevailing party in any legal action or proceeding arising out of or related to these Terms or the Products, or any portion thereof, shall be entitled to recover all costs and expenses incurred (including but not limited to reasonable attorney's fees and related expenses, court costs, expert fees and related expenses, alternative dispute resolution fees and related expenses, and others) in connection with any such action or proceeding.

2. Payment.

- a. Should Buyer elect to pay via credit card, a 3% surcharge shall apply to such transactions. The representative of Buyer submitting credit card information to Seller for processing hereby represents and warrants that they have authority on behalf of Buyer to take such actions. Unless otherwise specified in the invoice, or credit terms having been approved in writing by Seller, payment of 50% of the specified invoice price for the Products is payable upon Buyer's acceptance of this offer. If not so paid, Buyer shall be considered to have rejected 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 due and payable upon receipt of invoice. Products will not be shipped unless all amounts have been paid (in U.S. Dollars) in full. All payments are due and payable in full and not by installments and not subject to any form of offset.
- b. Buyer is not entitled to any discount for early payment unless specifically agreed in writing signed by Seller.
- c. Past due amounts shall bear interest at the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate permitted by law, from the date due until the date such amount is paid. Payment of such interest shall be made when such amount is paid. Payment of such interest shall not excuse or cure any default by Buyer under this Agreement. The interest on such past due amounts is to compensate Seller for the cost of collection and other related losses incurred by Seller. 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 the above referenced late payment charges.
- 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 ("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 shall immediately upon demand

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 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 of 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.

3. Delivery.

- a. The Products are sold FOB Seller's place of business. 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. Seller will maintain title and risk of loss of all Products until such time that it passes control of such Products to Buyer for delivery, regardless of location, at such time title and risk of loss shall shift to Buyer. For avoidance of doubt, control of Products shall be deemed to have passed from Seller to Buyer at that point when, regardless of location, Seller surrenders Product (i) to Buyer or any agent of Buyer; (ii) to Buyer or any agent of Buyer for purposes of loading such Products for delivery, or (iii) to any common or contract carrier for delivery to Buyer or its accounts, agents, or assigns. Buyer is responsible for purchasing adequate insurance policies and coverage to cover its risk of loss.
- 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) and 3(f) above and these Terms.

4. Will Call.

- a. Subject to the risk of loss provisions of clause 3(b) above, all will call items are EX Works unless arranged in writing with Seller for FOB.

5. Warranties.

- 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 Seller's website at the time of purchase, other than LEDs and Power Supplies, (individually and collectively, "Misc. Equipment") are warranted for a period of 3 years from the original shipment date. All LEDs and Power Supplies listed on Seller's website at the time of purchase (individually and collectively "Lighting Equipment") are warranted for a period of 5 years from the original shipment date. All 800 Series retrofit LEDs and Power Supplies for installation of existing 800 Series housings (collectively, "Retrofit Equipment") are warranted for a period of 2 years from the original shipment date. Products not listed on Seller's website, or not otherwise provided for hererin, 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, Seller, at its sole discretion, may repair in place, repair at factory, or replace any defective Product. Under this warranty, 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.
- c. Notwithstanding the warranty provisions set forth in clauses 5(a) and 5(b) above (collectively, the "Warranty") or anything to the contrary set forth herein, the following limitations and exclusions apply to the Warranty:
 - The Warranty is not transferable or assignable by operation of law or otherwise.
 - The Warranty does not apply to any Product modified, altered, or improperly installed.
 - The Warranty does not apply to any Product damaged after Buyer has assumed the risk of loss thereof.
 - In the event any Products are removed from their original installation location, the Warranty, regarding such Products, shall automatically terminate and be of no further force and effect.
 - In the event the ownership of the location in which the Products, or any portion thereof, were installed is sold or otherwise transferred, by operation of law or otherwise, the Warranty, regarding all Products installed at such location, shall automatically terminate and be of no further force and effect.
 - In the event any Misc. Equipment, Lighting Equipment, or Retrofit Equipment is returned and replaced in accordance with the return provisions of Section 8 below, such equipment shall be warranted for a period of one year from the return shipment date, or five years from the original product shipment date, whichever is longer.
 - The Warranty does not include any labor or materials costs, fees, or expenses, of any kind, and any such costs, fees, or expense incurred by Buyer, or others, related to the replacement or reinstallation of any Products warranted hereunder shall be the sole responsibility of Buyer.
 - 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.

- 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 Seller's option, the invoice price for such Products.
- Seller makes no representations or warranties, expressed or implied, with regard to the Products except as specifically stated in these Terms. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY OTHER THAN AS PROVIDED ABOVE.

6. Liability Limitations.

- a. Seller limits its obligations to repair or replacement as set forth in the Warranty, subject to limitations and exclusions set forth in clause 5(c) above, the replacement of nonconforming Products as set forth herein and subject to the return provisions of Section 8 below, and Buyer (nor any third party) shall have any other remedy against Company. If Seller fails to repair or replace defective or nonconforming Products within a reasonable time, Buyer may, subject to the return provisions of Section 8 below, return the defective or nonconforming Products in exchange for a full refund of the purchase price for such Products.
- b. Under no circumstances shall Seller be liable for any form of special, direct or indirect, economic, incidental, 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. The foregoing limitations of liability shall remain applicable even if Seller was aware of the potential of such losses or damages.

7. 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.

8. Returns.

- a. Notwithstanding anything to the contrary set forth herein, 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 (an RMA will be issued at the sole discretion of Seller and must be requested within 90 days of the original shipment date).
- b. 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.
- c. An RMA is only valid for 30 days and thereafter automatically and irrevocably expires.
- d. A 30% restocking fee may apply to all returned Products that Seller stocks.
- e. Custom or specialty Products are not returnable or refundable.

9. Severability; Disputes. Should any provision in these Terms be found to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable. Any dispute or controversy regarding the construction or application of these Terms or the Products (each, a "Dispute") shall, on written request of one party served on the other, be submitted to binding arbitration. Arbitration shall be conducted by JAMS Mediation, Arbitration, and ADR Services ("JAMS"). Arbitration shall be conducted in Sonoma County, California, and in accordance with the California Arbitration Act, Section 1280-1294.2 of the California Code of Civil Procedure, provided such rules are not inconsistent with the express provisions set forth in these Terms. Arbitration shall be conducted by one (1) arbitrator from JAMS's panel, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Discovery may be conducted if determined necessary or appropriate by the arbitrator, but such arbitrator shall limit such discovery to the minimum necessary for preparation of the parties' prosecution and defense of any claim made in arbitration. Costs of arbitration (including attorneys' fees and expenses) shall be made a part of the arbitrator's award to the prevailing party. Arbitration pursuant to this Section 9 shall be the parties sole and exclusive venue for resolution of a Dispute.