

# 1. Standard Terms and Conditions of Sale Updated 4/05

## **PAYMENT TERMS:**

Net 30 days from date of invoice.

## **QUOTATIONS:**

The prices shown in Linear Lighting's price list or in any order acknowledgement are prices prevailing at the time. Linear Lighting reserves the right to change such prices at any future date. Unless otherwise specifically provided in writing, orders will be billed at prices prevailing at time of shipment.

Prices issued by a written standard quotation are firm for 30 days from date of quotation. Purchase orders received and acknowledged within this 30-day period will be price protected for shipment within 90 days from the date of the order.

Prices issued by a written non-standard quotation authorized by Linear Lighting's Home Office may offer price protection for a different period.

Releases for shipments beyond the price-protected period (standard or non-standard) will be increased in price at the rate of 1% per month.

Additions to orders already processed shall be considered separate orders and shall be priced accordingly.

All prices are subject to federal, city and state taxes, if applicable, unless appropriate exemption certificate is on file at Linear Lighting's Home Office.

All fixtures are sold without lamps, unless otherwise specified. When lamps are installed by Linear Lighting, they are installed for the convenience of the customer and Linear Lighting assumes no responsibility or liability whatsoever for damage or looseness of such lamps which may occur in transit.

## **PURCHASE ORDERS:**

The acceptance of the Buyer's purchase order is contingent upon written acknowledgement by Linear Lighting at its Home Office in the form of a letter or printed acknowledgement.

The acceptance of Buyer's order is expressly made conditional upon Buyer's assent to the terms and conditions stated herein and in Linear Lighting's printed acknowledgement. Linear Lighting agrees to furnish the merchandise covered by its Price List only upon such terms and conditions. In the absence of any written notification to the contrary; and by virtue of the issuance of a purchase order, Buyer shall be deemed to have accepted terms and conditions as stated herein and in Linear Lighting's acknowledgement. If there is any inconsistency between the terms and conditions stated herein and in Linear's acknowledgement, the terms and conditions contained in the acknowledgement shall control. Linear Lighting's failure to object to provisions contained in Buyer's forms shall not be deemed a waiver of the provisions of Linear Lighting's terms and conditions.

Cancellation of any order prior to release will result in a 25% cancellation charge. No order may be cancelled after release.

## **SPECIFICATIONS, VARIATIONS and ERRORS:**

Merchandise will be shipped in accordance with Linear Lighting's drawings.

In the event of a conflict between a customer's written order and a Linear Lighting drawing or specification sheet marked "approved", the Linear Lighting drawing or specification sheet shall prevail.

Linear Lighting reserves the right to change details of design, materials and finish in any way that will not alter installed appearance or reduce function and performance.

Every effort is made to avoid errors in catalogs, price sheets, specification sheets and other data. Linear Lighting will not accept responsibility for additional costs incurred in connection with errors of measurements, prices, descriptions etc. Orders containing such phrases as "all material to be supplied as per project plans and specifications", etc., are subject to separate written acceptance by Linear Lighting.

## **Linear Lighting Corp. 4/05**

31-30 Hunters Point Ave., Long Island City, NY 11101 • 718-361-7552 • Fax: 718-937-2747 • Web: [www.LINEARLTG.COM](http://www.LINEARLTG.COM)

**SPECIAL ITEMS:**

Orders for special items are not cancelable except on payment for work performed and materials purchased. Linear will calculate the incurred costs.

**PACKAGING:**

Method of packaging is at Linear Lighting's option.

If Buyer requires ancillary components to be delivered separately from the fixtures, then charges for additional packaging, handling and delivery shall be added to the price of the fixture.

Export packaging may be charged as an extra.

**DELIVERY AND TRANSPORTATION:**

All merchandise is sold, and all shipments are made, F.O.B. the Linear Lighting factory.

In all cases, domestic freight will be prepaid and charged. Foreign freight methods vary.

Linear Lighting will use its discretion in routing all shipments, and reserves the right to select carrier and truck size. If any shipment made in accordance with Buyer's instructions shall incur additional labor or carrier costs, such costs shall be paid by Buyer as invoices are rendered.

The shipment date mentioned on our order acknowledgement, if any, is Linear Lighting's best approximation of the probable shipment date and is not a fixed or guaranteed shipment date. Shipment of merchandise is subject to any and all delays due to any condition or happening whatsoever beyond Linear Lighting's control, including but not exclusive of strikes, fires, riots, wars, acts of God, inability to obtain materials, governmental regulations or other conditions. Linear Lighting shall not be responsible for any damage or loss resulting, whether directly or incidentally, from delayed shipments or its inability to ship as above.

Linear Lighting reserves the right to make shipment in installments unless otherwise expressly stipulated in the order acknowledgement. All such installments shall be separately invoiced and paid for when due, without regard to subsequent shipments. Delay in the shipment of any installment will not mitigate Buyer of its obligation to accept remaining shipments.

Linear Lighting reserves the right to refuse to make direct shipments to destinations outside Buyer's regular service area(s).

**PAYMENT:**

Buyer shall make payments as specified herein and Linear Lighting may suspend shipment or delivery until such payments are made. Linear Lighting reserves the right to charge a service charge of 1-1/2% per month, but not in excess of any lawful rate, if Buyer is delinquent in payment of invoices.

If, in the opinion of Linear Lighting, the financial condition of Buyer becomes impaired or unsatisfactory, Linear Lighting may at any time limit or cancel the credit of Buyer and, before delivering additional goods to Buyer, require Buyer to pay in cash for such goods and to pay for goods theretofore delivered. Failure by Buyer to make any such payments within 10 days after demand in writing shall constitute a breach of this agreement by Buyer. Approval of credit of one or more deliveries shall not be deemed a waiver hereof.

If any shipment made in accordance with Buyer's instructions is refused for whatever reason, Buyer shall be responsible for payment of such merchandise, in accordance with the terms hereof, as though such merchandise had been accepted at the time of original delivery. Buyer shall also be responsible for reasonable storage, handling and delivery charges and shall pay such charges as invoices are rendered.

Linear Lighting shall be entitled to reimbursement for all costs and expenses (including reasonable attorneys' fees) incurred by it in connection with collection of any amounts for goods sold in the event payment therefore shall not be made when due.

If Buyer notifies Linear Lighting not to deliver merchandise after such merchandise has been produced by Linear in accordance with the terms of sale or Buyer's prior instructions, then Buyer shall pay reasonable storage charges until such merchandise is delivered and accepted.

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**SECURITY INTEREST:**

Linear Lighting shall retain a security interest in all goods sold until the full amount of the purchase price (including any service charges) has been paid by Buyer. In the event Buyer shall default in payment of the purchase price, Linear Lighting shall have the right, in addition to and not exclusive of any other rights it may have under the Uniform Commercial Code or otherwise, to enter upon the premises where the goods are located and retake possession thereof, without notice, free from any claims of Buyer. At the request of Linear Lighting, Buyer will join Linear Lighting and any assignee of Linear Lighting in preparing, executing and causing to be filed any and all financing statements pursuant to the Uniform Commercial Code. Buyer hereby authorizes Linear Lighting and any assignee of Linear Lighting to file a financing statement signed only by Linear Lighting or such assignee in all places where necessary or appropriate to perfect any security interest which Linear Lighting or such assignee might be deemed to have in all jurisdictions where such authorization is permitted by law.

**LIMITED WARRANTY:**

Linear Lighting warrants that its products (other than ballasts) are free of defects in workmanship and materials. SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Linear Lighting, at its sole option, will repair or replace, F.O.B. our factory, freight prepaid any Linear Lighting product (other than ballasts) defective in workmanship or materials. Such repair or replacement is the sole and exclusive remedy against Linear Lighting and is limited to ONE year from date of shipment. Linear Lighting reserves the right to determine whether to repair or replace. No charge-back, or charge for labor or material, that does not have Linear Lighting's prior written approval will be honored, accepted or paid by Linear Lighting. Linear Lighting will not be responsible for any consequential or incidental damages in connection with any breach of its aforementioned warranty.

Ballasts are covered by separate ballast manufacturers' warranties. Linear Lighting does not make any warranties whatsoever as to ballasts and will accept no responsibility or liability whatsoever.

No agent, employee or representative of Linear Lighting has any authority to bind Linear Lighting to any affirmation, representation or warranty concerning goods sold by Linear Lighting and, unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included herein, or in Linear Lighting's acknowledgement or Buyer's purchase order, or in standard printed materials provided by Linear Lighting, it does not form a part of the basis of any bargain between Linear Lighting and Buyer and shall not in any way be enforceable by Buyer.

**CLAIMS AND ADJUSTMENTS:**

Claims for shipping errors or merchandise defects will be waived unless made in writing to Linear Lighting and within 30 days after receipt of merchandise.

Linear Lighting's sole responsibility and obligation in the event of defective merchandise shall be limited to the repair or replacement of the merchandise, at Linear Lighting's option, at its own cost and expense, and Linear Lighting shall not be responsible for any other damage or loss which may be sustained or claimed.

Buyer shall make claims for shortages, losses and apparent or concealed damages sustained in transit with the carrier.

Upon request, Linear Lighting will provide evidence of goods turned over to a carrier, but reserves the right to charge a reasonable fee for all proof of delivery requests.

**RETURNED GOODS:**

All goods produced by Linear Lighting have been done so at the request of the customer and to the customer's specifications. Even "standard" products have been customized with regard to run lengths; finish, wiring specs, voltage, pendant length, etc. Therefore, goods produced by Linear Lighting may not be returned for refund or credit.

**GENERAL:**

All additions, deletions or other changes to or in an order are subject to the foregoing terms and conditions. Possession of a price list is not in itself an offer to sell.

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