



## General Terms & Conditions of Sale

Litelab Corporation ("Litelab") shall sell and deliver to Buyer the described goods ("goods") only pursuant to the terms and conditions contained herein, which shall constitute the entire agreement between Litelab and Buyer. No other terms or conditions shall be of any effect unless agreed to in writing by Litelab. Buyer will be deemed to have agreed to these terms and conditions if Buyer accepts delivery of any part of the goods. Any additional or different terms or conditions contained in any purchase order of Buyer ("Order") or Buyer's response to these terms and conditions shall be deemed objected to by Litelab and shall be of no effect.

**1. ORDERS; INVOICES** - Orders issued to Litelab shall be deemed to have been issued by an authorized representative of Buyer. Invoices will be sent to Buyer at Buyer's address as set forth on the face hereof unless otherwise specified in Buyer's Order.

**2. TERMS OF PAYMENT** - Except as provided in this section 2, all invoices shall be due and payable upon receipt. Orders that include non-standard product require a 50% non-refundable deposit with the balance due prior to shipment. Credit terms for Orders for only standard products will vary with customer creditworthiness. A 50% deposit may be required. The minimum Order is \$500, which can only be waived with full pre-payment. Payment terms will be granted on an Order by Order basis at the discretion of Litelab. Litelab, without notice, may change or withdraw extensions of credit at any time, in which event Litelab may require cash payments and/or collateral security for account balances. All indebtedness outstanding for more than 30 days from the date of Litelab's invoice shall be subject to a late payment charge equal to the lesser of (i) 1 1/2% per month, or (ii) the highest rate permitted by applicable law. Should Litelab find it necessary to obtain assistance in collecting past due balances, Buyer shall pay Litelab's reasonable attorney fees, collection fees and court costs. If Litelab has to return a check to Buyer for any reason, Buyer shall pay Litelab a service charge of \$25.00 for each such check.

**3. FREIGHT** - Customer is responsible for all freight charges and handling charges. In the event goods require extra or special packaging due to the nature of the goods, the manner in which they will be transported or otherwise, Buyer is responsible for the extra charges therefore. All goods are sold FOB Litelab's factory, and with respect to international Orders, on a "DTA" (door to airport) basis unless otherwise specified. Additional information will be required before international Orders can be processed.

**4. DELIVERIES** - Title to and risk of loss for all goods shall pass to Buyer immediately upon Litelab's delivery thereof to the carrier. Shipments will be made via carrier selected by Litelab. Litelab will endeavor to ship in another manner requested by Buyer, at Buyer's expense. Litelab shall not be liable for shipment delays, or any loss or damage to goods while in transit, and all claims therefore shall be made immediately by Buyer to the carrier. Specified shipping date(s) are approximate only. Litelab reserves the right to deliver goods in installments unless expressly prohibited in the applicable Order. Installment deliveries will be invoiced by Litelab at time of shipment unless otherwise agreed in writing by Litelab. Delay in any installment delivery shall not relieve Buyer of its obligation to accept all remaining installment deliveries pursuant to an Order.

**5. FORCE MAJEURE** - Litelab shall not be liable to Buyer or any other person, and Buyer shall make no claim against Litelab, for any loss, liability, cost, damage or expense (each a "Loss") resulting from Litelab's failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdowns, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, or acts or regulations or priorities of the federal, state or local governments. Litelab's period of performance shall be extended for the period of such failure or delay, and when the event causing such failure or delay in performance shall cease, Litelab can complete its performance of an Order. Buyer agrees to make no claim for any Loss due to any such delay in the performance

of an Order, and agrees that any such Loss shall be fully compensated for by Litelab's completion of the Order. Buyer shall not impose any charge back, offset or other adjustment to the contract price which is not preapproved in writing by Litelab.

**6. PRICES, SPECIFICATIONS AND QUOTATIONS** - (a) Prices, delivery terms and specifications are subject to change without notice. Litelab's price list is not an offer to sell. (b) Litelab's written quotations to sell shall be binding upon Litelab only for 60 days from the date of the quotation, unless otherwise specified. Orders accepted by Litelab within the period designated in the quotation will be price protected for delivery for 90 days from the date of that Order. Litelab reserves the right to withdraw any price quotation at any time for any reason prior to Litelab's acceptance of an Order. (c) Prices for lighting products are quoted without lamps unless otherwise specified in an Order. If lighting products are furnished and/or installed by Litelab, it is for Buyer's convenience and Buyer assumes the risk of loss or damage to the products and lamps while in transit. (d) Litelab will exercise reasonable commercial efforts to avoid errors in its website, electronic communications, catalogs, price sheets and other publications, but hereby disclaims all liability therefore should any occur. (e) Prices shown on Litelab's price lists are prices prevailing at the date of their publication. Litelab reserves the right to change these prices without notice. Unless specifically provided otherwise in writing, Litelab will invoice Buyer at prices prevailing at date of shipment. Prices are subject to applicable federal, state and local taxes, duties and customs fees. (f)

Litelab shall treat additions to accepted Orders as separate Orders which will be priced and invoiced accordingly. (g) In the event of a conflict between an Order and Litelab's drawings or specifications with respect thereto which have been approved by Buyer, the approved drawing or specification shall in all cases prevail. (h) Each Order which is accepted by Litelab shall be independent of every other Order, and Litelab will not be bound by general or blanket instructions contained in or referred to in any Order. Order specifications and instructions must appear on the face of the Order itself. (i) If Buyer asks Litelab to delay shipment of any goods after they have been manufactured and made ready for shipment, Buyer shall pay for the goods and for storage charges until Litelab receives instructions from Buyer to ship the



goods. (j) If Buyer refuses to accept any shipment from Litelab, Buyer shall nonetheless be liable for the full payment thereof. Buyer shall also be liable for all of Litelab's rehandling, reshipping, restocking and storage charges. (k) Litelab reserves the right to change any design, material, mean or method of manufacturing its goods if the change does not alter the visible appearance of the goods nor adversely affect their performance or function. (l) Orders containing a phrase to the effect that "all material to be supplied as per project plans and specifications" are subject to Litelab's separate written acceptance. (m) Litelab reserves the right to assess (1) a minimum cancellation charge of \$25.00 when an Order is cancelled and (2) an additional charge of 50% of the net price of the Order, and (3) additional costs specifically related to the Order, if the Order is cancelled after it has been made ready for shipment. (n) All additions, deletions or other changes to an Order are subject to these terms and conditions. (o) Orders marked in effect "Hold for Release" will not be entered for processing until Litelab receives and accepts Buyer's written release, and invoices for such goods will be at prices prevailing at the date of their shipment. (p) Items specially manufactured to conform to customer's site-specific requirements, or purchased at customer's request, are cancelable only upon full payment of Litelab's quoted price therefor.

**7. SPECIAL ITEMS** – Orders for special or custom goods are not cancelable by Buyer, unless the goods have not yet been manufactured, and then only upon Litelab's receipt of Buyer's written notice of cancellation and payment of Litelab's invoice for Litelab's engineering and manufacturing work and special materials Litelab ordered after acceptance of the Order but prior to Litelab's receipt of Buyer's written cancellation. Cancellations of Orders must be in writing to be effective.

**8. RETURNS** – Before any goods may be returned to Litelab for a reason other than pursuant to Section 9(d), Buyer, within 90 days from Buyer's receipt of the goods, must request, in writing, a Return Material Authorization Number ("RMA") from Litelab's Customer Service Dept. Each request shall contain (1) the Order number and date, (2) an itemization of the goods being returned, (3) the reason for the requested return and (4) an attached copy of the invoice. If Litelab issues a RMA to Buyer, then Buyer may return such goods but only within 60 days from the date of the issuance of the RMA. Goods must be returned in the original, unopened, factory-sealed cartons, properly crated or packaged and shipped freight prepaid to Litelab. Special order, made-to-order, modified catalog items and discontinued goods are not subject to return unless due to Litelab's fault as described in Section 9(d), in which event such goods shall be returned in compliance with that Section. If Litelab provides Buyer with a RMA, and if Buyer has returned the goods as described in this Section 8, then Litelab will issue a credit to Buyer equal to Buyer's actual purchase price of the returned goods, less a 25% service charge for handling, inspection, repackaging and restocking, which in any event shall be not less than \$150.00. (d) An additional service charge of \$50.00 shall be charged to Buyer on all goods returned to Litelab without a valid and current RMA, regardless of whether or not Litelab agrees to accept the return of such goods.

**9. LIMITED WARRANTIES, LIMITATIONS OF LIABILITY AND CLAIMS** – Litelab shall have no warranty liability or obligations whatsoever with respect to goods which are not fully paid for. (a) All warranties are expressed in this Section 9 only and there are no other warranties, whether express or implied or statutory. Litelab hereby warrants to Buyer that goods manufactured by Litelab are (i) under normal use and service, in accordance with Litelab's recommendations and specifications, merchantable solely to the extent that they are free of defective workmanship and material, but not against normal wear and tear, and (ii) unless otherwise specified, are listed by a recognized testing laboratory or manufactured with components listed or recognized by a recognized testing laboratory. With respect to goods sold by Litelab but not manufactured by Litelab, Litelab shall make available to Buyer the manufacturer's warranty therefore but shall have no other liability therefore. With further respect to goods not manufactured by Litelab, warranty claims may be sent, and the related goods may be returned to Litelab as set forth in the last sentence of Section 9(d), and Litelab will, as an accommodation to Buyer, forward them to the manufacturer for settlement. Litelab shall not be responsible for any settlement which Buyer and the manufacturer of such goods may reach. (b) SOME GOODS MAY NOT CONFORM TO LOCAL CODES. LITELAB HEREBY DISCLAIMS ALL LIABILITY FOR CLAIMS, AND WILL REFUSE ALL REQUESTS FOR EXCHANGES OR RETURNS, RESULTING FROM THE PURCHASE OF GOODS WHICH DO NOT COMPLY WITH LOCAL CODES. LITELAB ALSO HEREBY DISCLAIMS LIABILITY FOR ANY FAILURE OF GOODS TO COMPLY WITH STANDARDS IMPOSED UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT AS AMENDED FROM TIME TO TIME. (c) Litelab shall have no warranty liability or other liability to Buyer or to any other person, for any Loss, under any circumstance, if any goods or any parts or components thereof have been (1) repaired or altered by anyone other than Litelab, (2) misused or neglected or (3) used for a purpose not intended, or in a manner contrary to, prevailing commercial practices or to Litelab's printed instructions or specifications. (d) Buyer waives all claims for defective or nonconforming goods, shortages, and other errors in shipping unless Buyer is in complete compliance with this Section 9(d). To return any such goods, Buyer shall first obtain an RMA from Litelab's Customer Service Dept. If the claim is for defective goods, Litelab must receive Buyer's written claim and the defective goods within 30 days after the occurrence which gave rise to the claim, but in no event beyond 365 days from the date of shipment of the defective goods. If the claim is for shortages or for any other error in shipping nonconforming goods, then Litelab must receive Buyer's written claim within 30 days after receipt of the goods. Each claim shall contain (1) the RMA designated in a conspicuous place, (2) the Order number and date, (3) an itemization of the missing goods or the goods being returned or both, (4) the nature of Litelab's fault and (5) a copy of the invoice. Buyer shall send the goods properly crated or packaged and freight prepaid to Litelab. (e) Buyer's exclusive remedy and Litelab's sole liability under this Agreement on any claim, whether tort, contract, warranty or otherwise, shall be limited, at Litelab's option either to repair or to replace without charge the goods returned pursuant to Section 9(d) and ship them back to Buyer, FOB Litelab's factory, freight prepaid. In lieu of making any factory repairs or replacing any goods, Litelab reserves the right to refund the purchase price of the goods or to make field repairs, in which event Buyer shall cooperate with Litelab in arranging for the same. Litelab shall endeavor to promptly resolve claims for shortages or for other errors in shipping nonconforming goods, but Litelab shall have no liability for any delay in doing so. In no event shall Litelab be liable for any other or further Losses of any kind whatsoever including, but not limited to, lost profits, special, incidental and consequential damages, regardless of the theory on which a claim therefore may be made or based. (f) No sales representative, distributor or other person may authorize the return of any goods to Litelab. (g) Fuses, lamps and other consumables are excluded from any warranty whatsoever. (h) As a condition to Litelab's providing any on-site warranty or service work, Buyer shall provide ready and



easy access to the goods to be serviced, whether the goods are located at Buyer's site or the site of a third party.

**10. DEFAULT AND WAIVER** – If Buyer defaults with respect to any payment or performance obligation whatsoever, in respect of an Order or any other agreement with Litelab, Litelab may, in addition and without prejudice to its other lawful rights and remedies (i) defer further shipments of goods until each default has been corrected to Litelab's satisfaction, or (ii) terminate the Order. No course of conduct, nor any delay of Litelab in exercising any rights hereunder, nor Litelab's acceptance of a payment from Buyer with knowledge of an existing default or breach, shall waive any rights of Litelab or be deemed a modification of this Agreement.

**11. GOVERNING LAW** – Each Order and these terms and conditions shall be construed to be between merchants. Any question concerning its validity, construction or performance shall be governed by the laws of the State of New York, United States of America. The exclusive venue for the resolution of all disputes shall be the state and federal courts located in the County of Erie, State of New York, regardless of where any Order was placed or filed, the place of delivery of the goods or where any other act or performance occurred, and Buyer hereby consents to the personal jurisdiction of such courts.

**12. MODIFICATION** – These terms and conditions, including any attached or future schedules accepted by Litelab constitutes the entire agreement between Buyer and Litelab with respect to an Order, and may be modified only in writing, signed by the party or parties to be charged.

**13. PERMITS** - Buyer will obtain, at its own expense, any and all necessary licenses, permits and inspections necessary to permit the lawful purchase, installation and use of goods.

**14. INDEMNIFICATION.** Buyer shall indemnify and hold Litelab harmless from each and every Loss incurred by Litelab in connection with any claim, action or

proceeding commenced against Litelab or to which Litelab is made a party, relating in any manner to Buyer's or Buyer's customer's purchase, installation, use, or ownership of any goods, except only to the extent of Litelab's acts or omissions.

**15. RETAINED SECURITY INTEREST** - Until such time as the entire purchase price of the goods has been paid, Buyer hereby grants to Litelab a purchase

money lien and security interest in the goods to secure the payment of all amounts owed to Litelab pursuant to the Order for such goods. The rights and remedies of Litelab, as a secured party with respect to the goods, shall be governed by the Uniform Commercial Code, or applicable equivalent statute(s) of the locale in which the goods are located. Buyer authorizes Litelab to execute and record on behalf of Buyer such financing statements and other instruments as Litelab may

deem necessary to perfect or protect its security interest in the goods.

**16. INSURANCE** - Until Litelab has been paid in full for goods, Buyer shall maintain all risk insurance on the goods, protecting against any loss or damage thereto and Litelab shall be named as loss payee thereof with respect to the goods. Buyer shall provide Seller proof of such insurance upon demand.

**17. LIMITATION OF LIABILITY:** Notwithstanding anything in an Order or these terms and conditions to the contrary, (i) in no event shall the aggregate liability of Litelab to Buyer for any one or more Losses incurred by Buyer related to goods, exceed the amount actually paid by Buyer to Litelab for such goods, and (ii) in no event shall Litelab be liable for any lost profits, or for any special, indirect or consequential damages.

**18. SITE CONDITIONS** - Buyer assumes all risks associated with changes in site and/or field conditions, such as, by way of example only, changes in dimensions or site or facility design.