

Terms & Conditions



These Terms and Conditions (the "Terms and Conditions") govern the product order between Integrated Illumination Systems, Inc. ("Seller"), a Connecticut corporation having a principal place of business at 355 Bantam Lake Road, Morris, Connecticut, 06763, U.S.A. and the buyer identified on the purchase order to which these Terms and Conditions are attached ("Buyer"). No purchase order, acknowledgment form, or other ordering document or communication from either party shall vary the terms and conditions in these Terms and Conditions unless both parties expressly agree in writing. In the event of any conflict between the terms and conditions herein and those of any purchase order, acknowledgment form or other ordering document or communication, the terms and conditions of these Terms and Conditions shall prevail.

1. Orders; Purchase Commitment. All purchases of products and services ("Products") by Buyer from Seller shall be made by means of a purchase order issued to Seller by Buyer (each, an "Order"). Each Order shall set forth, at a minimum, a list of the quantity and price of Products covered by the Order, the requested delivery date, and the authorized signature of Buyer. Any contingencies, modifications or additions to Products that Buyer sets forth in any Order are not binding on Seller until Seller agrees to them in writing. Either party's commencement of performance, delivery or acceptance of Products shall not be deemed or construed as acceptance of any additional terms and conditions contained in an Order. All Orders are subject to acceptance by Seller. Seller shall acknowledge Orders in writing within ten (10) days after receipt. In no event shall any Order be binding on Seller until the Order and Seller's acknowledgment are in agreement as to the Products ordered, pricing, delivery dates, and all other material terms. After acceptance of the Buyer's order, it shall not be subject to cancellation unless previously agreed to in writing between the Seller and Buyer. In addition, no product will be accepted for return and no credit will be allowed on any product returned unless Seller has granted prior written permission.

2. Delivery; Title; Risk of Loss. Products will be shipped F.O.B. Seller's Morris, Connecticut, U.S.A. facility. Seller will arrange for shipping via common carrier. Title and risk of loss or damage to the Products will pass to Buyer when delivery is made to the possession of the carrier. Seller shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of any delay. Prices do not include freight, delivery, shipping and insurance charges, which will be billed separately and shall be payable by Buyer upon receipt. Seller will not be deemed to assume any liability in connection with any shipment because of the selection of a carrier or its failure to obtain insurance. Seller shall use reasonable efforts to ship the Products on the shipment date reasonably requested in each Order; however, Seller shall not be liable for any loss, expense or damage incurred by Buyer if Seller fails to meet the shipment date requested in any Order.

3. Payment; Taxes. Unless otherwise stated in Seller's invoice or agreed to by the parties, Buyer shall pay for Products ordered under these Terms and Conditions within thirty (30) days from date of invoice for such Products, without condition, reserve or set-off. Payment of other charges (including, without limitation, maintenance and support service charges) invoiced separately shall be made within thirty (30) days of the date of the applicable invoice. Seller shall have the right, at any time and from time to time, to require an irrevocable letter of credit or other assurance of payment satisfactory to the Seller as a condition to acceptance of any order or shipment of any Product. The requirement of a letter of credit is standard for shipments outside the U.S. Buyer agrees to pay Seller interest of one and one-half percent (1.5%) per month or the maximum legal rate in effect, whichever is less, on any undisputed amount remaining unpaid beyond the payment due date(s) set forth above, along with all collection costs incurred by Seller, including reasonable attorneys' fees. In the event that Buyer fails to make any payment when due, Seller may withhold further shipments until such time as the past-due payment is made, and may require that subsequent Orders be paid in full prior to shipment. Should Buyer cancel or modify any Order, Buyer agrees to pay Seller all applicable cancellation and restocking fees. Orders may not be cancelled after shipment. Prices and delivery, installation, maintenance and support, and other fees are exclusive of all sales, use, valued added and other taxes levied against the sale, delivery, installation, maintenance and support, or use of the Products. Buyer shall pay any such taxes (excluding any taxes on Seller's business, net income or gross receipts), which may be added to the price of any Products or invoiced separately, and Buyer shall indemnify, defend and hold harmless Seller for any such taxes that Seller is required to pay on behalf of Buyer.

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4. Exports. All shipments with destinations outside of the United States shall be subject to Seller's determination that such shipments are in compliance with all applicable export and import regulations; *provided*, that in no event shall Seller be liable for Buyer's failure to comply with any applicable import regulations; and, *provided further*, that Buyer agrees that it shall indemnify, defend and hold harmless Seller for any violation or alleged violation by Buyer of such import rules or regulations or Buyer's failure to fulfill its responsibilities as set forth below. For shipment other than within the United States, Buyer will be solely responsible for: (a) obtaining any license, permit or approval that may be required to import the Products into the destination jurisdiction; (b) clearing the Products through local customs upon their arrival in such jurisdiction; and (c) paying all customs duties, taxes and other charges assessed on such importation's in such jurisdiction. In no event shall Seller's delay in shipping or refusal to ship due to export or import issues be deemed a default hereunder. Buyer will be solely responsible for Seller's compliance with all export regulations (including payment of all applicable license or permit fees, duties or taxes relating to such export regulations).

5. Limited Warranty.

5.1 Limited Warranty. Products are warranted to be free from defects in material and workmanship and to conform substantially to Seller's then-current (as of the date of Product shipment) user documentation and specifications for a period of one (1) year from the date of invoice (the "Warranty Period"), provided the Products are used under those operating conditions (including electrical values and environmental conditions) described in Seller's then-current user documentation and specifications for such Products. Seller shall not be liable under the foregoing warranty if Buyer fails to provide Seller with notice of the alleged defect during the Warranty Period.

5.2 Remedies. In the event a Product does not comply with the foregoing express warranty, Buyer may notify Seller within the Warranty Period and if so notified Seller will, at Seller's option: (a) provide a replacement for such Product or defective component or part thereof that has caused the warranty claim (such Product or defective component or part thereof that has caused the warranty claim, the "Warranty Item"); or (b) refund to Buyer the lesser of (1) the amount Buyer paid for the Warranty Item, or (2) Buyer's cost to replace the Warranty Item, in each case as determined by Seller in its sole and absolute discretion following receipt and inspection by Seller of the Warranty Item. For the avoidance of doubt, "provided a replacement for such Product or defective component or part thereof" expressly does not include any removal or reinstallation costs or expenses, including without limitation labor costs or expenses. All exchanged Warranty Items shall become the property of Seller. Seller may use either new or remanufactured, reconditioned or refurbished components or parts (if in like-new condition), or functionally equivalent components or parts, in the furnishing of replacement(s) for any Warranty Item. Seller's warranty flows only to Buyer of the products. If the Seller chooses to replace the Product and is not able to do so because it has been discontinued or is not available, the Seller may replace it with a comparable product.

5.3 Limitations. The foregoing warranty is limited, and does not extend to, and Seller shall incur no liability for: (a) lumen maintenance of the Products; (b) color shift of light output of the Products; (c) degradation or discoloration of the Product housing(s); (d) mechanical or cosmetic deterioration of the Products associated with normal wear and tear. For clarity and without limiting the generality of the foregoing, the foregoing warranty does not apply if a Product's light module continuously generates light at any intensity, regardless of whether such intensity has decreased since the date of first use of such Product **[(viz., warranty coverage only applies in the event that such light module generates no light or generates light intermittently)]**. This limited warranty only applies when the product has been properly wired and installed and operated within the electrical values, operating range and environmental conditions provided in the Specifications. This warranty does not apply to damage or failure to perform arising as a result of any Acts of God or from any abuse, misuse, abnormal use or use in violation of any applicable standard, code, or instructions for use including those contained in the latest National Electrical Code, the Standards for Safety of Underwriters Laboratory, Inc., the Standards for the American National Standards Institute or, in Canada, the Canadian Standards Association. This Warranty shall become void in the event any repairs or alternations not duly authorized by the Seller in writing are made to the Product by any person.

Buyer shall convey with each Product distributed to end users this LIMITED WARRANTY, and if Seller determines that the appropriate remedy for a defective product is refund of Buyer's purchase price, Buyer shall refund to the end user (or arrange for the refund to the end user of) the full purchase price paid by the end user for such defective Product.

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With respect to Products sold to the Buyer by Seller but not bearing the Seller's name or sub-brand name, SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, but will make available to the Buyer upon request but only to the extent permitted by law and relevant contracts, the warranties of the manufacturer of the relevant product.

5.4 Exclusions; Buyer Indemnification. The foregoing warranty shall be void with respect to defective conditions or non-conformities of the Products resulting from: (a) modifications of Products not authorized by Seller; (b) misuse, neglect, accident or abuse, improper wiring, repairing, splicing, alteration, installation, storage or maintenance; (c) use in a manner not in accordance with Seller's published operating specifications or instructions for the applicable Products; (d) Product defects caused by Buyer's combination of the Products with equipment provided or manufactured by third party vendors (unless Seller is advised, in writing, of such proposed combination and Seller thereafter consents in writing to such combination); (e) breach by Buyer or its employees, partners to whom Buyer sold Product, contractors, representatives, agents or affiliates, (collectively, "Buyer Parties") of any obligation herein; or (f) negligent use, application, installation or implementation of Product by any of the Buyer Parties. Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, agents, employees, affiliates, representatives, successors, and assigns from and against all losses, liabilities, costs, and expenses (including, without limitation, attorneys' fees) arising out of or in connection with claims by third parties for any loss, damage, or injury (including death) caused by or alleged to be caused by the circumstances described in this Section 5.4. Buyer shall not join, settle or otherwise attempt to affect or dispose of any such claim without Seller's written consent.

5.5 DISCLAIMER. THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE THE ONLY WARRANTIES GRANTED BY SELLER AND THE REMEDIES IN THIS SECTION 5 ARE THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF SUCH WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, SELLER MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND SELLER EXPRESSLY DISCLAIMS ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF QUALITY, CONDITION, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning goods sold by Seller and unless an affirmation, representation or warranty is specifically included herein or in Seller's sales acknowledgement, it does not form a part of the basis of any bargain between Seller and Buyer and shall not be enforceable by Buyer.

6. Intellectual Property Rights. Except as expressly described in these Terms and Conditions, Seller does not grant and Buyer shall have no right, license or other interest in any of the patents, copyrights, trademarks, or trade secrets owned, used or claimed by Seller and/or its licensors that are used to create the Products or are embodied in the Products ("Intellectual Property Rights"). All rights to such Intellectual Property Rights are and will remain the exclusive property of Seller and/or its licensors subject to the limited rights expressly granted to Buyer by these Terms and Conditions. Title to and ownership of the Intellectual Property Rights shall remain at all times the property of Seller or its licensors, as applicable.

7. Intellectual Property Indemnification.

7.1 Exclusions; Buyer Indemnification. Notwithstanding anything to the contrary contained in these Terms and Conditions or any other agreement or writing between Buyer and Seller, Seller shall have no obligation to indemnify Buyer for any Third Party IP Claim to the extent that it arises from: (a) Seller's adherence to design modifications, specifications or written instructions which Seller is directed by Buyer to follow; or (b) Buyer's combination of the Products with equipment provided or manufactured by third party vendors (unless Seller is advised, in writing, of such proposed combination and Seller thereafter consents in writing to such combination); and Buyer shall indemnify, defend and hold Seller harmless from and against all claims, losses, damages and other liabilities arising from the circumstances described in this Section 7.1.

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7.2 DISCLAIMER. THIS SECTION 7 STATES SELLER'S ENTIRE LIABILITY TO BUYER AND BUYER'S SOLE REMEDY FOR ANY INFRINGEMENT OR ALLEGED INFRINGEMENT BY THE PRODUCTS OF ANY UNITED STATES PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS.

8. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, MULTIPLE OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, LOSS OF USE OF THE PRODUCTS, DOWNTIME OR COSTS OF SUBSTITUTE PRODUCTS OR EQUIPMENT) ARISING FROM THE SALE AND/OR DELIVERY OF THE PRODUCTS OR ANY OTHER ACT OF SELLER IN CONNECTION WITH THESE TERMS AND CONDITIONS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER BE LIABLE FOR DAMAGES HEREUNDER IN EXCESS OF AGGREGATE AMOUNTS ACTUALLY RECEIVED BY SELLER FROM BUYER FOR THE PRODUCT THAT GIVES RISE TO THE CLAIM. THIS PARAGRAPH WILL SURVIVE FAILURE OF AN EXCLUSIVE OR LIMITED REMEDY.

9. General.

9.1 Entire Agreement; Amendments; No Waiver. These Terms and Conditions supersede all prior and contemporaneous agreements, representations and warranties and contains the entire agreement between the parties. No amendment, modification, termination, or waiver of any provision of these Terms and Conditions shall be effective unless it is in writing and signed by a duly authorized representative of Seller. No failure or delay on the part of either party in exercising any right or remedy under these Terms and Conditions shall operate as a waiver of such right or remedy.

9.2 Successors and Assigns. These Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

9.3 Governing Law. These Terms and Conditions shall be governed in accordance with the laws of the State of Connecticut, U.S.A. (without regard to its conflicts of laws principles). In connection with any dispute hereunder, Seller and Buyer irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts located in Connecticut and waive any right to jury trial.

9.4 Severability; Headings. The provisions of these Terms and Conditions are severable. In the event that any provision contained in these Terms and Conditions are held unenforceable or invalid, the remaining provisions shall be given full effect. Headings in these Terms and Conditions are included for reference only and shall not constitute a part of these Terms and Conditions for any other purpose.

9.5 Force Majeure. Except with regard to obligations to pay sums due hereunder, neither party shall be held responsible for any delays or failure in performance caused in whole or in part by fires, strikes, floods, embargoes, labor disputes, delays or failures of subcontractors, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any governmental act, regulation or request, acts of God or by public enemy, or any other causes beyond the party's reasonable control (a "Force Majeure Event"). If a Force Majeure Event shall occur, the defaulting party may elect to either: (a) suspend these Terms and Conditions for the duration of the delaying cause; or (b) extend the duration of these Terms and Conditions by the length of time the contingency endured. In all cases, the non-defaulting party may terminate these Terms and Conditions without liability in the event the Force Majeure Event endures or is reasonably expected to endure for a period of greater than ninety (90) days.

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