



PRODUCT TERMS AND CONDITIONS

Acceptance and Governing Terms:

These Terms and Conditions of Sale shall apply to all sales of products by Orion Energy Systems, Inc. ("Orion") to Customer. As used in these Terms and Conditions of Sale, "we" and "our" shall refer to Orion. Unless otherwise specifically agreed in writing by an authorized representative of Orion, any different or additional terms and conditions proposed by and/or contained in a purchase order, response to a quotation, or other proposal are hereby rejected by Orion and shall not be incorporated into the agreement for sale of Orion products. Customer's assent to these Terms and Conditions of Sale shall be conclusively presumed from Customer's ordering products quoted by Orion. If Orion is found to have acknowledged Customer's order or proposal, and such acknowledgement constitutes an acceptance of an offer, such acceptance is expressly made conditional on Customer's assent solely to these Terms and Condition of Sale which shall form part of the acknowledgment and acceptance by Customer of any products and shall be deemed to constitute such assent. If any quotation or other document of Orion is deemed to constitute an offer to Customer, Customer's acceptance of such offer is limited to these Terms and Conditions of Sale.

Sales Tax:

Customer shall provide to Orion a copy of applicable state sales tax Customer certificates prior to the shipment of any orders. If no such certificate is supplied, Orion may assess applicable sales and/or use tax on the invoice.

Terms of Payment:

Terms of payment shall be as stated on the invoice. Orion's standard payment terms are Net 30. A service charge of 1.5% per month will be charged by Orion on any balance which is beyond the stated due date. Should it be necessary for Orion to institute formal proceedings to collect any past due amount, Orion shall be entitled to recover its attorney's fees and any other costs associated with the proceedings. Notwithstanding the acceptance of an order by Orion, we reserve the right not to ship product to a party not paying in accordance with our terms or who, in the sole opinion of Orion, may be unable to meet its payment obligation to Orion. Credit limit, if any is granted, shall be determined in Orion's sole discretion. A personal guarantee, audited financial statements and/or irrevocable standby letter of credit may be required.

Freight Terms:

For orders less than \$5,000, all freight charges will be FOB Orion factory prepaid and add. For all orders greater than \$5,000, all standard freight charges will be FOB Orion factory prepaid within the continental United States. Expedited freight orders over \$5,000 will have expedited freight added to the invoice. Any special charges for handling or similar services will be added to the invoice. All shipments will be made via carrier selected by Orion. Orion reserves the right to ship all items on orders in one complete shipment, and in any event orders must comply with minimum tray or pallet quantity requirements. Orion will not be responsible for storage charges or cartage charges beyond the destination address acknowledged by Orion or for rescheduled delivery dates or times. Any/all additional onsite storage charges will be the responsibility of the Customer. You may request partial shipments, provided you pay any additional freight charges along with any other additional cost incurred by Orion to accommodate the requested partial shipment. Partial shipments may also be made at Orion's discretion and if Orion decides to make partial shipments it will not be responsible for storage or demurrage charges nor will Orion be responsible for cartage charges beyond the destination address acknowledged by Orion.



Title Transfer and Freight Claims into Stock/Drop Ship:

Title to all products shall pass from Orion to Customer upon execution of bill of lading or tendering freight to carrier's agent or Customer's agent, whichever shall first occur. Consignee must make all claims for loss or damage in transit to carrier immediately upon receipt of shipment. All claims of damage or shortage must be clearly documented on bills of lading at the time of receipt in order to protect consignee's rights and communicated to Orion.

Ordering Procedures:

All purchase orders must be in writing with specified delivery dates, shipping address, quantities and complete product description. Orion may accept or reject any order without liability to Customer and any order shall not be binding on Orion until it has been approved and accepted by Orion. Invoiced overages or product shortages must be reported within 60 days of invoice date. Any discrepancy not reported within 60 days will not be considered for an adjustment.

Order Cancellation/Changes Terms; Excusable Delays:

Orion may accept order cancellations solely at the option of Orion, but in no event shall a cancellation be allowed after products are produced by Orion. Orion may, in its sole discretion, attempt to sell your products you request be cancelled, but in the event it elects not to attempt mitigation or its efforts are not successful, you will pay for the materials as per agreed terms. Verbal order cancellations will not be accepted. Neither party shall be liable for damages resulting from delays arising out of causes beyond its control and without its fault or negligence, including acts of God, acts of the Government, fires, floods, strikes, freight embargoes, labor disputes, and unusually severe weather, nor shall such delay affect the remainder of this order.

Shipping Dates:

Shipping dates are approximate and are based on conditions existing at the time of Orion's receipt of Customer's documented order with complete information. A ship date will be assigned within two business days after receipt of purchase order, with the exception of nonstandard/custom items. Tier 1 lead-times are published on current price lists. A minimum of three weeks lead-time is required to ship all other standard products, with the exception of exterior fixtures and controls, which have a 3-6 week lead time. Custom designed products will usually require additional lead times and may be subject to other conditions. Orion will in good faith endeavor to ship by the estimated shipping date but it shall not be responsible for any delay or any damage arising there from. This also includes will-call orders.

If the quantity ordered of any given item is greater than 500 pieces, lead-times may be longer than as stated above. For large quantity orders, please coordinate product forecasts and materials needs with your account manager.

Returns - Non Defective:

No merchandise may be returned by Customer without prior written authorization in the form of a Return Materials Authorization (RMA) which has been issued by Orion expressly for the merchandise to be returned. This RMA will be issued at the sole discretion of Orion and must be requested by Customer within 60 days of the Bill of Lading Ship Date. Returned merchandise must be in its original sealed packaging. Returned merchandise must be brand new (never hung, installed, or mounted). Non-stocking special products, custom made product, or outdated or modified versions of cataloged factory stocking items may not be returned by Customer. The minimum value, for which an RMA will be issued, is \$500, except for products considered by Orion to be defective in workmanship or materials. All returns will be subject to a handling and restocking charge up to 30%, and a charge back will be made for the freight expense of the original shipment. Merchandise accepted for return must be shipped prepaid to the factory.



The process to attain authorization for a non-defective RMA will be as follows:

- Customer to contact Customer Service and request an RMA
- Customer Service will review the RMA request and obtain all necessary authorizations prior to approving a non-defective RMA
- Customer cannot ship product back to Orion without an approved RMA
- RMA number must be included on the packing slip, Bill of Lading and pallet (not on product packaging)

Furthermore, only items and quantities preapproved will be accepted. Noncompliance of the above policy, in part or whole, will result in refusal at the Orion receiving dock. If you have any questions, please contact Customer Service at 800-660-9340.

Returns - Defective/Damaged:

No merchandise may be returned by Customer without prior written authorization in the form of a Return Materials Authorization (RMA) which has been issued by Orion expressly for the merchandise to be returned. This RMA will be issued by Orion with explicit instructions regarding the course of action at the sole discretion of Orion. Any merchandise damaged during shipment from Orion must be identified and noted on the Bill of Lading immediately upon receipt. All product returned to factory must be clearly marked and identified with the RMA number on the Bill of Lading/Packing List. Any/all freight without proper RGA authorization will be refused at our dock.

The process to attain authorization for a defective RMA will be as follows:

- Customer must submit a warranty claim in writing or electronic format, which includes:
 - Detailed Reason for Claim
 - Contact Person Name, Phone Number, and Email Address
 - Copy of the original invoice
 - Part number(s) claim is being submitted on

Orion will review the claim and if tentative approval is given a RMA number will be issued. All returning warranty claim packages must have the RMA number included on the packing slip, Bill of Lading, and pallet (not on the product packaging). Merchandise accepted for return must be shipped prepaid to the factory. Orion at its sole discretion may arrange for pick-up of the defective/damaged return. Orion reserves the right to examine all products and/or any associated component to determine cause of failure and pattern of usage. Orion reserves the right to be the sole judge as to whether any items and components are defective and/or covered under warranty.

Pricing Changes:

Prices are subject to change with 30 days' notice, unless otherwise stated on Quote.

Changes in Product Design:

Orion reserves the right at any time and without notice to change, discontinue or modify the design and construction of any of its products and to substitute material equal to or superior to that originally specified.

Conditions of Sale - Warranty:

Orion warrants that all products will be free from defects in material or workmanship for a period, as outlined in any product specification and/or Orion's Limited warranty, from the date of purchase, provided that the products are used under normal operating conditions. Certain components not manufactured by Orion are covered by a manufacturer's



warranty and any claim thereunder should be made directly with the manufacturer. Customer shall be responsible for all required reporting or product registration to the manufacturer of components not made by Orion in order to perfect or protect rights available under such warranty. Orion may agree to assist the customer in filing the warranty claim with the manufacturer. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The applicable warranty provided by Orion is void if the products are exposed to fire, accident, abuse, negligence, objects striking the products or corrosive atmospheres such as chemicals, alkalines, acids or other chemical fumes, or are altered or repaired by anyone other than Orion. Any other warranties provided by manufacturers other than Orion are subject to the terms, conditions and limitations of those warranties. The exclusive remedy for Orion's breach of the applicable warranty provided by Orion is that Orion will replace the defective product with an equivalent product or a component (not including the costs of installation). Orion warrants its products in accordance with the Orion standard product warranties, found at <http://www.orionlighting.com/>. These Orion standard product warranties are exclusive. There are no other express or implied warranties made or offered by Orion, including but not limited to implied warranties of merchantability or fitness for a particular purpose. Moreover, no other express warranty or guarantee given by any person or entity with respect to Orion products shall bind Orion.

Limitation of Liability:

IN NO EVENT SHALL ORION BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSS OR DAMAGE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY PRODUCT, REGARDLESS OF WHETHER ORION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ORION'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT. IF SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE MAY NOT APPLY.

Custom Designed Product Procedure and Terms:

The necessary first step is to fill out a new product or non-standard quote request form available from the Account Manager. This form requires detailed information on the new product design or product modifications. If detailed drawings or pictures are available, they should also be included with the form. A formal quotation will be generated based on the information provided and an estimated lead time will be given. The quotation may include engineering fees. If samples are required (Orion recommended), a purchase order must be submitted that includes the product cost plus any applicable engineering fees. If, after the samples are purchased, a larger order is placed for the same product, Orion, at its discretion, may credit back any applicable engineering fees. Absolutely no returns of custom designed and manufactured material will be allowed. Custom designed products will usually require additional lead times and may be subject to other conditions.

Customer-supplied components shall be void of all written, promised, and implied warranties, including but not limited to the Orion Product Limited Warranty. All customer-supplied components shall be properly compatible with Orion products and shall be installed "as-is". Orion shall have no liability for any damages or costs incurred relating to or arising out of customer-supplied components.

Product orders that include customer-supplied components are non-cancellable and non-returnable. Customer shall request and receive formal written approval prior to submitting an order for products containing customer-supplied components.

**Entire Agreement; No Waiver:**

These terms and conditions contain the entire agreement of the parties, and any prior and future understanding, agreements and representations, oral or written, shall be deemed superseded and merged herein. Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder.

Confidential Information:

Customer shall not at any time use any Confidential Information for any purpose other than for the purposes of carrying out its activities and transactions as a Customer of Orion products and shall not, without the prior written consent of Orion, at any time disclose any Confidential Information to any person who does not have a need to know the same in connection with Customer's activities and transactions. The term "Confidential Information" includes: (i) all formulae, test results, production and manufacturing data and all other technical information related to the design, development, manufacture or specifications of Orion's products; (ii) any information concerning any product under development by or being tested by Orion but not yet offered for sale; (iii) the pricing policies of Orion, the prices charged by Orion to any customer, the volume of orders of any customer and all other information concerning pricing and volume of orders between Orion and any customer or proposed customer; (iv) any information concerning the marketing programs or sales strategies of Orion; (v) any financial information concerning Orion; and (vi) any other information determined by Orion to be confidential and proprietary and which is identified as such prior to or at the time of its disclosure to Customer. Confidential Information shall include information which is in oral, written or electronic form. Confidential Information shall not include, and the obligations stated above shall not apply to, any information that (a) is or becomes publicly known without the fault of Customer; or (b) is known by Customer prior to its disclosure by Orion. Customer agrees that it shall take all steps necessary to ensure that its employees and agents maintain the confidentiality of all Confidential Information and use it only in the manner provided herein.

Audit and Engineering Data:

While Orion uses state of the art technologies, computer programs, third party testing data, generally accepted industry standards and reasonable care to ensure that the most accurate data possible is used in any of Orion's projections, Orion cannot and does not, because of inherent differences in facilities, power sources, designs, and uses within a facility as well as other existing known and unknown conditions, guarantee complete certainty and accuracy in any of Orion's projections. Customer agrees that Orion's projections are to be used as averages only and are in no way guarantees of specific performance in any one location.

Intellectual Property:

Customer agrees that all inventions, developments, improvements, ideas, concepts, designs, patents, patent rights, copyrights, trademark and service mark rights and all goodwill associated therewith, trade secret rights, and other intellectual property and similar rights of any kind (collectively, "Intellectual Property") in connection with Orion's Confidential Information and/or Orion's products, in any form or stage of development, shall be the sole and exclusive property of Orion. Customer agrees to assign and hereby does assign to Orion all rights, title and interests to Intellectual Property that Customer may have or acquire during the course of Customer's dealings with Orion.

Effective Date: December 28, 2017