

ORION ENERGY SYSTEMS, INC.

PRODUCT TERMS AND CONDITIONS

Acceptance and Governing Terms:

These Product Terms and Conditions ("Terms and Conditions of Sale") shall apply to all sales of products by Orion Energy Systems, Inc. ("Orion") to the purchaser of Orion's products (the "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 from 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.

Tax:

Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest, or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Orion and Customer will be paid by Customer in addition to the prices, ordered, quoted, or invoiced. In the event Orion is required to pay any such taxes or other charges, Customer will reimburse Orion therefor on demand. Customer shall provide to Orion a copy of applicable state sales tax and/or use tax exemption certificates prior to the shipment of any orders. If no such certificate is supplied, Orion shall assess applicable sales and/or use tax to Customer and include the tax on Customer's invoice, and Customer shall be responsible for payment therefor.

Terms of Payment:

Orion's payment terms are Net 30 from the date of invoice, unless otherwise agreed in writing by Orion. 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. Orion reserves the right to require that Customer's payments to Orion be made by means of electronic funds transfers (EFTS) from an authorized Customer account. In such an event, Customer hereby authorizes Orion and Customer's designated bank to initiate EFTS from Customer's account, and Customer shall cooperate with Orion as necessary to assure the implementation of such payment method. 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. Orion, in its sole discretion, reserves the right at any time to modify the payment terms and/or Customer's credit limit (if any) (including, without limitation, by placing Customer's account on credit hold, withholding delivery of products, or requiring payment in advance of product delivery), depending on such factors as Customer's credit history and credit status (as determined by Orion), Customer's payment performance with Orion and the volume of purchases of Orion products (either with respect to a particular purchase order or in the aggregate over a period of time) made by Customer. In connection with Customer's credit limits established by Orion, Orion reserves the right at any time to require credit instruments for the benefit of Orion to secure Customer's

payment obligations to Orion, including without limitation personal guarantees, corporate guarantees, and/or irrevocable standby letters of credit in form, substance and amounts satisfactory to Orion.

Financial Statements:

From time to time as requested by Orion, Customer shall be required to submit financial statements to Orion in order to maintain its account with Orion. Audited financial statements may be required.

Offset:

Orion reserves a continuing right to adjust or offset against any amounts that may be due from Customer to Orion. Customer's obligation to pay Orion is absolute and unconditional, without any abatement, reduction, set off or defense of any kind.

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 and paid by Customer. Any special charges for handling or similar services will be added to the invoice and paid by Customer. 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 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 Customer pays 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 any additional cartage charges incurred as a result of such partial shipments. In the event of a shortage of the products, Orion will allocate its available capacity first to the satisfaction of its internal needs and then in any manner that Orion determines, in good faith.

Title Transfer and Freight Claims into Stock/Drop Ship:

Title to all products shall pass from Orion to Customer FOB point of origin at Orion's or its designee's dock. Customer must make all claims for loss, damage or shortage in transit to carrier immediately upon receipt of shipment. All claims of loss, damage or shortage must be clearly documented on bills of lading at the time of receipt. Orion will provide reasonable assistance to Customer in processing properly-documented freight claims with the carrier.

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. Without limiting the foregoing, minimum orders must be at least \$150.00 (exclusive of freight); Orion, at its discretion, may accept orders under this minimum order amount. Orion reserves the right to uphold the minimum invoicing requirement. 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; Storage:

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. Verbal order cancellations will not be accepted. Orion shall not 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, war, terrorism, transportation delays, freight embargoes, labor disputes, and unusually severe weather, nor shall such delay affect the remainder of this order. If production or shipment of completed goods, or other Orion performance, is delayed by Customer, Orion may immediately invoice, and Customer will pay, the percentage of the purchase price corresponding to the percentage of completion; in addition, Customer will compensate Orion for storage of completed goods or work in process during any such delay, whether stored at Orion's facility or an independent storage company's facilities.

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 three-to-six-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 the Orion account manager.

Returns - Non-Defective:

No products 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 products to be returned. This RMA will be issued at the sole discretion of Orion and must be requested by Customer within 60 days after the date of invoice. Returned products must be in their original sealed packaging. Returned products 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 of 30%. Customer is also responsible for the cost of the freight of the original shipment of the materials being returned. Products accepted for return must be shipped prepaid to Orion's factory at Customer's expense and risk of loss.

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

- Customer to contact Orion Customer Service and request an RMA
- Orion's Customer Service will review the RMA request and determine whether to issue an RMA for such non-defective products
- 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 for return by Orion will be accepted. Noncompliance of the above policy, in part or whole, may result in an additional 10% administrative fee/minimum \$250 or in refusal of such products at the Orion receiving dock. Please contact Orion Customer Service at 800-660-9340 with questions.

Returns - Defective:

No products 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 products 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 product 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 RMA

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, an RMA number will be issued by Orion. 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). Products accepted for return must be shipped prepaid to Orion's factory at Customer's expense and risk of loss. 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 make the final determination as to whether any items and components are defective under the terms of the Product Warranty.

Pricing Changes:

Prices are subject to change with 30 days' notice to Customer, unless otherwise provided by Orion in writing.

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 suitable material for any material originally specified.

Conditions of Sale - Warranty:

The products manufactured by Orion are warranted to the end-user of such products in accordance with Orion's standard Product Limited Warranty then in effect as of the date such products are purchased by the Customer ("Product Warranty"), as such Product Warranty may be amended from time to time by Orion. A copy of the current Product Warranty in effect is available at:

<http://files.orionlighting.com/resources/PRODUCT/Warranties/Product%20Warranty.pdf>

ORION HEREBY EXCLUDES AND DISCLAIMS ANY AND ALL WARRANTIES OTHER THAN THE PRODUCT WARRANTY, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING.

Orion makes no warranty, express or implied, for products or components of products that are not manufactured by Orion; such products may be covered by a manufacturer's warranty, and any claim thereunder should be made directly with the manufacturer. Customer shall be solely 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, in its sole discretion, to assist the Customer in filing the warranty claim with the manufacturer. Any warranties provided by manufacturers other than Orion are subject to the terms, conditions and limitations of those warranties. No 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.

Custom-Designed Product Procedure and Terms:

For a custom-designed product, Customer must complete a new product or non-standard quote request form available from the Orion 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 (which is recommended by Orion), a purchase order must be submitted that includes the sample cost plus 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.

Orion makes no warranties, express or implied, as to any Customer-supplied components. Customer shall ensure that all Customer-supplied components are compatible with Orion products. Orion shall have no liability for any damages or costs incurred relating to or arising out of Customer-supplied components, and Customer shall indemnify, defend and hold harmless Orion from and against any such damages and costs.

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

Security Interest; Liens:

If the products are sold on credit terms, Customer acknowledges that Orion retains a purchase money security interest in the products. To secure Customer's obligations to Orion under these Terms and Conditions of Sale or any other agreement, Customer hereby grants to Orion a security interest in all the products sold under these Terms and Conditions of Sale, whether now owned or hereafter acquired, and all products and proceeds thereof. Orion may file any financing statements and send any notices necessary or appropriate to perfect or protect such security interest. Subject to applicable law, Orion reserves the right to take any steps necessary or appropriate to preserve and enforce any and all lien rights with respect to the products and to protect its interests and to enforce Customer's payment obligations to Orion. All amounts paid by Customer's customers to Customer with respect to products sold by Orion to Customer shall be held in trust by Customer on Orion's behalf in a separate account and shall be promptly submitted to Orion to pay the amounts owed by Customer to Orion for such products.

Indemnification:

Customer shall indemnify and hold harmless Orion and its officers, agents, and employees from and against any losses, damages, liabilities, costs or expenses that may arise out of Customer's acts or omissions, including, but not limited to: (a) any breach by Customer of these Terms and Conditions of Sale; (b) any violation by Customer of any law or regulation; or (c) any use, customization, modification, assembly or resale of the products by Customer.

Orion's Remedies:

The exercise of any rights and remedies by Orion that are available to Orion at law or in equity shall be cumulative and not exclusive to any other right or remedy.

Costs of Enforcement and Collection:

Customer agrees to pay all costs, expenses, and legal fees (including costs of collection, filing fees,

attorneys' fees and judgment enforcement) paid or incurred by Orion in connection with any actions taken by Orion in enforcing its rights under these Terms and Conditions of Sale, including, without limitation, its right to be paid by Customer and to collect payment of any amounts due from Customer.

Entire Agreement; No Waiver:

These Terms and Conditions of Sale 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, except an employee of Customer with a need to know the same who is bound by an obligation of confidentiality. 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; (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; and (vii) any sketches, models or samples submitted to Customer by Orion. 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 or warranties 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 (including without limitation any Customer-designed product), including any specifications related thereto 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.

Designs and Tools:

Any design work performed by Orion, and any dies, molds, jigs, or other tools that Orion manufactures or acquires, in connection with its performance hereunder will be and remain the sole property of Orion, notwithstanding any charges to Customer therefor. Any such charges convey to Customer the right to have the designs, dies, molds, jigs and/or other tools used by Orion for performance hereunder, but do not convey title or right of possession or any other right.

Governing Law; Venue:

Customer agrees that any business transactions between Orion and Customer shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to principles of conflicts of law. Customer further agrees and consents that the exclusive venue for any legal proceeding related to any business transactions between Orion and Customer shall be the Circuit Court of Manitowoc County, Wisconsin, or the United States District Court for the Eastern District of Wisconsin. Customer agrees and consents to the personal jurisdiction of any such courts and agrees that venue in such courts is not inconvenient for Customer. **THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

Waiver of Jury Trial:

CUSTOMER KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY LEGAL PROCEEDING BETWEEN ORION AND CUSTOMER AND AGREES AND CONSENTS THAT ANY SUCH PROCEEDING SHALL BE DECIDED BY TRIAL TO THE COURT WITHOUT A JURY.

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