



STANDARD TERMS AND CONDITIONS OF SALE

These standard terms and conditions of sale ("**Terms and Conditions**") apply to any and all orders placed by purchaser ("**Purchaser**") for purchases of products or services (together, "**Products**") from and after January 1, 2012 from Philips Optimum ("**Manufacturer**"), whether or not such purchase is subject to a signed purchase order, distribution or other agreement between Manufacturer and Purchaser. These Terms and Conditions may be updated by Manufacturer from time to time. Ordering Products from Manufacturer constitutes acceptance of the terms set forth herein, as such terms may be updated. Any different, conflicting or additional terms in any purchase order or other writing from Purchaser are hereby expressly objected to and rejected and shall be of no force or effect. Course of performance or usage of trade shall not be applied to modify these Terms and Conditions.

ORDERS; CHANGES AND CANCELLATIONS

All orders must be placed in writing and delivered directly to Manufacturer from the entity which will be liable for the payment of the order. Verbal orders or orders through a third party will not be accepted. No order is final as to Manufacturer until accepted by Manufacturer. After acceptance, requests to cancel or change orders must be submitted in writing to Manufacturer a minimum of two weeks prior to the scheduled shipping date. All requests are reviewed for approval before processing and are subject to any and all costs incurred by Manufacturer from such cancellation or change including, without limitation, costs for work performed and/or materials purchased by Manufacturer for made-to-order Products.

PRICES

All prices represent those in effect at the time of quotation and are subject to change without notice. Unless prices are quoted as "firm" by an officer of Manufacturer, Manufacturer reserves the right to invoice prices in effect at the date of shipment, regardless of any prior quote and regardless of whether notice was received by Purchaser.

SALES MATERIALS

Any catalog, price sheet or other similar documentation prepared by Manufacturer is strictly for the convenience of the user and shall not be deemed as an offer to sell. Manufacturer believes such documentation is complete and accurate at time of printing, but does not warrant they are error free. Catalogs or price sheets are not offers to sell and possession of them does not entitle one to purchase products from Manufacturer.

TERMS OF PAYMENT

Unless otherwise stated in Manufacturer's invoice or agreed to in writing by the parties, terms of payment for orders shipped to destinations in the United States will be net twenty-five (25) days from date of invoice. The terms of payment are also subject to review of Purchaser's credit by Manufacturer. Manufacturer shall have the right, at any time and from time to time, to require cash

payments in advance or a letter of credit or other assurance of payment satisfactory to Manufacturer as a condition to acceptance of any order or shipment of any Product. Unless otherwise agreed to by Manufacturer, payment shall be by check to be drawn on Purchaser's corporate account, by wire transfer to Manufacturer's account at a commercial bank designated by Manufacturer, or by Manufacturer's draw upon a letter of credit satisfactory in form and substance to Manufacturer. The requirement of a letter of credit is standard for shipments outside the United States for special products, and for F.O.B. factory orders. All payments by Purchaser shall be made in United States Dollars and shall be paid fully net, without set-off, deduction or counterclaim.

TAXES AND GOVERNMENTAL CHARGES

Prices do not include any taxes or other governmental charges, including, without limitation, value-added, sales, use or privileges taxes, required governmental withholdings or excise or similar taxes levied by any government, now or hereafter enacted. In Manufacturer's discretion, any such taxes, charges or withholdings may be added to the price for any Products or may be billed separately. Purchaser will pay all such taxes and charges, on or before their due dates. In the event Manufacturer is required at any time to pay any such tax or charge, Purchaser will reimburse Manufacturer promptly on demand.

LATE CHARGES; COSTS

If Purchaser fails to pay any amount due to Manufacturer promptly when due, Manufacturer may recover, in addition to the price of payment, interest thereon at a rate equal to the lesser of 1-1/2% per month and the maximum rate of interest allowable under applicable law and Purchaser shall be liable for all costs and expenses, including reasonable attorneys' fees, incurred by Manufacturer in collecting or attempting to collect any and all overdue accounts.

SHIPMENT, DELIVERY AND TITLE

Products will be tendered and shipped F.O.B. Manufacturer's plant or warehouse. The title and risk of loss or damage to Products pass to Purchaser upon Manufacturer's delivery to initial carrier. Manufacturer will select such carrier and ship Products freight prepaid and added to the price of the relevant Products. Manufacturer may, in its discretion, choose to make partial shipments and shall bill each shipment as it is made, but on terms applicable to the complete order. If a more expensive means of transportation is specified by Purchaser, Purchaser assumes all extra transportation costs.

For non-expedited orders in excess of \$3,000, surface freight to certain destinations within the continental United States will be paid by Manufacturer ("**Freight Allowance**"). Unless otherwise agreed to in writing, partial shipments and shipments to non-commercial facilities shall not be eligible for a Freight Allowance. Where Manufacturer provides a Freight Allowance,

Manufacturer may use its own discretion in routing the shipment, and Purchaser shall at all times remain responsible for paying all fees associated with any special shipping requirements, including any lift-gate, call-ahead, unloading assistance, fuel surcharge, or other special handling arrangement.

Manufacturer 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. Delivery dates of all shipments are estimated and are not guaranteed. Manufacturer assumes no liability in connection with any delay in delivery. Postponement of deliveries at Purchaser's request, if for a period of more than ten (10) days, will not be permitted unless prior approval is given by an authorized officer of Manufacturer.

STORAGE

Purchaser shall pay any detention, storage, handling or auxiliary charges assessed by carriers or warehousemen resulting from Purchaser's requirements for special service or Purchaser's failure to accept delivery in a timely manner.

PRODUCT ACCEPTANCE

Products will be deemed to have been accepted by Purchaser upon delivery of said Products to Purchaser. Purchaser has seven (7) days following delivery to perform all necessary tests and inspections and report any discrepancy in shipment quantity, after which time Purchaser will be deemed to have irrevocably accepted the Products.

FORCE MAJEURE

Manufacturer assumes no liability in connection with any failure to manufacture or deliver due to causes beyond Manufacturer's reasonable control including inadequate transportation services, inability to secure raw materials or supplies, acts of God, fire, strikes, lockouts, or other labor disturbances, orders or acts of authority, or any cause of similar or different kind.

RETURNS

No Product will be accepted for return and no repair or replacement will be made or credit be allowed on any Product returned unless such return is made in accordance with Manufacturer's Products Return Policy (the "**Return Policy**"), posted on Manufacturer's website at <http://www.optimumlighting.com>, which includes provisions for authorization procedures, packaging, shipment and restocking charges, if applicable.

LIMITED WARRANTY

Manufacturer warrants that each Product will be free from any defect in materials and workmanship which cause the Product to fail to operate in accordance with Manufacturer's published specifications for such Product as in effect on the date of shipment. The foregoing warranty is valid for a period of one (1) year of Purchaser's purchase (the invoice date) from Manufacturer or for such other period as may be specified by Manufacturer in writing for such Product. If a Product fails to operate in accordance with this warranty, Manufacturer will, at its option, repair or replace the Product or the defective part thereof, or credit Purchaser for the purchase price therefor, subject to the limited warranty terms and conditions set forth herein. For purposes of clarity, "repair or replace the Product

or the defective part thereof" does not include any removal or reinstallation costs or expenses, including without limitation labor costs or expenses. If Manufacturer chooses to replace the Product and is not able to do so because it has been discontinued or is not available, Manufacturer may replace it with a comparable product.

Manufacturer shall have no liability under this warranty unless Manufacturer is notified in writing promptly upon Purchaser's discovery of the defect and the defective items are returned to Manufacturer, freight prepaid, and received by Manufacturer not later than ten (10) days after expiration of the warranty period. This warranty shall not apply to any defect or failure to perform resulting from misapplication, improper installation, improper operation, abuse or contamination, whether internal or external and only applies when the Product has been properly wired and installed and operated within the electrical values, operating ranges and environmental conditions provided in the specifications for such Product. 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. Manufacturer shall have no liability of any kind for failure of any equipment or other items in which the Products are incorporated. This warranty shall not apply to Products manufactured by Manufacturer to Purchaser's designs or specifications, and no warranty is given as to such non-standard Products unless otherwise specifically agreed to in writing by Manufacturer. This warranty shall become void in the event any repairs or alterations not duly authorized by Manufacturer in writing are made to the Product by any person.

THE FOREGOING WARRANTY PROVISIONS ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF AND MANUFACTURER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AGAINST INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. An essential purpose of the limited exclusive liabilities and remedies in this warranty is allocation of risks between Manufacturer and Purchaser, which allocation of risks is reflected in the purchase price for the Products. UNDER NO CIRCUMSTANCES SHALL MANUFACTURER'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR MANUFACTURER'S PERFORMANCE OR ASSERTED FAILURE TO PERFORM HEREUNDER, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCT TO WHICH SUCH LIABILITY RELATES. IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, PROFITS, BUSINESS OR GOODWILL, WHETHER OR NOT MANUFACTURER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. No warranty or agreement varying or extending the foregoing warranty and

limitation of remedy provisions may be relied upon by Purchaser unless it is in writing and signed by Manufacturer's General Manager. No representation or affirmation of Manufacturer, whether by words or action, shall be construed as a warranty. If any model or sample was shown to Purchaser, such model or sample was used merely to illustrate the general type and quality of the Products and not to represent that the Products would necessarily conform to the model or sample.

With respect to products sold to Purchaser by Manufacturer but not bearing the Manufacturer's name or sub-brand name (including, without limitation, lamps, ballasts and other products), Manufacturer 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 Purchaser upon request but only to the extent permitted by law and relevant contracts, the warranties of the manufacturer of the relevant product.

EXPORT; COMPLIANCE WITH LAWS

Purchaser shall comply with all applicable laws, including, without limitation, export control laws and applicable regulations which may be issued from time to time concerning the exporting, importing and re-exporting of Manufacturer's Products and the direct products thereof. Purchaser acknowledges that shipments of Manufacturer's Products are subject to the export laws of the United States and such laws could delay or preclude delivery of Manufacturer's Products in the future. Purchaser shall also comply with the United States Foreign Corrupt Practices Act, and shall indemnify Manufacturer for any failure to comply or violation of such Act by Purchaser. Purchaser shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

INDEMNIFICATION

Purchaser shall indemnify, defend and hold harmless Manufacturer and its officers, directors, agents, employees, affiliates, successors, and assigns from and against all losses, liabilities, costs and expenses arising out of or in connection with any claim by third parties for any loss, damage or injury or death caused or alleged to be caused by: (a) the negligent use, application, or installation of Product by Purchaser or its employees, partners to whom Purchaser sold Product, contractors, agents or affiliates, (collectively, "**Purchaser Parties**"); or (b) the modification of Product or integration of Product into other products by any of the Purchaser Parties unless authorized in writing by Manufacturer. Purchaser shall not join, settle or otherwise attempt to affect or dispose of any such claim without Manufacturer's written consent.

PROPRIETARY RIGHTS

Manufacturer shall defend any suit or proceeding brought against Purchaser based on a claim that the manufacture and sale of a Product, or any part thereof, constitutes infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Manufacturer's expense) for defense of same, and Manufacturer shall pay damages or costs awarded therein against Purchaser. The use of such Products by Purchaser is beyond the control of Manufacturer and Manufacturer has no obligation or liability

whatsoever in connection with any suit claiming infringement by reason of the use of the Products.

Notwithstanding the foregoing, with respect to all Products manufactured by Manufacturer, either in whole or in part, to Purchaser's designs, specifications or instructions, Purchaser shall defend and hold harmless Manufacturer from all liability, loss, cost and expense (including attorney's fees) resulting from claims of alleged infringement of patents, designs, copyrights, trademarks, and other proprietary rights.

SOFTWARE LICENSE

Any software included with a Product, is licensed and not sold. The license is nonexclusive and is limited to use with the Product. No other use is permitted and Manufacturer retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes, without limitation, all rights in patents, copyrights, trademarks and trade secrets. Purchaser shall not sell, transfer, sublicense, reverse engineer or disassemble or redistribute the software. Purchaser shall not copy, disclose, or display any such software or otherwise make it available to others.

APPLICABLE LAW

The law applicable to sales in the United States under these Terms and Conditions shall be Article 2 of the Uniform Commercial Code as applicable to the state of destination. The United Nations Convention on Contracts for the International Sales of Goods is hereby excluded and shall not apply.