



**Optec LED Lighting, Inc**  
13040 W Lisbon Rd Unit 400  
Brookfield, WI 53005  
**Phone:** 888-743-5220  
**Fax:** 909-212-7745  
**Email:** customerservice@optecled.com

## TERMS & CONDITIONS

### APPLICABILITY

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These Terms and Conditions of Sale (these "Terms") shall apply to the sale of any goods, materials, services or work product ("Products") by Optec LED Lighting, Inc ("Seller") to the buyer thereof ("Buyer"). Except to the extent otherwise expressly agreed in writing signed by an authorized officer of Seller, these Terms and the order, quote or proposal in which they are referenced or to which they are attached (together, this "Agreement") constitute the entire agreement between Buyer and Seller regarding the Products. Buyer shall also be bound by the applicable provisions of any terms and conditions of the original manufacturer or service provider of the Products ("Supplier"). SELLER HERBY EXPRESSLY OBJECTS TO, AND IS NOT BOUND BY, ANY OTHER TERMS OR CONDITIONS ON BUYER'S PURCHASE ORDER, CONFIRMATION OR OTHER DOCUMENTS. SHIPMENT OR OTHER PERFORMANCE BY SELLER SHALL NOT CONSTITUTE ASSENT TO ANY SUCH INCONSISTENT TERMS.

### PRICES

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Prices and other information shown in any of Sellers' and Suppliers' catalogs and brochures are subject to change without notice and to confirmation by specific quotation. Prices and discounts quoted by Seller in writing are firm for the period of time (if any) set forth there in and are otherwise subject to change without notice. Such prices are subject to increase by Seller for any change to the Order made by Buyer and approved by Seller.

### DELIVERY

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Customer shall accept partial or pro rata deliveries in commercial units as full performance under Customer's order if Seller is unable to fill Customer's entire order. All goods shall be shipped FOB SHIP POINT, prepaid and billed, unless otherwise agreed by Seller in writing. Title and risk of loss pass to Customer on tender of delivery to the carrier. If goods are damaged in transit, Customer's sole recourse is to file a claim with the carrier. Customer understands that delivery dates are estimates only and Seller shall not be liable for any late or delayed delivery.

### RETURNS

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Fixtures that were factory custom orders or otherwise configured and altered to accommodate Customer requested wattage, voltage, CCT, CRI or lens types are not returnable; otherwise, returns will be accepted if prior authorization is obtained from Seller, which authorization shall be in Seller's sole discretion, the product is in resalable condition and in the original, undamaged manufacturer's package with sales receipt or invoice. Credit will be issued, if at all, based on Customer's purchase price for the returned product less any vendor restocking charges, freight, insurance, and other expenses of disposal.

Examples of what is accepted and not accepted returns are listed below.

#### STOCK ORDERS

- Stock orders can be returned within 90 Days of sale with 25% restocking fee.
- Returns over 90 Days will be accepted with company approval with specified restocking charges.



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## **RETURNS (continued)**

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### **NON-STOCK and SPECIAL ORDERS**

- Non-stock and special orders may be returned within 90 days of sale upon authorization plus all applicable restock and shipping/freight charges.
- Non-stock and special orders over 90 days are NON-RETURNABLE.

### **OTHER**

- A fixture is NON-RETURNABLE once installed.
- All requests for returns must have a receipt or invoice copy.
- Credit will be issued to account after inspection accordingly.

## **CREDIT APPROVAL**

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Shipments, deliveries and performances of work shall at all times be subject to the approval of Seller's credit department. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment in advance or upon such other payment terms as are acceptable to Seller's credit department.

## **PAYMENT TERMS**

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Payment for all amounts due hereunder shall be due net thirty (30) days from date of invoice (the "Payment Date") unless otherwise agreed to by Seller and Customer in writing; provided, however, Seller may, in its sole discretion, require full payment in case before order entry, shipment, or delivery. Payments not received when due will be subject to a service charge of 1.5%, or the maximum lawful rate, whichever is lower, of the outstanding invoice balance for each 30 day period or portion thereof past due. All costs of collecting monies due from Customer, including, but not limited to, legal expenses, legal interest, attorneys' fees and collectors' expenses, shall be paid by Customer to Seller upon demand. When Seller deems itself insecure with respect to Customer's ability to pay, Seller may, in its sole discretion: (a) withhold, defer, or cancel shipments and/or orders; (b) require cash in advance; (c) demand immediate payment of all amounts then owed and pursue collection actions (including attorneys' fees and costs of collection); and/or (d) impose, revoke, or revise Customer's credit limits. Seller may also impose, revoke, or revise Customer's credit limits, if any, at any time and for any reason. Customer agrees to give Seller current credit information, current annual financial statements, and proper authorizations for Seller to request financial information on Customer (including its subsidiaries and affiliates) from third parties, in each case, within five (5) days of request from Seller as a condition to beginning and/or continued credit extension. All amounts and payments are in U.S. dollars. Seller may set-off and/or deduct for any sums owed by Customer (including its subsidiaries and affiliates). Customer has no right to withhold or set-off amounts against Seller or its affiliates.

## **PRODUCTS**

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Seller endeavors to provide current and accurate information on our Web Site. However, misprints, errors, inaccuracies, omissions (including incorrect specifications for products) or other errors may sometimes occur. You should independently evaluate the accuracy of the information and the usefulness for your particular needs of any product or service available through our Web Site. Seller cannot guarantee that products and services advertised on our Web Site will be available when ordered or thereafter. Specifications for products and services are subject to change without notice, and Seller reserves the right to make changes to processing, materials or configuration without notice. Seller does not warranty that



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## **PRODUCTS (continued)**

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the content of the Website including, without limitation, product descriptions or photographs, is accurate or complete.

Seller reserves the right to reject any order you place with us, and/or to limit quantities on any order, without giving any reason. If we reject your order, we will generally attempt to notify you using the e-mail address you gave us when you placed the order, although we make no guarantee to do so. If your credit card has been charged for the purchase and your order is cancelled by Seller we will issue a credit to your credit card unless otherwise noted.

## **CANCELLATION OF ORDERS**

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Customer may cancel an order for standard Products prior to thirty (30) days before shipment by providing written notice to Seller of cancellation and paying a cancellation and restocking charge. Special order Products may only be cancelled with the written consent of the manufacturer thereof and Seller.

## **WARRANTIES AND DISCLAIMER**

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Customer acknowledges that Seller is a seller and not a manufacturer and that Seller is not responsible for the design, fabrication, or manufacture of any materials, equipment, tools, or other goods provided by or on behalf of Seller, including for any defects therein. Seller is also not liable for defects in information, labeling, instructions, or packaging provided by secondary sources. Any warranty issued by the manufacturer shall be solely that of the manufacturer and not of Seller. Seller warrants good title to Customer and otherwise Seller shall assign to Customer, effective upon transfer of title, all assignable warranties of the manufacturer. Seller hereby authorizes Customer to make or settle any claims under such manufacturer's warranties directly with any such manufacturer. Each jurisdiction's laws, regulations, codes, and standards may vary regarding product labeling, warnings, instructions, specifications, manufacture, and installation, as well as regarding construction, zoning, and/or use of products for a specific purpose; thus; Customer agrees that certain products may not be appropriate for all areas or applications and Customer hereby agrees that Customer is solely responsible for ensuring proper compliance with all such laws, rules, regulations, codes, and standards. Customer shall comply with all applicable laws, rules, codes, standards, and regulations including, but not limited to, those concerning exports, imports, anti-corruption, anti-bribery, child labor, affirmative action, conflict minerals, trade, economic or financial restrictions or trade embargoes and any amendments thereto (collectively, the "Laws") imposed by any applicable governmental authority. Seller shall not be liable, and Customer agrees to indemnify, defend, and hold harmless Seller, for any breach of such Laws. Customer agrees that it shall not, except as otherwise permitted under applicable Laws, transship, re-export, or otherwise divert goods purchased from Seller. If applicable, Customer undertakes to timely provide all information and documentation necessary for export, shipment and import. Seller shall not be liable, and Customer shall hold Seller harmless, for delays or any other losses resulting from Customer's failure to timely provide accurate information and documentation, export/import reviews, or any related permitting procedures. To the extent permitted by law, Customer shall, promptly upon becoming aware, provide to Seller details of any claim, action, suit, proceedings or investigation against it with respect to the Laws brought by any enforcement authority. In the event that Seller should believe, acting in good faith, that Customer has violated, or is under investigation for violating, any Laws, or if Customer is identified on any applicable sanctions list, Seller shall have the immediate right to terminate its relationship and/or any contract with Customer without liability. EXCEPT FOR THE WARRANTIES OF TITLE ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS OR WORKMANSHIP, AND ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.



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## **WARRANTIES AND DISCLAIMER (continued)**

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CUSTOMER'S EXCLUSIVE REMEDIES AGAINST SELLER FOR BREACH OF WARRANTY ARE REPAIR OR REPLACEMENT OF GOODS, REPERFORMANCE OF SERVICES, OR CREDIT OF THE PURCHASE PRICE PAID, AT SELLER'S OPTION, WHICH MAY ONLY BE EXERCISED WITHIN ONE (1) YEAR OF PERFORMANCE (FOR SERVICES) OR SHIPMENT (FOR GOODS). SELLER'S OBLIGATIONS UNDER THIS SECTION 5 SHALL BE VOID UNLESS CUSTOMER PROVIDES SELLER WITH WRITTEN NOTICE OF THE NON-CONFORMITY IN THE GOOD OR SERVICE WITHIN THIRTY (30) DAYS OF DISCOVERY.

## **LIMITED SUPPLIER WARRANTY**

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Buyer shall have the benefit of any warranty, guarantee or commitment extended directly by the applicable Supplier to Buyer (each a "Supplier Warranty"). Copies of any applicable Supplier Warranty shall be made available to Buyer upon request. Buyer's sole remedy for any defective or non-conforming products shall be as set forth in the applicable Supplier Warranty. Buyer acknowledges that the Seller is an independent contractor, reselling the Supplier's Products for Seller's own account. Seller is not an agent of any Supplier, and no Supplier is authorized to commit or bind Seller in any way. Seller shall not be responsible for any post-sale warranty repair or technical support obligations of Supplier. Seller may facilitate and assist Buyer and Supplier in processing any warranty claims without assuming such obligations. Notwithstanding the foregoing, to the extent Seller directly performs services hereunder (and such services are not performed by Supplier or any other third party), Seller warrants to Buyer that it shall perform such services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with Seller's standard practices. Seller shall not be liable for a breach of the foregoing services warranty unless: (i) Buyer gives written notice of the defective services, reasonably described, to Seller within five (5) days of the time when Buyer received the services; (ii) Seller reasonably verifies Buyer's claim that the services are defective; and (iii) Buyer followed Seller's instructions related to such services. Subject to the foregoing, with respect to any services subject to Seller's services warranty in this Section, Seller shall, in its sole discretion, repair or re-perform the applicable services, or credit or refund the price of such services at the pro rata contract rate. THE SUPPLIER WARRANTY AND SELLER SERVICES WARRANTY ARE THE EXCLUSIVE WARRANTIES APPLICABLE TO THE PRODUCTS, IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT.

## **LIMITATION OF LIABILITY**

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UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANYONE CLAIMING UNDER BUYER FOR ANY AMOUNT IN EXCESS OF THE PRICE ACTUALLY PAID BY BUYER FOR THE PRODUCTS, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES OR EXPENSES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF INCOME, PROFITS OR GOODWILL, WHETHER ARISING IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY.

## **PROPRIETARY RIGHTS**

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Buyer acknowledges and agrees that it is not acquiring any right, title or license in or to Seller's or the applicable Supplier's intellectual property or other proprietary rights associated with any of the Products. Any software, firmware, applications, code or data incorporated into the Products may be subject to Buyer's acceptance of separate license agreements with Seller or the applicable Supplier thereof. Buyer shall not use, disclose, modify, transfer, sublicense,



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## **PROPRIETARY RIGHTS (continued)**

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disassemble, decompile, reverse engineer such software, firmware, applications or data, except as expressly provided in the applicable license agreement.

## **INDEMNIFICATION**

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Buyer agrees to indemnify, defend and hold harmless Seller, its affiliates, and their respective shareholders, members, directors, managers, employees, agents and representatives (collectively "Representatives") from any claim, demand, action, cause of action, judgement, damages, cost, expense, liability of loss (including, without limitation, reasonable attorney's fees) arising out of any: (i) use, ownership, maintenance, transfer, transportation or other disposition of the Products by Buyer; (ii) breach or violation of this Agreement on the part of Buyer; or (iii) negligent act or omission, intentional misconduct or violation of applicable law on the part of Buyer or its Representatives. Seller's remedies under these terms and conditions are cumulative and in addition to any other remedies available to Seller at law, in equity, by contract or otherwise.

## **ASSIGNMENT**

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This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Buyer shall not assign its rights or obligations under this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld. Any attempted assignment in violation of this Section shall be void and have no force and effect. Seller may subcontract the performance of any of its duties or obligations hereunder to any third party.

## **FORCE MAJEURE**

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Neither party shall be liable to the other party, or deemed to have breached or defaulted under this Agreement, for failure or delay in fulfilling or performing any obligation (except for payment obligations), to the extent such failure or delay results from any cause beyond such party's direct control, including but not limited to acts of God, fire, flood, embargo, governmental acts or regulations, accident, labor dispute, strike, slowdown, war, riot, major equipment failure, delay in transportation, or shortage or inability to obtain necessary labor, materials, equipment, power and/or transportation. In the event of such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of such delay.

## **MISCELLANEOUS**

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These terms and conditions constitute and represent the complete and entire agreement between Seller and Buyer and supersede all previous communications and representations, either written or verbal, with respect to the subject matter of any Order or invoice. No modification of these terms and conditions shall be binding on the parties unless made in writing and signed by an authorized representative of each party. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement or of any future breach of the provision so waived. If any provision, clause or part, or the application thereof is held invalid, the remainder of this Agreement or the application of such provision, clause or part under other circumstances shall not be affected thereby. This Agreement may be made in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement. Counterparts to this Agreement may be signed, transmitted and delivered electronically.