

LITELAB CORP.
TERMS & CONDITIONS OF SALE

Litelab Corp., a New York corporation ("Litelab"), will sell and deliver to Buyer the described goods only pursuant to the terms and conditions contained herein (the "Terms"), which constitute the entire agreement between Litelab and Buyer. No other terms or conditions shall be of any effect unless agreed to in writing by Litelab. Any additional or different terms or conditions contained in any request for proposal of Buyer (an "RFP"), any purchase order of Buyer ("Order"), or Buyer's response to these Terms will be deemed objected to by Litelab and will be of no effect. Buyer will be deemed to have agreed to these Terms if Buyer issues an RFP to Litelab, issues an Order to Litelab, or accepts delivery of any part of the goods.

1. **ORDERS.** Orders are not binding on Litelab unless accepted by Litelab in writing or filled by Litelab. Litelab reserves the right to reject any Order.
2. **TERMS OF PAYMENT.** Invoices will be sent to Buyer at Buyer's address as set forth on the Order unless otherwise specified by Buyer. Except as provided in this **Section 2**, all invoices shall be due and payable upon receipt. Payment terms are at the sole discretion of Litelab.
 - a. Credit Terms. Credit terms for Orders will vary with Buyer creditworthiness. Litelab, without notice, may change or withdraw extensions of credit at any time, in which event Litelab may require cash payments or collateral security for account balances.
 - b. Pre-Payment. Orders under five hundred dollars (\$500) require full pre-payment. Orders for non-standard products or for greater than ten thousand dollars (\$10,000) require a fifty percent (50%) non-refundable deposit with the balance due prior to shipment.
 - c. Late Payment. All account balances outstanding for more than thirty (30) days from the date of Litelab's invoice shall be subject to a late payment charge equal to the lesser of (i) one and one-half percent (1.5%) per month, or (ii) the highest rate permitted by applicable law. Should Litelab find it necessary to obtain assistance in collecting past due balances, Buyer shall pay Litelab's collection fees, including attorney fees and court costs. If Litelab has to return a check to Buyer for any reason, Buyer shall pay Litelab a service charge of one hundred dollars (\$100) for each such check.
 - d. Wire Transfer. Both Litelab and Buyer recognize that there is a risk of wire fraud when individuals impersonating a business demand immediate payment under new wire transfer instructions. To avoid this risk, Buyer/Seller must verbally confirm any new or changed wire transfer instructions by calling Litelab and speaking with Litelab's Credit Manager before transferring any monies using the new wire instructions. Both parties agree that they will not institute wire transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any wire transfer instruction changes before any outstanding payments are due using the new instructions.
3. **SHIPPING.** Buyer is responsible for all freight and handling charges. Buyer is responsible for any additional charges if the goods require extra or special packaging due to the nature of the goods, the manner in which they will be transported, or otherwise. Any Buyer arranging for its own transportation will be invoiced a handling fee of one hundred dollars (\$100). For domestic orders, all goods are sold Free on Board ("FOB") Litelab's factory. For international Orders, all goods are sold Door to Airport ("DTA"). Additional Buyer information may be required before international Orders can be processed. If Buyer asks Litelab to delay shipment of any goods after they have been manufactured and made ready for shipment, Buyer will pay for the goods and for storage charges until Litelab receives instructions from Buyer to ship the goods. If Buyer refuses to accept any shipment from Litelab, Buyer will nonetheless be liable for the full payment thereof. Buyer will also be liable for all of Litelab's rehandling, reshipping, restocking, and storage charges.
4. **DELIVERIES.** Title to and risk of loss for all goods shall pass to Buyer immediately upon Litelab's delivery thereof to the carrier. Shipments will be made via carrier selected by Litelab unless other arrangements requested by Buyer have been expressly agreed to in writing by Litelab. Litelab will not be liable for shipment delays or any loss or damage to goods while in transit, and all claims therefore must be made immediately by Buyer to the carrier. Specified shipping dates are approximate only. Litelab reserves the right to deliver goods in installments unless expressly prohibited in the applicable Order. Installment deliveries will be invoiced by Litelab at time of shipment.

Delay in any installment delivery will not relieve Buyer of its obligation to accept all remaining installment deliveries pursuant to an Order.

5. **PRICES.** Prices, delivery terms, and specifications are subject to change without notice. Litelab's price list is not an offer to sell. Litelab's written quotations to sell will be binding upon Litelab only for thirty (30) days from the date of the quotation. Orders accepted by Litelab within the period designated in the quotation will be price protected for delivery for sixty (60) days from the date of that Order. Additionally, hold for release ("HFR") Orders are price protected for sixty (60) days, after which time they are subject to review and revised pricing. Litelab reserves the right to withdraw any price quotation at any time for any reason prior to Litelab's acceptance of an Order. All Goods are sold as described in the price quotation. Prices shown on Litelab's price lists are prices prevailing at the date of their publication; Litelab reserves the right to change these prices without notice. Prices are subject to applicable federal, state and local taxes, duties, and customs fees. Litelab disclaims all liability for any errors in its website, electronic communications, catalogs, price sheets, and other publications.

6. **SPECIFICATIONS.** Litelab will treat additions and/or modifications by Buyer to accepted Orders as offers by Buyer to revise said accepted Order. If accepted by Litelab, the revised Order will be priced and invoiced accordingly. In the event of a conflict between an Order and Litelab's drawings or specifications approved by Buyer, the approved drawing or specification will in all cases prevail. Each Order accepted by Litelab will be independent of every other Order, and Litelab will not be bound by general or blanket instructions contained in or referred to in any Order. Order specifications and instructions must appear on the face of the Order itself. Orders containing a phrase to the effect that "all material to be supplied as per project plans and specifications" are subject to Litelab's separate written acceptance. All additions, deletions, or other changes to an Order are subject to these Terms. Orders marked HFR will be entered and held for processing until Litelab receives and accepts Buyer's written release, and invoices for such goods will be at prices prevailing at the date of their shipment. Litelab reserves the right to change any design, material, mean, or method of manufacturing its goods if the change does not alter the visible appearance of the goods nor materially adversely affect their performance or function.

7. **CANCELLATION.** Litelab reserves the right to assess a minimum cancellation charge for standard products of: (i) costs specifically related to the Order including costs of components, labor, design, and engineering, plus (ii) a cancellation fee of twenty-five percent (25%) of the purchase price. All orders for non-standard product are non-cancellable and subject to full payment. There is a twenty-four (24) hour grace period from time of Order or release of HFR Order.

8. **WARRANTIES.**

- a. **Limited Warranty.** Litelab warrants that for a period of twelve (12) years from the date of shipment to Buyer that goods manufactured by Litelab are: (i) free of defective workmanship and material, and (ii) unless otherwise specified, are listed by a recognized testing laboratory or manufactured with components listed or recognized by a recognized testing laboratory; provided, the warranty period for components of such goods consisting of LEDs, LED assemblies, drivers, ballasts, transformers, dimmers, sockets or other electronic components shall be five (5) years from date of shipment.
- b. **Third-Party Goods Disclaimer.** GOODS MANUFACTURED BY THIRD PARTIES AND NOT BY LITELAB BUT THAT ARE INCLUDED IN AN ORDER AS A COURTESY WILL BE COVERED SOLELY BY THE WARRANTY ISSUED BY THE MANUFACTURER THEREOF, IF ANY.
- c. **Code Compliance Disclaimer.** BUYER IS RESPONSIBLE FOR ENSURING ALL GOODS CONFORM TO LOCAL CODES. LITELAB WILL NOT HAVE ANY LIABILITY FOR ANY FAILURE OF GOODS TO COMPLY WITH STANDARDS IMPOSED UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, AS AMENDED FROM TIME TO TIME.
- d. **Third-Party Maintenance Disclaimer.** LITELAB WILL NOT BE LIABLE TO BUYER FOR ANY LOSS IF ANY GOODS, PARTS, OR COMPONENTS HAVE BEEN: (I) REPAIRED OR ALTERED BY ANYONE OTHER THAN LITELAB, (II) MISUSED OR NEGLECTED, OR (III) USED FOR A PURPOSE NOT INTENDED BY, OR IN A MANNER CONTRARY TO, PREVAILING COMMERCIAL PRACTICES OR TO LITELAB'S PRINTED INSTRUCTIONS OR SPECIFICATIONS.

- e. **General Disclaimers.** LITELAB SHALL HAVE NO WARRANTY LIABILITY OR OBLIGATIONS WHATSOEVER WITH RESPECT TO GOODS WHICH ARE NOT FULLY PAID FOR. LITELAB DOES NOT WARRANTY AGAINST DAMAGE INCURRED FROM NORMAL WEAR AND TEAR, MISUSE, OR FREIGHT HANDLING. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, LITELAB MAKES NO WARRANTIES WITH RESPECT TO ANY GOODS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, OR NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
- f. **Returns.** Returns pursuant to warranties in this **Section 8** are subject to the return policy in **Section 9** and must be made within thirty (30) days after Buyer becomes aware of the breach of warranty.
9. **RETURN POLICY.** Before any goods may be returned to Litelab, Buyer must request, in writing, a return material authorization number ("**RMA**") from Litelab's Customer Service Department. Each request shall contain: (i) the Order number and date, (ii) an itemization of the goods being returned, (iii) the reason for the requested return, and (iv) an attached copy of the invoice. If Litelab issues an RMA to Buyer, Buyer may return such goods, but only within sixty (60) days from the date of the issuance of the RMA. Goods must be properly crated or packaged and shipped freight prepaid to Litelab.
10. **REPAIRS, REPLACEMENTS AND REFUNDS.** Non-standard goods are returnable only in the event of a breach of Litelab's warranty pursuant to **Section 8**. Standard goods may also be returned in the event of a breach of Litelab's warranty pursuant to **Section 8**. Goods returned for breach of warranty will be repaired, replaced or the purchase price refunded, in Litelab's discretion. Standard goods may also be returned for refund at the Buyer's option within thirty (30) days from Buyer's receipt of goods; provided such returns will be subject to a fifty percent (50%) fee for handling, inspection, repackaging, and restocking and must comply with the return policy in **Section 9** above.
11. **FORCE MAJEURE.** Litelab will not be liable to Buyer or any other person, and Buyer will make no claim against Litelab, for any loss, liability, cost, damage, or expense (each, a "**Loss**") resulting from Litelab's failure or delay in the performance of any obligation under this agreement due to events beyond its control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdowns, stoppages or delays, shortages or failures or delays of energy, materials, components, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, or acts or regulations or priorities of the federal, state or local governments. Litelab's period of performance will be extended for the period of such failure or delay, and when the event causing such failure or delay in performance ceases, Litelab can complete its performance of an Order. Buyer will not impose any charge back, offset, or other adjustment to the contract price which is not preapproved in writing by Litelab.
12. **LIMITATION OF LIABILITY.** Litelab's aggregate liability in connection with the sale of any goods, regardless of the form of action giving rise to such liability, will not exceed the amount actually paid by Buyer to Litelab for such goods. IN NO EVENT WILL LITELAB BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST REVENUE, OR LOSS OR DEPRECIATION OF GOODWILL, EVEN IF LITELAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. All remedies of Buyer will be limited exclusively and in lieu of any and all other remedies to those contained in these Terms, whether based in breach of warranty, contract, negligence, strict liability, or any other theory.
13. **INDEMNIFICATION.** Buyer will indemnify and hold harmless Litelab from each and every Loss, together with attorneys' fees and other litigation costs, incurred in connection with any action, claim, or proceeding commenced against Litelab by Buyer or any other person or entity or to which Litelab is made a party, relating in any manner to the goods, except only to the extent it is determined that Litelab's acts or omissions have directly caused any damaged to the party or parties seeking recovery for the same.
14. **CONFIDENTIALITY.** All technical information, specifications, drawings, documentation, and know-how of every kind and description disclosed by Litelab to Buyer will be deemed to constitute "**Confidential Information**" of Litelab unless such information: (i) becomes part of the public domain through no fault of Buyer, (ii) is disclosed to Buyer by a third party without breach of any obligation or other restriction, (iii) is known to Buyer at the time of disclosure and has been documented as such, or (iv) is required to be disclosed by legal, judicial, or administrative proceeding.

All Confidential Information will be owned by, and remain the exclusive property of, Litelab. All Confidential Information will be held in confidence by Buyer and, if in any form of physical media, returned by Buyer to Litelab upon request. Buyer will not: (i) reproduce the Confidential Information without the written consent of Litelab, or (ii) use the Confidential Information for any purpose other than in connection with the operation and maintenance of the goods. Buyer will indemnify and hold harmless Litelab from each and every Loss arising from any failure to comply with the Terms relating to Confidential Information. Buyer acknowledges that monetary damages may not be adequate in the event of any such failure to comply and that Litelab will be entitled to injunctive relief in the event of any such non-compliance.

15. **INTELLECTUAL PROPERTY.** All contributions of Litelab to the goods, the results of the goods, and any other goods designed or provided by Litelab hereunder may contain or result in statutory and non-statutory intellectual property (the "IP"), including but not limited to patentable subject matter or trade secrets; and all such IP remains the sole property of Litelab; and Buyer will not disclose, disassemble, decompile, or otherwise reverse engineer said contributions, or any results of the goods.

16. **DEFAULT AND WAIVER.** If Buyer defaults with respect to any payment or performance obligation whatsoever, in respect to an Order or any other agreement with Litelab, Litelab may, in addition and without prejudice to its other lawful rights and remedies: (i) defer further shipments of goods to Buyer until each default has been corrected to Litelab's satisfaction, (ii) terminate the Order, or (iii) terminate and refuse to fill all other Orders with such Buyer. No course of conduct, nor any delay of Litelab in exercising any rights hereunder, nor Litelab's acceptance of a payment from Buyer with knowledge of an existing default or breach, shall waive any rights of Litelab or be deemed a modification of these Terms.

17. **GOVERNING LAW.** Each Order and these Terms will be construed to be between merchants. Any question concerning their validity, construction, or performance will be governed by the laws of the State of New York. The exclusive venue for the resolution of all disputes will be the state and federal courts located in the County of Erie, State of New York, regardless of where any Order was placed or filled, the place of delivery of the goods, or where any other act or performance occurred, and Buyer hereby consents to the personal jurisdiction of such courts.

18. **MODIFICATION.** Unless otherwise agreed in writing by Litelab, the Terms constitute the entire agreement between Buyer and Litelab with respect to an Order, and may be modified only in writing, signed by the party or parties to be charged. In the event of a conflict between these Terms and any Order, these Terms will prevail.

19. **ASSIGNMENT.** All rights and obligations of Litelab and Buyer will enure to the benefit of and be upon their respective successors and permitted assigns. The rights and obligations of Buyer hereunder will not be assignable, directly or by operation of law, without the prior written consent of Litelab. Any purported assignment or transfer in violation of this **Section 19** is void.

20. **PERMITS.** Buyer will obtain, at its own expense, any and all necessary licenses, permits, and inspections necessary to permit the lawful purchase, installation, and/or use of goods.

21. **INSURANCE.** Until Litelab has been paid in full for goods, Buyer shall maintain all-risk insurance on the goods, protecting against any loss or damage thereto and Litelab will be named as loss payee thereof with respect to the goods. Buyer will provide Seller proof of such insurance upon demand.

22. **SITE CONDITIONS.** Buyer assumes all risks associated with changes in site or field conditions, such as, by way of example only, changes in dimensions or site or facility design.

Buyer Signature

Date