

# TERMS AND CONDITIONS OF SALE

## 1. Entire Agreement

All purchases of products ("Products") from DMF, Inc. d/b/a DMF Lighting and/or its affiliates ("Seller") by commercial, industrial and institutional customers ("Customers"), shall be subject to these standard Terms and Conditions of Sale (these "Standard Terms"). These Standard Terms and Conditions of Sale, together with any applicable quote, invoice for the Products and/or any other Seller documents attached hereto or into which these Standard Terms are incorporated by reference, including any agreement executed by the parties (collectively, this "Contract"), constitute an offer or counteroffer by Seller to sell the Products to Customer. This Contract is not an acceptance of any offer or counter offer by Customer, and this offer and any contract arising out of this offer are expressly conditioned on Customer's assent to all of the terms and conditions set forth in this Contract. Seller objects to any additional or different terms or conditions contained in any request for quotation, purchase order, or other document or communication previously or hereafter provided by Customer to Seller, and Seller's shipment of any Products shall not be construed as assent to any such terms or conditions. No such additional or different terms or conditions will be of any force or effect. This Contract will be the entire agreement between Seller and Customer on the subject matter hereof; and there are no conditions to this Contract that are not so contained or incorporated in this Contract.

## 2. Pricing

Unless otherwise provided in this Contract, Seller will ship Products at prices prevailing in Seller's published price list at the time of shipment. Prices are subject to change by Seller without written notice to Customer. Unless otherwise provided in this Contract, prices do not include applicable taxes, fees, duties, insurance, export, shipping or other governmental fees or charges (including without limitation Import Costs and Fees, as that term is defined in Section 9 hereof), all of which shall be paid by Customer. In the event Seller is required to pay any such taxes or other charges, Customer shall reimburse Seller therefor on demand.

## 3. Terms of Payment

Terms of payment are Net 30 days from the date of the applicable invoice.

## 4. Freight Policy

Seller uses a ground shipping carrier of its choice. Subject to these Standard Terms, unless otherwise agreed by Customer and Seller, all orders will be shipped on Seller's account with the applicable carrier. Freight will be prepaid by Seller, and such charges will not be charged to Customer, on any order totaling \$2,000 USD or more that is shipped to a single location within the limits of the continental United States (excluding shipments to Hawaii, Alaska, or any U.S. territory). Freight will be prepaid by Seller, and such charges will not be charged to Customer, on any order totaling \$6,500 CAD (excluding HST/GST/PST) or more that is shipped to a single location within the limits of Canada (excluding orders shipped to Canadian federal territory). Unless otherwise agreed in a writing signed by both Customer and Seller, all orders are shipped F.O.B. Seller's loading dock (as the term F.O.B. is used in the Uniform Commercial Code) or, for ultimate destinations outside of the United States or Canada, EXW Seller's loading dock (Incoterms 2010). For all orders that are less than \$2,000 USD in the United States or less than \$6,500 CAD (excluding HST/GST/PST) in Canada, and for orders of any amount that are shipped to Alaska, Hawaii, any U.S. territory, Canadian Federal Territory, or outside the United States and Canada, Customer is responsible, and shall pay or reimburse Seller, for all freight charges. Partial shipments may be made at Seller's sole discretion. For Mexico and all other international destinations, orders are not processed without Customer's prior approval of shipping charges.

## 5. Shipping Terms and Force Majeure

Product delivery issues (shortage of and/or damage to) must be reported to the carrier immediately upon discovery and any such issues must be indicated on the bill of lading. Seller is not responsible for Products damaged in transit. Customer must notify Seller of any quantity shortage or delivery issue within 24 hours from receipt of Products. All shipment and delivery dates are approximate. Seller shall not be liable for any losses or damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of Customer, embargo or other governmental act, regulation or request, fire, flood, accident, strike, slowdown, war, riot, delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities, casualty, terrorist act, police action, currency restrictions, shortage of transport, import or export restrictions, failure or delay of vendors, restrictions in the use of power, or any other cause beyond Seller's reasonable control, even if foreseeable or anticipated. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Purchaser's exclusive remedy for other delays and for Seller's inability to deliver for any reason shall be rescission of its agreement to purchase. Risk of loss shall pass to Customer upon delivery by Seller of the Products to Seller's loading dock for loading into carrier vehicle. Notwithstanding the foregoing, title to the Products shall pass to Customer upon payment in full for the item in question.

## 6. Returns

Subject to the terms of Section 10 below, no Products may be returned by a Customer without prior written authorization in the form of a Return Merchandise Authorization ("RMA") which has been issued by Seller, and must be requested by the Customer within 90 days of the original shipment date of applicable Products. Except with respect to defective Products covered by Section 10, each returned Product must be in its original sealed cartons and shipped prepaid to Seller. Once an RMA is issued, it is only valid for 30 days. A minimum of a 25% restocking fee will apply to all stock Products. A minimum of a 50% restocking fee will apply to all Products that are assembled. Special ballasted Product, custom-made Product, outdated or modified versions of catalogued factory stocking Products will not be accepted for return. Minimum RMA is \$50.00 USD (\$65.00 CAD) except for defective Products subject to Section 10.

## 7. Cancellation

No order may be canceled or altered by Customer except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. All order cancellation requests from Customer shall be submitted to Seller in writing prior to returning the Product(s) which is subject to the cancellation request. No oral order cancellation requests will be accepted. All costs for warehousing and freight on orders canceled after shipment and refused at destination will be charged to Customer.

## 8. Changes

Seller reserves the right to change, discontinue or modify the design and construction of any Products and to substitute material equal to or superior to that originally specified, without notice to Customer.

## 9. Export Sales

All sales will be invoiced and payable in US dollars, with the sole exception of sales into Canada, which will be invoiced and payable in Canadian dollars. Unless otherwise agreed in a writing signed by both Seller and Customer, Seller will not be the importer of record for any shipments outside the United States and will not be responsible for any compliance or customs broker fees, freight forwarder fees, freight expenses, insurance, customs duties, import fees, goods, services, or goods and services taxes (GST/HST/PST) or other turnover, ad valorem, and value added taxes (collectively, "Import Costs and Fees") associated with shipments outside the United States. Unless otherwise agreed in a writing signed by both Seller and Customer, in case of any such export sales, Customer shall be the importer of record in the destination country and shall be solely responsible, at its sole expense, for satisfying all formalities that may be required to import the orders into the applicable jurisdiction and for complying with applicable import laws and regulations, including, but not limited to, labeling requirements and applicable related product regulatory laws and regulations. Unless otherwise agreed in a writing signed by both Seller and Customer, Customer shall also be solely responsible for and, if applicable, shall reimburse and hold harmless Seller in respect of all Import Costs and Fees. Seller shall provide Customer with such documentation as Customer may reasonably require to facilitate export/import of products.

## 10. Product Warranty

Seller warrants to Customers that Seller's Products provided hereunder shall be free of defects in material or workmanship for a period of (i) five (5) years for LED Products and (ii) one (1) year for all other Products, from date of shipment from the applicable Seller warehouse location. If within either such applicable period any such Products shall be proved to Seller's satisfaction to be defective, Seller shall, at its option, repair or replace the affected part free of charge and send such repaired or replaced part to the Customer F.O.B. destination. Such repair or replacement (whichever Seller determines, in its discretion, to provide) shall be Seller's sole obligation and the Customer's exclusive remedy for any deficiency in Products furnished hereunder, and shall be conditioned upon the Customer's return of such Products to Seller F.O.B. shipping point, or, in Seller's sole discretion, inspected in the field by a Seller-authorized representative. Notwithstanding anything to the contrary contained herein, this warranty does not apply to, and Seller has no responsibility to any Customer for, Products that have been modified, improperly installed and/or used in conditions or for purposes other than for which they were designed. Any parts repaired or replaced under this warranty are warranted only for the balance of the applicable warranty period on the defective Product. No person, agent or distributor is authorized to give any other warranty, or to modify the terms of this warranty, on behalf of Seller. THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED; AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. To obtain warranty service pursuant to this Section 10, please send an email to [info@dmflighting.com](mailto:info@dmflighting.com) or contact your local sales agent.

## 11. Consequential Damages and Other Limitations of Liability

Seller's liability with respect to the Products sold hereunder shall be limited to the warranty provided in Section 10 of these Standard Terms and, with respect to any other breaches by Seller of the Contract with Customer, shall be limited to the contract price, other than liability arising from Seller's willful misconduct. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO PRODUCTS SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. Without limiting the generality of the foregoing, Seller specifically disclaims any liability

for property damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost good will, cost of capital, cost of substitute Products, or for any other types of economic loss, or for claims of Customer's customers or any third party for any such damages, costs or losses. SELLER SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL, INDIRECT AND CONTINGENT DAMAGES WHATSOEVER, INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY SELLER'S WILLFUL MISCONDUCT.

#### 12. Offset

Customer shall pay for the Products in full, without any set-off, counterclaim, recoupment or other similar rights Customer may have against Seller. If Customer is required under law to withhold or deduct any amount from the payment due to Seller, Customer shall increase the sum it pays to Seller by the amount necessary for Seller to receive an amount equal to the sum it would have received if no withholdings or deductions had been made.

#### 13. Indemnification

Customer shall indemnify and hold harmless Seller and its officers, agents, and employees from and against any and all losses, damages liabilities, costs and expenses (including but not limited to attorneys' fees and other costs of defense) that Seller may incur as a result of any claim, other than a claim for the remedies provided in Section 10 of these Standard Terms, by Customer or Customer's customers or by any third party arising out of or relating to the Products sold hereunder (including, without limitation, any such claim based upon the negligence of Seller in designing, manufacturing, performing and/or selling Products), unless such losses, liabilities, damages or expenses are ultimately determined to be attributable solely to the willful misconduct of Seller.

#### 14. Applicable Law

This Contract shall be governed by and construed in accordance with the laws of the State of California, without regard to any provisions regarding choice of law. THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS OR ANY APPLICABLE LEGISLATION ENACTED IN ORDER TO GIVE EFFECT TO SUCH CONVENTION. Any dispute or issue between the parties arising hereunder or in connection herewith shall be commenced and prosecuted in its entirety in any state or federal court in Los Angeles County, California, and each party consents to personal and subject matter jurisdiction and venue in such courts and waives and relinquishes all right to attack the suitability or convenience of such venue or forum by reason of their present or future domiciles, or by any other reason. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR FORUM TO WHICH THEY MAY BOTH BE PARTIES, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS CONTRACT, THE BREACH OF THIS CONTRACT, OR WITH RESPECT TO ANY MATTER OR DISPUTE BETWEEN THEM.

#### 15. No Assignment

Customer shall not assign its rights or delegate its duties under this Contract. Any such attempted assignment or delegation shall be null and void.

#### 16. Compliance with Laws

Customer shall conduct its business in strict compliance with all laws and regulations. Customer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization in respect of the use, handling, transportation, storage, import, sale or disposal of the Products, required under any applicable law or regulation. Customer shall not export or re-export, directly or indirectly, the Products without obtaining any required license or approval.

#### 17. Independent Contractors

The parties understand and agree that nothing contained in this Contract shall be construed as creating a joint venture, partnership or other similar arrangement between the parties.

#### 18. Security Interest

If the Products are sold on credit terms, Customer acknowledges that Seller retains a purchase money security interest in the Products. To secure Customer's obligations to Seller under this Contract or any other agreement, Customer hereby grants to Seller a security interest in all the Products sold under this Contract, whether now owned or hereafter acquired, and all products and proceeds thereof. Seller may file any financing statements and send any notices necessary or appropriate to perfect or protect such security interest.

#### 19. Miscellaneous

If any provision of this Contract is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract



shall continue in full force and effect. Neither party's delay or failure in enforcing any right or remedy afforded under this Contract or by law shall prejudice or operate to waive that right or remedy or any other right or remedy which it may have available; nor shall any such failure or delay operate to waive either party's rights to any available remedies due to a future breach of this Contract, whether of a like or different character. No amendment, modification, or waiver of the provisions of this Contract shall be valid or binding on either party unless it is in writing and signed by both of the parties. All notices, requests, demands and other communications under this Contract shall be given in writing and shall be delivered to such person or address as each party may from time to time furnish in writing to the other party.

20. Minimum order.

\$50.00 USD (\$65 CAD).