



# Terms & Conditions Of Sale

**A. Agreement.** All orders of goods (“Goods”) are subject to these Terms and Conditions of Sale (these “Terms”) and acceptance by IKIO LED Lighting, LLC (“Seller”). These Terms, along with the corresponding purchase order in form and substance acceptable to Seller (“Order”) and, if applicable, any Seller acknowledgment forms (“Confirmation”), constitute the entire agreement (“Agreement”) between Buyer and Seller as to the sale of the Goods, and supersede all prior oral or written agreements or representations. These Terms supersede and override, and Seller expressly rejects, any and all terms and conditions contained on any documents provided by Buyer in connection with the Order, including, without limitation, any acknowledgement forms, purchase orders other than the Order, packing slips, bills of lading, and invoices. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. Buyer’s receipt of the Goods shall constitute Buyer’s agreement to these Terms.

**B. Order Procedure.** Buyer may purchase Goods from Seller by submitting an Order. Each Order will state the quantity and type of Goods to be purchased and an applicable target delivery date. If any term in an Order conflicts with any Terms, these Terms shall govern and control. Seller has the right, in its sole discretion, to accept, reject, or cancel any Order. Seller may accept any Order by confirming the Order (whether by written confirmation, invoice, or otherwise) or by delivering such Goods, whichever occurs first. No Order is binding on Seller unless accepted by Seller as provided in these Terms. Buyer shall be obligated to purchase from Seller the quantities of Goods specified in any Order.

**C. Pricing, Adjustments and Additional Charges.** Prices set forth on the Order are subject to change prior to shipment and the final price will be determined by Seller as of the date of shipment and reflected on the Confirmation (“Price”). Prices do not include local, state, or federal taxes (including sales and use taxes), all of which Buyer shall pay. Whenever applicable, taxes will be added to the invoice as an additional charge to be paid by Buyer on demand. Seller will package the Goods in accordance with its customary packaging methods. Seller will use commercially reasonable efforts to comply with packaging requests made by Buyer, provided that Buyer will be liable for any additional costs incurred by Seller in complying with such requests.

**D. Payment Terms.** Unless otherwise set forth on the Confirmation, the payment terms are prepaid. Interest at the rate of the lesser of 1.5% per month or the highest rate permitted by applicable law will be charged on past due amounts. Buyer shall also reimburse Seller for all reasonable costs incurred in collecting any late payments, including without limitation, attorneys’ fees and costs. Buyer shall not, and acknowledges that it will have no right, under this Agreement or any Order, to withhold, offset, recoup, or debit any amounts owed (or to become due and owing) to Seller, whether under this Agreement or otherwise. Buyer hereby grants to Seller a security interest in all Goods, and in all proceeds thereof, until the entire invoice amount has been paid by Buyer. Buyer authorizes Seller to file one or more financing statements to protect its security interest and agrees to execute such agreements and documents as Seller may request from time to time. If reasonable grounds for insecurity arise with respect to payment due by Buyer, Seller may demand different terms of payment and/or assurance of Buyer’s due payment. Seller may, upon the making of such demand, stop production, suspend shipments, cancel any pending orders, and/or terminate the Agreement.

**E. Delivery Dates and Shipping.** Delivery dates are provided as estimates and may be subject to change. Seller will use commercially reasonable efforts to meet its delivery date estimates, but will not be liable for delays in filling the Order or liable for any losses or damages due to such delays. Buyer may not cancel the Order for any such delays. All shipments shall be FOB Seller’s facility in Indianapolis, Indiana or such other shipping point as Seller shall designate (“Shipping Point”) (North American sales only; international sales shipping term will be as designated by Seller on the Order) unless otherwise stated on the Order. For international sales and shipping, terms will be designated by seller in the quote or in the order acceptance. Seller may make partial shipments for any Order, and each partial shipment may be invoiced by Seller, but no partial shipment will relieve Buyer of its obligations under the remainder of the Order.

**F. Title and Risk of Loss.** Title and risk of loss passes to Buyer upon shipment by Seller from the Shipping Point. Buyer agrees that it shall be Buyer’s responsibility to ensure that the carrier delivering Goods to Buyer has adequate insurance in full force and effect to cover any and all loss or damage to the Goods which may result from delivery or transport of the Goods.

**G. Inspection; Quality Tolerances.** Inspection, acceptance or rightful rejection of Goods shall be made within 30 days after Buyer’s receipt of the Goods (“Inspection Period”). Goods shall be deemed accepted unless, prior to the end of the Inspection Period, Buyer notifies Seller in writing that any of the Goods are rejected and the reason for such rejection. Goods rejected without reason within 15 days after Buyer’s receipt of the Goods may be subject to a restocking charge.

**H. Warranty.** Seller provides to Buyer all transferable warranties (Parts & Labor) made to Seller by the manufacturers or suppliers of materials for such Goods for the warranty period provided by such manufacturer or supplier (the “Warranty Period”). In no event shall the Warranty Period under these Terms exceed the duration or term of the warranty provided to Seller by the manufacturer or supplier of the Goods to Seller. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATED TO THE GOODS, INCLUDING WITHOUT LIMITATION, ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) WARRANTY OF TITLE, OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THE WARRANTY PROVIDED HEREIN IS PROVIDED EXCLUSIVELY FOR THE BENEFIT OF BUYER AND IS NONASSIGNABLE AND NONTRANSFERABLE AND IS NOT INTENDED TO BE FOR THE BENEFIT OF ANY THIRD PARTY, PURCHASER, OR OTHER TRANSFEREE OF BUYER.**

**I. Remedies.** During the Warranty Period, regarding any Goods that do not conform to the warranties set forth in the foregoing section and accepted by Buyer (“Nonconforming Goods”), Seller’s liability under any warranty is discharged, in Seller’s sole discretion and at its expense, by (i) repairing or replacing such Nonconforming Goods and pay labor charges incurred in the removal of the defective unit/s; or (ii) crediting or refunding the price of such Nonconforming Goods, less any applicable discounts, rebates, or credits. Buyer is responsible for all costs and risk of loss associated with the delivery of Nonconforming Goods to Seller’s designated facility or Seller’s designated agent for warranty repair or replacement. Seller is responsible for all costs and risk of loss associated with the delivery of repaired or replaced Goods to Seller’s designated facility. Warranty claims for breach of a warranty must be received by Seller no later than thirty (15) days after expiration of the Warranty Period. This section sets forth Buyer’s sole remedy and Seller’s entire liability for any breach of any warranty relating to the Goods.

**J. Limitation of Liability.** IN NO EVENT SHALL SELLER, ANY OF SELLER'S AFFILIATES, OR ANY OF THEIR RESPECTIVE REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER THE DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT TO THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**K. Indemnification.** Buyer shall indemnify, hold harmless, and defend Seller and its parent, officers, directors, partners, members, managers, shareholders, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, expenses, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party, arising out of or relating to any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise of a third party: (i) relating to a material breach or non-fulfillment of any representation, warranty, or covenant set out in this Agreement by Buyer or Buyer's personnel; (ii) alleging or relating to any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent acts or omissions of Buyer or its personnel or any installers of the Goods hired by or at the request of Buyer or its personnel; (iii) relating to a purchase of any Goods by any person or entity purchasing directly or indirectly through Buyer; or (iv) relating to any failure by Buyer or its personnel to materially comply with any applicable laws.

**L. Intellectual Property.** Buyer acknowledges that, as between Buyer and Seller, all intellectual property rights (including without limitation, all specifications, names, trademarks, copyrights, patents, trade secrets, goodwill, know-how, technology, computer software and related documentation and source code) owned or licensed by Seller now or in the future are and shall remain the sole property of Seller, and nothing in this Agreement shall be deemed to grant to Buyer a license to use or any other right or interest of any kind in Seller's intellectual property, except as expressly provided in this Agreement. Buyer covenants that it will not use the word "IKIO" or any Seller trademarks, products, or trade names in advertising, promoting, or packaging the Goods or for any other use without Seller's prior written consent.

**M. Confidential Information.** To the extent that Seller may disclose or make available to Buyer information about Seller's business affairs, goods and services, forecasts, specifications, inventions, engineering, technical data, confidential information and materials comprising or relating to intellectual property rights, trade secrets, third party confidential information and other sensitive or proprietary information, such information, whether oral or written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" constitutes "Confidential Information." Confidential Information does not include information that at the time of disclosure (i) is or becomes generally available to and known by the public other than resulting from, directly or indirectly, any breach of this Agreement by

Buyer or any of its representatives or agents, (ii) is or becomes available to Buyer on a non-confidential basis from a third-party source, provided that the third party is not and was not prohibited from disclosing the Confidential Information, (iii) was known by or in the possession of Buyer or its representatives before being disclosed by or on behalf of Seller, (iv) was or is independently developed by Buyer without reference to or use of, in whole or in part, any of the Confidential Information, or (v) must be disclosed under applicable law. Buyer shall protect and safeguard the confidentiality of the Confidential Information. Buyer shall not use or permit the Confidential Information to be accessed or used, for any purpose other than to exercise its rights or perform its obligations hereunder.

**N. Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to Seller's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage. In the event of any of the foregoing, Seller shall be excused from performance under this Agreement.

**O. Compliance.** Buyer and seller shall comply with all applicable laws, regulations, and ordinances.

**P. Choice of Law; Venue; Waiver of Jury Trial; Fees.** This Agreement shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the substantive laws of the State of Indiana, without regard to any conflicts of laws principles. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN, OR WITH JURISDICTION THAT INCLUDES, MARION COUNTY, INDIANA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREUNDER, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE COURTS OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURTS. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING COUNTERCLAIMS), WHETHER ARISING IN CONTRACT OR TORT, AT LAW OR IN EQUITY, OR OTHERWISE, BROUGHT BY ANY PARTY OR OTHERWISE INVOLVING ANY PARTY IN CONNECTION WITH THIS AGREEMENT. In the event any suit or other action is commenced to enforce any provision of this Agreement or recover for any breach of this Agreement, reasonable attorneys' fees and court costs of the prevailing party shall be paid by the other party. The parties expressly exclude and waive the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as it may be amended or replaced from time to time.

**Q. Termination.** Buyer may not terminate the Order without the prior written consent of Seller. Seller may terminate the Order immediately upon notice to Buyer if Buyer breaches any term or condition of the Agreement, and Buyer will be liable for all damages, losses, costs, expenses, and liabilities incurred by Seller directly or indirectly resulting from Buyer's breach including, without limitation, attorneys' fees.

**R. Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

**S. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing herein shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties. This Agreement does not limit Seller's right to manufacture or sell to any other person or entity, other goods or products that are similar to or competitive with the Goods.

**T. Damage Claims.** All shipping damage and missing items must be reported within 3 days of delivery so we can process an insurance claim with the carrier. Both freight and small package carriers will not accept damage claims or missing item claims after 3 days. All damage claims after 3 days of delivery will be denied and viewed as a repair return at your expense. All missing item claims after 3 days of delivery will be denied, and replacements for missing items must be purchased. IKIO shall not be responsible for Products lost or damaged in transit. The Buyer will be responsible for checking the shipment upon delivery for total product count and condition. ANY EVIDENCE OF DAMAGE TO Products MUST BE NOTED ON THE CARRIER'S DELIVERY RECEIPT. This must be immediately reported to the IKIO Accounts Receivable and Shipping Departments and to the carrier's local office, followed by a written notice within fourteen (14) business days from the date of invoice, providing in writing the IKIO invoice number, order number, and an itemization of all damages to the Products. Incomplete claims or claims filed more than fourteen (14) business days after the IKIO invoice date will not be accepted and no credit will be given.

**U. Delivery Shortages.** ANY SHORTAGES IN TOTAL PRODUCT COUNT MUST BE NOTED ON THE CARRIER'S DELIVERY RECEIPT. All shortages must be immediately reported to the IKIO Accounts Receivable and Shipping departments, followed by a written notice within seven (7) business days from the date of invoice, providing in writing the IKIO invoice number, order number and an itemization of all shortages/overages by product code and quantity. Incomplete claims or claims filed more than fourteen (14) business days after the IKIO invoice date will not be accepted and no credit will be given. The Buyer shall further provide its claims number(s), if any, when reporting a shortage.

**V. Returns.** Unless you have a separate agreement with IKIO, or except as defined below as a non-returnable product, all new, unused products may be returned within 15 days from the date on the invoice or packing slip for a credit or return of the purchase price of the product, minus any shipping and handling fees and any associated restocking fees.

• You have 15 days from the date of invoice to return merchandise. • You are responsible for shipping the equipment back to IKIO and for the costs associated with that shipment. • It is important that you return everything on your order, and that it is in its original packaging. Any missing components that are not received upon receipt of return will be subtracted from any credits issued to you. • The product must be properly packed to survive the rigors of the carrier's transit. Items returned with physical damage will result in a reduction of the credit due for the return. In some cases, aesthetic damage can result in the forfeiture of all credit. • We will credit your account for the price of the equipment minus shipping and handling costs. • Shipping & Handling Fees are NON-REFUNDABLE. You will also be responsible for the initial costs to ship the merchandise to you. In the case of products that received free freight at the time of purchase, any associated shipping costs WILL be subtracted from the amount of the credit. • A minimum of 15% restocking fee will be charged to cover the repacking & preparation, if the boxes are opened or product has been used. The return authorization form will have the percentage restocking we plan to assess. We do reserve the right to increase this in the event the item returned exceeds the conditions described over the phone.

• We will charge additional restocking fees if the product comes back to us in other than pristine "sell as new" condition. Items that have to be repackaged, replace missing parts or components, replace product boxes or packaging (internal or sales packaging) for product and/or accessories, remove and/or replace batteries, refold carrying bags, replace missing documentation, etc. we will be subject to a higher restocking fee. We want to be able to quickly inspect the item and put it back into inventory. Any work we have to do restore the item or its packaging to original condition will result in additional restocking fees. On a case by case scenario, we may authorize returns for time periods extending past the 15 day return policy as stated above. These returns must be approved by us. Restocking fees for authorized returns outside of the 15 day return policy are subject to higher restocking fees. We reserve the right to assess the scenario and apply appropriate restocking fees, which may be in excess of 50% for timeframes exceeding 60 days, or for specialty products.

**W.** A request to cancel an order, which has been entered into the IKIO order system, must be made in writing and received at least three (3) business days prior to the requested ship date, and is subject to prior approval by IKIO.

**X. Miscellaneous.** If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. No waiver by Seller of any of the provisions of this Agreement is effective unless set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Buyer may not assign the Agreement or any of its rights hereunder or delegate any of its obligations under this Agreement without the prior written consent of Seller. Seller may freely assign the Agreement or any of its rights hereunder or delegate any of its obligations.