



## LIGHTING INNOVATIONS

# Terms and Conditions of Sale

**GENERAL CONDITIONS:** 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, “Product”) from and after January 15, 2024 from FC Lighting, Inc., Solid State Luminaires, and Paramount Lighting (together, “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 Product from Manufacturer constitutes acceptance of the terms set forth herein, as such terms may have been updated through the date of such order. 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, & CANCELLATIONS:** Only orders placed in writing and delivered directly to Manufacturer from the entity that will be liable for the payment of the order will be accepted and considered a valid order (“Order”). Verbal orders or orders through a third party will not be accepted. No Order is final as to Manufacturer until accepted by Manufacturer. Manufacturer may choose to include a minimum order value in their order acceptance criteria.

After acceptance by Manufacturer, requests to cancel Orders may be submitted in writing to Manufacturer. Manufacturer will soon thereafter begin production activities, such as procuring materials, design and engineering activities, fabricating components, and assembly of products (together, “Production”). After Production begins, cancellation charges are as follows,

- Custom, non-standard product cancellation charge will be 100% of purchase price; and,
- Standard products cancellation charge will be a minimum of 50% and as high as 80% depending on progress to completion – cancellation charge will be determined at the sole discretion of the Manufacturer.

Similarly, after acceptance, requests to change orders will be reviewed for approval before processing and are subject to all costs incurred by Manufacturer from such change including, without limitation, costs for work performed, and / or materials purchased by Manufacturer in response to the receipt of Order by Purchaser.

**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 the Manufacturer at which time then the “firm” quoted price is valid for up to 30 days. 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 the time of printing or electronic distribution 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 Product 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 will be net thirty (30) days from date of invoice. The terms of payment are 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. Manufacturer may at times agree to accept payment via credit. In this event, purchaser will be responsible for payment of any and all resultant fees incurred by Manufacturer. All payments by Purchaser shall be made in United States Dollars and shall be paid fully net, without set-off, deduction, or counterclaim.

**TAXES & GOVERNMENT CHARGES:** Prices, whether catalog, price sheet, or quoted, do not include any taxes or other government 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. At Manufacturer’s discretion, any such taxes, charges, or withholdings may be added to the price of any Product 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 one and one half percent (1.5%) per month or the maximum rate of interest allowable under applicable law, and Purchaser shall be liable for all costs and expenses, including reasonable attorney's fees, incurred by Manufacturer in collecting or attempting to collect any and all overdue accounts.

**SHIPMENT, DELIVERY, & TITLE:** Manufacturer will provide an estimated ship date ("ESD") upon formal acknowledgement of Order receipt. Manufacturer will make all reasonable attempts to meet or improve upon the ESD, but may, at times, experience unforeseen delays. In no case shall Manufacturer be liable for any charges or damages due to a Product shipment date that occurs beyond the ESD.

Product will be tendered and shipped EXW (Ex Works). The title and risk of loss or damage to Product pass to Purchaser upon Manufacturer's making the material available to the initial carrier. Manufacturer will select such carrier and ship Product freight prepaid and added to the price of the relevant Product. Manufacturer may, at its sole discretion, choose to make partial shipments and shall bill each shipment as it is made, but on terms applicable to the complete order. Charges for partial shipments requested by Purchaser will be Purchaser's responsibility.

Manufacturer may, at its sole discretion, offer freight allowances for orders in excess of certain set prices. Purchaser shall contact Manufacturer for the applicable terms and conditions of any freight allowances offered by Manufacturer. Where Manufacturer provides such an allowance to Purchaser, Manufacturer will use its own discretion in routing the shipment. If a more expensive means of transportation is specified by Purchaser, Purchaser assumes all extra transportation costs. Delivery dates of all shipments are estimated and 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:** Product will be deemed to have been accepted by Purchaser upon delivery of said Product to Purchaser. Purchaser has fourteen (14) calendar 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 Product.

All return requests must be consulted with the manufacturer. If product is made to order, they are non-returnable.

**FORCE MAJEURE:** Manufacturer shall not be liable to the Purchaser for any delay of performance hereunder, if such delay is due to circumstances beyond Manufacturer's reasonable control, including but not limited to: capture of goods or transporting vessels, perils at sea, road accidents, delays in obtaining required licenses, government regulations or embargo, interference of civil or military authority, fire, flood, natural disasters, accidents, acts of God, pandemic or epidemic, government action, strikes, lockouts, or other labor disturbance, either actual or potential, war, insurrection, civil disorder or other commotion) or unavailability of raw material supplies (each, a "Force Majeure Event").

**LIMITED WARRANTY:** Manufacturer warrants that its Products will be free from defects in material and workmanship and operate according to published specifications for the applicable warranty period, subject to the following conditions. This warranty extends only to the original end-user of the Products. Reference the Limited Warranty document on the manufacturer's websites for details.

THE WARRANTY AS DESCRIBED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- (a) IN NO EVENT SHALL SELLER BE LIABLE UNDER THIS CONTRACT TO THE PURCHASER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, LOSS OF USE OF THE GOODS OR PART THEREOF, LOSS OF TIME, SHUTDOWN OR SLOWDOWN COSTS, INCONVENIENCE, COST OF CAPITAL, CLAIMS RESULTING FROM CONTRACTS BETWEEN THE PURCHASER, ITS CUSTOMERS AND/OR ITS SUPPLIERS, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

(b) NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS CONTRACT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

**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 Product and the direct products thereof. Purchaser acknowledges the shipment of Manufacturer's Product are subject to the export laws of the United States and such laws could delay or preclude delivery of Manufacturer's Product in the future. Purchaser shall also comply with the United State 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 cause or alleged to be caused by: (a) 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 modifications or 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.

**PROPERTY RIGHTS:** Manufacturer shall defend any suit brought against the Purchaser, and pay all costs and damages awarded against the Purchaser provided that:

(a) The suit or proceeding is based upon a claim that the product is an infringement of a claim of a presently existing U.S. patent or, in the case of any software materials provided by Manufacturer, any presently existing copyright; (b) The claim of infringement is not based, directly or indirectly, upon (i) the manufacture, use, or sale of any product furnished by Manufacturer which has been modified without Manufacturer's consent; or (ii) the manufacture, use, or sale of any combination of a product furnished by Manufacturer with products not furnished by Manufacturer; or (iii) performance of a patented process using a product furnished by Manufacturer or production thereby of a patented product; and, (c) Manufacturer is notified promptly and given information and assistance (at Manufacturer's expense) and the authority to defend the suit or proceeding. Manufacturer shall not be responsible hereunder for any settlement made without Manufacturer's written consent nor shall Manufacturer be responsible for costs

or expenses incurred without Manufacturer's written consent. If Manufacturer's product is adjudicated to be an infringement and its use in the U.S. by the Purchaser is enjoined, Manufacturer shall, at its own expense and in its sole discretion either: (1) procure for the Purchaser the right to continue using the product; (2) replace it with a non-infringing product; (3) modify it so it becomes non-infringing; or (4) remove the product, refund Purchaser's net book value and transportation costs attributable to it, and cover costs associated with Manufacturer's sourcing a substitute product. The foregoing states Manufacturer's entire liability with respect to any patent infringement by its products or any parts thereof and with respect to any copyright infringement by any software materials supplied by Manufacturer.

The use of such Product 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 Product.

All intellectual property rights, including but not limited to patents, copyrights, trademarks, and trade secrets, associated with Product sold herein shall remain the exclusive property of the Manufacturer.

Notwithstanding the foregoing, with respect to all Product 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, costs, and expense (including attorney's fees) resulting from claims of alleged infringement of patents, designs, copyrights, trademarks, and other proprietary rights.

**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 the destination. The United Nations Convention on Contracts for the International sales of Goods is hereby excluded and shall not apply.