



## *NexLight*® TERMS OF SALE

1. **Controlling Terms and Conditions.** NexLight division of Northport Engineering [Seller] agrees to sell the Goods to Buyer at the indicated price only on the express condition that Buyer assents to the terms and conditions set forth in this document, without addition or modification. Neither Seller's delivery of the Goods nor any other action at any time on the part of Seller shall constitute acceptance of additional or different terms. Buyer shall be bound by all of the terms of this Contract, which shall prevail over any terms and conditions proposed by Buyer, when Buyer accepts this Contract by written acknowledgment in the space provided or by any other statement, act or course of conduct which constitutes acceptance under applicable law, including failure to object in writing hereto within a reasonable time or acceptance of delivery of the Goods. By acceptance hereof, Buyer expressly agrees that no collateral contracts, terms, conditions, warranties or undertakings exist between Buyer and Seller.
2. **Purchase Price and Payment Terms**
  - a. **Purchase Price.** The price of the Goods (the "Purchase Price") is only effective for Goods scheduled for shipment within thirty (30) days from the date of issue unless otherwise acknowledged. Typographic or other errors in the Purchase Price are subject to correction.
  - b. **Payment Terms.** Unless otherwise acknowledged, payment of the Purchase Price shall be due in full within thirty (30) days from the stated shipment date. All payments shall be paid in United States currency or negotiable paper immediately collectible at its face value in United States funds at the location indicated on the Seller's invoice.
  - c. **Payment of Undisputed Invoices.** Invoices issued by Seller for whole or partial shipments of the Goods shall be paid by the Buyer regardless of disputes relating to other invoices, and Buyer waives the right to assert offsets or counterclaims with respect to such invoices. Buyer shall promptly notify Seller's customer service personnel of any disputed invoice and confirm such notice in writing delivered to such person.
  - d. **Late Payment Fee and Collection Costs.** Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to one and one half percent (1.5%) per month or the highest rate permissible under applicable usury law. Buyer agrees to pay Seller's reasonable attorneys' fees and other costs incurred in collection of any amounts not paid when due.
  - e. **Buyer's Financial Condition; Insecurity.** If, in Seller's sole judgment, Buyer's financial condition or any other circumstance causes Seller to be insecure with respect to Buyer's performance of any obligation under this Contract, Seller may accelerate and demand immediate payment of any amounts owed Seller, suspend performance or cancel this Contract.
  - f. **Sales and Similar Taxes; Shipping Costs; Insurance.** Unless otherwise acknowledged, the Purchase Price does not include sales, use, excise or similar taxes or any shipping, delivery or insurance costs. Buyer shall be responsible for any such amounts incurred by Seller on behalf of Buyer.
  - g. **Order Holds.** If Buyer requests Seller to hold delivery of the Goods ordered hereunder, at its option, the Seller may delay delivery of the Goods ordered invoicing Buyer on the original date the Goods were to be shipped to meet the delivery date originally agreed upon.
3. **Security for Payment of Purchase Price.** Buyer hereby grants Seller a security interest in the Goods and proceeds thereof to secure payment of the Purchase Price and all of Buyer's related and incidental obligations to Seller. Buyer shall execute, and authorizes Seller to execute on Buyer's behalf, suitable financing statements for filing upon the request of Seller. Seller may file this Contract as a financing statement.
4. **Shipment, Delivery and Terms of Acceptance.**
  - a. **Shipment.** Unless otherwise acknowledged, all shipments shall be F.O.B. point of shipment and, if Seller arranges for transportation, the carrier shall be deemed to be Buyer's agent, Buyer shall pay all charges due to the carrier, and Buyer shall make all claims with respect to damage in transit against the responsible carrier. Absent written instructions from Buyer, Seller may, but shall not be required to, obtain insurance on the Goods shipped.
  - b. **Title to Products, Risk of Loss.** Title to and all risk of loss concerning the Goods shall pass to Buyer upon the delivery of the Goods to the Buyer, or to any common or private carrier acting as an agent of the Buyer. Buyer's rejection of any Goods shall not shift such risk until the Goods are returned to Seller, freight prepaid, pursuant to Seller's written authorization. Seller shall have no obligation to hold or resell Goods rejected by Buyer for Buyer's account.
  - c. **Delivery Schedule.** The delivery dates specified in any Contract are estimates only and Seller's failure to meet the same shall not be deemed a breach of this Contract.
  - d. **Force Majeure.** Seller shall not be liable to Buyer for any delay or failure of delivery of any of the Goods or other nonperformance caused in whole or part by any contingency or event beyond Seller's reasonable control, including, without limitation, acts of any government or any agency or subdivision thereof, war, riots, acts of God, machinery breakage, or any shortage of or inability to secure labor, transportation facilities, fuel, energy, raw materials, supplies, or machinery at reasonable prices or from regular sources. In the event of the occurrence of any of the foregoing, Seller may distribute its available material among its customers on such a basis as Seller shall deem fair and equitable, without liability to Buyer.
  - e. **Inspection and Acceptance.** Buyer shall inspect all shipments within twenty-four (24) hours after arrival and notify Seller in writing within two (2) days of any shortages or other failures to conform to this Contract which are reasonably discoverable upon arrival, including, without limitation, any claim that the Goods fails to conform to the specifications described in the then current applicable product manual. Buyer shall allow Seller a reasonable opportunity to inspect such Goods to enable Seller to verify the alleged nonconformity. Buyer's failure to timely notify Seller in writing of any alleged nonconformity of the Goods or any comingling of the Goods shall constitute an immediate and irrevocable acceptance of the Goods and an acknowledgment by Buyer that the Goods delivered conforms to the specifications in the then current applicable product manual.
  - f. **Cure of Imperfect Tender.** Buyer hereby grants Seller the right to cure any imperfect tender of the Goods by tendering goods of equal or better quality than the subject Goods within thirty (30) days from the date Buyer delivers written notice of such imperfect tender to Seller.
  - g. **Returns.** No returns may be made without written authorization from Seller, which shall be granted in Seller's sole discretion. Any returns may be subject to a minimum fifteen percent (15%) service fees, plus all transportation charges.
5. **LIMITED WARRANTY TO BUYER, BUYER'S REMEDIES AND DISCLAIMER OF WARRANTIES.**
  - a. **Limited Warranty to Buyer.** Seller hereby warrants to Buyer that the Goods are free from defects in materials and workmanship. Any alleged breach of this limited warranty must be reported in writing to Seller in writing within twelve (12) months after delivery, or sixty (60) months for NexLight labeled goods. This limited warranty is inapplicable to defects resulting from unauthorized repairs, improper installation, misapplication, modifications, misuse, abuse, or failure to strictly follow Seller's operating and maintenance instructions.
  - b. **Buyer's Remedy.** Seller's sole obligation and Buyer's sole remedy in the event of a breach of the above limited warranty shall be, at Seller's option, to repair or replace such nonconforming Goods or refund the portion of the Purchase Price for such nonconforming Goods. Seller's choice of one of these remedies shall be Buyer's sole remedy for breach of warranty. Seller may require Buyer to return the alleged defective Goods to Seller, F.O.B. Seller's shipping origin, before remedying a breach of the limited warranty.



c. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6(a), SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS SOLD HEREUNDER, INCLUDING, BUT NOT LIMITED TO, IMPLIED CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS CONTRACT. BUYER FURTHER EXPRESSLY AGREES AND WARRANTS THAT EXCEPT FOR THE WARRANTY PROVIDED IN SECTION 6(a), NO CONTRACTUAL WARRANTIES AND NO REPRESENTATIONS, WRITTEN OR ORAL, HAVE BEEN MADE BY SELLER, ITS EMPLOYEES OR AGENTS WITH RESPECT TO THE GOODS.

6. **Representations of Solvency.** Buyer hereby represents and warrants to Seller that it is not insolvent as that term is defined in § 1-201(23) of the Uniform Commercial Code. Buyer agrees that it will notify Seller in writing if Buyer becomes insolvent at any time before delivery of the Goods. Buyer's acceptance of the Goods shall constitute a written reaffirmation of Buyer's solvency at the time of delivery.

7. **Default; Non-Waiver.** In the event of any default by Buyer, Seller may, in addition to any and all other remedies provided by law, exercise all rights of a secured party. If Seller elects to repossess the Goods, Buyer shall permit Seller, with or without legal process, to enter all premises where the Goods are located to remove or take possession of the same. Ten (10) days advance notice of any intended disposition of repossessed Goods shall be deemed reasonable.

8. **LIMITATION OF REMEDIES.** SELLER SHALL HAVE NO LIABILITY TO ANY PERSON FOR, AND BUYER HEREBY EXPRESSLY WAIVES, ALL REMEDIES AND DAMAGES RELATING TO INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, RESCISSION, DIFFERENCE IN VALUE DAMAGES, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS AND RELIANCE DAMAGES. THE PARTIES EXPRESSLY AGREE THAT THE LIMITATIONS TO INDIRECT, INCIDENTAL, CONSEQUENTIAL AND SPECIAL DAMAGES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SHALL SURVIVE THE DETERMINATION OF ANY COURT OF COMPETENT JURISDICTION THAT ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY HEREUNDER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE GOODS.

9. **Indemnification.** Except to the extent of Seller's obligations under this Agreement, Buyer shall indemnify (and at Seller's option, defend) and hold Seller harmless from all claims, actions, damages, liability, costs and expenses (including reasonable attorneys fees) incurred in connection with Buyer's disposition of the Goods and arising out of the ultimate use of the Goods.

10. **Intellectual Property Infringement.** Seller agrees, at its own expense, to indemnify and hold Buyer harmless from infringement of any United States patent, trademark or copyright relating to the Goods; provided that: (a) such infringement does not arise from use of the Goods as part of or in combination with any other device or parts; and (b) Buyer gives Seller immediate written notice of the potential infringement, permits Seller to control the defense and settlement thereof, and cooperates with Seller in all reasonable respects. If the Goods are, or in Seller's opinion it is likely that the Goods may become, subject to a claim of infringement, Seller may, at its expense and option: (i) modify the Goods so that the Goods become non-infringing; or (ii) procure for Buyer the right to continue to use the Goods; or (iii) provide Buyer a substitute for the infringing Goods having a capability equivalent to the Goods; or (iv) take back the Goods with the sole obligation to refund to Buyer the amount paid for the Goods. This Section states the entire liability of Seller for patent, copyright, trade secret or other proprietary right infringement by the Goods.

11. **Specifications.** Seller may modify the specifications of Goods covered by this Contract, at any time, provided the modifications do not adversely affect the performance of the Goods.

12. **General Provisions.**

a. **ASSIGNMENT.** BUYER MAY NOT ASSIGN ITS RIGHTS OR OBLIGATIONS UNDER THIS CONTRACT TO ANY THIRD PARTY, BY OPERATION OF LAW OR OTHERWISE, WITHOUT SELLER'S PRIOR WRITTEN CONSENT.

b. **Modification and Waiver.** No addition to or modification of any provision of this Contract shall be binding upon Seller unless set forth in a written document signed by all parties (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Contract or of the same circumstance or event upon any recurrence thereof. Seller shall not be deemed to have waived any provision hereof or any remedy available to it, except pursuant to a written document signed by a duly authorized officer of Seller.

c. **Governing Law and Forum.** The validity, performance and construction of this Contract shall be governed by the laws of the State of Minnesota, and no other jurisdiction. If any dispute, controversy or claim arises out of or relates to this Contract or the breach, termination or validity thereof, each party agrees to bring suit or initiate other dispute resolution proceedings exclusively in the County of Hennepin, State of Minnesota. Each party consents to jurisdiction and venue in County of Hennepin, State of Minnesota and that valid service of process may be effected by certified mail at the last known address of its principal office, or by other means authorized under Minnesota Statutes.

d. **Government Contracts.** If Goods furnished under this Contract are to be used in the performance of a Government contract or subcontract and a Government contract number appears on Buyer's purchase order, those clauses of the applicable Government Procurement Regulations which are mandatorily required by federal statute to be included in Government subcontracts are hereby incorporated in this Contract by reference.