



PIONEER LIGHTING

300 Dwight Avenue, Toronto, Ontario M8V 2W7, CANADA

Terms and Conditions of Sale

The following are the Terms and Conditions under which Pioneer Lighting, Inc., its designated representatives and its successors and assigns ("Pioneer Lighting") sells its products in Canada, the United States of America, and elsewhere.

- 1. Terms and Conditions.** These Terms and Conditions shall apply to purchase orders issued and accepted or other contractual commitments to buy and sell Pioneer Lighting's products (collectively, "Orders"). Pioneer Lighting hereby gives notice of its objection to any different or additional terms that may be included by the person, firm, corporation or other business entity that places an Order ("The Buyer"). The Buyer's acceptance of any products delivered by Pioneer Lighting pursuant to any Order shall constitute The Buyer's acceptance of these Terms and Conditions. These Terms and Conditions shall govern each Order notwithstanding any different, conflicting or additional terms and conditions which may appear on any form submitted by The Buyer. No addition to or modification of the Terms and Conditions herein shall be binding on Pioneer Lighting unless specifically agreed to by Pioneer Lighting in writing.
- 2. Prices.** Pioneer Lighting's prices for stock products are subject to change without prior notice. Prices payable under an Order for stock products shall be based on Pioneer Lighting's published prices in effect at the time the Order was placed. Prices for custom products shall be as stated in Pioneer Lighting's quotation. Stenographic and clerical errors, if any, made by Pioneer Lighting in any price quotation are subject to correction by Pioneer Lighting. Prices are exclusive of all taxes. Any tax Pioneer Lighting may be required to collect or pay upon the sale or delivery of the Products shall be for the account of The Buyer, who shall promptly pay the amount thereof to Pioneer Lighting or the taxing authority as required.
- 3. Termination for Convenience.** Orders for products shall be terminable by The Buyer on written notice received by Pioneer Lighting prior to delivery by Pioneer Lighting to the carrier for shipment. Upon termination of an Order by The Buyer for stock products, The Buyer shall be liable for a restocking charge of 15% of the price for each product terminated. Upon termination by The Buyer of an Order for custom products (a) with respect to products manufactured prior to termination, The Buyer shall be liable for the full price, and (b) with respect to products not fully manufactured, The Buyer shall be liable for all direct and indirect costs and expenses incurred by Pioneer Lighting in fulfilling the Order, including all materials purchased, commitments made and engineering design services performed.
- 4. Returned Goods.** Pioneer Lighting will not accept return shipment of any items delivered under the contract of an Order from the Buyer without express written consent and an RGA (return goods authorization) form. Any costs incurred due to undeliverable shipments, storage, jobsite or extra charges by a carrier shall be charged to the Buyer. Detailed terms and conditions of each return shall be indicated on the RGA.
- 5. Deliveries and Delivery Quantities.** Pioneer Lighting will make all reasonable efforts to adhere to the shipping or delivery dates requested by The Buyer. Pioneer Lighting shall not be liable for any damages, loss or expense of The Buyer for failure to meet any shipping or delivery dates for any reason whatsoever. Unless otherwise agreed, all products shall be delivered F.O.B. Pioneer Lighting's manufacturing facility or a Pioneer Lighting-owned distribution facility (whichever is applicable), and The Buyer shall make all arrangements with an appropriate carrier to receive and transport the products to the destination specified by The Buyer. Risk of loss for, or damage to, the products shall pass to The Buyer upon delivery to the carrier. If Pioneer Lighting agrees to arrange for a carrier, the cost of the carrier and insurance shall be added to the otherwise applicable price, if total net value of the order is below the applicable minimum for prepaid shipment, but risk of loss for the products will still pass to The Buyer upon delivery to the carrier. Title shall pass upon Pioneer Lighting's receipt of full payment by The Buyer. The Buyer shall accept overruns and under-runs on each individual item of custom product purchased hereunder, not exceeding 10% of the quantity of any product ordered. Any claims for damaged product delivered to the Buyer or his customer, assigns, or jobsite, must be made to Pioneer Lighting within 24 hours from date of delivery and be duly noted on the carrier waybill. Any claims for shortages in the quantity of product delivered to The Buyer must be made to Pioneer Lighting, in writing, within 15 days from the date of delivery. Pioneer Lighting may make partial deliveries of products. In the event of a shortage of any product or delays in delivery caused by force majeure as provided in Paragraph 12 below, Pioneer Lighting reserves the right to apportion products among its customers in its sole discretion.
- 6. Inspection.** The Buyer acknowledges that Pioneer Lighting inspects the products sold hereunder on a sampling basis only, and such inspections will be conducted in accordance with Pioneer Lighting's standard practice of quality control. With respect to custom products, The Buyer assumes full responsibility for inspecting all custom products upon delivery.
- 7. Packaging and Packing.** Standard packaging and packing methods selected by Pioneer Lighting will be used unless otherwise agreed in a writing signed by both parties. Additional packaging and packing costs incurred at

The Buyer's request shall be payable by The Buyer and added to the applicable invoice.

8. **Payment and Credit Terms.** Pioneer Lighting's payment terms are net 30 days from the date of the invoice for The Buyers who have an established credit record with Pioneer Lighting, which shall be determined by Pioneer Lighting in its sole discretion. Pioneer Lighting reserves the right to refuse to deliver any product to The Buyer except upon payment in cash in advance. In the event The Buyer fails to make payments as required herein, The Buyer shall pay the costs of collection and attorneys' fees. Pioneer Lighting shall have a security interest in all products delivered to The Buyer under an Order until Pioneer Lighting receives payment in full as provided herein.
9. **Warranties and Remedies.** Pioneer Lighting warrants that at the time of delivery for shipment (a) stock products delivered hereunder shall be free of defects in workmanship and material and conform to any product descriptions that are made a part of the Order and (b) custom products delivered hereunder shall conform to any The Buyer specifications that are made a part of an Order. PIONEER LIGHTING MAKES NO WARRANTY FOR PRODUCT MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In the case of electronic ballasts, the ballast manufacturer warranty policy covers the cost of replacing the defective materials only and no allowance is made for labour or transportation charges, or any other incidental costs incurred. Any claim for additional costs must be addressed directly to the ballast manufacturer.
10. If any Product delivered hereunder fails to conform to the foregoing warranty and such product (or non-conforming part thereof) is returned to Pioneer Lighting by The Buyer, then Pioneer Lighting, at Pioneer Lighting's sole option, shall repair or replace such product (or non-conforming part) and make such repaired or replacement product (or part) available for shipment to The Buyer. Pioneer Lighting's obligation to repair or replace is expressly conditioned on (a) The Buyer obtaining written return authorization from Pioneer Lighting prior to returning such non-conforming product and (b) Pioneer Lighting's receipt of such non-conforming product within 30 days after delivery. Pioneer Lighting's remedial obligations shall be excused if the product (or part) has been subjected to alteration, misuse, abuse or improper storage. Unless Pioneer Lighting expressly agrees in writing in advance, no set-off, allowance or credit shall be allowed for any non-conforming product. The repair or replacement remedy as set forth in this paragraph shall be The Buyer's sole and exclusive remedy for non-conforming products.
11. **Usage.** Pioneer Lighting reserves the right to select sources of supply for raw materials, and Pioneer Lighting does not guarantee the compatibility of performance of the materials in its products, or the products themselves, with any of The Buyer's specific products or intended uses, whether or not such uses are known to Pioneer Lighting, unless agreed to by Pioneer Lighting in writing. Without limiting The Buyer's obligations as stated, The Buyer shall indemnify and hold Pioneer Lighting against any and all loss, damage, injury, claim, cause of action or proceeding that may result from The Buyer's failure to adhere to the covenants contained in this paragraph, and from and against any and all costs and expenses.
12. **Limitation of Liability.** IN NO EVENT SHALL PIONEER LIGHTING BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY ORDER OR THE PRODUCTS SOLD. IN NO EVENT SHALL PIONEER LIGHTING'S LIABILITY TO THE BUYER EXCEED THE COMPENSATION PAYABLE TO PIONEER LIGHTING. No action, whether in contract or tort, arising out of or in connection with an Order, may be brought by either party more than 12 months after the cause of action has accrued, except that an action for nonpayment may be brought by Pioneer Lighting at any time within 36 months from the date payment becomes 90 days past due.
13. **Force Majeure.** Neither The Buyer nor Pioneer Lighting shall be liable to the other for any failure to perform, or delay in the performance of any obligation hereunder (except the obligation to pay amounts due hereunder) to the extent such failure or delay is due to causes beyond the reasonable control and without the fault or negligence of the party whose performance is prevented or delayed, provided that the party concerned (a) provides prompt written notice to the other of such circumstances and (b) makes reasonable efforts to perform or complete performance hereunder despite the impediment to performance. Such causes shall include fire, storm, flood, act of God, war, explosion, sabotage, act of terrorism, strikes or other labor trouble, shortages or inability to secure transportation, raw materials, machinery and/or other equipment necessary for the manufacture of the product, the expropriation of Pioneer Lighting's plant, the product and/or raw materials in whole or in part by any government authority, acts of the federal government, any state or local government or any agency thereof and any other like cause interfering with the production or transportation of the product.
14. **Cancellation.** Any Order may be cancelled by Pioneer Lighting upon The Buyer's breach or repudiation thereof for any reason, including bankruptcy, reorganization or insolvency or for the appointment of a receiver or any assignment for the benefit of creditors and without regard to materiality of such breach or repudiation, provided such breach shall not be cured, or such repudiation is not retracted, within five days after Pioneer Lighting provides written notice thereof to The Buyer.
15. **General Provisions.** These Terms and Conditions and any sale hereunder shall be governed by the laws of the province of Ontario Canada, notwithstanding any choice of law provision that might apply the laws of another jurisdiction. Any claim or dispute arising out of an Order or the products delivered may only be brought in the provincial and federal courts located in the province of Ontario. The Buyer may not assign any Order or any

interest therein without the prior written consent of Pioneer Lighting. Any actual or attempted assignment without such consent shall be void and shall entitle Pioneer Lighting to cancel the Order. Each Order is for the sale of goods, and the relationship between the parties is that of the Buyer and seller. Failure by Pioneer Lighting to enforce any term or condition herein shall not be construed as a waiver of that or any other term or condition. No waiver shall be binding upon Pioneer Lighting unless in writing and signed by Pioneer Lighting and any such waiver shall be limited to the particular instance referred to. In the event any provision of these Terms and Conditions is held invalid under any applicable statute or rule of law, then to the maximum extent permitted by law, such provision shall be deemed severable from these Terms and Conditions and the remainder shall continue in full force and effect. Such invalid term or condition shall be construed in accordance with the original intent of the parties. Each Order and these Terms and Conditions constitute the entire agreement between Pioneer Lighting and The Buyer with respect to the Order and supersede all proposals, oral and written, all previous negotiations and all other communications between the parties.