

DIGITAL LUMENS

Standard Terms and Conditions of Sale

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 November 1, 2013 from Digital Lumens (“**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 and Cancellations

All orders must be placed in writing and delivered directly to Manufacturer from the entity that will be liable for the payment of the order. Verbal orders or orders through a third party will not be accepted. No order is final as to Manufacturer until accepted by Manufacturer. After acceptance, requests to cancel or change orders must be submitted in writing to Manufacturer a minimum of two weeks prior to the scheduled shipping date. All requests are reviewed for approval before processing and are subject to any and all costs incurred by Manufacturer from such cancellation or change including, without limitation, costs for work performed and / or materials purchased by Manufacturer for Product.

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 Manufacturer, 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 time of printing, 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. All payments by Purchaser shall be made in United States Dollars and shall be paid fully net, without set-off, deduction or counterclaim.

Taxes and Governmental Charges

Prices do not include any taxes or other governmental 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. In Manufacturer’s discretion, any such taxes, charges or withholdings may be added to the price for 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 1-1/2% per month and the maximum rate of interest allowable under applicable law and Purchaser shall be liable for all costs and expenses, including reasonable attorneys' fees, incurred by Manufacturer in collecting or attempting to collect any and all overdue accounts.

Shipment, Delivery, and Title

Product will be tendered and shipped F.O.B. Manufacturer's plant or warehouse. The title and risk of loss or damage to Product pass to Purchaser upon Manufacturer's delivery to initial carrier. Manufacturer will select such carrier and ship Product freight prepaid and added to the price of the relevant Product. Manufacturer may, in its discretion, choose to make partial shipments and shall bill each shipment as it is made, but on terms applicable to the complete order. Upon request, Manufacturer will drop-ship individual orders of \$10,000 or more to any one destination within the continental United States. Manufacturer may, at its discretion, offer freight allowances for orders in excess of certain set prices and/or for orders shipped outside the continental United States. 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 are 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 seven (7) 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.

Force Majeure

Manufacturer assumes no liability in connection with any failure to manufacture or deliver due to causes beyond Manufacturer's reasonable control including inadequate transportation services, inability to secure raw materials, components or supplies, acts of God, fire, strikes, lockouts, or other labor disturbances, orders or acts of authority, or any cause of similar or different kind.

Limited Warranty

For Warranty information pertaining to the CLE, Digital Light Agents (DLAs) or Battery Backup (BBD43) products, please refer to the [Five-Year Warranty Statement](#).

For Warranty information pertaining to the ILE, HLE, DLE, and LLE products, please refer to the [Ten-Year Warranty Statement](#).

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 that shipments 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 States 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 caused or alleged to be caused by: (a) the 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 modification of 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.

Proprietary Rights

Manufacturer shall defend any suit or proceeding brought against Purchaser based on a claim that the manufacture and sale of a Product, or any part thereof, constitutes infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Manufacturer's expense) for defense of same, and Manufacturer shall pay damages or costs awarded therein against Purchaser.

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.

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, cost and expense (including attorney's fees) resulting from claims of alleged infringement of patents, designs, copyrights, trademarks, and other proprietary rights.

Software EULA

Any software included with a Product, is licensed and not sold. The license is nonexclusive and is limited to use with the Product. No other use is permitted and Manufacturer retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes, without limitation, all rights in patents, copyrights, trademarks and trade secrets. Purchaser shall not sell, transfer, sublicense, reverse engineer or disassemble or redistribute the software. Purchaser shall not copy, disclose, or display any such software or otherwise make it available to others. All terms including, but not limited to licenses, usage, restrictions, and warranties to the Software and the associated Documentation is governed by the [Digital Lumens End User Software License Agreement](#).

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

Applications

Warehouse
Manufacturing
Sports Facilities
Cold Storage

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