

DDP ENGINEERED LED SOLUTIONS/EMERGE LED LIGHTING®

TERMS AND CONDITIONS OF SALE

1. GENERAL

1.1 Contract Terms. These Terms and Conditions constitute an integral part of any offer made by DDP ENGINEERED LED SOLUTIONS/EMERGE LED LIGHTING® (DDP®) to sell goods to purchaser and shall govern the sale of the goods. Any additional or different terms or conditions proposed by purchaser are hereby objected to.

1.2 Acceptance. No order by purchaser, regardless of whether a deposit has been accepted, shall be binding upon DDP until a credit review has been completed and the order has been accepted by DDP in writing.

2. PRICES

2.1 Quotations. Unless otherwise stated, all prices quoted by DDP are based in U.S. dollars and are effective for sixty (60) days from the date of quotation. FOB shipping point includes domestic packaging.

2.2 Transportation. Transportation shall be by common carrier at purchaser's risk and expense with the charges therefore added to the quoted prices.

2.3 Delay in Acceptance of Delivery. Should purchaser postpone the delivery date, DDP shall have the right to adjust the price of the undelivered goods to DDP's price at the time of shipment.

2.4 Escalation. Unless otherwise agreed to in writing, except as to goods to be delivered within thirty (30) days of DDP acceptance of purchaser's order, DDP reserves the right to increase its prices to those in effect at the time of shipment.

3. TAXES

Any sales, use or manufacturer's tax which may be imposed upon the sale or use of goods or any property tax levied after readiness to ship or any excise tax, license or similar fee required under this transaction shall be in addition to the quoted prices and paid by purchaser. If purchaser is exempt from any taxes, purchaser shall furnish to DDP an appropriate tax exemption certificate in form acceptable to the taxing authority.

4. TERMS OF PAYMENT

Due Date. Unless otherwise agreed, terms are net thirty (30) days from the date of invoice. All charges are payable in U.S. dollars. In the event that legal action is taken by DDP, purchaser shall be liable for DDP's reasonable attorney's fees plus the other costs of such action.

5. EXPORT PAYMENT TERMS

Unless other arrangements have been made, payment on export orders shall be made by telephone transfer, payable in U.S. dollars against DDP's invoice. Such payment shall be in an amount equal to the full purchase price of the goods and shall be remitted to a bank specified by DDP.

6. DELIVERY, RISK OF LOSS, AND SHIPMENT

6.1 Delivery Date. Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of purchaser's order.

6.2 Risk of Loss. Unless otherwise agreed to in writing, delivery shall be complete upon transfer of possession to common carrier or FOB shipping point as the case may be, whereupon all risk of loss, damage or destruction to the goods shall pass to purchaser.

6.3 Shipment. In the absence of written agreement to the contrary, the means of shipment will be at the discretion of DDP. DDP reserves the right to make partial shipments and to submit invoices for partial shipments.

7. TITLE

Unless otherwise agreed to in writing, title to the goods shall remain with DDP until all payments due hereunder have been made.

8. CHANGES AND CANCELLATIONS

8.1 Orders accepted by DDP are not subject to change or cancellation by purchaser except with DDP's written consent.

8.2 Returns. All returns require factory approval and may be subject to a restocking fee. Inactive items, some catalog items and all special items (denoted with an "SP" prefix), including those referenced by customer drawings, are non-returnable.

8.3 Changes. All changes require factory approval and may be subject to a charge to cover the cost or loss incurred by DDP. Inactive items, some catalog items and all special items (denoted by an "SP" prefix), including those referenced by customer drawings, are non-cancelable. The factory must be notified of any change within at least thirty (30) days of our promised ship date.

9. FORCE MAJEURE

DDP will make every effort to complete shipment as indicated but shall not be liable for any loss or damage for delay in delivery or inability to install due to causes beyond its reasonable control including but not limited to fire, acts of God, acts of government or compliance with any governmental rules or regulations.

10. WARRANTY

10.1 Unless otherwise agreed to in writing, DDP warrants that the goods sold hereunder shall be free from defects in material or workmanship under normal use and service for a period of five (5) years from the date of shipment.

10.2 No warranty extended by DDP shall apply to any goods which have been modified or altered by persons other than DDP's authorized personnel, to goods that are defective due to misuse, neglect, improper installation, soldering or accident. DDP's obligation under this warranty is limited to the repair or replacement at DDP's option of defective parts or goods FOB destination.

10.3 This warranty is made on condition that immediate written notice of any defect is given to DDP and DDP's inspection reveals that the purchaser's claim is valid under the terms of this warranty. No returns will be accepted by DDP unless accompanied by a Return Authorization number issued by DDP.

10.4 DDP shall have the right to change the design, dimension, weight and specifications of the goods when necessary, provided that such change does not impair the performance or function of the goods or their utility to purchaser.

DDP MAKES NO WARRANTY OTHER THAN THE ONE SET FORTH HEREIN OR THAT WHICH MAY BE PROVIDED IN A SUPPLEMENTARY OR SEPARATE WARRANTY FURNISHED BY DDP. SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY EXPRESSED OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSES AND SUCH CONSTITUTES THE ONLY WARRANTY MADE WITH RESPECT TO THE GOODS.

11. LIMITATION OF LIABILITY

In no event shall DDP be liable for any loss of use, revenue or profit or for any direct, indirect or consequential damages arising out of connected with or resulting from the sale of goods.

12. PATENT, TRADEMARK AND OTHER INFRINGEMENT CLAIMS

12.1 Infringement by DDP. If purchaser receives a claim that any goods or part thereof infringe upon the rights of others under patent trademark or otherwise, purchaser shall notify DDP immediately in writing. As to all infringement claims relating to products or parts manufactured by DDP: (a) purchaser shall give DDP information, assistance and exclusive authority to evaluate, defend and settle such claims; (b) DDP shall then at its own expense and/or option, defend or settle such claims, procure for the purchaser the right to use the product, remove or modify it to avoid infringement or remove the goods and refund the purchase price.

12.2 Infringement by purchaser. If some or all of the goods sold hereunder are made by DDP pursuant to drawings or specifications furnished by the purchaser, should a claim be made that such goods infringe the rights of any third party under patent, trademark or otherwise, purchaser shall indemnify and hold DDP harmless against any liability or expense, including reasonable attorney's fees incurred by DDP in connection therewith.

12.3 Any product or part not manufactured by DDP that is part of or has been incorporated in the goods, is furnished subject only to the manufacturer's patent warranties, if any, and without warranties expressed or implied by DDP.

13. GENERAL

13.1 Designs and Trade Secrets Disclosures by DDP. Any drawings, designs, or other technical information supplied by DDP to purchaser in connection with the sale of goods shall remain DDP's property and be held in confidence by purchaser. Such information shall not be reproduced or disclosed to others without DDP's prior written consent.

13.2 Modification. This agreement may not be changed, modified or amended except in writing by an officer of DDP.

13.3 Governing Law. The laws of the State of California shall govern the rights and obligations of the parties under this agreement.