

# SoftForm Lighting, LLC

## General Terms and Conditions

**AGREEMENT:** This document (“Document”) contains the standard terms and conditions of sale by SoftForm Lighting, LLC (the “Company”), to Purchaser, of products, materials, other goods, equipment, operations, or services (“Product”). If this Document is a quotation, then the offer contained herein shall remain open for thirty (30) days from the date it was issued, unless otherwise specified, and Purchaser shall be deemed to have accepted the offer and terms and conditions contained herein upon Company’s receipt of any order or any other writing from Purchaser indicating Purchaser’s acceptance and agreement to the terms hereof; or Purchaser’s acceptance of any shipment of Product. Whether this Document is a quote, an invoice, or otherwise, the terms and conditions of the parties’ agreement shall consist solely of the terms and conditions contained in this Document, together with any separate written agreement previously executed by both Purchaser and the Company, any invoices generated in connection herewith, and any written addenda to the foregoing that are signed by Purchaser and the Company (all of which are hereinafter collectively referred to as the “Agreement”). Any additional or different terms contained in any order or other document submitted by Purchaser to the Company shall be deemed rejected, unless expressly accepted in writing by the Company. In no event shall the Company’s silence or failure to respond to any such additional or different terms be deemed to constitute acceptance or approval thereof. If this Document is a quotation, then failure of the Purchaser to reject these terms and conditions in writing upon the first to occur of the receipt of this or any other document from or on behalf of the Company containing these terms and conditions or the delivery of Product pursuant to the Agreement shall constitute final acceptance of the terms and conditions hereof. To the extent this invoice is in any way deemed to be an acceptance of an offer of the Purchaser, any such acceptance of the Company is expressly conditioned upon the consent of the Purchaser to the terms and conditions of the Agreement.

**MODIFICATIONS, RESCISSION & CANCELLATION:** The Agreement may be modified or rescinded only in writing signed by duly authorized representatives of the parties. For any changes requested by Purchaser to the specification, style, or quantity of the Product, Purchaser shall pay the Company a charge equal to the actual additional cost incurred by the Company as a result of such change plus a reasonable percentage of such actual cost for overhead and profit. Orders may be canceled only with the Company’s written consent and upon terms which will save the Company from loss, including all out-of-pocket costs and lost profits.

**LIMITED WARRANTY:** The Company warrants the Product to be free of material and workmanship defects for a period of one year from the date of shipment exclusive of Drivers, LEDs, and Emergency Lighting Devices. The Company makes no warranty concerning the design, fabrication, or manufacture of said items and such items shall carry only the respective manufacturer’s warranty, if any. For product manufactured or fabricated by the Company according to specifications or designs provided by Purchaser or Purchaser’s designee, the Company makes no warranty concerning the adequacy or sufficiency of the specifications or designs themselves. All warranty claims alleging defects of materials or workmanship must be submitted in writing within seven (7) days after the discovery of the defect or such claim shall be considered waived. The Company will not accept Product returned to it for repair or replacement, unless the Company is previously notified of the defect in writing and the return or correction is authorized by the Company in writing. Any Product deemed by the Company, in its sole discretion, to be defective in material or workmanship will be repaired or replaced, at the Company’s option, F.O.B. the Company’s plant. The Company’s obligation to repair or replace any defective Product shall not include any obligation to reimburse the Purchaser for transportation, installation, removal, unauthorized repairs, or any other expenses that may be incurred by the Purchaser or others in relation to any Product defect. THIS WARRANTY EXCLUDES DAMAGE CAUSED BY IMPROPER INSTALLATION, OVERLOADING, MISUSE, ABUSE, ACCIDENT OR NEGLIGENCE. In addition, this warranty does not cover alterations, modifications, or additions unless the change is acknowledged and accepted, in advance in writing, by the Company.

THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES GIVEN BY THE COMPANY, AND THE COMPANY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE. THE REMEDY OF REPAIR

OR REPLACEMENT OF THE DEFECTIVE PRODUCT SET FORTH IN THE FOREGOING WARRANTIES SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO ANY PERSON. THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, EXPENSE, OR DAMAGE, WHETHER DIRECT, CONSEQUENTIAL, INCIDENTAL, OR OTHERWISE (INCLUDING LOST PROFITS, LOSS OF CONSTRUCTION BONUS OR INCENTIVES), RESULTING FROM THE POSSESSION, INSTALLATION, START-UP, USE, MAINTENANCE, OPERATION, REMOVAL, OR RESALE OF COMPANY'S PRODUCT OR CAUSED BY ANY DEFECT, FAILURE, OR MALFUNCTION OF ANY PRODUCT, WHETHER A CLAIM FOR SUCH DAMAGES IS BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, OR OTHERWISE. NO PERSON HAS THE AUTHORITY TO BIND THE COMPANY TO ANY REPRESENTATION OR WARRANTY OTHER THAN THE FOREGOING LIMITED WARRANTIES AS DISCLAIMED.

**DELIVERY, FREIGHT & RISK OF LOSS:** All products are sold F.O.B. factory within the continental United States, consisting of the lower 48 contiguous states. Freight is not included in any quotes by the Company, and will either be prepaid or charged to the customer. For shipment destinations outside the continental U.S., freight charges will be to the nearest port of exit with all other applicable charges from said point of delivery being the responsibility of the customer, unless otherwise noted. The method of shipment will be solely determined by the Company, using a common carrier of the Company's choice and delivered to the nearest destination. The customer assumes and will pay all charges for special services such as cartage, airfreight, express deliveries, parcel post and multiple deliveries on one order. Risk of Loss, including transportation delays and losses, shall pass to Purchaser upon the earlier of (i) completion of the Product's manufacture, if shipment is delayed by Purchaser, (ii) delivery of the Product to the Purchaser in cases where shipment is F.O.B. destination, or (iii) delivery of the Product to the carrier in cases where shipment is collect or is F.O.B. point of shipment.

**PRICING:** All prices and discounts are subject to change without advance notice except those shown on a specific quotation indicating the prices to be firm for thirty (30) days from the date of the quotation. For quotations accepted by Purchaser, Purchaser agrees that if the contract documents or designs or the prices of raw materials change from that contained in the quotation, the Company has a right to charge additional compensation for increased costs, including, without limitation, costs related to freight and raw materials, as well as for increased margin associated therewith. Orders delayed or put on customer hold may not be price protected beyond the date of a general price increase announcement.

**RETURNS & CLAIMS FOR SHORTAGES:** The Company will not accept returns for Product for any reason, provided that the Company will accept returns made solely for repair or replacement under the foregoing express warranties, but only if the Company has previously authorized said returns in writing. All claims for shortages must be made in writing within 30 days of receipt of shipment at destination.

**INSTALLATION:** Purchaser shall be solely responsible at its cost for the installation of the Product purchased. Although the Company may, in some cases, provide data, manuals, instructions, designs, drawings or specifications to aid Purchaser with installation or startup, the Company ASSUMES NO RESPONSIBILITY FOR PROPER INSTALLATION OR SUPPORT OF THE PRODUCT WHEN INSTALLED AND DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO SUCH INSTALLATION OR SUPPORT, WHETHER OR NOT DATA, MANUALS, INSTRUCTIONS, DESIGNS, DRAWINGS OR SPECIFICATIONS ARE PROVIDED.

**DELAYS:** The Company will deliver or ship with reasonable promptness, but shall not be liable for delays for any reason beyond the the Company's reasonable control, including, but not limited to, delays caused by acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, quarantine restrictions, mill conditions, strikes, differences with workmen, delays in transportation, shortages of cars, fuel, labor or materials. IN ANY SUCH EVENT, THE COMPANY SHALL HAVE SUCH ADDITIONAL TIME WITHIN WHICH TO PERFORM AS MAY BE REASONABLE AND NECESSARY UNDER THE CIRCUMSTANCES, AND THE COMPANY SHALL NOT BE LIABLE TO PURCHASER FOR ANY DAMAGES ARISING FROM SUCH DELAYS, LOSS OF USE OR FOR OTHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LABOR RESULTING FROM FAILURE OR DELAY IN DELIVERY.

**CREDIT APPROVAL & SECURITY FOR PAYMENT:** Acceptance of any offer of the Company is subject to the Company's approval of Purchaser's credit, and the Company may at any time decline to make any shipment or delivery, or to perform any services, except upon receipt of payment or security, or upon such other terms as may be satisfactory to Company. To secure the payment of any and all amounts due the Company under this Agreement or any other contract between the parties, the Company retains and the Purchaser grants to the Company a security interest in the Product purchased hereunder and agrees to execute and deliver to the Company such financing statements or to take any other action necessary to perfect the Company's security interest as the Company may reasonably request.

**TERMS, INVOICES, PAYMENT, LATE CHARGE & TAXES:** Payment terms are: (i) fifty percent (50%) of the purchase order (PO) amount at the time of PO submission to the Company; (ii) balance (100%) of PO plus freight due within thirty (30) days from the Company's invoice. Invoices will be rendered upon shipment of each order to Purchaser. All payments shall be made in accordance with the instructions on the Company's invoice. The Company reserves the right to invoice, and Purchaser agrees to pay for, any or all Product ready for shipment, together with expenses, costs, and losses associated therewith, whenever shipment is delayed pursuant to Purchaser's written instructions or for other reasons beyond the Company's control. A monthly late charge of 1.5% of the invoice amount or \$50, whichever is greater, will be assessed on all past-due amounts. Any tax or other charge imposed by law on the sale of goods or the performance of services shall be paid by the Purchaser, unless the law specifically provides that such payment must be absorbed by the Company. Purchaser shall inform the the Company, in advance in writing, of such taxes or other charges imposed by state, municipal, or other law that are to be paid by the Company.

**DEFAULT OF PURCHASER:** In the event that (i) Purchaser fails to pay any invoice when due; (ii) Purchaser breaches this Agreement or any other contract with the Company or any of its affiliated companies; or (iii) Purchaser's financial strength becomes unsatisfactory, Purchaser shall thereby be in default, and the Company reserves the right, in its sole discretion, to do any one or more of the following: (i) cancel this Agreement and any work in progress, shipments, and pending orders without further notice; (ii) declare all sums owing from Purchaser to the Company to be due and payable; (iii) require payment in advance of performance, in certified funds; (iv) foreclose any security interest; (v) require other security satisfactory to the Company. Purchaser shall be liable to the Company for any and all damages, whether direct, indirect, consequential, special or any other kind of damages, caused by or arising out of any breach of this agreement, provided that the exercise of any rights under this contract shall not bar the Company from exercising its rights under the UCC or any other applicable law. The Purchaser waives any applicable statutory exemptions and shall pay all expenses incurred by the Company in the collection of the amounts due under the Agreement, including attorneys' fees.

**INDEMNIFICATION & GOVERNING LAW:** Purchaser shall indemnify and hold the Company harmless from all expenses (including attorneys' fees), claims, demands, suits, judgments, actions, costs, and liabilities (including without limitation those alleging the Company's own negligence) which may arise from, relate to, or be connected with the Purchaser's possession, installation, start-up, use, maintenance, operation, removal, or resale of the Product described herein and any manuals, instructions, designs, drawings or specifications related thereto. All disputes relating to the execution, interpretation, construction or enforcement of the rights and obligations of the parties hereto shall be governed by the laws of, and resolved in the State and Federal courts in the State of Colorado, and the parties hereby consent to venue in Boulder, Colorado. THE PURCHASER AND THE COMPANY EACH HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY ON ANY CLAIM (INCLUDING COUNTERCLAIMS) ARISING WITH RESPECT TO THE GOODS PURCHASED HEREUNDER. Any lawsuit based on or related in any way to the Agreement or the Product described therein must be commenced within one (1) year after delivery of the Product or other goods to the Purchaser or it shall be barred.