

Imagerail © TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale (the "Terms") apply to all sales of finished goods, components, and other products (individually, a "Product" and collectively, "Products") by **IMAGE ARCH LIGHTING, LLC** ("IAL" or "Seller") to **BUYER** (as identified on Sales Quote/Purchase Agreement and herein referred to as "You" or "Buyer").

1. **ACCEPTANCE.** CONTRACT FORMATION BETWEEN YOU AND SELLER IS HEREBY EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO ALL OF THE TERMS AND CONDITIONS OF SALE SET FORTH HEREIN AND, IN ANY INVOICE, OR OTHER **DOCUMENTS PROVIDED BY SELLER IN CONNECTION WITH THE SALE OF ITS PRODUCTS** (ALL OF SUCH TERMS AND CONDITIONS BEING REFERRED TO HEREIN COLLECTIVELY AS THESE "TERMS"). ORDERING ANY PRODUCTS FROM SELLER SHALL INDICATE YOUR UNDERSTANDING AND ACKNOWLEDGMENT OF SUCH CONDITION AND ASSENT TO BE BOUND BY THESE TERMS. ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY YOU AT ANY TIME, WHETHER PROPOSED BEFORE, ON OR AFTER THE DATE OF SALE, ORALLY OR IN WRITING, UNLESS SUCH TERMS AND CONDITIONS ARE AGREED TO IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER, ARE HEREBY REJECTED IN THEIR ENTIRETY BY SELLER AND SHALL BE DEEMED BY SELLER A MATERIAL ALTERATION OF THESE TERMS. NO COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY TO ANY SALE OF PRODUCTS UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER.
2. **ORDER CHANGES.** You may not cancel or make changes to your order except by a written instrument signed by a duly authorized representative of Seller.
3. **PRICE.** Products are invoiced at prices in effect at the time of the order and Seller's prices are subject to change without notice. You understand that Seller's prices do not include taxes and other charges, including, without limitation, shipping, which Seller may be required to pay in connection with the sale and/or transportation of Products hereunder, which shall be paid by you in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes or charges, you agree to promptly reimburse Seller in full for such amounts.
4. **ENGINEERING APPROVAL:** Approval documents are generated by Seller based on information provided to Seller by Buyer or agents acting on behalf of Buyer. Approval documents are interpretations of field conditions as depicted within Buyer communications or as directed by Buyer to Seller. These documents are accurate to the extent that Buyer-provided communications accurately depict ultimate field conditions. **VERIFYING FIELD CONDITIONS TO SELLER-GENERATED APPROVAL DOCUMENTS IS THE RESPONSIBILITY OF THE BUYER UNLESS SELLER ENTERS AN AGREEMENT WITH "IAL" TO FURNISH AND PROVIDE FIELD VERIFICATIONS FOR THE BUYER** or Seller cannot be held liable for rework, damages, back-charges or schedule delays due to incorrect Approval Drawings.
5. **DELIVERY.** All Products are shipped F.O.B. Seller's applicable manufacturing facility unless otherwise noted. All Products are shipped by carrier(s) of Seller's choice. If Seller is unable to meet any shipping date requested by you, you shall have no claim for damages, whether incidental, consequential, punitive or otherwise (even if Seller has been

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6. advised of the possibility of such damages), resulting from any such delay in delivery.
7. **PAYMENT.** A deposit of 50% is required at time of order placement, balance due before shipping. Orders may be prepaid in full by check, credit card or EFT; credit card orders will be subject to 3% fee. You shall pay Seller all costs and expenses, including, without limitation, attorneys' fees, incurred by Seller in connection with its collection of your overdue account.
8. **LIMITED WARRANTY.**
 - (a) IAL hereby warrants that the Lighting Products will be free of defects in material and/or workmanship for a period of five (5) consecutive years from immediately following the Effective Date, which was the date of Product shipment and acceptance of the Product by the Installer.
 - a. IAL hereby warrants that the Power Transformer products will be free of defects in material and/or workmanship for a period of one (1) year from immediately following the same Effective Date
 - (b) This Limited Warranty **excludes:**
 - i. Normal wear and tear and damage or failure due, in whole or in part, by acts of God, falling objects, external forces, explosions, fire, riots, civil commotion, act of war, radiation or other occurrences beyond IAL's control.
 - ii. Corrosion, in whole or in part, due to end users' failure to properly maintain the Products or deterioration common to the environment. (Note: In areas of high salt concentration, such as adjacent to the seashore, a systematic maintenance program must be instituted to clean the surface to prevent the accumulation of concentrated salt deposits.).
 - iii. Performance or workmanship of Buyer, Buyer's installer or any other contractor involved with the Project or otherwise beyond the warranty(ies) provided by any third-party supplying material and/or labor to IAL in connection with IAL's manufacture of the Products; and/or
 - iv. Misuse, alteration, abuse, neglect, improper installation, tampering, disassembly and other actions or omissions of third parties.
 - (c) **Warranty Claims.** Claims under this Limited Warranty must be made known to IAL, in writing by Certified Mail, Return Receipt Requested, to the attention of Quality Manager at IAL's office located at 5586 E. La Palma Ave., Anaheim, CA 92807 within 60 days of the date Buyer knew or should have known of a condition or conditions covered by this Limited Warranty. In no instance, however, shall this notice provision extend the time period or length of this Limited Warranty. IAL must be provided a reasonable opportunity to inspect and correct the claimed defect directly and/or through a third-party contractor of IAL's choosing. Any alleged corrective action or treatment taken, or work performed upon a claimed defect by anyone other than IAL or its chosen contractor shall void this Limited Warranty.

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- (d) **No Other Warranties or Remedies** IAL's obligation to correct a defect which is covered by this Limited Warranty shall be IAL's sole obligation and Buyer's sole remedy in the event of such a defect. Except as expressly set forth herein, IAL makes no other warranties, express or implied, including, without limitation, any
- (e) **implied warranty of merchantability or fitness for a particular purpose or use, with**

respect to any Products. Under no circumstances shall IAL be liable for any indirect, consequential, incidental, special, exemplary, or punitive damages or damages for lost profits or damages to reputation or goodwill because of any defect in the Products.

- (f) This Limited Warranty may not be amended, modified, or waived except in a written instrument signed by an authorized representative of IAL.
- (g) Rights under this Limited Warranty are not assignable, in whole or in part, without the prior written consent of an authorized representative of IAL and any attempted assignment without such consent shall be null and void.

9. **RETURN POLICY.** This requires Custom Fabrication and there are no returns on Handrail. For the return of defective products, please refer to Paragraph 7, above. Buyer has 14 days from the date a non-defective LED Product(s) was received to return such Product(s) to IAL. Prior to returning any non-defective Product(s), Buyer shall first obtain written authorization from IAL, which authorization shall not be unreasonably withheld. Upon giving such written return authorization, IAL's customer service department shall assign a return authorization number to Buyer. No returns will be accepted without an assigned return authorization number. Unless otherwise agreed to by IAL, Buyer is responsible for all shipping costs including duties, fees and taxes associated with the return of Product(s) to IAL. The Product(s) must be returned by Buyer in the same condition in which it was received, in its original packaging, with all original accessories, Product(s) documentation and manuals. Once the Product(s) is received by IAL, it shall inspect said Product(s) and, if said Product(s) is in satisfactory condition, IAL will issue a refund to Buyer within 14 days, less a 45% restocking fee . All shipping costs associated with returned goods shall be the responsibility of the buyer and deducted from @balance due.

10. **INDEMNIFICATION.** To the maximum extent allowed by law, you shall defend, indemnify and hold harmless Seller and each of its directors, officers, employees, shareholders, affiliates, agents, representatives, successors and assigns (each, an "Indemnified Party") against all claims, actions, demands, legal proceedings, judgments, settlements, sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including, without limitation, attorneys' fees) that any Indemnified Party may incur or be legally obligated to pay as a result of (i) your negligence, use, ownership, maintenance, transfer, transportation or disposal of any Products; (ii) any infringement or alleged infringement of the intellectual property rights of third parties arising from your plans, specifications or adjustment of Products ordered by you; (iii) your violation or alleged violation of any federal, state, county or local laws or regulations; or (iv) your breach of any of these Terms. Seller's remedies under these Terms are cumulative and in addition to any other remedies available to Seller at law, in equity, by contract or otherwise. No purported limitation on Seller's remedies contained in any purchase order or other agreement, instrument or document provided by you shall operate to reduce your indemnification obligations hereunder.

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11. **SET-OFF**. Seller may, at any time and from time to time, set-off any amount owing from Seller to you or any of your affiliates against any amount owing by you or any of such affiliates to Seller.
12. **NON-WAIVER**. Seller's failure to enforce any provisions of these Terms shall not operate as a complete or partial waiver of such provisions or rights and the same shall remain in full force and effect.
13. **FORCE MAJEURE**. Seller shall not be liable to you or any other person for any delay in delivery or failure to deliver Products, directly or indirectly caused by fire, explosion, accident, flood, labor difficulties or shortage, war, act of terrorism, act or regulation of any governmental body, act of God or any other circumstance or cause beyond the control of Seller.
14. **ASSIGNMENT**. You may not assign any of your rights or obligations under these Terms without the prior written consent of Seller and any attempted assignment without such consent shall be null and void.
15. **SEVERABILITY**. If any provision of these Terms shall under any circumstances be deemed invalid or inoperative, these Terms shall be construed with such invalid or inoperative provision deleted, and the remaining rights and obligations of the parties shall be construed and enforced accordingly.
16. **GOVERNING LAW; VENUE**. These Terms and all transactions between Seller and you shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without regard to any conflicts of law principles. Any action or proceeding involving any dispute, claim or controversy relating to or arising from these Terms or such transactions, which cannot be resolved amicably, shall be commenced exclusively in the courts of the State of Wisconsin, and you consent to the exclusive jurisdiction of such courts and waive any objection to such jurisdiction.
17. **MODIFICATION**. These Terms shall not be amended, supplemented, or otherwise modified except by a written agreement executed by duly authorized representatives of you and Seller.
18. **BINDING EFFECT**. These Terms shall be binding on, and inure to the benefit of, each of you and Seller and our respective successors and permitted assigns. These Terms shall survive the delivery of Product(s) to Buyer.
19. **ENTIRE AGREEMENT**. These Terms and Conditions, together with the Sales Quote/Purchase Agreement and all documents attached thereto, constitute the entire agreement between IAL and Buyer, and supersede all other agreements, representations, earlier proposals, bids and quotations between Seller and Buyer, whether written or oral.

Company: X _____

Authorized Agent: X _____

Date: X _____

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