

Terms & Conditions of Sale

1. ORDER PLACEMENT AND ACCEPTANCE:

Valid orders to Evo-Lite, LLC ("Seller") are accepted by receipt of Seller's quotation form approved and signed by Buyer or on Buyer's purchase order with Seller's quotation attached and referenced or written acknowledgement from Buyer authorizing purchase with reference to Seller's quotation. Receipt of authorization to purchase includes consent of Buyer to Seller's Terms & Conditions. No contract shall arise until Seller has acknowledged in writing receipt of authorization to purchase from Buyer for the material and/or services on the terms and provisions quoted herein and on such further terms and conditions as may be included in Seller's acknowledgment. Any contract resulting from this quotation shall be deemed not to include any printed provision contained in Buyer's communications with Seller with respect to this proposal (including in any purchase order or purchase acknowledgement), which conflict or are inconsistent with the provisions of this proposal unless agreed to in writing by both parties. For custom sized and shaped fixtures or standard fixtures with special requirements, drawings in PDF and DXF file formats, approved/signed by purchaser must accompany all Purchase Orders. Orders are deemed accepted and entered into production upon the issuance by Seller of Seller's formal Order Confirmation. Additional acknowledgements if necessary, will be issued upon receipt of deposit, receipt of all final information for production and for any subsequent change orders. A firm ship date will only be confirmed by a written acknowledgement of Seller. All sales are subject to the approval of Seller's credit department.

2. ORDER CANCELLATION:

It is the Buyer's responsibility to review the Seller's acknowledgements immediately upon receipt for accuracy of project specifications, materials and measurements ("Technical Specifications"). If there is any disparity between Buyer's purchase order and the specifications listed on the acknowledgement, Buyer must notify Seller of such disparity immediately upon electronic receipt of the acknowledgement. Orders for custom products may be cancelled by Buyer only upon written notice to Seller and subsequent written consent of Seller to such cancellation. Buyer shall pay to Seller a cancellation charge to include all costs and expenses already incurred or to become incurred for obligations made by Seller in connection with the processing, handling and fabrication of the products subject to the cancelled order, plus reasonable amounts for overhead and profit or 75 percent of the dollar amount of the cancelled order, whichever is greater. Seller and Buyer agree that this cancellation charge is necessary as liquidated damages and not as a penalty for Buyer's improper cancellation of the order, which charge Buyer acknowledges as reasonable. Changes, including order cancellations, may result in a minimum \$50.00 processing fee plus any additional costs associated with the changes.

3. AGREEMENT:

Buyer accepts these Terms and Conditions as well as the Technical Specifications as outlined in Attachments hereto or included in or attached to Seller's acknowledgment as the entire agreement that exists between Buyer and Seller with respect to this purchase order.

4. ERRORS AND MODIFICATIONS

If any errors or omissions pertinent to this order have been made either by Seller or Buyer, Seller shall be notified by Buyer in writing of such error or omission immediately after the electronic receipt of the acknowledgement. Orders are placed into production upon receipt of the customer's Purchase Order, signed Evo-Lite quotation or other written authorization referencing the Evo-Lite quotation and Payment (unless otherwise not required). Otherwise, the order will be deemed accepted by both parties as shown. Seller reserves the right to correct any and all typographical, computational or clerical errors made in the preparation of quotations and specifications. Prices quoted or pricing on orders accepted for materials or products may be adjusted for variances in material or fabrication requirements as they become known. Any representations, warranties or terms regarding this order made by any person other than Seller, including dealers or representatives of Seller which are inconsistent or in conflict with the terms and conditions stated in this order or attachments hereto shall not be binding on Seller and shall not modify this contract unless made and approved in writing by Buyer and Seller.

5. KELVIN TEMPERATURE, LIGHT INTENSITY, LIGHT DISTRIBUTION

Seller's products may exhibit variations in color temperature (Kelvin or "K" Value), Light Intensity and/or Light Distribution within a product category from one fixture to another and within the same fixture depending on the fixture size(s) and shape(s). In addition, these variances may be significant when comparing the color, light intensity and light distribution between samples and larger size fixtures. Seller recommends that Buyer perform testing, procure mock-ups and any other pre-order confirmation process that the application may require to ensure that the product being ordered will display the characteristics of color temperature, light intensity and light distribution as required. If Seller submits samples for Buyer's approval of light color, light intensity and light distribution, it is understood that slight variations are possible between the samples and finished production products. It is the responsibility of Buyer when ordering fixtures to add to an existing project where similar fixtures have been purchased in the past from Seller to identify this circumstance, provide invoice number(s) for the original fixtures and identify the conditions in which the new fixtures are being installed in relation to the original fixtures purchased prior to submitting their purchase order to Seller.

6. PRODUCT SUITABILITY

It is the responsibility of Buyer to determine the suitability of Seller's products for its intended use. Since Seller has no control over the final or intended use of its products, Buyer should conduct its own tests of these products in their intended application.

7. DESIGN RESPONSIBILITY

While Seller is happy to support Buyer's project with advice about the specific qualities and properties of Evo-Lite's products, Seller will not be held liable for any flaws in customer design, installation or specification. Shop drawings, structural engineering services and design services may be contracted from Seller upon Buyer's request.

8. DRAWINGS AND SPECIFICATIONS

Product specifications are subject to change without notice. All dimensions, shapes and wire exit locations detailed in Seller's lighting product drawings or on quotations are based upon illuminated side facing the viewer unless noted otherwise. Seller reserves all copyright privileges in connection to Seller's proposal to Buyer relating to the sale of the goods and all accompanying drawings and specifications provided by Seller. Seller's proposals, drawings, and all Technical Specifications ("Materials") are submitted to Buyer solely for Buyer's consideration in connection with the proposed

sale of goods by Seller to Buyer and Buyer shall not disclose and shall keep confidential all such Materials, Title to such materials shall at all times remain vested in Seller and Seller reserves the right to require Buyer to promptly return to Seller, upon request, all copies of all Materials, extracts or analyses thereof within the possession of Buyer or any of Buyer's agents or representatives. These Materials are not to be published, reproduced, copied (in whole or in part), loaned or otherwise communicated to any third party by Buyer or its agents or representatives without written permission by Seller. All specifications and dimensions are firm but are subject to change or correction during final engineering; therefore, the proposal drawings shall not be used for construction purposes. All stenographic and clerical errors are subject to correction.

9. PRICING

Seller's products are sold on a wholesale basis. Manufacturers' Suggested Retail Pricing (MSRP) may be included on quotations along with Buyers discounted Net Pricing. Net pricing discounts are based on pre-established price levels relative to Buyer's position in the distribution channel for Seller's product(s). Seller has the sole right to determine and/or change the Buyer's price level position. Buyers, where required by law, must provide a Tax Exemption Certificate or Resale Number to be recorded in Seller's records of the sale. The prices quoted are subject to any additions necessary to cover Federal, State and Local Taxes or import duties, when applicable and identified to Buyer for the product or services described, or applicable to the production, distribution or delivery thereof, all of which shall be paid by Buyer. Unless explicitly stated to the contrary, all prices are in US dollars.

10. PAYMENT TERMS

Seller requires full payment upon placement of order in the form of a check (subject to bank clearance), credit card (3.5% convenience fee applies), EFT, or wire transfer before commencement of production. Seller may agree to payment terms for specific customers, these terms shall exclude custom product orders. A service charge will be added on accounts which remain unpaid beyond approved stated terms. The rate of interest will be 1.5% per month (annual percentage rate of 18%) or such lesser rate as is permitted by applicable law. All charges are payable in US funds. If at any time, for any reason, Buyer does not pay for ordered product when due, and in the event, it becomes necessary for Seller to incur collection cost or institute suit to collect any amount due, Buyer agrees to pay such cost including attorney's fees and expenses. In addition to the foregoing, if Buyer shall fail to comply with any payment or performance provision hereof, or of any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract.

11. ORDER DELAY & STORAGE FEES

Regarding Seller's custom products that are made to order, Seller's manufacturing process is organized on a "throughput" basis. This means that an unexpected delay in your order, by Buyer, will hinder Seller's ability to produce other customer's custom orders in a timely fashion. If Buyer instructs Seller to place Buyer's project on hold once it has been released into production or otherwise interrupt Seller's chain of production, Buyer will be charged for storage and handling of Buyer's project materials during any such period until placed back into production. Production handling charges will be charged at \$100 minimum per purchase order and a storage charge will be charged at \$25 minimum per day. Seller will invoice Buyer for such charges, which shall be paid prior to shipment. When products resume production, Seller will re-evaluate shipping costs as needed based on any shipping cost escalation during the production delay. From time to time, it is possible that the inventory of the standard product may not be available at the time the order is scheduled to

be pulled from inventory ("Out of Stock" condition). If this occurs Seller will immediately notify Buyer of such condition, advise when inventory will be available and place Buyer's order into the queue to receive their product upon the replenishment of the product inventory. The queue will be organized based on date and time of the receipt of Buyer's order. Alternatively, upon being informed of an "Out of Stock" condition Buyer will have the option of cancelling any portion of the order that can be used for other customers' orders with all order cancellation fees waived by Seller.

12. SHIPMENT DATE

A tentative shipment date may be agreed upon with Buyer prior to receipt of Seller's order confirmation. Shipment dates are subject to change and all lead times are impacted by the final date of order. A final estimated shipment date for products or services is established by the Seller and is sent by electronically transmitted order confirmation to the Buyer.

13. TITLE TO GOODS

Delivery and legal title to the goods shall not pass to Buyer until goods have been loaded onto freight carrier, F.O.B. Shipping Point and at such time as all sums due or payable by Buyer to Seller, whether in respect of goods or services or otherwise howsoever shall have been received by Seller. Notwithstanding the passage of title, Seller reserves and Buyer grants a security interest in and right of repossession of products until fully paid by Buyer.

14. PRODUCT ACCEPTANCE

BUYER SHOULD CAREFULLY INSPECT THE PRODUCTS UPON RECEIPT AND PRIOR TO INSTALLATION, AND INFORM SELLER IMMEDIATELY OF ANY DAMAGES, PRODUCT DEFECTS, ERRORS OR OMISSIONS. ALL PRODUCTS AND COMPONENTS SHALL BE POWERED UP AND TESTED TO CONFIRM PROPER FUNCTIONALITY BEFORE FINAL INSTALLATION. FAILURE TO DO SO MAY JEOPARDIZE BUYER'S RIGHTS UNDER WARRANTY FOR REPAIR OR REPLACEMENT. IF BUYER INSTALLS OR FABRICATES EVO-LITE PRODUCTS BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE PRODUCT IN ITS DELIVERED CONDITION.

15. SHIPMENT AND RISK OF LOSS

All prices are F.O.B. Shipping Point. All orders are shipped pre-pay and bill "best way" unless carrier preference is specified on the purchase order. Crating and preparation for shipment will be that which is customary and typical for domestic or international shipment by common carrier. Costs associated with 'For Export Crating' (not including shipments from Canada to the USA) are the responsibility of the Buyer. In the absence of shipping directions from Buyer at the time of order, Seller will use its sole discretion as to the method and route of shipment, and Seller shall have no liability for any shipment delay whatsoever. Transportation shall be at Buyer's sole risk, and any claim for loss or damage in transit shall be against the carrier only and Buyer shall be responsible for insuring the goods and for making all claims, with carriers, insurers, warehousemen and others for delivery, non-delivery and loss, damage and delay. No insurance will be placed by Seller on the goods which are the subject of this order unless Buyer gives Seller written notice to place insurance in such amount as described by customer ten (10) days prior to shipment. The cost of such insurance shall be added by Seller to the final invoice for the goods. Buyer should carefully inspect the shipment prior to acceptance from the carrier. Any potential damage issues shall be noted on the carrier's Bill of Lading. Refusal to accept goods from carrier does not relieve Buyer of responsibility for payment and filing damage claims in the carriers' prescribed manner. In any event freight claim must be made within 24 hours of receipt of shipment. In the event of Product Shortages within the correct Package Shipment you must file a claim with Seller within 36 hours of

the receipt of the package. It is the Buyer's responsibility to test all components prior to installation. DO NOT DISCARD PACKAGING UNTIL ALL COMPONENTS HAVE BEEN TESTED AND APPROVED BY THE RECEIVING PARTY.

16. HANDLING

Buyer shall take care when handling, storing, and altering all Sellers' products to prevent damage to the product. Buyer shall refer to all applicable Sellers product literature for installation, proper care and handling.

17. RETURNS

Custom products and Samples cannot be returned. Standard products and accessories, power supplies and controls can be returned if in unopened original packaging with all components and have not been powered up or used in any way. No returns will be authorized after two weeks from date of shipment. Before returning any products contact the Seller to request an RMA (Return Material Authorization) number. No product returns will be accepted without an RMA number. Upon receipt of returned materials, the products will be inspected and if found to be in good condition will be approved and the return will be accepted. A 25% re-stocking charge will be applied to all products returned with an RMA number. Return freight is the responsibility of the buyer. No collect return shipments will be accepted.

18. REGULATORY PROVISIONS

Seller will comply with Federal, State and Local laws applicable to the manufacturing of Seller's products. Products will not necessarily be manufactured to conform to any particular ordinance, code or regulation (including those to which the Buyer or its project may be subject), unless so stated or specifically contracted to do so in writing by Seller. Seller assumes no liability for the difficulties experienced by Buyer should any product fail to comply with any particular ordinance or regulation, or for any damages or fines occasioned thereby.

19. WARRANTY AND LIMITATION OF DAMAGES

Seller's products are warranted as follows from the date of shipment to be free from defects in material and workmanship under normal use and service and when properly installed, and maintained in accordance with Seller's written instructions and recommendations. Term of warranty is as shown on the product specification documentation included at www.Evo-Lite.com.

Warranties exclude any and all removal or reinstallation costs and expenses including, without limitation, labor and equipment required to remove and/or reinstall original or replacement product(s) or parts, shipping costs to return nonconforming product(s) or any damage that may occur during the return of any products to Evo-Lite. If a replacement or repaired product is to be shipped to customer based on the terms above, it will be at Evo-Lite's expense. Any returned products are found to be in working order may be returned to the customer, at the customer's option, and at the customer's expense.

AS SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE NOTWITHSTANDING THAT SELLER MAY HAVE CONSULTED WITH BUYER CONCERNING DESIGN, AND SHALL NOT BE ENLARGED BY REPRESENTATIONS, DESCRIPTIONS, COURSE OF DEALING, TRADE USAGE, RENDERING OF TECHNICAL ADVICE, SERVICE, SAMPLES, MODELS OR OVERUSE. Seller shall not be liable for indirect,

special, incidental, or consequential losses, damages, or expenses, including without limitation, loss of profits or revenue, loss of use of the product, cost of substitute product, or claims of Buyer's customers for such damages, directly or indirectly arising from the sale, handling or use of the goods, or from any other cause relating thereto, and Seller's liability hereunder, in any case, is expressly limited to repair or replacement (in the form originally shipped) of goods not complying with this agreement whether such goods are for breach of warranty or negligence. This warranty shall not apply to any Seller product which shall have been: (a) altered other than by Seller or a third party authorized in writing by Seller; (b) subjected to physical abuse or misuse; (c) used or installed in any manner inconsistent with the applicable Seller general instructions for installation; (d) subject to environmental contamination; (e) use of power adapters not tested and recommended by the manufacturer; (f) high voltage surges; (g) electrostatic discharges; (h) operation outside the product's specifications; (i) failure to follow product instructions; or (j) any breach of 3rd party product component warranty. This warranty extends only to Buyer and not to Buyer's customers or to users of Buyer's products. Customer acknowledges that the obligations of the aforesaid warranty will be limited as per the following conditions: (a) If a product or accessory which is the subject of this order is found to be defective during the warranty period, at the discretion of Seller, repair or replacement of said products will be made. Replacement parts may be sent to be installed by the purchaser. Alternatively, at Seller's election, Seller may credit Buyer with an amount not to exceed the purchase price of such defective goods, (b) No product or accessory shall be returned to Seller prior to notification of the alleged defect and authorization by Seller to return the product or accessory. All repairs or replacements are made subject to factory inspection of returned products. Seller and Buyer agree that the liability of Seller is limited under the aforesaid warranty to the repairing, adjusting, and servicing, free of charge at Seller's facility, of any product or accessory, which is returned prepaid to Seller, and which Seller's examination discloses to have been defective. Buyer is responsible for shipping and other transportation charges involving the shipment of materials for warranty repairs. THIS STATES "EVO-LITE, LLC" ENTIRE LIABILITY WITH RESPECT TO THE SALE OF ITS PRODUCTS PURSUANT TO THIS SALES CONFIRMATION.

20. AMENDMENT

These Terms and Conditions of Sale may not be amended, changed, or modified in any way except in written instrument duly executed by both parties. Should any item supplied be other than specified or agreed in the final order acknowledgment, Buyer must notify Seller immediately in writing. Seller will use its commercially reasonable efforts to provide the goods as proposed in the final order acknowledgment. Terms of the product warranty will be void if Seller is not allowed to first correct any inaccuracies.

21. TAXES

Buyer shall pay all local, state and/or federal taxes applicable in the purchase of products from Seller unless otherwise noted on Seller's quotation.

22. DELIVERY

The estimated production time provided on a quotation is the current production time at the time of quotation. Final estimated production time will be provided with the order confirmation. Shipping dates/production schedules are approximate and based on the prompt receipt of all necessary information, purchase order and / or payment by Seller. Seller shall not be liable for any delay in production or delivery, or loss or damage due to delay or failure to make delivery in any event, including but not limited to delay or failure caused by fire, strikes, civil or military authority, war, hostilities, government control, restrictions or prohibitions, the failure of Seller's suppliers to make

reasonable delivery of materials or components, or other causes beyond the reasonable control of Seller. In the case of such a delay, the date or dates of the completion of this order shall be extended for a period equal to the time loss occurring by reason of such delay. Seller will in no event be liable for any damages occasioned by any such delay, including for any special, indirect, incidental, or consequential damages arising from any delay in delivery. Seller reserves the right to allocate inventories and production when such allocation becomes necessary.

23. JURISDICTION

This Agreement shall be governed by and construed according to the laws of the State of Colorado.

24. SEVERABILITY

Should any provision hereof be declared invalid or unenforceable under controlling law, same will not operate to render the other provisions hereof similarly invalid or unenforceable, and this Agreement shall otherwise continue to full and effect.

25. WAIVER

The failure of either party hereto at any time to require performance by the other party of any of its obligations hereunder shall in no way affect the full right to require such performance at any time thereafter. The waiver by either party hereto of any remedy with respect to a breach of any provision hereof shall not be taken as a waiver of a remedy with respect to any succeeding breach of such provision or any breach of other provision.