



## STANDARD TERMS AND CONDITIONS OF SALE

These Terms shall govern all conduct between the Seller and Buyer concerning the purchase of products or services from Seller (the "Products"). To the extent a Seller order acknowledgement, invoice or other document or transmittal constitutes an acceptance of an offer from Buyer, such acceptance is expressly made conditional upon Buyer's assent to these Terms. Buyer disclaims all other terms, including but not limited to terms included in any Buyer purchase order. "Buyer" means the individual or entity identified on Buyer's purchase order, or if different, on Seller's quote. "Seller" means Progress Lighting Inc., or the subsidiary, division or affiliated entity of Progress Lighting Inc. identified on Seller's quote or order acknowledgement.

**1. PRICES.** All prices are those in effect at the time of the quotation and are subject to change without notice. Unless prices are quoted as "firm," Seller reserves the right to invoice at the prices in effect on the date of shipment, regardless of any prior quote. All prices and other terms are subject to correction for typographical and clerical errors. Seller's prices do not include any domestic or foreign sales, use, excise, or similar taxes, for which Buyer will be charged (separately on Seller's invoice) unless Buyer has provided an appropriate tax exemption certificate.

**2. PAYMENT TERMS.** Unless different credit terms have been extended to Buyer in writing by Seller, payment terms are net 30 days from the invoice date. Amounts not paid when due shall be subject to interest at the lesser of (i) one and one-half percent (1<sup>1</sup>/<sub>2</sub>%) per month or (ii) the maximum rate permitted by law. All past due amounts shall be payable on demand. If any amount due Seller is collected by or through an attorney, Seller shall be entitled to recover all costs of collection, including, without limitation, attorney's fees. Buyer hereby grants to Seller a purchase money security interest in the Products until all payments have been made. Buyer shall sign any financing statements or other documents necessary to perfect Seller's security interests in the Products.

**3. DELIVERY AND RISK OF LOSS.** Products shall be shipped F.O.B. Origin from Seller's manufacturing facility or distribution center, and risk of loss of Products shall pass to Buyer upon delivery to the designated carrier. Seller's responsibility for exception-free delivery ceases when the transportation company receives shipment in good condition. Until Buyer fully discharges all payment obligations for the Products under these Terms, however, Buyer grants Seller a purchase money security interest in the Products. Seller will use reasonable efforts to meet shipment or delivery dates specified by Seller or Buyer, but such dates are estimates only and are not a firm commitment. Seller will not be liable for any delay in shipping or performance or non-delivery beyond Seller's reasonable control, including, without limitation: act or omission of Buyer; flood, hurricane, or other act of God; embargo or other governmental act, regulation, order or request; strike, slowdown, or labor dispute; inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of performance shall be extended for a period equal to the time lost by reason of delay, plus a reasonable time for resuming performance. If shipping is delayed or interrupted for any cause for which Buyer is directly or indirectly responsible and additional costs (including storage costs) are incurred by Seller due to such delays, Buyer shall reimburse Seller for such added costs.

**4. FREIGHT ALLOWANCE.** Freight shall be prepaid and allowed on all shipments of Products with a net order value of \$1,500 and above to destinations within the contiguous United States. Freight shall be added to all shipments of Products less than the foregoing minimum net order value. Actual freight costs are subject to change. Shipments to Alaska and Hawaii will be made to the nearest ports of embarkation in the contiguous United States as prepaid to such points. Applicable delivery terms for shipments outside the United States will be agreed on a case by case basis. For orders that qualify for a freight allowance, Seller reserves the right to select the carrier, routing and method of transportation. Seller will ship in a different manner, selected by Buyer, if deemed practical by Seller and if Buyer agrees to pay any incremental cost. Seller reserves the right to ship multiple orders in one complete shipment, and to make partial shipments of any given order. Buyer shall pay any detention, storage, handling or auxiliary charges assessed by carriers or warehousemen. Buyer requests for deferment on shipping must be approved by Seller and such orders may be subject to revised pricing and storage costs.

**5. MINIMUM ORDER; MASTER PACKAGE.** Seller will only accept orders in excess of \$5.00. Where applicable, all orders will be shipped in standard master packs as noted. A 25% charge will be assessed to any quantity ordered by Buyer that is less than a standard master pack.

**6. LIMITED WARRANTY.** Seller's limited warranty is available at [www.hubbell.com/progresslighting/en/warranty](http://www.hubbell.com/progresslighting/en/warranty), the terms of which are hereby incorporated by reference. Seller reserves the right to modify its limited warranty at any time in its sole discretion. THE OBLIGATIONS CREATED BY SELLER'S LIMITED WARRANTY TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES FOR NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

**7. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR COMPENSATORY DAMAGES RESULTING FROM LOSS OF USE, LOST REVENUES OR PROFITS, BUSINESS OR GOODWILL EVEN IF SELLER HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCTS, IN CONTRACT, TORT OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCT TO WHICH SUCH LIABILITY RELATES. ANY ACTION FOR BREACH OF CONTRACT OR TORT MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

**8. CANCELLATIONS.** Orders may not be cancelled or modified, either in whole or in part, without Seller's express written consent. Orders for stock Products may be cancelled without charge if Seller receives notice seven days prior to shipment. Cancellation of non-

stock, custom made, or modified Products will incur charges for work already performed and for special material purchased by Seller. Cancellation of any Product order after shipment will be subject to the return provisions of these Terms.

**9. RETURN OF PRODUCTS.** Products may not be returned without Seller's prior written authorization. To obtain such authorization, Buyer must make any request to return Products in writing within 90 days of the date of shipment. Seller will not grant return authorization where the products are non-standard, made-to-order, manufactured to Buyer's specific design or specification, or discontinued, or where the value of all items to be returned is less than \$250. Items returned without advance authorization from Seller will, at the sole option of Seller, be returned to Buyer freight collect, or scrapped immediately with no issuance of credit. If Seller authorizes a return, Seller will issue an RMA form. Buyer must include with the return shipment (i) the RMA form and (ii) the original Seller invoice number. All returned Products must be in excellent, resalable condition and packaged in the original carton. Total current annual returns of Products cannot exceed three percent (3%) of the previous calendar years' net purchases. Credit will be issued for only the actual quantity received and will be based on original invoice price, or the price in effect at the time of the return shipment, whichever is lower. Unauthorized material included in an otherwise authorized return will not be credited. Stock product order returns are subject to a 35% restocking fee (inclusive of outbound freight). Products will be inspected upon return and any service or repair needed to place them in first class, saleable condition will be charged and added to the restocking charge described herein. Return freight must be prepaid unless otherwise instructed by Seller in writing. Returned Products must be received by Seller within 30 days of issuance of the RMA. Seller reserves the right to deduct for any damage sustained to the Returned Products in transit, including damage to the carton, missing components, or other damage not caused by Seller.

**10. CONFIDENTIALITY.** All pricing, drawings, plans, disclosures, specifications, patterns or technical or business information furnished at any time by Seller shall remain the sole property of Seller. Buyer shall hold all such information in strict confidence, shall not use or divulge to any person or entity any such confidential information, and any and all copies of such confidential information shall be returned to Seller promptly upon Seller's request.

**11. INTELLECTUAL PROPERTY RIGHTS.** The sale of Products or provision of services hereunder does not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by Seller (beyond the use of the Product). Buyer agrees not to infringe, directly or indirectly, any patents of Progress Lighting Inc. or its affiliates through any combination or system incorporating a Product sold hereunder. With respect to any software incorporated in or forming a part of the Products hereunder ("Software"), Seller and Buyer intend and agree that such Software is being licensed and not sold. Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use the Software (and to use the related documentation) solely in connection with the Products and solely for Buyer's own internal business purposes. This software license terminates when Buyer's lawful possession of the Products ceases, unless earlier terminated as provided herein. Buyer agrees to not to sell, transfer, license, loan or otherwise make available in any form the Software to any third party. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the Software without Seller's prior written consent. Buyer will not export the software in violation of export control laws. Seller may terminate this license if Buyer fails to comply with any term or condition herein. In the event a Product is made or modified in accordance with Buyer's drawings, samples, manufacturing specifications, or the like, Buyer agrees to indemnify, defend, and hold Seller harmless from any and all damages, costs and expenses (including attorney's fees) related to any claim of patent infringement arising from such manufacture or modification. Buyer agrees, at Seller's sole discretion, to undertake the defense of such suit at its own expense.

**12. COMPLIANCE WITH LAWS.** Buyer shall comply with all laws and regulations applicable to the Products, including, but not limited to, all applicable import and export laws and regulations. Buyer has sole responsibility for obtaining any required export licenses. If the ultimate destination of the Products is outside of the United States, Buyer shall designate such country on its purchase order. In the event that Buyer purchases Products for export without so notifying Seller, Seller reserves the right to cancel the contract. Buyer will have sole liability and shall defend, indemnify and release Seller for any loss or damage (including without limitation, claims of governmental authorities) arising from the export from the United States or import into another country of such Products.

**13. GOVERNING LAW.** These Terms shall be governed by and construed in accordance with the laws of the State of South Carolina, without reference to its choice of law rules. Any claim or litigation arising out of or relating to the Products shall be brought exclusively in a court of competent jurisdiction in Greenville County, South Carolina.

**14. ASSIGNMENT.** These Terms are binding upon, and shall inure to the benefit of Buyer, Seller and their successors and permitted assigns. Buyer may not assign all or any portion of its rights or obligations hereunder without the prior written consent of Seller. Seller may assign, delegate or subcontract a purchase order or any of its obligations under these Terms, in whole or in part, without Buyer's consent.

**15. GENERAL.** These Terms supersede all other written or oral agreements between the parties. Any different or additional terms included in Buyer's offer, purchase order, blanket instruction, or other transmittal are expressly rejected by Seller. To the extent a Seller order acknowledgement, invoice, or other document or transmittal constitutes an acceptance of an offer from Buyer, such acceptance is expressly made conditional upon Buyer's assent to these Terms exclusively. Buyer disclaims all other terms, including but not limited to terms included in any Buyer purchase order. The Seller and Buyer may modify these Terms, or the associated quote or purchase order acknowledgement, only by an express written agreement signed by both parties. Seller's waiver of any breach of any provision contained in these Terms will not waive any other breach by Buyer. Seller's delay or failure to enforce its rights under these Terms shall not be deemed a waiver of such rights. The relationship between the parties is that of independent contractors. Neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from a quote or these Terms. Any part of these Terms held to be invalid or unenforceable by a tribunal of competent jurisdiction shall be deemed ineffective to the extent thereof without affecting the validity or enforceability of any other part of these Terms. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms.