

Sales Terms and Conditions

Applies for all Enerlites Inc Products

Effective March 1, 2009.

The following are the terms and conditions under which Enerlites Inc, a California Corporation, ("ENERLITES") sells its products ("Product(s)"). Any contrary or conflicting terms, whenever received, are hereby expressly rejected.

1. PRICES

Prices are set forth on the face hereof, or on the applicable pricing attachment. If no price is stated, the price is that specified in the then current ENERLITES Price List at the time of order acceptance by ENERLITES. If Buyer does not purchase the quantity in the specified time period or otherwise comply with the obligations upon which these prices are based, ENERLITES may, at its sole discretion, charge Buyer the price stated in the ENERLITES Price List for the quantity actually acquired in the time period. Prices specified herein exclude taxes. Buyer will pay any tax, however designated (and any related interest or penalty), imposed with respect to the Products sold. The acceptance of all quotations and orders are subject to final approval by ENERLITES. Acceptance is expressly made conditional upon agreement by Buyer of these terms and conditions. Prices, cash discounts, and terms are subject to change without notice. Each transaction must be accompanied by full instructions on the order itself. Prices are subject to change without notice. Unless otherwise stated in the orders accepted by ENERLITES, ENERLITES will honor prices quoted for a period of 180 days and orders calling for delivery beyond 180 calendar days will be billed according to the prices in effect at the time of shipment. The Minimum Order Value is \$50.00.

2. TERMS OF PAYMENT AND SECURITY INTEREST

(a) Terms of payment are payment received at ENERLITES' bank thirty (30) days from date of invoice, or less 2% of full price invoice (taxes and freight excluded) if paid within 10 days from the date of the invoice. All sales are subject to the prior approval of ENERLITES' Credit Department. Whenever requested by ENERLITES, Buyer will promptly submit its most current available financial information.

(b) If at any time the financial condition of Buyer so warrants, or if Buyer fails to make payment(s) when due, or if Buyer fails to supply requested financial documentation or defaults in any way, all payments may, in ENERLITES' sole and absolute discretion, become immediately due and payable and ENERLITES may alter terms of payment, suspend credit, delay, stop or recall shipment, and/or pursue any and all remedies available at law or in equity or otherwise under this Agreement. In such event, ENERLITES will be entitled to reimbursement from Buyer upon demand for all expenses incurred by ENERLITES in respect thereof, including, without limitation, reasonable attorneys' fees and costs. ENERLITES may charge and Buyer agrees to pay upon demand the lesser of 1.5% per month or the highest lawful monthly rate on overdue accounts.

(c) Buyer hereby grants ENERLITES a security interest in (i) all present and future Product sold, delivered by ENERLITES to Buyer, including, without limitation, any and all goods, equipment and inventory described herein or in any subsequent document, (ii) all present and future books and records,

including, without limitation, books of account and ledgers, computer programs, computer tapes, computer software and data relating to Buyer or to any personal property subject to a security interest granted herein; and (iii) all proceeds thereof, whether now owned and existing or hereafter acquired or arising, including, without limitation, (A) all rents, issues, royalties and profits of or from any of the foregoing, (B) all personal property now or hereafter received by Buyer upon the sale, exchange, lease, transfer or other disposition of any of the foregoing, and (C) any amounts now or hereafter payable under any insurance policy by reason of any loss or damage to any of the foregoing or any proceeds thereof to secure the prompt and unconditional payment and performance by Buyer of all indebtedness, obligations, debts and liabilities owed to ENERLITES. Buyer agrees, upon request by ENERLITES, to execute promptly any documents and perform any other acts at Buyer's sole expense that ENERLITES deems necessary or advisable to confirm, continue and/or perfect the security interests granted herein. In addition to and not in limitation or derogation of the foregoing, Buyer hereby irrevocably authorizes ENERLITES to execute and file any one or more financing statements covering all personal property subject to the security interests granted herein by Buyer in favor of ENERLITES.

3. TITLE AND DELIVERY

(a) All prices are F.O.B. shipping point with freight allowed to any point within the contiguous 48 states provided their F.A.S minimum net value is at least \$1,500.00. Shipments to Alaska are F.A.S Washington & shipments to Hawaii port of exit on the west coast. Freight carriers are to be selected by ENERLITES, INC. unless buyer specifically request routing, the terms of which are governed by section 3(f). All shipments or delivery destinations within the United States or Puerto Rico are made Ex-Works (EXW as per Incoterm 2000) at the point of shipment (ENERLITES's warehouse or distribution centers). Title to Product and risk of loss pass to Buyer upon delivery to Buyer's carrier at the point of shipment, and Buyer will pay all transportation and insurance charges from this point.

(b) All shipments to delivery destinations outside the United States or Puerto Rico are made Delivered Duty Unpaid (DDU as per Incoterms 2000) to the port of entry in the destination country. Title to Product and risk of loss will pass to Buyer at the point of landing in the destination country, prior to entry through Customs.

(c) Delivery dates and product availability as set forth on the face hereof or as otherwise communicated to Buyer are estimates only. ENERLITES will make reasonable efforts to deliver in accordance with these dates; however, ENERLITES will not be liable for failure to deliver as estimated. Shipment of Product may originate from either ENERLITES or its authorized sub-contractors or distributors.

(e) In the event of Product shortages or an inability to meet Buyer requested requirements for any reason whatsoever, ENERLITES may allocate production among its customers in its sole and absolute discretion.

(f) Unless otherwise specified, Products will be shipped in ENERLITES' standard packaging and by the method ENERLITES and/or its subcontractor deems best for Product shipment. If special packaging or shipping is requested, the additional cost of the same will be invoiced to Buyer.

4. CANCELLATION, RESCHEDULING and RETURNS

If Buyer (i) cancels all or part of any order; (ii) fails to meet any obligation hereunder, causing cancellation or rescheduling of all or part of any order; or (iii) requests a rescheduling of scheduled Product and the request is accepted by ENERLITES, Buyer agrees as follows:

(a) Standard Product.

Buyer may not cancel all or part of any order for Standard Product within thirty (30) days of the date scheduled for shipment. Upon written notice to ENERLITES, Buyer may cancel all or part of any order for Standard Product scheduled for shipment beyond thirty (30) days after ENERLITES receives Buyer's written cancellation notice. Buyer will be liable for any quantity price adjustment resulting from any such cancellation. For purposes of this Agreement "Standard Product" means any Product not deemed to be a "Custom Product" as defined in Section 4(b).

(b) Custom Product

Buyer may not cancel all or part of any order for Custom Product within sixty (60) days of the date scheduled for shipment. Upon written notice to ENERLITES, Buyer may cancel all or part of any order for Custom Product scheduled for shipment beyond sixty (60) days after ENERLITES receives Buyer's written cancellation notice. Buyer will be liable for any quantity price adjustment resulting from any such cancellation. For purposes of this Agreement, a "Custom Product" shall mean any Product that contains any item, component, design, marking, packaging or other specification unique to Buyer.

(c) Rescheduling

Upon written notice to ENERLITES, Buyer may request the rescheduling of the shipment of all or part of any order (other than orders for EOL Products) for (i) Standard Product scheduled for shipment more than thirty (30) days after ENERLITES receives Buyer's written request for reschedule; and (ii) Custom Product scheduled for shipment more than sixty (60) days after ENERLITES receives Buyer's written request for reschedule. Unless otherwise agreed to by ENERLITES in writing, Product shipment may only be rescheduled once and no reschedules will exceed sixty (60) days from the originally scheduled ship date.

(d) Return of Materials

Goods may be returned only with ENERLITES' consent through the issuance of a RGA, (Returned Goods Authorization) prior to returning. Only unused items in their original packaging which have been invoiced within 180 days will be considered for return. Returned goods are subject to a restocking charge of twenty-five percent. (25%), F.O.B. point of destination and prepaid.

5. LIMITED WARRANTY

(a) ENERLITES warrants that Products to be delivered hereunder, if properly used, will be free from defects in material and workmanship and will substantially conform to ENERLITES' publicly available specifications for two to five (2 – 5) years depending on the specific product following the date of shipment from the factory.

(b) There is no obligation to provide service and/or support until full payment is received. Terms and conditions of support are at ENERLITES' discretion.

(c) ENERLITES does not warrant that Products to be delivered hereunder will be free from design defects or errors known as "errata". For purposes of this section, "errata" are design defects or errors that may cause ENERLITES the Products to deviate from published specifications.

(d) The Limited Warranty does not apply if the goods have been damaged by accident, abuse, modification, misapplication, during shipment or by improper service.

(f) Disclaimer. THE ABOVE WARRANTIES ARE IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION OR SAMPLE. ENERLITES NEITHER ASSUMES NOR AUTHORIZES ANY PERSON, EMPLOYEE, AGENT OR DEALER TO ASSUME FOR IT ANY OTHER LIABILITY. EXCEPT FOR END-ENERLITES PRODUCT WARRANTIES DELIVERED WITH THE PRODUCT AS CONTAINED IN THE PRODUCT PACKAGING, THESE WARRANTIES ARE PROVIDED SOLELY TO BUYER AND ARE NOT SUBJECT TO ASSIGNMENT, TRANSFER OR PASS-THROUGH TO BUYER'S DIRECT OR INDIRECT CUSTOMERS.

(g) Remedy. If any Product furnished by ENERLITES fails to conform to any warranty, ENERLITES' sole and exclusive liability will be, at ENERLITES' option, to repair, replace or credit Buyer's account with an amount equal to the price paid for any such Product which fails during the applicable warranty period. To receive the benefit of the foregoing warranty, (i) Buyer must follow ENERLITES' return instructions; (ii) Buyer must promptly notify ENERLITES in writing within the applicable warranty period that such Product is defective and must furnish an explanation of the deficiency; (iii) such Product must be returned to ENERLITES' service facility at Buyer's risk and expense; and (iv) ENERLITES must be satisfied that claimed deficiencies exist and were not caused by accident, misuse, neglect, alteration, repair, improper installation or improper testing. Unless otherwise agreed to by ENERLITES in writing, if such Product is defective, transportation charges for the return of the repaired Product to Buyer within the United States will be paid by ENERLITES. Returned Product that is found by ENERLITES not to be defective or that contains missing or damaged parts will be returned to Buyer at Buyer's sole cost and expense with credit, replacement or repair disapproved. For all other locations, the warranty excludes all costs of shipping, duty, customs clearance, and other related charges. ENERLITES will have a reasonable time to make repairs or to replace Product or to credit Buyer's account.

(h) Exclusive Remedy. IN NO EVENT WILL ENERLITES BE LIABLE FOR ANY MONETARY DAMAGES OR OTHER COSTS ASSOCIATED WITH WARRANTY CLAIMS WHETHER FOR THE REPLACEMENT OR REPAIR OF PRODUCTS, INCLUDING LABOR, INSTALLATION OR OTHER COSTS INCURRED BY BUYER.

6. LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY SET FORTH IMMEDIATELY BELOW, INCLUDING SPECIFICALLY UNDER SECTION 7 BELOW, IN NO EVENT WILL ENERLITES BE LIABLE FOR ANY DAMAGES WHETHER ARISING FROM LOSS OF PROFITS, LOSS OF ENERLITES, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, IRRESPECTIVE OF WHETHER ENERLITES HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL ENERLITES' TOTAL CUMULATIVE LIABILITY TO BUYER, INCLUDING INDEMNITY UNDER SECTION 7 BELOW AND ANY DIRECT DAMAGES ARISING FROM THIS AGREEMENT, EXCEED THE SUM PAID TO ENERLITES BY BUYER FOR PRODUCTS SOLD UNDER THE PARTICULAR PURCHASE ORDER HEREUNDER WHICH ARE THE SUBJECT OF AND DIRECTLY AFFECTED BY SUCH CLAIMS.

IN NO EVENT OTHER THAN AS STATED IN SECTION 7 BELOW (SUBJECT TO THE FOREGOING CUMULATIVE LIABILITY LIMITATIONS), WILL ENERLITES BE LIABLE IN INDEMNITY TO BUYER. THIS INCLUDES, WITHOUT LIMITATION, LIABILITY FOR LOSS OR CORRUPTION OF DATA.

UNLESS OTHERWISE AGREED IN WRITING BY ENERLITES, THE PRODUCTS SOLD HEREUNDER ARE NOT DESIGNED NOR INTENDED FOR ANY APPLICATION IN WHICH THE FAILURE OF THE PRODUCT COULD CREATE A SITUATION WHERE PERSONAL INJURY OR DEATH MAY OCCUR. Should Buyer purchase or Enerlites ENERLITES' Products for any such unintended Enerlites, Buyer shall indemnify and hold ENERLITES and its directors, officers, subsidiaries, subcontractors and affiliates harmless against all claims, costs, damages, and expenses, and reasonable attorney fees arising out of, directly or indirectly, any claim of product liability, personal injury or death associated with such unintended Enerlites, even if such claim alleges that ENERLITES or its sub-contractor was negligent regarding the design or manufacture of the Product or any of its parts.

7. PATENT AND COPYRIGHT INDEMNIFICATION

(a) General. ENERLITES will settle and, at its election, defend, any claim brought in any suit or proceeding against Buyer based upon an allegation that any hardware Product furnished hereunder or part thereof, alone and not in combination with any other product, constitutes an infringement of any United States patent or copyright and ENERLITES will pay all damages and costs finally awarded against Buyer for the claim provided that: (i) Buyer notifies ENERLITES promptly in writing of such claim; (ii) if ENERLITES elects to defend, ENERLITES solely controls and conducts the defense and any settlement of the claim; and (iii) Buyer fully and timely cooperates and provides all requested authority, information and assistance to ENERLITES; and (iv) such damages are awarded for infringement by the hardware Product alone and not by any other product in combination or conveyed with such hardware Product. ENERLITES will not be responsible for any costs, expenses or compromise incurred or made by Buyer without ENERLITES' prior written consent. In the event of settlement of the claim in accordance with this Section 7 or if the Enerlites of such Product is permanently enjoined by a United States court, ENERLITES will, in its sole discretion and at its own expense, procure for Buyer the right to continue using said Product, replace same with a non-infringing Product, modify it so that it becomes non-infringing, or upon its return credit the Buyer the sum paid to ENERLITES by Buyer, less appropriate depreciation, for the infringing Product.

(b) Personal Indemnity. The foregoing indemnity is personal to Buyer and shall under no circumstance be assignable, transferable or subject to pass-through to Buyer's indirect customers, and Buyer will notify such end customers that they must look solely to Buyer in connection with any claim of infringement arising from purchases made through Buyer.

(c) Exclusions. ENERLITES will not be liable for any costs or damages, and Buyer will indemnify, defend and hold ENERLITES harmless from any expenses, damages, costs or losses resulting from any suit or proceeding based upon a claim arising from: (i) ENERLITES compliance with Buyer's designs, specifications or instructions; (ii) modification of the Product by a party other than ENERLITES after delivery by ENERLITES; (iii) the Enerlites of any Product or any part thereof furnished hereunder in combination or conveyed with any other product; (iv) any unintended or unauthorized Enerlites of Products; or (v) the direct or contributory infringement of any process patent using any Product furnished hereunder.

(d) No License. Sale of any Product by ENERLITES does not confer upon Buyer a license under any patents, trade secrets, trademarks or copyrights to combine any Product furnished hereunder with any other product or to modify any Product furnished hereunder.

(e) Exclusive Remedy. The foregoing states the entire obligation and exclusive remedy of each of the parties hereto with respect to any alleged patent or copyright infringement by any Product furnished hereunder and is subject to the limitation of liability of Section 6 above.

10. PRODUCT AND MANUFACTURING CHANGES

ENERLITES may modify the specifications or manufacturing processes for the Product, provided the modifications do not adversely affect form, fit, or function of the Product except with respect to form, fit or function changes required by health, safety, law, regulation or industry standards. ENERLITES shall Enerlites reasonable efforts to provide Buyer with notice of the proposed Product modifications discussed herein.

11. FORCE MAJEURE

ENERLITES will not be liable for any failure to perform acts due to unforeseen circumstances or causes beyond the ENERLITES' reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, electronic viruses, worms or corrupting microcode, shortage of supply or delay in delivery by ENERLITES' vendors, fire, flood, earthquake, accident, strikes, radiation, inability to secure transportation, failure of communications or electrical lines, facilities, fuel, energy, labor or materials. In an event of force majeure, ENERLITES' time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby.

12. EXPORT

Buyer will not export, either directly or indirectly, any Product or system incorporating such Product without first obtaining any required license or other approval from the appropriate host Government or the U.S. Department of Commerce or any other agency or department of the host Government or the U.S. Government with appropriate authority.

13. GENERAL

(a) The terms herein will be governed by the laws of the State of California U.S.A. notwithstanding its conflicts of laws provisions, and the parties have agreed that the United Nations Convention for International Sale of Goods shall not govern this Agreement.

(b) All rights and remedies, whether conferred hereunder or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any term will not be deemed a waiver of future enforcement of that or any other term. The terms and conditions stated herein are declared to be severable. Should any term(s) or condition(s) of this Agreement be held to be invalid or unenforceable the validity, construction and enforceability of the remaining terms and conditions of this Agreement shall not be affected.

(c) Neither party may assign any rights, duties or obligations hereunder without the prior written approval of the other and any attempt to assign any rights, duties or obligations hereunder without the other's written consent will be void. Notwithstanding the foregoing, Buyer hereby acknowledges that ENERLITES may use sub-contractors to manufacture and/or ship Product without Buyer's prior approval.

(d) These terms and conditions constitute the entire agreement between the parties with respect to the subject matter hereof. These terms and conditions will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any order submitted by Buyer, which conflicting terms are specifically rejected by ENERLITES and withdrawn by Buyer. Deviations from these terms and conditions are not valid unless agreed to in writing by an authorized representative of ENERLITES.

(e) Any action, other than an action for collection of debt, commenced under this Agreement must be commenced within one year after the cause of action accrues.

(f) Portions of information provided by ENERLITES are confidential and are so marked. Such marked information shall be treated as confidential pursuant to the terms of the applicable confidentiality agreement between ENERLITES and Buyer. If there is no confidentiality in place, Buyer will nonetheless not disclose, distribute or make use of any such information except as expressly authorized in writing by ENERLITES. ENERLITES retains all rights in and to Product specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other proprietary rights relating to the Products. Buyer acknowledges and agrees that any breach by Buyer of the foregoing restrictions would irreparably injure ENERLITES and that damages would be inadequate to compensate ENERLITES for such a breach.

(g) All written notices required or permitted to be given under this Agreement may be sent by electronic transmission in lieu of traditional paper format, provided that the party sending the notice can confirm the authenticity of the transmission and accurately demonstrate that the transmission was sent by an authorized representative and thereafter received by the entity or individual designated by the receiving party. Neither party will contest the enforceability of any transaction solely on the basis that the MSttransaction was conducted electronically.