

NOVA FLEX LED, INC. GENERAL TERMS AND CONDITIONS OF SALE

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Nova Flex LED, Inc. ("**Nova Flex**") to the undersigned ("**Buyer**"). All descriptions, quotations, proposals, offers, acknowledgments, acceptances and sales of Nova Flex's products are subject to and shall be governed exclusively by the terms and conditions stated herein. BY ACCEPTING ANY GOODS FROM NOVA FLEX, BUYER IS DEEMED TO HAVE AGREED TO ALL OF THESE GENERAL TERMS AND CONDITIONS OF SALE WITHOUT THE NEED FOR ANY EXECUTION OR DELIVERY BY BUYER OR NOVA FLEX OF ANY FURTHER INSTRUMENT OR AGREEMENT OR OTHER DOCUMENT.

(b) The accompanying sales quotation, if any (a "**Purchase Order**" and these Terms (collectively, this "**Agreement**"), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order. Nova Flex shall not be liable for any delays, loss or damage in transit or for any damages arising out of any such occurrence, including, without limitation any penalty provisions in contracts entered into by the Buyer with a third party. Delivery shall be made F.O.B., 2789 Clearwater Road, Suite X, St. Cloud, MN 56301.

(b) Nova Flex charges for shipping and handling on all orders unless otherwise agreed to in writing by Nova Flex. Packages are generally shipped within 2-4 business days unless otherwise agreed to by the parties in writing. The shipping and handling charges for all packages will be on the invoice for billing. An additional charge may be applied to all purchase orders shipped via a carrier other than Nova Flex's ordinary provider.

(c) Nova Flex may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods, or if Nova Flex is unable to deliver the Goods on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Nova Flex, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Nova Flex on dispatch from Nova Flex's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) Nova Flex shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Nova Flex of the non-delivery within ten (10) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Nova Flex for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual

quantity delivered.

4. **Quantity.** If Nova Flex delivers to Buyer a quantity of Goods of up to eighty (80%) more or less than the quantity set forth in the Purchase Order, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Purchase Order adjusted pro rata.

5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods to a carrier selected by Nova Flex (or such other carrier as may be agreed upon in writing by both parties). As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Nova Flex a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Minnesota Uniform Commercial Code.

6. **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

7. **Inspection and Rejection of Nonconforming Goods.**

(a) Buyer shall inspect the Goods within ten (10) days after receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Nova Flex in writing at 2789 Clearwater Road, Suite X, St. Cloud, MN 56301 or customerservice@novaflexled.com of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Nova Flex. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Nova Flex of any Nonconforming Goods, Nova Flex shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods (which may be identical to the items originally ordered or with substantial similar product selected by Nova Flex from its then-current product line), or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Nova Flex's facility located at 2789 Clearwater Road, Suite X, St. Cloud, MN 56301. If Nova Flex exercises its option to replace Nonconforming Goods, Nova Flex shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Buyer.

(c) Buyer acknowledges and agrees that the remedies set forth in Section (b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section (b) and Section 8, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Nova Flex.

8. **Conforming Goods Returns.** Subject to the terms set forth in this Section 8, Nova Flex may accept returns of Goods that are not Nonconforming Goods within sixty (60) days from date of purchase, subject to a restocking fee equal to the sum of 25% of invoiced cost. Only returns of Goods that are in good working order and that have not been altered or installed will be accepted by Nova Flex. Nova Flex will not accept returns of (a) LEDs where the backing paper has been removed; (b) power supplies from which the knockouts have been removed; or (c) any custom-ordered products. Buyer must contact Nova Flex Buyer Service at customerservice@novaflexled.com to receive a Return Goods Authorization ("**RGA**") form and RGA number before returning Goods. All returns must be shipped back to Nova Flex's facility located at 2789 Clearwater Road, Suite X, St. Cloud, MN 56301, with the signed RGA form inside and the RGA number

on the outside of the box. A credit memo will be placed and sent to Buyer placing a credit on Buyer's account for the amount of the purchase once the merchandise has been received. Product must be in working order and in original packaging to be eligible for return.

9. Price.

- (a) Buyer shall purchase the Goods from Nova Flex at the price (the "**Price**") set forth in the purchase order.
- (b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Nova Flex's income, revenues, gross receipts, personnel or real or personal property or other assets

10. Payment Terms.

- (a) Buyer shall pay all invoiced amounts due to Nova Flex within fifteen (15) days from the date of Nova Flex's invoice, if Nova Flex has approved Buyer's credit application. All other sales require cash payment in advance. All payments must be made in US Dollars via wire transfer, check or credit card (Visa, Mastercard, Discover, or American Express).
- (b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Nova Flex for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Nova Flex does not waive by the exercise of any rights hereunder), Nova Flex shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.
- (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Nova Flex, whether relating to Nova Flex's breach or otherwise.

11. Limited Warranty.

- (a) Nova Flex warrants to Buyer that for a period of two (2) years (or such longer period as may be specified on Nova Flex's website or product specification sheet on the date an order is placed) from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will materially conform to the specifications set forth in Nova Flex's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. By purchasing Nova Flex's customized products, the Buyer agrees and acknowledges that lighting design, configuration, and installation is a complex process, wherein seemingly minor factors or changes in layout and in-field adjustments can have a significant impact on an entire system. Nova Flex's warranty does not cover problems caused by improper design, configuration or installation issues. Nova Flex cannot guarantee that the color or light output of subsequent purchases and installation will match previously purchased and/or existing installed product. Choosing the right components, configuring them and installing them in accordance with Nova Flex's published specifications, current National Electrical Code, and UL Safety Standards is essential. Nova Flex strongly recommends that the design and installation of its products be performed by licensed professionals with proper training and experience in the installation and design of LEDs. All lighting technology has some amount of gradual light degradation (output and/or color) over the life of the products and Buyer acknowledges and agrees that although Nova Flex products are designed to minimize degradation, some light degradation and color shift is a normal part of the life span of any LED lighting system. Any statement from a Nova Flex employee or agent regarding Buyer's bill of goods and/or

purchase order is NOT an acknowledgement that the products purchased are designed and configured correctly, as all such determinations are the Buyer's own responsibility. The Buyer agrees and acknowledges that it is the Buyer's responsibility to adhere strictly to all information contained in the Product Specification Sheets and to install Nova Flex's products in conformity with all applicable federal, state and local building codes, ordinances and regulations. The Buyer further agrees and acknowledges that any technical drawings provided by Nova Flex are for illustrative purposes only, Buyer shall have no right to rely upon any such drawing, and Nova Flex shall have no liability to Buyer or to any third party as a result of the furnishing of any such drawing to Buyer.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), NOVA FLEX MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section (a). For the avoidance of doubt, **NOVA FLEX MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) Nova Flex shall not be liable for a breach of the warranty set forth in Section (a) unless: (i) Buyer contacts Nova Flex at Buyerservice@novaflexled.com within thirty (30) days of the time when Buyer discovers or should have discovered the defect to request an RGA Form and RGA number; (ii) delivers such Goods to Nova Flex's facility located at 2789 Clearwater Road, Suite X, St. Cloud, MN 56301, with the signed RGA form inside reasonably describing such Goods' defect(s) and the RGA number on the outside of the box; (iii) Nova Flex is given a reasonable opportunity to examine such returned Goods; and (iv) Nova Flex reasonably verifies Buyer's claim that the Goods are defective.

(e) Nova Flex shall not be liable for a breach of the warranty set forth in Section (a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Nova Flex's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Nova Flex.

(f) Subject to Section (d) and Section (e) above, with respect to any such Goods during the Warranty Period, Nova Flex shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such non-conforming Goods on a *pro rata* basis, taking into account the time that has elapsed since the delivery date and the stated product life; provided that, if Nova Flex so requests, Buyer shall, at Nova Flex's expense, return such Goods to Nova Flex.

(g) THE REMEDIES SET FORTH IN SECTION 11(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND NOVA FLEX'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).

12. Limitation of Liability.

(a) IN NO EVENT SHALL NOVA FLEX BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS

OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT NOVA FLEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL NOVA FLEX'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO NOVA FLEX FOR THE GOODS SOLD HEREUNDER.

(c) The limitation of liability set forth in Section (b) above shall not apply to liability resulting from Nova Flex's gross negligence or willful misconduct.

13. Custom Orders; No Representations; Disclaimer of Responsibility. Buyer agrees that any Nova Flex products that are substituted for specified competitive products, per a Buyer initiated Request For Information ("RFI") as part of any sales quotation or Bill of Materials ("BOM") prepared by Nova Flex, are Nova Flex's interpretation of the specifications, performance, and operating conditions of the competitive product. Due to the complexity of LED lighting design, the specifications, performance, and operating conditions, including color fidelity, lumen output, Correlated Color Temperature ("CCT"), and Color Rendering Index ("CRI"), may differ, and Nova Flex does not make any representation regarding compatibility or comparisons with competitors' products or that any Nova Flex product will exactly match Buyer's requirements. Buyer agrees that any custom-ordered Nova Flex product, per a RFI or as part of any sales quotation or BOM prepared by Nova Flex, are based on Nova Flex's interpretation of Buyer-supplied information, drawings, specifications, performance and operating conditions guidelines. Specifications, performance, and operating conditions, including lumen output, Kelvin, CCT and CRI may differ from Buyer expectations and Nova Flex can make no representation regarding ability to meet Buyer expectations or match Buyer's requirements without first creating a sample or prototype. Because any sales quotation or BOM is based on Nova Flex's interpretation of pre-bid documents or specifications furnished by Buyer (or its' architect, designer, lighting designer, contractor, specifier) such sales quotation or BOM may not include all the necessary products and accessories necessary to achieve Buyer's desired lighting effect. Buyer acknowledges that there is often more than one way to design, configure and layout an LED lighting application properly to achieve the same lighting effect. Any sales quotation or BOM provided to Buyer by Nova Flex (in addition to any accompanying statement, drawing or layout from any Nova Flex employee or agent is NOT an acknowledgement that the products specified are designed and configured correctly, but is an interpretation of provided documents. The Buyer agrees and acknowledges that it is Buyer's responsibility to adhere strictly to all information contained in the Product Specification Sheets that are available in the product section of the Nova Flex website. Buyer further acknowledges and agrees that any designed, planned, or in-field adjustments or modifications may affect lighting

solution operation and Nova Flex will not in any way be liable for any detrimental results of any such adjustments or modifications.

14. Photos, Logos, etc. Buyer agrees that Nova Flex shall have the right to use Buyer's name on its website and other promotional materials and to reproduce any photos, drawings or illustrations provided by Buyer to Nova Flex, as well as Buyer's logos and the logos of Buyer's end-users on Nova Flex's website, internet advertising, and otherwise in connection with the advertising, marketing and promotion of Nova Flex's products. Buyer consents to such use by Nova Flex, without any payment or additional consideration, and holds Nova Flex harmless and releases and forever discharges Nova Flex from all claims, demands and causes of action which may arise out of any such use.

15. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Jurisdictions have varying laws, codes and regulations governing construction, installation, and/or use of products for a particular purpose. Certain products may not be available for sale in all areas. Nova Flex does not guarantee compliance or suitability of the products it sells with any laws, codes or regulations, nor does Nova Flex accept responsibility for construction, installation and/or use of a product. It is Buyer's responsibility to review the product application and all applicable laws, codes and regulations for each relevant jurisdiction to be sure that the construction, installation, and/or use involving the products are compliant. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Nova Flex may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

16. Termination. In addition to any remedies that may be provided under these Terms, Nova Flex may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

17. Waiver. No waiver by Nova Flex of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Nova Flex. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Confidential Information. All non-public, confidential or proprietary information of Nova Flex, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, Buyer lists, pricing, discounts or rebates, disclosed by Nova Flex to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Nova Flex in writing. Upon Nova Flex's request, Buyer shall promptly return all documents and other materials received from Nova Flex. Nova Flex shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. Force Majeure. Nova Flex shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Nova Flex including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

20. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Nova Flex. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Minnesota.

24. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Minnesota in each case located in the City of Minneapolis and County of Hennepin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

25. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

26. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.