

Standard Terms and Conditions of Sale

Products & Services

1. DEFINITIONS:

In these Terms and Conditions of Sale, "Seller" means Aeralux Inc.; "Buyer" means the person, firm, company or corporation by whom the order is given.

2. THE CONTRACT:

2.1 All orders must be in writing and are accepted subject to these Terms and Conditions of Sale. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.

2.2 The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order or upon the date of fulfilment of all conditions precedent stipulated in the Contract, whichever is the later (the "Effective Date").

2.3 No alteration or variation to the Contract shall apply unless agreed in writing by both parties. However, Seller reserves the right to effect minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

3. VALIDITY OF QUOTATION AND PRICES:

Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date. Aeralux will add taxes, duties and similar levies to the sales price where Aeralux is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price.

4. PAYMENT:

(4.1) Unless agreed otherwise between Seller and Buyer in writing, Aeralux may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable INCOTERM. Net payment is due within thirty (30) days of date of invoice. All payments shall be made to the designated Aeralux address. No discount is allowed for early payment unless agreed to in writing. In addition to any other rights and remedies Aeralux may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.

(4.2) All deliveries of Products agreed to by Aeralux shall at all times be subject to credit approval of Aeralux. If, in Aeralux's judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, Aeralux may require full or partial payment in advance or other payment terms as a condition to delivery, and Aeralux may suspend, delay or cancel any credit, delivery or any other performance by Aeralux.

(4.3) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, Aeralux shall have the right to refuse performance and/or delivery of any Products until payments are brought current and Aeralux may suspend, delay or cancel any credit, delivery or any other performance by Aeralux. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

5. DELIVERY PERIOD:

5.1 Unless otherwise stated in Seller's order confirmation, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only not involving any contractual obligations.

5.2 If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery/completion period and the Contract Price shall both be adjusted accordingly.

5.3 If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for despatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into a suitable storage at Buyer's expense. Upon placing the Goods into storage, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly.

6. FORCE MAJEURE:

Aeralux shall not be liable for any failure or delay in performance if:

(i) such failure or delay results from interruptions in the Product manufacturing process; or

(ii) such failure or delay is caused by Force Majeure as defined below and/or by (case) law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without Aeralux being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond Aeralux's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which Aeralux cannot reasonably be required to execute its obligations including force majeure and/or default by one of Aeralux's suppliers. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Aeralux to extend for a period of three (3) consecutive months), Aeralux shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

7. DELIVERY, RISK & TITLE:

Risk of loss of or damage to the Goods shall pass to Buyer upon delivery as aforesaid and Buyer shall be responsible for insurance of the Goods after risk has so passed. Any delivery or shipment dates given by Aeralux Inc. are estimates only and Aeralux Inc. is not liable for any loss, damage, cost or expense for any failure to deliver in accordance with the given delivery or shipment date.

8. DEFECTS AFTER DELIVERY:

Seller warrants (i) subject to the other provisions of the Contract, good title to and the unencumbered use of the Goods; (ii) that Goods manufactured by Seller and/or Seller's Affiliates shall conform with Seller's specifications therefore and be free of defects in materials and workmanship.

Seller will make good by the supply of a replacement part or parts, any defects which, under proper use, care and maintenance, appear in Goods of Seller's Affiliates' manufacture and which are reported to Seller within 12 calendar months after their delivery (the "Warranty Period") and which arise solely from faulty materials or workmanship: provided always that defective items are returned to Seller at Buyer's cost carriage and insurance prepaid within the Warranty Period. Repaired or replacement items will be delivered by Seller at Seller's cost to Buyer.

9. LIMITATION OF LIABILITY:

9.1 AERALUX SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE OF ANY PRODUCTS OR SERVICES BY AERALUX OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF AERALUX HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

AERALUX'S AGGREGATE AND CUMULATIVE LIABILITY TOWARDS BUYER UNDER ANY AGREEMENT SHALL NOT EXCEED AN AMOUNT OF TEN PERCENT (10%) OF THE RELATED AGREEMENT.

9.2 Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

9.3 The limitations and exclusions set forth above in this Section 9 shall apply only to the extent permitted by applicable mandatory law.

10. STATUTORY AND OTHER REGULATIONS:

If Seller's obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of Seller's quotation of any law or any order, regulation or by-law having the force of law that shall affect the performance of Seller's obligations under the Contract, the Contract Price and delivery period shall be adjusted accordingly and/or performance of the Contract suspended or terminated, as appropriate.

11. COMPLIANCE WITH LAWS:

Buyer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Buyer are established or from which items may be supplied, and the requirements of any licenses, authorizations, general licenses or license exceptions relating thereto will apply to its receipt and use of goods. Buyer agrees to comply with all appropriate legal, ethical and compliance requirements.

12. BREACH AND TERMINATION:

Without prejudice to any rights or remedies AERALUX may have under the Agreement or at law, Aeralux may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if: (a) Buyer violates or breaches any of the provisions of the Agreement; (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or (c) the control or ownership of Buyer changes.

Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable. In the event of cancellation, termination or expiration of an Agreement, the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

13. MISCELLANEOUS:

13.1 In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

13.2 The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.

13.3 In the event that there is agreement for a product return, there shall be a 25% restocking charge/fee associated with any product returns.