

## Terms and Conditions of Sale / Prudential Lighting Corporation

### Terms of Payment 1% 10th net 25th

**Prices:** Quoted prices firm for orders placed within 30 days.

- (a) Prices are subject to change without notice unless expressly designated as firm for a specified period pursuant to a written Quotation or Sales Order issued by Prudential Lighting.
- (b) Prices do not include lamps. Any tax other than government charges shall be added to the prices.
- (c) Freight allowances per schedule. See freight allowance.

**Price Adjustment – on Services Delivered:** Prices set forth on Quotation sheets or Sales orders apply to merchandise delivered within the period stated thereon. Prices for merchandise or services delivered after such date, where delivery is delayed for reasons beyond the control of Prudential Lighting or its lighting component suppliers, shall be subject to Prudential Lighting's prices in effect at the time of delivery.

### Conditions of the Sale

- (a) **Title and Risk of Loss** – Title, damages and risk of loss pass to and are borne by purchaser upon delivery by Prudential Lighting to carrier. Once order is shipped, merchandise must be accepted at point of delivery.
- (b) **Acceptance Based on Prudential Lighting Written Quotation** – Prudential Lighting reserves the right of acceptance on any purchase order received. Acceptance of a purchase order is based on Prudential Lighting's written quotation and receipt of a purchase order. All purchase orders are subject to Prudential Lighting's terms and conditions stated herein. Any deviation in a purchase order from the written quotation requires a written change notification to accompany the purchase order and for Prudential Lighting to confirm that the change request was both received and accepted. Quoted prices are firm for 30 days or for the specific time indicated in writing by Prudential Lighting. Once the order has been accepted any requests for additional time shall be an additional cost at the current or renegotiated price.
- (c) **Governing Laws** – The terms of sale of any product under this agreement shall be governed in accordance with the laws of the State of California. The parties hereby consent to the exclusive jurisdiction of the Federal District Court for the Central District of California or the jurisdiction of the State of California Superior or Municipal Court in Los Angeles, California. Buyer waives any objection on the ground of venue or forum non-conveniens or any similar grounds; and consents to service of process by mail or in any other manner performed by the relevant law.
- (d) **Guarantee and Waiver** – Prudential Lighting is not responsible for any obligations to purchaser other than to provide lighting fixtures and parts as specified by Prudential Lighting. The Company does not accept responsibility for take-offs on job specifications, nor for compliance with specifications that are not stipulated in the request for quotation. No orders are accepted per plans and specification or for guaranteed approval. All field measurements and dimensions are the responsibility of the contractor. Prudential Lighting shall be held harmless from any and all representations made by contractors not employed by Prudential Lighting.
- (e) **Warranty** – All fixtures manufactured by Prudential Lighting have a 3-year warranty against mechanical defects. This warranty does not include fixtures damaged by mishandling or misapplication. Lighting parts and electrical components not manufactured by Prudential Lighting are subject to the listed warranties of the applicable manufacturer. Prudential Lighting shall be held harmless and hereby denies any and all implied or expressed warranties made by manufacturers other than Prudential Lighting.

This warranty does not include the cost of any inconvenience or property damage due to the failure of the product sold and does not cover damage due to misuse, abuse, accident and/or damage arising out of transportation of such products. Maximum liability, in any event, shall not exceed the unit per price of the product.

Many products can be supplied with specialized components for dimming, cold weather operation, etc. Confirmation of adaptability for special components must be obtained from the component manufacturer before ordering fixtures.

- (f) **Claims** – All merchandise is properly packed for shipment. For extra protection, glass and certain plastic parts are packed separately. In the event of shipping damage, it is the sole responsibility of the buyer to file a freight claim.
- (g) **Back Charges** – No back charges for any fieldwork on fixtures will be accepted without prior written authorization from Prudential Lighting.
- (h) **Catalog/Pricebook/Website Errors** – Every effort is made to prevent informational errors in any Prudential Lighting publications. Prudential Lighting will not accept responsibility and shall be held harmless from all loss and/or damages due to errors relating to, but not limited to dimension data, prices, descriptions, applications etc.
- (i) **Acceptance by Buyer** – Retention by the buyer for a period of 10 calendar days after receipt of any shipment of goods sold under a purchase order shall constitute an irrevocable acceptance of the goods contained in the shipment, unless Prudential Lighting is notified in writing in accordance with the terms and conditions stated herein.
- (j) **Returned Merchandise** – Written authorization must be obtained from the factory before merchandise can be returned for credit. Transportation must be

prepaid on all returned merchandise. Credit will be issued at prices prevailing at time of shipment, or at the time of return, whichever is lower, provided the products are in sellable condition and are of current style and design. A restocking charge, the amount to be determined at time of request, based on the invoice price plus original freight costs involved, will be deducted from the credit to cover the cost of handling inspecting, and loss of profit. Custom-made or modified merchandise is not subject to return.

- (k) **Change Orders** – After acceptance of purchase order, all requests for changes must be made in writing and shall not be effective unless accepted by Prudential Lighting.

**Freight Allowance:** F.O.B. Prudential Lighting factories or warehouses. Freight shall be allowed on orders of \$7500.00 or more. Where freight allowance is specifically authorized it shall be at the Seller's option to determine the carrier. Freight allowance is based on one single shipment within the Continental United States unless stated otherwise on the written Quotation.

- (a) Mounting hardware, which is requested prior to delivery of fixtures, will be shipped on a Prepay and Charge basis.

**Shipments:** all weights shown are approximate and are for estimating purposes only. Prudential Lighting will use its own discretion in routing all freight allowed shipments. The acceptance of shipment by a licensed common carrier shall constitute a delivery.

- (a) It is the Buyer's responsibility to accept shipment when ready, or to provide adequate storage of the shipment.

**Date of Shipment:** A scheduled production date is not a warranty that Prudential Lighting fixture products will ship on that specific date.

**Late Deliveries:** Prudential Lighting will not be responsible for or incur any liability for costs associated with "late deliveries" based upon job schedules or contracts to which Prudential Lighting is not a signatory.

**Interest on Past-Due Obligations:** Any unpaid invoice due to Prudential Lighting shall bear interest at a rate of 10% per annum or the maximum rate allowed by law, from due date.

**Attorneys' Fees:** Should legal action become necessary to enforce the terms of this agreement, the prevailing party shall be entitled to recover all reasonable costs incurred in bringing forth and defending such action, including without limitation, reasonable attorney fees.

**Discrepancies:** Notification of all claims for short shipments, price differences, freight discrepancies, etc, must be made in writing within 5 calendar days from the receipt of shipment and must include copies of all supporting information. Failure to report a discrepancy within the terms stated above shall be deemed a waiver.

**IMPORTANT:** The order is subject to all of the terms and conditions hereof, all of which are hereby accepted by Buyer.

The order becomes a binding contract when accepted by Seller at its office. Such acceptance by Seller shall be complete when (A) acceptance in writing is mailed by Seller to Buyer, or (B) when Buyer receives delivery of and retains in its possession without immediate return or any written objection thereto for all or any part of the merchandise ordered hereunder, or (C) Buyer has given to Seller instructions relative to delivery dates, shipments, requests to bill and hold, or has otherwise assented to Terms and Conditions hereof as to all or any part of the goods referred to hereunder.

**Trading area:** Prudential Lighting reserves the right to refuse acceptance or shipment of any order when destination is outside of the wholesaler's or agent's normal trading area.

**Cancellations:** Orders are not subject to cancellation except for all costs incurred, engineering work performed and special material purchased.

**Arbitration:** Any controversy or claim arising out of or related to the agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association on under its rules for the resolution of commercial disputes. Judgement upon the award rendered by the arbitrator may be entered by any court having jurisdiction of the parties and the subject matter. The prevailing party shall be entitled to reasonable attorney fees. The arbitration shall take place in Los Angeles County, California.

### DISCLAIMER

Unless otherwise stated in the Company's literature, all luminaires and accessories manufactured by Prudential Lighting are designed for indoor use, at voltages from 90% to 105% of rated and ambient temperatures of 50F to 85F, installed in conformity with all applicable codes and regulations, and not subjected to unusual atmospheric content, wind, moisture, pressure, vibration or other abnormal ambient conditions. Since the ultimate use of these luminaires and accessories is beyond the control of the Company, said Company assumes no responsibility for their proper operation of safety other than the stated conditions or for any use other than that for which they were designed as described in the Company's literature, unless prior written approval has been obtained from the Company for the specific conditions.