

# **TWR Lighting, Inc.**

*Enlightened Technology<sup>SM</sup>*

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY.

THE TERMS AND CONDITIONS OF PRODUCTS SALES AND SERVICE PROJECTS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CUSTOMER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS, AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS, OR BY ENGAGING THE TWR LIGHTING, INC. ("TWR") AFFILIATE IDENTIFIED ON THE INVOICE, STATEMENT OF WORK, OR OTHER TWR DOCUMENTATION ("SELLER") TO PROVIDE PRODUCTS OR PERFORM OR PROCURE ANY SERVICES, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND SELLER HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

ANY GENERAL DESCRIPTION OF THE TYPES OF PRODUCTS OR SERVICES AND RESULTS THEREOF POSTED ON THE WEBSITE DO NOT CONSTITUTE PART OF THE AGREEMENT BETWEEN SELLER AND CUSTOMER.

## **IMPORTANT INFORMATION ABOUT THESE TERMS AND CONDITIONS**

These Terms and Conditions constitute a binding contract between Customer and Seller, and are referred to herein as either "Terms and Conditions" or this "Agreement." Customer accepts these Terms and Conditions by making a purchase from, or placing an order with Seller, or otherwise requesting Products (the "Products"), or engaging Seller to perform or procure any Services (as this and all capitalized terms are defined herein). These Terms and Conditions are subject to change without prior notice.

Customer shall issue a purchase order for all Products, services, and administrative purposes. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties, and no usage of trade will be relevant to determine the meaning of these Terms and Conditions, or any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of Services, other than Third Party Services (each, a "Statement of Work"). This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic, or implied, if any, between the parties with respect to the subject matter hereof.

## **GOVERNING LAW**

**THESE TERMS AND CONDITIONS, ANY STATEMENTS OF WORK, THE SERVICES HEREUNDER AND ANY SALE OF PRODUCTSSS HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN HARRIS COUNTY, TEXAS, AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT, WITH RESPECT TO ANY SUCH PROCEEDING.**

Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Seller under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or equity.

## **RISK OF LOSS**

If Customer provides Seller with Customer's carrier account number, or selects a carrier other than a carrier that regularly ships for Seller, title to Products, and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the carrier (FOB Origin, freight collect). For all other shipments, title to Products, and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the specified destination (FOB Destination, freight prepaid, and added).

## **SERVICES**

Customers may order services (collectively "Services") from or through Seller from time to time.

Where Services are ordered in a Statement of Work, each Statement of Work hereby incorporates these Terms and Conditions, and constitutes a separate agreement with respect to the Services performed. Seller, or any of its Affiliates on behalf of Seller, may execute a Statement of Work. In the event of an addition to, or a conflict between, any term or condition of the Statement of Work and these Terms and Conditions, the terms and conditions of this Agreement will control, except as expressly amended in the applicable Statement of Work by specific reference to this Agreement. Each such amendment will be applicable only with respect to such Statement of Work and not to future Statements of Work. Changes to the scope of the Services described in a Statement of Work will be made only in a writing executed by authorized representatives of both parties. Seller will have no obligation to commence work in connection with any such change, unless and until the change is agreed upon in that writing executed by both parties. All such changes to the scope of the Services will be governed by these Terms and Conditions, and the applicable Statement of Work. Each Statement of Work may be signed in separate counterparts, each of which shall be deemed an original, and all of which together will be deemed to be one original.

## **TERMS OF PAYMENT**

Seller shall invoice Customer upon shipment of each order. Such invoices shall be due and payable within 30 days following acceptance of the Products, or receipt of the invoice, whichever is later. Customer shall be entitled to a prompt payment discount of two per cent (2.0%), if payment is made within ten (10) days of receipt of Products, or invoice. Orders are not binding upon Seller until accepted by Seller. Customer agrees to pay the total purchase price for the Products plus shipping (to the extent shipping is not prepaid by Customer), including shipping charges that are billed to Seller as a result of using Customer's carrier account number. Terms of payment are within Seller's sole discretion. In connection with Services being performed pursuant to a Statement of Work, Customer will pay for the Services in the amounts and in accordance with any payment schedule set forth in the applicable Statement of Work. If no payment schedule is provided, Customer will pay for the Services as invoiced by Seller. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice, subject to continuing credit approval by Seller. Seller, or any of its Affiliates on behalf of Seller, may issue an invoice to Customer. Seller may invoice Customer

separately for partial shipments, and Seller may invoice Customer for all of the Services described in a Statement of Work, or any portion thereof. Customer will pay for, and will indemnify and hold Seller and its Affiliates harmless from, any applicable sales, use, transaction, excise, or similar taxes, and any federal, state, or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of, or otherwise associated with any Statement of Work, the Products, or the Services. Customer must claim any exemption from such taxes, fees or charges at the time of purchase, and provide Seller with the necessary supporting documentation. In the event of a payment default, Customer will be responsible for all of Seller's costs of collection, including, but not limited to, court costs, filing fees, and attorneys' fees. In addition, if payments are not received as described above, Seller reserves the right to suspend Services until payment is received.

Except as otherwise specified on an applicable Statement of Work, Customer will reimburse Seller for all reasonable out-of-pocket expenses incurred by Seller in connection with the performance of the Services, including, but not limited to, travel and living expenses.

### **EXPORT SALES**

If this transaction involves an export of items (including, but not limited to, commodities, software, or technology) subject to the Export Administration Regulations, such items were exported from the United States by Seller in accordance with the Export Administration Regulations. Customer agrees that it will not divert, use, export or re-export such items contrary to United States law. Customer expressly acknowledges and agrees that it will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time, but currently includes Cuba, Iran, Sudan, and Syria. Customer also expressly acknowledges and agrees that it will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including, but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals, or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, manufacturers' warranties for exported Products may vary or may be null and void for Products exported outside the United States.

## Warranty & Return Policy

**TWR Lighting, Inc. (“TWR”) warrants its products (other than “LED Product”)** against defects in design, material (excluding incandescent bulbs) and workmanship for a period ending on the earlier of two (2) years from the date of shipment or one (1) year from the date of installation.

**TWR Lighting, Inc. (“TWR”) warrants its “LED Product”** against defects in design, material and workmanship for a period of five (5) years from the date of shipment. TWR, at its sole option, will, itself, or through others, repair, replace or refund the purchase price paid for “LED Product” that TWR verifies as being inoperable due to original design, material or workmanship. All warranty replacement “LED Product” is warranted only for the remainder of the original warranty of the “LED Product” replaced. Replacement “LED Product” will be equivalent in function, but not necessarily identical, to the replaced “LED Product.”

**TWR Lighting, Inc. (“TWR”) warrants its “LED Product”** against light degradation for a period of five (5) years from the date of installation. TWR, at its sole option, will, itself, or through others, repair, replace or refund the purchase price paid for “LED Product” that TWR verifies as failing to meet 70% of the minimum intensity requirements as defined in the FAA Advisory Circular 150/5345-43E dated 10/19/95. All warranty replacement “LED Product” is warranted only for the remainder of the original warranty of the “LED Product” replaced. Replacement “LED Product” will be equivalent in function, but not necessarily identical, to the replaced “LED Product.”

**Replacement parts (other than “LED Product”) are warranted for 90 days from the date of shipment.**

Conditions not covered by this Warranty, or which might **void** this Warranty are as follows:

- Improper Installation or Operation
- Misuse
- Abuse
- Unauthorized or Improper Repair or Alteration
- Accident or Negligence in Use, Storage, Transportation, or Handling
- Any Acts of God or Nature
- **Non-OEM Parts**

**The use of non-OEM parts or modifications to original equipment design will void the manufacturer warranty and could invalidate the assurance of complying with FAA requirements as published in Advisory Circular 150/5345-43.**

**Field Service – Repairs are warranted for 90 days from the date of service**, except where TWR has made recommendations that were not adhered to that may cause premature failure on previous repairs. Labor, Travel, and Tower Climb are not covered under warranty. Customer shall be obligated to pay for all incurred charges not related to warranty. All warranty repairs are performed by trained TWR personnel, or dispatched through an extensive network of certified and insured Service Representatives.

## **Warranty & Return Policy** (continued)

### **Return Policy**

**Return Terms** – You must first contact our Customer Service Department at **713-973-6905** to acquire a Return Merchandise Authorization (RMA) number in order to return the product(s). Please have the following information available when requesting an RMA number:

- The contact name and phone number of the tower owner
- The contact name and phone number of the contractor
- The site name and number
- The part number(s)
- The serial number(s) (if any)
- A description of the problem
- The billing information
- The Ship To address

**This RMA number must be clearly visible on the outside of the box.** If the RMA number is not clearly labeled on the outside of the box, your shipment will be refused. Please ensure the material you are returning is packaged carefully. **The warranty is null and void if the product(s) are damaged in the return shipment.**

**All RMAs must be received by TWR LIGHTING, INC., 4300 WINDFERN RD #100, HOUSTON TX 77041-8943, within 30 days of issuance.**

Upon full compliance with the Return Terms, TWR will replace, repair and return, or credit product(s) returned by the customer. It is TWR's sole discretion to determine the disposition of the returned item(s).

**Replacements** – Replacement part(s) will be shipped and billed to the customer for product(s) considered as Warranty, pending return of defective product(s). When available, a certified reconditioned part is shipped as warranty replacement with a Return Merchandise Authorization (RMA) number attached. Upon receipt of returned product(s), inspection, testing, and evaluation will be performed to determine the cause of defect. The customer is then notified of the determination of the testing.

- Product(s) that is deemed defective and/or unrepairable and covered under warranty - a credit will be issued to the customer's account.
- Product(s) found to have no defect will be subject to a **\$60.00 per hour testing charge (1 hour minimum), which will be invoiced to the customer.** At this time the customer may decide to have the tested part(s) returned and is responsible for the return charges.
- Product(s) under warranty, which the customer does not wish returned, the customer will be issued a credit against the replacement invoice.

## **Warranty & Return Policy** (continued)

**Repair & Return** – A Return Merchandise Authorization (RMA) will be issued for all part(s) returned to TWR for repair. Upon receipt of returned product(s), inspection, testing and evaluation will be performed to determine the cause of defect. The customer is then notified of the determination of the testing. If the returned part(s) is deemed unrepairable, or the returned part(s) is found to have no defect, the customer will be subject to a **\$60.00 per hour testing charge (1 hour minimum), which will be invoiced to the customer.** Should the returned parts be determined to be repairable, a written estimated cost of repair will be sent to the customer for their written approval prior to any work being performed. In order to have the tested part(s) repaired and/or returned, the customer must issue a purchase order and is responsible for the return shipping charges.

**Return to Stock** – Any order that is returned to TWR for part(s) ordered incorrectly by the customer, or unneeded upon receipt, the customer is required to pay a **20% restocking fee.** A credit will be issued once it is determined that the Return Terms are met.

**Credits** – Credits are issued once it is determined that all of the Warranty and Return Terms are met. All credits are processed on Fridays. In the event a Friday falls on a Holiday, the credit will be issued on the following Friday.

**Freight** – All warranty replacement part(s) will be shipped via ground delivery and paid for by TWR. Delivery other than ground is the responsibility of the customer.

REMEDIES UNDER THIS WARRANTY ARE LIMITED TO PROVISIONS OF REPLACEMENT PARTS AND REPAIRS AS SPECIFICALLY PROVIDED. IN NO EVENT SHALL TWR BE LIABLE FOR ANY OTHER LOSSES, DAMAGES, COSTS OR EXPENSES INCURRED BY THE CUSTOMER, INCLUDING, BUT NOT LIMITED TO, LOSS FROM FAILURE OF THE PRODUCT(S) TO OPERATE FOR ANY TIME, AND ALL OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING ALL PERSONAL INJURY OR PROPERTY DAMAGE DUE TO ALLEGED NEGLIGENCE, OR ANY OTHER LEGAL THEORY WHATSOEVER. THIS WARRANTY IS MADE BY TWR EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FORGOING, TWR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE PRODUCT(S) FOR ANY PARTICULAR PURPOSE. TWR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

### **IMPORTANT INFORMATION**

**Upon receipt of the Products, open and inspect the contents for any damage. Contents may be damaged even if the box does not appear to have any external signs of mishandling. Contact TWR immediately, if any of the contents are damaged. TWR is not responsible for any damage or freight claim after 24 hours of receipt of the Products.**

## **PRODUCT CHANGES**

**Discontinuance and Obsolescence.** Seller reserves the right to discontinue the manufacture or sale of, or otherwise render or treat as obsolete, any or all of the Products covered by this Agreement upon at least 60 days prior written notice to Customer. Customer may, in its discretion, within ten (10) days following receipt of such notice, notify Seller in writing of its intention to return any or all Products so discontinued, or rendered obsolete, which remain in its inventory, and shall receive a credit for such Product equal to the net price paid by Seller for the same.

**Events of Default.** Any of the following shall constitute a default under this Agreement.

Seller or Customer fails to perform or observe any of its obligations hereunder for a period of 30 days following written notice thereof from the other.

## ARBITRATION

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether pre-existing, present, or future, and including, but not limited to, statutory, common law, intentional tort, and equitable claims), arising from, or relating to the Products, the Services, the interpretation, or application of these Terms and Conditions, or any Statement of Work, or the breach, termination, or validity thereof, the relationships which result from these Terms and Conditions, or any Statement of Work, (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), or Seller's, or any of its Affiliates' advertising or marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF ANY OF SELLER, CUSTOMER OR THE THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the Rules of the American Arbitration Association. If arbitration is chosen, by any party, with respect to a Claim, neither Seller nor Customer will have the right to litigate that Claim in court, or to have a jury trial on that Claim, or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. **Further, Customer will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim.** Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Houston, Texas. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery, or research required to complete arbitration. The existence, or results of any arbitration, will be treated as confidential. **Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Seller arising out of the Products or Services will be exclusively litigated in court rather than through arbitration.**