

LightWild Standard Terms and Conditions for Accent Lighting Products (www.LightWild.com)

ACCEPTANCE/GOVERNING TERMS

THESE TERMS AND CONDITIONS OF SALE ("TERMS") SHALL APPLY TO ALL SALES OF ACCENT LIGHTING PRODUCTS BY LIGHTWILD ("EQUIPMENT"). UNLESS OTHERWISE SPECIFICALLY AGREED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF LIGHTWILD, ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS PROPOSED BY ANY PURCHASER IN A PURCHASE ORDER, RESPONSE TO A QUOTATION OR OTHER PROPOSAL, ARE HEREBY REJECTED BY LIGHTWILD AND SHALL NOT BE INCORPORATED INTO ANY AGREEMENT FOR SALE OF EQUIPMENT. PURCHASER'S ASSENT TO THESE TERMS SHALL BE CONCLUSIVELY PRESUMED FROM PURCHASER'S ORDERING EQUIPMENT QUOTED BY LIGHTWILD, PURCHASER'S FAILURE TO OBJECT IN WRITING TO THESE TERMS, AND/OR PURCHASER'S ACCEPTANCE OF ALL OR PART OF ANY EQUIPMENT ORDERED. IF LIGHTWILD IS FOUND TO HAVE ACKNOWLEDGED PURCHASER'S ORDER OR PROPOSAL, AND SUCH ACKNOWLEDGMENT CONSTITUTES AN ACCEPTANCE OF AN OFFER, SUCH ACCEPTANCE IS EXPRESSLY MADE CONDITIONAL ON PURCHASER'S ASSENT SOLELY TO THESE TERMS WHICH SHALL FORM PART OF THE ACKNOWLEDGMENT, AND ACCEPTANCE BY PURCHASER OF ANY EQUIPMENT SHALL BE DEEMED TO CONSTITUTE SUCH ASSENT. IF ANY QUOTATION OR OTHER DOCUMENT OF LIGHTWILD IS DEEMED TO CONSTITUTE AN OFFER TO PURCHASER, PURCHASER'S ACCEPTANCE OF SUCH OFFER IS LIMITED TO THESE TERMS.

1. Orders

LightWild price sheets and quotations are not offers to sell, and possession of a price sheet or quotation does not entitle one to purchase. LightWild shall not be bound to sell any Equipment unless it shall (in its sole discretion) accept submitted purchase orders. Orders for standard catalog Equipment may be cancelled prior to shipping, subject to a handling/restocking charge in accordance with Section 8 below. Orders for custom-made Equipment may not be cancelled unless such cancellation is approved in writing by LightWild, in which case Purchaser shall reimburse LightWild for all work already performed and for special material purchased by LightWild. If an order is cancelled after shipment or if delivery is refused at destination, all warehousing, delivery, disposition and return costs will be charged to the Purchaser, and Purchaser also shall be liable for, and shall promptly pay to LightWild, the full purchase price of the Equipment.

2. Shipment and Delivery Terms

(a) Unless otherwise noted, shipment of Equipment will be F.O.B. (LightWild facility). Unless Purchaser notifies LightWild in writing at least 5 calendar days (for domestic shipments) and 15 calendar days (for international shipments) prior to the scheduled shipping date of special or alternative shipping instructions, all shipments will be made (i) via ground shipment (domestic) and air or sea freight (international) as determined by LightWild, (ii) via carrier selected by LightWild, and (iii) utilizing the carrier's standard insurance coverage up to the invoice value of the Equipment being shipped. If Purchaser elects to handle its own shipping, Purchaser shall be solely responsible for making all arrangements for pickup on a timely basis.

(b) The Purchaser will assume the risk of loss of Equipment upon LightWild's delivery to carrier at point of shipment. LightWild will not be responsible for storage charges or cartage charges beyond the destination address acknowledged by LightWild. The Equipment is inspected and tested for defects prior to shipping, and all claims for damages or shortages in transit shall be made by Purchaser with delivering carrier within 10 calendar days after delivery.

(c) Purchaser may inspect and accept Equipment at LightWild's facility prior to shipment. In any event, acceptance shall occur, if not at LightWild's facility, then no later than when the Purchaser fails to reject within 10 calendar days after delivery of the Equipment. All claims for defective Equipment, shortages or any other cause shall be waived after such date, except for claims made in accordance with the warranty provisions of these Terms. The Purchaser waives its right to revoke acceptance; it being the intent of the parties that the Purchaser's remedies for any warranty nonconformity detected after acceptance be limited to those provided in these Terms.

3. Prices

All prices are F.O.B. (LightWild's facility) and are subject to adjustment, without notice, to LightWild's prices in effect at the time of shipment. Price does not include freight charges, handling charges or charges for installation, commissioning, or engineering services unless otherwise stated. All shipping and LightWild's standard handling charges are added to the final invoice or to progress invoices if there are multiple shipments.

4. Payment Terms

All accounts shall be paid in U.S. Dollars (unless specifically agreed otherwise by LightWild) at LightWild's principal offices, in accordance with the payment terms specified in the quotation and/or listed on LightWild's invoice. All payment amounts are net of applicable fees. LightWild reserves the right to not ship Equipment, and/or to not put and order for customer Equipment into production, until receipt of the initial deposit. Credit references may be requested by LightWild, and if, in the judgment of LightWild, the financial condition of Purchaser at the time Equipment is ready for shipment does not justify the terms of payment specified, LightWild may at its sole discretion require either full or partial payment before making shipment. A service charge of the lesser of 1-1/2% per month or the maximum permissible rate will be added to all past due accounts. If LightWild refers a claim for payment to an attorney or agent for collection or pursues any other collection remedies, Purchaser shall pay all associated costs and attorney's fees, including all costs associated with the filing of liens and other legal actions.

5. Delivery and Delay

Shipping dates are approximate and are based on conditions existing at the time of LightWild's receipt of the Purchaser's firm order and full information. LightWild will use commercially reasonable efforts to ship by the estimated shipping date but it shall not be responsible for any delay or any damage arising from a delay. Delivery dates in no event shall be construed as falling within the meaning "time is of the essence." In addition, LightWild shall not be liable for any damages, loss

or delay due to war, riots, fire, flood, strikes or other labor difficulty, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, shortage of transportation facilities or delay in transportation, or inability to obtain necessary labor or materials from usual sources, other contingencies of manufacture or shipment, or other causes beyond the reasonable control of LightWild. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay. LightWild will use all reasonable efforts to comply with Purchaser's request as to method of shipment, but LightWild reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. In such cases LightWild will notify Purchaser of such changes as soon as reasonably possible. If the Purchaser declines or is unable to take delivery at the time(s) specified, LightWild will have the Equipment stored for Purchaser's risk and account, and the Equipment shall be considered "shipped" and the final invoice shall be issued and due.

6. Taxes

The price does not include any present or future federal, state, national or local property, license, privilege, sales, use, VAT, gross receipt, withholding or other excise, transportation, occupational, like taxes or assessments, or duties or import/export fees or charges, which may be applicable to, measured by, imposed upon or result from this transaction or any services performed in connection therewith. Any such taxes or charges itemized separately to Purchaser on LightWild's quotation, order acknowledgment or invoice shall be paid promptly to LightWild. In addition, Purchaser shall reimburse LightWild and hold LightWild harmless for all such taxes and charges which LightWild is required to collect or remit to applicable tax authorities (including any interest or penalties thereon), whether prior to or following shipment. All other taxes incurred by the Purchaser as a result of the purchase of the Equipment or otherwise through performance of the contract shall be the Purchaser's responsibility to pay directly to the proper taxing authority. LightWild will accept a valid exemption certificate from Purchaser, if applicable; provided, however, that evidence of Purchaser's tax exemption status must be provided to LightWild prior to shipment.

7. Specifications

LightWild reserves the right to discontinue items, modify designs, substitute materials and change specifications and/or dimensions without notice and without incurring any liability. LightWild in no way, express or implied, accepts responsibility for voltage determination. Unless specifically agreed by LightWild in writing, it does not warrant compliance of Equipment with Purchaser's individual project specifications.

8. Returned Merchandise

No Equipment may be returned by Purchaser without written authorization in the form of a Return Materials Authorization (RMA), which has been issued by LightWild expressly for the Equipment to be returned. This RMA will be issued at the sole discretion of LightWild. RMA's must be requested within 45 calendar days from original date of shipment of the Equipment, and are valid for 30 calendar days from date of issue. All Equipment containing time-sensitive components that have reached the end of their warranty period or shelf life are not returnable. Outdated or phase-out Equipment also is not returnable. Except with respect to non-conforming Equipment as to which a warranty claim is being made, all returned Equipment must be in re-saleable condition and in its original sealed packaging in order to qualify for a credit. Any applicable credit shall be issued based on the original invoice price, or price in effect at the time of return, whichever is lower, less a minimum handling/restocking charge of 25%. Properly formatted catalog or item numbers and invoice numbers are required in order to process any RMA request. Equipment accepted for return must be shipped FOB (LightWild facility) at the Purchaser's expense freight prepaid, and the RMA Packing List supplied by LightWild must accompany the shipment. LightWild will not take ownership of any returned Equipment until it is received, inspected and found to be acceptable for return by LightWild. Damaged, unauthorized, broken, or obsolete Equipment received will at LightWild's option be scrapped or returned to Purchaser freight collect, with no credit issued. Only LightWild's standard catalog Equipment is eligible for return. ALL CUSTOM-MADE EQUIPMENT IS NOT RETURNABLE.

9. Indemnification

Purchaser shall be solely responsible for, and shall indemnify and hold LightWild free and harmless from, any and all claims, damages or lawsuits (including attorneys' fees) arising out of the acts or omissions of Purchaser, or its employees, architects, installers, contractors or agents and from any claims or liabilities arising out of or connected to any (a) breach by Purchaser of its obligations under these Terms, including, without limitation, any penalties, interest, attorneys' fees and disbursements incurred by LightWild or any person relying upon Purchaser's obligations under these Terms, and/or (b) any costs, charges or damages related to the installation, removal, or re-installation of the Equipment, including any rework of walls, ceilings or other facility components required in connection with the inspection, removal and/or reinstallation of Equipment in connection with warranty claims.

10. Confidentiality

Any proposals, prints, brochures, drawings, or other information furnished by LightWild and marked as Confidential are intended for confidential use by Purchaser, shall remain the property of LightWild, shall not be disclosed or used to the detriment of LightWild's competitive position, and are protected against unlawful use or disclosure by common law and federal and state statutes that cover copyright, patents, trademarks, and trade secrets. Any unauthorized use, printing, copying, disclosure or dissemination of such information may be subject to legal restriction or sanction.

11. Promotional Material

All LightWild's drawings, descriptive matter, weights, dimensions, the descriptions and illustrations contained in LightWild's catalogs, price lists or advertisements, are approximate only and intended merely to give a general idea of the goods described therein and shall not form part of this contract. Because LightWild is continually researching and improving its products, it reserves the right to modify its designs and specifications without notification.

12. Trademarks; Copyright and License Notice

All LightWild trademarks, trade names and/or logos associated with LightWild products and services or with LightWild's business are the sole property of LightWild. Unless otherwise specified, all materials containing logos, graphics, icons and images of LightWild, as well as the selection, assembly, and arrangement thereof, are the sole property of LightWild or the companies it represents. No materials may be copied, reproduced, modified, republished, uploaded, posted, transmitted, or distributed in any form or by any means without prior written permission. All rights not expressly granted herein are reserved. Any unauthorized use of the materials may violate copyright, trademark and other applicable laws and could result in criminal or civil penalties.

13. Services

LightWild may provide commissioning, engineering or programming services in connection with the Equipment pursuant to a services order accepted by LightWild. All services will be provided at LightWild's then current rates and will be invoiced and paid on a monthly basis unless mutually agreed otherwise in writing. Any control programs developed by LightWild pursuant to programming services constitute LightWild's proprietary property and will be owned by LightWild and licensed to Purchaser in perpetuity for Purchaser's use solely in conjunction with the Equipment and control system. LightWild's liability with respect to any services provided to Purchaser is limited to the re-performance of such services as necessary to rectify any errors or defects in such services and do not include any travel expenses incurred in connection therewith which will be invoiced monthly.

14. LightWild Warranty

LightWild's products are tested and found to be operational at the time of manufacture. Provided they are installed and operated in accordance with manufacturer's recommendations and compliant with applicable codes, under normal conditions of use, LightWild warrants that LightWild's standard and custom products will be free from defects in materials and workmanship for a period of two (2) years from date of shipment (except for ENERGY STAR-certified products which have a three (3) year warranty).

Purchaser must notify LightWild promptly and within the warranty period of any claim under the above warranty. Purchaser's exclusive remedy for breach of the warranty is as follows: units demonstrated to be defective within the warranty period will be repaired or replaced (at LightWild's sole discretion) at its factory service center at no cost. This Warranty applies only to the original Purchaser (end user) and is not transferable or assignable. All warranties are void without full payment, including full payment of collection costs as described in Section 4 above.

The above warranties do not cover, and LightWild will not be liable for, any conditions, defect or damage attributable to (1) misuse, inadequate or faulty installation, misapplication, mishandling, misuse, abuse, neglect, improper storage, extreme environmental conditions beyond those defined in the product specification, lack of compliance with applicable instructions, improper or inadequate maintenance, negligence, accident, or tampering; (2) the incompatibility, improper design, manufacture, installation, operation or maintenance of products, accessories, equipment or materials not supplied by LightWild; (3) problems resulting from external causes such as accident, abuse, misuse, mishandling, negligence, fire, theft, vandalism, riot, explosion, natural disaster, or other external causes unrelated to product defect; (4) problems caused by normal wear and tear; (5) alterations, modifications or repairs made to the Equipment by Purchaser or others; (6) structural defects in or damage to any property or (7) Equipment for which LightWild has not yet received full payment.

The above warranty does not apply to the quality of the installation of the Equipment by the installer of such Equipment. For example, the above warranties would not cover problems resulting from an installer's installation methods and procedures. Installers are neither LightWild's employees nor agents and they do not have the authority to alter or extend the above warranties. Further, (a) the above warranty does not include LightWild's responsibility for or cover reimbursement for any expenses of labor, transportation, materials or rework related to or arising from the removal or reinstallation of the Equipment, (b) the above warranty does not include or cover any travel expenses incurred by LightWild in connection with inspecting and evaluating any warranty claim at Purchaser's facility, and (c) LightWild's liability and responsibility for warranty defects is limited solely to repair or replacement as set forth above and is in any event limited to the purchase price of the specific Equipment item for which the warranty claim is being made.

Pay particular attention to installation and protection of the controllers for LightWild's products.

These components are easily damaged by environmental conditions and must be adequately protected by proper installation. No guaranty or warranty by LightWild extends to control units which have in LightWild's sole opinion have been improperly installed.

If a product must be returned for repair or replacement, Purchaser must comply with the applicable Returned Merchandise provisions as set forth above, including shipment of the Equipment FOB (LightWild facility) at the Purchaser's expense freight prepaid. Sufficient packing materials must be used to avoid damage to the Equipment being returned while in transit. LightWild reserves the right to repair or replace at its discretion. LightWild assumes no responsibility or liability for expenses incurred for the troubleshooting, removal and/or installation of products requiring service and/or repair, nor for the handling of products returned to sender after the service has been rendered. LightWild does not repair or replace in the field.

LightWild makes no warranty, express or implied, for products not manufactured by LightWild, but to the extent permitted by law, will make available the warranties of the manufacturer of those products. All batteries, if included, are specifically excluded from all warranty provisions.

LIGHTWILD MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY, WHETHER ARISING BY COURSE OF DEALING, USAGE TRADE OR OTHERWISE IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS OR MERCHANTABILITY, WITH RESPECT TO THIS PRODUCT.

No agent, distributor or representative or employee of LightWild or any other person, other than an authorized officer of LightWild, is authorized to give any additional warranty on behalf of LightWild. Any technical advice, recommendations, samples, and/or demonstrations provided by LightWild concerning the use, application, or compatibility of any products or materials are provided by LightWild for the purpose of assisting the Purchaser to evaluate, at its own risk, the suitability of products for the Purchaser's intended use and may not be construed as an express or implied warranty. LightWild does not warrant the accuracy of and results from any recommendations or suggestions resulting from any engineering analysis or study. This applies regardless of whether a charge is made for such analysis or study. In the event of errors or inaccuracies in any such study or analysis, LightWild's liability will be limited to the re-performance of any study or analysis.

15. Disclaimer & Limitation of Liability

IN NO EVENT SHALL LIGHTWILD BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER BASED IN CONTRACT, WARRANTY, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF CAPITAL COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, LABOR OR OTHER CONSTRUCTION COSTS, CLAIMS OF THIRD PARTIES AGAINST PURCHASER, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE THIS PRODUCT, EVEN IF LIGHTWILD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL LIGHTWILD'S LIABILITY, WHETHER BASED IN CONTRACT, WARRANTY, TORT OR OTHERWISE, EXCEED THE AMOUNT OF THE APPLICABLE PURCHASE PRICE ALLOCABLE TO THE SPECIFIC EQUIPMENT WHICH GIVE RISE TO CLAIM FOR DAMAGES, LESS ANY DEDUCTION FOR USE BY THE END USER.

16. Miscellaneous

These Terms shall be governed by and construed under the laws of the State of Kansas. The federal and state courts within the State of Kansas shall have exclusive jurisdiction to adjudicate any dispute arising out of these Terms. Purchaser may not assign or transfer this contract without prior written consent of LightWild. Neither Purchaser nor any affiliated company nor assignee shall have the right to claim compensation or to set off against any amounts that become payable to LightWild under this contract or otherwise. The failure of either party to enforce at any time any of the provisions of these Terms, or the failure to require at any time performance by the other party of any of the provisions of these Terms, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of such provision, or the ability of either party to enforce each and every such provision thereafter. If any provision of these Terms becomes or is declared by an arbitrator or court of competent jurisdiction to be illegal, unenforceable or void, these Terms shall continue in full force and effect without said provision.