

PLEASE READ THIS ENTIRE AGREEMENT AND FILL IN AND SIGN BELOW.

ACCOUNT AGREEMENT AND TERMS AND CONDITION OF SALE

Each of the undersigned (collectively "Customer") shall be jointly and severally liable to , Inc. ("Seller") for all sums due and agree to all terms of this ACCOUNT AGREEMENT AND TERMS AND CUNDITIONS OF SALE (the "Agreement") as follows:

1. **TERMS OF SALE.** All invoices are net and *are* due and payable thirty (30) days following the invoice date unless otherwise stated on Seller's Invoice. If Customer fails to pay for any invoice when due. past due interest shall be added to and payable on all overdue amounts, from the date of invoice, computed daily, at the rate of the lesser of five percent (5o%) per annum above the prime rate of interest quoted daily by the Wall Street Journal newspaper or the Street Journal newspaper or the maximum rate of interest permitted by law. Seller reserves the right to require cash payment prior to delivery, if so stated on Customer's work order. If in Seller's opinion, Customer's credit standing becomes impaired, Seller reserves the right to request cash payment in full of Customer's entire account. In the event of payment is past due, Customer agrees – to pay, in addition to all other delinquency charges set forth herein, a one time late charge for Seller's processing of ten percent (10%) of the past due amount or \$100 whichever is less.
2. **LIMITED WARRANTY.** Seller warrants for a period of 60 days from the date of delivery to the original Customer that the bulbs and related products (the "Goods") as of delivery, are free from unreasonable defects, damages and shortages. Seller, upon Customer's written claim, will, at Seller's sole option, either replace or refund the selling price of any defective, damaged or shorted goods. Claims for detects, damages or shortages must be in writing and delivered to Seller at its office in San Diego County, California within 60 days of delivery of the goods subject to claim. Failure to make such claim within the stated period shall constitute irrevocable acceptance of the Goods and an admission that they fully comply with the Customer's specifications. **THE WARRANTIES OF SELLER SET FORTH IN THTS PARAGRAPH 2 ARE IN LIEU OF, AND CUSTOMER HEREBY WAIVES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES OF SELLER, EXPRESS, STATUTORY OR IMPLIED ARISING OUT OF OR IN CONNECTION WITH THE SALE, RESALE, AND PURCHASE OF SELLER'S GOODS, OR THE USE OR PERFORMANCE THEREOF, OR THE COURSE OF DEALING OR PERFORMANCE UNDER ANY AGREEMENT BETWEEN CUSTOMER AND SELLER WHICH I'HIS AGREEMENT APPLIES.**
3. **LIMITATION IN DAMAGES.** Except as provided expressly in paragraph 2 above, Seller shall not be liable to Customer, to Customer's customers or to any other person with respect to any claims against Seller for incidental, special, indirect, or consequential damages, including, without limitation, loss of profit, plant, equipment, information, property or production, arising from the sale, purchase, resale or subsequent use of Seller's Goods and from any promise or offer to sell or purchase such Goods, regardless of whether Seller has been informed of the possibility of such damages, and Customer agrees

to indemnify Seller and hold it harmless from and against all such claims. Customer agrees that this limitation of damages is reasonable and will not cause it to lose any expected benefits, rights or remedies under any agreement for the sale of goods.

4. **DELIVERY.** Delivery will be made F.O.B. Seller's facility in California, or other F.O.B. point agreed to in writing by Customer and Seller, to a carrier selected by Seller unless Customer requests in writing use of a particular carrier, All Goods are identified and all risks of loss pass to Customer, except as described in Paragraph 2, upon delivery by Seller to the carrier, to Customer, Customer's designated carrier or any other agent of Customer. In no case will Customer be entitled to recover from seller any damages, consequential or otherwise, caused by any delay in delivery or Seller's failure to meet Customer's requested delivery date.
5. **WORK ORDER.** Unless otherwise agreed in writing by Customer and Seller, Customer shall order goods from Seller by executing and delivery to Seller a written work order or purchase order executed by an authorized representative of Customer. No order shall be deemed accepted by Seller unless Seller executes a written acceptance of such order executed by an authorized representative of Seller. Once an order has been accepted by Seller, Customer may not cancel the order. Unless otherwise agreed in writing, prices quoted by Seller shall not include, and Customer agrees to pay, any sales, use, value added, excise or other similar tax applicable to the sale of goods. Customer is solely liable and agrees to hold Seller harmless with respect to all such tariffs, duties and excise or other taxes or charges levied on goods exported hereunder by Seller or Customer.
6. Neither party to this contract shall be responsible to the other party, nor shall either party be liable to the other party or to any third party for any damages, including without limitation incidental and consequential damages, arising out of nonperformance or delay in performance of this Agreement due to acts of God, wars, riots, strikes, unavailability of suitable and sufficient labor, materials or capacity and except beyond its control.
7. **MODIFICATION.** No term or condition contained in any purchase order form submitted by Customer that varies from or conflicts with any of this Agreement shall become part of the contract for the sale of Goods unless each such term is expressly accepted in writing by Seller's authorized representative at its office. Delivery of this Agreement constitutes notification of Customer's objection to any term of condition that varies from or conflicts with those contained herein. This Agreement constitutes the complete agreement between Seller and Customer for the purchase of Goods described on the face hereof from Seller and supersedes any other prior or contemporaneous agreement between the parties, whether oral or written. No modification of any of this Agreement shall be binding on either party unless it is in writing and signed by authorized representatives of both parties.
8. **ATTORNEYS' FEES.** In the event a dispute arises between Seller and Customer with regard to the interpretation or enforcement of this Agreement or in connection with any transaction between Seller and Customer, the prevailing party shall be entitled to recover from the other reasonable attorney's fees and court costs in addition to any other relief or remedy awarded to or obtained by the prevailing party.
9. **GOVERNING LAW AND VENUE.** Any agreement to which this Agreement applies is an installment contract within the meaning of Section 2612 of the Commercial Code of the State of California. Each shipment shall be considered a separate transaction. In the

event of any default by Customer, Seller may decline to make further shipments. The Seller elects to continue to make shipments, such action shall not constitute a waiver of any default by Customer of any provision of this Agreement. In the event of any dispute, this Agreement shall be construed under the laws of the State of California without giving effect to the rules of conflicts of law, and the United Nations Conventions on Contracts for the International Sale of Goods shall not apply in any manner to this Agreement. Performance under this Agreement requires Customer to make payments to Seller at its principal place of business in San Diego County, California. In the event of litigation, the courts, whether State or Federal, located in San Diego County, California shall be the sole and proper place for jurisdiction and venue. No action shall be filed by either party in any Court not located in San Diego County. In the event Customer files an action against Seller in a court outside of San Diego County, it shall be transferred to the courts in San Diego County, and no court outside of San Diego County shall have jurisdiction to resolve any dispute between the parties. Seller shall be entitled to recover its legal fees in opposing and transferring any action by Customer in a court not located in San Diego County.

10. NOTICES. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery or on the day sent by facsimile transmission if a true and correct copy is sent the same day by registered or certified mail, return receipt requested, or by dispatch by an internationally recognized express courier service sent to the other party at its home or principal place of business, receipt to be acknowledged in writing.
11. I (We) hereby certify that all statements in the Credit Application are true and complete and are made for the purpose of obtaining credit. Any subsequent purchase or purchases made by me (us) shall be subject to the above Agreement, unless modified by an agreement in writing. This Agreement is deemed executed in San Diego County, California.

Dated: _____

(Customer's name printed)

By: _____
Name and Title (Must be an Officer if Corporation)