

# STANDARD SIGNS, INC. TERMS & CONDITIONS FOR THE SALE OF GOODS

## I. GENERAL PROVISIONS AND CONDITIONS

**A. NATURE OF CONTRACT AND NAMES OF PARTIES.** This agreement between Standard Signs, Inc. ("Seller") of 9115 Freeway Drive, Macedonia, Ohio 44056 and Buyer is for the sale of goods ("Goods") identified on the face of this Agreement and/or Seller's Order Acknowledgement (collectively "Agreement"). Seller recognizes that Buyer may desire to use its own acknowledgement form to reflect this agreement; however, any provisions in Buyer's acknowledgement form which modify, conflict with or contradict any provisions of this Agreement, shall not be binding between the parties. An acceptance of any of the Goods covered by this Agreement or Seller's Order Acknowledgement shall constitute an acceptance of these terms and conditions and shall constitute the entire understanding between Seller and Buyer.

**B. INTEGRATED AGREEMENT.** All orders are subject to approval by Seller at its offices in Macedonia, Ohio. The parties agree and understand that no waiver or alteration of terms contained in this Agreement, including but not limited to any verbal alteration or agreement between Buyer and any agent of Seller, shall bind Seller unless in writing, signed by an executive officer of the Seller. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any term used in this Agreement. Buyer acknowledges that it has not relied upon any sample, model, description or exact technical specifications in placing its order. The parties intend the terms of this Agreement to be the final, complete and exclusive expression of their agreement.

**C. TERMINATION, CANCELLATION CHARGES.** Seller reserves the right to begin production of orders and/or to ship Goods in stock immediately unless specifically requested otherwise. Buyer may not terminate, modify, cancel, or defer shipment of the Goods under this Agreement, except with Seller's prior written consent and subject to conditions then agreed upon. Cancellation will involve cancellation charges for all work performed, including but not limited to engineering and production work performed, up to receipt of written cancellation provided by Buyer to Seller. Buyer agrees to pay these charges as a condition of sale.

**D. GOVERNING LAW, VENUE, JURISDICTION.** The laws of the state of Ohio shall govern this Agreement, the construction of its terms, and the interpretation of all rights and duties of Buyer and Seller. Buyer agrees that venue shall lie in Summit County, Ohio. Buyer and Seller agree that they are amenable to suit in Ohio, and therefore, subject themselves to the jurisdiction of the state courts in Ohio by entering into this Agreement.

**E. MANDATORY ARBITRATION.** Except for a breach of the Intellectual Property Rights and Confidentiality provisions contained in this Agreement, for which Seller may seek equitable relief, including temporary and permanent injunction, against Buyer, the parties shall arbitrate any dispute, claim or controversy arising out of or relating to this Agreement in Ohio in accordance with the commercial rules of the American Arbitration Association then in effect. The party requesting arbitration of a dispute shall give written notice to the other party as soon as possible within the applicable time frames set forth in this Agreement for pursuing a dispute, claim or controversy. The parties agree that the results of the arbitration will bind the parties and that the prevailing party may enter judgment upon the award rendered in the highest court in Ohio, state or federal.

**F. STATUTE OF LIMITATIONS.** Pursuant to Ohio Revised Code Section 1302.98 the parties agree that an action for breach of this agreement, or any other cause of action arising from this agreement, must be commenced if at all within one year from when the cause of action accrued.

**G. WAIVER.** Neither the parties nor any interpreting legal authority shall construe any failure of Seller to demand rigid adherence to one or more of this Agreement's provisions, on one or more occasions, as a waiver or deprive Seller of the right to insist upon strict compliance in the future.

**H. BINDING EFFECT, ASSIGNMENT.** This Agreement shall bind and inure to the benefit of the parties and their successors and assigns; provided, however, that Buyer may not assign or transfer this Agreement, in whole or in part, except with prior written consent of Seller.

**I. LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

**J. EQUAL EMPLOYMENT OPPORTUNITY.** The parties incorporate herein by reference the Equal Opportunity clause, Section 202 of Executive Order 11246, as amended, relative to equal employment opportunities and implementing rules and regulations of the Secretary of Labor.

## II. PACKAGING, SHIPMENT, RISK OF LOSS, DELIVERY

**A. PACKAGING.** Seller shall package the Goods in standard commercial package that is acceptable to commercial carrier. Seller shall furnish special customer packaging only upon Buyer's written request and Buyer shall bear the cost for any special packing requirements. Buyer agrees to hold Seller harmless for any damage to the Goods caused by Buyer's special packaging requirements.

**B. SHIPMENT, RISK OF LOSS.** Seller ships all Goods F.O.B. Seller's plant. Seller ships LUMACURVE Goods with freight allowed within the contiguous 48 US states via the lowest overland rate, on orders exceeding a net value of \$3500. If qualified, Seller will ship LUMACURVE Goods consigned to Alaska or Hawaii freight allowed to the contiguous U.S. port of exit. Buyer shall bear the expense of the shipping costs to Alaska or Hawaii. If Buyer requests premium routing, Buyer shall pay the shipping cost differential. Buyer may combine any LUMACURVE Goods manufactured by Standard Signs, Inc. consigned to a single destination within the 48 contiguous U.S. states when calculating invoice value for freight allowance. Seller ships Porcelain Enamel Goods to Buyer in a reasonably commercial manner. Seller invoices Buyer for all shipping charges incurred and Buyer is responsible for payment of all shipping charges. The risk of loss passes to Buyer upon Seller's delivery to a common carrier for shipment to Buyer. Seller may treat each shipment made as a separate transaction.

**C. DELIVERY.** Unless expressly specified to the contrary, Seller shall ship Goods as soon as practicable. Shipping dates represent Seller's best estimate and are approximate based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Failure to meet these dates shall not constitute default by Seller nor shall Seller be liable for any failure to perform by reason of

causes beyond its control. These causes include, but are not limited to, storms, floods, fires, accidents, wars, shortages of fuel, materials, transportation facilities, labor disputes and shortages, legislative action, judicial action and acts of God. In the event of any delay or nonperformance, Seller may at its option and without liability, upon written notice to Buyer, cancel all or any portion of this Agreement and/or extend any date upon which any performance under this Agreement is due.

## III. PRICE, PAYMENT TERMS, INTEREST, COLLECTION FEES & COSTS, TITLE, SECURITY INTEREST, RETURNS

**A. PRICE.** The price for the Goods that are the subject matter of this Agreement are set forth on the face side of this Agreement. Prices stated are subject to change without notice in the event of: (i) alterations in specifications, quantities, designs, or delivery schedules; (ii) increases in the cost of fuel, power, material, supplies, or labor; and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the Goods purchased by Buyer. Seller shall not provide Buyer with any discount unless a discount is set forth on the face side of this Agreement. Prices do not include federal, state or local taxes as applicable and Seller will add these taxes to the sales price when Seller is legally obligated to collect the taxes unless Buyer provides Seller with a proper tax exemption certificate. If Seller pays any taxes on the Goods, Buyer shall immediately reimburse Seller for any tax payment upon demand. All prices are subject to correction for stenographic, typographic and clerical errors.

**B. PAYMENT TERMS, CREDIT.** The terms of payment for Goods are net thirty (30) days from the date of invoice, unless otherwise agreed between the parties. Seller may require advanced payment of 50% of the total order amount for all Porcelain Enamel Goods at the time Buyer orders Porcelain Enamel Goods. Seller extends credit purely at its discretion. If in Seller's judgment, Buyer's financial condition does not justify the terms of payment specified, Seller may at its option (1) cancel this Agreement; or (2) refuse to perform further under this Agreement unless Buyer shall immediately pay for all Goods which Seller has delivered to Buyer.

**C. INTEREST, COLLECTION FEES & COSTS, TITLE, SECURITY INTEREST.** Buyer agrees to pay a delinquency charge of 1½% per month (18% per annum) on any outstanding balances owed by Buyer and not paid after sixty (60) days from invoice date until Buyer renders payment in full. If Seller must pursue legal action against Buyer to collect any amounts owed by Buyer to Seller, Buyer agrees to pay Seller's expenses, including reasonable attorneys' fees, incurred as a result of the legal action. Until Buyer pays Seller the purchase price and all other sums due in full, Seller retains title to all goods shipped by Seller to Buyer. Seller may, at its discretion, seek additional security from Buyer on any amount due to Seller for goods shipped from Seller to Buyer and thus Seller may retain a security interest in the Goods and in all proceeds of the Goods. Buyer shall execute a financing statement(s) on request and irrevocably authorize Seller to execute and file same.

**D. RETURNS.** This return policy applies only to LUMACURVE Goods (with the exception of LUMACURVE legend panels which are custom made and not returnable). Seller only accepts returned Goods within 90 days from shipment date. Seller will not accept Goods returned for credit without Seller's permission. Buyer must contact Seller and obtain verbal permission to return any Goods and at that time Seller will issue a return confirmation number to Buyer. All returned Goods require a return confirmation number, and Seller reserves the right to reject any returned Goods without a return confirmation number. Seller will not issue any refunds prior to Seller's receipt of the returned Goods. Buyer must return any Goods for which it seeks a refund in good, usable condition. If Seller, at its sole discretion, determines that the Goods that Buyer seeks to return are not in good, usable condition, Seller reserves the right to reject the return of the Goods and deny Buyer a refund for the Goods. All accepted returned Goods are subject to a 25% restocking charge. Seller will not refund original freight charges. Buyer, at its sole expense, shall bear all freight charges incurred to return any Goods to Seller. **All Seller's Porcelain Enamel Goods are custom made and not returnable.**

The original manufacturer's return policy shall apply to any non-Seller manufactured Goods sold through Seller that Buyer seeks to return. Buyer must notify Seller and obtain a return confirmation number as stated above in Seller's return policy.

## IV. WARRANTY, LIMITATION OF LIABILITY, INDEMNIFICATION

**A. LIMITED WARRANTY.** THE FOLLOWING WARRANTY FROM SELLER IS EXPRESSED IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF SELLER'S GOODS.

THE FOLLOWING WARRANTY APPLIES TO LUMACURVE GOODS ONLY. SELLER WARRANTS THAT LUMACURVE GOODS ARE FREE FROM DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF THREE (3) YEARS FROM DATE OF INSTALLATION. SELLER WARRANTS THAT LUMACURVE "LED" LAMPS AND LUMACURVE "LED" SYSTEM ELECTRONIC PARTS ONLY ARE FREE FROM DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF FOUR (4) YEARS FROM DATE OF INSTALLATION. If Buyer finds Goods defective, Buyer's sole and exclusive remedy and Seller's sole and exclusive obligation shall be, at Seller's option, replacement or repair of Goods. This exclusive remedy shall not fail for its essential purpose so long as Seller is willing and able to repair or replace defective Goods in the prescribed manner. Buyer's remedy is subject to an inspection and determination by Seller at Seller's Plant, that any alleged defect, malfunction or other failure of Goods is not the result of misuse, mishandling, misapplication, neglect (including but not limited to improper maintenance), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), or adjustment or repair performed by anyone other than Seller or one of Seller's authorized agents.

IF SELLER MANUFACTURES THE GOODS ACCORDING TO BUYER'S SPECIFICATIONS, SELLER DOES NOT WARRANT THE ADEQUACY OF BUYER'S SPECIFICATIONS OR THAT THE GOODS WILL PERFORM IN ACCORDANCE WITH BUYER'S SPECIFICATIONS. SELLER DOES NOT WARRANT ANY GOODS SOLD BY SELLER BUT NOT MANUFACTURED BY SELLER. THIS WARRANTY DOES NOT COVER LABOR OR OTHER COSTS OR EXPENSES TO REMOVE OR INSTALL ANY DEFECTIVE, REPAIRED OR REPLACED GOODS.

The parties expressly acknowledge that any technical advice that Seller furnishes to Buyer with respect to the use of the Goods, Seller provides

without charge, and Seller assumes no obligation or liability for the advice given or the results obtained, and Buyer accepts any advice that Seller provides at Buyer's risk. This warranty is void in the event that anyone other than Seller makes repairs to the Goods without prior written authorization from Seller.

IF BUYER SEEKS REJECTION OF GOODS DELIVERED FOR NONCONFORMITY WITH THIS AGREEMENT, SELLER'S ORDER ACKNOWLEDGEMENT, OR PACKING LIST DISCREPANCIES, BUYER MUST SEND WRITTEN NOTIFICATION TO SELLER OF THE REJECTION OF THE GOODS WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY OF THE GOODS TO BUYER. This notification shall state the basis of the alleged nonconformity and a description of the portion of the shipment rejected. Buyer's failure to send written notification to the Seller within forty-eight (48) hours after delivery shall result in Seller deeming that no nonconformities or packing list discrepancies existed at the time of delivery to Buyer.

## **SELLER OFFERS NO WARRANTY ON AND NO WARRANTY APPLIES TO PORCELAIN ENAMEL GOODS.**

**B. LIMITATION OF LIABILITY.** Pursuant to Ohio Revised Code Sections 1302.29 and 1302.93 Seller's liability for Buyer's damages is limited in the event of a breach or repudiation of this contract or of any of the provisions by Seller. SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR ITS GOODS IS LIMITED TO REPAIRING OR REPLACING GOODS FOUND BY SELLER AS DEFECTIVE, OR AT SELLER'S OPTION, TO REFUNDING THE PURCHASE PRICE OF THE GOODS OR PARTS. AT SELLER'S REQUEST, BUYER WILL SEND AT BUYER'S SOLE EXPENSE, ANY ALLEGEDLY DEFECTIVE GOODS TO THE PLANT OF SELLER. BUYER SHALL NOT BE ENTITLED TO RECOVER INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING THOSE ARISING OUT OF OR UPON THE RIGHTS RAISED OUT OF A CLAIMED BREACH OF WARRANTY, BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY FOR A PARTICULAR PURPOSE OR USE, OR ANY LOSSES, COSTS, EXPENSES, LIABILITIES AND DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OR PROFITS, DAMAGES TO PROPERTY, ALL LIABILITIES OF BUYER TO ITS CUSTOMERS OR THIRD PERSONS, AND ALL OTHER SPECIAL OR CONSEQUENTIAL DAMAGES) WHETHER DIRECT OR INDIRECT, AND WHETHER RESULTING FROM, OR CONTRIBUTED TO BY THE DEFAULT OR NEGLIGENCE OF SELLER, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS, WHICH MIGHT BE CLAIMED AS THE RESULT OF THE USE, MISUSE OR FAILURE OF THE GOODS DELIVERED. Additionally, Buyer shall not be entitled to recover any costs for materials expended or used, initiated at the request of Buyer.

**C. INDEMNIFICATION.** Buyer agrees to indemnify and hold harmless Seller from and against all claims for bodily injury, illness, death or property damage, liabilities, damages, losses and expenses, including attorneys' fees, arising: (1) from the use or misuse of the Goods by Buyer, Buyer's customers or any other party; (2) the infringement of any United States patent, copyright, trade secret, trademark or similar intellectual property rights, arising from the manufacture or purchase of the Goods; or (3) out of the performance of this Agreement.

## V. INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY

**A. INTELLECTUAL PROPERTY RIGHTS.** Seller shall retain all intellectual property rights to the Goods that are the subject matter of this Agreement. Seller's intellectual property rights include, but are not limited to patent, trademark, trade name and copyright rights. Specifically, Seller retains the right to file for patent protection under 35 U.S.C. §1 et seq. for the Goods which are the subject matter of this Agreement.

**B. CONFIDENTIALITY.** Buyer shall consider confidential the Goods and all specifications, drawings, prototype articles and information furnished by Seller or prepared by Seller for Buyer in connection with this Agreement. Buyer shall not disclose this information to any other person or use this information itself for any purpose other than performing under this Agreement without Seller's prior written permission. Buyer shall not disclose any information relating to this Agreement without Seller's prior written permission.

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