

Heraeus Noblelight America LLC – Terms and Condition of Sales 6/2014

For the purposes of these Terms and Conditions of Sale, the term "contract" shall mean the agreement between **Heraeus Noblelight America LLC , 910 Clopper Road, Gaithersburg, Maryland, 20878-1357, USA** ("Supplier") and the Buyer, arising as a result of the Buyer's submission of an order for the Supplier's products. Such a contract shall be deemed to incorporate and be governed by these Terms and Conditions. **THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS, WHICH APPEAR IN THE BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN THE BUYER'S ORDER.** No term or condition of Buyer's order additional to or different from these Terms and Conditions shall become part of the contract unless explicitly agreed to in writing by the Supplier. Retention by Buyer of any products delivered by Supplier, or payment by Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Terms and Conditions. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions or as an acceptance of any such provision.

1. **Quotations:** Prices, specifications and dates for delivery referenced in Supplier's quotations are for information purposes only and shall not be binding on Supplier until all technical requirements have been agreed and Supplier has accepted Buyer's order. Quotations terminate if not accepted by Buyer within 60 days.

2. **Orders:** By submitting an order to Supplier, Buyer agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by Supplier, shall be binding upon Supplier until accepted in writing by Supplier.

3. **Prices and Taxes:** Prices do not include taxes, including without limitation sales, use or excise taxes, applicable to the products sold in this transaction, which taxes may, in Supplier's discretion, be added by Supplier to the sales price or billed separately and which taxes shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate.

4. **Shipment:** Shipment shall be freight collect unless otherwise agreed in writing by Supplier. Shipping dates are approximate and are contingent upon prompt receipt of all necessary information from Buyer, including but not limited to line voltage and frequency and mechanical specifications, if any. Cash deposit and written purchase order must be received before a firm shipping date is scheduled. Supplier will notify Buyer promptly of any significant delay and will specify the revised delivery date as soon as practical. Buyer shall pay transportation and insurance charges. Domestic shipments of MPE cabinets and certain designated custom systems must be transported via air-rive van. For export shipment the Buyer should explicitly state the method of shipment preferred. In the absence of such shipping directions, Supplier will use its discretion in employing method of shipment. All necessary packaging and crating for export shipments are supplied *excluding sea freight*.

5. **Delivery:** Delivery will be deemed to have been effected when the products leave the premises of Supplier or as the case may be the premises of suppliers to Buyer in circumstances where the products are delivered direct from such suppliers. Time of delivery is not of the essence. Supplier shall not be liable for any loss whatsoever or howsoever arising caused by non-delivery. Supplier reserves the right to make delivery by installments and to tender a separate invoice in respect of each installment. When delivery is to be by installments or Supplier exercises its right to deliver by installments or if there be delay in the delivery of any one or more installments for whatever reason this will not entitle the Buyer to treat the contract as repudiated or to damages.

6. **Title and Risk of Loss:**

6.1 Risk in the products shall pass to Buyer F.O.B. point of shipment. Buyer must provide its own insurance. Any claims for loss, damage or mis-delivery shall be filed with the carrier. All products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given in writing to Supplier within such period. Acceptance shall constitute acknowledgement of full performance by Supplier of all obligations under the contract except as stated in Section 10 (*Limitation of Warranties*).

6.2 Notwithstanding risk in the products passing in accordance with clause 6.1 hereof title in the products shall not pass to Buyer until Supplier receives payment for the products and no other amounts remain outstanding from Buyer to Supplier in respect of other products supplied by Supplier.

6.3 Until title to the products passes: -

(a) Buyer will hold the products as fiduciary agent and bailee for Supplier;
(b) The products shall be kept separate and distinct from all other property of Buyer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to Supplier. Buyer shall ensure that the products are not subject to any mortgage, charge, lien or any other security interest of any kind however created or arising.

6.4 Supplier shall at any time be entitled to appropriate any payment made by Buyer in respect of any products in settlement of such invoices or accounts in respect of such products as Supplier may in its absolute discretion think fit notwithstanding any purported appropriation by Buyer.

6.5 Until such times as the title in the products has passed to Buyer Supplier has the right to withhold delivery if Buyer (being a Company) has a petition presented for its bankruptcy or passes a resolution for voluntary bankruptcy otherwise than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law.

6.6 For the avoidance of doubt it is hereby declared that nothing in this clause shall affect the rights given to Supplier by section 2 of the Uniform Commercial Code and its state counterparts.

7. **Terms of Payment:**

7.1 Each shipment shall be a separate transaction and Buyer will be invoiced on date of dispatch. Unless otherwise stated on Supplier's invoice, terms of payment for: (i) any order under \$25,000 shall be net thirty (30) days from date of invoice; or (ii) any order over \$25,000 shall required a fifty percent (50%) deposit with Buyer's order with the balance due net 30 with approved credit.

7.2 Domestic spare parts orders and orders from selected export customers are net cash within thirty (30) days from shipment upon approved credit.

7.3 Export orders for \$5,000 or more will be accepted only after an irrevocable letter of credit with terms in accordance with the attached letter of credit has been provided to Supplier. Export orders for less than \$5,000 will only be accepted by Supplier upon Supplier's receipt of a wire transfer for the amount of the order.

7.4 Supplier may, in its sole discretion, determine at any time that Buyer's financial condition requires payment in advance or other assurance of payment satisfactory to Supplier and, if such requirement is not met, may cancel the order or any part thereof and receive reasonable cancellation fees. If Buyer fails to pay any payment due hereunder when due, Supplier may recover, in addition to the payment, interest thereon at the rate of 1 1/2% per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable legal fees.

8. **Force Majeure:** Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Supplier, including, by way of illustration but not limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, floods, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Supplier has exercised ordinary care in the prevention thereof. If any such contingency occurs, Supplier may allocate production and deliveries among Supplier's customers.

9. **Equipment:** Supplier may modify specifications provided the modifications do not adversely affect the performance of the equipment to be supplied under the contract ("the equipment"). In addition, Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from suppliers.

10. **Limitation of Warranties:**

10.1 Unless otherwise stated, the supplier warrants that all equipment shall be free from defects in material and workmanship if properly installed, maintained and operated by Buyer under normal use with competent supervision for a period of 60 months from date of shipment to Buyer. Buyer shall be responsible for determining that the equipment is suitable for Buyer's use and that such use complies with any applicable law. Provided that Buyer notifies Supplier in writing of any claimed defect in the equipment immediately upon discovery and any such equipment is returned at Buyer's risk to the original shipping point, transportation charges prepaid, within 60 months from date of shipment to Buyer and upon examination Supplier determines to its satisfaction that such equipment is defective in material or workmanship, i.e. contains a defect arising out of the manufacture of the equipment and not a defect caused by other circumstances, including, but not limited to accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing, Supplier shall at its option repair or replace the equipment, shipment to Buyer prepaid. Supplier shall have reasonable time to make such repairs or to replace such equipment. Any repair or replacement of equipment shall not extend the period of warranty. This warranty is limited to 60 months from date of shipment for all products, except where otherwise stated, without regard to whether any claimed defects were discoverable or latent on the date of shipment.

10.2 LC6B conveyors, Pressure Blower Assemblies (PBA), Exhaust Blower Assemblies (XBA), Hydraulic components, Oxygen Analyzers and Conveyor Belts are warranted for twelve (12) months from the date of shipment to Buyer unless otherwise stated in writing.

10.3 Bulbs: Standard H lamp bulbs are warranted for 8000 operating hours on a non-prorated basis, not to exceed thirty-six (36) months from original date of shipment, unless otherwise stated in writing. Standard D, V and H+ lamp bulbs are warranted for 6000 operating hours on a non-prorated basis, not to exceed thirty-six (36) months from original date of shipment.

10.4 Magnetrons: Model I300 and I250 magnetrons are warranted for 8000 operating hours on a prorated basis, not to exceed 36 months from original date of shipment; Model I600, I6 and LH110 magnetrons are warranted for 6000 hours, on a prorated basis, not to exceed thirty-six (36) months from original date of shipment.

10.5 Reflectors: Standard R500 reflectors are warranted for 36 months from the date of installation. Dichroic reflectors are warranted for 3000 operating hours on a non-prorated basis, not to exceed 36 months from the original date of shipment.

10.6 Light Hammer 10 MarkII and Light Hammer 6 MarkII. Are warranted for thirty-six (36) months from the date of shipment to Buyer unless otherwise stated in writing.

10.7 UV LED Products. Warranted for twelve (12) months from date of shipment to Buyer to be free from defects in material and workmanship if properly installed, maintained, and operated by Buyer under normal use and competent supervision.

10.8 UVC Module. Warranted for twelve (12) month from date of shipment to Buyer to be free from defects in material and workmanship if properly installed, maintained, and operated by Buyer under normal use and competent supervision.

10.9 Machinery, equipment and accessories furnished by Supplier, but manufactured by others, are warranted only to the extent of the original manufacturer's warranty to Supplier.

10.10 Warranty replacements are warranted for ninety (90) days from date of shipment.

10.11 Any alterations or repairs that include the use of non-Heraeus Noblelight parts, made by the Buyer without Supplier's prior written consent, shall void all warranties provided by Supplier and such warranties shall cease to be in effect. No allowance will be granted for such repairs or alterations. No person, agent, representative or distributor is authorized to give any warranties on behalf of Supplier or to accept for Supplier any other liability in connection with any of Supplier's products.

10.12 Resellers and authorized distributors of Supplier's products may require proof of purchase in order to honor claims under warranty on alleged defective products on behalf of the Supplier.

10.13 Supplier agrees, at its option, to repair at Supplier's factory, to replace without charge, or to issue credit at a price calculated F.O.B. Supplier's factory for any parts of products of Supplier's manufacture which, within said warranty period, shall be proven to Supplier's satisfaction to have been defective when shipped, provided the Buyer promptly notifies Supplier in writing of such alleged defect.

10.14 The preceding warranties are contingent upon Buyer returning alleged defective products, freight prepaid, to Supplier's point of shipment. Such products, if judged by Supplier to be covered by said warranties, shall be repaired or replaced at no charge, and returned surface freight, at Supplier's expense.

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10.15 Supplier's warranty SPECIFICALLY EXCLUDES field service or repairs at Buyer's installation site. Such field service is provided only upon receipt by Supplier of Buyer's confirmed purchase order number for such services at then prevailing field service rates of Supplier. In the event warranty work is performed during the course of such field service, Supplier will credit Buyer for labor hours specifically arising from such warranty work, but Buyer shall bear full responsibility for the balance of all such field service charges. These charges may be waived at the Suppliers discretion.

10.16 If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, all warranties and remedies granted under this Section 10 may, at Supplier's option, be terminated.

10.17 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED BY STATUTE OR COMMON LAW, TO THE EXTENT PERMITTED BY LAW WITH RESPECT TO THE EQUIPMENT AND ANY DEFECTS THEREIN OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER SHALL NOT BE LIABLE FOR, AND BUYER ASSUMES ALL RISK OF, ANY ADVICE OR FAILURE TO PROVIDE ADVICE BY SUPPLIER TO BUYER REGARDING THE EQUIPMENT OR BUYER'S USE OF THE SAME. UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE TO BUYER UNDER ANY TORT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY CLAIM AND BUYER AGREES TO WAIVE SUCH CLAIMS. NOTHING IN THIS CLAUSE 10 SHALL BE DEEMED TO EXCLUDE OR RESTRICT SUPPLIER'S LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE. SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS OR ANYTHING DONE IN CONNECTION WITH THIS CONTRACT, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN SUBSECTION 10.1 THROUGH 10.11 HEREOF AS LIMITED BY SUBSECTION 10.12 HEREOF.

11. **Patents:** Supplier shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that any equipment manufactured by Supplier infringes in construction or design a European, United Kingdom or United States patent (excluding "method claim" patents), and shall indemnify Buyer against all costs, damages and expenses finally awarded against Buyer provided that Buyer notifies Supplier promptly in writing of any such claim and gives Supplier full and complete authority, information and assistance for the defense of such claim and provided further that Supplier shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If any such equipment is held in construction or design directly to infringe any European, United Kingdom or United States patent (excluding "method claim" patents) and the use of said equipment is enjoined, or in case any equipment may, in the opinion of Supplier, be held to infringe, Supplier may, at its expense and option, either (a) procure for Buyer the right to continue using said equipment, (b) replace said equipment with a suitable non infringing product, (c) suitably modify said equipment, or (d) refund the purchase price of said equipment, less depreciation at twenty percent (20%) per year, and accept its return. Supplier shall not be liable for any cost or expense incurred without Supplier's written authorization. Supplier shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification or from a combination with or an addition to equipment not manufactured or developed by Supplier or a modification of the equipment after delivery or the use of equipment beyond that established by Supplier or approved in writing by Supplier. THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE SAID EQUIPMENT.

12. **Limitation of Liability and Buyer Indemnity:** IN NO EVENT, REGARDLESS OF THE FORM OF ACTION, SHALL SUPPLIER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF USE, BUSINESS, GOODWILL, OR PROFITS, AND CLAIMS ARISING OUT OF THIRD PARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY FORESEEABLE TO BUYER OR SUPPLIER, OR DAMAGES ARISING OUT OF THE SALE OF ITS PRODUCTS TO BUYER OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT. BUYER'S EXCLUSIVE REMEDY ARISING OUT OF ITS PURCHASE AND USE OF SUPPLIER'S PRODUCTS, OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT, SHALL BE FOR DAMAGES AND NO CLAIM OR CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WARRANTY AND STRICT LIABILITY), STATUTORY OR REGULATORY PROVISIONS, INDEMNITY, CONTRIBUTION, OR OTHERWISE, SHALL BE GREATER IN AMOUNT IN AGGREGATE THAN THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

Buyer shall indemnify and hold harmless Supplier, its officers, agents, employees, subsidiaries, parents, affiliates and insurers from and against any and all liabilities, damages, losses, claims, lawsuits, including costs and expenses in connection therewith, for death or injury to any persons or loss of any property whatsoever, caused in any manner by Buyer's abnormal or negligent use or operation of equipment.

13. **Proprietary Information:** Buyer represents that it has adopted reasonable procedures to protect Proprietary Information, as defined hereafter, including binding agreements with employees and consultants to prevent unauthorized publication, disclosure or use of such during or after the term of their employment by or services for Buyer. Buyer shall not use Proprietary Information except as required for the use of the equipment, shall not disclose Proprietary Information to any third party, and shall not transmit any documents or copies thereof containing Proprietary Information to any third party, except as may be authorized in writing by Supplier. This Section 13 shall survive termination of the contract.

"Proprietary Information" shall mean information or data of Supplier, or a third person to whom Supplier owes obligations of confidentiality, and which is furnished or to be furnished to Buyer in written, graphic or machine-readable form and is marked proprietary information or confidential. Where copies or alternative forms of information or data are received from Supplier, such information or data shall be considered Proprietary Information if at least one of said copies or alternative forms is marked proprietary or confidential.

This Section 13 shall not apply to information which Buyer demonstrates was in Buyer's possession prior to receipt from Supplier or information which Buyer demonstrates is or has become available to the public or general knowledge in the industry otherwise than through the fault of Buyer.

14. **Rescheduling and Cancellation:** Orders accepted by Supplier may be cancelled, rescheduled or returned by Buyer only with the written consent of Supplier (which consent Supplier may withhold for any reason) and upon payment of Supplier's cancellation, rescheduling or restocking charges. Returned products must be shipped freight prepaid. The minimum cancellation charge is twenty-five percent (25%) of the value of the order. This cancellation charge may be greater than twenty five (25%) if Supplier has incurred expenses and commitments that exceed the value of twenty-five percent (25%) at the time the order is cancelled. At Supplier's sole option, all deposits received by Supplier may be applied to any cancellation charges due to Supplier. Supplier shall have the right without penalty or payment to cancel any order accepted (i) if Buyer fails to make any payment when due to Supplier under the contract or any other contract (ii) if any act or omission of Buyer delays Supplier's performance, (iii) if Buyer violates any of these Terms and Conditions, or (iv) if Buyer's credit becomes impaired; and in the event of such cancellation Supplier shall be entitled to receive reimbursement for its reasonable and proper cancellation charges. Supplier reserves the right to discontinue any product at any time without notice. Supplier reserves the right to make changes and modifications in product design at any time without incurring any obligation to install the same on units previously purchased.

15. **Installation and service:**

15.1 Buyer shall provide all mechanical and electrical installation of equipment including proper electric service to equipment. Buyer shall also provide an interlocked exhaust system including properly sized ducting. Supplier provides none of the lamp and magnetron guarantees stated in Section 10 unless Buyer has installed and maintained the system according to Supplier's installation specifications as outlined in the Operation and Maintenance Manual.

15.2 Proper design and fabrication of light shielding is required for the safety of operating personnel. Supplier bears no responsibility for safety or other aspects of light shielding designed or fabricated by the Buyer or third parties.

16. **Non-Waiver: Remedies:** No waiver of any breach of these Terms and Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the contract. All Supplier rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singularly or concurrently.

17. **Applicable Law and Actions to Recover Damages:** The contract shall be governed by and construed in accordance with the law of the State of Maryland. If any provision of these Terms and Conditions is held to be unenforceable, such holding shall not affect the enforceability of any other provision. Prior to commencement of any legal proceedings, Buyer and Supplier shall meet at a senior level to attempt to resolve differences. Notwithstanding any attempts to resolve differences or negotiations regarding such differences, any action brought by Buyer against Supplier arising out of this contract or Buyer's purchase and use of the equipment must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such equipment.

18. **Assignment:** The contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The contract is personal to Buyer, and Buyer may not assign any of its rights or delegate any of its obligations thereunder, in whole or in part, without the prior written consent of Supplier, which may be withheld for any reason.

19. **Complete Agreement; Modifications:** This contract constitutes the entire agreement between the parties relating to the sale of the equipment and no addition to or modification of any provision of said agreement shall be binding upon Supplier unless agreed in writing by Supplier.

20. **Notices:** All notices given under the contract shall be in writing, mailed by first class mail, certified or registered, or delivered by hand to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice, and shall take effect when received.

21. **U.S. Export Control and Sanctions Requirements:** Buyer hereby acknowledges that some Heraeus Noblelight America LLC products may be subject to licensing requirements under U.S. export control laws and regulations. Certain equipment, software, technology, and technical data controlled under the U.S. export laws and regulations may not be exported from the United States or re-exported from another country absent a specific license from the U.S. government. In addition, U.S. sanctions laws and regulations prohibit transactions by U.S. persons with certain individuals and countries. Heraeus Noblelight America LLC shall not be considered to be in breach of this Agreement if its performance is delayed or made impossible by U.S. export control and sanctions laws and regulations. Buyer certifies that it will comply with all U.S. export control and sanctions laws and regulations.

22. **U.S. Antiboycott Requirements:** Nothing in this Agreement shall obligate Heraeus Noblelight America LLC to take any action inconsistent with U.S. antiboycott law and regulations administered by the U.S. Department of the Treasury and the U.S. Department of Commerce, such as participation in other nations' economic boycotts or embargoes not sanctioned by the U.S. Government. Buyer undertakes to comply with such laws and regulations and understands that any requests that do not conform to such laws and regulations may need to be reported to the U.S. Commerce Department under U.S. law.