

Terms and Conditions of Sale

These standard terms and conditions of sale (“Terms and Conditions”) apply to any and all orders placed by purchaser (“Purchaser”) for purchases of products or services (together, “Products”) from and after November 5, 2018 from Modular Lighting Instruments North America Corporation (“Modular”), whether or not such purchase is subject to a signed purchase order, distribution or other agreement between Modular and Purchaser. Ordering Products from Modular constitutes acceptance of the terms set forth herein, as such terms may have been updated through the date of such order. Any different, or additional terms in any purchase order, blanket instructions or other writing from Purchaser shall be deemed a material alteration hereof and are hereby expressly objected to and rejected and shall be of no force or effect. Commencement of performance or shipment shall not be construed as acceptance of any of Purchaser’s terms and conditions which are different from or in addition to those contained in the Agreement. Course of performance or usage of trade shall not be applied to modify these Terms and Conditions.

ORDERS; CHANGES AND CANCELLATIONS: All orders must be placed in writing and delivered directly to Modular from the entity that will be liable for the payment of the order. Telephone orders or orders through a third party will not be accepted.

Modular shall in no way be responsible for any errors made by the purchaser in the type or quantity of Products ordered. It is Purchaser’s responsibility to review the order confirmation upon receipt and report any errors or omissions to the Company in writing immediately.

Orders can be mailed or faxed to an authorized Modular representative or placed directly to:

Modular USA, Inc.
Customer Service Department
One PPG Place, Floor 31
Pittsburgh, PA. 15222

Tel: (800) 674 9691
Website: supermodular.com

No order is final as to Modular until accepted by Modular by written acknowledgement. All orders that are accepted by Modular are subject to these Terms and Conditions. After acceptance, requests to cancel or change orders must be submitted in writing to Modular. All requests are reviewed for approval before processing and are subject to any and all cost or expense incurred by Modular from such cancellation or change, including, without limitation, costs for work performed and/or materials purchased by Modular for Products. Hold orders may be accepted for informational purposes only. Any orders submitted to Modular as “hold for release” or similar will not be accepted by Modular unless accompanied by a fifty percent (50%) non-refundable deposit.

PRICES: All prices represent those in effect at the time of quotation and are subject to change without notice. All prices are as stated in Modular’s quote and specifically override any prices referenced in Purchaser’s purchase order. Unless prices are quoted as “firm” by an officer of Modular, Modular reserves the right to invoice prices in effect at the date of shipment, regardless of any prior quote and regardless of whether notice was received by Purchaser. All prices and other terms are subject to correction for typographical or clerical errors.

SALES MATERIALS; SPECIFICATIONS: Any catalog, specification or price sheet or other similar documentation prepared by Modular is strictly for the convenience of the user and shall not be deemed as an offer to sell. Modular believes such documentation is complete and accurate at time of printing, but does not warrant that such documentation is error free. Modular will not accept responsibility for any damages including labor charge backs in connection with errors of measurements, descriptions, application recommendations, etc.

Products will be shipped in accordance with the standard styles and sizes as described in Modular's catalogs or, for special or made-to-order Products, in accordance with Modular's drawings and specifications sheets. In the event of a conflict between a customer's written order and a Modular drawing or specification sheet marked "approved" or the like, the Modular drawing or specification sheet shall prevail. Modular reserves the right to change details of design, materials and finish at any time without written notice.

TERMS OF PAYMENT: Unless otherwise stated in Modular's invoice or agreed to in writing by Modular, terms of payment for orders placed by Purchasers with an open and current Modular credit account, as determined by Modular in its sole and absolute discretion, are net 30 days from invoice date. For Purchases with no open and current Modular credit, as determined by Modular in its sole and absolute discretion, and for the initial order for all new Purchaser accounts, payment in full is required prior to shipment or delivery. Such advance payment must include all requisite freight and transportation charges, as well as all taxes, customs, duties, tariffs, and insurance related to the Products.

The terms of payment are subject to review of Purchaser's credit by Modular. Modular shall have the right, at any time and from time to time, to require cash payments in advance or a letter of credit or other assurance of payment satisfactory to Modular as a condition to acceptance of any order or shipment of any Product. Unless otherwise agreed to by Modular, payment shall be by check to be drawn on Purchaser's corporate account, by wire transfer to Modular's account at a commercial bank designated by Modular, or by Modular's draw upon a letter of credit satisfactory in form and substance to Modular.

The requirement of a letter of credit is standard for shipments outside the United States or Canada for special products, and for F.O.B. factory orders. All payments by Purchaser shall be made in United States Dollars. All payments by Purchaser shall be paid in full, without set-off, deduction or counterclaim.

All orders under fifty dollars (\$50.00), net any applicable discounts (exclusive of any requisite freight and transportation charges, as well as all taxes, customs, duties, tariffs, and insurance related to the Products), shall be subject to a twenty dollar (\$20.00) surcharge.

All orders exceeding ten thousand dollars (\$10,000.00), net any applicable discounts, a fifty percent (50%) non-refundable deposit must be paid by Purchaser to Modular at the time of order. For all orders requiring customization (including, but not limited to, a custom finish and/or modifications), a fifty percent (50%) non-refundable deposit must be paid by Purchaser to Modular at the time of order, and once submitted such orders cannot be cancelled by Purchaser.

TAXES AND GOVERNMENTAL CHARGES: Prices do not include any taxes or other governmental fees, charges or assessments, including, without limitation, value-added, sales, use or privileges taxes, required governmental withholdings or excise or similar taxes levied by any government, now or hereafter enacted. In Modular's discretion, any such taxes, charges or withholdings may be added to the price for any Products or may be billed separately. Purchaser will pay all such taxes and charges, on or before their due dates. In the event Modular is required at any time to pay any such tax or charge, Purchaser will reimburse Modular promptly on demand.

LATE CHARGES; COSTS: If Purchaser fails to pay in full without any set off or deduction any amount due to Modular promptly when due, Modular may recover, in addition to the payment due, interest thereon at a rate equal to the lesser of 1-1/2% per month and the maximum rate of interest allowable under applicable law and Purchaser shall be liable for all costs and expenses, including reasonable attorneys' fees, incurred by Modular in collecting or attempting to collect any and all overdue accounts. If Purchaser fails to pay any amount when due, in addition to any other rights or remedies available to Modular at law or in equity, Modular may discontinue the performance of services, discontinue the delivery of the product, or deduct the unpaid amount from any amounts otherwise owed to Purchaser by Modular under any agreement with Purchaser.

SECURITY INTEREST: Purchaser hereby grants to Modular a purchase money security interest in the products until

all payments have been made. Purchaser shall sign any financing statements or other documents necessary to perfect Modular's security interests in the products. Where permitted by applicable law, Purchaser's signature on the quotation or on a purchase order issued as a result of the quotation gives Modular the right to sign on Purchaser's behalf and file any financing statement or other documents to perfect Modular's security interest in the product.

PACKAGING AND HANDLING: Modular shall determine the method of packaging for all Products. If Purchaser requires special packaging or handling, such request must be made in writing and charges for special packaging, handling, and delivery shall be added to the price of the Products. Unless specifically agreed to in writing, Modular will not be responsible for the payment of any penalties or special handling charges relating to Modular's failure to comply with a customer's special requirement for order processing, handling, packaging, shipping or invoicing.

SHIPMENT, DELIVERY AND TITLE: Unless otherwise agreed upon between the parties, Products will be tendered and shipped Modular's plant(s) or warehouse(s) in accordance to the table below (Incoterms 2010). Modular may, in its discretion, choose to make partial shipments and shall bill each shipment as it is made, but on terms applicable to the complete order. Modular may refuse to make direct shipments outside of Purchaser's regular service area.

From	To	Incoterm
Modular Factory and/or Warehouse USA	USA Destination	CIP
Modular Factory and/or Warehouse USA	Canada Destination	EXW
Modular Factory and/or Warehouse Belgium	USA Destination	CIP
Modular Factory and/or Warehouse Belgium	Canada Destination	CIP

Delivery dates of all shipments are estimated and are not guaranteed. The shipment date mentioned on Modular's quote or order acknowledgement, if any, is Modular's approximation of a shipment date, and is not a fixed or guaranteed shipment date. Modular assumes no liability in connection with any delay in delivery. Postponement of deliveries at Purchaser's request, if for a period of more than ten (10) days, will not be permitted unless prior approval is given by an authorized officer of Modular. Any claims for shortages, losses, or damages sustained in transit shall be made by Purchaser with the carrier and must be documented on delivery receipt. Upon request, Modular will provide evidence of delivery of Products to the carrier, but reserves the right to charge a reasonable fee for all proof of delivery requests.

STORAGE: Purchaser shall pay any detention, storage, handling or auxiliary charges assessed by carriers or warehousemen resulting from Purchaser's requirements for special service or Purchaser's failure to accept delivery in a timely manner.

PRODUCT ACCEPTANCE: All Products delivered hereunder shall be deemed accepted by Purchaser as conforming to this Agreement, and Purchaser shall have no right to revoke any acceptance, unless written notice of the claimed nonconformity is received by Modular within ten (10) days of delivery thereof. Notwithstanding the foregoing, any use of a product by Purchaser, its agents, employees, contractors or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that product by Purchaser.

FORCE MAJEURE: Modular shall have no liability or obligation in connection with any failure to manufacture or deliver due to causes beyond Modular's reasonable control including but not limited to strikes, lockouts, fires, riots, wars, acts of God, inability to obtain materials, components or supplies, failure or breakdown of machinery, production scheduling delays, government regulations or other conditions.

PRODUCT RETURNS: In the event it is necessary to return Products to Modular, Purchaser must follow the procedure outlined in these Terms and Conditions. For Purchaser's who received their Products from an authorized distributor of Modular, the procedure outlined below should be directed to, and the term "Modular" shall mean, such distributor. To obtain approval to return Products to Modular, Purchasers must contact Modular's Customer Service at (212) 334-1809 during normal business hours. If a return is approved, a packet will be prepared and mailed to the Purchaser within two standard business days containing (i) a Return Merchandise Authorization ("RMA") number; and (ii) the authorized RA form to be included with the return shipment.

NO PRODUCT RETURNS WILL BE ACCEPTED BY MODULAR IF NOT ACCOMPANIED BY A VALID RMA NUMBER. Product returned without a RMA number will either be refused or returned to Purchaser at Purchaser's expense. Modular is not liable for loss or damage to unauthorized product returns. Once issued, RA numbers are valid for 30 days. Any returns received after 30 days of the issuance of an RMA will be refused. Purchaser is responsible for all return freight charges, including taxes, customs and duties if applicable. All product returned for credit must be new, undamaged, and in factory sealed packaging. Product may not be returned if it is non-standard, made-to-order, or manufactured to Purchaser's specific design or specification (including units with non-standard components or accessories), or is outdated or phase-out stock product. Any product returned with marked box, damaged box, missing components, (e.g. cables, manuals, etc.), or other damage not caused by Modular will be assessed a higher restocking fee to cover the cost of replacements.

All Products returned are subject to inspection. Un-saleable and damaged merchandise may be credited at salvage value or less costs of repairs. Credit can be issued only on Products re-saleable as new. Modular may at its option issue credit at prices prevailing at time of shipment, or time of return, whichever is lower, less the any applicable restocking or other charges. Returns authorized by Modular, other than return of Defective Products which are subject to the terms of Modular's applicable Limited Warranty, will be subject to a 35% restocking fee and Purchaser will pay all transportation costs associated with the return, including taxes, customs and duties, if applicable.

LIMITED WARRANTY:

Modular's limited warranty for the Products is posted on Modular's website at www.supermodular.com/na/warranty (as applicable, the "Product Warranty"). The terms of the Product Warranty are hereby herein incorporated by reference. THE WARRANTIES SET FORTH HEREIN AND IN THE PRODUCT WARRANTY ARE THE ONLY WARRANTIES MADE BY MODULAR IN CONNECTION WITH THE PRODUCT AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

EXPORT CONTROL: Purchaser understands that certain transactions of Modular are subject to export control laws and regulations, such as but not limited to the UN, EU and the USA export control laws and regulations ("Export Regulations"), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of Modular to export, re-export or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, Modular may suspend its obligations and the Purchaser's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, Modular may at its option terminate the relevant order in all cases without incurring any liability towards the Purchaser or end-user.

Purchaser warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Purchaser. Purchaser accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Purchaser shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Purchaser shall indemnify Modular against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Purchaser's or its customers' breach or non-compliance with this section.

ANTI – BRIBERY: Purchaser and its owners, officers, directors, employees, or agents have not and will not engage in any activities that violate the United States Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials Act, the UK Bribery Act, or any other anti-corruption laws or laws prohibiting the payment of commercial or private bribes. In particular, and not in limitation of the foregoing, Purchaser and its owners, officers, directors,

employees, or agents will not pay, offer, or promise to pay, or authorize the payment directly or indirectly, of any money, gift, or anything of value to any Government Official, as defined below, for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or direct business to any person. As used in this Section, "Government Official" means any minister, officer, director or employee of a government or any department, agency, or instrumentality thereof, or of a public international organization (such as the World Bank, International Monetary Fund or United Nations), or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

INDEMNIFICATION: Purchaser shall indemnify, defend and hold harmless Modular and its officers, directors, agents, employees, affiliates, successors, and assigns from and against all losses, liabilities, costs and expenses arising out of or in connection with any claim by third parties for any loss, damage or injury or death caused or alleged to be caused by: (a) the negligent use, application, or installation of Product by Purchaser or its employees, partners to whom Purchaser sold Product, contractors, agents or affiliates, (collectively, "Purchaser Parties"); or (b) the modification of Product or integration of Product into other products by any of the Purchaser Parties unless authorized in writing by Modular. Purchaser shall not join, settle or otherwise attempt to affect or dispose of any such claim without Modular's written consent.

PROPRIETARY RIGHTS: Modular shall defend any suit or legal proceeding brought against Purchaser by a third party based on a claim that the manufacture and sale of a Product, or any part thereof, constitutes infringement of any patent of the United States and Canada, if notified promptly in writing and given authority, information and assistance (at Modular's expense) for defense of same, and Modular shall pay damages or costs finally awarded against Purchaser therein to the extent that such damages and costs are directly and solely attributable to such infringement. The use of such Products by Purchaser is beyond the control of Modular and Modular has no obligation or liability whatsoever in connection with any suit claiming infringement by reason of the use of the Products.

Notwithstanding the foregoing, with respect to all Products manufactured by Modular, either in whole or in part, to Purchaser's designs, specifications or instructions, Purchaser shall defend and hold harmless Modular from all liability, loss, cost and expense (including attorney's fees) resulting from claims of alleged infringement of patents, designs, copyrights, trademarks, and other proprietary rights.

If any Product is, or in Modular's opinion is likely to become, the subject of a claim of infringement under this Section or if Modular receives from a claim of infringement from a third party in relation to any of the Products, Modular shall have the right, without obligation or liability and at its sole option, to: (i) procure for Purchaser the right to continue to use or sell the Product; (ii) replacement the Product with a non-infringing product, or (iii) modify the Product in such a way as to make the modified Product non-infringing; or (iv) repurchase such Product from the Purchaser for the initial price paid by Purchaser less reasonable depreciation; or (v) suspend or discontinue supplies to Purchaser of the Products or parts to which such notice relates or (vi) terminate any agreement to the extent related to such Product.

CONFIDENTIALITY: Purchaser shall maintain as confidential any information furnished or disclosed to it by the Modular, whether disclosed in writing or disclosed orally, relating to the business of the Modular, its customers and/or employees, and the quotation and its terms, including the pricing terms under which Purchaser has agreed to purchase the products. Purchaser shall use the same degree of care to protect the confidentiality of the disclosed information as it uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Purchaser may disclose such confidential information to its employees on a need to know basis necessary to perform the transactions contemplated herein. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of these Terms and Conditions or any other obligation of confidentiality or (b) is lawfully obtained by the Purchaser from a third party without any breach of confidentiality or violation of law.

SOFTWARE LICENSE: Any software included with a Product or otherwise licensed by Modular to Purchaser, is licensed and not sold. The license is nonexclusive and is limited to use with the Product. No other use is permitted and Modular retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which

contains confidential and proprietary information and which ownership includes, without limitation, all rights in patents, copyrights, trademarks and trade secrets. Purchaser shall not sell, transfer, sublicense, reverse engineer or disassemble or redistribute the software. Purchaser shall not copy, disclose, or display any such software or otherwise make it available to others. Software licensed or provided by Modular to Purchaser may require that Purchaser agree to a separate service agreement or terms of use in connection with the license or use of such software. Purchaser hereby agrees (i) to be bound by any such service agreement or terms of use to the extent accepted by Purchaser prior

to use of the software and (ii) that such terms shall be in addition to those set forth herein. To the extent that there are any inconsistencies between the terms set forth herein and any software service agreement or software terms of use, the software service agreement terms or terms of use, as applicable, shall apply.

ENTIRE AGREEMENT: This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, proposals, agreements and understandings, whether oral or written, relating to the products to be purchased hereunder or otherwise relating to the subject matter of this Agreement. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Modular. If the products purchased from Modular are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding upon Modular unless specifically agreed to by Modular in writing.

LIABILITY:

UNDER NO CIRCUMSTANCES SHALL MODULAR'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCTS, IN CONTRACT, TORT OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCT TO WHICH SUCH LIABILITY RELATES. IN NO EVENT SHALL MODULAR BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR COMPENSATORY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOST REVENUES OR PROFITS, BUSINESS OR GOODWILL EVEN IF MODULAR HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

PRODUCT SAFETY: Purchaser shall comply fully with all applicable laws, industry safety standards applicable to the manufacture, distribution or sale of items incorporating the products supplied by Modular, including but not limited to American National Standards Institute (ANSI)/Illuminating Engineering Society of North America (IESNA) RP-27 (or equivalent eye safety labeling standards) and International Standard IEC 62471-2006, published by the International Electrotechnical Commission, including all marking, labeling, and supplemental user and service information (if any) required by the standards, where applicable. Purchaser shall comply fully with all applicable safety-related laws, rules and regulations of any governmental body having jurisdiction to regulate the manufacture, distribution or sale of items incorporating the products supplied by Modular. Purchaser shall obligate all persons and entities buying such products from Purchaser (other than end users) to comply with such industry standards, laws, rules or regulations applicable to such person or entity. Purchaser shall defend and hold Modular harmless against any expense, loss, costs or damages relating to any claimed failure by Purchaser to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from products manufactured by Purchaser which incorporate the products supplied by Modular.

GENERAL TERMS

Bankruptcy. If Purchaser becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Modular may cancel any unfulfilled obligations, or suspend performance; however, Purchaser's financial obligations to Modular shall remain in effect.

Assignment. Purchaser may not assign any rights or obligations in connection with the transactions contemplated herein without the prior written consent of Modular, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect.

Governing Law. All U.S. transactions contemplated by these Terms and Conditions shall be governed by the laws of the State of Pennsylvania, without regard to that state's choice of law principles. All Canadian transactions contemplated by these Terms and Conditions shall be governed by the laws of the Province of Ontario without giving effect to its choice or conflict of law provisions. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO. The United Nations Convention on Contracts for the International Sales of Goods is hereby excluded and shall not apply.

Environmental Handling Fees (Canada). Purchaser is responsible for the payment of all applicable Environmental Handling Fees related to the Products sold by Modular to Purchaser covered by applicable Environmental Stewardship Legislation in various provinces in Canada from time to time ("Covered Products"). Purchaser shall pay Product Care Association or any replacement industry steward ("Industry Steward"), designated by Modular, all applicable Environmental Handling Fees related to the Covered Products. Purchaser confirms that it is registered as a steward with the Industry Steward for all Covered Products. In the event that Purchaser loses its status as a steward for a Covered Product or ceases to be registered as a steward for a Covered Product with the Industry Steward, Modular shall have the right to invoice any applicable Environmental Handling Fees and applicable interest related to Covered Products for any unpaid Environmental Handling Fees relating to Covered Products. Purchaser shall promptly pay Modular the full value of all such invoices.

Language (Canada). The parties hereto have specifically requested that this agreement be prepared in English. Les parties aux présentes ont demandé spécifiquement que ce contract soit préparé en anglais..

Headings. The headings contained herein are intended for convenience only and shall not be used to interpret the terms hereof.

Severability. If any provision of these Terms and Conditions are deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.

Performance. The failure of Purchaser or of Modular at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting these Terms and Conditions.

Obligations. Purchaser's obligations are independent of any other obligations the Purchaser may have under any other agreement, contract, or account with Modular. Purchaser will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Modular.