These Lumileds Lighting ("Lumileds") Terms and Conditions of Sale govern the sale or license of Lumileds Products by its salesforce and authorized representatives.

1. DEFINITIONS

a) “Products” are goods sold or licensed through Lumileds Lighting. These are components, subassemblies, printed circuit board products or finished goods supplied to the automotive, signaling, signage & contour lighting and illumination markets.

b) “Special Products” are products that have been modified under mutual agreement to meet Customer requested changes, custom installations or custom fixtures and may not appear on Lumileds' Price list.

c) "Specifications" means specific technical information about Lumileds Products which is published in Lumileds Product manuals and technical data sheets in effect on the date Lumileds ships Customer's order.

d) “Delivery” means standard Lumileds shipping to and arrival at the receiving address at the “Ship To” address in the country where Customer's order is placed, unless otherwise indicated on the quotation.

2. PRICES

a) Prices exclude delivery charges, unless otherwise indicated on the quotation, and are valid for the period indicated on the quotation or for the applicable Ordering Period, whichever expires first.

b) Prices are exclusive of and Customer will pay applicable sales, use, service, value added or like taxes, unless Customer has provided Lumileds with an appropriate exemption certificate for the delivery jurisdiction.

3. ORDERS

a) All orders are subject to acceptance by Lumileds. Customer will specify Ship To addresses within the country where the order is placed, unless otherwise agreed. Orders must specify delivery within twelve (12) months from order date, including possible rescheduling, unless otherwise agreed or indicated on the quotation.

b) Customer may incur charges for canceling product orders or modifying delivery schedules. Lumileds cannot accept cancellation of orders after Product shipment. Customer will incur charges for canceling Special Product orders and will pay all charges for returning Products to Lumileds' shipping location.

4. DELIVERY

a) Lumileds will make reasonable efforts to meet Customer’s delivery requirements. If Lumileds is unable to meet Customer's delivery requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order.

b) The parties may agree to reschedule delivery; however, orders put on hold more than sixty (60) days beyond the original scheduled delivery date will be considered cancelled and are subject to the cancellation provisions of Section 3(b).

5. SHIPMENT AND RISK OF LOSS

Lumileds will ship according to Lumileds' standard commercial practice, unless otherwise indicated on the quotation. Risk of loss and damage will pass to Customer per Incoterms 2000, as applicable. If special packing or shipping instructions are agreed, charges will be billed separately to Customer.

6. ACCEPTANCE

Acceptance of Products by Customer occurs upon Delivery. If Customer issues a claim for wrong shipment (Products, quantity and address) or damaged Products within thirty (30) days from delivery date, Lumileds will verify the claim and issue a credit note, if appropriate.

7. PAYMENT AND TITLE

a) Payment terms are subject to Lumileds credit approval. Payment is due net 30 days from Lumileds' invoice date, unless otherwise indicated on the quotation.

b) Lumileds may change credit or payment terms at any time when, in Lumileds’ opinion, Customer's financial condition, previous payment record or the nature of Customer's relationship with Lumileds so warrants.

c) Lumileds may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other agreement if, after ten (10) days written notice, the failure has not been cured.

d) Title to Products will pass upon delivery of Products.

8. WARRANTY

a) Lumileds warrants hardware Products against defects in materials and workmanship for one year from date of shipment or for the warranty period as referenced in the Product specifications. Lumileds further warrants that its hardware Products conform to Lumileds' published minimum/maximum specifications (or Customer’s specifications expressly accepted in writing by Lumileds). This warranty extends only to Customer and not to indirect purchasers or users. If Lumileds receives notice of defects or non-conformance to hardware specifications during the warranty period, Lumileds will, at its option, repair or replace the affected Products. If Lumileds is unable, within a reasonable time, to repair, replace or correct a defect or non-conformance in a Product to a condition as warranted, Customer will be entitled to a refund of the purchase price upon prompt return of the Product to Lumileds.

b) Customer will prepay shipping charges (and will pay all duties and taxes) for Products returned to Lumileds for warranty service. For valid warranty claims, Lumileds will reimburse Customer for prepaid freight charges and return Products to Customer at Lumileds' expense.

c) Unless Lumileds agrees in writing that Customer has configuration control, Lumileds may make process or materials changes affecting the performance or other characteristics of Products. Products supplied after such a change will continue to meet Lumileds' published minimum/maximum specifications, but may not
be identical to Products supplied as samples or under prior orders.

d) Some sub-assembly Products may contain remanufactured parts equivalent to new in performance.
e) The above warranties do not apply to defects resulting from improper or inadequate maintenance; Customer or third party supplied software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications for the product; abuse, negligence, accident, loss or damage in transit, improper site preparation; or unauthorized maintenance or repair.
f) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. LUMILEDS SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. LICENSES

a) Customer may transfer embedded software only upon transfer of the associated Device. All license terms will be binding on involuntary transferees, notice of which is hereby given. Customer’s license will automatically terminate upon transfer.
b) The Software is owned and copyrighted by Lumileds or by third party suppliers. Customer’s license confers no title or ownership and is not a sale of any rights in the Software, its documentation, or the media on which they are recorded or printed. Third party suppliers may protect their rights in the software in the event of any infringement.
c) Customer will not disassemble or decompile the Software without Lumileds’ prior written consent. Where customer has other rights under statute, customer will provide Lumileds with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the Software unless necessary for legitimate use of the Software.
d) The following terms will apply to Licenses of Software directly or indirectly to the U.S. Government. In this section, the term “Customer” means Lumileds’ direct purchaser, any entity sublicensing the Software, and the end-user.

1) In the event the Software is transferred directly or indirectly to the U.S. Government, the Customer agrees that it has only those rights provided for such Software by Lumileds’ standard commercial license terms, or if specifically incorporated in the applicable purchase order of contract under which the Software is to be provided, those rights provided for “Restricted Computer software” under FAR 52.227-19 (June 1987) and 52.227-14, if applicable.

2) The Customer further agrees that Software, and any derivatives or modifications, is adequately marked for purposes of FAR 52.227-14, Rights in Data-General, if applicable, when the following legend is affixed to the Software, or otherwise contained in the contract between Customer and Lumileds under which the Software is to be provided: RESTRIC TED RIGHTS NOTICE Use, duplication or disclosure is subject to Lumileds’ standard commercial license terms, and for non-DOD U.S. Government Customers, the restriction as set forth in FAR 52.227-19(a)(1-2)(June 1987);

Lumileds Lighting
370 Trimble Road
San Jose, CA 95131 U.S.A.

10. INTELLECTUAL PROPERTY RIGHTS

a) Lumileds will defend or settle any claim against Customer that Products (excluding Special Products), delivered under these Lumileds Terms and Conditions of Sale infringe a patent, utility model, industrial design, copyright, trade secret, mask work or trademark in the country where Products are used or sold, provided Customer:

1) was not at fault;
2) promptly notifies Lumileds in writing; and
3) cooperates with Lumileds in, and grants Lumileds sole control of, the defense or settlement.

b) Lumileds will pay infringement claim defense costs, settlement amounts and court awarded damages. If such a claim appears likely, Lumileds may modify the Product, procure any necessary license, or replace it. If Lumileds determines that none of these alternatives are reasonably available, Lumileds will refund Customer’s purchase price upon return of the Product, if within one year of delivery, or the Product’s net book value thereafter.

c) Lumileds has no obligation for any claim of infringement arising from:

1) Lumileds’ compliance with Customer’s designs, specifications or instructions;
2) Lumileds’ use of technical information or technology provided by Customer;
3) Product modifications by Customer or a third party;
4) Product use prohibited by Specification or related application notes; or
5) Use of the Product with products not supplied by Lumileds.

d) These terms state Lumileds’ entire liability for claims of intellectual property infringement.

11. LIMITATION OF REMEDIES AND LIABILITY

a) Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products purchased by Customer are used for these applications. Customer will indemnify and hold Lumileds harmless from all loss, damage, expense or liability in connection with such use.

b) To the extent that Lumileds is held legally liable to Customer, Lumileds’ liability is limited to:

1) payments described in Section 8 and 10 above;
2) damages for bodily injury;
3) direct damages to tangible property up to a limit of U.S. $1,000,000;
4) other direct damages for any claim based on a material breach of these Terms and Conditions of Sale, up to a limit of $1,000,000, or the amount paid to Lumileds pursuant to a specific agreement or Purchase Order, for the specific part giving rise to liability, whichever is less.

c) Notwithstanding Section 11(b) above, in no event will Lumileds or its affiliates, subcontractors or suppliers be liable for any of the following:

1) actual loss or direct damage that is not listed in 11(b) above;
2) damages relating to Customer’s procurement of substitute Products or services (i.e., “cost of cover”); or
3) incidental, special or consequential damages, including downtime costs or lost profits, but excluding payments described in section 10 above and damages for bodily injury.

12. GENERAL

a) Transactions may be conducted through Electronic Data Interchange ("EDI") or other electronic methods, as agreed.
b) Lumileds will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
c) If either party 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, the other party may cancel any unfulfilled obligations.
d) Neither party may assign any rights or obligations without prior written consent of the other party.
e) Under no circumstances will Lumileds provide cost data.
f) Customer will provide VAT-ID numbers to support VAT exemptions of intra-community supplies where appropriate as governed by national and European legislation and Customer will notify Lumileds immediately if the VAT-ID number provided becomes invalid or is changed or amended in any way. Lumileds may have to retrospectively charge VAT in the event that VAT has been incorrectly exempted due to Customer failure to notify Lumileds of the invalidation or change of VAT-ID number.

g) Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. Lumileds may suspend performance if Customer is in violation of applicable regulations.

h) Disputes arising in connection with these Lumileds Terms and Conditions of Sale will be governed by the laws of:

1) California, for orders placed in the Americas;
2) The member state of the European Union from which the order is placed;
3) Switzerland, for orders placed in all other locations

i) Customer and Lumileds expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to transactions processed under this Agreement.

j) These Lumileds Terms and Conditions of Sale constitute the entire agreement between Lumileds and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder, including Customer's additional or different terms and conditions, express or implied. Customer's purchase or license of Products will constitute Customer's acceptance of Lumileds Terms and Conditions of Sale, which may not be changed except by an amendment signed by an authorized representative of each party.