

# Truex Lighting

## Terms and Conditions of Sale

This Agreement contains the terms and conditions that apply to your purchase from Truex, LLC ("Truex") of products. By placing an order, You acknowledge that You have read, accepted and agree to be bound by this Agreement.

### 1. ORDERS

You may offer to purchase products by submitting firm orders to Truex. Orders must be in writing and are subject to Truex's acceptance in its sole discretion. Within two business days after receipt of your order, Truex will notify you in writing whether the order is accepted or of any necessary modifications to the order. Even if Truex accepts an order, Truex has the right to not ship products if, in Truex's sole opinion, You may be unable to meet your obligations to Truex. Your accepted order will establish the products to be purchased, quantity, price and ship to address for the sale. All other terms and conditions of the sale are set forth herein. *PLACING AN ORDER CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.* Any terms or conditions in orders other than those stated herein, whether printed, stamped, typed, or written on the face of or the reverse of any portion of the order, incorporated by reference or added in any manner, shall be deemed inapplicable and shall not be binding on Truex.

### 2. TERMS OF PAYMENT

If You are purchasing from Truex for the first time, You must submit a completed Credit Application. To receive a Credit Application, email: [www.creditmanager@truexlighting.com](mailto:www.creditmanager@truexlighting.com). If no Credit Application is submitted or if credit is denied, then You must pay for products in advance. If your credit application is approved, Truex will invoice you at the time of shipment. Payment in U.S. dollars is due thirty (30) days from the invoice date. The address to which payments should be submitted shall be stated on the invoice. If You fail to pay when due any amounts payable hereunder, such amounts shall bear interest, payable on demand, at the per annum rate announced by Citibank, New York, New York, of its prime rate plus two percent (2%) on the last working day of the month in which such amount becomes due.

### 3. TAXES

You will be responsible for any applicable federal, state, or local taxes on the sale of the products unless You submit to Truex a tax exemption certificate prior to shipment.

### 4. DELIVERY/SHIPPING/PACKAGING

Delivery of products is F.O.B. Truex's facilities, Tulsa, Oklahoma. Title and risk of loss shall pass to You at the time of delivery. Your products will be packaged using Truex's standard packaging practices.

### 5. DELAYS IN DELIVERY

Truex strives to always meet your delivery schedule, but cannot guarantee delivery dates. Truex's delivery dates are good faith estimates only. Truex shall not be liable for damages for delays in deliveries.

6. FIXTURE WARRANTY

Truex warrants that each of its lighting fixtures will at the time of delivery by Truex be free from defects in material and workmanship ("Warranty"). This Warranty expires one year from the date of delivery of the fixture by Truex pursuant to Section 4 of this Agreement. Damage incurred in shipping, handling, or improper installation or use is not covered by this Warranty. The exclusive remedy for breach of this Warranty is for Truex to replace the fixture in question. To make a warranty claim on a lighting fixture, please complete a Return Goods Authorization, found on our website, and email it as an attachment to: [www.fixturewarranty@truexlighting.com](mailto:www.fixturewarranty@truexlighting.com).

7. BALLAST WARRANTY

The ballasts in Truex's lighting fixtures are manufactured by reputable manufacturers, which offer limited warranties on their products. YOUR SOLE AND EXCLUSIVE WARRANTY FOR A BALLAST IS THAT PROVIDED BY THE BALLAST MANUFACTURER. TRUEX MAKES NO EXPRESS OR IMPLIED WARRANTY ON THE BALLASTS.

8. LIMITATION OF WARRANTY. ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, ARE HEREBY EXCLUDED AND DISCLAIMED TO THE EXTENT THEY EXCEED THE WARRANTIES GRANTED HEREIN. NO VARIATION OR EXTENSION OF THE WARRANTY OR REMEDIES SHALL BE BINDING UNLESS IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF TRUEX.

9. LIMITATION OF LIABILITY. THE LIABILITY OF TRUEX ARISING OUT OF OR RELATING TO THE SUPPLY OF PRODUCTS, SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY BUYER TO TRUEX FOR THE PRODUCTS GIVING RISE TO SUCH DAMAGES. IN NO EVENT SHALL TRUEX BE LIABLE FOR LOSS OF PROFITS, COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, EVEN IF TRUEX IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR THE CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. TRUEX WILL NOT BE RESPONSIBLE FOR DATA REQUIRED OR SUBMITTED BY THE BUYER OR END USER OF TRUEX PRODUCT TO UTILITY PROVIDERS OR THIRD PARTY CONSULTANTS FOR THE PURPOSE OF PRODUCT REGISTRATION OR ENERGY REBATE PROGRAMS. THIS IS THE SOLE RESPONSIBILITY OF THE BUYER OR END USER. TRUEX WILL IN NO EVENT BE LIABLE LOSS OF PROFITS, COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, EVEN IF TRUEX IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR THE CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. TRUEX'S ONLY OBLIGATION IS TO PROVIDE PRODUCT IN THE CONFIGURATION AS ORDERED BY THE BUYER OR END USER.

10. MISCELLANEOUS

a. This Agreement contains the entire understanding of the parties and supersedes and

merges all prior and contemporaneous agreements and discussions between the parties. Any and all representations or agreements by any agent or representative of either party not contained in this Agreement shall be null, void and of no effect, including but not limited to representations as to the performance or conduct of Truex, or any other matter pertaining to this Agreement, its performance or the products. This Agreement may not be changed or waived in any way, except by written agreement signed by both parties. No waiver by either party of any default shall operate as a waiver of any other default or of the same default on a future occasion.

b. Except for claims for payment for products sold and delivered, the parties agree to submit all disputes arising out of or relating to this Agreement, including the termination thereof, the parties' relationship, or the rights and obligations of the parties, to final and binding arbitration before a single arbitrator in Tulsa County, OK under the Commercial Arbitration Rules of the American Arbitration Association. The costs of arbitrator shall be borne equally by the parties and each party shall be responsible for its own attorney's fees and costs.

c. If for any reason any provision of this Agreement, shall be deemed by the arbitrator or a court of competent jurisdiction to be unenforceable in any jurisdiction to which it applies, the validity of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law, and, in its modified form, such provision shall then be enforceable and enforced.