

TERMS AND CONDITIONS OF SALE

1. GENERAL

These terms and conditions govern the sale of products by OMNI as well as by OMNI's distributors. In the event of any conflict or inconsistency between the terms and conditions of sale herein and the terms and conditions contained in Buyer's order or in any other form issued by Buyer, whether or not any such form has been acknowledged or accepted by OMNI, OMNI's terms and conditions herein shall prevail. No waiver, alteration or modification of these terms and conditions shall be binding upon OMNI unless made in writing and signed by a duly authorized representative of OMNI.

2. PRICE

Unless otherwise quoted, prices shall be those published and in effect at time of shipment. Prices are subject to change without notice. Any change in quantities, partial release or destination may incur a price adjustment. All prices are F.O.B. shipping point with freight costs being collect, prepaid and added or allowed. All prices quoted are exclusive of transportation and insurances costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes. Such taxes, where OMNI is required by law to collect them, whether designated as sales tax, use tax, gross receipts tax, etc., will be billed to Buyer based on the law in effect at the time of delivery unless Buyer furnishes OMNI with a proper tax exemption certificate. Buyer agrees to reimburse OMNI for any such taxes that OMNI or its suppliers are required to pay, including penalties and interest thereon. All orders are subject to credit approval. All purchases are subject to the terms and conditions herein.

3. PAYMENT

For any and all late payments after 30 days from the date of the invoice, OMNI will impose, as interest, a charge of 1-1/2% per month or the maximum applicable legal amount to offset OMNI's anticipated accounting and debt expenses. Should OMNI have to incur the services of an attorney to pursue collection of the payment of the invoice, Buyer agrees to pay all costs of collecting or securing amounts owed by Buyer to OMNI, together with a reasonable attorney's fee of not less than 25% of the total outstanding balance, plus all accrued interest, due and owing, or the maximum lawful rate, whichever is greater. In addition, in the event that Buyer becomes delinquent in the payment of any sum due to OMNI, OMNI shall have the right to suspend performance under any order until such delinquency is corrected. Partial shipments made under any order shall be treated as a separate transaction and payment thereof shall be made accordingly. In the event of any default by Buyer, OMNI may decline to make further shipments without in any way affecting its rights under such order or any orders or agreements between OMNI and Buyer.

4. CANCELLATION

Buyer may cancel a general order prior to shipment subject to payment of the costs of labor, overhead, and materials used plus 10% of the sales price. Special orders may not be cancelled at any time.

5. RETURNS

No product may be returned for credit without written consent from OMNI. Should OMNI consent to the return of product, Buyer shall be responsible for all freight charges, and all returned items must be in original conditions, including all packing. Before crediting the Buyer's account for a return item, OMNI will deduct the costs and charges associated with re-stocking the item.

6. WARRANTY

a. Coverage. Subject to the terms, conditions, limitations and exclusions of this warranty, OMNI warrants that the product is free from defects in workmanship and materials for a period of one (1) year from the date of shipment. If during the duration of this Limited Warranty, OMNI determines that the product is defective in workmanship or materials, OMNI shall, at OMNI's sole discretion, repair or replace the product. Should OMNI choose to replace the product, OMNI shall pay for the delivery of the new product to the location where the product was determined to be defective. Should OMNI choose to repair the product, this shall take place at customer's location or at a facility designated by OMNI. For any replacement or repair of product under this warranty, the only warranty remaining in effect after the repair or replacement shall be the balance of the one (1) year period from the shipment of the original product.

b. Exclusions from Coverage. This Limited Warranty does not cover defects, failures, damages or injuries of any type attributable directly or indirectly to any of the following:

- i. Normal wear and tear.
- ii. Misuse or unreasonable use of the product.
- iii. Alterations to the product.
- iv. Lack of proper maintenance.
- v. Extended periods of outdoor storage time.
- vi. Products sold by, but not manufactured by, OMNI.
- vii. Products incorporated in or utilized by Buyer in connection with the product.
- viii. Natural disasters, including, but not limited to, cyclones, tornadoes, hurricanes, lightning, earthquakes, flood, hail or fire.
- ix. Falling objects, civil insurrection, war, riot, vandalism, or accident.
- x. Any circumstances or events beyond OMNI's control.

c. Notice of Claims. To obtain performance of any obligation under this warranty, the user must notify OMNI within ten (10) days of when the claim of a defect arises. Notice of any warranty claim shall be made at the following address:

OMNI
259 Plaque Street
Harahan, Louisiana 70123
Attention: Warranty Claims
Telephone: (504) 736-0331
or E-mail: sales@omni-opti.com (Subject: Warranty Claim)

d. Non-Transfer. This limited warranty may not be transferred. To be entitled to the benefits of this warranty, you must be the original purchaser of the product and provide proof of purchase.

e. Exclusive Warranty and Limitation of Remedies. This document constitutes the exclusive warranty and sole remedies provided by OMNI. The warranty and remedies contained in this document are expressly in lieu of any and all other obligations, guarantees, warranties, and representations, whether written, oral, implied by statute, at law or in equity, including without limitation, the implied warranties of merchantability, fitness for use and fitness for a particular purpose. Some states or jurisdictions may not allow the exclusion of implied warranties, so the above exclusion may not apply to you. OMNI's obligations, responsibilities and liability shall be limited to repairing or replacing the defective product as set forth in this limited warranty. In no event shall OMNI be liable for any special, indirect, incidental, or consequential damages, of any kind, including any damage to property or for injury to any persons that may occur as a result of the use of OMNI's products or as a result of the breach of this warranty. If your state or jurisdiction does not allow exclusions or limitations of special, indirect, incidental or consequential damages, the above limitations may not apply to you. In no event shall OMNI's total liability arising out of or related to product or this warranty exceed the cost paid by the owner to OMNI for the product. This limited warranty gives you specific legal rights and you may have other rights that may vary by state or jurisdiction.

f. Waiver of the Warranty Against Redhibitory Defects. This waiver is a material part of the consideration for the sale and for the price charged, and OMNI calls it to Buyer's attention.

Buyer waives and renounces the warranty against redhibitory defects and vices provided by Louisiana Civil Code Articles 2520 through 2548, and the warranty that the products are fit for their ordinary use or for Buyer's particular purpose provided by Louisiana Civil Code Article 2524, together with any corresponding warranty arising under the law of any other jurisdiction, whether the defect or vice is apparent or hidden, known or unknown, and whether or not discoverable by reasonable inspection. Buyer likewise waives any right to rescind or avoid the sale, to obtain a return or refund of the purchase price, to obtain a reduction of the purchase price, and to recover damages, expenses, interest, or attorney's fees on account of any defect or vice in the products. Buyer accepts the products with all faults, subject only to the limited warranty set forth in Section 6(a).

OMNI makes no declaration, affirmation, or representation that any product possesses any quality other than as expressly set forth in the limited warranty in Section 6(a) and in OMNI's published product specifications in effect at the time of shipment. Buyer acknowledges that this waiver is written in clear and unambiguous terms, that it has been called to Buyer's attention, and that Buyer has had the opportunity to review it with counsel of Buyer's own choosing. This waiver applies to the fullest extent permitted by applicable law and survives delivery, inspection, acceptance, and payment.

g. Resale. If Buyer resells or otherwise transfers any product, Buyer shall include in its contract of sale a waiver and exclusion of warranty substantially similar to that set forth in Section 6(f), and shall call that waiver to the attention of its purchaser. Buyer's indemnification obligations under Section 11 apply to any claim arising from Buyer's failure to do so.

This Limited Warranty may NOT be modified, altered or expanded by anyone, including OMNI representatives.

7. DELIVERY

Delivery schedules are approximate and are based on prevailing market conditions applicable respectively at the time of sale. OMNI will ship common carrier to Buyer's location stated on the Purchase Order. Buyer must file claims for shortages or errors of product delivered by OMNI in writing to OMNI within 5 days of the delivery. If OMNI does not receive written notification of such shortage or error within 5 days, it shall be conclusively presumed that the correct goods were delivered in their entirety. If delivery is by common carrier, except for any limited warranty obligations, OMNI's responsibility for products ceases upon delivery to the carrier. In the event of loss or damage during shipment, Buyer's claim shall be against the carrier only. Unless agreed upon otherwise in writing, OMNI reserves the right to make partial shipments and to submit invoices for partial shipments. Buyer is responsible for prompt unloading of the trucks and/or freight cars. If unloading of OMNI product at customer's location exceeds two (2) hours, through no fault of the freight carrier, and freight carrier imposes a detention time fee as a result thereof, then customer will be responsible for payment of such fee.

8. INSTALLATION

Supervision of the installation of OMNI products is not included with the purchase unless specifically requested by Buyer and agreed to by OMNI.

9. FORCE MAJEURE

OMNI will not be responsible for failure to fulfill its obligations for any accepted order or for any delays in performance or delivery due to causes beyond OMNI's reasonable control, including, but not limited to, acts of god, war, riots, embargoes, acts of city or military authorities, natural or artificial disaster, fires, floods, epidemics, accidents, quarantine restrictions, supplier conditions, strikes, delay by carrier, differences with workmen, cessation of plant operations, delays in transportation, nuclear incident, and shortage of cars, fuel, labor or materials. In an event of force majeure condition, OMNI's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting OMNI to any liability or penalty. OMNI may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.

10. LIMITATION OF LIABILITY

The limitations set forth in this Section 10 are in addition to, and do not limit, the disclaimers, exclusions, waivers, and limitations set forth in Section 6, including the waiver in Section 6(f), and apply to all claims of every kind, whether or not arising under the limited warranty.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, REDHIBITION, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY, CONTRIBUTION, STATUTE, OR OTHERWISE, OMNI'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO ANY ORDER, ANY PRODUCT, OR THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE PURCHASE PRICE ACTUALLY PAID TO OMNI FOR THE SPECIFIC PRODUCT GIVING RISE TO THE CLAIM.

IN NO EVENT SHALL OMNI BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, COST OF CAPITAL, COST OF SUBSTITUTE GOODS OR SERVICES, DOWNTIME, DELAY, LOST OR REDUCED PRODUCTION, CLAIMS OF BUYER'S CUSTOMERS OR OF ANY THIRD PARTY, PROJECT DELAY, ACCELERATION, OR DISRUPTION DAMAGES, LIQUIDATED DAMAGES OWED BY BUYER TO ANY THIRD PARTY, COSTS OF REMOVAL OR REINSTALLATION, OR DAMAGE TO PROPERTY OR INJURY TO PERSONS, WHETHER OR NOT OMNI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE.

Without limiting the foregoing, delivery dates and schedules are estimates only, and OMNI shall have no liability of any kind for late delivery, failure to deliver, or any delay in performance.

The limitations and exclusions in this Section 10 and in Section 6 shall apply notwithstanding the failure of the essential purpose of any limited remedy, and shall survive delivery, inspection, acceptance, payment, and the expiration or termination of any order. Buyer acknowledges that the prices charged by OMNI reflect this allocation of risk and that OMNI would not sell the products on these prices absent these limitations.

11. INDEMNIFICATION BY BUYER

Buyer shall defend, indemnify, and hold harmless OMNI, its affiliates, and their respective officers, directors, members, managers, employees, agents, successors, and assigns from and against any and all claims, demands, suits, causes of action, losses, damages, liabilities, judgments, awards, settlements, fines, penalties, costs, and expenses of any kind (including reasonable attorney's fees, expert fees, and costs of defense), whether for property damage, bodily injury, death, economic loss, or otherwise, arising out of or relating to:

- a. any misuse, abuse, misapplication, alteration, or modification of the products by Buyer or by any person other than OMNI;
- b. improper or defective installation, handling, storage, transportation, assembly, or maintenance of the products by Buyer or by any person other than OMNI;
- c. Buyer's failure to follow OMNI's published instructions, specifications, or recommendations, or Buyer's failure to comply with any applicable law, code, standard, permit, or regulation, including without limitation the National Electrical Code and applicable UL, NEMA, and ASTM standards;
- d. any design, drawing, specification, sample, process, or other material furnished, selected, or directed by Buyer, including without limitation any claim that a product manufactured in accordance with the same infringes or misappropriates any patent, trademark, copyright, trade secret, or other intellectual property right of any third party;
- e. any representation, warranty, guarantee, affirmation, or description made by Buyer or by any person acting on Buyer's behalf with respect to the products that exceeds, expands upon, or is inconsistent with the limited warranty set forth in Section 6; and
- f. the negligence, gross negligence, or willful misconduct of Buyer or of any person for whom Buyer is responsible.

OMNI shall notify Buyer of any claim for which it seeks indemnification hereunder. Buyer shall defend such claim with counsel reasonably acceptable to OMNI, and OMNI may at its option participate in the defense with counsel of its own selection at its own expense. Buyer shall not settle or compromise any claim in a manner that admits fault on the part of OMNI, imposes any non-monetary obligation upon OMNI, or fails to fully and unconditionally release OMNI, without OMNI's prior written consent. Buyer's obligations under this Section 11 shall not be limited by any insurance held by Buyer, by any limitation on the amount or type of damages or compensation payable by or for Buyer under any workers' compensation, disability benefit, or other employee benefit act, or by any other limitation on Buyer's liability to its own employees. This Section 11 shall survive delivery, inspection, acceptance, payment, and the expiration or termination of any order.

12. NO SET-OFF

Buyer shall pay all amounts when due without set-off, deduction, recoupment, counterclaim, withholding, retainage, or abatement of any kind. Buyer waives any right to withhold, reduce, or delay payment of any invoice pending resolution of any claim, dispute, warranty issue, or alleged breach, whether arising under the same order or any other order or agreement. Any claim Buyer may have against OMNI shall be asserted separately and shall not excuse Buyer's obligation to make timely payment in full.

13. CHOICE OF LAW AND VENUE

Buyer agrees that the law of the State of Louisiana will govern the construction, enforcement and validity of this agreement, collection on any invoices and all other legal aspects of the sales, without regard to conflicts of law, and irrevocable consent is hereby granted by both parties to the exclusive jurisdictions and venue for any action or dispute arising from or related to this agreement in the state and federal courts located in Louisiana.

14. WAIVER OF JURY TRIAL

EACH OF OMNI AND BUYER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS-CLAIM ARISING OUT OF OR RELATING TO ANY ORDER, ANY PRODUCT, OR THESE TERMS AND CONDITIONS, WHETHER SOUNDING IN CONTRACT, WARRANTY, REDHIBITION, TORT, STATUTE, OR OTHERWISE.

Each party acknowledges that this waiver is a material inducement to enter into the transaction, that it has had the opportunity to consult with counsel of its own choosing regarding this waiver, and that it makes this waiver knowingly and voluntarily. This Section 14 shall survive the expiration or termination of any order.

15. NO THIRD-PARTY BENEFICIARIES

These terms and conditions are for the sole benefit of OMNI and Buyer and their respective permitted successors and assigns. Nothing herein, whether express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, claim, or remedy of any nature whatsoever. Without limiting the foregoing, the limited warranty set forth in Section 6 runs only to the original purchaser as provided in Section 6(d), and no subsequent purchaser, transferee, end user, contractor, subcontractor, property owner, or other person shall have any right, claim, or remedy under these terms and conditions or under that limited warranty.

16. SEVERABILITY

If any provision of these terms and conditions is held to be invalid, illegal, or unenforceable in any respect under any applicable law or in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof or the validity, legality, or enforceability of that provision in any other jurisdiction. Any such provision shall be modified and reformed to the minimum extent necessary to render it valid and enforceable while giving maximum effect to the intent of the parties, and if it cannot be so modified, it shall be severed and the remaining provisions shall continue in full force and effect.

Without limiting the foregoing, if any disclaimer, exclusion, or limitation contained in Section 6 or Section 10 is held to be unenforceable in whole or in part, that disclaimer, exclusion, or limitation shall be enforced to the maximum extent permitted by applicable law, and all remaining disclaimers, exclusions, and limitations shall be given full force and effect.

17. ENTIRE AGREEMENT

These terms and conditions, together with OMNI's quotation, order acknowledgment, and invoice for the applicable order, constitute the entire agreement between OMNI and Buyer with respect to the products and supersede and replace all prior and contemporaneous agreements, understandings, negotiations, proposals, quotations, representations, warranties, advertising, catalogs, brochures, technical data, samples, statements of sales representatives or distributors, purchase orders, and communications, whether written or oral, relating to those matters.

Buyer acknowledges that it has not relied upon any representation, warranty, promise, assurance, sample, drawing, model, or description not expressly set forth in these terms and conditions. No course of dealing, course of performance, or usage of trade shall modify or supplement these terms and conditions. No employee, agent, sales representative, or distributor of OMNI has authority to modify, waive, expand, or supplement these terms and conditions or the limited warranty set forth in Section 6, and any purported modification, waiver, expansion, or supplement is void unless made in writing and signed by a duly authorized officer of OMNI.