

# STANDARD TERMS AND CONDITIONS FOR ACCEPTANCE OF PURCHASE ORDERS



## 1. MAKING OF CONTRACT:

This Contract and any related purchase order or supply agreement (including electronic transmissions) shall become effective upon the receipt of same by a customer ("Buyer") of H. E. Williams, Inc. ("Seller") and shipment of goods by Seller. These Standard Terms & Conditions for Acceptance of Purchase Orders (hereafter, "Standard Terms") shall apply to all purchase orders or other supply arrangement (such as in a transmittal letter) submitted by Buyer, and regardless of Seller's execution of any agreement or other instrument/document required by Buyer. Buyer's acceptance of any goods shipped by Seller shall constitute acceptance of these Standard Terms, regardless of any conflicting terms or waiver language contained in any Buyer purchase order, general terms & conditions, or other instrument.

## 2. TERMS OF PAYMENTS:

Cash Discount of 1% 10th prox. net 25th. All payments must be in U.S. dollars. Any account having a balance due that is 30 days past due or has unauthorized payment deductions may be placed on a 'Credit Hold' condition. Late payments on invoices shall bear interest at 1.5% per month or the highest rate allowed by applicable law, whichever is less. Seller shall be entitled to recover its costs of collection of any past due invoice, including court costs and reasonable attorneys' fees. All payments made utilizing a payment card are subject to a processing fee.

## 3. FREIGHT ALLOWANCES:

All goods are priced FOB factory, full freight allowed on orders having a distributor price total of \$3,000.00 or more for release of one shipment to one destination within contiguous limits of the United States. Routing is at Seller's discretion. For shipments outside the 48 contiguous United States, contact Seller for applicable freight charges. For orders that do not meet the freight allowance, all transportation and delivery charges will be added to Buyer's invoice unless Buyer makes alternative transportation and delivery arrangements.

## 4. DROP SHIPMENTS:

Seller reserves the right to refuse to make direct shipments to points of destination outside of the regular or assigned selling and service area of Buyer.

## 5. PRICING:

Prices are subject to change without notice. In the event of price increases, all orders on hand will be filled at their original levels provided such orders are released for immediate shipment within 30 days after the increase. All orders are subject to acceptance at the Seller's office and contingent upon fires, strikes, machinery breakdown, raw materials shortages, or any cause beyond our control. Any taxation and/or tariff levied upon sale, production, or transportation of these goods is borne by Buyer. Fixtures requiring lamps are priced without lamps unless otherwise noted.

## 6. DELIVERY DATE:

The shipment date on the face hereof, or any delivery date stated in any related purchase order or supply agreement, is only Seller's estimate of the shipment/delivery date. While Seller shall use commercially reasonable efforts to meet such date, Seller shall not be liable for damages of any kind (including any direct, incidental, consequential or punitive damages) for the failure to meet such date or for any delay in shipment or delivery.

## 7. ORDER CHANGES AND CANCELLATIONS:

Changes or modifications to existing orders which fall into the current week of production are subject to a \$150.00 order modification fee. For those orders being produced at the time of the requested change, a modification fee will be charged and if applicable, a warehousing fee will apply. Upon cancellation, orders may be subject to additional charges for payment of work performed, including engineering charges on custom material and/or engineering fees for layouts. All costs for warehousing and freight on orders canceled after shipment and/or refused at destination will be charged to Buyer. Buyer acknowledges that the above cancellation fees shall be paid to Seller as reasonable liquidated damages to compensate Seller in part for direct and indirect expenses incurred in connection with cancellation of order.

## 8. TRANSPORTATION CLAIMS:

All goods are inspected prior to shipping. Seller's responsibility for safe delivery ceases when merchandise has been turned over to the carrier in good condition. Shipment should be thoroughly checked upon receipt for damage or shortage in transit and, if damage or shortage occurs, Buyer should file a claim with the delivering carrier.

## 9. RETURN MERCHANDISE:

No merchandise may be returned without prior written permission from Seller. Requests must be made within 60 days from date of shipment. If the return is approved, credit will be issued less a minimum service charge of 35% and less the freight expense of the original shipment. All non-stocking, special, custom, or modified fixtures are not returnable.

## 10. LIMITED WARRANTY:

Refer to the H.E. Williams, Inc. **LED PRODUCT 5 YEAR WARRANTY** <https://hew.com/specifications/ledwarranty.pdf> for all LED products. For non-LED products, the following standard limited (12) month warranty on construction of fixtures will apply:

If the goods provided by Seller, under normal operating conditions, prove defective in material or workmanship, as determined by Seller's inspection, within twelve (12) months from the date of shipment or performance, Seller will replace or repair the same free of charge, or, in Seller's sole discretion, refund the price allocable to the defective goods. This limited warranty is contingent upon the following conditions: that Seller promptly receives notice of the defect; that Buyer establishes that goods have been properly installed, maintained, and operated by qualified personnel within the limits of related and normal usage as specified by Seller; and that, upon Seller's request, Buyer will return to Seller at Buyer's expense, the defective goods or part thereof. Any services or goods provided by Seller which are outside the scope of the above warranty shall be charged to Buyer at Seller's applicable time and material rate and on terms and conditions in effect at the time such services or goods are provided. Seller will not accept or recognize any labor charges submitted by Buyer without prior written permission and approval.

## 11. EXCLUSION OF OTHER WARRANTIES:

The warranty to repair or replace defective goods or refund a portion of the purchase price as set forth in Paragraph 10 hereof IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 12. LIMITATION OF REMEDIES AND LIABILITIES:

BUYER AGREES THAT SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY PURSUANT TO ANY CLAIM OF ANY KIND HEREUNDER OR RELATION TO THE GOODS DELIVERED BY SELLER TO BUYER, INCLUDING WITHOUT LIMITATION ANY CLAIM IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AGAINST SELLER OR ANY OF ITS AFFILIATES, SHALL BE (A) THE REPAIR OR REPLACEMENT AT SELLER'S OPTION OF DEFECTIVE GOODS, OR (B) IN SELLER'S SOLE DISCRETION, A REFUND OF THE PRICE ALLOCABLE TO THE DEFECTIVE GOODS. UNDER NO CIRCUMSTANCES SHALL SELLER OR ANY OF ITS AFFILIATES HAVE ANY LIABILITY WHATSOEVER FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

## 13. INDEMNITY:

Buyer hereby covenants and agrees that it will assemble, maintain, and operate Seller's goods, only in accordance with Seller's recommendations and safe industry practice. In addition, Buyer shall defend, indemnify and hold harmless Seller, against all damages, claims, or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from the assembly, maintenance, operation or use of Seller's goods by Buyer or its employees, agents or subcontractors, however such injuries, death, damage to property or violations may have occurred.

## 14. RISK OF LOSS:

Possession and risk of loss of any goods shall pass to Buyer upon Seller's delivery of such goods to any common carrier.

## 15. MERGER:

This contract (along with any related purchase order or supply agreement that has been executed by both Buyer and Seller) supersedes any prior purchase order, oral representations, correspondence, proposals, quotations or agreements between the parties or their representatives, and the same constitutes the complete and exclusive expression of the terms of the party's agreement. Any conflict between this Contract and any related purchase order or supply agreement shall be resolved in favor of this Contract.

## 16. ASSIGNMENT:

Buyer shall not assign this Contract or any related purchase order or supply agreement without Seller's prior written consent.

## 17. GOVERNING LAW:

This Contract shall be governed by and construed under the substantive laws of the State of Missouri.