

# H.E. Williams, Inc.

## 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.

### 3. Freight Allowances:

All goods are priced FOB factory, full freight allowed on orders having a distributor price total of \$2,000.00 or more for release of one shipment to one destination within continental limits of the United States. Routing is at the Seller's discretion.

### 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 the 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 Carthage office and contingent upon fires, strikes, machinery breakdown, or any cause beyond our control. Any taxation levied upon sale, production, or transportation of these goods is borne by buyer. Fixture prices do not include 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. Hold Orders:

Order production and component purchasing will not commence until order has been released for immediate shipment.

### 8. 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 the buyer. Buyer acknowledges that the above cancellation fees shall be paid to the Seller as reasonable liquidated damages to compensate Seller in part for direct and indirect expenses incurred in connection with cancellation of order.

### 9. 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, a claim should be filed at once by the Buyer with the delivering carrier.

### 10. Return Merchandise:

No merchandise may be returned without prior written permission from the factory. Request must be made within 60 days from date of shipment. Returns for one job will be limited to 10% of the total job value. Only Quick Ship items are acceptable for return and must be shipped pre-paid to location designated by the Seller. Credit will be issued less a 35% service charge less the freight expense of the original shipment. All non stocking, special, custom or modified fixtures are not returnable. Authorization will not be granted when value of all items to be returned is less than \$100.00.

### 11. Limited Fixture Warranty:

If the goods provided by the 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 receive notice of the defect; that Buyer establish that any 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 the 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.

### 12. Ballast Guarantee:

Claims for defective ballasts in warranty should be made directly to Buyer's nearest ballast service center to expedite replacement. Any charges for replacement of such ballasts must be authorized by the ballast manufacturer and will not be accepted by the Seller.

### 13. 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 11 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.

### 14. 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.

### 15. Indemnity:

Subject to paragraphs 11 - 14 above, Seller shall defend, indemnify and hold harmless Buyer against all actual damages arising out of or resulting from any defect in the goods purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. 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.

### 16. 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.

### 17. 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.

### 18. Assignment:

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

### 19. Governing Law:

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



H. E. WILLIAMS, INC.