



## 1. STANDARD TERMS AND CONDITIONS

Any offer made by Ushio America, Inc. (“**Seller**”) to sell goods is subject to these terms and conditions, and, unless otherwise expressly agreed by Seller in writing, any different or additional terms and conditions proposed by the purchaser are hereby objected to and rejected and shall be of no effect, even if such terms and conditions have not been expressly rejected by Seller.

## 2. PRICES, TAXES, AND MINIMUM ORDER

2.1 Unless otherwise specified by Seller, prices are in US currency. Prices do not include, and the purchaser shall pay (or reimburse Seller for), (a) freight and associated charges, (b) insurance, and (c) any and all duties, excise, sales, use, personal property, inventory or similar taxes, charges or levies imposed on or in connection with the sale or use of goods sold by Seller to the purchaser or held by Seller for the purchaser pending shipment.

2.2 Price quotations are subject to change without notice. After acceptance, price terms are subject to increase to cover cost increases, including increases in any applicable duties or tariffs.

2.3 Orders are subject to stock availability. The minimum order is for \$250 of goods on a net purchase price basis.

## 3. PAYMENT TERMS

3.1 Unless otherwise specified by Seller, payment terms are net 30 days from the date of invoice.

3.2 Interest at a rate equal to the lower of 1.5% per month or the maximum rate permitted by law shall accrue on the outstanding balance of all payments not made when due, and any such interest shall be payable on demand.

## 4. DELIVERY AND RISK OF LOSS

4.1 All delivery dates are approximate and Seller shall have no liability to the purchaser for late deliveries.

4.2 Unless otherwise specified by Seller, shipment is FCA shipping point, Incoterms® 2010. Purchaser bears all risks of loss of or damage to the goods upon delivery to carrier for shipment. Upon such delivery, title to and all risk of loss of or

# USHIO

damage to the goods shall pass from Seller to the purchaser. **Seller shall have no liability or responsibility in connection with claims for loss of or damage to goods incurred after delivery to the carrier, and the purchaser shall pursue all such claims directly with the carrier.** All freight, duties, taxes, and other similar charges are the sole responsibility of the purchaser.

## 5. CHANGES, CANCELLATION AND RETURNS

5.1 Orders accepted by Seller are not subject to change or cancellation by the purchaser unless Seller consents in writing and the purchaser pays to Seller an amount, not to exceed 15% of the purchase price, which covers Seller's losses (including lost profit, if any) and actual costs incurred in connection with such change or cancellation.

5.2 Seller may, but is not obligated to, accept returns of goods. Any such returns (other than returns requested by Seller in connection with warranty claims) will be limited to current goods in original cartons and in standard package quantities. Any credit issued by Seller will be for the original net purchase price of the goods less any return transportation charge paid by Seller and a restocking charge equal to 20% of the original net purchase price.

5.3 Goods may not be returned to Seller unless Seller consents in writing and assigns a return authorization number. Any unauthorized returns or shipping containers received from the purchaser which do not bear a return authorization number will be returned to the purchaser at the purchaser's expense. Return shipments must be prepaid, insured, and shipped at the purchaser's expense.

## 6. FORCE MAJEURE

Seller shall have no liability to the purchaser for any delay or failure in carrying out its obligations to the purchaser for reasons beyond Seller's control including, without limitation, acts of God, war, terrorism, natural disasters, epidemic or pandemic, labor disputes, port congestion, container shortages, changes in or compliance with laws, regulations or governmental policies and shortages of supplies and services, and governmental actions, including without limitation shelter-in-place or similar orders. Seller may extend delivery until any such cause of delay has been removed or, at its option, cancel the undelivered portion of any order so affected without liability to the purchaser except for the return of any payment made by the purchaser to Seller with respect to any undelivered portion of the order so canceled.



## 7. WARRANTY AND LIMITATION OF LIABILITY

7.1 Seller warrants to the purchaser that goods sold by Seller to the purchaser will be free from manufacturing defects in materials and workmanship on the earlier of (a) the date the first end user purchaser initially installs such goods in an electrical circuit having the correct characteristics for proper use of such goods, and (b) the first anniversary of the purchase date.

**7.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER EXCLUDES AND EXPRESSLY DISCLAIMS ALL WARRANTIES AND TERMS, WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR USE OR PURPOSE.**

7.3 The warranty set forth in Section 7.1 is subject to the specific terms of Seller's standard limited warranty on goods, a copy of which will be provided by Seller upon request. The warranty does not apply to goods which have been subject to abuse, misuse, neglect, improper installation or alteration (other than by Seller or its authorized representatives) after delivery to the carrier for shipment to the purchaser. Seller makes no warranty as to the useful life of the goods. At Seller's request, the purchaser shall return goods to Seller at its original shipping point for verification that the warranty set forth in Section 7.1 of this Agreement, as limited by this Section 7.3, is applicable. Any such returns are subject to the provisions of Section 5.3.

7.4 In the event Seller determines that the warranty set forth in Section 7.1 as limited by Section 7.3 is applicable to any goods, Seller shall, as the purchaser's sole remedy and at Seller's sole option, repair, replace, refund, or issue to the purchaser a credit for an amount not to exceed the original purchase price paid by the purchaser to Seller for the affected goods.

**7.5 Seller shall have no liability with respect to warranty claims made by the purchaser more than one year after Seller's sale of the goods involved to the purchaser. IN NO EVENT WILL SELLER BE LIABLE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY, FOR (A) ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, AND (B) LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF USE, LOSS OF BUSINESS OPPORTUNITIES, OR LOSS OF REVENUES; IN EACH CASE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.**

# USHIO

## 8. INFRINGEMENT

8.1 Subject to Section 8.2, Seller shall indemnify and hold the purchaser harmless from any third-party claims, judgments, decrees, costs and expenses, and reasonable attorney's fees incident to any infringement or to any claimed infringement of any patent or other proprietary rights of third parties arising out of the use by the purchaser of any goods sold by Seller to the purchaser, unless (a) the goods are of the purchaser's design, specifications, or formula, (b) the infringement claim arose solely from modifications to the goods after delivery to the purchaser, or (c) the infringement claim arose solely based on a combination with any products or components not supplied by Seller. Seller shall have no liability under this provision unless the purchaser gives to Seller prompt written notice of any such claim, full authority to settle, compromise, or defend any such claim, and full cooperation in connection therewith. In the event the purchaser notifies Seller of any such infringement claims, Seller shall, at its option, (a) defend or settle such claims, (b) procure for the purchaser the right to use the goods, (c) substitute non-infringing goods, or (d) accept the return of the product and refund the purchase price less appropriate deductions in the event the goods are not returned in the condition in which sold.

8.2 The purchaser shall indemnify and hold Seller harmless from any claims that goods sold by Seller to the purchaser in accordance with specifications furnished by the purchaser infringe on the patent or other proprietary rights of third parties.

## 9. DESIGNS AND TRADE SECRETS

Any drawings, data, designs, or other technical information supplied by Seller to the purchaser in connection with the sale of any goods shall remain Seller's property and shall be held in confidence by the purchaser, and the same shall not be reproduced or disclosed to others without Seller's prior written consent.

## 10. EXPORT CONTROLS

The purchaser will comply with all applicable export control laws as in effect from time to time.

## 11. MISCELLANEOUS

11.1 The purchaser's rights, duties, and claims under these terms and conditions may not be assigned, transferred, or delegated without prior written consent of Seller in each instance.

# USHIO

11.2 These terms and conditions and any contract of sale between Seller and the purchaser shall be governed by the laws of the State of California, USA, without reference to conflicts of law principles.

11.3 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions or to any contract of sale between Seller and the purchaser.

11.4 If any provision contained in these terms and conditions or any contract of sale between Seller and the purchaser or any portion of any such provision is held to be unenforceable or invalid, the remaining provisions and portions shall nevertheless be carried into effect.

11.5 The headings contained in these items and conditions are for convenience only and do not in any way interpret, limit, or amplify the scope, extent or intent of any of the provisions.

*Revised on 3/16/2022*