

# EyeC-America, LLC: TERMS AND CONDITIONS OF SALE

**1. CONTROLLING PROVISIONS.** These terms and conditions shall supercede, and EYEC-AMERICA, LLC ("SELLER") hereby objects to, any items and conditions of BUYER'S order to the extent that a conflict exists. No waiver, alteration or modification of these provisions shall be valid unless made in writing and signed by an officer or other authorized representative of SELLER. No order shall be assignable by BUYER without SELLER'S prior written consent, and any such assignment to a leasing company or other third party shall be subject exclusively to these terms and conditions.

**2. PRICES.** Unless product changes are made after the date hereof, the prices quoted by SELLER will remain firm for the quantities listed, provided equipment ordered is scheduled for delivery within the specified shipping date, and delivery is accepted within that time. For all orders scheduled for delivery beyond the specified date, or if no date is specified by the BUYER, SELLER will invoice and BUYER will pay prices in effect at time of shipment. The cost of any special handling caused by BUYER'S requirements or requests or the cost of complying with the particular requirements of any local electrical or building codes shall be added to the amount of the order. No cash discounts or other allowances will apply.

**3. SECURITY INTEREST.** BUYER hereby grants a security interest to SELLER in all products sold to BUYER by SELLER. This security interest shall remain in full force and effect until payment in full has been received by SELLER. BUYER hereby authorizes SELLER to file documents (including without limitation National UCC Financing Statement Form UCC1) to perfect said security interest.

**4. PAYMENTS.** Terms are net 30 days on all products except systems in which case terms are 30% down payment on order and 70% net 30 on shipment unless otherwise agreed. A finance charge of 1.5% per month, not to exceed the maximum rate allowed by law, shall be made on any portion of BUYER'S outstanding balance not paid within thirty (30) days from the date of invoice. If BUYER fails to pay any amount when due or shall otherwise default, SELLER may without notice to BUYER peaceably enter any premises in which the product may be found, render it inoperable or remove it and hold and sell it in accordance with applicable law.

**5. INSTALLATION.** Installation charges cover normal installation work unless otherwise specified. SELLER agrees to install the products ready for use and to connect same to wall plugs to be installed by the BUYER. BUYER shall provide all necessary plumbing, carpentry work, or conduit wiring required to attach and install the products ready for use. In the event BUYER'S local labor conditions make it impossible or undesirable to use SELLER'S regular employees for installation and connection, such work shall be performed by laborers supplied by the BUYER, or by an independent contractor chosen and engaged by the BUYER at the BUYER'S expense. In such case, SELLER agrees to furnish adequate engineering supervision for proper completion of the installation. BUYER assumes all responsibility for product damage caused by contractors or laborers supplied by BUYER. BUYER shall obtain all permits and licenses required by federal, state or local authorities in connection with the installation and operation of the products and shall bear any expense in obtaining same or in complying with any related rules, regulations, ordinances and statutes. If the installation of the products is delayed for any reason for which BUYER is responsible, the products shall for payment purposes be considered to be completely installed thirty (30) days after shipment date, and any unpaid balance shall then be payable to SELLER. Installation shall be deemed complete upon the earlier of (a) when the products are installed and accepted by BUYER or (b) when BUYER uses the products for commercial purposes.

**6. TAXES.** BUYER shall pay sales, use, property, gross receipts or any other taxes imposed upon the transaction, products sold and/or installed, whenever payable, whether levied upon the BUYER or SELLER. "Products Sold" shall include any products in transit to, or on the premises of the BUYER, or held under this agreement for delivery to the BUYER.

**7. SHIPMENT.** Unless specified otherwise, all shipments are ex works, and, except for obligations under warranty, SELLER'S responsibility for products ceases and risk of loss passes to BUYER upon pickup at SELLER'S warehouse. Unless instructed otherwise by BUYER, SELLER will make appropriate arrangements for shipping and insure the products for their full replacement value at the BUYER'S expense. In the event of loss or damage during shipment BUYER'S claim should be made against the carrier. For the BUYER'S own protection, it is urged that all products be carefully inspected immediately upon receipt and in the event of damage, notice of claim be filed with the carrier without delay. Such notice should also be given to SELLER, so that SELLER can cooperate with the BUYER in the protection of BUYER'S interest.

**8. RETURNS.** No products may be returned without SELLER'S prior written permission. If products are returned without authorization, SELLER will notify BUYER to make arrangements to make return shipment arrangements. If return shipment has not been accomplished by BUYER within thirty (30) days of such notification, SELLER may dispose of the products without obligation to BUYER. All freight charges for authorized returned products, together with a standard restocking fee, shall be charged to the BUYER'S account and paid by BUYER.

**9. DELIVERY.** When delivery of the products is delayed at the request of BUYER beyond the specified delivery date, the products may be placed in storage by SELLER at an appropriate warehouse at BUYER'S expense and SELLER may immediately invoice the BUYER for the balance due. Delivery schedules are approximate and are based on conditions prevailing at the time of acceptance. SELLER will attempt to complete shipments as specified, but assumes no responsibility or liability for loss or damage by reasons including, but not limited to, delay or inability to ship or install caused by Acts of God; fire; floods; war embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any governmental act, regulation or request, shortage of labor, materials or manufacturing facilities, or any other cause or causes beyond SELLER'S reasonable control. Should manufacture, delivery or installation be delayed in whole or in part by such causes, SELLER'S time for performance shall be extended by the duration of the delaying cause. Products shall be delivered to BUYER'S receiving dock only. Arrangements for internal movement of products to the final installation location are the responsibility of the BUYER. Damage and risk of loss of any kind or nature after delivery to the carrier shall be at BUYER'S sole risk. Any claims for damage shall be made against the carrier by the BUYER.

**10. TERMINATION.** If the BUYER shall, for any reason, terminate any order in whole or in part, the notice of termination must be given in writing to the SELLER. The SELLER shall thereupon cease work and the BUYER shall pay the SELLER the following: (a) the price provided in the order for all products which have been specifically manufactured, modified or ordered by SELLER on a noncancellable basis prior to termination and which conform to the provisions of the purchase order, which products shall be delivered to the BUYER and (b) actual expenditures made by the SELLER in connection with the uncompleted portion of the order, including reasonable cancellation and restocking charges in accordance with the policies of SELLER.

## 11. WARRANTY.

**SYSTEM COMPONENTS AND ACCESSORIES.** SELLER warrants that new products, except those specifically referenced below, will be free from defects in material or workmanship for a period of six (6) months from the "warranty commencement date", which will be the earliest of (1) date of original installation and acceptance, (2) thirty (30) days after the date of delivery, or (3) date of first commercial use for a period of four (4) hours or more. SELLER will, at its option, either repair or replace the defective equipment. Any repairs performed by SELLER during the warranty period will not affect the warranty commencement date, warranty duration or expiration date of the warranty period.

BUYER is responsible for freight and insurance costs for warranted equipment returned to SELLER'S factory. The warranted, repaired equipment will be returned to the BUYER, freight pre-paid, via standard commercial surface transportation.

**THIRD PARTY EQUIPMENT.** SELLER does not warrant third party equipment and/or components supplied with EYEC-AMERICA equipment. Such items will be covered by the warranty policies of the respective manufacturers unless otherwise stated in writing.

**COMPUTER HARDWARE & SOFTWARE.** Warranty obligations for repair or reconfiguration of computer hardware and software are void where unauthorized modification has occurred. Similarly, this warranty does not extend to repairs for system malfunctions where unauthorized or third party software has been installed on the system. Protection of the computer system from electrical surges or power interruption as recommended by SELLER must be provided at all times to validate this warranty.

**ELECTRICAL & COMPRESSED AIR SUPPLY.** SELLER'S obligation for equipment performance and warranty repair does not extend to those systems which are utilized with electrical or compressed air services of inadequate quality or consistency.

**IMPORTANT:** SELLER'S sole obligation is to repair or replace equipment proved to be defective. This warranty does NOT extend to (1) degradation of consumable items (2) defects or damage resulting from accident, misuse, exceeding known limitations for use, overheating, neglect, unauthorized modifications, failure to follow an approved preventative maintenance schedule, or improper installation, maintenance, or application.

This warranty is void when installation, service or repair is performed by service personnel who are not authorized by SELLER. This warranty is extended only to the first end user of the equipment and is NOT TRANSFERABLE to subsequent users. Reconditioned or used equipment is sold "AS IS" with no warranty unless otherwise indicated.

SELLER DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE OR RESPONSIBLE FOR DIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN ANY EVENT, THE MEASURE OF DAMAGES SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE DEFECTIVE GOODS.

**12. TRIAL PERIOD.** In the event BUYER and SELLER agree on a Trial Period for certain items, BUYER may decide to return the covered items for any reason at any time during the Trial Period and will receive a refund from SELLER. To qualify for a refund, items must be paid in full by BUYER and received by SELLER within the agreed Trial Period in as new condition. Third party equipment does not qualify. At the SELLER'S sole discretion the refund may be given as a credit and may be withheld to cover BUYER'S other open invoices. In any event BUYER will be responsible for shipping and handling costs, costs for installation, training and equipment removal, taxes, import and/or export duties, customs fees and all cost to return such systems.

**13. INTELLECTUAL PROPERTY.** No rights to any intellectual property residing in the products, software, documentation, or any data furnished hereunder are granted except the right to use such intellectual property subject to SELLER'S Standard Software License. BUYER will use the same standard of care to protect SELLER'S confidential information as it uses to protect its own confidential information. BUYER recognizes that, among other items, computer software necessary to the operation of products is confidential information belonging to SELLER or to third parties to whom SELLER is under an obligation not to disclose such confidential information except to certain authorized parties, such as the BUYER. Unless otherwise agreed by SELLER in writing, BUYER is merely granted a license to use such software consistent with the purpose by which it is delivered to BUYER. Such license shall be revoked upon any violation of the terms and conditions stated herein. BUYER shall have no right to copy, reproduce, or disclose to others in whole or in part any of the above without the prior written permission of SELLER.

**14. CHANGES.** In the event the BUYER requires changes which add to the SELLER'S cost, the price of the products will be increased and the delivery date will be extended by the amount of the delay which such change causes in such delivery date. SELLER will notify BUYER as soon as practicable of the amount of such increase in price or extension of delivery date, but SELLER'S right to receive such increase in price or extension of delivery dates will not depend upon SELLER asserting a claim under this clause within any particular time limit.

**15. CHANGES IN DESIGN.** SELLER reserves the right to modify or change the products in whole or in part, at any time prior to the delivery thereof, in order to include therein electrical or mechanical refinements deemed appropriate by SELLER, but without incurring any liability to modify or change any product previously delivered, or to supply new products in accordance with earlier specifications.

**16. PRODUCT OPERATION.** BUYER agrees that all products purchased hereunder shall be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with SELLER'S written instructions and for the purpose for which the products were intended. SELLER does not offer and will not be responsible for training of BUYER'S personnel except as may be agreed in writing. BUYER agrees to indemnify and hold SELLER harmless from and against all claims, demands, actions, causes or actions, judgements and costs, including reasonable attorney's fees, arising out of or in connection with the operation of the products by the BUYER, unless caused by SELLER'S negligence.

**17. CUSTOMER SAMPLES.** In the event BUYER ships samples or equipment to SELLER, BUYER will be responsible for the cost of return or disposal of such items. SELLER will notify BUYER when such items are ready for return to BUYER and BUYER will have thirty (30) days to arrange for return, after which SELLER may dispose of the samples or equipment and charge BUYER for all costs incurred.

**18. ERRORS.** SELLER does not accept any liability for stenographic, clerical or other errors.

**19. COMPLIANCE WITH LAWS.** SELLER agrees to observe and comply with all applicable federal, state and local laws, rules and regulations in the performance of this order and specifically represents that any products to be delivered hereunder will comply with all of the applicable requirements of the Fair Labor Standard Act, as amended. In the event that any regulatory activity is performed by other than SELLER'S personnel, BUYER shall be responsible for fulfilling any and all reporting requirements. SELLER shall only report activity performed by its personnel.