

## **TERMS AND CONDITIONS:**

**(Stated in U.S. Dollars):**

Kim Lighting, (hereinafter "Kim") Kim hereby gives notice of its exception to any different or additional Terms and Conditions other than as stated herein and these Terms and Conditions supersede all those published and issued previously by Kim. All sales are expressly made conditional on Buyer's consent to the following Terms and Conditions. Buyer's acceptance of the provisions of Kim's Terms and Conditions as recited herein shall be conclusively presumed on Buyer's receipt of the goods. These Terms and Conditions constitute the entire agreement between Kim and the Buyer, and supersede other communications between the two parties, whether written or oral.

**PRICING** - Refer to appropriate price schedule, unless otherwise quoted.

**TERMS** - Kim's terms are Net 30 Days, unless otherwise quoted or indicated on the face of Kim's invoice. Remittance address and payee is indicated on the invoice. Invoices dated the 26th through 31st will be considered as dated on the first day of the following month. Invoices will be dated the day of shipment. A service charge of 1 1/2% per month or, if such rate exceeds the maximum lawful rate, the maximum lawful rate shall be assessed on all past due payments and shall be payable on demand.

**QUOTATION PRICE PROTECTION** - All prices shown in the price lists are subject to change without notice. All quotations on special products or modifications to catalog items are binding only if confirmed in writing by the factory for the period shown on the quotation. Price protection will be provided for a period of thirty days from date of quotation from Kim.

**HOLD ORDERS** - Hold for release orders for a specific job will be provided price protection for 5 months from the date the order is received, with 1% escalation each month thereafter for any part of the order not released, unless otherwise quoted. Kim must have approved drawings (when necessary) within the five (5) month period and a release for shipment as soon as possible. Production and procurement of components will be withheld until a firm release date is given. Hold for release orders without a specified time period on a quotation will be canceled after one year from date of the order.

**SALES AND SIMILAR TAXES** - Kim's prices do not include Federal, State or Municipal sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to the sale or use of the equipment hereunder, shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide Kim with a tax exemption certificate acceptable to the taxing authorities.

**ACCEPTANCE OF ORDERS** -All orders are subject to acceptance by Kim at its order receipt location and are subject to Kim Terms and Conditions. Kim reserves the right to select its customers and reject any order. Additions to orders are allowed provided the original order has not yet been released to manufacturing. Any other terms proposed by Buyer and/or stated in a customer's purchase order are not allowed unless expressly accepted in writing. Acceptance of any order is subject to availability of product and the ability of Kim to deliver. Orders will be billed at prices in effect at time of shipment unless otherwise agreed. We reserve the right to refuse to make direct shipments to destinations outside the customer's normal trading area. Buyers placing orders who are not appointed to purchase and sell Kim products will be referred to the closest appointed stocking distributor in their area.

## **TERMS AND CONDITIONS OF SALE (Stated in U.S. Dollars): (“Continued)**

**DELAY** - Kim will use reasonable efforts to meet shipment or delivery dates specified by Kim, but such dates are estimates only. Kim will not be liable for any delay or non-delivery in shipping for any reason but not limited to delay or non-delivery caused directly or indirectly by Acts of God, fire, flood, strike or lockout or other labor dispute, accident, civil commotion, riot, war, governmental regulation or order, whether or not it later proves to be invalid, or from any other cause or causes (whether or not similar to any of the foregoing) beyond Kim’s control. In no case will Kim be liable for loss of profits or any indirect, special, incidental, multiple, punitive or consequential damages on account of any delay in delivery or non-delivery whether or not excused hereunder.

**SHIPPING DEFERMENT** - Buyer requests for shipping deferment must be approved by Kim and are subject to price negotiation.

**LIMITED WARRANTY** - When installed in accordance with Kim installation instructions and accepted trade practices, the following shall apply:

**GENERAL PRODUCT** -All material and component parts used in the manufacture of Kim products are warranted to be free from defects of material and/or workmanship for 1 year from date of sale, with the following exceptions:

**Auxiliary Equipment** – All auxiliary equipment (such as lamps, ballasts and transformers) provided by and/or included in Kim products shall carry the component manufacturer’s warranty. **Copper and Bronze**

**Landscape Components** – Copper and bronze landscape fixture components shall be warranted against defects of material and/or workmanship, and failure due to corrosion, for a period of 25 years from date of sale.

**Composite In-Grade Components** – Composite In-Grade fixture components installed below grade, shall be warranted against defects of material and/or workmanship, and failure due to corrosion, for a period of 7 years from date of sale. **Aluminum Landscape components** – Aluminum Landscape fixture components not in direct contact with soil, shall be warranted against defects of material and/or workmanship for a period of 3 years from date of sale. Aluminum fixture components in direct contact with soil shall be warranted from defects of material and failure from corrosion for a period of 1 year from date of sale.

**LIMITATION OF LIABILITY** - Only products, which are installed, used and maintained in accordance with applicable Kim instructions, specifications and acceptable trade practices, are covered by the Kim warranty. During the warranty period, with proof of purchase, Kim will repair or replace with the same or similar product, at Kim’s option, without charge. Labor costs are the owner’s responsibility and are excluded from this warranty. This warranty is void if the product is modified, tampered with, misapplied, poorly installed, improperly maintained, or subjected to abnormal conditions. Repair or replacement as provided under this warranty is the exclusive remedy of the purchaser. This warranty is in lieu of all other warranties, expressed or implied, including any implied warranty of fitness for a particular application. Kim Lighting shall not be liable to the purchaser for indirect or consequential damages.

Any claim by Buyer for breach of the foregoing warranty shall be deemed waived by Buyer unless submitted to Kim in writing within thirty (30) days from the date Buyer discovered, or by reasonable inspection should have discovered the alleged breach. Any cause of action for breach of the foregoing warranty shall be brought within one year after the cause of action has occurred.

**Any charges for labor, materials, etc. that do not have our written approval before such work is implemented will not be allowed. Contact Kim Warranty Services for support. NOTE: Catalog pages are for reference only. Specifications and dimensions may change without notice.**

## **TERMS AND CONDITIONS OF SALE (Stated in U.S. Dollars): (“Continued)**

**FREIGHT ALLOWANCE AND F.O.B. POINT** - All sales are F.O.B. shipping point. Risk of loss and title of goods shall pass to Buyer upon delivery to the designated carrier. Freight is prepaid and allowed on all shipments of products with a net order value of \$2,500 and above to destinations within the contiguous United States. Shipments to Alaska and Hawaii will be made to the nearest ports of embarkation in the continental U.S. as prepaid to such points (Freight allowance for Alliance orders through the end of 2008 remains at \$2,000). Consult factories for applicable Terms and Conditions outside the contiguous United States.

Kim reserves the right to select carrier, routing and method of transportation, including flatbed trailers on all shipments via least expensive surface route within the Contiguous United States. Buyer will assume all charges for transportation specified via more expensive means. Multiple deliveries for released portions of orders are routed considering the shortest length of haul. Acceptance of a specified routing does not constitute a guarantee of ship date, transit time or arrival date.

Kim reserves the right to ship all prepaid orders in one complete shipment. Partial shipments may be made at our discretion. Kim will not be responsible for any cartage or storage charges at destination. Kim’s responsibility for exception-free delivery ceases when the transportation company receives shipment in good condition. Claims for loss or damage must be reported directly to the carrier. Kim’s willingness to assist does not indicate liability for claim or replacement. Special for Poles – Poles delivered via flatbed will be loaded according to size and type, and may not necessarily reflect the delivery order. Poles shipped via flatbed may require the customer to have a forklift available at the site for unloading. All other charges and services provided by the carrier at the consignee’s request including but not limited to redelivery or reconsignment are the responsibility of the customer.

**PACKAGING** - Products will be packaged as Kim deems appropriate for protection of goods against damage due to normal handling. Consult factory for export packing information or special handling.

**PARTIAL RELEASE** - If an order has multiple releases specified by the Buyer, each release will be treated as individual orders, relative to freight allowance and minimum billing. Kim will, upon request, make partial shipments of all pour items on a prepaid basis providing the original order qualified for freight allowance and will ship the balance of the material on any given order upon completion of that order. Requests for partial shipments may include additional freight charges.

**BACK ORDERS** - Back orders that are the responsibility of Kim will be shipped F.O.B. factory or point of shipment with freight prepaid and allowed via the most cost effective method, providing the original order qualified for freight allowance.

**MINIMUM BILLING - Standard Orders - \$150 net per order.**

**Parts - \$30 net per order.**

### **CANCELLATIONS**

**Stock Product** - Buyer may cancel orders with written notice to Kim subject to the following conditions and with Kim’s written consent. For current stocked product the buyer shall accept delivery of and pay for at the agreed upon prices all products which are released and/or allocated for this order. Kim will always try to accommodate requests for cancellations but cannot guarantee stoppage of shipment for stocked product. If an order for stocked product is stopped after picking prior to shipment buyer shall pay any costs associated with this order.

If a cancellation request is received and the order cannot be stopped the product can be returned according to terms as outlined in the Return Goods Policy section.

## **TERMS AND CONDITIONS OF SALE (Stated in U.S. Dollars): (“Continued)**

**Non-Stock Product** - Cancellation of non-stock product may be made only if no work has been performed and no material purchased. If work has been performed any costs incurred will be charged to the customer, which may include a cancellation charge up to the price of the product. Upon cancellation, buyer owned materials will be disposed of by the seller at its discretion.

### **RETURNED GOODS**

**GENERAL CONDITIONS** applying to all transactions:

1. Merchandise is not returnable without the written consent of Kim. Kim is not obligated to consider requests to accept returned merchandise except for merchandise shipped in error by Kim.
2. Request for permission to return merchandise must be made in writing within 90 days from date of shipment and expires 90 days after receipt except defective products, and Buyer must provide original Kim Lighting invoice number.
3. All returned material must be in excellent, resalable condition and packaged in the original carton. Products will be inspected upon return and any service or repair needed to place them in first class, saleable condition will be charged and added to the restocking charge. A 35% minimum restocking charge will be applied for landscape lighting fixtures (illustrated in the Landscape Lighting Catalog) and 50% for all other products, plus outbound freight previously prepaid by Kim. Credit will be issued for only the actual quantity received and will be based on original invoice or price in effect at the time of the return shipment, whichever is lower.
4. Ballasts ordered incorrectly by the buyer (voltage, mode etc.) will be subject to a 20% handling charge plus freight charges. If these ballasts are part of a pre-wired ballast assembly, the entire assembly must be returned. If ballast lead wires are cut, or any alterations are made, credit will not be allowed.
5. Poles, modified, custom, non-standard, discontinued and catalog items not normally stocked at Kim are not returnable for credit under any circumstances.
6. Return Material Authorization (RMA) form, supplied by Kim, must accompany the return shipment.
7. Return freight must be prepaid. Material must be received by Kim within ninety, (90) days of issuance of RMA and must be non-discontinued product.
8. KIM reserves the right to deduct for any damage sustained in transit.
9. Unauthorized returns will be refused. Items returned without proper authorization from Kim Lighting will, at the sole option of Kim, be returned to Buyer freight collect, or scrapped immediately with no issuance of credit. Unauthorized material included in a return will not be credited. Disposition of these items is left up to Kim Lighting. All non-stocking, special or custom made product or poles are not returnable.
10. If the return of goods is made necessary through any fault of Kim and permission is granted for its return, Kim will give full credit including all transportation charges if returned per transportation routing instructions on the RMA.
11. The Buyer shall remain absolutely liable for the purchase price of all merchandise, and Kim will not be bound by terms and conditions imposed by any third party.

## **TERMS AND CONDITIONS OF SALE (Stated in U.S. Dollars): (“Continued)**

**PRODUCT SPECIFICATION** - Kim reserves the right to discontinue items, modify designs, and change specifications or prices without incurring any liability. Discontinued fixtures if ordered may not be returned for credit. Unless specifically noted on our acknowledgement, Kim shall accept and process orders for standard items in accordance with the latest Kim published catalog and specification sheets. We will not be responsible for, nor will we accept, any order requiring adherence to plans, specifications or addenda.

**INVOICING** -All invoices are due and payable per the standard terms stated herein. Buyer shall be liable for legal fees incurred by Kim Lighting to collect past due amounts. In the case of an apparent discrepancy in a line item charge, the Buyer is obligated to advise Kim Customer Service in writing of the nature of the claimed discrepancy within five (5) days of receipt of the invoice. This includes all requests for proof of delivery. A claim of discrepancy does not relieve Buyer of the absolute obligation to pay the remaining balance of the invoice in accordance with the standard terms of payment. Kim, after review, will have sole discretion to resolve the discrepancy; and the Buyer expressly agrees to abide by Kim’s decision. Kim will promptly advise Buyer of its decision regarding any disputed items or charges.

**CONFIDENTIALITY** - Buyer agrees that all information furnished by Kim in connection with the sale of items will be confidential. The Buyer agrees not to disclose any such information to any other person, or use such information for any purposes other than performance hereunder.

**OSHA** - Kim warrants that at time of shipment, the equipment will conform to the applicable occupational safety and health standards promulgated pursuant to the Federal Occupational Safety and Health Act of 1970, which are in effect on the date that Kim enters its acknowledgement of Buyer’s order. The Buyer’s exclusive remedy and Kim’s liability for breach of this warranty is limited to replacement of the nonconforming equipment.

**FAIR LABOR STANDARDS ACT AS AMENDED** - Kim represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

**EXPORT REGULATIONS/PERMITS** - Please contact the sales department for a copy of terms and conditions for Canadian or International customers.

**GENERAL** -Any assignment of rights hereunder by Buyer without the prior written consent of Kim shall be void. No waiver by Kim or any default shall operate as a waiver of any other default or of the same default on a future occasion. Kim shall have the right to credit toward the payment of any monies that may become due from Buyer, any amounts that may now or hereafter be owed by Buyer under this or any other agreement or transaction between Kim and Buyer. If any provision of this agreement is found to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not be affected. All clerical errors are subject to correction. The construction, interpretation and performance of Kim and Buyer hereunder and all transactions hereunder shall be governed in accordance with the laws of the State of California. Venue for any litigation arising hereunder shall lie exclusively in the State and Federal Courts of California.

Effective Date: 4-1-08