

TERMS AND CONDITIONS OF SALE

The following are the terms and conditions ("Terms") under which **Softbox Systems, Inc.**, a South Carolina corporation ("Seller"), agrees to sell and the buyer ("Buyer") agrees to purchase goods. Buyer's assent to these Terms shall be conclusively presumed from Buyer's acceptance of any or all goods ordered from Seller.

1. **General.** These Terms and any related order confirmation and/or invoice, constitute the entire understanding between Buyer and Seller and Seller objects to any additional or different terms. These Terms also apply to any change orders issued under Seller's order number except as expressly stated on any related order confirmation. No modifications or changes to these Terms shall be valid or binding unless Seller and Buyer agree to such modifications in writing.

2. **Shipment and Delivery.** Unless otherwise specifically indicated on an invoice, Buyer must pay for freight and shipping, which is included in the price listed on the invoice. Seller shall not be liable for delays, loss or damage in transit. Buyer shall have five (5) days after receipt of goods to reject such goods, and to make a claim for shortage. Buyer's rejection shall be in writing and state Buyer's reason for rejection. Upon rejection, all goods must be held with reasonable care and intact until re-inspection by Seller or Seller's agent. Buyer shall be deemed to have accepted all goods if Buyer fails to notify Seller of its rejection as set forth herein. Buyer acknowledges and agrees that the remedies set forth in this provision are Buyer's exclusive remedy for non-conforming goods.

3. **Terms of Payment.** Terms of payment shall be set forth on the invoice Seller sends to Buyer and if nothing is set forth thereon, net thirty (30) days from the invoice date. As collateral security for the payment of the purchase price for the goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accession thereto and replacements or modifications thereof, as well as proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the applicable Uniform Commercial Code. Unless prohibited by law, a service charge of one-and-one-half percent (1-1/2%) of the total amount due shall be charged each month on the open account for payments not received within the time specified in the invoice or as otherwise set forth above. If the foregoing is prohibited by law, there shall be charged to Buyer on account of such payments the maximum contractual amount permitted by law. Acceptance of this service charge shall not be deemed a waiver of any rights Seller may have by reason of non-payment by Buyer.

4. **Assurance of Performance.** Seller reserves the right even after partial payment on account of any contract with Buyer to demand from Buyer adequate assurances or security for the due performance for any and all of the obligations of Buyer and refusal to furnish such adequate assurance or security or the failure of Buyer to perform any of its obligations under this or any other existing contract will entitle Seller, without notice to Buyer, to suspend shipments or cancel a contract or so much of it as may remain unexecuted, all without incurring liability to Buyer and without prejudice to any claim for damages or other remedy Seller may be entitled to make.

5. **Warranties and Consequential Damages.** SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE GOODS, EITHER EXPRESSED OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR THE FOLLOWING: (a) unless Buyer's own goods are being processed, Seller warrants unencumbered title to the goods to be shipped; and (b) Seller warrants that at the time of shipment the goods to be shipped shall conform to the description, grade, specification and condition of goods ordered, confirmed and invoiced. Buyer agrees that Seller shall not be liable under any circumstances for consequential or incidental damages, and that Seller's liability arising out of these Terms is limited solely and exclusively to, at Seller's option, the replacement or repair of defective goods. In no event shall Seller's liability under these Terms exceed the price of the goods giving rise to the claim. When replacing lost, damaged, or defective goods, Seller may reimburse Buyer for the cost of goods, without compensation for conforming the goods to manufacturing specifications or specifications of a set and without compensation for removal, installation or transportation of goods. No action for any breach of warranty shall be brought more than one (1) year after delivery of such goods to Buyer. Seller is not responsible for

disposal of, or recycling of goods after their intended useful life. Goods and any components or accessories thereof including, without limitation, PCM bricks and insulated panels are warranted for single use only, unless otherwise agreed to in writing by Seller. Buyer agrees that it shall be solely responsible and liable to its customers, end users and/or other third-parties in the event of injury, harm or damages suffered by any of them, for any reason and under any circumstance, whether or not due to failure of the goods in any manner, and whether foreseeable or unforeseeable. Buyer shall indemnify and hold harmless Seller and Seller's directors, officers, employees and/or other representatives, from any and all claims, however and whenever presented, by any third-party including any customers and end users of the goods, wherein such claim(s) arise out of the goods including packaging, design, materials, and/or manufacturing, or to the acquisition, shipping, storage, handling, assembly, use and/or misuse, marketing, resale, and/or any other action whatsoever of Buyer or of an end user or a third-party, with respect to the goods. Buyer agrees that the scope of the foregoing indemnification shall include indemnification from damages of any kind, including but not limited to direct, indirect, compensatory, special, incidental, punitive, or consequential damages, and from any expenses required to defend against such claims, including but not limited to legal costs and fees, attorney fees, and reasonable travel expenses, including but not limited to conveyance, lodging, food and reasonable incidental costs. Buyer further agrees to indemnify and hold harmless Seller from any and all costs associated with performing a recall or other corrective disposition of the goods, whether voluntary or to comply with an order issued by any entity having authority over such matters, including but not limited to all costs to repair, replace, and/or recover the goods and/or to notify any and all affected customers, end users and other third-parties.

6. **Taxes; Compliance with Law.** Buyer shall be responsible for any taxes or duties, now or hereafter imposed by the United States, and state, local or other government entity on the sale, export, import, or use of the goods. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms.

7. **Force Majeure.** Seller shall not be liable for any delay or failure in manufacturing or delivery due to fire, strikes, disputes with workers, war, civil commotion, epidemics, pandemics, floods, accidents, delays in transportation, shortages of fuel or other materials, shortages of labor, acts, demands, or requirements of the government, or to any other causes beyond the reasonable expectation or control of Seller. The existence of such cause of delay shall justify the suspension of Seller's obligations and shall extend the time of performance on the part of Seller to such extent as may be necessary to enable it to make delivery in the exercise of reasonable diligence after the causes of delay have been removed. If the performance of Seller is rendered more burdensome by reason of any of the causes above-mentioned, Seller may request an increase in the price of the goods to compensate for such extra burden and may cancel the sale without penalty upon failure of Buyer to agree to such price increases and to satisfactorily secure their payment. If the delay shall continue for ninety (90) days, then either party may, by written notice to the other, cancel the sale except as to goods manufactured, or in the process of manufacture, at the time such notice is received.

8. **Title and Risk of Loss.** Title and risk of loss or damage shall pass to Buyer upon the earlier of Seller's delivery of goods to a carrier or receipt of goods by Buyer. If, upon Buyer's request, Seller assists Buyer in processing claims against a carrier, Buyer solicits and accepts such assistance at its own risk.

9. **Cancellation.** Seller may terminate an order with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the invoice; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Except as otherwise provided in these Terms, no order for goods shall be cancelled except by mutual consent. Notice is hereby given that Seller will not consent to cancellation if processing of Buyer's goods has commenced, special stock has been purchased or manufactured for this order, stock has been assembled for loading, or the goods for the order are being loaded or are in route to destination.

10. **Partial Shipment.** In any sale contemplating shipment by Seller, Seller shall not be required to ship the total amount of the subject goods in one shipment but may make partial shipments at Seller's convenience. If

partial shipments are made, Seller at its option may invoice by or for such partial shipment and Buyer shall pay according to the terms thereof.

11. **Governing Law; Jurisdiction.** The Uniform Commercial Code and other laws set forth in the laws of the State of South Carolina, United States of America shall be the governing law of these Terms and each contract thereunder, without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of South Carolina. Each party irrevocably agrees that the courts in Greenville, South Carolina shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or their subject matter or formation.

12. **Attorney Fees.** Buyer agrees to pay all costs of collection for sums due for the sale of goods, including reasonable attorney fees, whether or not litigation is actually commenced. In the event a legal proceeding is instituted to enforce any term of condition of sale, the prevailing party shall be entitled to recover from the other party such sum as the court may deem reasonable as attorney fees at trial or on appeal in addition to all other sums provided by law.

13. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with any order and these Terms is confidential, solely for the use of performing any orders in accordance with these Terms and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return or destroy all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this provision. This provision does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

14. **Binding Effect.** These Terms shall inure to the benefit of and be binding upon Buyer and Seller, their legal representatives, successors and permitted assigns. No right hereunder may be assigned by Buyer without the prior written consent of Seller, which shall not be unreasonably withheld.

15. **Severability.** If any provision of these Terms is invalid or unenforceable in any respect for any reason, the validity and enforceability of the provision in any other respect and of the remainder of these Terms shall be unimpaired.

16. **Waiver.** Waiver by Seller or Buyer of strict performance of any of these terms or conditions shall not be a waiver of or prejudice of any right to require strict performance of the same terms or conditions in the future or of any other of these terms or conditions.

17. **No Third-Party Beneficiaries.** These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

18. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

19. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the order confirmation and/or invoice or to such other address that may be designated by the party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided herein, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this provision.