

HIGH END SYSTEMS, INC.'S STANDARD TERMS AND CONDITIONS OF SALE AND WARRANTY

TERMS AND CONDITIONS

1. **Acceptance of Terms.** The following terms and conditions, and those on the face hereof, shall control as to any order for High End Systems, Inc. ("HIGH END") products ("Products") accepted by HIGH END ("Order"), notwithstanding any terms and conditions that may be contained in any purchase order or other document of Customer, and HIGH END's acceptance of any order is expressly made conditional on Customer's assent to the following terms and conditions and those on the face hereof (the "Agreement"). Such terms and conditions will constitute the entire Agreement between the parties as to any order and will supersede any prior understandings, agreements, representations, or warranties. Such terms and conditions will not be modified, added to, superseded or otherwise altered except by written document signed by the President of HIGH END, or his/her designee, notwithstanding any terms and conditions contained in the purchase order or other document of Customer. HIGH END's commencement of performance and/or delivery shall not constitute a waiver of these terms and conditions or any acceptance of any terms and conditions contained in the Customer's order or other documents. Acceptance of any Product or service by the Customer will be construed as acceptance of HIGH END's terms and conditions. Any dispute or questions of construction with respect to any order placed with HIGH END shall be governed by the laws of the State of Texas.
2. **Conditions Precedent.** The obligations of HIGH END in this Agreement are subject to the express condition precedent that Customer shall fully perform its obligations under this Agreement, subject to any waiver by HIGH END which shall be at its sole discretion.
3. **Payment Terms.** Payment terms are net 30 days after date of invoice unless otherwise stated on the sales acknowledgment or invoice. If HIGH END in good faith doubts Customer's ability or willingness to pay, HIGH END may in its discretion complete its performance of this contract upon a cash in advance basis or make deliveries only upon a C.O.D. basis or file a UCC filing or suspend all or part of its performance here under. All payments are applied to the oldest outstanding invoice. Accounts over thirty (30) days are subject to a one and one-half percent (1 1/2%) per month (or the highest rate permitted by law, whichever is less) late payment charge. HIGH END will have the option of withholding performance under any and all orders from the Customer if an invoice remains unpaid when due.
4. **Delivery and Risk of Loss.** HIGH END will attempt to ship the Order for delivery on or about the times requested by the Customer, although time shall not be of the essence in this contract in this regard. HIGH END will attempt to follow Customer's written instructions as to mode and routing of shipments. In absence of such instructions, HIGH END shall have absolute discretion as to mode and routing of shipments, including express or parcel post for small shipments. HIGH END will prepay and bill freight on shipments unless specifically quoted otherwise or upon written instruction from the Customer. Where the Customer has requested expedited freight, the Customer will be responsible for the incurred additional charges. Orders are shipped at the Customer's risk and HIGH END's obligation to deliver Orders is discharged upon the Order's delivery in good condition to the carrier. Shipments are FOB HIGH END's factory or warehouse. Unless specifically prohibited, partial shipments will be made. Federal, state and/or local taxes, duties and other charges are the responsibility of the Customer. If for any reason Customer is unable or unwilling to take delivery of the Order, HIGH END may, at its sole discretion, store the Order and any and all costs associated with such storage, including taxes or insurance, shall be immediately paid by Customer. Unless otherwise specifically noted and where shipping terms dictate that Customer take delivery at HIGH END's facilities, Customer is solely responsible for determining any export licensing requirements, to obtain any necessary licenses or official authorizations, and to handle any customs formalities for export of the Order. Claims for shortage or damaged goods must be made within ten (10) days of receipt by the Customer. The Order will be carefully packed and delivered in good condition to the carrier. All claims for loss or damage in transit must be made by the consignee directly to the carrier. HIGH END will render every aid and assistance in the presentation and enforcement of such claims without waiver of our rights to have compliance with the terms of payment of our invoices.
5. **Warranty.** HIGH END's Standard Warranty and limitation of liability ("Warranty") is the complete and final warranty with regard to Products. HIGH END's obligations under the Warranty are limited to repairing or replacing any of the Products which shall, within the applicable Warranty period, fail due to fault manufacture, design, or workmanship. Customer acknowledges and agrees that the provisions of the Warranty are the sole and exclusive remedy available to the Customer for any defective Products.
6. **Warranty Disclaimer.** EXCEPT AS SET FORTH IN THE WARRANTY, HIGH END EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
7. **Change Orders.** Any changes in engineering drawings, specifications, or in other terms of manufacture, assembly or shipment, requested by Customer, must be in writing and approved by HIGH END. If any such change by Customer causes an increase in the cost of, or in the time required for performance of, any part of the contract, then HIGH END shall make a reasonable adjustment to the price of the Order. Products ordered which differ in any way from HIGH END's standard catalog items will require drawings approved in writing by the Customer. When drawings are approved, they shall take precedence over all other written or verbal instructions.
8. **Prices.** All prices are in the applicable currency listed on the invoice. Prices, models and specifications are subject to change without notice. Orders must be in writing. Phone orders will be accepted from established accounts when followed by written confirmation. The acceptance of any Order does not imply conformance with plans and specifications unless the plans and specifications accompany the Order and are accepted as binding by HIGH END. Price protection will be given on Orders entered for immediate shipment and for project Orders entered before the effective date of a price increase. All other Orders will be billed at the current price at time of shipment. Quotations for custom Products are valid for thirty (30) days. Orders are effective only when accepted and acknowledged by the factory. Minimum order is \$25.00 net, exclusive of freight.
9. **Cancellation.** If Customer cancels all or any portion of the Order prior to shipment, Customer shall be liable to HIGH END for a cancellation charge equal to HIGH END's actual costs incurred in connection with that portion of the Order that is cancelled, including, without limitation, labor and materials.
10. **Security Interest.** Customer represents that it is not bankrupt or insolvent. HIGH END retains a security interest in the goods to secure payment of the purchase price and all other indebtedness now or hereafter owed by the Customer to HIGH END. At HIGH END's request, Customer will execute a financing statement or statements evidencing such security interest and will take any other action necessary to perfect the same.
11. **Waiver.** No failure of HIGH END to insist upon or compel compliance by the Customer with any provision of this Agreement shall be construed as a waiver by HIGH END of its right to insist upon compliance with this Agreement. No waiver by HIGH END of any breach by Customer shall be effective unless in writing signed by the President of HIGH END, or his/her designee, and no waiver by HIGH END of any breach by Customer shall be deemed a waiver of any other breach.

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12. Non-Warranty Returns. Products returned without HIGH END's written permission will not be accepted. Products returned for credit must be in accordance with this Agreement. Products must be unused, in original packaging and in saleable condition, subject to HIGH END's quality control and test inspection. Restocking charges of \$25.00 or 25% of invoice (whichever is greater) plus any repacking or reconditioning costs will be deducted from the credit. Returns for warranty work will be in accordance with HIGH END's established warranty procedures. In no case will permission be granted to return specially-modified or custom Products, or merchandise invoiced more than six (6) months prior to date of Customer's return request.
13. Use of Image. Customer agrees and consents to allow HIGH END to make reference to and/or use: (i) the installed HIGH END Products, (ii) the location of the installed Products, (iii) Customer's respective logo(s), trademark(s) or any other graphical representation of Customer's use of the HIGH END Products, and/or (iv) photographs of the installed HIGH END Products in any material of any kind used or produced by or at the direction of HIGH END, without the prior written consent of Customer; provided, however, that HIGH END may not, without prior written consent, do any of the foregoing in a manner that implies endorsement by Customer.
14. Force Majeure. HIGH END shall be released from any liability whatsoever under this Agreement for any delay in performance or delivery or failure to perform or deliver, when such delay or failure to perform or deliver is caused by or due to circumstances or situations that are beyond the reasonable control of HIGH END, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, material shortages, labor stoppages or slowdowns, inability to obtain materials or other industrial disturbances; and (i) shortage of adequate power or transportation facilities.
15. Confidentiality. To the maximum extent permitted by law, the terms and conditions of this Agreement, as well as any information provided by HIGH END, including but not limited to pricing, drawings, specifications or other materials prepared by HIGH END, to Customer shall be treated as confidential and shall not be disclosed to any third party or be used for any purpose except to fulfill Customer's obligations created hereunder, without the express prior written consent of HIGH END. Customer agrees to limit disclosure of the confidential information to its employees, agents, and subcontractors who have a need to know such information, and who have been informed of and agree to be bound by the confidentiality obligations of this Agreement. This confidentiality obligation shall survive the termination or cancellation of this Agreement.
16. Miscellaneous. This Agreement shall be governed by the laws of the state of Texas without regard to its conflict of laws principles. The parties agree that the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. The parties consent to the exclusive jurisdiction and venue of the courts located in Travis County, Texas for any action, suit or proceeding. If suit or action is instituted by HIGH END to enforce payment or performance by the Customer, the Customer agrees to pay all reasonable costs and attorney's fees incurred by HIGH END. If any part of this Agreement is held to be invalid, illegal, void or to be in conflict with any law, the validity of the remaining terms or provisions of this Agreement shall not be affected, and such part, term, paragraph or provision shall be construed and enforced in such a manner so as to fulfill the intent expressed in this Agreement to the maximum extent permitted by law.

WARRANTY

Warranty Coverage. HIGH END WILL ONLY BE OBLIGATED TO HONOR THE WARRANTY SET OUT BELOW UPON RECEIPT OF FULL PAYMENT OF THE ORDER.

High End Systems, Inc. ("HIGH END") warrants to the original owner or retail customer ("Customer") that during the warranty period defined below, HIGH END will repair or replace its Products that are defective in materials or workmanship which cause the Product to fail to operate in accordance with HIGH END's published specifications for the Product in effect as of the date of shipment, subject to the terms of this limited warranty. The warranty period of box Products shall begin on the date of shipment ("Warranty Start Date"), except the Warranty Start Date shall begin on the date of energization for Orders which include energization performed by HIGH END or an authorized service provider acting on HIGH END's behalf. If no energization date is recorded, however, the Warranty Start Date shall begin on the date of shipment. HIGH END warrants its Products for 2 years from the Warranty Start Date, except for the light engine for Sola series fixtures which is warranted for 5 years from the Warranty Start Date. The controlling warranty, terms and conditions, and product warranty periods is available at the time of order acknowledgment, either by hard copy or by internet link listed on the order acknowledgment.

If HIGH END shall fail to repair or replace defective Products within a reasonable time after they are returned to HIGH END, or if HIGH END shall wrongfully fail to make delivery or shall wrongfully repudiate this contract, then Customer shall be entitled to recover from HIGH END such part of the purchase price as has been paid by Customer to HIGH END. The remedy stated in the preceding sentence shall be Customer's exclusive remedy for any breach, non-delivery, or repudiation by HIGH END or for any other liability of HIGH END to Customer. This exclusive remedy shall not be deemed to have failed its essential purpose so long as HIGH END is willing and able to repair or replace defective Products in the prescribed manner.

Warranty Exclusions. This Warranty does not impose any liability or duty upon HIGH END for: (i) any Product or part of a Product damaged by or subject to accident, negligence, alteration, abuse or misuse by Customer, or any accessories or parts not supplied by HIGH END; (ii) any damage caused by the unauthorized adjustment, repair or service of the Products by anyone other than HIGH END or its authorized repair agents; (iii) any damage, to any Product, or part of a Product caused by or due to an act of God, any catastrophe resulting from earthquake, fire, flood, explosion, inability to obtain materials or utilities, or any other cause beyond the reasonable control of HIGH END. This warranty also does not cover "consumable" parts such as fuses, lamps, color media or components which may be warranted directly to the Customer by the original manufacturer. This Warranty does not extend to items not manufactured by HIGH END. Freight terms on warranty repairs are FOB HIGH END factory or designated repair facility. Collect shipments or freight allowances will not be accepted.

HIGH END's sole responsibility under this Warranty shall be to repair or replace at HIGH END's option such Products or parts of Products as shall be determined to be defective on HIGH END's inspection. HIGH END, at its option, may perform on-site warranty repairs. Such repairs may be performed with re-worked or refurbished parts. HIGH END will not assume any responsibility for any labor expended or materials used to repair any Products without HIGH END's

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prior written authorization. HIGH END SHALL NOT BE RESPONSIBLE FOR ANY INCIDENTAL, GENERAL OR CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, TIME, PROFITS OR INCOME, OR ANY OTHER DAMAGES.

The Customer's obligations during the warranty period under this Warranty are to notify HIGH END within one week of any suspected defect and to return the Products prepaid to HIGH END at HIGH END's factory or authorized service center. The one week notice period does not apply to claims for shortage or damaged Products.

This written Warranty is intended as a complete and exclusive statement of the terms thereof. Prior dealings or trade usage shall not be relevant to modify, explain or vary this Warranty. Acceptance of, or acquiescing in, a course of performance under this Warranty shall not modify the meaning of this Warranty even though either party has knowledge of the performance and a chance to object.

THIS LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE PRODUCTS AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, EXCEPT AS PROVIDED HEREIN, HIGH END UNDERTAKES NO RESPONSIBILITY FOR THE QUALITY OF THE PRODUCT OR THAT THE PRODUCT WILL BE FIT FOR ANY PARTICULAR PURPOSE FOR WHICH CUSTOMER MAY BE BUYING THE PRODUCT. ANY IMPLIED WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. NO ORAL OR WRITTEN INFORMATION, OR ADVICE GIVEN BY HIGH END, ITS AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS LIMITED WARRANTY.

This is HIGH END's current Warranty statement at the time of publication. This Warranty statement is subject to change at any time without notice. The controlling Warranty, as well as applicable terms and conditions are available at the time of order acknowledgement.



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