

# HOLOPHANE®

## Terms and Conditions

### Prices

All prices are subject to change without notice and are F.O.B. shipping point.

### Acceptance of Orders

No order placed with Holophane shall be considered accepted until officially acknowledged in writing by Holophane. The terms and conditions stated in Holophane's written order acknowledgement shall constitute the entire sales agreement between Holophane and the purchaser, and any contrary or additional terms or conditions submitted by the purchaser shall be deemed to be of no effect unless specifically acknowledged in writing by Holophane at the time of order acceptance. No custom, practice, or course of prior dealings between the parties and no usage of trade shall modify or otherwise affect the terms and conditions of Holophane's written order acknowledgement. Holophane reserves the right to select its own customers and to reject any order. All orders and shipments are subject to the approval of Holophane's Credit Department.

### Terms of Payment

Invoice payment terms are Net 30 days from the Invoice Date.

A service charge of 1½% per month (or if such rate exceeds the maximum lawful rate, then such maximum lawful rate) shall be assessed on all past due payments and shall be payable on demand.

### Freight

FREIGHT IS PREPAID AND ALLOWED ON ALL SHIPMENTS OF PRODUCTS FOR ORDERS OVER \$3,000.00 (\$750.00 FOR REPLACEMENT BALLAST KITS) TO ALL POINTS IN THE CONTINENTAL UNITED STATES AND CANADA. All freight charges are the responsibility of the purchaser. Holophane reserves the right to use its discretion in routing all shipments; however, special instructions will be followed if the purchaser will assume any additional transportation charges. Cartage or accessorial charges and detention or demurrage charges are not allowed.

All goods are shipped F.O.B. shipping point at the purchaser's risk. Holophane's responsibility for safe delivery ceases when the goods have been turned over to the transportation company. All claims for damage or shortage in transit are to be handled by the purchaser. Shipments should be inspected by the purchaser immediately upon receipt for transportation loss or damage and any necessary claim entered promptly with the carrier.

### Delivery

Holophane shall not be liable for any delay or default in delivering products where occasioned by any cause of any kind or extent beyond the control of Holophane, including without limitation armed conflict or economic dislocation resulting therefrom; embargoes; shortages of labor, raw materials, fuel, energy, production facilities or transportation; labor difficulties; civil disorders of any kind; action of civil or military authorities (including priorities and allocations); fires; floods; and accidents. No liability shall be sustained by Holophane by reason of its not filling any order or portion thereof due to any of these or similar occurrences.

### Packing

No charge will be made for domestic packing. Some products are shipped palletized for the purchaser's convenience. Where it is impractical for the purchaser to handle heavy pallets, the purchaser should specify "No Pallet" on the order.

### Taxes

The purchaser shall pay when due all sales, use, gross receipts, excise and other taxes (together with interest and penalties if any, thereon) now or hereafter imposed by any governmental agency upon Holophane, the purchaser, the products or the use thereof.

### Proper Product Application

Products should be stored, installed, used and maintained in accordance with applicable Holophane instructions and specifications. Copies of instructions and specifications can be obtained from: Holophane Customer Service Department,

PO Box 3004, Newark, Ohio 43058-3004. Holophane is not responsible, under its limited warranty described below or otherwise, for any product modified or altered without prior written authorization from Holophane.

### Limited Warranty

HID Components: Subject to all limitations set forth below, Holophane warrants to the purchaser that Holophane factory-installed electrical system, consisting of a core and coil ballast, starting aid (where required), capacitor, and wiring inside its HID lighting fixtures will be free from defects in material and workmanship for six (6) years from the date of manufacture.

Other Products: Subject to all limitations set forth below, Holophane warrants to the purchaser that Holophane products other than HID components, which are covered under the preceding paragraph, will be free from defects in material and workmanship for two (2) years from the date of manufacture. Emergency lighting products - See HL-1351.

Notwithstanding the preceding paragraphs, Holophane makes no warranties regarding purchased poles and posts; lamps; fluorescent ballasts; purchased HID electrical systems, consisting of a core and coil ballast, starting aid (where required), capacitor and wiring; photoelectric controls. All purchased poles and posts, lamps, fluorescent ballasts, purchased HID electrical systems, and photoelectric controls shipped by Holophane are subject to the applicable warranty (if any) of the company that manufactures such products. For purposes of this limited warranty, the term "purchaser" means a purchaser for resale or for use in business. Holophane makes no warranties to those defined as consumers in the Magnuson-Moss Federal Trade Commission Improvement Act.

If any of Holophane's products fail to meet the applicable warranty described above Holophane shall correct the defect by shipping to the purchaser either (at Holophane's option) the necessary repaired or replacement parts F.O.B. Holophane factory with freight allowed to destination within the Continental United States, Alaska, and Hawaii; provided that the purchaser promptly gives Holophane written notice of any product defect within thirty (30) days after discovery of the defect and, if requested by Holophane, promptly arranges to make the product available to Holophane for investigation and correction. NO PRODUCTS MAY BE RETURNED UNTIL THE PURCHASER HAS CONTACTED HOLOPHANE AND RECEIVED A RETURN AUTHORIZATION. The warranty set forth in this section is VOID IF the products have not been properly stored, installed, used or maintained or if the purchaser fails to comply with any applicable recommendations of Holophane. Holophane shall not be responsible for any failure of its products which is a result of external causes; natural catastrophe; power surges or failure; improper power supply; fault or negligence of the purchaser or user; improper or unauthorized use, installation, handling, storage, alteration or service; or any cause other than a defect in the material or workmanship of the product itself.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH ABOVE, HOLOPHANE MAKES NO REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, RELATING DIRECTLY OR INDIRECTLY TO ANY PRODUCTS MANUFACTURED OR SOLD BY HOLOPHANE, WHETHER ORAL, WRITTEN, OR ARISING BY COURSE OF DEALING OR USAGE OF TRADE INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY MAY BE MODIFIED OR AMENDED ONLY BY A WRITTEN INSTRUMENT SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF HOLOPHANE. WITHOUT AN EXPRESS, WRITTEN AUTHORIZATION FROM HOLOPHANE, NO DISTRIBUTOR OR SUPPLIER OF HOLOPHANE PRODUCTS HAS THE AUTHORITY TO MODIFY OR AMEND THIS LIMITED WARRANTY.

### Limitation of Liability

The foregoing limited warranty provides the purchaser's sole and exclusive remedy relating to Holophane's products. The total liability of Holophane on any and all claims of any kind, whether in contract, warranty, tort (including negligence), strict liability or otherwise, arising out of or in connection with, or

resulting from, Holophane performance or breach of the foregoing limited warranty or from Holophane's sale, delivery, resale, repair, or replacement or use of any products or the furnishing of any services, shall in no event exceed the purchase price allocable to the specific product which gives rise to the claim, and any and all such liability shall terminate upon the expiration of the limited warranty specified above. If Holophane furnishes advice or other assistance which concerns any product, or any system or equipment in which any product may be installed, the furnishing of such advice or assistance shall not subject Holophane to any liability, whether in contract, warranty, tort (including negligence), or otherwise.

IN NO EVENT SHALL HOLOPHANE BE LIABLE FOR ANY INDIRECT SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY, INCLUDING WITHOUT LIMITATION LABOR CHARGES, LOSS OF TIME, PROFITS OR REVENUES, LACK OR LOSS OF PRODUCTIVITY, INTEREST CHARGES OR COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, SYSTEMS SERVICES OR PRODUCTS COST OF PURCHASED OR REPLACEMENT POWER, DOWNTIME COSTS, DAMAGE TO OR LOSS OF USE OF PRODUCTS OR ANY RELATED EQUIPMENT, SYSTEM OR FACILITY, OR ANY PROPERTY TO WHICH ANY PRODUCT IS AFFIXED, OR ANY INCONVENIENCE ARISING OUT OF ANY BREACH OF THE FOREGOING LIMITED WARRANTY OR OBLIGATIONS UNDER SUCH LIMITED WARRANTY.

Holophane reserves the right to change or improve the design of any of its products without assuming any obligation to modify any product previously manufactured.

### Return Goods

Requests to return materials must be made within four (4) months from date of shipment. No products will be accepted for return unless in original packages and accompanied by "return authorization number" which can be obtained only from Holophane's Customer Service Department, Newark, Ohio.

### Return Shipment

Shipments must be made F.O.B. Holophane's factory as specified on Holophane's return authorization form. For products accepted for return, a credit will be issued at the prices prevailing at the time of shipment or at the time of return, whichever is lower, from which will be deducted are freight charges previously allowed, and a minimum service charge of 40% of the invoice price to cover part of the cost of handling, unpacking, repacking and placing the products in salable condition. The actual service charge will be determined from the condition of the units as received at Holophane's factory. Such charge is payable by the purchaser on demand. Products specifically modified to customer requirements are noncancelable after release and are nonreturnable. Products returned for errors in shipments will be accepted at full credit and without service charge. Transportation must be prepaid on all returned merchandise.

### Cancellations

If the purchaser, after acceptance of an order by Holophane, desires to cancel the order, and Holophane accepts such cancellation in writing, the cancellation charge shall be 10% of the total price of the order, or, if greater, the actual costs incurred by Holophane with respect to the order as of the time of cancellation. Such charges are payable by the purchaser on demand.

### Construction of Agreements

These terms and conditions and all agreements between Holophane and the purchaser shall be governed by and construed in accordance with the laws of Ohio, including without limitation the Uniform Commercial Code as adopted in Ohio. As used herein, the term "Holophane" shall mean Holophane, a division of Acuity Brands Lighting, Inc., a Delaware corporation.

The prices and data in this schedule are for the convenience of users, and every effort is made to avoid error, but Holophane cannot be held responsible for any errors or omissions.