



## Judco Manufacturing, Inc. / Focus-Lite Products

### TERMS AND CONDITIONS OF SALE

The terms and conditions of sale set forth below are an integral part of the contract between Judco Manufacturing, Inc., a California corporation, hereinafter referred to as "Seller", and the party to whom Seller's accompanying quotation is submitted, hereinafter referred to as "Buyer", relating to the goods or services described in Seller's accompanying quotation (collectively referred to as the "Contract"). The quotation by Seller is made upon these terms and conditions, and any acceptance by Buyer shall be subject to these terms and conditions. Any attempt by Buyer to alter the terms and conditions by counter offer or conditional acceptance shall be void and of no effect. These terms and conditions shall be deemed accepted by Buyer, and the Contract concluded between Buyer on the basis of these terms and conditions, unless written notice to the contrary is received by Seller and is accepted by Seller within 10 business days after the date of Seller's accompanying quotation.

If Seller's accompanying quotation responds to or follows any order or request for quotation by Buyer which could be reasonably construed as an "offer" from Buyer and which contains terms of conditions ("Buyer's Terms") different from or additional to these terms and conditions, then Seller's Accompanying quotation shall not constitute an acceptance of Buyer's "offer" on Buyer's Terms. Seller's acceptance of such "offer" is expressly subject to the terms and conditions set forth below. In the event of any conflict between Buyer's Terms and these and conditions, these terms and conditions will govern.

**PRICES:** The prices quoted in Seller's accompanying quotation are the prices in effect at the time of quotation and are valid for 30 days from the date of Seller's accompanying quotation. Seller reserves the right to increase the prices charged for any goods or services to reflect increases in the cost of labor, materials, supplies or other goods obtained by Seller between the date of Seller's accompanying quotation and the date of shipment. Prices quoted for goods to be shipped outside the continental United States are based on international currency exchange rates in effect at the time of quotation. Seller reserves the right to change its prices at any time prior to shipment if exchange rates vary.

**SALES AND USE TAX:** Sales, use, excise, property or similar taxes arising out of or relating to Seller's accompanying quotation for sale of goods or services or the delivery of goods or services are not included in the price except as otherwise specifically stated in Seller's accompanying quotation. All such taxes which Seller may be obligated to pay or account for shall be the responsibility of Buyer and may be charged to Buyer.

**PAYMENT:** Payment shall be C.O.D., or upon approved credit, cash thirty (30) days after date of invoice, in U.S. dollars, unless otherwise specified in Seller's accompanying quotation. Seller may issue an invoice on the date the goods are ready for shipment even though shipment is delayed by Buyer. Under no circumstances will the thirty (30) day term be construed to begin after the goods arrive at Buyer's factory or after goods are set up or operational, or after the occurrence of any other event or contingency. Shipment of goods may be subject to downpayment or prepayment by Buyer at Seller's sole discretion, upon demand by Seller. Goods shipped to foreign countries shall be subject to a downpayment with the acceptance of Seller's accompanying quotation and the balance through an irrevocable Letter of Credit established through and confirmed by a U.S. bank of Seller's choice, in U.S. dollars. Payment is due within 30 days of presentation of documents. Balances paid beyond the terms stated on the invoice are subject a service fee of 2% per month, 24% per annum.

**SECURITY FOR PAYMENT:** Notwithstanding delivery of, or passing of title in, any goods from Seller to Buyer, Seller shall have a continuing first priority lien and security interest in the goods as security for payment in full of the purchase price, and Seller shall be entitled to repossess the goods upon demand in the event of failure by Buyer to pay the price in whole or in part. With out prejudice to the generality of the foregoing, Buyer will sign and deliver to Seller such financing Statements, UCC-1 forms and other forms, agreements and notices as Seller may request to evidence such first priority lien and security interest in the goods, and Buyer hereby consents to the filing of such statements, forms, agreements and notices in such court or other public records as Seller may deem appropriate.

**DESIGNS AND SPECIFICATION:** Seller and its suppliers conduct a continuing program of development and product improvement and, therefore, retain the right to alter and improve the specifications and design of goods marketed by Seller at any time prior to delivery to Buyer. Such design or specification changes judged by Seller to be of major significance will be transmitted to Buyer in writing together with any price changes necessary at least thirty (30) days prior to Seller's acknowledged scheduled shipment date. Buyer agrees that the specifications for the goods subject to Seller's accompanying quotation are not part of the basis of the bargain between Buyer and Seller and do not create an express or implied warranty that the goods actually shipped shall conform to such specifications. Buyer understands and agrees that any changes in specifications by Seller will be made by Seller on the basis of Seller's judgement that such changes improve the goods.

**CANCELLATION BY SELLER:** Seller reserves the right to cancel all or any part of the Contract at any time if, in Seller's sole judgement, the financial condition of Buyer, or the status of any existing account of Buyer with Seller, warrants such action. Buyer agrees to authorize its creditors to disclose to Seller information concerning Buyer's credit worthiness, upon Seller's request.

**DELIVERY:** Shipping and shipping insurance charges relating to the delivery of goods sold to Buyer are not included in the price except as otherwise specifically stated in Seller's accompanying offer. All such charges shall be the responsibility of Buyer and shall be charged to Buyer. Delivery dates are approximations, and time of delivery shall not be of the essence of the Contract without limiting the generality of the foregoing sentence, if any delivery is delayed because of labor disputes, governmental regulations or any other cause or reason beyond Seller's control, such delivery dates shall be reviewed by Seller, and if, in Seller's sole judgement, delivery is delayed indefinitely, Seller may cancel the contract by notice to Buyer. In no event shall Seller be liable for loss of use or for any damages, direct or indirect, including, without limitation, consequential, incidental or contingent damages and expenses, caused by delays in delivery.

**INSTALLATION:** The goods sold to Buyer under the Contract shall be installed by Buyer at Buyer's expense.

**TITLE & RISK:** Title, risk and possession of the goods which are the subject of the Contract will pass to the Buyer on delivery to Buyer or as otherwise indicated in writing by Seller, subject to Seller's continuing first priority lien and security interest in the goods as security for payment in full of the purchase price.

**WARRANTY AND LIMITATION OF SELLER'S LIABILITY; INDEMNITY BY BUYER:** Seller warrants only that at the time that they are ready for shipment all goods sold by Seller under the Contract shall be free from defects in workmanship and material under normal use and service in the possession of Buyer, provided, however, the Buyer gives Seller immediate written notice of any defects, and provided further that the goods have not been used beyond their normal working capacity and have not been altered or abused in any other way. The foregoing warranty extends for a period of 12 months from the date that the goods are ready for shipment and applies only so long as the goods are owned by Buyer and in Buyer's possession. Buyer sole remedy for any breach of the foregoing warranty shall be the replacement, of any material or parts, F.O.B. point of shipment, without obligation of Seller for installation of repaired or replacement parts. If Seller deems that any repaired or replacement part require special or unique skills or tools in making a necessary repair, Seller may at its sole discretion, offer to make the installation of the repaired or replacement part at Seller's factory in order to assure a proper installation. All shipping costs to be paid by Seller. The foregoing remedy is expressly agreed by Buyer to be Buyer's sole and exclusive remedy. IN NO EVENT SHALL SELLER BE LIABLE FOR LOSS OF USE OR FOR ANY OTHER DAMAGES, DIRECT OR INDIRECT, INCLUDING CONSEQUENTIAL DAMAGES FOR PERSONAL INJURIES). BUYER EXPRESSLY AGREES, WITHOUT LIMITATION, THAT THIS DISCLAIMER SHALL REMAIN IN EFFECT EVEN IN THE EVENT THAT BUYER'S SOLE AND EXCLUSIVE REMEDY AS EXPRESSED ABOVE FAILS OF ITS ESSENTIAL PURPOSE. ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED. To the extent that Seller's accompanying quotation is an offer to provide services (or includes such an offer), Buyer agrees that Seller's liability, if any, for damages arising from breach of contract or from the performance of such services, regardless of the form of action, shall not exceed the total amount paid by Buyer for such services. The foregoing remedy is expressly agreed by Buyer to be Buyer's sole and exclusive remedy in connection with any contract for provision of services by Seller. BUYER FURTHER AGREES THAT SELLER WILL NOT BE LIABLE FOR LOSS OF USE OR FOR ANY OTHER DAMAGES, DIRECT OR INDIRECT, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, INCIDENTAL OR CONTINGENT DAMAGES AND EXPENSES, (INCLUDING WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES FOR PERSONAL INJURIES) ARISING FROM THE PERFORMANCE, NEGLIGENT PERFORMANCE OR NON-PERFORMANCE OF SUCH SERVICES. None of Seller, Seller's employees, agents, representatives of affiliates, shall have any liability whatsoever to Buyer or any third party, and Buyer shall indemnify and hold Seller harmless from all third party claims, for any loss of use or damages, direct or indirect, including, without limitation, consequential, incidental or contingent damages to persons or property which may occur during or as a result of, the provision of service by Seller at Buyer's facility or during a demonstration at Seller's facility. Without limitation to the generality of the foregoing, Seller shall have no liability whatsoever for any damage tubing wire or other property belonging to Buyer or any third party, and Buyer shall indemnify and hold Seller harmless from all third party claims, even if such damage is directly or indirectly attributed to the negligence, fault, acts or omission of Seller, its employees, agents, representative or affiliates, and any use of any mold or other property by Seller or by Buyer in connection with goods offered or sold by Seller or its affiliates, shall be solely at Buyer's risk.

**SAFETY AND INDEMNIFICATION OF BUYER:** Buyer and its successors and assigns shall employ and shall require its employees and others on its premises to employ all safety devices, guards, and proper safe operation procedures as set forth in Seller's documents, manuals and in notices attached to goods sold by Seller, and in accordance with all other data furnished by Seller, and as required by law. Seller shall have no liability if any such safety devices, guards, and procedures are not employed or where such safety devices, guards or procedures have been altered or removed or where goods have been repaired or modified with parts other than those supplied by Seller or by persons other than Seller's employees or agents authorized in writing by Seller to make such repairs, and Buyer shall indemnify and hold Seller harmless from all claims, including without limitation, from all claims for personal injury or death or property loss or damages, direct or indirect, including, without limitation, consequential, incidental or contingent damages and expenses claimed by reason of any such alteration, removal, repair, or modification.

**CANCELLATION:** In the event of any cancellation of the Contract by Buyer:

- A.** Any good completed at time of receipt of any written cancellation notice will be shipped and invoiced by Seller to Buyer at the Contract price; and,
- B.** Work on the balance, if any, of the Contract will be stopped, if Seller deems reasonably practicable, by Seller as promptly as Seller deems reasonably practicable, and Buyer shall reimburse Seller for all actual expenditures, commitments, liabilities and cost incurred by Seller connection with its performance of the Contract. All as determined in accordance with generally accepted accounting principles, plus an amount equal to fifteen percent (15%) of such actual expenditures, commitments, liabilities and costs.

**CLAIMS AND ADJUSTMENTS:** No shortage claim or error in shipment will be adjusted unless reported in writing to Seller within ten (10) days of Buyer's receipt of goods, Returns, regardless of reason, will not be accepted without prior written authorization by Seller. Returns must be properly packaged by Buyer to prevent damage and returned prepaid by the best and most economical means. Returns of merchandise ordered in error by Buyer must be properly returned by Buyer in the same condition as originally shipped by Seller within thirty (30) days and are subject to fifteen percent (15%) restocking charge.

**OPERATION OF GOODS:** Buyer expressly agrees that Seller will not be liable for loss of use, or for any damages, direct or indirect, including, without limitation, consequential, incidental or contingent damages and expenses (including, without limitation, consequential damages for personal injuries) resulting from any observation or suggestion made by Seller or any of its employees or agents concerning the capabilities, design, construction and/or materials or special attachments to goods sold by Seller.

**COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT OR STATE DEPARTMENT OF LABOR REGULATIONS:** Because of the varied interpretation of standards at the local level, Seller cannot and does not warrant that its goods or services meet all requirements of the Occupational Safety Health Act or local State regulations. Where possible, Seller will modify goods upon Buyer's written request, and at Buyer's risk and expense, at prices then in effect.

**SPARE PARTS:** Buyers agrees that the purchase and sale or any spare parts for the goods originally sold under the Contract shall be governed by these terms and conditions.

**STATUES OF LIMITATIONS:** Buyer agrees that any action of any kind by Buyer against Seller arising from the Contract or relating to the goods must be commenced on or before the first anniversary of the date the goods are originally shipped from Seller's plant in Harbor City, California, U.S.A.

**ARBITRATION:** Any controversy or claim arising out of or relating to the Contract, or the goods or services which are the subject thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) maybe entered in any court of competent jurisdiction. The parties agree that venue for the arbitration shall be Harbor City, California, U.S.A.

**SOLE AGREEMENT:** Seller's accompanying quotation supersedes and cancels any previous offer of Buyer or Seller, and any previous understanding or agreement, written or implied, between Buyer and Seller relating to the goods and /or services covered by Seller's accompanying quotation. The Contract of which these terms and conditions form part expresses the complete and final understanding of the parties with respect thereto, and may not be changed in any way except in writing signed by both parties.

**APPLICABLE LAW:** This Agreement shall be construed and interpreted according to the laws of the State of California, U.S.A.