



INTEMATIX TERMS AND CONDITIONS OF SALE

THESE INTEMATIX TERMS AND CONDITIONS OF SALE ("TERMS AND CONDITIONS") CONSTITUTE THE ENTIRE AGREEMENT BETWEEN INTEMATIX CORPORATION ("INTEMATIX") AND THE CUSTOMER INDICATED ON THE FACE HEREOF ("CUSTOMER") WITH RESPECT TO THE SALE OR DISTRIBUTION OF ANY PRODUCT BY INTEMATIX TO CUSTOMER. SUCH TERMS AND CONDITIONS ARE EXCLUSIVE, AND INTEMATIX REJECTS ANY AND ALL TERMS AND CONDITIONS PROPOSED BY CUSTOMER. ACCEPTANCE OF THE PRODUCTS INDICATES CUSTOMER'S ACKNOWLEDGEMENT OF AND ASSENT TO THE TERMS AND CONDITIONS.

1. DEFINITIONS

- 1.1 "Delivery" means the first instance at which the customer can take receipt of the Product/s.
- 1.2 "Product" means any good sold or distributed by Intematix or any product manufactured or processed by Intematix and sold through its representatives or distributors.
- 1.3 "Specifications" means Intematix's specific technical information about a given Product which is published in the applicable user manuals and/or technical data sheets distributed together with such and which are in effect on the date Intematix ships Customer's order.

2. PRICES

- 2.1 Prices exclude delivery charges, unless otherwise indicated on the applicable quotation delivered to Customer by Intematix (each, a "Quote"), and are valid for the period indicated on such Quote.
- 2.2 Prices are exclusive of all applicable withholding, excise, sales, use, service, duties, value added or like taxes in each case imposed now or in the future by any governmental authority in connection with the transactions or amounts payable by Customer (collectively, "Taxes"). Customer shall pay all Taxes, unless Customer has provided Intematix with an appropriate exemption certificate for such Taxes for the delivery jurisdiction.

3. ORDERS

- 3.1 All orders are subject to acceptance by Intematix. Customer will specify the address for Delivery to take place in the country where the order is placed, unless otherwise agreed by Intematix in writing. Each order must specify a delivery date that is within twelve (12) months from the applicable order date, including possible rescheduling, unless otherwise agreed or indicated on the applicable Quote.
- 3.2 Customer may not cancel or modify an order for any Product within thirty (30) days or quoted lead-time, whichever is longer, prior to the originally scheduled ship date. For all custom product(s) (product which deviates from the standard datasheet per the customer's request), Customers may not cancel an order at any time prior to the ship date without the written consent of Intematix (at Intematix's sole discretion) and in such cases, Customer shall be responsible and promptly reimburse Intematix for any costs incurred in connection with such custom orders, including with limitation, any custom tooling, product in Finish Goods or Work in Progress. Intematix cannot accept and Customer has no rights to cancel any order after the applicable Product has been shipped to Customer. All changes requested by a customer must be approved in writing by Intematix. Intematix may cancel any order or portion thereof without liability on its part in the event of Customer's default of any terms herein or upon material adverse change in Customer's financial condition in Intematix's discretion. Except as provided in these Terms and Conditions, orders accepted by Intematix are firm and noncancelable.
- 3.3 Intematix reserves the right, at any time, to renegotiate the terms under which it has accepted any Purchase Order from Customer in the event of extraordinary changes to the price of its raw material supply.

4. DELIVERY AND ACCEPTANCE

- 4.1 Intematix will make reasonable efforts to ship Products on Customer's requested delivery date. Intematix will provide a ship date as soon as practicable after receipt of order. If Intematix is unable to ship Products by Intematix's ship date, alternative arrangements may be agreed. In the absence of such agreement and in the event of Intematix's failure to ship Products on the ship date, Customer's sole remedy and Intematix's exclusive liability shall be to refund any prepayment made by Customer for the applicable Products.
- 4.2 Customer may not modify an existing delivery schedule for any Product within thirty (30) days prior to the originally scheduled ship date. If more than thirty (30) days from the originally scheduled ship date, the parties may agree to reschedule the delivery dates for the Products; however, any order for which Customer requests that delivery be delayed more than sixty (60) days beyond the original scheduled delivery date will be considered cancelled and shall be subject to the cancellation provisions of Section 3.2.
- 4.3 All Products shall be deemed accepted by Customer upon Delivery.

5. SHIPMENT AND RISK OF LOSS

- 5.1 Intematix will ship Products according to Intematix standard commercial practice, unless otherwise indicated on the applicable Quote. All shipments of Product will be made EX Works (Incoterms 2010) Intematix authorized facility, unless otherwise agreed to in writing by both parties. If special packing or shipping instructions are agreed by Intematix, charges for such packing and/or shipping will be billed separately to Customer.

6. PAYMENT; TERMINATION

- 6.1 Payment terms are subject to credit approval of Customer by Intematix. Payment is due Net 30 days from Intematix invoice date and shall be made in United States dollars, unless otherwise indicated on the applicable Quote. Any invoice which is unpaid by Customer when due shall be subject to the interest rate of 1% per month or the maximum allowable by applicable law, whichever is lower, plus such late payment charge as Intematix may reasonably require to cover its additional costs of administration and collection.
- 6.2 Intematix may change credit or payment terms at any time if Intematix determines, in its sole discretion, that Customer's financial condition, previous payment record, or the nature of Customer's relationship with Intematix so warrants.



6.3 Intematix may discontinue performance and/or terminate these Terms and Conditions if Customer fails to pay any sum when due, or fails to perform under these Terms and Conditions or any other agreement with Intematix if, after ten (10) days written notice, the failure has not been cured.

7. LIMITED PRODUCT WARRANTY

7.1 Subject to the limitations, exclusions and disclaimers set forth in this Section 7, Intematix warrants solely to Customer that Products (excluding Other Products) shall materially conform to the applicable Specifications (or Customer's specifications to the extent expressly accepted in writing and signed by an authorized representative of Intematix) for the "Warranty Period" applicable for such Products. The Warranty Period for Products from the date of shipment is set forth in the chart below (subject to any lesser period if so specified in the applicable Specifications for such Product):

Product	Limited Warranty Period
Phosphor Products	One Year
Mid to Low Power LED Packaged Products	One Year
ChromaLit Remote Phosphor Components	One Year
Module Products including Ambient Lighting Modules, Tunable Lighting Modules, and Commercial Lighting Modules	Five Years*
All Other Products	AS IS, No Warranty

* Limited Warranty Period of up to 5 years is limited to and shall not exceed the lowest warranty period of any other component that operates in conjunction with Intematix Module Products including but not limited to drivers, power supplies, optics, printed circuit boards, etc. Limited Warranty Period is conditioned upon using Intematix Module Products: (1) in accordance with the relevant product and application specifications; (2) in lighting fixtures rated for 50,000 hours of operation or greater; (3) only in indoors residential or indoor commercial settings (not industrial); and (4) in non-corrosive environment. The warranty shall only apply when the failure rate of the Module Products exceeds the nominal failure rate.

7.2 The forgoing limited warranty applies only to Customer and not to indirect purchasers or users or other third parties. No other warranties, other than as set forth herein are made by Intematix with respect to the Products. This warranty is not transferable except with the prior written consent of an authorized representative of Intematix.

7.3 If Customer discovers during the applicable Warranty Period that such Product(s) fail to materially conform to the applicable Specifications ("Non-Conforming Products"), Customer shall promptly request (providing a detailed description of the nature of the defect or non-conformity) and obtain from Intematix an RMA for the return of the Non-Conforming Product(s) to Intematix. Intematix Module Products shall be considered to be Non-Conforming Products only if there is no light output when powered up. Customer shall appropriately package the Non-Conforming Products and apply the RMA number to the outside of the packaging. Such Non-Conforming Products may then be returned to Intematix during the applicable Warranty Period freight prepaid, in accordance with the Intematix then-current return policies and procedures. If Intematix requires that the entire Customer end product with the Non-Conforming Product installed be shipped to Intematix, then Customer shall ship the entire Customer end product with Non-Conforming Product installed to Intematix at Customer's expense. All returned Non-Conforming Products shall be subject to inspection by Intematix. If Intematix confirms that the Non-Conforming Products do not materially conform to the applicable Specifications, Intematix will, as Customer's sole and exclusive remedy and Intematix's sole and exclusive liability under this limited warranty, either, at its sole discretion, ship the same or functionally equivalent or better replacement Products in exchange for Non-Conforming Products, repair the affected Product using new or previously used parts that are equivalent to new in performance, or provide a refund of the net price paid by Customer to Intematix for the affected Product(s); provided that Customer (a) notifies Intematix in writing within thirty (30) days after discovery of the failure to materially meet the applicable Specifications; (b) Customer obtains an RMA from Intematix prior to returning any Non-Conforming Products; and (c) the Non-Conforming Products are received by Intematix no later than two (2) weeks following the last day of the applicable Warranty Period. Any such repair or replacement will not extend the Warranty Period. Remedies of Customer for any breach of warranty are limited to those provided herein to the exclusion of all other remedies, including without limitation, incidental or consequential damages.

7.4 Customer will prepay shipping charges (and will pay all duties and taxes) for Products returned to Intematix under this limited warranty. For valid warranty claims, Intematix will reimburse Customer for prepaid freight charges and any return shipment of replacement Products to Customer will be at Intematix's expense

7.5 Unless Intematix agrees in writing that Customer has configuration control, Intematix may make process or materials changes affecting the performance or other characteristics of Products. Covered Products supplied after such a change to a Covered Product will continue to materially meet Intematix's published Specifications, but may not be identical to the Covered Products supplied as samples or under prior orders.

7.6 Notwithstanding anything herein to the contrary, the foregoing limited warranties shall not apply to, and Intematix shall have no liability or obligation with respect to (A) any Product: (i) damaged by abuse, accident, misuse, neglect, mishandling, alteration, power fluctuations, improper power supply, power surges or dips, induced vibrations, environmental contaminants, repair, disaster, mishandling, transit, acts of God, or improper installation, maintenance, alteration, assembly, unauthorized service or testing; (ii) caused to fail by any product, device, circuitry, controls, software, data, system or component (or any combination thereof) not supplied by Intematix, operation or use outside of the applicable Specifications, improper site preparation, failure to follow prescribed operating, maintenance, installation, commissioning, assembling, handling or environmental instructions, processes or services, or any other cause external to the Products (such as network connections, Internet access, or operation of infrastructure software systems) or beyond the range of normal use of the Products (including, without limitation, power fluctuations or electrical overdrive); (iii) purchased under an order designating such Product as excess inventory, surplus equipment, prototype, or similar designation; or provided to Customer as a sample; or (B) any Product which is not Intematix branded, in which case the Intematix limited warranty applies only to Intematix branded components of such Product and Intematix passes through to you the warranty, if any, provided by the provider of such non-Intematix branded Product.

7.7 EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 7, ALL PRODUCTS, SERVICES, AND ANY OTHER MATERIALS PROVIDED BY INTEMATIX ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, WHETHER



EXPRESS, IMPLIED, OR STATUTORY. INTEMATIX'S OBLIGATIONS TO HONOR ANY APPLICABLE WARRANTY AS SET FORTH IN THIS SECTION 7, IS CONTINGENT UPON INTEMATIX'S RECEIPT OF PAYMENT IN FULL FOR THE PRODUCT(S) ENTITLED TO THE WARRANTY. INTEMATIX AND ITS SUPPLIERS AND SUBCONTRACTORS EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY THAT IS NOT EXPRESSLY SET FORTH IN THIS SECTION AND FURTHER ACKNOWLEDGES THAT IT HAS NOT PURCHASED PRODUCTS OR SERVICES IN RELIANCE ON ANY WARRANTY OR REPRESENTATION BY ANY PERSON OR ENTITY EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SPECIFICALLY SET FORTH HEREIN.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 As between the parties, Intematix (or its licensors) retains ownership of all patents and other intellectual property rights in the Products and related designs, data, and materials. The Products are offered for sale and sold on the condition in every case that such sale does not convey any license, express or implied, under any patent or other intellectual property right of Intematix, and all such rights are reserved.
- 8.2 Customer will not modify, alter, reproduce, reverse engineer, or disassemble the Products without Intematix's prior written consent. Where Customer has other rights under statute, Customer will provide Intematix with reasonably detailed information regarding any intended disassembly.

9. INDEMNIFICATION

- 9.1 Intematix will (a) defend or settle any claim brought by a nonaffiliated third party against Customer alleging that Intematix's manufacture and sale of the Products, as delivered under these Terms and Conditions, infringe any issued and valid patent, or any utility model, industrial design, copyright, trade secret, mask work or trademark, and (b) pay the defense costs, settlement amounts and court-awarded damages resulting from such claims. The foregoing obligations of Intematix are conditioned on Customer: (i) having no fault for the applicable claim; (ii) promptly notifying Intematix in writing of each claim; and (iii) cooperating with Intematix in, and granting Intematix sole control of, the defense or settlement of each claim. If such a claim is brought or appears likely, Intematix may modify the affected Product, procure any necessary license, or replace it, at Intematix's sole discretion. If Intematix determines that none of these alternatives are reasonably available, provided that Customer returns at Customer's expense each affected Product in accordance with Intematix standard RMA procedures, Intematix will refund (A) the amount actually paid by Customer for the affected Product if the refund is requested within one year after Delivery of the applicable Product, or (B) the Product's then-current net book value after such one year period has expired. This Section 9.1 states Intematix's entire liability and Customer's sole and exclusive remedy for infringement and misappropriation claims and actions.
- 9.2 Customer will (a) defend or settle any suit brought by a nonaffiliated third party against Intematix alleging that Customer's designs, specifications or instructions, or use of the Products furnished hereunder in any manufacturing or other process, or the combination of such products with items not supplied by Intematix (but only to the extent of such combination), infringe any issued and valid patent, or any utility model, industrial design, copyright, trade secret, mask work or trademark, and (b) pay the defense costs, settlement amounts and court-awarded damages resulting from such claims. The foregoing obligations of Customer are conditioned on Intematix: (i) having no fault for the applicable claim; (ii) promptly notifying Customer in writing of each claim; and (iii) cooperating with Customer in, and granting Customer sole control of, the defense or settlement of each claim.
- 9.3 Notwithstanding the above, Intematix has no obligation or liability for any claim of infringement based upon, arising from or related to: (a) Intematix compliance with Customer's designs, specifications or instructions; (b) Intematix use of technical information or technology provided by Customer; (c) Product modifications by Customer or a third party; (d) any use of the Product not in accordance with these Terms and Conditions or in a manner prohibited by Specifications or related application notes; (e) any use or combination with devices, products, components, elements, materials or technology not supplied by Intematix; (f) Customer's use of an earlier version of Products when a later version has been made available to Customer and the use of such later version would have avoided the infringement; and (g) a claim of infringement of any patents or other intellectual property rights necessary to any technology standard. Customer acknowledges that if any third party intellectual property rights are needed for the use of the Products in the making, having made, using, selling, offering for sale, or importing Customer products and services, Customer will be solely responsible for obtaining such rights. The sale of Products by Intematix does not convey any license, warranty or indemnity protection by implication, estoppel, or otherwise, under any third party intellectual property rights covering the use or combination of the Products with other devices, products, components, elements, materials or technology.

10. LIMITS ON USE; LIMITATION OF LIABILITY

- 10.1 Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for, and the products are not warranted for, any use that is intended for hazardous or high-risk applications in which ANY DEFECTS OR FAILURES OF THE PRODUCT COULD CREATE A SITUATION WHERE PERSONAL INJURY, DEATH OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE MAY OCCUR (INCLUDING, WITHOUT LIMITATION, SECURITY, LAW ENFORCEMENT, MILITARY, MEDICAL, OR SAFETY-OF-LIFE APPLICATIONS). Customer is solely liable if Products purchased by Customer are used for these applications. Customer will indemnify and hold Intematix harmless from all loss, damage, expense or liability in connection with such use.
- 10.2 THE REMEDIES EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. INTEMATIX SHALL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, NOR FOR ANY LOSS OF BUSINESS, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS, LOST PROFITS OR GOODWILL, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE PRODUCTS OR THESE TERMS AND CONDITIONS, EVEN IF INTEMATIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. INTEMATIX'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE GREATER OF (A) THE PRICE PAID BY CUSTOMER FOR THE PRODUCTS TO WHICH THE APPLICABLE CLAIM RELATES, OR (B) TEN THOUSAND U.S. DOLLARS (\$10,000). INTEMATIX AND CUSTOMER ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION HEREIN.

11. GENERAL

- 11.1 Intematix will not be liable for performance delays, or for nonperformance, due to causes beyond its reasonable control.
- 11.2 If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- 11.3 Customer may not assign any rights or obligations under these Terms and Conditions without Intematix's prior written consent.



- 11.4 Under no circumstances will Intematix be obligated to provide any cost data for the Products to Customer or any third party.
- 11.5 Customer will provide VATID numbers to support VAT exemptions of intracommunity supplies where appropriate as governed by national and European legislation and Customer will notify Intematix immediately if the VATID number provided becomes invalid or is changed or amended in any way. Intematix may have to retrospectively charge VAT in the event that VAT has been incorrectly exempted due to Customer failure to notify Intematix of the invalidation or change of VATID number.
- 11.6 Customer acknowledges and agrees that the Products and technical data or information provided hereunder may be subject to U.S. export control laws and regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such laws and regulations and obtain all required licenses to export, re-export, or import the Products and technical data and information provided hereunder.
- 11.7 These Terms and Conditions of Sale will be governed by the laws of the State of California without regard to any conflict of laws principles that would require the application of the laws of a different jurisdiction. The parties consent to the exclusive jurisdiction and venue of any court of general jurisdiction in Santa Clara County, California, and the United States District Court for the Northern District of California, for any and all actions associated with any dispute arising in connection with these Terms and Conditions.
- 11.8 Any documentation, data or technical information supplied by Intematix to Customer hereunder and marked "confidential" ("Confidential Information") is proprietary and confidential to Intematix. Customer agrees to use its best efforts to maintain the confidentiality of any Confidential Information or Quotes (whether marked "confidential" or not) supplied to it and not to disclose or use Confidential Information or Quotes in any manner inconsistent with the purpose for which it was disclosed.
- 11.9 The failure by Intematix to enforce at any time any of the provisions in these Terms and Conditions will in no way be construed as a waiver of such provisions. If any provision of these Terms and Conditions is unenforceable as written, the remainder of these Terms and Conditions will remain in effect and the unenforceable provision will be limited or eliminated to the minimum extent necessary so that these Terms and Conditions will otherwise remain in full force and effect and enforceable. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in connection with the construction or interpretation of these Terms and Conditions.
- 11.10 These Terms and Conditions constitute the entire agreement between Intematix and Customer, and supersede any previous communications, representations or agreements between the parties relating to the Products, whether oral or written, and apply to all quotations, purchase orders, and acknowledgements relating to the Products. Acceptance of any order by Intematix is made only on the express condition that these Terms and Conditions shall govern. Intematix's failure to object to provisions contained in any communication from Customer will not be deemed a waiver of any provision herein. Any additional or different term proposed by Customer shall be deemed material, is objected to, and is hereby rejected unless specifically accepted in writing by Intematix. Any changes in these Terms and Conditions must be agreed in writing by an officer of Intematix before becoming binding. These Terms and Conditions shall be applicable whether or not they are enclosed with the Products sold hereunder. Acceptance of the Products indicates Customer's acknowledgement of and assent to the terms set forth herein, regardless of any purchase order, confirmation, or writing of the Customer indicating otherwise.