

**1. Agreement:** These Terms and Conditions constitute the entire agreement between the parties and supersede any previous agreement, understanding or purchase order between the parties relating to the sale of the Goods. The customer identified on this invoice ("Customer") agrees that these Terms and Conditions shall apply to the sale of SIMKAR Corporation ("Company") products identified on the invoice ("Goods"). These Terms and Conditions shall prevail over any terms in Customer's purchase order and different or new terms shall only be binding on the Company if expressly accepted in writing by the Company. Nothing contained in these Terms and Conditions shall be construed as providing rights to any person other than the Company or the Customer, and no third party shall be a beneficiary of these Terms and Conditions.

**2. Terms:** The Customer has agreed to pay the Company the purchase price for the Goods set forth on the invoice. If the Goods are not to be released for shipment, pursuant to the Customer's instructions, within fifteen (15) days from the date of the Company's receipt of the Customer's order, the Goods will be billed at the higher of the price for the Goods in effect at the time of shipment or the price in effect at the time of order. A one percent (1%) discount off of the price of the Goods ("Discount") if payment is made by the tenth day of the first calendar month following the date of the invoice, otherwise, all charges shall be due and payable no later than the twenty-fifth day of the first calendar month following the date of the invoice ("Due Date"). The Discount shall not apply to any other charges such as shipping, taxes or insurance. In the event payment is not made by the Due Date, Customer shall be charged and shall pay interest at the rate of one and one half percent (1-1/2%) per month or the maximum rate permitted by applicable law, whichever is less, on the overdue payment. All expenses to collect overdue payments from Customer shall be paid by Customer.

**3. Commercial Transaction:** The Customer acknowledges, agrees, represents and warrants that the transactions described by these Terms and Conditions are commercial transactions and not for personal, family or household use.

**4. Force Majeure:** The Company will be excused from any delay or failure in its performance under these Terms and Conditions, where the delay or failure is due to, in whole or in part, directly or indirectly, a cause beyond the Company's reasonable control, including, but without limitation to, labor difficulties, fire, casualty, accidents, acts of God, civil disorder, transportation difficulties, shortage of fuel, labor or materials or governmental acts or restrictions.

**5. Taxes:** The price for the Goods does not include any applicable taxes and the Customer shall pay all federal, state, and local sales, use, property, excise or other taxes imposed on or with respect to the Goods. If the Customer is tax exempt, then the Customer will provide the Company with a tax exemption certificate.

**6. Title and Allocation of Risk of Loss:** Title to the Goods and any risk of loss associated with the Goods shall pass to the Customer at the time of delivery of the Goods to the carrier for shipment to the Customer and all claims for damage and shortage in transit shall be made by the Customer with the carrier. With regard to Goods that are returned to the Company, title and risk of loss remains with the Customer until receipt and acceptance of the Goods by the Company.

**7. Freight and Shipping:** All Goods are price F.O.B. shipping point (Company factory or Company warehouse). Company shall pay freight charges for any single order over \$1,000.00 but only if the order is for release in one shipment to one destination. When the Company pays freight and the Customer chooses shipper then the Company will pay up to the value of competitive shipping as determined by the Company. Otherwise, all freight charges shall be the responsibility of and paid by the Customer. Routing of shipments is at the discretion of the Company.

NOTE: Minimum factory order \$250.00. Minimum warehouse release \$100.00. Minimum replacement parts orders \$50.

**8. Standard Packaging:** The Company reserves the right to alter the quantities of any order so as to conform to packaging standards.

**9. Cancellation Charge:** Orders may not be cancelled, unless appropriate charges are reimbursed to SIMKAR for work or materials invested specifically to that order. If an order is cancelled after shipment or if delivery is refused at destination, all warehousing, delivery, disposition and return costs will be charged to the customer.

#### **10. Returned Goods General Conditions:**

1. Merchandise is not returnable without the written consent of SIMKAR.
2. Request for permission to return merchandise must be made in writing within 90 days from date of shipment and expires 90 days after receipt. Customer must provide SIMKAR original invoice number.
3. All returned goods must be in excellent, resalable condition and packaged in the original carton. Products will be inspected upon return and any service or repair needed to place them in first class, saleable condition will be charged and added to the restocking charge. A 35% minimum restocking charge on standard product will be deducted from all credits issued on authorized standard product returns. Credit will be issued for only the actual quantity received and will be based on original invoice or price in effect at the time of the return shipment, whichever is lower.
4. Return materials Authorization (RMA) form, supplied by SIMKAR, must accompany the return shipment.
5. Return freight must be prepaid. Material must be received within ninety (90) days of issuance of RMA.
6. Authorization for return will not be issued for discontinued, non-stocking, custom, special made product, or for net value less than \$250.
7. SIMKAR reserves the right to deduct for any damage sustained in transit.
8. Unauthorized returns will be refused. Items returned without proper authorization from SIMKAR will, at the sole option of SIMKAR, be returned to the buyer freight collect, or scrapped immediately with no issuance of credit. Unauthorized material included in a return will not be credited. Disposition of these items will be determined by SIMKAR.
9. If the return of goods is made necessary through any fault of SIMKAR and permission is granted for said return then SIMKAR will give full credit including all transportation charges if returned per routing instructions on the RMA.
10. All stock products containing time-sensitive components that have reached the end of their warranty or shelf life are not returnable. Outdated or phased out stock products are also not returnable.
11. The Buyer shall be absolutely liable for the purchase price of all merchandise, and SIMKAR will not be bound by Terms and Conditions imposed by any third party.

### 11. Limited Warranty:

A. All fluorescent and incandescent fixtures are guaranteed against defects in material or workmanship for a period of one (1) year from the date of shipment to the Customer. All HID fixtures are guaranteed against defects in material or workmanship for a period of one (1) year from the date of shipment to the Customer. Exit & Emergency electronics and housings are guaranteed against defects in material and workmanship for a period of five (5) years and batteries are guaranteed for five (5) years pro-rata date of shipment to the Customer. Poles are guaranteed against defects in materials and workmanship for a period of one (1) year from date of shipment. Any claim with regard to fluorescent ballasts shall be made by the Customer directly with the fluorescent ballast manufacturer. Lamps may carry a manufacturer's warranty, otherwise, they are guaranteed against defects in material and workmanship for a period of one (1) year for lamps with ratings in excess of 12,000 hours and ninety (90) days for lamps with a lesser rating from the date of shipment to the Customer. No guarantee is provided for defects that occur as a result of improper or abnormal use or as a result of any attempt to repair, other than by an agent authorized by the Company. This warranty is limited to repair or replacement by the Company, and does not cover labor charges, which shall be paid by the Customer, except, at the Company's sole discretion.

B. **No warranties are provided by the company with regard to the goods except as expressly set forth in these Terms and Conditions.**

**12. Limitation of Liability:** The foregoing limited warranty provides the Customer's sole and exclusive remedy relating to SIMKAR products. **In no event, whether as a result of a breach of contract, tort, strict liability, warranty or alleged negligence shall SIMKAR be liable for any indirect, special, incidental, multiple, punitive or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the equipment, or any associated equipment, loss of capital, cost of substitute equipment, facilities or services, downtime costs, or claims of third parties of the customer for such damages. In no event shall SIMKAR's total liability for any reason arising hereunder exceed the purchase price allocable to the specific product which gives rise to the claim.**

**13. Waivers:** The Company's failure to enforce strictly these Terms and Conditions shall not be construed as a waiver or excusing the Customer from future performance.

**14. Remedies Cumulative:** If the Customer wrongfully rejects the Goods, fails to make a payment due, repudiates with respect to these Terms and Conditions or otherwise breaches or defaults under any of these Terms and Conditions, then, with respect to any Goods directly affected and also with respect to the whole undelivered balance of Goods on order by the Customer, the Company may withhold delivery of such Goods, stop delivery of such Goods in possession of a carrier or other bailee, and recover any and all damages for wrongful rejection, breach, non-acceptance or repudiation, including, but without limitation to, lost profits of the Company. The remedies provided in these Terms and Conditions in favor of the Company upon default of the Customer shall not be deemed to be exclusive, but shall be cumulative and in addition to all other remedies in the Company's favor existing at law or in equity (including, but without limitation to, the rights of a seller under the Uniform Commercial Code). The Company may exercise all remedies, successively or concurrently, and any such

action shall not operate to release the Customer until the full amount of all sums due and to become due under these Terms and Conditions have been paid. In the event of a dispute between the Customer and the Company arising directly or indirectly from these Terms and Conditions for the sale of the Goods, the prevailing party shall have its attorneys' fees and court costs paid by the losing party.

**15. Other Defaults:** It shall be a default under these Terms and Conditions if the Customer files a petition in bankruptcy, has a bankruptcy petition filed against it, is unable to pay its debts as they mature, makes an assignment for the benefit of its creditors or breaches any other agreement with the Company.

**16. No Setoff:** The Customer agrees that it has no rights, under any circumstances, to set off against amounts due the Company for the Goods, and in the event the Customer exercises a set off it shall constitute a breach of these Terms and Conditions by the Customer and entitle the Company to all rights and remedies under these Terms and Conditions including the right to recover interest and attorneys' fees.

**17. Assignment:** The agreement set forth in these Terms and Conditions may not be assigned by the Customer directly or indirectly (including, but without limitation to, by merger or sale of stock) without the prior written consent of the Company.

**18. Governing Law:** These Terms and Conditions are made, entered into and performed in the Commonwealth of Pennsylvania and shall be in all respects governed by and construed in accordance with the laws of the United States and the Commonwealth of Pennsylvania, as if entirely performed in Pennsylvania and without regard to any conflict of law rules and without regard to any rules of construction or interpretation relating to which party prepared these Terms and Conditions. If any provision of these Terms and Conditions is determined by a court of competent jurisdiction to be unenforceable or invalid, such provision shall be modified to the extent necessary to eliminate the invalidity or unenforceability, and any remaining unenforceability or invalidity shall have no effect on any of the other Terms and Conditions which shall remain in full force and effect.

**19. Jurisdiction:** The Customer consents to the exclusive jurisdiction and venue of the Philadelphia County Court of Common Pleas of the Commonwealth of Pennsylvania with respect to the enforcement of these Terms and Conditions, the collection of any amounts due under this invoice or any disputes arising under or with regard to the sale of the Goods. The Customer agrees that effective service of process may be made upon the Customer by U.S. Mail under the notice provisions contained in paragraph 20 below.

**20. Notices:** All notices or other communications permitted or required to be given in writing under these Terms and Conditions shall be sent by certified mail, return receipt requested, and directed to the address of the Customer shown on this invoice. Notice will be deemed to have been given three (3) days after the mailing of the notice.