



## TERMS AND CONDITIONS OF SALE

These standard terms and conditions of sale (these “Terms and Conditions of Sale”) apply to any and all orders placed by original purchaser (“Purchaser”) for purchases of Circadian Light products or services (together, “Circadian Light Products”) from and after March 1, 2017 from Circadian ZircLight, Inc., a Delaware corporation doing business as Circadian Light (“Circadian”), whether or not such purchase is subject to a signed purchase order, distribution or other agreement between Circadian and Purchaser. Ordering Circadian Light Products from Circadian constitutes acceptance of the terms set forth herein, as such terms may have been updated through the date of such order. Any different, or additional terms in any purchase order, blanket instructions or other writing from Purchaser shall be deemed a material alteration hereof and are hereby expressly objected to and rejected and shall be of no force or effect. Commencement of performance or shipment shall not be construed as acceptance of any of Purchaser's terms and conditions which are different from or in addition to those contained in these Terms and Conditions of Sale. Course of performance or usage of trade shall not be applied to modify these Terms and Conditions of Sale.

### ORDERS; CHANGES AND CANCELLATIONS

All orders must be placed in writing and delivered directly to Circadian from the entity that will be liable for the payment of the order. Verbal orders or orders through a third party will not be accepted. No order is final as to Circadian until accepted by Circadian by written acknowledgement. All orders that are accepted by Circadian are subject to these Terms and Conditions of Sale. After acceptance, requests to cancel or change orders must be submitted in writing to Circadian. All requests are reviewed for approval before processing and are subject to any and all costs or expenses incurred by Circadian from such cancellation or change including, without limitation, costs for work performed and/or materials purchased by Circadian for Circadian Light Products. Hold orders may be accepted for informational purposes only. Procurement and production process will not be initiated, and delivery commitments will not be provided, without firm release dates.

### PRICES

All prices represent those in effect at the time of quotation and are subject to change without notice. All prices are as stated in Circadian’s quote and specifically override any prices referenced in Purchaser’s purchase order. Unless prices are quoted as “firm” by an authorized representative of Circadian, Circadian reserves the right to invoice prices in effect at the date of shipment, regardless of any prior quote and regardless of whether notice was received by Purchaser. All prices and other terms are subject to correction for typographical or clerical errors.

### SALES MATERIALS; SPECIFICATIONS

Any catalog, specification or price sheet or other similar documentation prepared by Circadian is strictly for the convenience of the user and shall not be deemed as an offer to sell. Circadian believes such documentation is complete and accurate at time of printing, but does not warrant that such documentation is error free. Circadian will not accept responsibility for any damages including labor charge backs in connection with errors of measurements, descriptions, applications, recommendations, etc.

Circadian Light Products will be shipped in accordance with the standard styles and sizes as described in Circadian's catalogs or, for special or made-to-order Circadian Light Products, in accordance with Circadian's drawings and specifications sheets. In the event of a conflict between Purchaser's written order and a Circadian drawing or specification sheet marked "approved" or the like, the Circadian drawing or specification sheet shall prevail. Circadian reserves the right to change details of design, materials, and finish at any time without written notice.

#### **TERMS OF PAYMENT**

Unless otherwise stated in Circadian's invoice or agreed to in writing by Circadian, payment for orders shipped to destinations in the United States shall be due by the 30th day following invoicing. The terms of payment are subject to review of Purchaser's credit by Circadian. Circadian shall have the right, at any time and from time to time, to require cash payments in advance or a letter of credit or other assurance of payment satisfactory to Circadian as a condition to acceptance of any order or shipment of any Circadian Light Product. Unless otherwise agreed to by Circadian, payment shall be by check to be drawn on Purchaser's corporate account, by wire transfer to Circadian's account at a commercial bank designated by Circadian, or by Circadian's draw upon a letter of credit satisfactory in form and substance to Circadian. The requirement of a letter of credit is standard for shipments outside the United States, for special Circadian Light Products, and for F.O.B. factory orders. All payments by Purchaser shall be made in United States Dollars and shall be paid in full, without set-off, deduction or counterclaim.

#### **TAXES AND GOVERNMENTAL CHARGES**

Prices do not include any taxes or other governmental fees, charges or assessments, including, without limitation, value-added, sales, use or privileges taxes, required governmental withholdings or excise or similar taxes levied by any government, now or hereafter enacted. In Circadian's discretion, any such taxes, charges or withholdings may be added to the price for any Circadian Light Products or may be billed separately. Purchaser will pay all such taxes and charges, on or before their due dates. In the event, Circadian is required at any time to pay any such tax or charge, Purchaser will reimburse Circadian promptly on demand.

#### **LATE CHARGES; COSTS**

If Purchaser fails to pay in full without any set off or deduction any amount due to Circadian promptly when due, Circadian may recover, in addition to the payment due, interest thereon at a rate equal to the lesser of one and one-half percent (1 1/2%) per month or the maximum rate of interest allowable under applicable law. Purchaser shall be liable for all costs and expenses, including reasonable attorneys' fees, incurred by Circadian in collecting or attempting to collect any and all overdue accounts. If Purchaser fails to pay any amount when due, in addition to any other rights or remedies available to Circadian at law or in equity, Circadian may discontinue the performance of services, discontinue the delivery of the Circadian Light Products, or deduct the unpaid amount from any amounts otherwise owed to Purchaser by Circadian under any agreement with Purchaser.

#### **SECURITY INTEREST**

Purchaser hereby grants to Circadian a purchase money security interest in the Circadian Light Products until all payments have been made. Purchaser shall sign any financing statements or other documents necessary to perfect Circadian's security interests in the Circadian Light Products. Where permitted by applicable law, Purchaser's signature on the quotation or on a purchase order issued as a result of the quotation gives Circadian the right to sign on Purchaser's behalf and file any financing statement or other documents to perfect Circadian's security interest in the Circadian Light Products.

## **PACKAGING AND HANDLING**

Circadian shall determine the method of packaging for all Circadian Light Products. If Purchaser requires special packaging or handling, such request must be made in writing and charges for special packaging, handling, and delivery shall be added to the price of the Circadian Light Products. Unless specifically agreed to in writing, Circadian will not be responsible for the payment of any penalties or special handling charges relating to Circadian's failure to comply with Purchaser's special requirement for order processing, handling, packaging, shipping or invoicing.

## **SHIPMENT, DELIVERY AND TITLE**

Circadian Light Products will be tendered and shipped FOB (Incoterms 2010) Circadian's manufacturing plant or warehouse and title to and risk of loss of the Circadian Light Products shall pass to Purchaser at such point. Purchaser shall obtain and pay for insurance covering such risks at such destination. Circadian will select the carrier and routing and ship Circadian Light Products freight prepaid. All costs of shipping shall be added to the price of the Circadian Light Products and paid by Purchaser. Circadian may, in its discretion, choose to make partial shipments and shall bill each shipment as it is made, but on terms applicable to the complete order. Circadian may, at its discretion, offer freight allowances for orders in excess certain set prices and/or for orders shipped outside the continental United States. Purchaser shall contact Circadian for the applicable terms and conditions of any freight allowances offered by Circadian. Where Circadian provides such an allowance to Purchaser, Circadian will use its own discretion in routing the shipment. If a more expensive means of transportation or other special delivery requirements are requested by Purchaser, Purchaser assumes and shall pay all additional costs.

Delivery dates of all shipments are estimated and are not guaranteed. The shipment date mentioned on Circadian's quote or order acknowledgement, if any, is Circadian's approximation of a shipment date, and is not a fixed or guaranteed shipment date. Circadian assumes no liability in connection with any delay in delivery. Postponement of deliveries at Purchaser's request, if for a period of more than ten (10) days, will not be permitted unless prior approval is given by an authorized representative of Circadian. Any claims for shortages, losses, or damages sustained in transit shall be made by Purchaser with the carrier and must be documented upon delivery. Upon request, Circadian will provide evidence of delivery of Circadian Light Products to the carrier, but reserves the right to charge a reasonable fee for all proof of delivery requests.

## **STORAGE**

Purchaser shall pay any detention, storage, handling or auxiliary charges assessed by carriers or warehousemen resulting from Purchaser's requirements for special service or Purchaser's failure to accept delivery in a timely manner.

## **PRODUCT ACCEPTANCE**

All Circadian Light Products delivered hereunder shall be deemed accepted by Purchaser as conforming to these Terms and Conditions of Sale, and Purchaser shall have no right to revoke any acceptance, unless written notice of the claimed nonconformity is received by Circadian within sixty (60) days of delivery thereof. Notwithstanding the foregoing, any use of a Circadian Light Product by Purchaser, its agents, employees, contractors or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that Circadian Light Product by Purchaser.

## **FORCE MAJEURE**

Circadian shall have no liability or obligation in connection with any failure to manufacture or deliver due to causes beyond Circadian's reasonable control including but not limited to strikes, lockouts, fires, riots, wars, acts of God, inability to obtain materials, components or supplies, failure or breakdown of machinery, production scheduling delays, government regulations or other conditions.

## **PRODUCT RETURNS**

No Circadian Light Products may be returned without the prior written consent of Circadian. Purchaser must make a request to return within sixty (60) days from date of shipment. Returns for one job will be limited to 10% of the total job value. Items acceptable for return must be shipped pre-paid to location designated by Circadian. Credit will be issued less a thirty-five percent (35%) service charge less the freight expense of the original shipment. All non-stocking, special, custom or modified Circadian Light Products are not returnable. Authorization will not be granted when value of all items to be returned is less than \$500.

## **LIMITED WARRANTY**

Circadian's limited warranty for the Circadian Light Products, as may be amended from time to time, is posted on Circadian's website at [circadianlight.com/warranty](http://circadianlight.com/warranty) (as applicable, the "Limited Warranty"). The terms of the Limited Warranty are hereby herein incorporated by reference. THE WARRANTIES SET FORTH HEREIN AND IN THE LIMITED WARRANTY ARE THE ONLY WARRANTIES MADE BY CIRCADIAN IN CONNECTION WITH THE CIRCADIAN LIGHT PRODUCTS AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

## **EXPORT CONTROL**

Purchaser understands that certain transactions of Circadian are subject to export control laws and regulations, such as but not limited to the UN, EU and the USA export control laws and regulations ("Export Regulations"), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of Circadian to export, re-export or transfer Circadian Light Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Circadian Light Products and technology abroad by person's subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of Circadian Light Products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, Circadian may suspend its obligations and the Purchaser's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, Circadian may at its option terminate the relevant order in all cases without incurring any liability towards the Purchaser or end user.

Purchaser warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Circadian Light Product supplied to Purchaser. Purchaser accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Purchaser shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Purchaser shall indemnify Circadian

against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Purchaser's or its customers' breach or non-compliance with this section.

#### **ANTI – BRIBERY**

Purchaser and its owners, officers, directors, employees, or agents have not and will not engage in any activities that violate the United States Foreign Corrupt Practices Act, the UK Bribery Act, or any other anti- corruption laws or laws prohibiting the payment of commercial or private bribes. In particular, and not in limitation of the foregoing, Purchaser and its owners, officers, directors, employees, or agents will not pay, offer, or promise to pay, or authorize the payment directly or indirectly, of any money, gift, or anything of value to any Government Official, as defined below, for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or direct business to any person. As used in this Section, "Government Official" means any minister, officer, director or employee of a government or any department, agency, or instrumentality thereof, or of a public international organization (such as the World Bank, International Monetary Fund or United Nations), or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

#### **INDEMNIFICATION**

Purchaser shall indemnify, defend and hold harmless Circadian and its officers, directors, agents, employees, affiliates, successors, and assigns from and against all losses, liabilities, costs and expenses arising out of or in connection with any claim by third parties for any loss, damage or injury or death caused or alleged to be caused by: (a) the negligent use, application, or installation of Circadian Light Products by Purchaser or its employees, partners to whom Purchaser sold the Circadian Light Products, contractors, agents or affiliates, (collectively, "Purchaser Parties"); or (b) the modification of Circadian Light Products or any part thereof, or integration of the Circadian Light Products into other products by any of the Purchaser Parties unless authorized in writing by Circadian. Purchaser shall not join, settle or otherwise attempt to affect or dispose of any such claim without Circadian's written consent.

#### **INTELLECTUAL PROPERTY:**

Nothing herein shall be construed to grant to Purchaser or any end user of a Circadian Light Product any right, title, or interest in or to any intellectual property rights (including, without limitation, any patent, trademark or copyright) embodied in or associated with the Circadian Light Products, services, service offerings or related software that may be already installed in or included with the Circadian Light Products, services or service offerings.

#### **CONFIDENTIALITY**

Purchaser shall maintain as confidential any information furnished or disclosed to it by the Circadian, whether disclosed in writing or disclosed orally, relating to the business of the Circadian, its customers, employees, and/or its patients, and the quotation and its terms, including the pricing terms under which Purchaser has agreed to purchase the Circadian Light Products. Purchaser shall use the same degree of care to protect the confidentiality of the disclosed information as it uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Purchaser may disclose such confidential information to its employees on a need to know basis necessary to perform the transactions contemplated herein. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of these Terms and Conditions of Sale or any other obligation of confidentiality, or (b) is lawfully obtained by the Purchaser from a third party without any breach of confidentiality or violation of law.

## **SOFTWARE LICENSE**

Any software included with the Circadian Light Products or otherwise licensed by Circadian to Purchaser, is licensed and not sold. The license is nonexclusive and is limited to use with the Circadian Light Products. No other use is permitted and Circadian retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes, without limitation, all rights in patents, copyrights, trademarks and trade secrets. Purchaser shall not sell, transfer, sublicense, reverse engineer or disassemble or redistribute the software. Purchaser shall not copy, disclose, or display any such software or otherwise make it available to others. Software licensed or provided by Circadian to Purchaser may require that Purchaser agree to a separate service agreement or terms of use in connection with the license or use of such software. Purchaser hereby agrees (i) to be bound by any such service agreement or terms of use to the extent accepted by Purchaser prior to use of the software, and (ii) that such terms shall be in addition to those set forth herein. To the extent that there are any inconsistencies between the terms set forth herein and any software service agreement or terms of use, the software service agreement terms or terms of use, as applicable, shall apply.

## **ENTIRE AGREEMENT**

These Terms and Conditions of Sale constitute the entire agreement of Circadian and Purchaser and supersedes all prior negotiations, proposals, agreements and understandings, whether oral or written, relating to the Circadian Light Products to be purchased hereunder or otherwise relating to the subject matter of these Terms and Conditions of Sale. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Circadian. If the Circadian Light Products purchased from Circadian are to be used in the performance of government contract or subcontract, no government requirements or regulations shall be binding upon Circadian unless specifically agreed to by Circadian in writing.

## **APPLICABLE LAW**

The law applicable to sales in the United States under these Terms and Conditions of Sale shall be Article 2 of the Uniform Commercial Code as applicable to the state of destination. The United Nations Convention on Contracts for the International Sales of Goods is hereby excluded and shall not apply.

## **LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL CIRCADIANS AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF CIRCADIANS LIGHT PRODUCTS, IN CONTRACT, TORT OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE CIRCADIANS LIGHT PRODUCT TO WHICH SUCH LIABILITY RELATES. IN NO EVENT SHALL CIRCADIANS BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR COMPENSATORY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOST REVENUES OR PROFITS, BUSINESS OR GOODWILL EVEN IF CIRCADIANS HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

## **GENERAL TERMS**

Bankruptcy. If Purchaser 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, Circadian may cancel any unfulfilled obligations, or suspend performance; however, Purchaser's financial obligations to Circadian shall remain in effect.

Assignment. Purchaser may not assign any rights or obligations in connection any order without the prior written consent of Circadian, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect.

Governing Law. All transactions contemplated by these Terms and Conditions of Sale shall be governed by the laws of the Commonwealth of Massachusetts, without regard to that state's choice of law principles. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

Headings: The headings contained herein are intended for convenience only and shall not be used to interpret the terms hereof.

Severability. If any provision of these Terms and Conditions of Sale are deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.

Performance. The failure of Purchaser or of Circadian at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting these Terms and Conditions of Sale.

Obligations. Purchaser's obligations are independent of any other obligations the Purchaser may have under any other agreement, contract, or account with Circadian. Purchaser will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Circadian.