

ENCELIUM Light Management Systems

Terms of Sale

1. Scope

These Terms of Sale ("Terms") apply to sale and delivery of the Encelium Light Management System and all quotations, order acknowledgements, and invoices from Digital Lumens, Inc. for Encelium products. These are the only terms to the sale of the Encelium System and components, except those relating to prices, quantities, delivery, or invoicing set forth in any Customer purchase order, or any alternate terms in a contract between Digital Lumens, Inc. and Customer ("Contract"). If there is a conflict between these Terms and the Contract, the provisions of the Contract shall prevail.

2. Definition

- a. "Customized Components." Any ordered components that are not included in the manufacturer's standard product offering or are modified from the standard product offering.
- b. "Documentation." Instructions, manuals, diagrams and collateral materials pertaining to use and operation of the Encelium Hardware and Software.
- c. "Encelium Products." Encelium Light Management System hardware and software and associated components.
- d. "Encelium Hardware." Encelium Light Management System hardware and components produced or supplied by Encelium.
- e. "Encelium Software." Any version of Polaris™, other software or firmware, including components, extensions and modules, related updates and upgrades; licensed materials, and Documentation, whether incorporated into, distributed, or for use with the System.
- f. "System." Encelium Light Management System consisting of Encelium Hardware and Software.
- g. "Third Party Components." Any non-Encelium branded components that may be supplied with Encelium Products including, motion sensors, occupancy sensors, photo sensors, electrical meters, and computer hardware and software.
- h. "Third Party Software." Software and software components provided by third parties ("Third Party Licensors") incorporated or for use with the Encelium Software and System, including certain Open-Source Software components and Third Party operating systems.

3. Quotes and Orders

- a. Quotations are effective for 120 days from date of issue, and delivery must be authorized within a further 120 days from receipt of purchase order. Prices and product availability are otherwise subject to change without notice.
- b. Purchase orders must include, at a minimum: (1) type and quantity of product with manufacturer's part number and model name; (2) total price of the purchase order; (3) time, place and conditions of delivery; and (4) any specifications or special requirements. If Digital Lumens, Inc. disagrees with items in the purchase order or any specifications, Customer and Digital Lumens, Inc. shall discuss in good faith and resolve the differences so that Customer can submit an acceptable purchase order. Alternatively, Digital Lumens, Inc. may issue an order confirmation or acceptance with different terms. Digital Lumens, Inc. will not be liable under any purchase order that contains errors or omits material information, even if accepted.

4. Delivery Terms

For all orders over 5,000 dollars, shipment by ground transportation within the continental United States is included. All orders less than 5,000 dollars are subject to a separate shipping and handling charge. Products shall be delivered according to delivery terms specified in the purchase order and in Digital Lumens, Inc. standard packaging. Customer is responsible for the additional costs resulting from requests for special packaging, delivery method, expedited shipment, or shipment in multiple releases, which may be invoiced separately and in advance of shipment by Digital Lumens, Inc. Digital Lumens, Inc. reserves the right to make delivery in installments or partial releases unless Customer expressly states otherwise in the purchase order. Installments and partial releases may be invoiced separately. Risk of loss shall be transferred to Customer upon delivery and title will transfer upon receipt of full payment.

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5. **Payment & Credit**

Payment is due 30 days from the date of invoice. Digital Lumens, Inc. reserves the right to halt shipment of any purchase order, in whole or in part, in the event of any delinquency in payment for any prior purchase order or shipment until all undisputed charges and applicable late fees have been resolved. Before releasing any halted shipment Digital Lumens, Inc. may request satisfactory assurance of Customer's ability to pay and may modify payment or credit terms. Past due balances shall be subject to interest charges at the maximum rate permitted by law.

6. **Cancellation and Returns**

Cancellation of any purchase order prior to shipment or any hold for release order will be subject to a cancellation fee equal to the greater of 25% of the total order value or Digital Lumens, Inc. actual costs and expenses. Orders cancelled after shipment must be returned to Digital Lumens, Inc. within 15 days at Customer's expense. Cancelled orders and non-warranty returns will be subject to a charge of 25% of list price for Encelium-branded products and 25% of list price for Third Party Components, for administrative and re-stocking expenses. Customized Components are non-cancellable and non-returnable.

7. **Taxes**

Prices do not include any taxes, excises, fees, duties, permits or other government charges, and Customer shall pay such amounts or reimburse Digital Lumens, Inc. for any amounts it pays. If Customer claims a tax exemption or direct payment permit, it shall provide Digital Lumens, Inc. with a valid exemption certificate or permit and indemnify, defend and hold Digital Lumens, Inc. harmless from any taxes, costs and penalties arising out of same.

8. **Delay**

Digital Lumens, Inc. will not be liable or responsible for any failure or delay in delivery or performance any term of this Agreement, when and to the extent such failure or delay results from acts beyond Digital Lumens, Inc. reasonable control, including: (a) acts of God; (b) flood, fire, earthquake, explosion, hurricane, blizzard or any other natural or manmade disaster or catastrophe; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) enactment, issuance, or operation of any law, ordinance, executive, administrative order, or judicial order that prevents performance; (e) actions, embargoes or blockades in effect on or after the date of Order; (f) action by any governmental authority; (g) national or regional emergency; or (h) strikes, labor stoppages or slowdowns or other industrial disturbances other than by Digital Lumens, Inc. employees. Digital Lumens, Inc. may allocate inventories and current production and to substitute suitable materials when, in its reasonable opinion, circumstances warrant allocation or substitution

9. **Limitations on Usage**

The Customer shall not use the System or any components for any purpose other than that identified in Digital Lumens, Inc. / Encelium published specifications and the End User License Agreement. Customer agrees to install and use the System in compliance with all applicable laws regulations, including export controls and electrical, lighting, safety, construction codes.

10. **Inspection and Acceptance**

Upon delivery, Customer shall inspect the shipment and verify the quantity and quality of the Products. Products shall be deemed accepted, and Customer will waive any claim for defects or incomplete shipment, unless Customer notifies Digital Lumens, Inc. any defects or shortfalls within fourteen (14) days from the date of delivery.

11. **Warranty and Repair**

- a. As provided in the Limited Warranty, Encelium Products are warranted to be free from defects and perform according to Encelium / Digital Lumens, Inc. published specifications for the Encelium Product in effect at the time of order for the duration of the warranty period.
- b. Warranty claims must submitted be to the Dealer or for direct sales to Encelium Customer Service at customerservice@encelium.com
- c. All warranty returns must have a Return Material Authorization (RMA) issued by Digital Lumens, Inc. After receiving a Return Material Authorization, Customer must return the Encelium Product at Customer's expense to Digital Lumens, Inc. according to the shipping labels or instructions provided with the RMA.

12. **Support and Maintenance Services**

Digital Lumens, Inc. may provide optional enhanced support and maintenance services during and after the warranty period, upon ordering and payment of the applicable fees by Customer and the execution of a separate agreement.

13. **Energy Savings**

Any energy savings analysis prepared by Encelium / Digital Lumens, Inc. is a preliminary estimate based on the information available at the time of quotation. Energy savings, if any, will vary depending on factors such as site

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conditions, utility rates, selected components and system configuration. Any rebate, incentive or cost reduction that may be available from third parties is outside the control of Digital Lumens, Inc. Digital Lumens, Inc. does not guarantee any energy savings or other monetary benefit from the use of the System.

14. Additional Terms

Except as otherwise agreed, all orders and sales of Encelium products will be subject to these Terms, Limited Warranty and the End User License Agreement, each of which is incorporated by reference. Digital Lumens, Inc. rejects any additional or inconsistent terms contained in any purchase order. These Terms may only be modified in writing by an authorized representative of Digital Lumens, Inc.

15. Applicable Law

Sales to U.S. locations are subject to the laws of the Commonwealth of Massachusetts, exclusive of its conflicts of law provisions. Sales to Canadian locations are governed by the laws of Canada. The United Nations Convention on Contracts for the International Sale of Goods is excluded.

16. Intellectual Property

Digital Lumens, Inc. and its licensors hold intellectual property rights or licenses to the intellectual property included or associated with the Encelium Hardware and Software. No license or rights are granted or transferred to Customer except the non-exclusive, limited right to use the System. The Encelium Software is licensed, not sold. The End User License Agreement and applicable Third Party Software license agreements governs the use of the Encelium Software.

17. Limitation of Liability

EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, DIGITAL LUMENS, INC. SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM USE OF THE ENCELIUM SOFTWARE. DIGITAL LUMENS, INC. MAXIMUM AGGREGATE LIABILITY FOR DAMAGES ARISING UNDER THIS AGREEMENT IS LIMITED TO THE GREATER OF \$500,000.00 OR THE TOTAL FEES PAID TO DIGITAL LUMENS, INC. FOR THE PURCHASE, INSTALLATION AND SERVICE OF THE SYSTEM. CLAIMS ARISING OUT OF DIGITAL LUMENS, INC. NEGLIGENCE, CLAIMS ALLEGING PERSONAL INJURY OR DEATH, OR CLAIMS ELIGIBLE FOR INDEMNIFICATION ARE EXCLUDED FROM THE LIABILITY LIMITATION. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CUSTOMER HAS SOLE RESPONSIBILITY TO PROPERLY BACK UP ALL SOFTWARE AND DATA ON SYSTEM HARDWARE AND TO MAINTAIN APPROPRIATE INFORMATION AND DATA SECURITY PRACTICES.

Customer understands and agrees that the limitations of liability set forth in these Terms are a reasonable allocation of risk between the parties, and, absent such allocation, Digital Lumens, Inc. would not be able to charge the prices it is charging for the System.

18. Export Restriction

The Encelium Hardware, Software and all related technical information or materials are subject to U.S. export control jurisdiction and the export controls, trade restrictions, embargoes and sanctions established by the United States and other countries ("Export Laws"). End User agrees to comply with all applicable Export Laws and ensure that the Encelium Hardware and Software: (a) are not exported directly or indirectly to any prohibited person or country or otherwise in violation of Export Laws; or (b) are not used for any purpose prohibited by Export Laws.