

## Standard Terms and Conditions of Sale – North America

### GENERAL

All transactions between Megaman America, Inc. ("Seller") and a buyer ("Buyer") concerning Fozz branded lighting sold by Seller ("Products") will be governed by the following terms and conditions.

Any terms or conditions which are different from, additional to or inconsistent with these terms and conditions are hereby expressly rejected and are null and void. These terms and conditions may not be modified, supplemented or waived by any agent, salesperson or distributor of Seller.

Seller has the right to correct any typographical or other errors in any of the documents issued by it.

The terms and conditions set forth herein constitute the sole and entire agreement between Buyer and Seller with respect to any order of Products superseding completely any oral or written communications between the parties. No additions to or variations from these terms and conditions, whether contained in Buyer's purchase order or elsewhere, shall be binding upon Seller unless expressly agreed to by Seller in writing.

### TERMS

Payment terms are: Net 30 Days from date of invoice with credit approval only. In the absence of prior credit approval and for initial order, Seller requires prepayment in full. Remittance address and payee is indicated on the invoice.

### QUOTATIONS

All prices quoted are subject to change without notice at any time prior to Seller's acceptance of Buyer's order. All quotations on special products or modifications to catalog items are binding only if confirmed in writing by Seller for the period shown on the quotation. Quotations are based on full shipments unless otherwise stated in writing on Seller's quotation. Price protection will be provided for a period of thirty days from date of quotation by Seller.

### SALES AND SIMILAR TAXES

Seller's prices do not include Federal, State, or Municipal sales, use, excise, value added or any other tax. All present or future tax obligations are the responsibility of and must be paid by Purchaser. If Buyer claims that the Products sold are exempt from any particular tax, Buyer must

provide Seller with a tax exemption certificate acceptable to the taxing authorities.

### ACCEPTANCE OF ORDERS

All orders are subject to acceptance by Seller at its sole discretion and Seller reserves the right to reject any order. Additions to orders are allowed provided the original order has not yet been released to manufacturing or shipped from warehouse stock. Acceptance of any order is subject to availability of product and the ability of Seller to deliver. Orders will be billed at prices in effect at time of shipment unless otherwise agreed.

### DELIVERY

Delivery of the Products shall be made F.O.B. Seller's warehouse in California or such other location in the United States as Seller, in its sole discretion, may from time to time designate. Delivery shall be deemed complete, when Seller places the Products at the disposal of Buyer at Seller's warehouse. Delivery dates are approximate and are based upon prompt receipt of all necessary information. Seller reserves the right to make partial shipments. Delivery dates are subject to change for any reason which is beyond Seller's reasonable ability to control. In the event Seller is unable to comply with designated delivery dates or makes partial shipments, Seller shall not incur any liability for direct, indirect, consequential, incidental or special damages which may be incurred by Buyer.

### TITLE /RISK OF LOSS

Title to the Products sold hereunder shall pass from Seller to Buyer when Seller places the Products at the disposal of Buyer at Seller's warehouse or such other location as Seller may designate.

Risk of loss or damage to the Products sold hereunder shall pass to Buyer when Seller places the Products at the disposal of Buyer's common carrier at Seller's warehouse or such other location as Seller may designate, and all claims for damages or shortages in transit shall be made by Buyer with its carrier. In the event that delivery of the Products to a common carrier at the designated delivery location should be delayed for any reason beyond Seller's control, risk of loss shall pass to Buyer at the time the Products destined for

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delivery to Buyer are set aside by Seller for dispatch to a common carrier.

#### **FREIGHT ALLOWANCE**

All orders for Products having an invoice price of \$2,500 or more for delivery to one consignee in a single shipment qualify for freight allowance.

All orders for Products having an invoice price less than \$2,500 will be assessed freight and handling charges.

#### **ALL SHIPMENTS**

For orders that qualify for freight allowance, Seller reserves the right to select the carrier and to route shipments at Seller's discretion. Seller will use commercially reasonable efforts to comply with Buyer's requests as to method of transportation, but Seller reserves the right to use an alternate carrier and method of transportation, whether or not at a higher cost to Buyer. For shipments outside the contiguous United States, Seller reserves the right to select the carrier and method of transportation.

#### **PARTIAL RELEASE**

If an order has multiple releases specified by Buyer, each release will be treated as an individual order with respect to freight allowance and minimum billing.

#### **BACK ORDERS**

Back orders that are the responsibility of Seller will be shipped F.O.B. warehouse or such other location as Seller may designate with freight prepaid and allowed via the most cost effective method, providing the original order qualified for freight allowance.

#### **MINIMUM BILLING**

\$500 net per order.

#### **CANCELLATION**

**Stock Products** – Orders cannot be cancelled or modified by Buyer, except with Seller's prior written consent and subject to the following conditions. For Product's currently in stock, Buyer shall accept delivery of and pay for at the agreed upon prices all Products which are released and/or allocated for this order. Seller will endeavor to accommodate requests for cancellations but cannot guarantee stoppage of shipment for stocked Products. If an order for stocked Products is stopped after picking and prior to shipment, Buyer shall pay any costs associated with this

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 Buyer.

**Non-Stock Products** – Cancellation of orders for Products not currently in stock may be made only if no work has been performed and no material purchased. If work has been performed any costs incurred will be charged to Buyer, which may include a cancellation charge equal to the price of the Product. Upon cancellation, Buyer owned materials will be disposed of by Seller at its discretion.

#### **RETURNED GOODS GENERAL CONDITIONS**

1. Products are not returnable without the prior written consent of Seller.
2. Request for permission to return Products must be made in writing within 60 days from date of shipment and no later than 60 days after receipt, TIME BEING OF THE ESSENCE, except for defective Products, and Buyer must provide original Seller invoice number.
3. All returned Products 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 25% minimum restocking charge on standard Products will be deducted from all credits issued on authorized standard Products returns. Credit will be issued for only the actual quantity received and will be based on original invoice price, or price in effect at the time of the return shipment, whichever is lower.
4. Return Material Authorization (RMA) form, supplied by Seller, must accompany the return shipment.
5. Return freight must be prepaid. Material must be received by Fozz within sixty (60) days of issuance of RMA and must be non-discontinued product.
6. Net value of the return must not be less than \$250.

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7. Seller reserves the right to deduct for any damage sustained in transit.
8. Unauthorized returns will be refused. Items returned without proper authorization from Seller will, at the sole option of Seller, be returned to 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 is at the sole discretion of Seller. All non-stocked, special, or custom made Products are not returnable.
9. If the returned Product is necessitated through the fault of Seller and written permission is granted by Seller for its return, Seller will give full credit including all transportation charges if returned per transportation routing instructions on the RMA.
10. On direct shipment orders, returns will be allowed up to 5% of the job value.
11. Buyer shall remain absolutely and unconditionally liable for the purchase price of all Products, and Seller will not be bound by terms and conditions imposed by any third party.

#### PRODUCT SPECIFICATION

Seller reserves the right to discontinue items, modify designs, and change specifications or prices without incurring any liability. Discontinued Products, if ordered, may not be returned for credit.

#### PAYMENTS

All invoices are due and payable in full, without deduction or set-off of any kind whatsoever, per the standard terms stated herein. Buyer shall be liable for legal fees and collection costs incurred by Seller to collect past due amounts. In the case of an apparent discrepancy in a line item charge, Buyer is obligated to advise Seller in writing of the nature of the claimed discrepancy within five (5) days of receipt of the invoice. This includes all requests for proof of delivery. **A claim of discrepancy does not relieve Buyer of the absolute obligation to pay the remaining balance of the invoice in accordance with the standard terms of payment.** Seller, after review, will have

sole discretion to resolve the alleged discrepancy; and Buyer expressly agrees that Seller's decision will be final and binding. Seller will promptly advise Buyer of its decision regarding any disputed items or charges. If, in the judgment of Seller, the financial condition of Buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance, and, in the event of the bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under any bankruptcy, insolvency or similar law, Seller shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges.

#### DEFAULT IN PAYMENT

If Buyer fails to make payments in full per the standard terms set forth herein, seller, in addition to any other remedies available to it, may, at its option, (i) defer further shipments until such payments are made and satisfactory credit arrangements are reestablished or (ii) cancel the unshipped balance of any order.

#### LIMITED WARRANTY

Seller warrants that all Products sold hereunder shall be free from defects in workmanship and materials under normal and proper storage, installation, and use. If any failure to conform to this warranty is reported to Seller in writing within one (1) year from the date of shipment, Seller, upon being satisfied of the existence of such non-conformity, will correct the same by repairing the Product or by delivering a replacement product to Buyer, as Seller in its discretion shall elect. In the event that Buyer discovers a defect in any Product, Buyer must immediately notify Seller in writing of such defect. If Seller is not provided with such written notification, Seller shall not be liable for any further damage which could have been avoided if Seller had been provided with immediate written notification.

Seller's liability under the foregoing warranty shall inure only to the benefit of Buyer and may not be transferred to any other person or legal entity. In the event that Buyer purports to transfer the foregoing warranty to any other person or legal entity, Seller's liability thereunder shall cease and be of no further force or effect.

In the event that any Product is altered or repaired by Buyer without the prior written approval of Seller, the foregoing warranty shall be null, void and of no effect. In addition, Seller shall not be

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liable for or accept invoices for repairs to Products which are not authorized in writing by Seller.

THE FOREGOING WARRANTY TERMS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY SET FORTH HEREIN AND SELLER EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO DISTRIBUTOR, SUPPLIER, AGENT OR SALES REPRESENTATIVE OF HAS THE AUTHORITY TO MODIFY, SUPPLEMENT OR AMEND THIS LIMITED WARRANTY.

#### **LIMITATION OF REMEDIES**

IN THE EVENT OF SELLER'S LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, BUYERS SOLE AND EXCLUSIVE REMEDY WILL BE LIMITED TO, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT BY SELLER OF THE NON-CONFORMING PRODUCT FOR WHICH CLAIM IS MADE BY BUYER IN ACCORDANCE WITH THE FOREGOING WARRANTY., OR TO THE REPAYMENT OF THE PORTION OF THE PURCHASE PRICE ATTRIBUTABLE TO THE NON-CONFORMING ITEM. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE, OR PORTION THEREOF, ATTRIBUTABLE TO THE NON-CONFORMING ITEM. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER AS THE RESULT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY).

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