

CRENSHAW

Standard Terms and Conditions

I.

Deliverables and Services

Deliverables. Crenshaw shall manufacture and sell the Deliverables to the Customer as described in one or more Statements of Work agreed upon by the parties and entered into in accordance with Crenshaw Lightings Standard Terms and Conditions.

Services. Crenshaw shall provide the Services to the Customer as described in one or more Statements of Work agreed upon by the parties entered into in accordance with Crenshaw Lightings Standard Terms and Conditions.

Controlling Document. Each Statement of Work, together with Crenshaw Lightings Standard Terms and Conditions, shall be a separate Agreement with respect to the Deliverables and Services described in the applicable Statement of Work. This Agreement is expressly limited to the terms of this Agreement and the terms contained in the applicable Statement of Work. The terms of this Agreement prevail over any terms or conditions contained in any other documentation and expressly exclude any of Customer's general terms and conditions contained in any purchase order or other document issued by Customer. In the event of any conflict between the terms of this Agreement and the terms of any Statement of Work or any other document issued by Customer, the terms of this Agreement prevail.

II.

Shipment; Delivery; Acceptance and Inspection of Deliverables

Delivery. Crenshaw shall select the method of shipment of and carrier for the Deliverables. Crenshaw shall deliver the Deliverables to the delivery location as set forth in the Statement of Work using Crenshaw's standard methods for packaging and shipping such Deliverables.

Title and Risk of Loss. Title to the Deliverables and risk of loss to the Deliverables passes to Customer upon Crenshaw's tender of the Deliverables to the carrier.

Inspection. All sales are final. Customer shall inspect the Deliverables upon receipt and either accept or, only if a Deliverable is a Non-Conforming Deliverable, reject the Non-Conforming Deliverables. Customer will be deemed to have accepted the Deliverables unless it provides Crenshaw with written notice of the Non-Conforming Deliverables within two (2) days following the Inspection Period, stating with specificity all such nonconformities.

Non-Conforming Deliverables. For Non-Conforming Deliverables, Crenshaw shall (a) replace such Non-Conforming Deliverables with conforming Deliverables, or (b) refund the price for such Non-Conforming Deliverables, together with all shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at its expense and risk of loss, the Non-Conforming Deliverables to Crenshaw's facility located at 592 Paradise Lane SE Floyd, VA 24091 or other as directed by Crenshaw Lighting. If Crenshaw exercises its option to replace the Non-Conforming Deliverables, Crenshaw shall, after receiving Customer's shipment of Non-Conforming Deliverables, ship to Customer at Customer's expense and risk of loss, the replaced Deliverables to Customer's location as described in the applicable Statement of Work. EXCEPT AS PROVIDED UNDER THESE TERMS AND CONDITIONS, CUSTOMER HAS NO RIGHT TO RETURN THE DELIVERABLES. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS ARE CUSTOMER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NON-CONFORMING DELIVERABLES, SUBJECT TO CUSTOMER'S RIGHTS UNDER THESE TERMS AND CONDITIONS WITH RESPECT TO ANY NON-CONFORMING DELIVERABLES FOR WHICH CUSTOMER HAS ACCEPTED DELIVERY.



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III. Crenshaw's Obligations

Licenses. Crenshaw shall maintain all necessary licenses and comply with all Laws applicable to Crenshaw in relation to Services and Deliverables.

Timely Performance. Any time quoted by Crenshaw for delivery of Deliverables or completion of Services is an estimate only. Crenshaw agrees to use commercially reasonable efforts to timely perform of all its obligations, including the timetables, Project Milestones and other requirements in these terms and conditions and in the applicable Statement of Work.

Insurance. Crenshaw shall, at its own expense, maintain and carry in full force, commercial general liability insurance in a sum no less than \$1,000,000 per occurrence with financially sound and reputable insurers, and upon Customer's reasonable request, shall provide Customer, upon request, with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Customer as an additional insured. Crenshaw shall provide Customer 10 days' advance written notice in the event of a cancelation or other material change in such insurance policy.

IV. Customer's Obligations

Customer's Obligations. Customer shall:

Cooperate with Crenshaw in all matters relating to the Services and Deliverables and appoint a Customer employee to serve as the primary contact with respect to these terms and conditions and who will have the authority to act on behalf of Customer with respect to matters pertaining to these terms and conditions or applicable Statement of Work;

Respond promptly to any Crenshaw request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Crenshaw to carry out the Services and/or deliver the Deliverables in accordance with the requirements of these terms and conditions and the applicable Statement of Work;

Provide such information as Crenshaw may request in a timely manner, and ensure that it is complete and accurate in all material respects; and

Obtain and maintain all necessary licenses and comply with all laws applicable to Customer in relation to the Services and Deliverables.

Delayed Performance. *If Crenshaw's performance of its obligations under these terms and conditions are prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Crenshaw shall not be deemed in breach of its obligations under these terms or conditions or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.*

V. Change Orders

Change in Scope of Services or Specifications. If either party desires to change the scope or performance of the Services or specifications of the Deliverables, it shall submit details of the requested change to the other in writing. Crenshaw shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the fees and other charges for the Services or Deliverables arising from the change;
- (c) the likely effect of the change; and
- (d) any other impact the change might have on the Services or Deliverables.



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Change Order Form. Promptly after receipt of the written estimate, the parties shall enter into a change order. Neither party shall be bound by the Change Order unless mutually agreed upon in writing in accordance with these terms and conditions.

VI.

Fees; Payment Terms

Fees and Prices. Customer shall pay the applicable prices and fees set forth in the Statement of Work, including any applicable changes made pursuant to a Change Order.

Payment. The total fees shall be paid to Crenshaw in accordance with any payment or installment schedule as set out in the Statement of Work, with each installment or payment being conditional on Crenshaw achieving the corresponding Project Milestone. On achieving a Project Milestone, Crenshaw shall issue invoices to Customer for the fees that are then payable. Customer shall pay all invoiced amounts due to Crenshaw upon receipt of such invoice. All payments hereunder shall be in US dollars and made by check or wire transfer.

Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Crenshaw's income, revenues, gross receipts, personnel or real or personal property or other assets.

VII.

Intellectual Property Rights; Ownership

Ownership. Customer acknowledges and agrees that:

- (a) except as provided in these terms and conditions, Crenshaw will retain all Intellectual Property Rights used to create, embodied in, used in and otherwise relating to all designs, materials, documents, writings and all other work created or used under these terms and conditions, including without limitation, the Deliverables and any of their component parts (the "Crenshaw Intellectual Property");
- (b) the Crenshaw Intellectual Property is the sole and exclusive property of Crenshaw;
- (c) Customer shall not acquire any ownership interest in any of the Crenshaw Intellectual Property;
- (d) the rights to any improvements in the Crenshaw Intellectual Property, including any patent, trademark, trade secret or copyright rights (whether or not patentable or registerable), shall belong to Crenshaw. Customer agrees to assign, transfer and set over unto Crenshaw all its right, title and interest in and to any improvements to the Crenshaw Intellectual Property;
- (e) any goodwill derived from the use by Customer of the Crenshaw Intellectual Property inures to the benefit of Crenshaw or its licensors, as the case may be;
- (f) if Customer acquires any Intellectual Property Rights, rights in or relating to any Deliverables or any other Crenshaw Intellectual Property (including any rights in any trademarks, derivative works or patent improvements relating thereto) by operation of Law or otherwise, such rights are deemed and are hereby irrevocably assigned to Crenshaw or its licensors, as the case may be, without further action by either of the parties; and
- (g) Customer and its customers shall use the Crenshaw Intellectual Property Rights only in accordance with these terms and conditions and any instructions of Crenshaw.

Interference. Customer shall not (a) take any action that may interfere with any of Crenshaw's rights in or to the Crenshaw Intellectual Property, including Crenshaw's ownership and exercise thereof, (b) challenge any right, title or interest of Crenshaw in or to the Crenshaw Intellectual Property or (c) make and claim or take any action adverse to Crenshaw's ownership of the Crenshaw Intellectual Property.

Customer Materials. Customer shall remain the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. To the extent that any



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Customer Materials are incorporated into any Deliverable or any other Crenshaw Intellectual Property, Customer grants to Crenshaw a non-exclusive, perpetual, non-revocable royalty-free license to use any Customer Materials. All other rights in and to the Customer Materials are expressly reserved by Customer.

VIII. Confidential Information

Non-Disclosure and Non-Use. The Receiving Party agrees:

- (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants and legal advisors who have a “need to know”, who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in these terms and conditions;
- (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under these terms and conditions or, in the case of Customer, to make use of the Services and Deliverables; and
- (c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

Compelled Disclosure. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

- (d) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and
- (e) reasonable assistance, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party’s legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party’s request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

Advertisement. Notwithstanding anything to the contrary in these terms and conditions, Crenshaw may refer to work performed for Customer in any sales promotion, advertisement or other publication unless Customer provides express written instruction to the contrary.

IX. Indemnification; Limitation of Liability

Indemnification by Crenshaw. Crenshaw shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded to a third party against Customer arising out of or resulting from (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or grossly negligent acts or omissions of Crenshaw or Crenshaw personnel; and/or (b) Crenshaw’s material breach of any representation, warranty or obligation of Crenshaw set forth in these terms and conditions.

Indemnification by Customer. Customer shall defend, indemnify and hold harmless Crenshaw and its officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded to a third party against Crenshaw arising out of or resulting from (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the grossly negligent or willful acts or omissions of Customer; and/or (b) Customer’s material breach of any representation, warranty or obligation of Customer in these terms and conditions.

LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY’S LIABILITY ARISING OUT OF OR RELATED TO A PARTICULAR STATEMENT OF WORK, WHETHER ARISING OUT OF OR



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RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO CRENSHAW UNDER THAT STATEMENT OF WORK.

LIMITATION ON DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

X.

Limited Deliverables Warranty

Limited Warranty.

If Deliverable will be used for personal, family or household purposes: Crenshaw warrants to Customer that, for a period of one year from the date that Deliverables are accepted by Customer pursuant to these terms and conditions, the Deliverables will materially conform to the Specifications. This warranty does not apply if the Deliverables (a) have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instruction issued by Crenshaw; (b) have been reconstructed, repaired or altered by Persons other than Crenshaw or its authorized representatives; or (c) have been used with any third-party products, hardware or product that has not been previously approved in writing by Crenshaw. A five (5) year warranty covers all electrical assemblies, including LED components and drivers, sockets, and wiring, with the exception of compact fluorescent and HID ballasts, which shall bear the manufacturer's warranties. Customer shall submit a written claim to Crenshaw these terms and conditions within 2 days of the discovery of the facts giving rise to such claim, stating with specificity all nonconformities. Crenshaw shall use commercially reasonable efforts to correct the nonconformities within 30 days of received such notice. Customer may have other rights which vary from state to state.

If Deliverable will be used for commercial purposes: Crenshaw warrants to Customer that, for a period of one year from the date that Deliverables are accepted by Customer pursuant to these terms and conditions, the Deliverables will materially conform to the Specifications, be free of defects in manufacturing and shall exhibit structural integrity. This warranty does not apply if the Deliverables (a) have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instruction issued by Crenshaw; (b) have been reconstructed, repaired or altered by Persons other than Crenshaw or its authorized representatives; or (c) have been used with any third-party products, hardware or product that has not been previously approved in writing by Crenshaw. A five (5) year warranty covers all electrical assemblies, including LED components and drivers, sockets, and wiring, with the exception of compact fluorescent and HID ballasts, which shall bear the manufacturer's warranties.

Manufacturer Warranty. Crenshaw agrees that Customer shall be entitled to the benefit of any manufacturer warranty granted to Crenshaw (to the extent such warranty extends to Customer by its terms) for materials incorporated into or attached to the Deliverables and Crenshaw agrees to coordinate at Customer's expense any warranty claims with respect to such materials with the manufacturer on Customer's behalf.

LIMITATION.

If Deliverable will be used for personal, family or household purposes: EXCEPT FOR THE EXPRESS WARRANTIES IN THESE TERMS AND CONDITIONS, CRENSHAW HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THESE TERMS AND CONDITIONS, TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING ANY (a) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; or (b) WARRANTIES OF INFRINGEMENT, IN EACH CASE WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER



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ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY CRENSHAW, OR ANY OTHER PERSON ON CRENSHAW'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED FOR IN THESE TERMS AND CONDITIONS. SHIPPING AND LABOR EXCLUDED IN MOST CASES.

If Deliverable will be used for commercial purposes: EXCEPT FOR THE EXPRESS WARRANTIES IN THESE TERMS AND CONDITIONS, CRENSHAW HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THESE TERMS AND CONDITIONS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; or (c) WARRANTIES OF INFRINGEMENT, IN EACH CASE WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY CRENSHAW, OR ANY OTHER PERSON ON CRENSHAW'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED FOR IN THESE TERMS AND CONDITIONS. SHIPPING AND LABOR EXCLUDED IN MOST CASES.

XI.

Termination; Effect of Termination

Termination by Crenshaw. In addition to any rights set forth in a Statement of Work, Crenshaw may terminate any Statement of Work, by providing written notice to Customer:

- (a) if Customer fails to pay any amount when due under these terms and conditions or any Statement of Work or
- (b) if Customer is in material breach of any representation, warranty or covenant of Customer under these terms and conditions or any Statement of Work (other than committing a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Customer within thirty (30) days after Customer's receipt of written notice of such breach.

Termination by Customer. In addition to any rights set forth in a Statement of Work, Customer may terminate any Statement of Work, by providing written notice to Crenshaw:

- (c) if Crenshaw is in material breach of any representation, warranty or covenant of Crenshaw under these terms and conditions, and either the breach cannot be cured or, if the breach can be cured, it is not cured by Crenshaw within thirty (30) days after Crenshaw's receipt of written notice of such breach; or
- (d) at least (30) days in advance if Customer desires to terminate a Statement of Work for convenience; provided, that as a condition precedent to Customer's right to terminate a Statement of work for convenience, within ten (10) days following the date of Customer's termination notice, Customer shall pay to Crenshaw all amounts due to Crenshaw, all of Crenshaw's out-of-pocket costs and expenses (including raw materials, machinery and equipment purchases and cost of labor) incurred by Crenshaw prior to receipt of Customer's termination notice that arise from or relate to the applicable Statement of Work plus the cancelation fee set forth in the Statement of Work.

XII.

Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached these terms and conditions, for any failure or delay in fulfilling or performing any term of a Statement of Work, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of any Statement of Work; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; or compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo,



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export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; (each of the foregoing, a “Force Majeure Event”). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

XIII. Definitions

Statement of Work is defined as any Crenshaw Lighting Quotation, Order Confirmation or accepted Purchase Order.

Confidential Information means any information that is treated as confidential by a party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of these terms and conditions by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

Crenshaw Intellectual Property has the meaning set forth in **Section VII**.

Intellectual Property Rights means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Losses mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

