



STANDARD TERMS AND CONDITIONS EFFECTIVE FEBRUARY 1, 2020

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1. **DEFINITIONS:** As hereinafter used in this schedule, words shall have the following meaning: **Tivoli, LLC. known hereafter as "Tivoli"**

2. **TERMS OF PAYMENT**

All orders must be in writing and are supplied with the following pertinent information:

Ship To

Bill To

PO#

Job Name or Number

Date Requested onsite

Ship Method and Preferred Carrier

Responsibility of Shipping Payment Clearly defined

**Non-Inventoried Standard Items (Distributor Net)**

- Prepay Check
- Prepay Credit Card
- COD
- Net 30 Terms OAC (On Approved Credit)

3. **SHIPMENTS:** All standard domestic shipments are F.O.B. Factory, located in Tustin California, USA. Domestic freight will be prepaid by TIVOLI and charged to the customer. The customer may provide their own shipping account number for domestic and international shipping.

a) **9:00AM PST Cut Off Time:** All expedited orders and/or any orders that must ship same day must be received by TIVOLI clean by 9:00 AM Pacific Standard Time. There may be a fee of up to 25% of the product value charged for same day processing and RUSH orders if a same day shipping is deemed possible by production. Orders received after 9:00 AM may not ship same day.

b) **Will Call:** Will call orders if ordered for same day pick up will be ready no earlier than 2:30PM and will be available for pick up until 5:00PM. Orders placed after 9:00 AM will be ready the following working day.

c) **International Shipping:** TIVOLI default ship location for international orders are:

i. **FOB Dock**

ii. **CIF Port**

4. **WARRANTY:** TIVOLI BRANDED PRODUCTS: TIVOLI LLC INC. MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OTHER THAN THOSE SET FORTH ON THE TIVOLI LIMITED WARRANTY IN EFFECT AT THE TIME OF PURCHASE. **Tivoli's obligation under this limited warranty is limited to, at Tivoli's option, either the repair or replacement of the product or reimbursement of the purchase price within valid warranty conditions. Tivoli's obligation does not include any other costs or expenses, such as, without limitation, any costs or expenses of removal or re-installation regardless of the cause or how incurred (example: labor costs, administrative costs, rental equipment, etc). In the case of "replacement of product" that has been discontinued or is no longer available, "replacement of the product" shall mean an equal or similar product as determined by Tivoli.**

## 5. LIMITATION OF LIABILITY

### 3 Year LIMITED WARRANTY LED Products and Accessories "Exception - Power Supplies."

Tivoli warrants to the original purchaser (the "purchaser") only, that the product that is the subject of this sale, (a) conforms to the manufacturers published specifications and (b) is free from defects in materials and workmanship.

TIVOLI LED Products are warranted to be free from manufacturer defects or defects on workmanship for a period of (3) three years from the original date of purchase based on a maximum of 12 hours of use per day at the products specific input voltage and used in accordance with the installation guide and/or user instructions.

If Tivoli determines that the Product is defective, Tivoli will replace or repair the Product.

**Replacement or repair is our sole warranty obligation and is in lieu of all other remedies. All implied warranties end 3 years after date of purchase as reflected on a tivoli invoice. Liability for incidental or consequential damages is excluded.**

This limited warranty does not apply to loss or damage to the Product caused by: negligence, misuse, mishandling, abuse, improper installation, storage or maintenance, vandalism, civil disturbances, power surges, improper power supply, electrical current fluctuations, corrosive environment installations, induced vibration, harmonic distortion, oscillation and or resonance associated with movement of air currents around the Product, alteration, accident, failure to follow installation instructions, operating, maintenance or environmental parameters prescribed by Tivoli or applicable electrical codes, improper service of the Product performed by someone other than Tivoli or its authorized service provider, or damage due to fire or acts of God. **This limited warranty expressly excludes field labor and/or services charges related to repair or replacement of product. This limited warranty is void if the product is not used for the purpose for which it is designed.**

Tivoli reserves the right to use new, refurbished, reconditioned, or repaired products or parts in the warranty repair or replacement process that will be comparable in function and performance to an original product or part, as determined by Tivoli in its sole discretion, and warranted for the remainder of the original warranty period.

Warranty claims must be made to Tivoli in writing within (14) fourteen days after the discovery of the defect. Proof of purchase such as the invoice or Proof of Purchase on packaging must be presented at time of claim, and comply with Tivoli's other warranty requirements. Upon receiving that notice, Tivoli may require you to promptly return the Product to Tivoli, or its authorized service provider, freight prepaid.

For warranty service evaluations a Return Goods Authorization number (RGA/TICKET#) must be obtained by filling out the online form located on the "Contact Us" page via Tivoli website ([www.tivolilighting.com](http://www.tivolilighting.com)) and click the support button and complete the small form. Packages returning without the RGA/TICKET# printed clearly on the outside carton or documentation may be refused. Warranty service requiring the return of any product to Tivoli, the product must be returned to Tivoli in its original shipping container, or an equivalent container that properly provides a high depth of cushioning and protection from rough shipping conditions. Under no circumstances will Tivoli honor any warranty service on damage deemed to have been caused by the shipping company by insurance agent or official.

The purchaser will be solely responsible for all shipping to Tivoli and/or customs (if applicable) associated with warranty returns. If the return is declared to be under warranty by Tivoli, Tivoli will return the replacement product to the purchaser using normal ground or economy shipping at no cost to the purchaser. If the purchaser so desires the replacement product to be returned from Tivoli in an expedited fashion the difference between economy freight and the desired expedited service will be the sole responsibility of the purchaser. Tivoli will insist that the returned product be insured for the total value of the product unless a hold harmless waiver is signed and submitted to Tivoli prior to shipping. Insurance costs will be the responsibility of the purchase

## LIMITATIONS OF WARRANTY

This non-transferable warranty applies only to the original Purchaser in the country of Purchase. Tivoli does not authorize anyone to make a warranty of any kind on its behalf and Purchaser should not rely on anyone making such statements. The Tivoli Warranty shall cover Products sold to Purchaser by Tivoli in terms of this agreement. Warranty can only be claimed for LED module failure when >10% (greater than ten percent of the total LEDs within any given run or section occurs. **\*Power supplies are warranted in accordance with the warranty of the manufacturer other than branded Tivoli power supplies and controls.**

**The foregoing warranty provisions are exclusive and are given and accepted in lieu of any and all other warranties, whether express or implied, including without limitation any warranty against infringement and any implied warranties of merchantability or fitness for a particular purpose.**

**In no event shall Tivoli be liable for incidental, compensatory, consequential, indirect, special or other damages. Seller's aggregate liability with respect to a defective product shall in any event be limited to the monies paid to seller for that defective product.**

Some states do not allow limitation on how long any implied warranty lasts, so the above limitation may not apply to you. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation may not apply to you. This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state.

Warranty terms and conditions are subject to change without notice

### **5 Year LIMITED WARRANTY LED Products and Accessories – "Exception - Power Supplies"**

Tivoli warrants to the original purchaser (the "purchaser") only, that the product that is the subject of this sale, (a) conforms to the manufacturers published specifications and (b) is free from defects in materials and workmanship.

TIVOLI LED Products are warranted to be free from manufacturer defects or defects on workmanship for a period of (5) five years from the original date of purchase based on a maximum of 12 hours of use per day at the products specific input voltage and used in accordance with the installation guide and/or user instructions and power supplies specified and provided by Tivoli.

If Tivoli determines that the Product is defective, Tivoli will replace or repair the Product.

**Replacement or repair is our sole warranty obligation and is in lieu of all other remedies. All implied warranties end 5 years after date of purchase as reflected on a Tivoli invoice. Liability for incidental or consequential damages is excluded.**

This limited warranty does not apply to loss or damage to the Product caused by: negligence, misuse, mishandling, abuse, improper installation, storage or maintenance, vandalism, civil disturbances, power surges, improper power supply, electrical current fluctuations, corrosive environment installations, induced vibration, harmonic distortion, oscillation and or resonance associated with movement of air currents around the Product, alteration, accident, failure to follow installation instructions, operating, maintenance or environmental parameters prescribed by Tivoli or applicable electrical codes, improper service of the Product performed by someone other than Tivoli or its authorized service provider, or damage due to fire or acts of God. **This limited warranty expressly excludes field labor and/or services charges related to repair or replacement of product. This limited warranty is void if the product is not used for the purpose for which it is designed.**

Tivoli reserves the right to use new, refurbished, reconditioned, or repaired products or parts in the warranty repair or replacement process that will be comparable in function and performance to an original product or part, as determined by Tivoli in its sole discretion, and warranted for the remainder of the original warranty period.

Warranty claims must be made to Tivoli in writing within (14) fourteen days after the discovery of the defect. Proof of purchase such as the invoice or Proof of Purchase on packaging must be presented at time of claim, and comply with Tivoli's other warranty requirements. Upon receiving that notice, Tivoli may require you to promptly return the Product to Tivoli, or its authorized service provider, freight prepaid.

For warranty service evaluation a Return Goods Authorization number (RGA/TICKET#) must be obtained by filling out the online form located on the "Contact Us" page via Tivoli website ([www.tivolilighting.com](http://www.tivolilighting.com)) and click the support button and complete the small form. Packages returning without the RGA/TICKET# printed clearly on the outside carton or documentation may be refused. Warranty service requiring the return printed clearly on the outside carton or documentation may be refused. Warranty service requiring the return of any product to Tivoli, the product must be returned to Tivoli in its original shipping container, or an equivalent container that properly provides a high depth of cushioning and protection from rough shipping conditions. Under no circumstances will Tivoli honor any warranty service on damage deemed to have been caused by the shipping company by insurance agent or official.

The purchaser will be solely responsible for all shipping to Tivoli and/or customs (if applicable) associated with warranty returns. If the return is declared to be under warranty by Tivoli, Tivoli will return the replacement product to the purchaser using normal ground or economy shipping at no cost to the purchaser. If the purchaser so desires the replacement product to be returned from Tivoli in an expedited fashion the difference between economy freight and the desired expedited service will be the sole responsibility of the purchaser. Tivoli will insist that the returned product be insured for the total value of the product unless a hold harmless waiver is signed and submitted to Tivoli prior to shipping. Insurance costs will be the responsibility of the purchaser.

#### **LIMITATIONS OF WARRANTY**

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**The foregoing warranty provisions are exclusive and are given and accepted in lieu of any and all other warranties, whether express or implied, including without limitation any warranty against infringement and any implied warranties of merchantability or fitness for a particular purpose.**

**In no event shall tivoli be liable for incidental, compensatory, consequential, indirect, special or other damages. Seller's aggregate liability with respect to a defective product shall in any event be limited to the monies paid to seller for that defective product.**

Some states do not allow limitation on how long any implied warranty lasts, so the above limitation may not apply to you. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation may not apply to you. This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state.

Warranty terms and conditions are subject to change without notice.

6. **PRICE AND QUOTATIONS:**

a) Prices for standard, special or modified items must be issued in writing from TIVOLI and are firm for thirty (90) days. Purchase orders for standard, special or modified items received and acknowledged with this 90 day period will be price protected for shipment within ninety (90) days from the date of the order. Extensions to this limitation may be issued and must be in writing with mutual agreement.

Prices quoted by TIVOLI, on official quotations, will be fixed for a period of 90 Days from the date printed on the quotation.

b) Only prices issued in writing in official quotations, authorized by TIVOLI may offer price protection for a different period other than the period specified in Section 7 (a) of this document.

c) Releases for shipments beyond the price protected period may be subject to a price increase of no less than the difference between the protected price and the price for the item published at the time of the lapse if the cause for delay or deferment is cause by the Customer. These reasons include but are not limited to: Failure to comply with payment terms, failure to comply with all terms and conditions set forth on the purchase agreement (Invoice, Agreement, or Contract): changes or modification to product, packaging, freight, user manuals, labeling, and any other changes not in accordance with the original purchase agreement. Additionally if the Factory price has changed due to any product changes, costs of materials increases, general costs increases, fluctuation of currency, or force majeure may affect the new adjusted price at the time of lapse.

d) Possession of a Price Sheet is not an entitlement to purchase at prices shown, and possession of a Price Sheet is not in itself an offer to sell.

e) Shipping estimates are only just that estimates. If the actual amount billed to Tivoli is greater than the amount charged to you by Tivoli, Tivoli reserves the right to invoice you for said additional amount.

7. **PURCHASE ORDERS:** TIVOLI hereby gives notice of its objection to any different or additional terms and conditions other than as stated herein. Acceptance of a buyer's order is expressly made conditional on the buyer's assent to the terms and conditions set forth herein. Buyer's acceptance of the provisions of the front and rear sides of the acknowledgment form shall be conclusively presumed if no written objection to the acknowledgment is received by TIVOLI within fifteen (15) days from the date on said acknowledgment. It is the buyer's responsibility to communicate any objections directly to TIVOLI, not through its Representatives.

8. **RETURNED GOODS:**

a) All returned goods must be accompanied by a "Return Goods Authorization" (RGA) Packing List. Requests to return non-defective surplus material must be made within twenty-one (21) days from the date of shipment. Special, made-to-order or discontinued equipment is not subject to return. Merchandise must be returned in the original factory sealed cartons. All merchandise must reach TIVOLI in a perfectly saleable condition.

b) Authorized Returns must be made freight prepaid within fifteen (15) days of the date of issuance of the RGA. All merchandise returned is subject to inspection. Unsellable, damaged or improperly packaged merchandise will be credited at salvage value or returned to the buyer freight collect. Credit will be issued at price prevailing at time of shipment or time of return, whichever is lower, less 25% handling and restocking charge when accompanied by a new order, 50% without a replacement order, plus original outbound freight costs if incurred by TIVOLI.

RGAs@Tivoliusa.com

Note: Issuance of an RGA does not constitute an admission that the item is defective or is creditable.

c) Requests to return defective materials under warranty must be made no later than 15 days following the end of the warranty period if a RGA has been obtained prior to the last day of Warranty Term. It is the Customer's responsibility for the return of defective materials. TIVOLI cannot and will not accept returns from anyone but the original purchaser. It will be at TIVOLI's sole discretion to repair or replace defective warranty materials.

9. **Order Cancellations** - Upon acceptance of a Purchase order Tivoli, LLC production has begun should the customer desires to cancel the order a restocking fee of 25% of the orders value may apply. Additionally, if there are custom cut line items the restocking fee will be assessed of up to 60% of the items sales value stated on the purchase order.

10. **SPECIAL ITEMS:** On special or modified products not listed in current published price list, TIVOLI reserves the right to sell only to the distributor, agent, or customer. Orders for special items are to be marked not cancelable or irrevocable. A Deposit of 50% of the total price for the special or modified item may be required on order and 50% balance to ship. There is a minimum billing of \$1,000.00 per each "special" or "modified" line item on order. Replacements or re-orders shall be considered as new orders.
11. **RUSH Orders** - for an order that is not a sample order, to qualify for a RUSH the shipping method must be 3-Day, 2-Day, or Next Day air to qualify as a RUSH order unless the destination is in UPS Zone 1.
12. **Custom Fees**  
a) Miter and Layout Fee \$15.00 per cut unless specified otherwise on the purchase agreement and will be added to quotes as a line item part # Miter.
13. **SAMPLE POLICY**  
**Resellers/Specifier's/Designers:**  
a. Samples are provided normally at charge and are billed in accordance to your established payment terms unless mutually agreed upon in writing.
14. **STANDARD CONDITIONS OF SALES**  
a) **PAYMENT:**  
i) Buyer shall make payment as specified herein and TIVOLI may hold shipment of delivery until such payment is made.  
ii) TIVOLI reserves the right to charge interest and handling charges if buyer is delinquent in payment of invoice.  
iii) If in the opinion of TIVOLI, the financial condition of the buyer becomes impaired or unsatisfactory, TIVOLI may at any time, limit or cancel the credit of buyer and may require from buyer pre-payment before delivery of all future deliveries. Approval of credit of one or more deliveries shall not be deemed a waiver hereof or a future guarantee of credit.  
iv) If any shipment made in accordance with the buyer's instructions is refused for whatever reason, the buyer shall be responsible for payment of such merchandise, in accordance with the terms of this agreement, as though such merchandise had been accepted at the time of original delivery. Buyer shall also be responsible for reasonable storage, handling and redelivery charges and shall pay charges as invoices are rendered.  
v) TIVOLI shall be entitled to reimbursement for all expenses (including reasonable attorney's fees and other costs) incurred by it in connection with collection of any amounts for goods sold hereunder in the event payment therefore shall not be made when due.  
vi) If the buyer notifies TIVOLI not to deliver merchandise after said merchandise has been produced in accordance with buyer's instructions, then buyer shall pay reasonable storage charges until such merchandise is delivered and accepted.
- b) **Standard Free Freight Program:**  
i) Orders \$5000.00 or more of product (excludes labor and overage) qualify for FREE GROUND FREIGHT within the continental United States and are subject to the conditions below:  
ii) Your shipment does not require a 8-12' pallet.  
iii) Your shipment does not require a lift gate delivery.  
iv) Your shipment does not require a specific transit time or a rush and whose method is at our discretion.  
v) Your account must be in good standing "in term"  
vi) Pricing is from the "at then" published price list.  
vii) The Ship to address must be in the continental USA.  
viii) The Ship to address must be a commercial address. If shipped to a non-commercial address, the cost for such additional costs will be assessed at 5% of the value of the goods on the order.  
ix) Contain no clearance or discounted merchandise.  
x) No split shipments on prepaid freight. The entire order must ship at one time. (Additional Freight will be billed if order is requested to be split shipment)

- xi) If it is found that there is no loading dock and a second delivery attempt must be made and a lift gate charge is incurred or a residential fee is incurred, the actual cost and may be passed on to the purchaser.
- xii) If air shipping is desired the difference between ground and air freight will be at the responsibility of the purchaser.
- xiii) The customer may opt to use their Fedex or UPS account at the time of the transaction.
- xiv) No COD orders will be accepted.

**c) PACKAGING AND SHIPMENTS:**

- i) Method of packaging is at the TIVOLI's option unless specified and mutually agreed upon on the purchase agreement.
- ii) TIVOLI will use its own discretion in routing all shipments and reserves the right to select carrier and truck size. If any shipment made in accordance with buyer's instructions shall incur additional labor or carrier costs, said costs shall be paid by the buyer as invoices are rendered.
- iii) **Shipment date mentioned on TIVOLI's order acknowledgment, if any, is TIVOLI's best approximation of the probable shipment date and shall not be deemed to represent a fixed or guaranteed shipment date. Shipment of the merchandise herein is subject to any and all delays due to any condition of happening whatsoever beyond TIVOLI's control (Force Majeure).**
- iv) TIVOLI reserves the right to make shipment in installments unless otherwise expressly stipulated in writing on the purchase agreement or in another document signed by both parties. All such installments shall be separately invoiced and paid for when due, without regard to subsequent shipments. Delay in the shipment of any installment shall not relieve buyer of its obligation to accept remaining shipments.
- v) TIVOLI does not quote shipping or freight charges. If such a quote is provided by an account manager, it is a rough estimate of the shipping or freight charges and is subject to increases or decreases depending on the actual shipping charges when billed. TIVOLI is not responsible for differences between any shipping or freight quote and actual charges billed. If you wish to estimate the shipping charges yourself online, dimensions of product shipping boxes and weights may be requested from your account manager.

**d) CLAIMS AND ADJUSTMENTS**

- i) The carrier accepts shipments covered by buyer's order in good condition and quantity as noted on freight bills. Any claim for damage or shortage lies between the buyer and the carrier.
- ii) It is the buyer's responsibility or his/her designated consignee to check shipment carefully and note any visible damage or shortage on freight bill before signing to facilitate a possible claim against the carrier.
- iii) Concealed loss or damage must be reported to carrier in writing immediately upon discovery, but not later than 72 hours after signing for shipment.
- iv) Buyer agrees not to return any merchandise to TIVOLI for any reason without prior written authorization. Any merchandise received without an RGA clearly printed on the box will be refused at the buyer's expense.
- v) Buyer is responsible for insuring the conformance of delivered material to his/her order or governing specifications. Installation and use of products is done at his own risk and expense. No back charges are applicable or will be honored.
- vi) Claims for shipping errors or concealed shortages will be waived unless made in writing directly to TIVOLI, at its Home Office in Tustin, CA, within three (3) days after receipt of the merchandise.
- vii) Where a return of merchandise is allowed, it must be authorized in writing by TIVOLI in accordance with Section 8 of this document. Failure to secure such authorization in advance will result in refusal by TIVOLI of such returned merchandise. (See Section 8)
- vii) Credit Memos where notice of issuance was emailed and or mailed to the buyer as issued for returned merchandise must be used within the calendar year of issuance or will be deemed forfeited and Tivoli Lighting Inc. and no future recourse for said credit may be made buy the purchaser.

**e) PRICE**

- i) The prices shown in our listed Distributor Net Price list (DNP) are prices prevailing at the present time. Company reserves the right to change these prices at any future date. Unless otherwise specifically provided in writing, the order will be billed at prices prevailing at time of shipment.
- ii) Additions to orders already processed shall be considered separate orders and shall be priced accordingly.
- iii) Promotional prices using promo codes, unless specified otherwise do not qualify for free freight.

**g) SPECIFICATIONS**

- i) Merchandise will be shipped in accordance with the standard styles, sizes and specification as described in TIVOLI's catalogs, specification sheets, or build of materials.
- ii) In the event of a conflict between a customer's written order and a TIVOLI drawing or specification sheet marked "Approved," TIVOLI drawing or specifications sheet shall prevail.
- iii) Every effort is made to avoid errors in catalogs, price sheets, specifications sheets and other data.
- iv) TIVOLI will not accept responsibility of labor charge backs in connection with errors of measurements, prices, descriptions, etc.
- v) Standard variations, if any, will not be covered by its acknowledgment as described in buyer's purchase order.
- vi) TIVOLI will not be bound by general or blanket instructions not contained within the buyer's order. Each transaction must be accompanied by full instruction on the order itself.
- vii) Errors in quoting by TIVOLI employees resulting in short shipments will still require payment if not paid for with the original order.
- viii) Orders containing such phrases as "all materials to be supplied as per project plans and specifications," etc. is subject to separate written acceptance by TIVOLI.
- ix) Most units are listed, certified, or recognized. Please consult our specification sheets or website for appropriate listing on any specific unit.
- x) It is the buyer's responsibility to ascertain the correct voltage and color temperature for each order, and to mark each order with this information. Some voltages or colors may cost more than other voltages and colors. When TIVOLI is requested to furnish catalog sheets for submittal; TIVOLI will furnish Standard Sheets unmarked. It is required by the buyer to mark up the submittal sheets.

**g) GENERAL**

- i) All additions, deletions or other charges to an order are subject to the terms and conditions as specified above and must be submitted in writing.
- ii) In the event of a conflict between the buyer's terms and conditions and TIVOLI 's terms and conditions, the buyer, by virtue of the acceptance of shipment of merchandise ordered, acknowledges and agrees that the TIVOLI terms and conditions shall take precedence and shall apply.
- iii) TIVOLI's field representatives are independent sales contractors. They have no authority to assume or create any obligation, express or implied, nor do they have any authority to accept service or legal process on its behalf.

**13. FORCE MAJEURE**

- a) Neither party shall be in default hereunder by reason of its delay in performance of, or failure to perform, any of its obligations hereunder, if such delay or failure is caused by strikes of other labor disturbance, riots or other civil disturbance, fire, flood, interference by civil or military authorities, compliance with governmental laws, inability to secure necessary governmental priorities for material or any other fault beyond its control and without its fault and negligence.