



359 Hood Road Suite 100 • Jasper, Georgia 30143 USA  
Office: 706-301-9046 • Fax: 706-253-8643 • Toll Free: 855-301-4874 • [novalight.com](http://novalight.com)

## Terms and Conditions

The following terms and conditions govern the sale of material to the undersigned Customer by The Culminant Corporation d/b/a NovaLight Telecom Supply (the "Company"). Please contact NovaLight Telecom Supply at 706-301-9046 if you have questions regarding the terms and conditions contained herein.

### QUOTATIONS

All quotations issued by the Company are the property of the Company and are private property between the Company and the Customer. All products quoted are subject to prior sale. There is no guarantee, expressed or implied, that quoted products will retain continued availability regardless of quote expiration date. New and Surplus products are subject to prior sale.

### ACCEPTANCE OF ORDERS

All orders issued by the Customer to The Company shall be effective only to specify material ordered. All orders, including amendments thereto, are subject to acceptance by the Company, which may be evidenced in writing or by fulfillment of the order. The Company's acceptance of Customer's orders is based on the terms and conditions contained herein. Neither an acknowledgment of Customer's order nor shipment of material ordered shall constitute the Company's acceptance or confirmation of terms set forth in Customer's Purchase Order. All quotations, orders, acknowledgments, and invoices shall be subject to the terms and conditions contained herein. All terms and conditions in addition to, or in conflict with, the terms and conditions set forth herein shall be deemed deleted unless otherwise agreed to by the Company in writing, which has been executed by its duly authorized officer.

### PRODUCT INSTALLATION

Customer assumes total responsibility for the proper selection, configuration, installation, operation, and maintenance of material purchased.

### DELIVERY INFORMATION

The Company plans to ship in a timely manner to meet Customer's requested delivery date. If Customer is not prepared to accept shipment on that date, Customer must notify the Company at least ten (10) days before the scheduled shipping date to reschedule the shipment. Otherwise, special handling charges will be assessed. All shipments are subject to and contingent upon timely receipt of order and established credit lines. The Company will not be liable for any failure or delay in performance of its obligations under these Terms and Conditions Of Sale caused by acts of nature, fire, explosion, power failure, riot, labor unrest (including, without limitation, strikes, slowdowns, picketing, or boycotts), acts of government, unavailability of material from suppliers, delay or default of common carrier, or any other circumstance beyond the reasonable control of the company

### SHIPPING AND RISK OF LOSS

All shipments of material shall be made F.O.B. Destination, freight and handling charges added to invoice. Unless otherwise specified in an order accepted by the Company, all material will ship by a reliable carrier of its own selection to meet Customer's requested delivery date. Title to the material and risk of loss pass to Customer when the material is delivered by the carrier, notwithstanding the prepayment of transportation by the company. The sole remedy against the Company for loss during transit is limited to recourse against the carrier for transit losses. If additional coverage is necessary, consult the company before shipment.



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#### WAREHOUSE SHIPMENTS

Material shipped from the company to points within the continental United States will be shipped F.O.B. Destination.

#### DROP SHIPMENTS

Drop shipments from the manufacturer to Customer will be shipped F.O.B. Destination.

#### EXPORT SHIPMENTS

Unless otherwise specified in writing, all materials shipped abroad will be shipped on an Ex Works point-of-origin basis. The export of materials to foreign countries may be subject to restrictions and approvals of the U.S. Government and/or the Company's suppliers. The import of materials into foreign countries may also be subject to restrictions and approvals by those countries. Customer will, in its own name, apply for any required U.S. export license and hereby assumes full responsibility for the exportation or importation of the materials and for compliance with all United States and foreign laws applicable to the exportation or importation of the materials. The Company assumes no liability whatsoever in connection with the exportation or importation of the materials.

#### CLAIMS

Items damaged during shipment should not be returned to the company without prior approval in writing. All damage and shortage claims should be made on receipt of the material and filed directly with the company. The carrier's agent is always required to make a notation on the freight bill specifying the damage or shortage. The Company will not be held responsible unless damage is notated on delivery receipt of goods and acknowledged by delivery carrier at time of delivery. The Company will resolve such claims with the carrier as quickly as possible. The Company will not be held responsible for damage claims after receipt of goods, unless so noted on delivery receipt by delivering carrier.

#### SELLER'S RIGHT TO STOP DELIVERY

For Customer's insolvency or default, the Company shall have the right to withhold shipments or stop delivery of material in the possession of a carrier or other bailee.

#### CANCELLATION OF ORDERS

Customer may cancel or reschedule an order on written notice to the company prior to shipment, unless (i) the order is for material containing Customer's trademark, trade name, insignia, symbols, decorative designs, or other evidence of Customer's ownership (hereinafter referred to as "Insignia Product"), or (ii) the order is for material not stocked by the company and the manufacturer or vendor of such material does not allow the company to cancel the order. If the order is for material that is not normally stocked by the company, Customer shall pay all charges, costs, fees, and other amounts charged by the manufacturer or vendor as a result of the cancellation or rescheduling. In the absence of such charges, the company may invoice Customer for an amount equal to ten percent (10%) of the order price for the cancellation or rescheduling. This charge is not imposed as a penalty, but in recognition of the difficulty computing actual damages, costs, or other charges caused by such cancellation or rescheduling.

If the order is for material normally stocked by the Company, and if written notice of the cancellation or rescheduling is received by the company fifteen (15) days or more prior to the scheduled shipping date (SSD), there is no cancellation charge. If written notice is received by the company within fifteen (15) days of the SSD, Customer may be charged ten percent (10%) of the order price for the cancellation or rescheduling. This charge is not imposed as a penalty but as a result of the difficulty computing actual damages, costs, or other charges caused by such cancellation or rescheduling. In no event may an order be rescheduled more than once or for more than sixty (60) days beyond the SSD unless mutually agreed on by the parties in writing.



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## RETURNS/RESTOCKING

All items to be returned will require a written return authorization from the company and must be accompanied by an approved Company Customer Return Authorization (CRA) form. Unauthorized returns will not be accepted.

*Returns For Nonconformity.* Customer shall have thirty (30) days following shipment of material within which to inspect and provide the company with written notice of rejection for nonconformity with these terms and conditions. Material returned for credit must be unused and in the original shipping carton or packaging. Material returned due to nonconformity with these terms and conditions will have credit issued against the original invoice for the material, freight, and taxes after the material has been received and inspected by the Company.

*Returns For Reasons Other Than Nonconformity.* Material may be returned for reasons other than non-conformance with these terms and conditions within thirty (30) days of shipment of the material, provided (i) the material is not a custom made or private label product, (ii) the manufacturer or vendor of material not stocked by the Company approves the return in advance, and (iii) the material is unused, resellable, and in the original shipping carton or packaging. Any material returned for reasons other than non-conformance with these terms and conditions will be subject to a restocking charge. Requests to return material not stocked by the company must be directed to the Company within thirty (30) days of shipment of the material. Material not stocked by the Company must be sent to the Company or directly back to the manufacturer or vendor, as instructed by the Company. Prior to the return, the manufacturer or vendor, must approve all returns of material not stocked by the Company. Credit for such material will be issued when the Company receives credit from the manufacturer or vendor. Material stocked by the company must be returned within thirty (30) days of shipment of the material in accordance with the instructions provided at the time of the request. Credit for the return of stocked material will be issued after the material has been received and inspected by the Company.

The Company shall pay the transportation costs of returning nonconforming material and the Customer shall pay the transportation costs of returning material for reasons other than nonconformity with these terms and conditions. Customer shall be responsible for providing proof of delivery on returned material if requested by the Company. Return authorizations are valid for thirty (30) days.

## PAYMENT TERMS

Payment shall be due thirty (30) days from the date of the Company's invoice, or as agreed on in written documentation from the Company. Overdue accounts will be assessed a late payment charge at a rate of 1.5% per month, or the maximum permitted by law, whichever is lower, on any unpaid amounts past due. The Company reserves the right to withhold shipment to Customers with a past due balance. In the event the Company has to take legal action in order to collect any past due amount from Customer, the Customer shall be responsible for all attorney fees, court costs, and related fees.

## PRICES

Unless otherwise quoted, material will be invoiced at prices in effect at the time of order acceptance, provided the requested shipping date for ordered items is within sixty (60) days of such acceptance. Prices for material with a requested shipping date beyond sixty (60) days shall be negotiated at the time of order acceptance. Prices for material do not include shipping and handling charges or taxes unless specifically stated to Customer.

Prices published by the Company are subject to change without notice and do not constitute quotations or offers to sell. Quotations expire thirty (30) days after the date of the quote unless otherwise specified in writing by the Company

## TAXES

Customer shall be responsible for all taxes, including tariffs or duties, with respect to transactions hereunder, except taxes levied on the Company's net income. Customer shall not be responsible for taxes for which it possesses a valid exemption certificate acceptable to the applicable taxing authority and on file with the Company prior to order acceptance.



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#### WARRANTY AND DISCLAIMER OF WARRANTY

THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. All products sold by the Company are sold "where-is, as-is" with no guarantee other than the warranty provided by the manufacturer of the material. Material sold by the Company may be subject to such warranties as may be made available to Customer by the manufacturer of the material. If material is defective, upon request, the Company will assist Customer in notifying the manufacturer and receiving replacement material or refund from the manufacturer.

#### LIMITATION OF LIABILITY

Under no circumstance shall the Company be responsible or liable for incidental, indirect, special, or consequential damages, including any damages arising from delay, loss of data, lost profits, or loss of goodwill, notwithstanding their foreseeability or disclosure thereof by Customer. In addition, Customer provides complete indemnification to the Company for any and all liability, which may or may not occur as a result of, but not limited to; financing, procurement, storage, shipping, delivery of products and services, and cancellation of orders by Customer. The Company's maximum liability to Customer arising out of or relating to the performance or nonperformance of its obligations, regardless of the form of action, shall be limited to the recovery of direct and actual damages and shall not exceed the amount invoiced for the material that is the subject matter of, or directly related to, the cause of action.

#### INTELLECTUAL PROPERTY RIGHTS

Customer's intellectual property rights in any material, including any hardware, software, or firmware, are derived from and shall be subject to the intellectual property rights of the Company, its suppliers, or other third parties, including the terms of any licenses restricting use, duplication, or resale. Material may be subject to special licensing requirements, which will be provided to Customer.

#### CHOICE OF LAW

The domestic laws of the State of Georgia shall govern all transactions without giving effect to the principles of conflict of laws. The U.N. Convention on Contracts for the International Sale of Goods shall not apply.

#### MISCELLANEOUS

Any dispute arising out of any transaction (other than the collection of unpaid invoices) shall be resolved by and submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, with the following modifications: (1) the place of arbitration shall be held in Atlanta, Georgia; (2) the arbitrator shall be licensed to practice law and shall preferably have former judicial experience; (3) the arbitrator shall conduct the arbitration as if it were a bench trial and shall use, apply and enforce the Federal Rules of Civil Procedure; (4) the arbitrator shall have no power or authority to make any award that provides for consequential, incidental, indirect, punitive or exemplary damages; (5) the arbitrator shall control the scheduling so that the hearing is completed no later than 120 days after the date of demand for arbitration; (6) the arbitrator shall rule on the dispute by issuing a written decision within 30 days after the close of the hearing; and (7) the arbitrator's decision shall follow the plain meaning of this Agreement and the relevant documents. Each party shall bear its own arbitration costs and expenses, except that a party seeking discovery shall reimburse the other for costs of document production (including search time and reproduction costs). The parties shall equally split the fees of the arbitrator and the arbitration. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. No action or demand for arbitration may be brought more than two years after accrual. Material purchased hereunder is not for resale or distribution unless specifically authorized by the company in writing.