

A. GENERAL TERMS AND CONDITIONS OF SALE

- 1. Scope:** These General Terms and Conditions of Sale for product and services of Mercury Tube, LLC (“Mercury Tube”) apply to all orders accepted by Mercury Tube, LLC. These General Terms and Conditions of Sale shall govern all Product orders between Mercury Tube, LLC and Purchaser and shall supersede all other terms and conditions submitted to Mercury Tube, LLC by Purchaser prior to the date of these General Terms and Conditions of Sale. Further, these General Terms and Conditions of Sale may NOT be altered, supplemented, or amended by the use of any additional document(s) that purport to be an agreement of the parties. Any attempt to supplement or amend these terms and conditions or to enter an order for Product(s) which is subject to additional or altered terms and conditions shall be null and void.
- 2. Price:** Quoted prices are subject to change prior to final acceptance of order by Mercury Tube, LLC. If Purchaser is in default of payment, Mercury Tube, LLC may declare all payments for orders completed immediately due, stop all further orders until payments are brought current and interest paid, and/or require advance payment for future shipments. If Mercury Tube, LLC accelerates payments, the entire sum shall bear interest at the rate of 1% per month until fully paid. All amounts quoted and agreed upon between Mercury Tube, LLC and Purchaser shall in all cases be deemed payable in U.S. dollars.
- 3. Covered Services and Products:** Each sale includes only the services and product described in the order. Mercury Tube, LLC shall not be responsible for compliance with federal, state, or local codes or safety and health statutes unless it has expressly accepted such responsibility in writing. Compliance with all such laws shall always be Purchaser’s responsibility.
- 4. Security Interest:** Mercury Tube, LLC retains title and right of repossession to the product ordered and purchased until the full purchase price has been paid. Purchaser will not encumber nor permit others to encumber said product by any liens or security instruments.
- 5. Shipments and Delivery:** (a) Mercury Tube, LLC shall use reasonable efforts to meet specified delivery dates, but such dates are estimates only and not guaranteed. So long as Mercury Tube, LLC makes reasonable efforts to complete the delivery of ordered product, it shall have no liability, direct or indirect, for any delay and shall not be declared in breach nor shall the of subject to cancellation. In any event, delivery is based upon the effective date of the order and subject to prompt receipt by Mercury Tube, LLC of all necessary information and instructions from Purchaser, including any required approval of drawings, and is subject to the timely delivery of raw materials from Mercury Tube’s vendors. Mercury Tube, LLC may make partial shipments and invoices therefore shall be payable in accordance with their terms. (b) Purchaser shall inspect the product and notify Mercury Tube, LLC in writing of any damage or shortage within three (3) days of receipt. Failure to so notify Mercury Tube, LLC shall constitute complete acceptance, relieving Mercury Tube, LLC of any liability for damage or shortage. (c) All shipments of product, material and supplies to Purchaser shall be shipped F.O.B. at Mercury Tube, LLC facilities in Englewood, Colorado, Colorado, USA. (d) Purchaser will accept all shipments that are +/- 10% of Purchaser’s Purchase Order.
- 6. Force Majeure:** Mercury Tube, LLC shall not be liable for loss, damage, detention, or delay resulting from causes beyond its reasonable control, or directly or indirectly caused by any acts of God, natural disaster, war, terrorism, fire, strike, civil or military authority, embargoes, shortages or delays in raw material deliveries, wrecks or delays in transportation, or inability to obtain necessary labor, materials or manufacturing facilities.
- 7. Cancellation, Suspension or Delay:** If Purchaser requests or causes a cancellation, suspension or delay of the shipment or production work being performed by Mercury Tube, LLC, Purchaser shall pay Mercury Tube, LLC for all applicable charges incurred up to the date of such event plus prorated overhead and profit. Additionally, all charges related to and risks incidental to storage, disposition and/or resumption of work shall be borne solely by Purchaser.
- 8. Changes and Back Charges:** Mercury Tube, LLC shall not be obliged to make changes in or additions to the product or scope of production unless Mercury Tube, LLC agrees in writing thereto and proportionate adjustment is made to the contract price and/or delivery schedule. Mercury Tube, LLC will not accept returns of or back charges for labor, materials or other costs incurred in modification, adjustment, service or repair of product unless previously approved in writing by an authorized corporate officer of Mercury Tube, LLC.
- 9. Proprietary Information:** All product and design work, trademarks, copyrights, equipment, and related systems of Mercury Tube, LLC Care proprietary to Mercury Tube, LLC or its principal vendors and are deemed protected as their exclusive intellectual property. Purchaser shall indemnify, defend and hold harmless Mercury Tube, LLC against any infringement resulting, directly or indirectly, from the unauthorized disclosure or use of such protected proprietary assets or information, by anyone under the direction or control of Purchaser.

B. STANDARD LIMITED WARRANTY

- 1. Items Covered Under Warranty:** Mercury Tube, LLC warranties only the products which are manufactured by Mercury Tube, LLC. Mercury Tube, LLC only provides a limited warranty against defects in materials and workmanship for a period of ninety (90) days from the date Purchaser receives shipment of the subject product of Mercury Tube, LLC. This exclusive limited warranty is restricted solely to the repair or replacement of any defective item or product. The decision to repair or replace any product shall be exclusively that of Mercury Tube.
- 2. Items Provided by Others Not Covered:** Mercury Tube, LLC does not warranty any services, product, design or components which are provided or manufactured by other persons; nor any losses, damages, delays or defects caused by the failures of other person’s products, designs or services. Mercury Tube, LLC shall not be liable pursuant to any warranty nor shall have assumed any duty (including any fiduciary duty) express or implied, in connection with products or systems which were provided or designed by persons or entities other than Mercury Tube. Purchaser and Purchaser’s consultants, advisors, engineers and other agents shall at all times and in all circumstances remain fully responsible for the suitability, performance, strength, safety and results of the products provided by Mercury Tube, LLC.
- 3. Personal Injuries Not Covered:** Mercury Tube, LLC shall not be liable for any personal injuries, including death, directly or indirectly arising from the design, sale, manufacture, installation, or maintenance by Mercury Tube LLC, or otherwise, of the products provided to Purchaser. Purchaser shall indemnify, defend, and hold harmless Mercury Tube, LLC against all such claims and liabilities.
MERCURY TUBE, LLC MAKES NO WARRANTIES AS TO THE PRODUCTS AND MATERIALS PROVIDED WHETHER EXPRESS, IMPLIED OR IMPLIED BY LAW, EXCEPT THIS LIMITED WARRANTY. MERCURY TUBE, LLC SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND DISCLAIMS ANY LIABILITY FOR SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT. THIS LIMITED WARRANTY IS SUBJECT TO AND CONTINGENT UPON FULL, COMPLETE AND TIMELY PAYMENT OF ALL SUMS OWED TO MERCURY TUBE, LLC IN CONNECTION WITH THE SALE OF THE SUBJECT PRODUCT TO PURCHASER.
- 4. Warranty Services Procedure:** Should any warranted product require warranty service, it is the responsibility of the Purchaser to first contact Mercury Tube, LLC in writing to give timely notice of the specific problem and that product may need to be returned for repair or replacement. Whether to repair or replace the returned components will be at the sole discretion of Mercury Tube, LLC.
- 5. Inspection Rights of Mercury Tube, LLC:** Upon presenting any warranty claim to Mercury Tube, LLC for covered product, Purchaser shall permit representatives of Mercury Tube, LLC to inspect the product, on site where stored or installed, at Mercury Tube, LLC initial cost and expense. Reasonable access to the subject product for inspection is a prerequisite to any warranty claim by Purchaser. If the inspection reveals that the asserted problems are not the responsibility of Mercury Tube, LLC or its principal vendors, Purchaser shall immediately reimburse the cost and expense of such inspection upon invoicing by Mercury Tube, LLC.