

TERMS AND CONDITIONS OF SALE—ESO 09/24/09

- 1. BILLING** - Orders are accepted for shipment and/or invoicing as merchandise is manufactured. In the case of blanket orders, all manufactured and unreleased merchandise will be invoiced 1 year from date of order, providing merchandise is in inventory.
- 2. WAREHOUSING** - Product remaining in inventory over thirty (30) days following completion of manufacture is subject to warehousing charges. Product may be warehoused up to twelve (12) months at customer's cost, after which remaining product must be released by the customer. Cost to dispose of unreleased product is the responsibility of the customer.
- 3. INTEREST** - Invoices not paid within 30 days from invoice date are subject to a service charge of 1-1/2% per month.
- 4. TAXES** - All applicable State, Federal, and Local sales and use taxes will be charged at the time of billing in addition to quoted selling price and service/handling charges, unless appropriate tax waiver certificates are executed by customer at time of order and/or we are furnished with customer retail tax number for each State, County, and/or Municipality into which these signs are to be shipped.
- 5. SHIPPING CHARGES** - All shipments are made freight collect unless Buyer or Seller specifies otherwise. If the Buyer requests shipment to be prepaid, the Buyer will be designated as the shipper. If the Buyer requests the Seller prepay the freight charges, or if the I.C.C. Regulations permit common carrier to demand the Seller prepays freight costs, the Seller will bill the freight charges to the buyer and, in addition, add a service charge of 15%. When the Buyer contracts to have shipments made to a number of points, the seller makes such shipments at an extra charge based on agreed upon rates. The drop ship charge may vary according to the number of destinations and the amount of paper work involved. **For all International Shipments, buyer is responsible for all applicable fees relating to; customs clearance, import duties, taxes, tariffs, freight, insurance, etc., unless otherwise noted. These fees are additional and may not be included/detailed in original quotation.**
- 6. MOLDS, DIES AND TOOLS** - Invoices for molds, tools, and dies will render on completion of fabrication of same. Everbrite will keep, store, and maintain same without cost to the Buyer for one (1) year from order date. Thereafter, Everbrite may request the right to dispose of this equipment upon giving thirty (30) days written notice to the Buyer; or at Buyer's option. Everbrite will retain the mold and charge the Buyer for storage charges so incurred. If shipment of a Buyer owned mold is required, a charge for crating and handling will apply. Freight is F.O.B. Manufacturing Point.
- 7. PROPRIETARY INFORMATION** - Sketches, models, designs, artwork, tooling, and all preparatory work created or furnished by Everbrite, Inc. are original and remain our exclusive property, unless agreed upon in writing. No use of same shall be made, except upon written agreement.
- 8. RETURNED GOODS** - Merchandise once shipped cannot be returned without the previous knowledge and written authorization of the Everbrite Customer Service Department. All returned merchandise must be shipped prepaid. Merchandise returned is subject to receipt, inspection, handling, and restocking charges at the prevailing rate. Repair to damaged merchandise will be at extra charge. Above charges will not apply if Everbrite is responsible for the need to return merchandise.
- 9. CANCELLATIONS** - Orders are non cancelable and not subject to change, in whole or in part, except by written consent of Seller.
- 10. CREDIT TERMS** - Seller reserves the right to suspend and/or limit credit at any time when in Seller's judgment the financial condition of Buyer warrants such action. Patron deliveries shall be conclusively deemed to be separate contracts. In case where Buyer shall fail to make payments on this order or any other order or contract between Buyer and Seller in accordance with the terms and conditions of the order, Seller may defer further shipments until such payments are made, or may, at its option, cancel the unshipped balance, subject to cancellation charges to the Buyer. All credit terms are Net 30 days unless otherwise specified.
- 11. SECURITY INTEREST** - Seller retains a security interest and lien on all merchandise covered by this quotation and said merchandise shall not be deemed to constitute a part of the realty to which it may be attached until the purchase price is paid in full. Seller is given an express lien on such merchandise both erected and unerected notwithstanding the manner in which such merchandise is annexed or attached to the realty. In the event of default by the customer, including but not limited to payment of any amounts due and payable, the Seller may at once (and without process of law) take possession of and remove, when and where it sees fit, and wherever found, all merchandise called for in this contract without being guilty of trespassing.
- 12. FORCE MAJEURE** - Seller shall not be responsible or liable for delays or failure of performance resulting directly or indirectly from causes beyond Seller's control if occasioned by (a) act of God or public enemy, fire, explosion, flood, drought or riot, sabotage, accident, embargo or (b) without limiting the foregoing circumstances, any circumstances of life or different character beyond the reasonable control of the party so failing, or (c) interruption of or delays in transportation, inadequacies of shortage or failure of normal sources of supply of materials or equipment, breakdowns, labor shortages, strikes, or disruptions from whatever cause or (d) for personal injury, death, or property damage except as caused directly by Seller's negligence. In no event shall Seller be liable for any indirect, special exemplary, or consequential damages in connection with or arising out of the subject matter of this quotation or any resulting order even if Seller has been informed of the possibility of such damages. In all cases, Seller's liability, if any, or damages shall be limited to a refund of the limited warranties or purchase price paid by Buyer to Seller for the item(s) purchased giving rise to the claim, whichever is applicable. If by reason of any such circumstance, Seller's supply of material herein specified shall be insufficient to meet all requirements. Seller shall have the right at its option and without liability to apportion its available manufacturing capabilities among any and all purchases, including its affiliated divisions and companies in such manner as Seller believes equitable.
- 13. WARRANTY** - All signs manufactured but not installed by Everbrite, LLC, are guaranteed to be free of defects in materials and workmanship for a period of one (1) year from the date of shipment from Everbrite's plant, covering materials. All signs manufactured and installed by Everbrite, LLC are guaranteed for a period of one (1) year from the date of installation to be free of defects in workmanship and materials, covering both labor and materials. All electrical components, excluding lamps, carry the manufacturer's guarantee unless otherwise specified. Ballasts and transformers are a pass through warranty from manufacturer. Lamps, neon tubing, breakage of glass and plastics, are not covered by this warranty.
- 14. LIMITATION OF LIABILITY/DISCLAIMER:** WITH RESPECT TO THE PRODUCT SOLD, EXCEPT FOR THOSE WARRANTIES SPECIFICALLY AND EXPRESSLY SET FORTH ABOVE, SELLER DISCLAIMS ANY AND ALL WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Under no circumstances shall Everbrite be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict liability, or any other legal theory. Such damages include, but are not limited to, loss of profits, loss of revenue, loss of use of the Everbrite product or any associated or connected product or equipment, cost of capital, cost of substitute or replacement equipment, facilities or services, down time, purchaser's time, or the claims of third parties.
- 15. BUYER MATERIALS** - Any materials furnished by the Buyer are accepted only at such times as the Seller specified, and at a previously agreed upon handling charge. All materials furnished by the Buyer are held by the Seller at the Buyer's risk and the Seller assumes no responsibility for loss or damage by fire, water, or any cause beyond its control. The Seller also assumes no responsibility for defects of any nature in the materials so furnished.
- 16. OVERRUNS AND UNDERRUNS** - A 5% over or under run of the quantity ordered will constitute completion of the order except through mutual agreement.
- 17. DAMAGE** - In accordance with I.C.C. Regulations, Buyer must inspect all merchandise immediately upon receipt for damage or defect. Visible damage should be noted on the delivery receipt by the Buyer before accepting delivery. Concealed damaged must be reported to the carrier within 10 days after receipt of shipment and a concealed damaged report requested. The liability of the Seller for shipping damage ceases with acceptance of a shipment in good order by the carrier. However, reasonable cooperation is provided to aid the Buyer in settling shipping claims. Filing of claims is the Buyer's responsibility.
- 18. AFFILIATES** - This order may be performed and all rights hereunder against Buyer may be enforced by Seller or by any one or more of the affiliates of Seller or in par by Seller and in part by one or more of said affiliates.
- 19.** This order shall be considered a contract under the laws of the State of Wisconsin and shall be governed and construed there under.
- 20.** All understandings and agreements relative to this order are fully expressed herein and no change may be made herein except with Seller's written consent.
- 21.** Any order which is received in response to this quotation is subject to final approval and acceptance by the Seller at its corporate offices.
- 22.** Prices are based on current material costs. Seller reserves the right to pass on to the customer, increases in costs of materials which occur between the date of this quotation and actual cost of materials for the order.
- 23. MINIMUM ORDER** - All orders are subject to a minimum charge of \$50.00.
- 24. WIND LOAD** - Seller will manufacture all exterior signage based on standard windload requirements of 35psf (approx 90mph@40'OAH), unless otherwise specified and ordered. Certain municipalities/regions may require special (non-standard) construction methods to meet local code requirements. It is buyer's responsibility to verify that seller's standard sign construction will meet local conditions and code requirements.
- 24. MERCURY CONTENT** - Fluorescent tubes/bulbs and neon tubes/bulbs used in the product contain mercury and must be disposed of according to local, state, and federal law.