



## Terms and Conditions

Prescolite, hereby gives notice of its exception to any different or additional Terms and Conditions other than as stated herein and these Terms and Conditions supersede all those published and issued previously by Prescolite. All sales are expressly made conditional on Buyer's consent to the following Terms and Conditions. Buyer's acceptance of the provisions of Prescolite's Terms and Conditions as recited herein shall be conclusively presumed on Buyer's receipt of the goods. These Terms and Conditions constitute the entire agreement between Prescolite and the Buyer, and supersede other communications between the two parties, whether written or oral.

### **PRICING**

*Refer to appropriate price schedule, unless otherwise quoted.*

### **TERMS**

*Prescolite's terms are 1% 10<sup>th</sup> proximo, net 25<sup>th</sup>, unless otherwise quoted or indicated on the face of Prescolite's invoice. Remittance address and payee is indicated on the invoice. Invoices dated the 26<sup>th</sup> through 31<sup>st</sup> will be considered as dated on the first day of the following month. Invoices will be dated the day of shipment. No discount on export or any special packaging charge. No discount on freight. A service charge of 1 1/2% per month or, if such rate exceeds the maximum lawful rate, the maximum lawful rate shall be assessed on all past due payments and shall be payable on demand.*

### **PRESCOLITE EXPRESS TERMS AND CONDITIONS**

*Orders must be designated "Express." All Express items on any order will be (if in stock) split at the factory for expedited handling and shipped in 24 hours from order receipt from the nearest Prescolite warehouse, or direct from the plant where it is manufactured. Prescolite determines shipping locations. All other Prescolite Terms and Conditions apply. Prescolite Express provides no guarantee of shipment. If any item is not available in stock it will be produced and shipped as soon as possible, typically within five working days from receipt of order.*

### **QUOTATION PRICE PROTECTION**

*All prices shown in the price lists are subject to change without notice. All quotations on special products or modifications to catalog items are binding only if confirmed in writing by Prescolite for the period shown on the quotation. Quotations for special fixtures may at Prescolite's discretion, include the actual processing, testing, sampling and engineering costs required. Price protection will be provided for a period of thirty days from date of quotation from Prescolite.*

### **SALES AND SIMILAR TAXES**

*Prescolite's prices do not include Federal, State or Municipal sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to the sale or use of the equipment hereunder, shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide Prescolite with a tax exemption certificate acceptable to the taxing authorities.*

### **ACCEPTANCE OF ORDERS**

*All orders are subject to acceptance by Prescolite at its order receipt location and are subject to Prescolite Terms and Conditions. Prescolite reserves the right to select its customers and reject any order. Additions to orders are allowed provided the original order has not yet been released to manufacturing. Any other terms proposed by Buyer and/or stated in a customer's purchase order are not allowed unless expressly accepted in writing. Acceptance of any order is subject to availability of product and the ability of Prescolite to deliver. Orders will be billed at prices in effect at time of shipment unless otherwise agreed. We reserve the right to refuse to make direct shipments to destinations outside the customer's normal trading area. Buyers placing orders who are not appointed to purchase and sell Prescolite products will be referred to the closest appointed stocking distributor in their area.*

### **DELAY**

*Prescolite will use reasonable efforts to meet shipment or delivery dates specified by Prescolite, but such dates are estimates only. Prescolite will not be liable for any delay or non-delivery in shipping for any reason, but not limited to delay or non-delivery caused directly or indirectly by Acts of God, fire, flood, strike or lockout or other labor dispute, accident, civil commotion, riot, war, governmental regulation or order, whether or not it later proves to be invalid, or from any other cause or causes (whether or not similar to any of the foregoing) beyond Prescolite's control. In no case will Prescolite be liable for loss of profits or any indirect, special, incidental, multiple, punitive or consequential damages on account of any delay in delivery or non-delivery whether or not excused hereunder.*

## **SHIPPING DEFERMENT**

Buyer requests for shipping deferment must be approved by Prescolite and are subject to price negotiation.

## **LIMITED WARRANTY AND LIMITATION OF LIABILITY**

**MATERIAL:** Prescolite warrants all products sold by it to be merchantable (as such term is defined in the Uniform Commercial Code) and to be free from defects in material and workmanship for a period of one year from date of shipment. Buyer must notify Prescolite promptly of any claim under this warranty. The Buyer's exclusive remedy for breach of the warranty shall be the repair or replacement, F.O.B. factory, at Prescolite's option, of any product defective under the warranty, which is returned to Prescolite within one year from the date of shipment, except as noted below. NO OTHER WARRANTY, WHETHER EXPRESSED OR ARISING BY OPERATION, COURSE OF DEALING, USAGE OR TRADE OR OTHERWISE IMPLIED, SHALL EXIST IN CONNECTION WITH PRESCOLITE'S PRODUCTS OR ANY SALE OR USE THEREOF.

Prescolite's warranty shall extend only to the first Buyer of a product from Prescolite, from Prescolite's Buyer, or from an original equipment manufacturer reselling Prescolite's product, and is non-assignable and non-transferable and shall be of no force and effect if asserted by any person other than such first Buyer. This warranty applies only to the use of the product as intended by Prescolite and does not cover any misapplication or misuse of said product. This warranty excludes electrical components such as ballasts, emergency battery packs, control modules and buyer agrees to make all claims regarding defects or deficiencies therefore according to the warranty or the manufacturer thereof as its sole source of recourse or compensation.

**APPLICATION:** Prescolite does not warrant the accuracy of and results from product or system performance recommendations resulting from any engineering analysis or study. This applies regardless of whether a charge is made for the recommendation, or if it is provided free of charge. Responsibility for selection of the proper product or application rests solely with the Buyer. In the event that errors or inaccuracies are determined to be caused by Prescolite, its liability will be limited to the reperformance of any such analysis or study. Products should be installed, used and maintained in accordance with the applicable Prescolite instructions, National Electrical code and/or any prevailing local codes. No modifications to Prescolite product can be made. Any modification will void any U.L. listings and Prescolite warranty.

**LIMITATION OF LIABILITY:** IN NO EVENT, WHETHER AS A RESULT OF A BREACH OF CONTRACT, TORT, STRICT LIABILITY, WARRANTY OR ALLEGED NEGLIGENCE, SHALL PRESCOLITE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, LOSS OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF THIRD PARTIES OF THE BUYER FOR SUCH DAMAGES. IN NO EVENT SHALL PRESCOLITE'S TOTAL LIABILITY FOR ANY REASON ARISING HEREUNDER EXCEED THE PURCHASE PRICE PAID TO PRESCOLITE FOR THE PRODUCT PURCHASED BY BUYER HEREUNDER.

Any claim by Buyer for breach of the foregoing warranty shall be deemed waived by Buyer unless submitted to Prescolite in writing within thirty (30) days from the date Buyer discovered, or by reasonable inspection should have discovered the alleged breach. Any cause of action for breach of the foregoing warranty shall be brought within one year after the cause of action has occurred.

**Any charges for labor, materials, etc. that does not have our written approval before such work is implemented will not be allowed. Contact Prescolite Field Services for support.**

**NOTE: Catalog pages are for reference only. Specifications, dimensions and performance may change without notice.**

## **FREIGHT ALLOWANCE AND F.O.B. POINT**

All sales are F.O.B. shipping point. Risk of loss and title of goods shall pass to Buyer upon delivery to the designated carrier. Freight is prepaid and allowed on all shipments of products with a net order value of \$1,000 and above to destinations within the Contiguous United States. Consult Prescolite for applicable terms and conditions outside the contiguous United States.

Prescolite reserves the right to select carrier and route-qualified freight allowed shipments via least expensive surface route within the Contiguous United States. Buyer will assume all charges for transportation specified via more expensive means. Acceptance of a specified routing does not constitute a guarantee of ship date, transit time or arrival date. Prescolite reserves the right to ship all prepaid orders in one complete shipment. Partial shipments may be made at our discretion. Prescolite will not be responsible for any cartage or storage charges at destination.

Prescolite's responsibility for exception-free delivery ceases when the transportation company receives shipment in good condition. Claims for loss or damage must be reported directly to the carrier. Prescolite's willingness to assist does not indicate liability for claim or replacement.

## **PARTIAL RELEASE**

If an order has multiple releases specified by the Buyer, each release will be treated as individual orders, relative to freight allowance and minimum billing.

## **BACK ORDERS**

Back orders that are the responsibility of Prescolite will be shipped F.O.B. factory or point of shipment with freight prepaid and allowed via the most cost effective method, providing the original order qualified for freight allowance. Backorder shipment dates indicated on the order acknowledgement, if any, are the best approximation of the probable shipment date and shall not be deemed to represent a fixed or guaranteed shipment date.

## **WILL CALL**

All orders entered for Will-Call and not picked up within five days will be shipped to Buyer and appropriate freight and handling charges applied.

## MINIMUM BILLING

Standard Orders - \$50 net per order.      Parts - \$50 net per order.

## CANCELLATIONS

**Stock Product** – Buyer may cancel orders with written notice to Prescolite subject to the following conditions and with Prescolite's written consent. Prescolite Express orders are non-cancelable after acceptance by the factory. For current stocked product the buyer shall accept delivery of and pay for at the agreed upon prices all products which are released and/or allocated for this order. Prescolite will always try to accommodate requests for cancellations but cannot guarantee stoppage of shipment for stocked product. If an order for stocked product is stopped after picking prior to shipment buyer shall pay any costs associated with this order. If a cancellation request is received and the order cannot be stopped the product can be returned according to terms as outlined in the Return Goods Policy section.

**Non-Stock Product** - Cancellation of non-stock product may be made only if no work has been performed and no material purchased. If work has been performed any costs incurred will be charged to the customer, which may include a cancellation charge up to the price of the product. Upon cancellation, buyer owned materials will be disposed of by the seller at its discretion.

## RETURNED GOODS

### GENERAL CONDITIONS applying to all transactions:

- 1 Merchandise is not returnable without the written consent of Prescolite.
- 2 Request for permission to return merchandise must be made in writing within 90 days from date of shipment and expires 90 days after receipt except defective products, and Buyer must provide original Prescolite invoice number.
- 3 All returned goods must be in excellent, resalable condition and packaged in the original carton. Products will be inspected upon return and any service or repair needed to place them in first class, saleable condition will be charged and added to the restocking charge. A 35% minimum restocking charge on standard product will be deducted from all credits issued on authorized standard product returns. Credit will be issued for only the actual quantity received and will be based on original invoice, or price in effect at the time of the return shipment, whichever is lower.
- 4 Return Materials Authorization (RMA) form, supplied by Prescolite, must accompany the return shipment.
- 5 Return freight must be prepaid. Material must be received by Prescolite within ninety, (90) days of issuance of RMA and must be non-discontinued product.
- 6 Net value of the return must not be less than \$250.
- 7 Prescolite reserves the right to deduct for any damage sustained in transit.
- 8 Unauthorized returns will be refused. Items returned without proper authorization from Prescolite will, at the sole option of Prescolite, be returned to Buyer freight collect, or scrapped immediately with no issuance of credit. Unauthorized material included in a return will not be credited. Disposition of these items is left up to Prescolite. All non-stocking, special or custom made product is not returnable.
- 9 If the return of goods is made necessary through any fault of Prescolite and permission is granted for its return, Prescolite will give full credit including all transportation charges if returned per transportation routing instructions on the RMA.
- 10 On direct shipment orders, returns will be allowed up to 5% of the job value.
- 11 The Buyer shall remain absolutely liable for the purchase price of all merchandise, and Prescolite will not be bound by terms and conditions imposed by any third party.

## PRODUCT SPECIFICATION

Prescolite reserves the right to discontinue items, modify designs, and change specifications or prices without incurring any liability. Standard finishes will be furnished unless otherwise specified or if no specification is given. Discontinued fixtures if ordered may not be returned for credit.

## INVOICING

All invoices are due and payable per the standard terms stated herein. Buyer shall be liable for legal fees incurred by Prescolite to collect past due amounts. In the case of an apparent discrepancy in a line item charge, the Buyer is obligated to advise Prescolite Customer Service in writing of the nature of the claimed discrepancy within five (5) days of receipt of the invoice. This includes all requests for proof of delivery. **A claim of discrepancy does not relieve Buyer of the absolute obligation to pay the remaining balance of the invoice in accordance with the standard terms of payment.** Prescolite, after review, will have sole discretion to resolve the discrepancy; and the Buyer expressly agrees to abide by Prescolite's decision. Prescolite will promptly advise Buyer of its decision regarding any disputed items or charges.

## CONFIDENTIALITY

Buyer agrees that all information furnished by Prescolite in connection with the sale of items will be confidential. The Buyer agrees not to disclose any such information to any other person, or use such information for any purposes other than performance hereunder.

**OSHA**

*Prescolite warrants that at time of shipment, the equipment will conform to the applicable occupational safety and health standards promulgated pursuant to the Federal Occupational Safety and Health Act of 1970, which are in effect on the date that Prescolite enters its acknowledgement of Buyer's order. The Buyer's exclusive remedy and Prescolite's liability for breach of this warranty is limited to replacement of the nonconforming equipment.*

**FAIR LABOR STANDARDS ACT AS AMENDED**

*Prescolite represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.*

**EXPORT REGULATIONS/PERMITS**

*Buyer will comply with the provisions of the United States Government's Export Administration regulations and related documentation requirements and internal control procedures. Buyer shall be responsible for obtaining any necessary export or import licenses and permits.*

**GENERAL**

*Any assignment of rights hereunder by Buyer without the prior written consent of Prescolite shall be void. No waiver by Prescolite or any default shall operate as a waiver of any other default or of the same default on a future occasion. Prescolite shall have the right to credit toward the payment of any monies that may become due from Buyer, any amounts that may now or hereafter be owed by Buyer under this or any other agreement or transaction between Prescolite and Buyer. If any provision of this agreement is found to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not be affected. All clerical errors are subject to correction. The construction, interpretation and performance of Prescolite and Buyer hereunder and all transactions hereunder shall be governed in accordance with the laws of the State of South Carolina. Venue for any litigation arising hereunder shall lie exclusively in the State and Federal Courts of South Carolina.*