



## INSTALLATION SERVICE TERMS

These Installation Services Terms apply to any quote, order, order acknowledgment, and invoice, and any installation of Products by Lumentum, in addition to Lumentum's General Terms, which are incorporated by reference herein and are either attached hereto, or available at [www.lumentum.com/terms](http://www.lumentum.com/terms) or on request.

**1. DEFINITIONS.** The definitions in Lumentum's General Terms shall apply in addition to the following definition:

"Installation Services" means services that are focused on the installation of Products at Customer's location performed by, or on behalf of, Lumentum.

**2. INSTALLATION SERVICES.**

**2.1 Provision of Installation Services.** Installation Services will be provided to Customer as described in an applicable statement of work or as otherwise agreed in writing between the parties. If Customer requests services beyond what is normally required for installation, Lumentum may, at its sole discretion, agree with Customer to provide such services at Customer's additional cost.

**2.2 All Rights Reserved.** Lumentum reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights in and to Work Product, and any Intellectual Property and other information, materials and technology developed or acquired by Lumentum prior to, or independently of, the provision of Installation Services hereunder.

**3. COOPERATION.** Customer shall, in a timely manner and free of charge, provide all information, materials and cooperation necessary for the provision of Installation Services or as otherwise reasonably requested by Lumentum. If Customer fails to meet any of its obligations, Lumentum may, without limiting any other remedy (i) delay or suspend performance and charge Customer for any resulting costs; and/or (ii) charge Customer its then-current time & materials services rates (available on request) for every day or part day on which personnel are unable to perform services. Lumentum shall not be liable for, and Customer hereby excuses, any and all delays related to Customer's failure to perform or comply with its obligations. If Customer delays any performance, delivery, or acceptance for more than sixty (60) days, (a) Lumentum may invoice and Customer shall pay the full amount owing immediately; (b) Customer shall be deemed to waive its right to any refund; and (c) Lumentum may, in its discretion, indicate when any applicable warranty period shall start running, if at all.

**4. ACCEPTANCE.**

**4.1 No Acceptance Requirement.** Installation Services are deemed accepted upon completion of the work and do not require acceptance testing or a formal acceptance, unless the parties have expressly agreed on an acceptance requirement in a duly signed writing, in which case Section 4.2 (Completion and Acceptance Testing) through Section 4.4 (Deemed Acceptance) shall apply.

**4.2 Completion and Acceptance Testing.** If Installation Services are subject to acceptance testing as set forth in Section 4.1 (No Acceptance Requirement), Lumentum shall notify Customer when the installation is ready for acceptance testing. At Customer's request, a Customer representative may attend the acceptance testing. Via acceptance testing, Lumentum shall determine whether the installed Product(s) perform as specified in the applicable Documentation ("Acceptance Criteria"). If the acceptance testing demonstrates that the Acceptance Criteria are met, Lumentum shall notify Customer that the installation has passed the acceptance testing and Lumentum may provide Customer with a written summary of the results of the acceptance testing ("Test Results") following the completion of the acceptance testing procedure.

**4.3 Express Acceptance or Rejection.** If the installation materially conforms to the Acceptance Criteria, Customer shall sign a written acceptance statement (i) at the end of the acceptance testing procedure; or (ii) if no Customer representative attends the acceptance testing procedure, within ten (10) days after the earlier of Lumentum notifying Customer of completion of the acceptance testing or delivery of the Test Results. If any Work Product materially fails to conform to the applicable Acceptance Criteria, then Customer shall promptly provide Lumentum with a reasonably detailed written description of the perceived non-conformance ("Rejection Notice"). If Lumentum receives a justified Rejection Notice within ten (10) days after completion of the acceptance testing, Lumentum shall use commercially reasonable efforts to remedy the non-conformance and repeat the acceptance testing process per Section 4.2 (Completion and Acceptance Testing) and this Section 4.3.

**4.4 Deemed Acceptance.** In the absence of an express acceptance, Customer shall be deemed to have accepted Installation Services upon the earlier of (i) approval of the installation; (ii) payment, without reservation, of any amounts with respect to the Installation Services; (iii) ten (10) days after Lumentum notifies Customer of the completion of the acceptance testing, unless Lumentum receives a Rejection Notice within such period; or (iv) use of the installed Products for any purpose other than testing as necessary in order to determine conformance to the applicable Acceptance Criteria. If the parties do not expressly agree on an acceptance requirement (per Section 4.1 – No Acceptance Requirement), the Installation Services shall be deemed accepted upon completion.

**5. PAYMENT.** Customer shall make payment within thirty (30) days of the invoice date and in accordance with the General Terms.

## **6. LIMITED WARRANTY AND DISCLAIMER.**

**6.1 Limited Warranty.** Lumentum warrants that it will perform the Installation Services in a professional and workmanlike manner.

**6.2 Exclusive Remedies.** If Installation Services materially fail to conform to the limited warranty set forth in Section 6.1 (Limited Warranty), and Lumentum receives Customer's written and detailed notice of such non-conformance within thirty (30) days of completion of the Installation Services, Lumentum shall, at its sole discretion, re-perform the Installation Services or provide a credit to Customer equal to the fees paid for the Installation Services. This shall not affect the parties' obligations with respect to delivery, payment or any other terms related to the Products to be installed.

**6.3 Disclaimer.** THE REMEDIES EXPRESSLY PROVIDED IN SECTION 6.2 (EXCLUSIVE REMEDIES) WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST LUMENTUM WITH RESPECT TO ANY NON-CONFORMANCE OF INSTALLATION SERVICES OR WORK PRODUCT. EXCEPT AS SPECIFIED IN SECTION 6.1 (LIMITED WARRANTY), LUMENTUM MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY INSTALLATION SERVICES OR WORK PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LUMENTUM DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

## **7. TERM AND TERMINATION.**

**7.1 Term.** The term of any Installation Services project will continue until the earlier of completion or termination of the Installation Services in accordance with this Section 7 (Term and Termination).

**7.2 Termination for Cause.** Either party may terminate an Agreement regarding Installation Services by written notice, effective immediately, if the other party fails to cure any material breach of the Installation Terms within ten (10) days after receiving written notice from the non-breaching party detailing the alleged material breach.

**7.3 Consequences.** Unless Customer terminates because of Lumentum's material breach of these Installation Terms, Customer shall (i) pay to Lumentum all fees agreed for the Installation Services less out-of-pocket expenses saved by Lumentum as a result of the early termination, or one hundred twenty percent (120%) of Lumentum's fully loaded costs of all Installation Services performed before termination, whichever is greater; and (ii) return to Lumentum all Work Product, Lumentum's Confidential Information and other tangibles and intangibles received in connection with the Installation Services, without retaining any copies thereof.

**7.4 Survival.** Sections 2.2 (All Rights Reserved), 4.3 (Express Acceptance or Rejection), 4.4 (Deemed Acceptance), 5 (Payment), 6 (Limited Warranty and Disclaimer), and Section 7 (Term and Termination) as well as Lumentum's General Terms shall survive any termination of these Installation Services Terms.