



General Terms and Conditions of Sale

1. **Applicability** These terms and conditions of sale ("Terms") and the Seller's Order (as discussed in Section 2 below), are the only terms which govern the sale of the goods ("Goods") by eLuminaire LLC., DBA eLuminaire, a California Limited Liability Corporation, ("Seller"), to the purchaser of the Goods from Seller ("Buyer"). Any terms and conditions contained in any Buyer purchase order or other document, that are not consistent herewith, or contain additional or different terms, shall be deemed rejected absent a mutually executed written agreement by the parties hereto to the contrary.

2. **Order Acceptance** All purchase orders are subject to the terms and conditions of these Terms and are subject to Seller's acceptance upon the issuance of Seller's Sales Order (the Terms and any Sales Order shall be collectively referred to as the "Agreement"). Seller's Sales Order may include additional, modified, or amended terms and conditions. Neither submission of a purchase order alone, nor the commencement of performance or shipping shall constitute Seller's acceptance of any of Buyer's terms and conditions not specifically set forth in Seller's Sales Order.

Seller retains the right to review and approve each purchase order and to withhold acceptance thereof at Seller's sole discretion. All orders shall also be subject to Seller's review and approval of Buyer's credit.

3. **Shipping Terms and Delivery of Goods** Seller shall make delivery in accordance with the terms on the face of the Sales Order using Seller's standard methods for packaging and shipping. Buyer shall take delivery of the Goods at the point of delivery set forth on the face of the Sales Order or any written amendment thereto mutually executed by the parties.

Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the appointed delivery point, or if Seller is unable to deliver the Goods on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, transportation, storage and insurance).

4. **Title and Risk of Loss** Title and risk of loss passes to Buyer upon Seller's delivery of the Goods. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and upon the Goods, wherever

located, and whether presently existing or thereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision shall constitute a purchase money security interest under the Uniform Commercial Code as adopted by the State of California.

5. **Amendment and Modification**

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

6. **Inspection and Rejection of Nonconforming Goods** (a) Buyer shall inspect the Goods within seven (7) days of receipt of delivery ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is not the product identified in Buyer's purchase order; (ii) product's label or packaging incorrectly identifies its contents, or (iii) product is damaged upon delivery.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Upon Seller's instructions, Buyer shall ship, at its expense and risk of loss (subject to any applicable credit), the Nonconforming Goods to Seller's facility as directed by Seller.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 6(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 6(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under the Agreement without Seller's express authorization.

7. **Price** Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's Sales Order. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties, fees and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes.

8. **Payment Terms** (a) Buyer shall pay all invoiced amounts due to Seller pursuant to the terms of Seller's Sale Order. Buyer shall make all payments hereunder by wire transfer or check in US dollars. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller. (b) Buyer shall pay interest on the outstanding balance of all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts

when due hereunder and such failure continues for ten (10) days following any applicable payment due date. Seller shall not be responsible for the delivery of any notice of late payment before the accrual of any interest.

9. **Standard Return Policy** (a) All product returns are subject to Seller's issuance of a Return Merchandise Authorization ("RMA"). An RMA may be issued following Buyer's written request of Seller for return of Goods. No return will be accepted by Seller without an issued RMA and unless shipped to such address specified on the RMA. The return of Goods subject to warranties claims is governed by the terms and conditions set forth in Section 10 below.

(b) Upon Seller's inspection, review and acceptance of the returned Goods subject to and in conformity with an RMA, Seller shall issue a Credit Memo. Buyer shall not be entitled to deduct from any amounts due Seller unless specifically authorized in the Seller-issued Credit Memo.

(c) A restocking fee of twenty five percent (25%) will be applied to all authorized returns.

(d) All Goods returned shall be shipped freight prepaid by Buyer. If any Goods are returned without a valid RMA, the Goods will be returned to Buyer, at Buyer's cost without the issuance of a Credit Memo.

10. **Limited Warranty** Seller warrants that the Goods sold to Buyer will be free from defects in materials and workmanship for a period of five (5) years (the "Warranty Period"). This limited warranty is not transferrable and extends only to Buyer, commencing upon Buyer's receipt of the purchased Goods, subject to the terms and conditions set forth herein below. If any of the individual Goods purchased (the "Product" or "Products") should be found to be defective during the Warranty Period, Seller will, at its sole option, repair or replace the Product or Product component with the same or similar Product or Product component at no charge to Buyer, in accordance with the terms and conditions stated herein below. Labor charges are not included.

This limited warranty applies only to Goods purchased by Buyer which are wired, installed and maintained within the parameters described in the product information sheet. This limited warranty excludes the following: (a) any Product, components or parts not manufactured by Seller; (b) defects caused by failure to provide a suitable installation environment for the affected Product(s) (including but not limited to damage caused by the installation of the Product outside the specified temperature or humidity range described in the product information sheet); (c) damage caused by the use of the Product for purposes other than those for which it was designed; (d) damage caused by any unauthorized attachment or modification to the affected Product; (e) damage caused by any power source problems, including but not limited to unregulated power, short circuits, lighting hits, power surges, or under/over voltage supply; (f) damage incurred during installation, (g) damage caused during shipping or storage; (h) damage caused by criminal acts, terrorism, war, acts of civil disobedience, acts of God such as fire, flood, storm, wind or lightning; (i) damage caused by improper installation; or, (j) damage caused by the misuse of the affected Product or use in violation of any applicable national, state, province or local standard, code or instructions.

This limited warranty shall be void in event of any removal and reinstallation of the affected Product from its initial place of installment, any unauthorized repair or attempted repair, any unauthorized modification, the replacement of any original component with the components of another manufacturer, or the unauthorized removal of any original product labels or markings.

To make a claim under this limited warranty, Buyer must promptly, but no more than thirty (30) days from discovery of any warranted defective condition, notify Seller by contacting the eLuminaire Customer Service Group by e-mail at warranty@eLuminaire.com. Buyer will be requested to provide its original packing slip or such other evidence showing the date of delivery and the identity of Buyer, as Seller, at its sole discretion, may accept. Once Seller determines that the affected Product may be eligible for service under this warranty, Seller will first issue Buyer an RMA number and further instructions concerning any warranty service. Buyer will be required to deliver the affected Product to Seller and with its RMA number and Buyer shall prepay all freight, transportation or insurance costs required for the delivery and return of the affected Product under warranty service. If upon examination of the affected Product, Seller determines that a defect in material or workmanship exists, Seller will, within a reasonable time after the issuance of the RMA and Buyer's delivery of the affected Product to Seller, correct any defect in material or workmanship. If replacement components are required, such replacement components may be either new or used, subject to Seller's discretion. Such repair of the affected Product will be performed at Seller's expense and Seller shall retain title to all replaced components or the affected Product. All warranty service will be performed at service centers designated by Seller. If Seller is unable to repair the affected Product after a reasonable number of attempts, Seller will provide a replacement Product. All replacement Products or Products serviced or repaired are warranted only for the remainder of the original warranty period. These remedies are the Buyer's sole and only remedies under this limited warranty. **SELLER RESERVES THE RIGHT TO EXAMINE ALL ALLEGEDLY DEFECTIVE PRODUCTS TO VERIFY THE CAUSE OF ANY ALLEGED DEFECTS OR FAILURE OF THE PRODUCT AND USE PATTERNS, AND SELLER SHALL BE THE SOLE JUDGE AS TO THE CAUSE AND WHETHER SUCH DEFECT IS COVERED UNDER THIS LIMITED WARRANTY.**

Unless modified in writing by Buyer and Seller, this limited warranty is understood to be the complete and exclusive warranty, superseding all oral or written prior representations or warranties and all other communications. No employee or agent of Seller or any other party is authorized to make any warranty in addition to those made in this warranty.

Disclaimer of Warranty:

EXCEPT FOR THE WARRANTY SET FORTH HEREIN AND EXCEPT AS MAY BE REQUIRED BY LAW, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCT INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Limitation of Remedies Upon Breach of Warranty:

IN NO EVENT WILL SELLER BE LIABLE FOR ANY GENERAL, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, INCLUDING BUT NOT LIMITED TO:

LOSS OF PROFITS; LOSS OF SAVINGS OR REVENUE; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED PROPERTY WHETHER PERSONAL OR REAL; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES, INCLUDING CUSTOMERS; AND INJURY TO PROPERTY. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY EXCEED THE PRICE PAID BY BUYER FOR THE AFFECTED PRODUCT PURCHASED.

11. Waiver No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

12. Confidential Information All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

13. Force Majeure The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

14. Limitation of Liability (a) **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE AGREEMENT OR ANY PART THEREOF, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE**

AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE AFFECTED GOODS SOLD HEREUNDER. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE AGREEMENT (OR ANY PART THEREOF), OR PRODUCTS OR SERVICES FURNISHED BY SELLER MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

15. Assignment Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement.

16. Relationship of the Parties The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

17. No Third-Party Beneficiaries The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

18. Governing Law All matters arising out of or relating to the Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

19. Submission to Jurisdiction Any legal suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the City of Los Angeles within the County of Los Angeles, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. Notices All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

21. Severability If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.