

# Sales Terms & Conditions

Unless otherwise specifically agreed to in writing by Seller, these Sales Terms and Conditions shall apply to any and all orders placed by Buyer for lighting products and services sold by Seller. In these sales terms and conditions, "Seller" is eLuminaire LLC designated in Seller's order acknowledgement and "Buyer" is the party to whom Seller's order acknowledgement is addressed.

**1. ACCEPTANCE OF ORDERS.** Seller's acceptance of all orders and all offers and sales by Seller are subject to and expressly conditioned upon Buyer's assent to the terms and conditions of this Agreement. This Agreement consists of these sales terms and conditions, Seller's offer or quotation, if any, and Seller's order acknowledgement. Buyer's acceptance of any offer by Seller must be made on such terms and conditions exactly as offered by Seller. Any of Buyer's terms and conditions in any purchase order or otherwise referenced which are different from or in addition to those contained in this Agreement are expressly rejected by Seller and shall be of no effect unless specifically agreed to in writing by Seller. Commencement of performance or shipment shall not be construed as acceptance of any of Buyer's terms and conditions which are different from or in addition to those contained in the Agreement. If a contract is not earlier formed by mutual agreement in writing, acceptance by Buyer of products or services furnished by Seller pursuant hereto shall be deemed Buyer's assent to all of the terms and conditions of this Agreement.

This Agreement shall be governed by the laws of the State of California as if made and to be performed entirely within such state. All prices are expressed in U.S. dollars unless otherwise agreed to in writing by Seller.

**2. ORDERS AND PRICES.** Proposals for Seller to supply products and services to Buyer are valid for thirty (30) days from issuance unless otherwise agreed to by Seller in writing. Orders may not be cancelled or modified, either in whole or part, without Seller's express written consent. If Seller consents to any order modification or cancellation, it may impose an order modification or cancellation fee. All prices are as stated in Seller's offer or quotation and specifically override any prices referenced in Buyer's purchase order. In the event that Seller has not provided an offer or quotation, prices for orders for immediate shipment are Seller's standard prices in effect at time of receipt of order. The prices stated in this agreement do not include transportation, insurance or any sales, use, excise or other taxes, duties, fees or assessments imposed by any jurisdiction. All applicable taxes will be paid by Buyer, unless Buyer provides Seller with appropriate tax exemption certificates. If Buyer requests that Seller ship products to Buyer's customer, Buyer must provide Seller with a valid resale certificate or other valid exemption certificate for its customer, and Buyer hereby indemnifies Seller for all taxes, costs, fees, expenses, penalties, and other charges if Buyer cannot provide adequate evidence that it remitted the applicable sales tax to the destination state. Any amounts paid at any time by Seller that are the responsibility of Buyer shall be invoiced to Buyer

and promptly reimbursed to Seller. All prices and other terms are subject to correction for typographical or clerical errors.

**3. TERMS OF PAYMENT.** Buyer shall pay for products and services upon delivery with respect to products and upon completion with respect to services, unless a different time for payment is specified in the order acknowledgement (in which case payment shall be due at the time so specified). Each shipment of products shall be considered a separate and independent transaction and payment for each shipment shall be due accordingly.

Seller may, at its option, elect to extend credit to Buyer. If Seller extends credit to Buyer, invoices for products will be issued upon shipment of the products and invoices for services performed will be issued upon the earlier of completion of the services or the end of each calendar month. Payment shall be due in full within thirty (30) days from the invoice date unless otherwise agreed to in writing by Seller. Seller reserves the right to change the amount of or withdraw any credit extended to Buyer at any time.

All payments shall be in U.S. Dollars unless otherwise agreed to in writing by Seller. There are no discounts for early payment. Amounts not paid when due shall be subject to interest at the rate of one percent (1) per month or, if less, the maximum rate permitted by law.

In the event of the bankruptcy or insolvency of Buyer, or the filing of any proceeding by or against Buyer under any bankruptcy, insolvency, or receivership law, or in the event Buyer makes an assignment for the benefit of creditors, Seller may, at its election and without prejudice to any other right or remedy, exercise all rights and remedies granted Seller in Section 7 as in the case of a default by Buyer under this Agreement.

**4. DELIVERY, TITLE, AND RISK OF LOSS.** Unless otherwise agreed to in writing by Seller, products shall be shipped EXW Seller's manufacturing facilities or inventory hub to any location designated by Buyer (subject to Section 15) and shall be deemed delivered to Buyer when delivered to the transportation company at the shipping point. Unless otherwise agreed to in writing by Seller, (i) all eLuminaire orders with a net value of \$1,000 or greater will be shipped prepaid or freight allowed to destinations within the 48 contiguous United States via routing of Seller's choice; (ii) all eLuminaire orders with a net value of less than \$1,000 will be charged a shipping and handling fee of 10% of the order value, or \$50, whichever is greater and shipped via routing of Seller's choice; and (iii) all eLuminaire orders shipped outside the 48 contiguous United States will include shipping and handling fees as determined by Seller and shipped via routing of Seller's choice. Seller reserves the right to ship products freight collect when Buyer is responsible for freight charges. If special routing or expedited transportation is requested, Buyer is responsible for all additional expense. Unless otherwise agreed to in writing by Seller, Buyer is responsible for insurance against loss or damage in transit (which Seller may obtain at Buyer's written request) and sales, use, excise or other applicable taxes, duties, fees, and assessments imposed by any jurisdiction. Seller

hereby reserves, and Buyer hereby grants to Seller, a purchase money security interest in all products purchased under this Agreement, together with all proceeds thereof, including insurance proceeds. Such security interest secures all of Buyer's obligations arising under this Agreement, and any other agreements between Buyer and Seller, until all amounts due Seller hereunder have been paid in full. Buyer agrees upon Seller's request to sign appropriate financing statements evidencing Seller's security interest.

Subject to the security interest reserved to Seller, title, and risk of loss and/or damage to products shall pass to Buyer upon delivery of the products to the transportation company at the shipping point. Confiscation or destruction of or damage to products shall not release, reduce or in any way affect the liability of Buyer. In the event Buyer rejects or revokes acceptance of any products for any reason, all risk of loss and/or damage to such products shall nonetheless remain with Buyer unless and until the same are returned at Buyer's expense to such place as Seller may designate in writing. All products must be inspected upon receipt and claims filed by Buyer with the transportation company when there is evidence of shipping damage, either concealed or external.

5. **PERFORMANCE.** Seller will make a reasonable effort to observe the dates specified herein or such later dates as may be agreed to by Buyer for delivery or other performance, but Seller shall not be liable for any delay in delivery or failure to perform due to acceptance of prior orders, strike, lockout, riot, war, fire, acts of God, accident, delays caused by any subcontractor or supplier or by Buyer, technical difficulties, failure or breakdown of machinery or components necessary for order completion, inability to obtain or substantial rises in the price of labor or materials or manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, or compliance with any law, regulation, order or direction, whether valid or invalid, of any governmental authority or instrumentality thereof, or due to any circumstances or any causes beyond its reasonable control, whether similar or dissimilar to the foregoing and whether or not foreseen. As used herein, "performance" shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair and replacement, as applicable.

Buyer agrees that any delay in delivery or failure to deliver or perform any part of this Agreement shall not be grounds for Buyer to terminate or refuse to comply with any provisions hereof and no claim or penalty of any kind shall be effective against Seller for such delay or failure; provided, however, that if the delay or failure extends beyond six (6) months from the originally scheduled date either party may, with written notice to the other, terminate this Agreement without further liability for the unperformed part of this Agreement.

6. **ACCEPTANCE.** All products delivered and services performed hereunder shall be deemed accepted by Buyer as conforming to this Agreement, and Buyer shall have no right to revoke any acceptance, unless written notice of the claimed nonconformity is

received by Seller within sixty (60) days of delivery or performance thereof. Notwithstanding the foregoing, any use of a product by Buyer, its agents, employees, contractors, or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that product and associated services by Buyer.

Invoiced overages and product shortages must be reported within 60 days of invoice date. Any discrepancy not reported within 60 days will not be considered for an adjustment.

**7. DEFAULT AND TERMINATION.** Buyer may terminate this Agreement if Seller materially defaults in the performance of its obligations hereunder and fails to cure such default within sixty(60) days after written notice thereof from Buyer. Such termination shall be Buyer's sole remedy in the event of a default by Seller.

Buyer shall be deemed in material default under this Agreement if Buyer fails to pay any amounts when due hereunder, cancels or attempts to cancel this agreement prior to delivery or refuses delivery or otherwise fails to perform any of its obligations hereunder or fails to pay Seller any sums due under any other agreement or otherwise. In the event of a material default by Buyer, Seller may, upon written notice to Buyer, (1) suspend its performance and withhold shipments, in whole or in part, (2) terminate this agreement, (3) declare all sums owing to Seller immediately due and payable, and/or (4) recall products in transit, retake same and repossess any products held by Seller for Buyer's account, without the necessity of any other proceedings, and Buyer agrees that all products so recalled, taken or repossessed shall be the property of Seller, provided that Buyer is given credit therefor. Exercise of any of the foregoing remedies by Seller shall not preclude exercise of any of the others, and neither the existence nor exercise of such remedies shall be construed as limiting, in any manner, any of the rights or remedies available to Seller under the Uniform Commercial Code or other laws.

**8. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS.** The sale of products or provision of services hereunder does not convey any express or implied license under any patent, copyright, trademark, or other proprietary rights owned or controlled by Seller, whether relating to the products sold, service provided, or any manufacturing process or other matter. All rights under any such patent, copyright, trademark, or other proprietary rights are expressly reserved by Seller. Furthermore, Buyer agrees not to infringe, directly or indirectly, any patents of eLuminaire with any combination or system incorporating a product sold hereunder.

Seller will defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that the design or manufacture of products furnished hereunder which were manufactured solely to Seller's designs and specifications infringe any U.S. patent issued as of the date of shipment, provided Seller is promptly notified in writing of such suit or proceeding and is given full authority, information, and assistance by Buyer for such defense. Seller will pay all damages and costs based on such claim of infringement which are finally awarded against Buyer in any such suit or

proceeding or paid by way of settlement, but Seller shall have no liability whatsoever with respect to any settlement made by Buyer without Seller's prior written consent, which Seller may withhold in its sole discretion. If such products are held to infringe any U.S. patent and their use or sale is enjoined, or if in the opinion of Seller such products are likely to become the subject of such a claim of infringement, Seller may, in its sole discretion and at its own expense, either procure a license which will protect Buyer against such claim without cost to Buyer, replace such products with non-infringing products, or require return of such products and refund an equitable portion of the price paid by Buyer to Seller for such products.

The foregoing states Seller's sole liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights. Seller shall have no liability for any claim of infringement or damages based on a combination of products furnished under this Agreement with products, equipment or materials not furnished hereunder, or based upon any items made with the products furnished under this Agreement.

Buyer shall defend and hold Seller harmless against any expense, loss, costs, or damages resulting from any claimed infringement of patents, trademarks, or other intellectual property rights arising out of compliance by Seller with Buyer's designs, specifications, or instructions.

Seller reserves the right to publicize that Buyer has purchased products from Seller.

**9. LIMITED WARRANTY.** Seller shall provide to Buyer a limited warranty for each of Seller's products and services provided under this Agreement as follows:

(i) Commercial Products: The terms, limitations, and exclusions for the limited warranty for each commercial product provided under this Agreement are available at <http://eluminaire.com/resources/warranty>.

THE FOREGOING WARRANTY PROVISIONS ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT AND ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING DISCLAIMERS OF WARRANTY AND LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE. Seller reserves the right to modify its limited warranties at any time in its sole discretion, provided that any modification to any limited warranty shall be effective only for products or services purchased after the date of the change to the limited warranty. These limited warranties may not be transferred by Buyer except by an authorized distributor (as expressly permitted in Section 22 below) or in connection with the sale of the installation site in which the Product was originally installed.

**10. LIMITATION OF LIABILITY AND CLAIMS.** SELLER'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT, REGARDLESS OF HOW SUCH LIABILITY IS CLAIMED (INCLUDING BREACH OF CONTRACT, NEGLIGENCE, TORT, MISREPRESENTATION, STRICT LIABILITY, OR OTHER CLAIM) SHALL IN NO EVENT EXCEED THE GREATER OF (i) THE AMOUNT, IF ANY, RECEIVED BY SELLER FOR THE ORDER OF PRODUCTS AND SERVICES UNDER THIS AGREEMENT GIVING RISE TO SUCH CLAIM OR (ii) TEN THOUSAND US DOLLARS (\$10,000). IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSS OR DAMAGES ARISING FROM ANY INTERRUPTION OF BUSINESS OF ANY KIND, HOWEVER CAUSED, OR ANY PUNITIVE, EXEMPLARY, OR OTHER SIMILAR DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR PRODUCTS OR SERVICES FURNISHED BY SELLER MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUED.

**11. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, proposals, agreements, and understandings, whether oral or written, relating to the products to be purchased hereunder or otherwise relating to the subject matter of this Agreement. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Seller.

**12. ATTORNEY'S FEES.** In the event of default in payment of the purchase price or any part thereof, Buyer agrees to pay Seller's expenses, including reasonable attorney's fees and expenses, incurred by Seller in enforcing payment thereof, including all expenses incurred in connection with any arbitration or judicial proceeding.

**13. ARBITRATION.** Any controversy or claim (including, without limitation, any claim based on negligence, misrepresentation, strict liability, or other basis) arising out of or relating to this Agreement or its performance or breach, which involves an amount in excess of \$50,000 (exclusive of interest and costs), shall be settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, if arbitration is demanded by either party. The location of the arbitration shall be the City of Los Angeles, California. The decision in such arbitration shall be final and binding and any award rendered thereon may be entered in any court having jurisdiction.

**14. ASSIGNMENT.** Buyer shall not assign or transfer any rights or claims under this Agreement without the prior written consent of Seller, and any purported assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties.

**15. EXPORT CONTROL.** Seller's export of the products, and any technical information related thereto, may be subject to United States and/or other national or international

(e.g., UN) laws and regulations controlling the export and re-export of technical data and products, or limiting the export of certain products to specified countries (e.g., embargo regulations). Seller shall not be obligated under these Sales Terms and Conditions to export, transfer or deliver any products or related technical information to Buyer if prohibited by applicable law or until all necessary governmental authorizations have been obtained. Seller shall not be liable under these Sales Terms and Conditions for any expenses or damages resulting from failure to obtain or delays in obtaining any required government authorizations. Buyer shall comply fully with all export administration and control laws and regulations of the U.S. government and/or other national or international (e.g. UN) laws and regulations as may be applicable to the export, re-export, resale, or other disposition of any products purchased from Seller.

16. **PRODUCT SAFETY.** Buyer shall comply fully with all applicable safety-related industry standards and laws, rules, and regulations of any governmental body having jurisdiction to regulate the distribution or sale of products sold pursuant to this Agreement. Buyer shall obligate all persons and entities buying such products from Buyer (other than end users) to comply with such industry standards, laws, rules, or regulations applicable to such person or entity. Buyer shall defend and hold Seller harmless against any expense, loss, costs, or damages relating to any claimed failure by Buyer to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from products manufactured by Buyer which incorporate the products supplied by Seller.

17. **RETENTION OF ENVIRONMENTAL ATTRIBUTES.** Unless otherwise agreed to in writing by Seller, Seller retains all rights and interests, free and clean of any claims, liens, and encumbrances in favor of Buyer, in and to all environmental attributes that may be associated with the products sold under this Agreement (which attributes include, among other things, all characteristics that enable the energy that such products produce, consume, or avoid consuming to qualify for incentives and payments, other than with respect to ratepayer-funded incentive programs offered by or on behalf of an electric or natural gas utility).

18. **GENERAL.** If the products purchased from Seller are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding upon Seller unless specifically agreed to by Seller in writing. No modification, amendment, rescission, waiver, or other change in this Agreement shall be binding on Seller unless agreed to in writing by Seller. The invalidity or unenforceability, in whole or in part, of any provision herein shall not affect the validity or enforceability of any other provision herein. Failure or delay on the part of either party to exercise any right, power, privilege, or remedy herein shall not constitute a waiver thereof. The section headings contained herein are for convenience of reference only and are not to be used in the construction or interpretation of this Agreement.

**ADDITIONAL TERMS THAT ARE APPLICABLE TO AUTHORIZED DISTRIBUTORS  
OF ELUMINAIRE PRODUCTS:**

**19. EXPORT RESTRICTION.** DISTRIBUTORS LOCATED IN THE UNITED STATES ARE NOT AUTHORIZED TO SELL OR SHIP PRODUCTS OUTSIDE OF THE UNITED STATES WITHOUT PRIOR WRITTEN APPROVAL OF AN AUTHORIZED OFFICER OF SELLER.

**20. LICENSE TO USE ELUMINAIRE TRADEMARKS.** Seller grants Buyer a limited, non-exclusive non-transferable license to use the trade names and trademarks of Seller solely for the promotion and sale of products in accordance with these Sales Terms and Conditions.

**21. TRANSFER OF LIMITED WARRANTY.** A Buyer who is an authorized distributor of Seller may transfer (directly or indirectly through a contractor) its rights under the limited warranties described in Section 9 (LIMITED WARRANTY) above (either directly or indirectly through a subcontractor) to the original end user who purchases the product from such authorized distributor, provided that such product is resold by such distributor in new condition and in its original packaging. Except as expressly provided in this Agreement or as may be approved in writing by Seller, the limited warranties are non-transferrable