



Sales Terms

1. Scope. These General Terms of Sale (the "Agreement", "Terms", or "Terms of Sale") apply to all sales of products by ETI Solid State Lighting Inc. ("ETI SSL") to any purchaser ("Buyer"). In the event that a signed agreement exists between ETI SSL and Buyer, terms of that agreement will prevail. These Terms may in some instances conflict with some of the terms proposed by Buyer. Therefore, acceptance of Buyer's order is made only on the express understanding that to the extent that any of these terms and conditions conflict with any terms of Buyer's order, these terms and conditions will govern. These Terms will be deemed accepted by Buyer placing an order, accepting the goods, or tendering full or partial payment. ETI SSL's failure to object to provisions contained in any communication from Buyer will not be deemed a waiver of these Terms. Any additions to, or deviation from these Terms, must be proposed to ETI SSL at its office and must be accepted in writing by an officer of ETI SSL before such terms will become part of the Agreement. These Terms are subject to change by ETI SSL without prior written notice at any time, in its sole discretion. Buyer is responsible for complying with these Terms and for reviewing these Terms on a regular basis to ensure that Buyer is aware of changes in these Terms.

2. Order Acceptance and Cancellation. Buyer agrees that its order is an offer to buy, under these Terms, all products listed in its order. All orders must be accepted by ETI SSL or ETI SSL will not be obligated to sell the products to Buyer. ETI SSL may choose not to accept orders at its sole discretion, even after ETI SSL sends Buyer a confirmation email with the order number and details of the items Buyer has ordered.

3. Prices and Payment Terms.

(a) Unless otherwise expressly agreed in writing by ETI SSL, payment is due 30 days after the invoice date. ETI SSL may charge a late payment penalty of 1.5% per month on undisputed amounts, or the maximum rate permitted by law, whichever is less. Credit cards payments will be accepted with a \$15 convenience fee for each transaction. Without waiving any of ETI SSL's other rights or remedies, ETI SSL may refuse additional orders and suspend any services until all overdue amounts are paid in full. In the event that Buyer cancels an order prior to shipment but more than 72 hours after order confirmation, then Buyer will be charged a cancellation fee of 25% of the total price of the order. No order may be cancelled after shipment.

(b) All prices, discounts, and promotions are subject to change and revision without advance notice. Orders marked "HOLD" or "HOLD FOR RELEASE" will be billed at the prices in effect on the date that shipment is requested. Buyer will pay any and all applicable cost or charges for insurance or any production, sales, use, transfer, transportation, excise or other applicable federal, state, or local taxes, tariffs, or custom duties imposed on this sale, excluding tax

assessed on ETI SSL income. ETI SSL reserves the right to correct any errors, inaccuracies, or omissions related to pricing and availability at any time and to cancel any orders arising from such occurrences.

4. Authorized Distributors. ETI SSL products are sold only to Buyers authorized by ETI SSL to resell ETI SSL products on a non-exclusive basis ("Authorized Distributors"). ETI SSL may grant or terminate Authorized Distributor status in its sole discretion. Anyone placing an order who is not an Authorized Distributor will be referred to the nearest Authorized Distributor.

5. Shipping Costs. Products are sold FOB ETI SSL's factory or warehouse of origin. Posted prices do not include charges for shipping and handling. ETI SSL will only pay the freight costs on individual orders in accordance with its Free Freight Allowance (FFA) policy. Unless otherwise communicated to Buyer by ETI SSL or its Agent, a minimum order value of \$1500 is required to qualify for the FFA. The FFA policy is incorporated into these Terms of Sale by reference which will be made available upon request subject to any confidentiality restrictions required by ETI SSL. Any and all special charges for a shipment such as, but not limited to, lift gate fees, limited access fees, appointment fees, etc., will be charged to the Buyer.

6. Delivery Date. Any estimated or firm delivery dates or periods are predictions made by ETI SSL of the times within which it is likely that the products will be shipped; however, due to the difficulties inherent in predicting future delivery dates or periods, ETI SSL does not promise, guarantee or otherwise obligate itself to have products shipped on or before that time. **ETI SSL will endeavor to meet the estimated or firm delivery dates or periods, but will not be liable for any direct, indirect, special, incidental or consequential losses, costs or penalties incurred or suffered by Buyer as a result of ETI SSL's inability or failure for any reason to meet such estimated or firm delivery dates or periods, nor will Buyer be relieved of any performance due to such inability or failure.**

7. Minimum Billing. The minimum billing amount for all orders is \$200, plus transportation charges. Orders received for lesser amounts will be invoiced at the minimum billing amount. ETi SSL may waive, at its sole discretion, this minimum billing amount. In such cases, a written agreement will be signed by officers of both ETi SSL and Buyer prior to orders being accepted by ETi SSL.

8. Risk of Loss. Upon receipt by carrier of merchandise in good condition, title to and risk of loss for merchandise passes from ETI SSL to Buyer. Claims for loss or damage during transit or storage must be made by Buyer directly to the carrier, storage company, or insurance company, if any. Claims for shortages must be made to ETI SSL, in writing within 5 days of receipt of shipment.

9. Return Policy. Products may not be returned without prior written approval issued by ETI SSL in its sole and absolute discretion. Only the Authorized Distributor who places an order with a value at least twice the original net invoice value of the approved returns will be eligible to receive full credit for such approved returns; provided that, the prior approved returns must

be shipped at Buyer's expenses, and be received by ETI SSL in perfect condition in undamaged, unopened original cartons. Otherwise, all prior approved returns will be subject to a 25% restocking charge plus any shipping and handling costs, which will be deducted from the return credit amount. Buyer shall bear the risk of loss during shipment of any returns. Made to Order (MTO) products are not returnable.

10. Defective Goods. Buyer shall inspect the products within 5 business days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the products unless it completes a "Defective Material Report" (available at [Defective Material Report - ETI SSL](#)) during the Inspection Period and furnishes such written evidence or other documentation as required by ETi SSL. A representative of ETi SSL will respond to the submission within 2 business days. ETi SSL, at its sole discretion, may choose to offer Buyer replacement product, like product, or issue Buyer a credit equal to the purchase price as recorded on the original invoice to Buyer. For LED products being returned, the return authorization code must be included with the returned goods or the goods will be returned to Buyer at Buyer's expense. All returned items must be sent to a ETI SSL specified location in original conditions, freight prepaid.

11. Advance Replacement. Advance replacement means a process to ship replacement product in advance of ETI SSL's receipt of the defective or damaged product. Advance replacement is subject to ETI SSL's sole discretion. If advance replacement is approved by ETI SSL, Buyer will be billed and then credited upon ETI SSL's receipt of returned product in original conditions, freight prepaid.

12. Order Entry/Shipping Errors. In the event of order entry/shipping errors, Buyer must contact ETI SSL for return authorization within 2 days of Buyer's knowledge of such errors. Upon approval, Buyer may return the goods to a ETI SSL specified location in original conditions, freight prepaid. If the return is due to an error on ETI SSL's part, a full credit will be issued to Buyer. ETI SSL reserves the right to evaluate claims before granting authorization.

13. Product Warranties. The ETI SSL Lighting Product Warranties are incorporated into these Terms of Sale by reference and apply to all products purchased from ETI SSL unless otherwise agreed in writing by an officer of ETI SSL. These warranties are in lieu of, and ETI SSL expressly disclaims, all other warranties, express or implied in fact or by law, including without limitation all warranties of merchantability or fitness for a particular purpose or otherwise, and the foregoing warranties state ETI SSL's entire and exclusive liability, and the buyer's sole and exclusive remedy, in connection with the, products or parts, their design, suitability for use, installation or operation.

14. Limitation of Liability. ETI SSL will not be liable to Buyer or any third party under any theory of relief, including without limitation breach of warranty, breach of contract, tort (including negligence), strict liability, or otherwise, arising out of or related to this Agreement or products provided hereunder or ETI SSL's acts or omissions for: (i) any lost use, revenue or profits, consequential, indirect, incidental, special, exemplary, or punitive damages, whatsoever (including without limitation, loss of anticipated value of a business or its reputation) or (ii)

any damage or loss in excess of the price actually paid by Buyer for the products that caused the damages. Any action by Buyer must be commenced within one year after the cause of action has accrued.

15. Intellectual Property and Relationship of Parties. Buyer acknowledges and agrees that the ETI SSL trademark and all other trademarks of ETI SSL (collectively "ETI SSL Marks"), and all copyrights, patents and other ETI SSL intellectual property are owned exclusively by ETI SSL. Buyer will not adopt or attempt to register any trademark, service mark, trade name, company name, internet domain name or other proprietary designation that is identical or confusingly similar to any of the ETI SSL Marks. Buyer will not make, use or copy any material that is the same or substantially similar to any ETI SSL copyright or patent. Provided that Buyer is in good standing with ETI SSL and not in breach of this Agreement, the foregoing will not prevent Buyer from: (a) accurately identifying the ETI SSL products as offered for sale to consumers by Buyer provided that all such use of the ETI SSL Mark by Buyer will inure to the benefit of ETI SSL; and (b) using ETI SSL photographs and descriptions of ETI SSL products solely to promote sales of the ETI SSL products. Any other use of any ETI SSL Mark or ETI SSL copyrighted material is prohibited without ETI SSL's prior written consent.

Buyer shall notify ETI SSL of any claim that the design or construction of the product(s) as furnished infringes a United States patent. ETI SSL shall pay all costs and damages finally awarded in any suit against Buyer or its vendees to the extent based upon a finding that the design or construction of the product(s) as furnished infringes a United States patent, (except infringement occurring as a result of incorporating a design or modification at Buyer's request or any claim that the use of the product(s) infringes a process or method claim of any patent), provided that Buyer promptly notifies ETI SSL of any claim of infringement, and provided that ETI SSL is given sole right to settle such claim and to defend or control the defenses of any suit based upon such claim. THIS SECTION SETS FORTH ETI SSL'S EXCLUSIVE LIABILITY WITH RESPECT TO PATENTS.

Buyer and ETI SSL are independent contractors. Buyer will not hold itself out as an agent of ETI SSL or otherwise misstate or misrepresent its relationship to ETI SSL.

16. Termination. In addition to any remedies that may be provided under these Terms, ETI SSL may terminate this Agreement with immediate effect upon written notice to Buyer, but without prejudice to any other rights or remedies available to ETI SSL, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iv) if at any time it shall come to notice of ETI SSL that Buyer is or is likely to be unable to meet its obligations in full due.

ETI SSL retains a security interest in all products delivered under this Agreement to secure payment of amounts due in respect thereof. Upon termination or cancellation of this Agreement pursuant to this paragraph, ETI SSL shall (without prejudice to any other rights or

remedies available to it) (i) be entitled if it so elects to repossess at Buyer's expense any products which may have been delivered to, but not paid for by, Buyer; or (ii) be entitled to recover from Buyer the whole or any unpaid part of the contract price and any other charges. Buyer agrees to pay ETI SSL the cost of collection of overdue invoices, including, without limitation, attorneys' fees.

Buyer may not cancel or terminate for convenience, or direct suspension of manufacture without the prior written approval of ETI SSL and Buyer shall in any case pay all costs of materials, labor and associated overhead and shipping incurred to the date of such written approval.

17. No Representations Concerning Buy American Act and Trade Agreements Act. Except as provided in an official ETI SSL product specification or a document signed by ETI SSL, ETI SSL makes no representations of compliance with the Buy American Act, Trade Agreements Act, or other similar country of origin statutes, including passive certifications.

18. Force Majeure. ETI SSL shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond ETI SSL's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, public health emergencies, or other civil unrest; (d) statute, law, ordinance, regulation, code, treaty, or common law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any federal, state, local, foreign government or quasi-government authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "Force Majeure Event").

19. Miscellaneous. These Terms of Sale, the ETI SSL Lighting Product Warranties referenced herein and Free Freight Allowance Policy referenced herein, constitute the entire agreement between the parties hereto with respect to the subject matter of these Terms of Sale. Buyer agrees to indemnify and keep indemnified ETI SSL against all reasonable fees, costs and other expenses incurred by ETI SSL in enforcing any of the foregoing terms or provisions. These Terms of Sale will be governed by the laws of the State of Ohio. Buyer consents to the personal jurisdiction and venue of the courts of the State of Ohio. Any legal or equitable claim of any nature arising hereunder will be filed and maintained in the state or federal courts in the State of Ohio and Buyer agrees that such courts are a convenient forum for adjudication. In the event that suit is necessary to recover amounts owed by Buyer to ETI SSL, Buyer will be liable for reasonable attorney's fees, interest and costs of such collection. No agreement or understanding varying the terms and conditions hereof will be binding upon either party hereto unless in writing attached hereto and signed by duly authorized representatives of both parties. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Buyer acknowledges and agrees that (i) ETI SSL retains all rights and interests, free and clean of any liens and encumbrances in favor of Buyer or

Buyer's customer, in and to the Environmental Attributes that may be associated with products purchased from ETI SSL, and (ii) such products may not be enrolled or included by Buyer or Buyer's customer in an incentive program pursuant to which any Environmental Attributes related thereto are transferred to another person, other than a utility or other similar ratepayer funded program.