



## TESLYTE LLC, TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (collectively referred to as this “Agreement”) govern all sales of goods by TESLYTE LLC (herein referred to as TESLYTE) to BUYER. Any offer to sell Products to BUYER, whether or not in response to a purchase order from BUYER, is expressly conditioned on BUYER’S acceptance of this Agreement and BUYER’S placing an order, accepting an offer for sale or taking of delivery of any part of a shipment of Products is evidence of such acceptance. If this Agreement is construed to be an offer, this offer expressly limits acceptance by TESLYTE to the terms of this offer and notice of objection to any different or additional terms is hereby given. If this Agreement is construed to be an acceptance of an offer, this acceptance is expressly conditioned upon TESLYTE’S assent to any different or additional terms contained in this Agreement. If TESLYTE already has an executed purchase agreement currently in effect with BUYER or enters into the same in the future, then the terms of such signed purchase agreement (as the same may be amended from time to time) shall prevail in the event of any conflict between this Agreement and such purchase agreement. If TESLYTE does not already have or enter into an executed purchase agreement with BUYER, then this Agreement shall constitute the complete agreement with respect to the products. Without limitation of the foregoing, by purchasing any products on TESLYTE’S website or through other electronic means offered by TESLYTE (collectively the “Site”), BUYER accepts, without limitation or qualification, this Agreement governing such purchase. If BUYER does not agree and accept, without limitation or qualification, this Agreement, BUYER may not purchase from the Site.

1. AGREEMENT TO PURCHASE AND SELL. A quotation by TESLYTE is an estimate only and is subject to modification by either TESLYTE or BUYER. The transmission of a written confirmation (“Order Confirmation”) by TESLYTE signifies TESLYTE’S acceptance to sell only the Products that are the subject of the Order Confirmation and only pursuant to specified conditions inclusive of description, unit quantities, applicable prices, and delivery dates, and thereafter each party shall be deemed to have agreed to the terms and conditions herein.

### 2. PRICE AND PAYMENTS.

(a) Prices are reflected in U.S. Dollars and are exclusive of any and all federal, state, and local sales, use, excise, and similar taxes and charges which shall be the responsibility of

BUYER in addition to the purchase of Products. Prices are firm for the quantities specified in an applicable Order Confirmation. Notwithstanding the foregoing, TESLYTE reserves the right to revise prices to reflect any or all of the following: (i) any variation in market price of components, parts, raw materials; or (ii) any changes to the specifications or volume previously agreed upon, including changes that increase the cost of testing. TESLYTE shall provide reasonable prior notice before invoking any of these rights with respect to revised prices.

(b) Payment is due to TESLYTE 30 days after date of invoice, unless such payment terms are modified and signed by both parties in a separate writing.

3. DELIVERY. TESLYTE shall schedule delivery and undertake all reasonable efforts to meet BUYER'S requested delivery date. However, TESLYTE reserves the right to adjust the delivery dates for the entire or parts of any order. If TESLYTE cannot observe an agreed time for the delivery of the Products, or if delay by TESLYTE appears probable, TESLYTE shall give notice to BUYER listing the time when TESLYTE expects to deliver. A reasonable delay by TESLYTE shall not be grounds for BUYER to terminate the order as to the delayed Products, unless otherwise agreed to by TESLYTE and BUYER. Unless otherwise expressly agreed upon in a separate writing signed by both parties, all product shipments shall be made F.O.B. ORIGIN FREIGHT COLLECT, title to and risk of loss or damage to Products shall pass to BUYER upon TESLYTE'S tender of Products to carrier. Unless otherwise agreed upon in a separate writing signed by both parties, the Products will be shipped in standard commercial packaging and by a method determined by TESLYTE in its sole discretion.

4. INSPECTION AND CURE. BUYER shall inform TESLYTE of the lack of conformity of any Products with the Order Confirmation, specifying the nature of the lack of conformity within a reasonable time after BUYER discovers or should have discovered the non-conformity, but not more than 30 days after BUYER receives shipment of the Product. TESLYTE shall have the right to cure any non-conformity upon notice from BUYER notwithstanding any expiration of the original time for performance.

5. SAMPLES. Any sample(s) provided to BUYER is provided on a rent-free, loan basis for periods of 30 or 60 days, in each case as determined by TESLYTE in its sole discretion. Title to any such sample(s) shall remain with TESLYTE and BUYER shall be responsible for any loss or damage to the sample(s).

6. CHANGES. BUYER has the option to request, in writing, changes to any order, including changes to the specifications, up to 60 days prior to the previously agreed upon delivery date for the order. BUYER may reschedule a standard, non-custom order only once and only up to 30 days prior to the previously agreed upon delivery date, provided that, in any event the rescheduled delivery date must be within the same fiscal quarter as when the notice is received by TESLYTE. TESLYTE shall notify BUYER, in writing, as to the impact of each

such change to price, delivery schedule and any other terms within five (5) business days after receipt of the notice from BUYER. Any such requested changes shall become effective only upon the signing by both parties of a separate writing that incorporates the agreed upon changes. If any such change causes either an increase or decrease in TESLYTE'S costs or time required for performance, the prices and/or delivery schedules shall be adjusted in a manner that adequately compensates TESLYTE for any such changes and BUYER shall bear any increased costs. In no event may changes to either specifications or delivery of Products be made less than 30 days before the originally scheduled delivery date for the Products.

7. CANCELLATION. BUYER shall have the right to cancel any standard, non-custom order without cause, provided BUYER provides TESLYTE written notice of cancellation 60 or more days prior to the scheduled delivery date for the Products. All orders for custom products are non-cancelable by BUYER for any reason.

8. LIMITED WARRANTY. TESLYTE warrants, for the applicable warranty period set forth in Section 9 of this Agreement (the "Warranty Period"), that the Products, when used and installed in conformity with TESLYTE'S Published Specifications, will perform substantially in accordance with TESLYTE'S Published Specifications. This limited warranty is non-transferrable. TESLYTE does not guarantee that the Product will operate in an error-free or uninterrupted manner.

#### 9. WARRANTY PERIODS.

TESLYTE warrants that TESLYTE luminaires and retrofit kit/replacement lamp purchased directly from TESLYTE will be free from defects in material and workmanship until the earlier of five (5) years from the date of shipment. TESLYTE warrant products include light emitting diode (LED) component arrays limited with lifespan expectancy. LED arrays in the light fixture warrants based on LED life expectancy of 50,000 hours limit reached or five (5) years, whichever occurs first. The LED arrays in the fixture(s) will be considered defective in materials or workmanship if a total of 7% or more of the individual LEDs on the product fail to illuminate. Warranty does not include any removal or re-installation costs/expenses.

10. WARRANTY SERVICE INSTRUCTIONS. For Original Purchasers to request warranty service under this limited warranty, the Original Purchaser must first contact its TESLYTE representative to obtain a RMA prior to and as a condition of return of any Product. For End Users to request warranty service under this limited warranty, the End User must contact the manufacturer from which the system incorporating the Product was purchased prior to and as a condition of the return of any Product.

11. REMEDIES. In the event of a breach of the limited warranty set forth in Section 8 of this Agreement, TESLYTE, at its discretion, may (a) repair the non-conforming Product; (b)

replace the non-conforming Product with a similar product; or (c) Credit BUYER for the value of the non-conforming Product determined by TESLYTE at the time that the claim is made. The remedies set forth in this section are the sole and exclusive remedies available to BUYER and are not cumulative. TESLYTE retains the right to replace a non-conforming Product with a reconditioned Product. Any repaired or replaced Product will be shipped at TESLYTE'S expense within a reasonable time following receipt of the non-conforming Product by TESLYTE. Upon receipt of the non-conforming Product by TESLYTE, title in the Product shall vest in TESLYTE and will no longer remain the property of BUYER. The replacement Product continues to be subject to the limited warranty set forth in Section 8 of this Agreement and is subject to the same terms and limitations as the original Product for a period of 90 days or the remainder of the original Warranty Period, whichever is longer.

## 12. PRODUCT RISKS.

(a) Light products are subject to risks inherent in electrical connection such as ground light fixtures accordance with national, state, and/or local electrical codes. Therefore, the user of the Products assumes all responsibility and risk for personal injury of the Products and TESLYTE and, where applicable, TESLYTE'S third party licensors specifically disclaim any responsibility for any personal injury associated with the Products.

(b) The Products are not designed, manufactured or intended for use or resale in environments or application where product failure could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly TESLYTE and, where applicable, TESLYTE'S third party licensors specifically disclaim any express or implied warranty of fitness for High Risk Activities.

(c) BUYER will indemnify, defend and hold TESLYTE harmless from any loss, cost or damage resulting from High Risk Activities associated with the Products, including without limitation attorneys' fees and costs relating to any lawsuit or threatened lawsuit, arising out of such use, sale or export.

13. DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH IN SECTION 8, TESLYTE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS AND HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

14. LIMITATION OF LIABILITY. BUYER HEREBY EXPRESSLY AGREES THAT NEITHER TESLYTE NOR ITS SUPPLIERS WILL IN ANY EVENT UNDER ANY CIRCUMSTANCES BE

LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY OR OTHERWISE IN LAW OR EQUITY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, FUTURE OR PUNITIVE DAMAGES WHATSOEVER; LOSS OF PROFITS OR REVENUE; LOSS OF USE OF BUYER'S PROPERTY, PLANT, EQUIPMENT OR SYSTEM; INCREASED COSTS OF ANY KIND; OR CLAIMS OF CUSTOMERS OF BUYER. BUYER HEREBY EXPRESSLY AGREES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND THAT UNDER NO CIRCUMSTANCE SHALL THE TOTAL AGGREGATE LIABILITY OF TESLYTE AND ITS SUPPLIERS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), UNDER WARRANTY OR OTHERWISE IN LAW OR EQUITY, EXCEED THE PURCHASE PRICE BUYER ACTUALLY PAID TO TESLYTE FOR PRODUCTS UNDER THIS AGREEMENT.

15. INDEMNIFICATION. BUYER shall indemnify and hold harmless TESLYTE and its affiliates and their respective officers, directors and employees for all costs and expenses arising out of: (a) any breach of any agreement made by BUYER in this Agreement; (b) any negligence or willful misconduct of BUYER in connection with its performance under this Agreement; and (c) any personal injury (including death) or any damage to or loss or destruction of property attributable to BUYER'S handling, storage, transportation, placement, or use of the Products or otherwise arising from BUYER'S performance under this Agreement.

16. FORCE MAJEURE. TESLYTE shall be excused from fulfilling its obligations contained herein or from delays in delivery and shall not be liable for failure to fulfill its obligations contained herein or for delays in delivery due to causes beyond its reasonable control, including but not limited to, acts of God; acts or omissions of the other party; acts or omissions of civil or military authority; government priorities; shortages in materials, energy, labor or equipment; fire; strikes; floods; earthquakes; epidemics; quarantine restrictions; riots; war; labor difficulties; delay in delivery from TESLYTE'S suppliers; commercial impracticability and delays in transportation. The time for performance of any such obligation shall be extended for the time period lost by reason of the delay; provided that if such delay exceeds 90 days BUYER may cancel the applicable order for Products upon written notice to TESLYTE.

17. CONFIDENTIALITY. If either party hereto receives from the other party written information which is marked "Confidential" and or "Proprietary," or other confidential or proprietary information transmitted orally or visually, the receiving party agrees not to use such information except in the performance hereof, nor disclose such information to any third party, excluding TESLYTE'S employees, agents, subcontractors and OEMs, without mutual consent, and to treat such information in the same manner as it treats its own confidential

information, but no less than reasonable care under the circumstances. TESLYTE has a proprietary interest in the quotations it issues, and accordingly, quotations will not be disclosed in whole or in part to third parties without the prior written consent of TESLYTE. The obligation to keep information confidential shall not apply to any such information that (a) is received from a third party without violation of a duty of confidentiality; (b) is or becomes generally available in publicly available sources; (c) at the time of entering into this Agreement, is already in the rightful possession of the party receiving the confidential information without an obligation of confidentiality; or (d) is required to be disclosed by operation of law, but only to the extent and for purposes of such required disclosure. Except as otherwise provided herein, or as otherwise mutually agreed by the parties in a separate writing, the obligation not to disclose or use confidential information shall survive for a period of three (3) years after the termination hereof.

18. LEGAL. In the purchase and use of the Products, BUYER shall comply with all applicable laws, rules and regulations, including without limitation all applicable export laws and regulations. BUYER shall not be considered an agent or representative of TESLYTE and BUYER shall not be granted any rights in TESLYTE'S trademarks or other intellectual property rights.

19. ADVICE AND TECHNICAL DOCUMENTS. If technical advice is offered or given in connection with the use of any Product it will be as an accommodation to BUYER and without charge and TESLYTE shall have no responsibilities or liabilities whatsoever for the content or use of such advice. All drawings and technical documents delivered by either of the parties to the other party remain the property of the delivering party, and the receiving party may not improperly use, reproduce, or otherwise disclose such materials to third parties.

20. ASSIGNMENT. No rights, duties, agreements or obligations hereunder may be assigned or transferred by BUYER without the prior written consent of TESLYTE. The obligations, rights, terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

21. WAIVER. The waiver of any breach of any term, condition or covenant hereof or default under any provision hereof shall not be deemed to constitute a waiver of any other term, condition, or covenant contained herein or of any subsequent breach of default of any kind or nature.

22. SEVERABILITY. This Agreement is intended for use by TESLYTE wherever its products may be sold, and therefore, if any of the provisions of this Agreement contravene or are invalid under the laws of a particular state, country or jurisdiction where used, the contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as if not containing that particular provision or provisions held to be invalid in the particular state, country or jurisdiction, and the rights and obligations of the parties shall be construed

and enforced accordingly.

23. **ELECTRONIC COMMUNICATIONS.** The parties agree that electronic communication is a practicable method of communication and where written communication is required by this Agreement, electronic means will be sufficient including with respect to orders, acknowledgements, and order confirmations or otherwise, unless either party expressly objects to the use of electronic communication.

24. **APPLICABLE AGREEMENT.** The most current version of this Agreement can be found at <http://www.Teslyte.com> which contains the complete expression and entire understanding of the parties with respect to the purchase of Products from TESLYTE, superseding all previous agreements covering such purchases. The parties agree that such Agreement shall control, notwithstanding conflicting or additional terms on any purchase order, sales acknowledgement, confirmation or other document issued by either party. No terms of such Agreement may be amended, changed or modified except by a separate written document provided or signed by TESLYTE modifying such specific terms.

25. **GOVERNING LAW AND FORUM SELECTION.** In the event that parties cannot resolve a dispute, the parties acknowledge and agree that the state courts of Orange County, California and the federal courts located in the Central District of the State of California shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with any part of this Agreement. Further, the parties consent to the exercise of personal jurisdiction over them by such courts, and each party waives any objection to venue, personal jurisdiction, forum non conveniens, and any similar or related doctrine. The parties agree that the substantive laws of the State of California, without regard to its provisions concerning conflicts or choice of law, shall apply to all questions, disputes or actions arising out of or in connection with any part of this Agreement. Except as expressly set forth in this Agreement, each party shall bear the cost of its own attorneys with respect to any dispute arising out of or in connection with this Agreement.

26. **DEFINITIONS.** In addition to the other defined terms set forth in this Agreement, the following terms will have the meanings set forth in this section as they are used and applied within this Agreement:

(a) “BUYER” refers to an individual or entity, inclusive of all officers, employees, subcontractors, agents and other representatives, which purchases one or more products directly from TESLYTE (an “Original Purchaser”), or which purchases a system or device that incorporates one or more of TESLYTE’S products (an “End User”).

(b) “Credit” means credit to purchase another TESLYTE Product, but does not mean a full cash refund.

(c) “Product” refers only to the products sold by TESLYTE at the time this Agreement is

entered into.

(d) “Published Specifications” means the current product specification information TESLYTE makes publicly available through its website, as such information may be amended from time to time by TESLYTE in its sole discretion.

(e) “Return Merchandise Authorization Number” also referred to as “RMA”, means a number generated by TESLYTE at the time a warranty service claim is made.

(f) “TESLYTE” refers to Teslyte LLC, located at 155 East Liberty Ave, Unit G/H, Anaheim, CA. 92801

(g) “Warranty Period” means (a) in the case of an Original Purchaser, the period beginning on the date the Product was purchased in its original and sealed packaging and continuing for the term of years listed in the schedule in Section 9; or (b) in the case of an End User, the period beginning on the date of purchase of an applicable device or system under the terms of this Agreement and continuing for the term of years listed in Section 9.

TESLYTE HEADQUARTERS: (888)  
394-2299

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[Terms and  
Conditions  
of sales](#)

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