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General terms and conditions eldoLED

eldoLED - North America

1. Definitions

(a) eldoLED: eldoLED, a division of Acuity Brands Lighting, Inc.

(b) Customer(s): shall mean any natural person or corporation with whom eldoLED and its employees deal in the course of its business, including representative(s), agent(s), successor(s) and including visitors of its website.

(c) Product(s): shall mean any or all of eldoLED's products and services.

2. Applicability

These general terms and conditions apply to all offers of eldoLED and exclusively govern the relationship between eldoLED and Customers. No other terms and conditions shall be binding upon eldoLED unless accepted by it in writing. eldoLED expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind eldoLED.

3. Offers

All offers by eldoLED are non-binding and may be revoked at any time, unless eldoLED stated otherwise in writing. Any amendments made by eldoLED in writing or verbally, shall entail a new offer, automatically revoking the previous offer. Any amendments by Customer of an eldoLED offer, will be deemed a new offer by Customer, which eldoLED may accept or reject at its sole discretion.

4. Products, Prices and Taxes

(a) Product configurations and prices are subject to change at any time.

(b) Prices are based on delivery ex warehouse/works, unless otherwise agreed in writing, and do not include delivery and service costs.

(c) All listed and quoted prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on eldoLED or on Customer by any taxing authority (other than taxes imposed on eldoLED's income), related to Customer's order, unless Customer has provided eldoLED with an appropriate resale or exemption certificate for the delivery location, which is the location where eldoLED transfers title or possession of Products to Customer.

(d) The prices quoted are in U.S. dollars, or in another currency if stated by eldoLED in writing. Customer shall bear any exchange rate risk, unless otherwise agreed in writing.

5. Orders, Shipping, Delivery, Risk of Loss, Transfer of Title

(a) All orders are subject to product availability.

(b) Customer is aware that Products may be shipped internationally through third party carriers and that delivery times and dates are merely estimates. ELDOLED CANNOT BE HELD LIABLE FOR ANY DAMAGES AS A RESULT OF DELAY IN DELIVERY OF PRODUCTS.

(c) Unless otherwise agreed in writing, delivery shall be made ex warehouse/works. eldoLED is entitled to make partial deliveries. Customer must accept delivery of Products during normal business hours, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with eldoLED's rates or local rates.

(d) The risk of loss or damage of Products shall pass to Customer at the moment of delivery ex warehouse/works, even if eldoLED has not yet transferred the ownership thereof.

(e) Title to a Product will transfer to Customer immediately after the full purchase price has been received by eldoLED, provided that Customer is not otherwise in default of the purchase agreement and these terms and conditions.

6. Inspection, Acceptance of Products, Returns

- (a) Claims in connection to shortages or errors in shipping must be reported to eldoLED within two (2) days of receipt of such shipment. If Customer fails to report timely, eldoLED will have no obligation to correct such shipments, unless Customer bears all the expenses thereof.
- (b) Immediately upon receipt of a Product, Customer shall test and inspect it for defects and non-conformance with the written specifications provided by eldoLED and will notify eldoLED in writing within seven (7) days of receipt of a Product, of any defects or non-conformance. After such seven (7) day period, Customer shall be deemed to have irrevocably accepted the Products, if not already previously accepted. After acceptance, Customer shall have no right to reject the Products for any reason or to revoke acceptance. Customer hereby agrees that a seven (7) day period is a reasonable amount of time for inspection and revocation.
- (c) THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGEDLY DEFECTIVE PRODUCTS IS THE REPLACEMENT OR REPAIR AT ELDOLED'S SOLE DISCRETION, OF SUCH PRODUCTS OR PARTS OF SUCH PRODUCTS, AT NO COSTS FOR CUSTOMER.
- (d) Customer may return a Product if:
- (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and
 - (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged.

All returns shall be subject to the following deductions:

- (i) cost of putting items in saleable condition;
- (ii) transportation charges, if not prepaid; and (iii) handling and restocking charges. Custom made Products may not be cancelled or returned, and no refund will be made.

7. Payments

- (a) All payments under this agreement shall be effected in U.S. dollars, or in any other currency as agreed to in writing.
- (b) Customer agrees to pay, without the right to set-off any amounts, all invoiced amounts within thirty (30) days of the invoice date. However, all amounts will be due immediately, in case Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any Federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- (c) Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.5% a month, or the highest rate allowed by law, whichever is higher, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- (d) Payments made by Customer shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the agreement which have remained outstanding for the longest period of time, even when Customer specifies that the payment relates to another claim.
- (e) Customer shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged defects of Products or on any other account whatsoever.
- (f) eldoLED may require a purchase money security interest or letters of credit, or any other form of security, at all times. If requested by eldoLED, Customer will authorize eldoLED to file a financing statement reflecting a purchase money security interest and Customer will record such purchase money security interest on its books. If Customer does not meet eldoLED's request to provide security, eldoLED shall be entitled to terminate the agreement or to suspend its obligations.

8. Suspension of Performance

eldoLED is entitled to suspend its performance (including future partial deliveries) if Customer fails to meet any of its obligations, or if eldoLED reasonably expects that Customer will not fulfil its obligations.

9. Representations and Warranties

- (a) eldoLED represents and warrants that for a period of 3 (three) years as of the date of invoice, Products materially meet the specifications and specifically agreed upon quality, both as stated in the applicable datasheet and/or written design-in specifications, or as stated in writing otherwise by eldoLED, provided that these specifications are explicitly designated by eldoLED as "warranted specifications".
- (b) eldoLED represents and warrants that to the best of its knowledge, the Products do not infringe, misappropriate or otherwise violate any intellectual property right of any third party.
- (c) The representations and warranties hereunder do not cover faults or damages arising from natural wear and tear, faulty or careless treatment, faulty and unauthorized commissioning, installation or setting into operation by Customer or a third party, improper storage or unloading and unauthorized unpacking of Products, improper or defective environmental circumstances and unauthorized relocation of Products. Unauthorized modifications, repairs, or additions to Products, modifications of and/or additions to eldoLED software, and wrong maintenance or maintenance by unauthorized people shall invalidate all warranties in connection thereto.
- (d) The rights of the Customer with respect to this warranty clause are restricted to a lack of conformity caused by defects, faulty materials and failures in the Products or workmanship which appear under proper use, in conformity with the operational and first-line-maintenance manual.
- (e) A warranty period of 3 (three) months is applicable to repairs conducted by or on behalf of eldoLED. No additional warranty period is applicable to replaced parts, but the warranty mentioned in section 9.a. on the original Product, will include those parts.

Defective parts shall become eldoLED's property as soon as they have been replaced. No warranties are made in connection to consumables and/or spare parts.

(f) EXCEPT AS UNAMBIGUOUSLY AND EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, ELDOLED MAKES NO REPRESENTATIONS OR WARRANTIES IN CONNECTION TO ITS PRODUCTS, INCLUDING WARRANTIES ABOUT ITS PRODUCTS' MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT (WHETHER EXPRESS, IMPLIED OR STATUTORY), UNLESS EXPLICITLY MADE AND PROVIDED BY ELDOLED IN WRITING TO CUSTOMER.

10. Liability and Limitation of Damages

(a) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGIES OR SERVICES OR COST OF COVER) IN CONNECTION WITH OR ARISING OUT OF THE RELATIONSHIP BETWEEN THE PARTIES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN CASE OF LIABILITY UNDER ARTICLE 11, ELDOLED'S MAXIMUM AGGREGATE LIABILITY FOR ANY CAUSES WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WILL AT ALL TIMES BE LIMITED TO \$100,- OR FIVE (5) PERCENT OF THE PURCHASE AMOUNTS PAID TO ELDOLED IN CONNECTION TO THE PRODUCTS SUBJECT TO THE CLAIM, WHICHEVER IS LESS.

(b) Customer agrees to defend and indemnify eldoLED, its present and future officers, directors, shareholders, employees and agents, and to hold each of them harmless from and against any claim, demands, causes of action, damages, liabilities, costs and expenses, including reasonable attorney's fees, arising from (i) Customer's or its customer's specific use of a Product, including product liability claims or actions, unless such action is solely related to the Product itself and has no bearing with the use or combination with other products, (ii) unauthorized maintenance, repairs or modification of Products by or on behalf of Customer or its customers, or (iii) Products that are out of the ordinary course of business of eldoLED and that were explicitly requested and/or designed by Customer.

(c) Customer undertakes and agrees to obtain and keep in full force and effect at all times valid policies of insurance against all liabilities, risks and losses (including but not limited to the losses caused by any unlawful act on the part of any person, liabilities based on product liability claims, and liabilities in connection to Article 11 below) in respect of Customer's business relating to the Products.

11. Patent indemnity and Limited License of Intellectual Property Rights

(a) eldoLED, at its own expense, shall defend any suit brought against Customer based upon a claim that Products as such, directly incorporate and infringe any third party's patents in the U.S. and shall indemnify Customer against any final award or agreed-upon settlement of damages or reasonable costs in such suit. This indemnity is conditional upon Customer giving eldoLED prompt notice in writing of any suit for such infringement, full authority at eldoLED's sole discretion to settle or to conduct the defence thereof, and full assistance and co-operation in said defence.

(b) No cost or expense shall be incurred on behalf of eldoLED without its written consent. In the event that Products are held to constitute infringement by a court of law, eldoLED at its own election and its own expense may either procure for Customer the right to continue the application of Products and/or the use of Products, or modify Products to make them non-infringing.

(c) CUSTOMER IS AWARE THAT SOME USES AND APPLICATIONS OF ELDOLED'S PRODUCTS MIGHT ONLY BE ALLOWED AFTER PRIOR APPROVAL OF THIRD PARTIES, HAVING PROPRIETARY RIGHTS ON A SPECIFIC USE OR APPLICATION. IT IS CUSTOMER'S SOLE RESPONSIBILITY TO OBTAIN ALL NECESSARY APPROVALS AND LICENSES, BEFORE USING AND APPLYING THE PRODUCTS. eldoLED shall not be obligated to defend against, and shall not be liable for, infringement of any patent claim covering combinations of Products with any other product, whether or not supplied by eldoLED, or any method, process or products in which Products are used, or for patent infringement arising from compliance with Customer's design, specification or instruction. In these cases Customer shall defend and indemnify eldoLED against any damages or costs for such infringement and if so requested, eldoLED shall give Customer full authority to conduct the defence thereof and full assistance and co-operation in such defence.

(d) Notwithstanding the foregoing, there shall be no indemnification by eldoLED with respect to any claim, loss, damage, expense or liability:

- unless eldoLED shall have been given the opportunity to defend the matter and Customer fully co-operates in such defence;
- if the claimed infringement is settled without eldoLED's consent;
- if the infringement results from the use of Products modified by the Customer or combined with a product not delivered by eldoLED, where such infringement would not have occurred from the use of the Product alone.

(e) All intellectual property rights, e.g. patents, copyrights, data protection, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights are owned by eldoLED. No transfer, license or other grant of rights are given to Customer, unless explicitly stated in writing.

(f) The sale of Products is conditional upon the non-exclusive, non-transferable limited license to (i) use the Products in Customer's internal business, and (ii) to combine the Products with other products and sell or lease such combined products to third parties within the United States. It is expressly understood that Customer is not allowed to resell or export Products as such, i.e. without being part of a larger system, and Customer is not allowed to provide maintenance or repair services in connection to any Product. There are no implied licenses.

(g) Customers may not, nor may enable and/or allow third parties to (i) copy, modify, translate, or reverse engineer any Products, including software; (ii) remove any copyright, trademark or other proprietary rights notices on Products, including software.

12. Confidential Information

(a) Confidential Information means (i) the existence and terms of any purchase agreement and (ii) any non-public, confidential or proprietary information relating to a disclosing party, whether or not technical in nature, including any that is designated by the disclosing party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving party; (ii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving party at the time of disclosure by the disclosing party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing party; or (v) is developed independently and separately by either party without use of the disclosing party's Confidential Information.

(b) Each party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other party and that it will observe the same due care with respect to such information as they would observe with respect to its own Confidential Information. The other party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without the disclosing party's prior written consent, which consent may be granted or withheld in such party's sole and absolute discretion.

(c) Each party agrees that it will restrict the circle of employees or third parties it retains who have access to the other party's Confidential Information as much as possible and provide such access only on a need to know basis and after binding such employees and third parties to the same level of confidentiality as set forth in this Agreement.

(d) Immediately following the receipt of a written request to this effect by the disclosing party the receiving party will return any and all Confidential Information received from the disclosing party or destroy such Confidential Information, if the disclosing party so requests.

13. Force Majeure

eldoLED will not be liable for any delay in performing or failure to perform any of its obligations under this agreement caused by events beyond its reasonable control. eldoLED will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.

14. Severability

If any provision of these terms and conditions or any other agreement between the parties is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction,

(i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and

(ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

15. Further Assurances

Each of the parties covenants and agrees on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of these terms or any other agreement between the parties.

16. No Beneficiaries

Any agreement between the parties is for the sole benefit of the parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the parties thereto, any legal or equitable rights thereunder.

17. No Partnership

Nothing contained in any agreement between the parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the parties. Neither of the parties may pledge or purport to pledge the credit of the other party or make or purport to make any representations, warranties, or undertakings for the other party.

18. Governing Law and Jurisdiction

Unless stated otherwise in writing, all agreements shall be governed by and construed in accordance with the laws of the state of New York, without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. With respect to any disputes arising between the parties, parties hereby submit exclusively to the personal jurisdiction of the Federal courts in New York, New York. The parties consent and agree that each such court is a convenient forum for, and has proper venue over, the resolution of all legal actions, proceedings and disputes arising out of or relating to their relationship. ANY CAUSE OF ACTION AGAINST ELDOLED, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH ACTION IS PERMANENTLY BARRED.

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