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## TERMS AND CONDITIONS

These terms and conditions govern the sale of lighting products ("Product or Products") by 2Point0 Lighting, LLC, d/b/a ayo (hereinafter "AYO"). These terms and conditions ("Agreement") supersede any supplemental or conflicting terms and conditions. Neither AYO's commencement of performance or delivery shall be deemed or construed as acceptance of any supplemental or conflicting terms and conditions. AYO's failure to object to conflicting or additional terms will not change or add to the terms of this Agreement. Buyer's acceptance of the Products from AYO shall be deemed to constitute acceptance of this Agreement.

**ORDERS:** All orders are subject to acceptance by AYO. Orders may not be cancelled or rescheduled without AYO's written consent.

**SAMPLES:** Where a sample of the Products is shown to and inspected by the buyer, the buyer understands and accepts that samples are representative in nature and the bulk of the order may differ slightly because of the manufacturing process.

**PRICES:** The prices of the Products are those prices specified on the front of the invoice. Quoted prices shall expire in thirty (30) days from the date issued or as otherwise stated in the quote. Prices do not include lamps.

**TAXES & COSTS:** Unless otherwise agreed to in writing by AYO, all prices quoted are exclusive of transportation and insurance costs, duties, and all

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as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on AYO's invoice.

**FREIGHT:** All shipping, handling, and freight costs will be paid by the buyer as they appear on AYO's invoice.

**PAYMENT:** Unless otherwise stated on AYO's invoice, payment will be made by buyer Net 30 from invoice. Any unpaid invoice due and owing to AYO shall bear interest at a rate of 10% per annum or the maximum rate allowed by law, from the due date.

**RISK OF LOSS:** Risk of loss and damages pass to buyer upon delivery of Product by AYO to carrier. Once order is shipped, Product must be accepted at point of delivery. AYO's delivery dates are estimates only and AYO is not liable for delays in delivery or for failure to perform due to causes beyond AYO's reasonable control. Carrier shall not be deemed an agent of the AYO.

**TITLE:** Title in the Products shall not pass to the buyer until AYO has been paid in full for the Products.

**ACCEPTANCE:** Shipments will be deemed to have been accepted by the buyer upon delivery unless rejected upon receipt. The buyer shall perform all inspections and tests as promptly as possible but in no event later than 7 days after delivery of Products, at which time acceptance of Products will be deemed irrevocable. Any discrepancy in shipment quantity must be reported within 7 days after delivery.

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**INTELLECTUAL PROPERTY RIGHTS:** All intellectual property rights produced from or arising because of the performance of this Agreement shall, so far as not already vested, become the absolute property of AYO, and the buyer shall do all that is reasonably necessary to ensure that intellectual property rights vest in AYO by the execution of appropriate instruments or the making of agreements with third parties.

**ARBITRATION & FORUM:** Unless prohibited by applicable law, (a) If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration; (b) Any dispute arising out of or relating to this contract, or the breach thereof, that cannot be resolved by mediation within 30 days shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitration will be conducted in accordance with the United States Arbitration Act, in the English language, and in the County of San Diego, California, unless the parties mutually agree to a different forum or location. There shall be three arbitrators, named in accordance with such rules. The award of the arbitrators shall be accompanied by a statement of the reasons upon which the award is based. Unless prohibited by applicable law, the arbitrators shall decide the dispute in accordance with the substantive law of the state of California.

**WARRANTY:** All fixtures manufactured AYO have a 2-year warranty against manufacturer defects. This warranty does not include fixtures

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warranty does not cover damage due to misuse, abuse, accident, or damage arising out of transportation or shipping of Products.

**LIMITATION OF LIABILITY:** AYO's liability arising out of or related to this Agreement, including without limitation liability for negligence, is limited to the contract price. In no event will AYO be liable for any consequential, indirect, special, incidental or punitive damages, or for attorneys' fees, costs, or expenses regardless of the form of action, whether based on breach of contract, tort, strict product liability, or otherwise, even if AYO has been advised of the possibility of such damages and even if the damages were foreseeable by AYO.

## ***DISCLAIMER OF IMPLIED WARRANTIES***

**AYO disclaims any and all implied warranties, including without limitation any implied warranties of merchantability or implied warranties of fitness or fitness for a particular purpose. There are no warranties beyond those described in the warranty section of this Agreement above.**

**CATALOG/PRICEBOOK/WEBSITE ERRORS:** Every effort is made to prevent informational errors in any AYO publications. AYO is not responsible and shall be held harmless from any and all loss or damage due to errors relating to, but not limited to dimension data, prices, descriptions, applications, etc.

**RETURNED MERCHANDISE OR CANCELLED ORDERS:** Written authorization must be obtained from AYO before Product can be returned

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Product is in sellable condition and is of current style and design. A 25% restocking charge will apply to all returned merchandise or cancelled orders based on the invoice price plus original freight costs involved. The 25% restocking charge will be deducted from any credit to cover the cost of handling, inspecting, and loss of profit. Custom-made or modified Product is not subject to return or cancellation.

**CHANGE ORDERS:** After acceptance of a purchase order, all requests for changes must be made in writing and shall not be effective unless accepted by AYO.

**CANCELLATIONS:** Orders cancelled before manufacturing begins will be subject to cancellation charges for costs incurred, engineering work performed, and special purchased material. Orders cancelled after the manufacturing has begun will be subject to additional cancellation charges inclusive of, but not limited to, material, labor, storage, overhead, profit and freight.

**ATTORNEYS' FEES:** Should legal action become necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred in bringing or defending such action, including without limitation, reasonable attorneys' fees.

## ***DISCLAIMER OF USE***

Unless otherwise stated in AYO's literature, all luminaires and accessories manufactured by AYO are designed for indoor use, at voltages from 90% to 105% of rated and ambient temperatures of 50F to 85F, installed in

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luminaires and accessories is beyond the control of AYO, AYO assumes no responsibility for proper operation or safety of the luminaires and accessories other than the stated conditions or for any use other than that for which they were designed as described in AYO's literature, unless prior written approval has been obtained from AYO for the specific conditions.

**SEVERABILITY:** If any term or provision of this Agreement is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been agreed with the invalid, illegal, or unenforceable provision eliminated.

\* \* \* \*

The order becomes a binding contract when accepted by AYO at its office. Such acceptance by AYO shall be complete when (A) acceptance in writing is mailed by AYO to buyer, or (B) when buyer accepts delivery of Product or (C) buyer has given to AYO instructions relative to delivery dates, shipments, requests to bill and hold, or has otherwise assented to this Agreement as to all or any part of the Products. The order is subject to all of the terms and conditions HEREIN, all of which are hereby accepted by The Buyer.

**see what**

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