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## eTech LED Terms & Conditions

These terms and conditions shall govern all activities related to Products and Services (Products) offered by eTech LED, Ltd (Company) to Dealers, Distributors, Contractors (Resellers), Independent Sales Reps, and direct purchasers of Company Products (Customers).

### **THESE TERMS AND CONDITIONS APPLY TO PURCHASES MADE AFTER JANUARY 1, 2017.**

#### **1. ORDERS & PRICES**

- 1.1 Orders from Customers of a Reseller or Independent Sales Representative shall first be forwarded to the Reseller or Independent Sales Representative for processing. Orders from Resellers or Independent Sales Representatives and orders from Customers not represented by Resellers or Independent Sales Representatives shall be forwarded to Company at its head office. No order shall be binding until accepted by Company as confirmed by an Order Acknowledgement confirmation sent to the Buyer.

After acceptance, an order shall not be subject to modification or cancellation without written consent of the Company. All sales are final.

- 1.2 Company's acceptance of orders is conditioned upon Customer's assent to the terms and conditions of this Agreement. The Agreement consists of these sales terms and conditions, Company proposal, if any, and Company's order acknowledgement. Customer's acceptance of any offer by Company must be made on such terms and conditions exactly as offered by Company.

Any of Customer's terms and conditions which are different shall not be in effect unless agreed to in writing by Company. Commencement of performance or shipment shall not be construed as acceptance of any of Customer's terms and conditions.

- 1.3 Proposals for Company to supply products to Customer are valid for 60 days from issuance unless otherwise agreed in writing by Company. Orders may not be cancelled or modified, either in whole or part, without Company's express written consent. If Company consents to any order modification or cancellation, it may impose an order modification or cancellation fee including cost of purchased materials, engineering costs and a reasonable allowance for profit.

All prices are as stated in Company's quote or proposal and specifically override any prices referenced in Customer's purchase order. Prices for immediate shipment are prices in effect at time of receipt of order. Qualifying orders specifying future delivery will be invoiced at prices and terms in effect at time of shipment. The prices stated in this Agreement are in U.S. dollars and do not include transportation, insurance, taxes, duties, fees, or assessments imposed by any jurisdiction. All applicable taxes will be paid by Customer, unless Customer provides Company with appropriate tax exemption certificates. If a Reseller requests that Company ship products to Reseller's Customer, Reseller must provide Company with a valid resale certificate or other valid exemption certificate for its Customer.

Reseller hereby indemnifies Company for all taxes, costs, fees, expenses, penalties, and other charges if Reseller cannot provide adequate evidence that it remitted the applicable sales tax to the destination state. Any amounts paid at any time by Company that are the

responsibility of Customer who shall reimburse Company. All prices and other terms are subject to correction for typographical or clerical errors.

- 1.4 Company shall not be obligated to accept any order less than \$1,000. Company reserves the right to cancel any sale of Products without liability to Customer (except for refund of monies already paid) if manufacture or sale of the Products is or becomes technically or economically unfeasible.

## **2. SHIPMENT, DELIVERY, PERFORMANCE**

- 2.1 Unless the Company otherwise agrees in writing, products shall be shipped best way (cheapest and fastest) from Company's manufacturing facilities to any location designated by Customer (subject to Section 10) and shall be deemed delivered to Customer when delivered to the transportation company at the shipping point. Absent advance written agreement, all transportation expenses will be prepaid and added to customer invoice.

Company reserves the right to ship orders in a single shipment. Customer will assume any expense over a standard single shipment if partial shipments, special routing, or expedited transportation is requested. Company may elect to make partial shipments of orders in its discretion. Customer will be solely responsible for any storage or cartage charges beyond the destination address acknowledged by Company. Company reserves the right to refuse the request of any Reseller or Independent Sales Representative to make a direct shipment to a destination outside the assigned territory of Reseller or Independent Sales Representative. Resellers located in the Continental United States are not authorized to sell or ship Products outside the continental United States without prior written approval of Company.

- 2.2 Company will make a reasonable effort to observe the dates specified and agreed with Customer for delivery or other Performance, but shall not be liable for any delay in delivery or failure to perform due to any reason beyond its reasonable control. Delivery dates are estimates only, and not a binding Performance commitment. As used herein, "Performance" shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair and replacement, as applicable.

All next-day air shipments must be sent in writing. Requests for expedited, next-day shipments must be received before 12:00 noon Central time.

- 2.3 Customer agrees that any delay in any part of this Agreement shall not be grounds for Customer to terminate or refuse to comply with any provisions hereof. No penalty of any kind shall be effective against Company for such delay or failure; provided, 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. This clause does not apply to custom orders: mutual consent is required to cancel custom orders.
- 2.4 All products delivered hereunder shall be deemed accepted by Customer as conforming to this Agreement, and Customer shall have no right to revoke any acceptance, unless the Company receives written notice of the claim within ten (10) days of delivery. Notwithstanding the foregoing, any use of a product by Customer, its agents, employees, contractors, or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that product by Customer.

- 2.5 Customer shall give Company written notice (Notice) of any overages or shortages in quantities shipped as stated in the bill of lading, packing slip or invoice within ten (10) days of receipt of shipment (Notice Period). For a claimed shortage, upon confirmation by the Company that a shortage occurred, the Company will ship the missing items to Customer or, if agreed by the Company and Customer, credit the invoice in the amount of the shortage.

Any credit balances must be applied within 12 months of issuance or they will be cancelled without notice or further liability.

Any shortage discrepancy not reported within the Notice Period will not be considered for adjustment. For a claimed overage, Customer shall return overages to Company, at Company's cost, in accordance with Company's written instructions, if any, given to Customer within ten (10) days of Company's receipt of the Notice.

### **3. TITLE & RISK OF LOSS**

- 3.1 Company hereby reserves, and Customer hereby grants to Company 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 Customer's obligations arising under this Agreement, and any other agreements between Customer and Company, until all amounts due Company hereunder have been paid in full. Customer agrees upon Company's request to sign appropriate financing statements evidencing Company's security interest.

- 3.2 Subject to the security interest reserved to Company, title, and risk of loss shall pass to Customer upon delivery of the products to the common carrier at the shipping point. Confiscation or destruction of or damage to products shall not release, reduce, or in any way affect the liability of Customer. In the event Customer rejects or revokes acceptance of any products for any reason, all risk of loss and/or damage to such products shall nonetheless remain with Customer unless and until the same are returned at Customer's expense to such place as Company may designate in writing.

### **4. TERMS OF PAYMENT**

- 4.1 All payments shall be in U.S. dollars. Each shipment shall be considered a separate and independent transaction and payment for each shipment shall be due upon receipt unless terms have been granted for thirty (30) days after each shipment, or otherwise noted. Payment may be made by (i) check or money order, (ii) wire transfer to a bank account designated by Company or (iii) credit card approved by the Company.

For payments made with credit cards, a 3% processing fee will be added to the final invoice unless otherwise noted.

- 4.2 Company may, at its option, elect to extend credit to Customer on terms acceptable to Company. If Company extends credit to Customer, Company may require a substantial down payment at the time of order, an additional payment at shipment and the balance on terms acceptable to Company. Company reserves the right to change the amount or terms of credit or withdraw any credit extended to Customer at any time in its sole discretion.

- 4.3 Unless otherwise specified in this Agreement or agreed to in writing by Company, amounts owed for Services will be invoiced upon shipment. Payment of such invoices is due within thirty (30) days from the invoice date ONLY if written terms have been extended.

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- 4.4 Amounts not paid when due will be subject to interest at the rate of one and one-half percent ( $1\frac{1}{2}\%$ ) per month or, if less, the maximum rate permitted by law. If Customer fails to fulfill the terms of payment, Company shall have the remedies set forth in Section 8 of this Agreement.
- 4.5 In the event of the bankruptcy or insolvency of Customer, or the filing of any proceeding by or against Customer under any bankruptcy, insolvency, or receivership law, or in the event Customer makes an assignment for the benefit of creditors, Company may, at its election and without prejudice to any other right or remedy, exercise all rights and remedies granted Company in Section 8 as in the case of a default by Customer under this Agreement.

## **5. INTELLECTUAL PROPERTY**

The sale of products or provision of services hereunder does not convey any express or implied license under any proprietary rights owned or controlled by Company. The Company expressly reserves all patent, copyright, trademark, and other proprietary rights.

Furthermore, Customer agrees not to infringe, directly or indirectly, any patents of the Company or its subsidiaries with any combination or system incorporating a product sold hereunder. Company grants Customer a limited, non-exclusive non-transferable license to use the trade names and trademarks of Company solely for the promotion and sale of products in accordance with these Sales Terms and Conditions. Company reserves the right to publicize that Customer has purchased products from Company.

## **6. LIMITED WARRANTY, RETURNS, & LIABILITY LIMITATIONS**

- 6.1 The Company shall provide the original purchaser a limited warranty for each of Company's commercial grade Products provided under this Agreement provided you register your purchase within 60 days of date of invoice from the Company. The Company also provides a return policy for its standard, non-custom products. The terms, limitations, and exclusions for the limited warranty for the Company's products are available on the eTech LED website.

Returns of new and unused product must be shipped within 90 days of receipt of the product. Returns are subject to a minimum restocking charge of 35%.

Customer shall direct all inquiries, complaints, return requests and warranty claims to the Reseller from whom Customer purchased the Product, or to the Company for any Product purchased directly from the Company. Company reserves the right to modify its limited warranty and return policy at any time in its sole discretion.

- 6.2 Company's aggregate liability in damages or otherwise shall in no event exceed the amount, if any, paid by the customer for the product or service giving rise to any claim. In no event shall company be liable for incidental, consequential, or special loss or damages, however caused, or any punitive, exemplary, or other damages. No action, regardless of form, arising out of or in any way connected with this agreement or Products furnished by company may be brought by customer more than one (1) year after the cause of action accrued.

## **7. RESELLER AND INDEPENDENT SALES REPRESENTATIVE OBLIGATIONS**

- 7.1 Reseller and/or Independent Sales Representative shall respond in a prompt and courteous manner to all Customer inquiries, complaints, return requests and warranty claims, will report all complaints, return requests, and warranty claims in writing to the Company within five (5) business days of notice of such complaint, return request or claim, and will refer all Customer

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warranty claims and return requests to the Company for disposition and provide all information requested by the Company.

- 7.2 Reseller and/or Independent Sales Representative agrees to defend, indemnify and hold the Company, its officers, agents and employees, harmless from and against any and all claims, liabilities or costs (including attorney fees) for any loss, damage or injury caused by, arising out of, or resulting from the Reseller's and/or Independent Sales Representative's activities in the distribution or sale of Products or any other activities carried on by Reseller and/or Independent Sales Representative pursuant to this Agreement or otherwise, except and to the extent that any such claims or damages are covered by the Limited Warranty or are the result of the willful misconduct or gross negligence of the Company.

## **8. DEFAULT AND TERMINATION**

Customer may terminate this Agreement if Company materially defaults in the performance of its obligations hereunder and fails to cure such default within sixty (60) days after written notice from Customer. Such termination shall be Customer's sole remedy in the event of a default by Company. Customer shall be deemed in material default under this Agreement if Customer 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 Company any sums due under any other agreement. In the event of a material default by Customer, Company may, upon written notice to Customer, (1) suspend its performance and withhold shipments, in whole or in part, (2) terminate this Agreement, (3) declare all sums owing to Company immediately due and payable, and/or (4) recall products in transit, retake same, and repossess any products held by Company for Customer's account, without the necessity of any other proceedings, and Customer agrees that all products so recalled, taken or repossessed shall be the property of Company, provided that Customer is given credit. Exercise of any of the foregoing remedies by Company 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 Company under the Uniform Commercial Code or other laws.

## **9. PRODUCT SAFETY**

- 9.1 Customer shall use the Company's products only for their intended purposes within published limitations and shall strictly adhere to all installation and use guidelines provided by the Company. Customer shall comply fully with all industry safety standards applicable to the manufacture, distribution or sale of items incorporating the products supplied by Company, including but not limited to American National Standards Institute (ANSI)/Illuminating Engineering Society of North America (IESNA) RP-27 (or equivalent eye safety labeling standards) and International Standard IEC 62471-2006, published by the International Electrotechnical Commission, including all marking, labeling, and supplemental user and service information (if any) required by the standards, where applicable. Customer shall comply fully with all applicable safety-related laws, rules, and regulations of any governmental body having jurisdiction to regulate the manufacture, distribution or sale of items incorporating the products supplied by Company. Customer shall obligate all persons and entities buying such products from Customer (other than end users) to comply with Company's installation and use instructions and such industry standards, laws, rules, or regulations applicable to such person

or entity. Customer shall defend and hold Company harmless against any expense, loss, costs, or damages relating to any claimed failure by Customer to comply with such industry standards, laws, rules, or regulations or from any bodily injury, illness or property damage resulting from products manufactured by Customer which incorporate the products supplied by Company.

- 9.2 Customer, Reseller, and/or Independent Sales Representative shall not modify, disassemble, reassemble, reverse engineer, substitute another manufacturer's components or otherwise attempt to replicate or copy any Company product. Any request for repair, or modification of a product shall be directed to and, if performed at Company's sole discretion, will be performed only by or at the written direction of Company.

## 10. EXPORT CONTROL

Company'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). Company shall not be obligated under these Sales Terms and Conditions to export, transfer or deliver any products or related technical information to Customer if prohibited by applicable law or until all necessary governmental authorizations have been obtained. Company 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.

Customer 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 Company.

## 11. GENERAL

- 11.1 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 Company.
- 11.2 Attorney Fees. In the event of default in payment of the purchase price or any part thereof, Customer agrees to pay Company's expenses, including reasonable attorney's fees and expenses, incurred by Company in enforcing payment thereof, including all expenses incurred in any arbitration or judicial proceeding.
- 11.3 Government Contracts. If the products purchased from Company are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding upon Company unless specifically agreed to by Company in writing.
- 11.4 Modification, Waiver, & Enforceability. No modification, amendment, rescission, waiver, or other change in this Agreement shall be binding on Company unless agreed to in writing by Company. 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

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constitute a waiver. 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.

- 11.5 No Assignment. Customer shall not assign or transfer any rights or claims under this Agreement without the prior written consent of Company, 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.
- 11.6 Governing Law, Venue. This Agreement shall be governed by the laws of the State of Wisconsin as if fully performed in Wisconsin and without regard to its conflicts of laws principles. Company and Customer irrevocably submit to the jurisdiction of the state and federal courts located in Oshkosh County, Wisconsin for any dispute, and waive any trial by jury. Venue for all proceedings, including arbitration, shall be Oshkosh County, Wisconsin. The provisions of this instrument are severable and shall be interpreted so as to be valid and enforceable to the maximum extent possible under applicable law. Any invalid or unenforceable provision shall be reformed or replaced by a valid and enforceable provision that is as similar in meaning as possible, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 11.7 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 over \$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 either party demands arbitration. The decision in such arbitration shall be final and binding and any award rendered thereon may be entered in any court having jurisdiction.

The Company may update these terms and conditions from time to time. All prices for Products are subject to change without notice. Any different, conflicting, or additional terms in any purchase order or other writing from a Customer shall be of no force or effect unless acknowledged and executed by an officer of the Company.