

**ECOSENSE LIGHTING, INC.**  
**TERMS AND CONDITIONS**

**1. Acceptance of Terms and Conditions**

(a) These terms and conditions (the “**Terms and Conditions**”) govern the sale of all lighting fixtures, lamps and accessories (the “**Products**”) by Ecosense Lighting, Inc. (“**Ecosense**”) to the party purchasing Products from Ecosense (“**Buyer**”), unless and to the extent Ecosense explicitly agrees otherwise in writing. The offer and sale of Products as described in the applicable quote or similar document is conditioned upon the acceptance by Buyer of these Terms and Conditions, which together with the sales acknowledgement form or similar document(s) regarding the purchase of Products constitute the “**Agreement**.” These Terms and Conditions may be updated by Ecosense from time to time, and the order of Products from Ecosense constitutes acceptance of the terms and conditions in effect at the time the order is accepted.

(b) Any terms and conditions different from or in addition to these Terms and Conditions that are set forth on any document or documents issued by Buyer or Ecosense are hereby rejected, and any such terms shall be wholly inapplicable to any sale of the Products made by Ecosense to Buyer and shall not be binding in any way on Ecosense, unless acknowledged and agreed in a written agreement executed by an officer of Ecosense.

(c) Any quotation received from Ecosense is open for acceptance for thirty (30) days from the date of the quotation, unless stated otherwise in the quotation, but any quotation may be modified, withdrawn, or revoked by Ecosense at any time prior to the actual receipt and confirmation by Ecosense of Buyer’s acceptance thereof.

**2. Cancellations.**

(a) Orders accepted by Ecosense cannot be changed, rescheduled or cancelled without the prior written consent of Ecosense. Without limiting any other remedies, if Buyer changes, reschedules or cancels an order without prior consent, Ecosense reserves the right to charge Buyer for costs incurred for such order, up to the full sales price of the Products subject to such order. Partial cancellations may affect freight prepayment, and orders which have already been processed will be considered separate orders for purposes of freight prepayment.

(b) Orders received as “Hold for Release” or “Will Advise” are not processed for manufacture until a formal release is received by Ecosense. Any such order will be subject to the pricing terms at the time of release. Buyers who place orders on a “Hold for Release” basis and subsequently cancel the order prior to release may be subject to a cancellation charge for product engineering, submittal drawings and administration relating to such cancelled order.

(c) All sales are final. No Products will be accepted for return, and no credit will be allowed on any Products, unless returned in accordance with Section 9 of these Terms and Conditions.

**3. Pricing.** Pricing for the Products shall be determined by Ecosense in its sole discretion and may be changed at any time by Ecosense on notice to Buyer subject to these Terms and Conditions. Unless otherwise specified by Ecosense, prices for such Products are for the quantity specified and do not include charges for transportation, insurance, special packaging, marking, applicable sale service taxes, value added taxes, export or import licenses, fees, taxes, duties and the like; Buyer shall bear the cost of such charges in addition to the prices invoiced. Price quotations are in U.S. Dollars and are valid for delivery only to locations within the United States unless stated otherwise in Ecosense's sales order acknowledgment. Ecosense reserves the right to make substitutions and modifications in the specifications of the Products sold if such substitutions or modifications do not cause a material adverse effect on overall performance of the Products. Ecosense further reserves the right to discontinue any Products at any time without notice to Buyer.

**4. Payment.**

(a) Unless Buyer's credit is pre-approved by Ecosense in writing, net payment is due within thirty (30) days from the date of shipment. Ecosense shall have the right, at any time, to require an irrevocable letter of credit or other assurance of payment satisfactory to Ecosense as a condition to the acceptance of any order. A letter of credit or prepayment shall be required for any shipments outside the United States and for special or customized Products. In the event of any default by Buyer in the payment of any fees or charges due or other default by Buyer, Ecosense shall have the right to refuse performance of any purchase order and shipment of any Products until payments are brought current and Ecosense may suspend, delay or cancel any credit, shipment or other obligation of Ecosense if payments are past due. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under these Terms and Conditions or at law.

(b) In addition to any other rights and remedies Ecosense may have under applicable law, interest will accrue on all late payments at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is lower, from the due date until payment has been made in full, plus legal fees associated with the collection of such past-due amounts.

**5. Shipment and Quantities.**

(a) Products will be shipped in accordance with sales order acknowledgement received from Ecosense, unless otherwise agreed in writing by Ecosense. Shipment dates communicated or acknowledged by Ecosense are approximate only, and Ecosense shall not be liable for, nor shall Ecosense be in breach of its obligations to Buyer for, any delays to the shipment date except as set forth in Section 5(b).

(b) In the event of any delay in the shipment of the Products of more than thirty (30) days following the shipment date set forth in the sales order acknowledgement form, Buyer will give Ecosense written notice of such delay or failure to ship and a 30-day period within which to cure. If Ecosense does not ship within such time period, Buyer's sole and exclusive remedy is to cancel the affected and unshipped portions of the purchase order. Except as set forth in this Section 5(b), Ecosense will have no liability associated with the failure to ship the Products by the shipment date communicated to Buyer.

(c) Unless otherwise specified in a sales order acknowledgement form, Ecosense shall ship the Products to Buyer FOB destination point. The destination point is the delivery location designated by Buyer. In cases where Buyer arranges for pick-up of the goods and shipping, Buyer is deemed to have taken control of the goods at the time the product leaves the Ecosense facility.

(d) Ecosense will attempt to redirect loose parcel shipments at Buyer's request, but any redirected shipment may incur additional fees. Ecosense is not responsible for any delays, damage and/or loss of goods resulting from the redirection of shipments currently in transit between Ecosense's shipping facility and the receiving party's new address.

(e) Shipments may be tendered in several lots. In the absence of specific instructions, Ecosense will select the carrier and ship freight prepaid. Surface freight for non-expedited orders in the contiguous United States for fixture orders in excess of \$5,000 will be paid by Ecosense. Soraa lamp purchase orders over \$1,000 shipped within the contiguous United States are free freight (over \$2,000 for Hawaii, Alaska and Canada). Except as otherwise provided in these Terms and Conditions, all shipping costs shall be the responsibility of Buyer, including without limitation, in cases where Buyer, for any reason, requests deliveries of the Products in a manner that is inconsistent with Ecosense standard shipping procedures. Buyer shall also be responsible for all costs associated with premium freight and any resulting overtime required to make deliveries in accordance with Buyer's required delivery schedule.

(f) Ecosense will not be deemed to assume any liability in connection with any shipment because of the selection of a carrier or its failure to obtain insurance. Title and risk of loss or damage to the Products will pass to Buyer when delivery is made to the carrier.

(g) If Buyer fails to take delivery of any Products, then Ecosense may deliver the Products on consignment at Buyer's cost.

(h) In the event production is curtailed for any reason, Ecosense shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and ship to Buyer fewer Products than specified in the Agreement.

(i) Subject to Section 5(b) of these Terms and conditions, Ecosense shall have the right to make full or partial shipment of the Products, and Buyer shall be responsible for payment of the

Products received, regardless of any delay or state of the shipment or partial shipment, provided that the foregoing does not limit Buyer's remedies under the limited warranty in Section 8.

## **6. Ownership Rights.**

(a) The sale of the Products furnished hereunder does not convey any license by implication, estoppel, or otherwise, under any proprietary or intellectual property rights of Ecosense. In all cases, intellectual property rights in and relating to the Products, including to all manufacturing information and process technology related to the development, manufacture and sale of the Products, shall be and remain the exclusive property of Ecosense and its licensors or suppliers. Any design, development and manufacture of the Products by Ecosense for Buyer shall not be deemed to produce a work made for hire and shall not give a Buyer any intellectual property right interest in the Products or any portion thereof. All equipment, materials, software and other proprietary information of Ecosense whether or not made for, obtained or developed by Ecosense in performance of its obligations for Buyer, shall remain the sole property of Ecosense. Buyer's payment of any costs or expenses relating to any of the foregoing shall not be deemed to grant Buyer any ownership interest therein. In no event shall Buyer reverse engineer any Product or attempt to decompile or otherwise decipher the source code of any software contained in the Product.

(b) All drawings, diagrams, specifications and other materials relating to the use and service of the Products and the information contained therein are confidential and proprietary to Ecosense. Such materials have been developed at great expense and may contain trade secrets of Ecosense. Buyer may not reproduce or distribute such materials, except to Buyer's employees who may use the Products as part of their duties. All such materials relating to the Products supplied by Ecosense (except information as may be established to be in the public domain without fault or action of Buyer or disclosed pursuant to judicial or government action) shall be received in confidence, and Buyer shall exercise reasonable care to hold such information in confidence and in no event less care than Buyer exercises to protect Buyer's confidential information. Buyer may only use such information for purposes of installing and operating the Products as specified by Ecosense.

## **7. Force Majeure.**

- (a) Ecosense shall not be liable for any failure or delay in performance if:
- (i) such failure or delay results from interruptions in the Product manufacturing and/or delivery process; or
  - (ii) such failure or delay is caused by Force Majeure (as defined below).

(b) For purposes of these Terms and Conditions "**Force Majeure**" shall mean and include any circumstances or occurrences beyond the reasonable control of Ecosense - whether or not foreseeable at the time of the Agreement - as a result of which Ecosense cannot reasonably be

required to execute its obligations, including defaults by suppliers, strikes or other labor disputes, riots or civil unrest, any breakage, malfunction or delay in delivery of any machinery, equipment or materials, earthquakes, floods, acts of terrorism, or other unforeseeable or unexpected events that substantially influence performance of the Agreement.

(c) In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without Ecosense being responsible or liable to Buyer for any damage resulting therefrom.

## **8. Limited Warranty and Disclaimers.**

(a) **Fixtures and Accessories.** During the applicable Warranty Coverage Period set forth in this Section 8(a), Ecosense warrants that lighting fixtures and accessories will be free from any defects in materials and workmanship which cause such fixture or accessory to fail to operate in accordance with its performance specifications as they exist at the time of shipment. The “**Warranty Coverage Period**” for lighting fixtures is five years from the date of shipment to Buyer, and for accessories is one year from the date of shipment to Buyer. The obligations under this limited warranty is limited to, at the option of Ecosense, either the repair or replacement of the applicable lighting fixture or accessory or reimbursement of the purchase price for such Product. If the Product has been discontinued or is no longer available, Ecosense will provide a comparable product as determined by Ecosense. Ecosense shall have no liability under this limited warranty unless such Product is returned to Ecosense in accordance with Section 9 of these Terms and Conditions.

(b) **Lamps.** Until the earlier of (i) the use of a lamp for 25,000 hours and (ii) three years from the date of shipment to Buyer, Ecosense warrants that such lamp will conform to and perform in accordance with the published design specifications for such lamp in effect on the date of shipment. The liability of Ecosense under this warranty is limited to the repair or replacement of items determined by Ecosense to be defective resulting in a Lamp Failure (as defined below). Ecosense shall have no liability under this warranty unless Ecosense is notified in writing promptly upon Buyer’s discovery of the defect resulting in a Lamp Failure and the defective lamp is returned to Ecosense in accordance with Section 9 of these Terms and Conditions.

- (i) Lamps shall be subject to the limited warranty only if a defect is caused by:
  - (A) CBCP depreciation beyond 30% from the minimum CBCP for the associated beam angle; or
  - (B) Color shift beyond the standard set forth in the Energy Star standard for solid state lighting, or
  - (C) A complete lack of light output (each such event, a “**Lamp Failure**”).
- (ii) Replacement lamps will be new or serviceably used, comparable in function and performance to the original lamp and warranted for the remainder of the original limited warranty period.

**(c) Product Specifications.**

- (i) The performance specifications for lighting fixtures and accessories can be found on the Ecosense website at <https://www.Ecosenselighting.com/products>.
- (ii) The performance specifications for lamps can be found on the Soraa website at <https://www.soraa.com/products.php>.

**(d) Limitations.**

- (i) The limited warranty described in these Terms and Conditions is void if the Product is:
  - (A) Not installed in accordance with the installation instructions found on the Ecosense website at <https://www.Ecosenselighting.com/products> or any applicable standard or codes, including, without limitation, the standards and codes promulgated by the Underwriters Laboratory, Inc, the Conformité Européenne, or the National Electrical Code.
  - (B) Altered or repaired other than as authorized by Ecosense in writing;
  - (C) Misused or abused, whether intentionally or not, including without limitation if the Product is used at any time in an environment or operating range, or subjected to electrical values, in excess of those specified in such Product's performance specifications;
  - (D) Damaged due to acts of God, fire, extreme weather, floods, tornados, hurricanes, war or other Force Majeure events;
  - (E) Used in violation of any applicable standard or code for use, such as, without limitation, those standards or codes of the Standards for Safety of Underwriters Laboratory, Inc. and the Conformité Européenne;
  - (F) Used other than as a stand-alone product (i.e. integrated into another manufacturer's product) with or without accessories; or
  - (G) Damaged during handling or in transit.
- (ii) Ecosense will not be held responsible for damage to, or failure of, any Products where any chemicals are applied intentionally or inadvertently to the Products.
- (iii) This limited warranty extends only to Buyer. In the event Buyer is authorized by Ecosense to resell Products to end users (such purchasing end users are referred to herein as "**End Users**"), the limited warranty in these

Terms and Conditions shall apply to all such sales as coming from Buyer, and Buyer shall handle all returns directly with such End User; provided, however, that Ecosense (not Buyer) shall determine if a defective Product is subject to the limited warranty described in these Terms and Conditions and whether obligation of Ecosense under such limited warranty shall be either the repair or replacement of such Product or reimbursement of the purchase price. If Ecosense determines that the purchase price will be reimbursed, then Buyer shall reimburse to the End User the full purchase price paid to Buyer by the End User.

- (iv) The limited warranty provided by Ecosense does not include any other costs or expenses, including, without limitation, any costs or expenses of removal, reinstallation of the Product, labor costs or administrative costs, regardless of the cause or how incurred.

(e) **Third Party Warranties.** With respect to Products sold to Buyer by Ecosense but not bearing Ecosense's name or sub-brand name, Ecosense makes no warranty of any kind, express or implied, including, without limitation, any warranty of merchantability or fitness of particular purpose, but will make available to Buyer upon request and only to the extent permitted by law and relevant contracts, the warranties of Ecosense of such relevant product.

(f) **No Implied Warranties.** The limited warranties given in this Section 8 are the only warranties given by Ecosense with respect to the Products and are given in lieu of all other warranties, express or implied, including, but not limited to, warranties or merchantability or fitness for a particular purpose which warranties are hereby disclaimed. Buyer's exclusive remedy, and Ecosense's sole liability, for any nonconformity or defect in any Product shall be only those set forth herein. No agent, employee or representative of Ecosense has any authority to bind Ecosense to any affirmation, representation or warranty concerning any Products and unless an affirmation, representation or warranty is specifically included herein, it does not form a part of the basis of any bargain between Ecosense and Buyer and shall not be enforceable by Buyer.

**9. Return Procedure.** In order to take advantage of the limited warranty described in Section 8 of these Terms and Conditions, Buyer must return the defective Product in accordance with the return policy described in this Section 9 during the applicable limited warranty coverage period. Customers wishing to return a Product must first contact Ecosense directly and obtain a return material authorization ("RMA") number. Buyer may contact the Los Angeles office of Ecosense at +1-310-496-6255 or [orders@Ecosenselighting.com](mailto:orders@Ecosenselighting.com). Please state the reason for request upon calling/emailing.

(a) If a defective Product is subject to the limited warranty described in Section 8, Ecosense will send a RMA form to be completed and included with the returned Product. If Buyer seeks to return a Product for any other reason, Ecosense will issue a RMA number, at its sole discretion. If an RMA number is provided for the return of any Product, such return may be subject to a restocking fee. Ecosense will not accept any return of Products that are not covered under the

limited warranty 90 days after the original invoice date or Products which are not in resaleable condition.

(b) If a Product is returned to Ecosense without a valid RMA number, delivery shall be refused and Buyer shall be liable for all return shipping costs and charges, including, as applicable, all taxes.

(c) If an RMA number is issued, it is valid for only thirty (30) days. Products not returned to Ecosense within this timeframe may not be eligible for any return, regardless of reason, and delivery may be refused. If a RMA number is issued, Customer shall be responsible for all shipment costs and charges to return the Product to Ecosense, including any taxes (if applicable). Buyer shall bear sole risk for any loss or damage the Products while in transit to Ecosense, regardless of the reason an RMA number may be issued.

#### **10. Limitation of Liability.**

(a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ECOSENSE HEREBY DISCLAIMS, AND SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR, DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO THE PRODUCTS OR THEIR USE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ECOSENSE BE LIABLE TO BUYER, OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER BUYER, FOR ANY LOST PROFITS, LOSS OF USE, OR EQUIPMENT DOWNTIME, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWSOEVER ARISING, RELATED TO THE PRODUCTS, EVEN IF ECOSENSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ECOSENSE'S MAXIMUM AGGREGATE LIABILITY TO BUYER, OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER BUYER, WHETHER RESULTING FROM BREACH OF CONTRACT OR NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS PAID TO ECOSENSE BY BUYER FOR THE PRODUCTS THAT GAVE RISE TO THE CLAIM. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THESE TERMS AND CONDITIONS.

(b) Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. After the one-year term, Buyer waives any and all rights to such claims and any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

(c) Buyer acknowledges that the foregoing limitations are an essential element of these Terms and Conditions and that in the absence of such limitations, the pricing and other terms by which Ecosense offers its Products to Buyer would be substantially different. The limitations and

exclusions set forth above in this Section shall apply only to the extent permitted by applicable mandatory law.

**11. Indemnification.** Buyer will at all times defend, indemnify and hold harmless Ecosense and its officers, directors, shareholders, employees, accountants, attorneys, agents, affiliates, successors and assigns from and against any and all damages, injuries (including death), liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or related to third party claims, actions or demands arising out of or related to any (a) breach of any provision in these Terms and Condition by Buyer or any End User or (b) improper or negligent installation or use, or unauthorized repair, or integration into another lighting product, of a Product by Buyer or End User (or its agents). Buyer shall not settle compromise or consent to the entry of any judgment with respect to any pending or threatened claim without the consent of Ecosense.

**12. Assignment and Setoff.** Buyer shall not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, the Agreement or any rights or obligations under the Agreement without the prior written consent of Ecosense. Any purported assignment, transfer or delegation by Buyer shall be null and void. Ecosense shall have the right to assign the Agreement or delegate any or all of its obligations hereunder without Buyer's consent and without prior notice to Buyer. Subject to the foregoing, the Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer may have with Ecosense and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

**13. Termination.**

(a) Without prejudice to any rights or remedies Ecosense may have under the Agreement or at law, Ecosense may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (i) Buyer violates or breaches any of the provisions of the Agreement; or
- (ii) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer.

(b) Upon the occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.

(c) In the event of cancellation, termination or expiration of the Agreement, the terms and conditions set forth in Sections 1(a), 1(b), 2(c), 4, 6, 7, 8, 9, 10, 11, 13(b), 13(c), and 14 shall survive.

**14. General.**

(a) This Agreement constitutes the entire understanding between Buyer and Ecosense with respect to the subject matter hereof and supersedes prior agreements, discussions and understandings between Buyer and Ecosense relating to the subject matter hereof.

(b) This Agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not set forth herein.

(c) The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, and this agreement shall be construed, enforced and governed in accordance with California state laws without giving effect to its choice of law provisions. The parties agree and submit to the exclusive jurisdiction of the state and federal courts located in the Los Angeles County, California.

(d) Notices sent to either party shall be deemed fully and completely given (i) when delivered in person to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile, (iii) one business day after being sent by overnight courier, or (iv) two business days after being sent by first class mail postage prepaid.

(e) Ecosense and Buyer are independent contractors and shall not represent themselves as principal and agent, partners or joint ventures.

(f) If any term or provision of this Agreement is held to be invalid or unenforceable, this Agreement shall continue in force without such provision or as changed and interpreted to give best effect to the parties' intentions.

(g) Buyer shall comply with all applicable laws, including, without limitation, the export control laws in effect in the United States, Canada, Asia, Latin America, Middle East and Europe and applicable regulations which may be issued from time to time concerning the exporting, importing and re-exporting of the Products. Buyer acknowledges that shipments of the Products are subject to the export laws of the United States and those laws could delay or preclude delivery of the Products in the future.

(h) If Products purchased are sold, or are incorporated into products that are sold, under a U.S. Government contract, Ecosense rejects provisions or clauses required to be passed on to Ecosense pursuant to such contract, and such provisions or clauses shall not be deemed included or binding on Ecosense unless accepted in writing by an authorized representative of Ecosense.

(i) No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default of the other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default. Any waiver, permission, consent or approval of any kind or of any breach or default must be in writing signed by the party against whom enforcement is sought.

Updated June 2, 2020