

# SALES POLICY TERMS & CONDITIONS

**DEFINITIONS:** "Eleek" means Eleek, Inc. "Purchaser" means the company or individual that submits a purchase order to Eleek. "Order" means a purchase order for Product that Purchaser submits to Eleek and that Eleek accepts, as modified by these Terms. "Product" means the goods described in the Order. "Terms" means these Terms and Conditions of Sale. "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, moral rights, trademarks, domain names, trade secret rights and any other intellectual property rights.

## ACCEPTANCE OF PURCHASE

**ORDERS; MINIMUM ORDERS:** Eleek's acceptance of a purchase order submitted by Purchaser is expressly conditioned on Purchaser's agreement that these Terms (a) will govern that purchase order; (b) will take precedence over any conflicting provisions in that purchase order and in any of Purchaser's other documents; and (c) will supersede all prior agreements, whether express, implied, written or oral. Eleek may accept Purchaser's purchase order in writing or by beginning production. Eleek may accept any purchase order, and rely on any other written or telephonic request or notice, that Eleek in good faith believes to have been submitted or made by an employee or authorized agent of Purchaser. Eleek reserves the right to refuse any order for any reason. All orders must meet a \$100 minimum, exclusive of shipping and handling. Applied finish upcharges (Artist patinas and powdercoats) must also meet a separate minimum of \$50 per color and per order.

## ORDER DEPOSITS; PAYMENT TERMS; LATE FEES; ATTORNEY FEES; COLLECTION COSTS AND SECURITY INTEREST:

Purchaser will deliver to Eleek a deposit of 50% of the price of the Product (the "Order Deposit") either (a) at the time Purchaser submits the purchase order for that Product; or (b) in the case of custom Product, upon Purchaser's receipt of notice that Eleek has approved the design drawing(s) for that Product. Eleek will invoice

Purchaser for the balance of the purchase price (final 50% plus Shipping & Handling if applicable) on completion of manufacture. Eleek must receive payment of that invoice before shipment. If Purchaser fails to pay that invoice when due, or if Purchaser pays that invoice but asks Eleek to delay delivery of the Product, Purchaser will also pay a fee of \$10 per day plus any storage charges until Eleek delivers the Product, which must be paid before Eleek delivers the Product. Past due accounts will incur a late fee of 1.5% per month (18% per year) or the maximum rate permitted by law, whichever is lower. Purchaser will reimburse Eleek for all costs and expenses it may incur in connection with collection of the price of the Product and any charges, tariffs, duties or taxes payable by Purchaser under these Terms, including, without limitation, reasonable attorney fees and expenses, court costs and cost of collection agencies. Purchaser grants Eleek a security interest in the Products and all raw materials identified to the Order to secure Purchaser's obligations under that Order.

## DESIGN DEPOSITS AND APPROVALS FOR CUSTOM ORDERS:

In addition to the Order Deposit, Purchaser will deliver to Eleek for each custom Product, a \$1,000 non-refundable deposit for each custom design drawing (a) to be prepared by Eleek. Design deposits will be credited to the final payment. Eleek will not begin production of any custom Product until both Purchaser and Eleek have approved the design drawings in writing. Due to the nature of custom fabrication, fixtures may vary slightly from drawings with regard to fasteners and assembly. If Eleek determines in its discretion that any major design changes are necessary, Eleek will notify the Purchaser in advance.

**CHANGE ORDERS:** If Purchaser requests a change to the Order or to an approved design drawing, and Eleek in its sole discretion accepts that change in writing, Eleek will make that change, and Purchaser will pay Eleek (a) a change order fee of 10% of the value of that Order; plus (b) any increase in labor and materials specified in Eleek's written acceptance of that request.

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**QUOTES; PRICES; TAXES:** If Eleek provides a written quote for Eleek's standard Products, the prices in that quote will be valid for 30 days from the date of that quote. If Eleek provides a written quote for custom Products, the prices in that quote will be valid for 60 days from the date of that quote except in the case of custom lighting Products, wherein the quote will be valid for 180 days. In all other cases, prices for Products are subject to change without notice, and Products will be sold at the prices prevailing at the time. If the cost of labor or any raw material increases by more than 3% from the date of the quote or Order, the price of the Product described in that quote or Order will increase by that percentage. Purchaser will pay this additional amount within five days after receiving written notice from Eleek. Additionally, prices set forth in any quote, price list, response, communication, other document, or Order do not include transportation charges, tariffs, duties or taxes, and Purchaser will pay those charges, tariffs, duties and taxes, if any. Lamps are not included with Eleek lighting orders, except in the case of hardwired LED fixtures.

**LEAD TIMES:** Eleek products are manufactured to order by hand in Portland, Oregon, USA. Quoted lead times are based on current availability of labor and materials and commence at the time Purchaser's order and deposit are received. Standard lead times for non-custom products are typically, but not guaranteed to be, 8-12 weeks. Lead times for custom orders will be quoted with pricing, or at the time deposit and design approval are received. Rush orders, when possible, will be negotiated and priced on a case-by-case basis.

**CANCELLATIONS:** If Purchaser cancels an Order, Purchaser will pay Eleek a restocking fee equal to 25% of the price of that Product and in addition will forfeit, and Eleek may retain, the Order Deposit. To the extent Purchaser cancels an Order that includes any custom Products, Purchaser will, in addition to the preceding, (a) forfeit the design deposit(s) described above; and (b) pay Eleek for all work completed through the cancellation date in excess of the Order Deposit and design deposit(s). Eleek may cancel an Order if Purchaser is delinquent in the payment of

any other Order, if Purchaser's acts or omissions have delayed Eleek's performance of an Order, if Purchaser is the subject of any bankruptcy or other debtor relief proceeding, or if Eleek otherwise in good faith believes that Purchaser's ability to perform its obligations under these Terms is impaired.

**RETURNS:** Purchaser may not return the Product except as expressly permitted below in the section entitled, "Limited Remedy".

### **PACKAGING; SHIPPING; DELIVERY;**

**RISK OF LOSS:** Unless shipping and handling (including crating and insurance) charges are expressly included in a quote and the corresponding invoices, they will be charged separately to the Purchaser, payable before the Product leaves the factory. Once the product is fully paid for by the Purchaser, the Purchaser will own the product. Upon shipment, Purchaser will bear the risk of loss and damage in transfer, regardless of which party pays for or arranges for carriage, and regardless of which party coordinates with the carrier regarding damages. If Eleek arranges for carriage, Eleek may elect at its sole discretion to either 1) submit all claims for damage to the responsible carrier and collect and distribute any insurance reimbursement on behalf of Purchaser or 2) sign over claim to Purchaser for direct negotiation and reimbursement. If Eleek chooses to coordinate the claim, Purchaser will fulfill all responsibilities related to opening and inspecting within the designated amount of time (typically five [5] days) and cooperating with the carrier's investigation and needs for evidence. If the Purchaser arranges for their own carriage, the Purchaser will submit all claims for damage to the responsible carrier; Eleek will endeavor to make the Product available to Purchaser for delivery to the carrier by the date set forth in the Order. [However, if Eleek is unable to do so, Eleek will not be in breach of the Order unless Eleek receives written notice from Purchaser that time is of the essence, that Eleek has not delivered the Product by the date specified in the Order and that Eleek must deliver the Product to the carrier within 30 days following the date of that notice or such longer time as is reasonable under the circumstances.]

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**INSPECTION; CLAIMS:** Purchaser will thoroughly and carefully inspect the Product immediately upon receipt and prior to installation. Eleek will not be liable for shortages or defective Product unless Purchaser gives Eleek written notice specifying in detail the nature and extent of the shortage or defect within five business days from the date of delivery.

**INTELLECTUAL PROPERTY:** Purchaser or its licensors will own the Intellectual Property Rights in and to the drawings and designs created by or on behalf of Purchaser that Purchaser delivers to Eleek (the "Purchaser Intellectual Property"). Eleek will own the Intellectual Property Rights in and to the drawings and designs created by Eleek or its licensors, including any custom drawings and designs paid for by Purchaser, and any modifications or improvements that Eleek makes to any of the Purchaser Intellectual Property (the "Eleek Intellectual Property"). Purchaser grants to Eleek and its subcontractors a non-exclusive, perpetual, royalty-free license to (a) import, make, copy, modify, and otherwise use the Purchaser Intellectual Property; and (b) to photograph and publish photographs of the Product sold pursuant to the Order, including photographs of the final installation of the Product. Except as expressly provided in these Terms, neither party has the right to use the other party's Intellectual Property Rights.

**LIMITED WARRANTY:** Eleek warrants only to Purchaser (a) that upon delivery of the Product to Purchaser, the Product will conform to the product descriptions in the Order and will be free from material defects in workmanship and material, subject to the tolerances and variations customary in those products that exhibit natural, expected surface irregularities, and (b) title. THIS LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON INFRINGEMENT, AND WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. This limited warranty may not be modified or expanded unless otherwise negotiated and approved in writing by AN AUTHORIZED

REPRESENTATIVE OF Eleek. This limited warranty does not cover any damage to the Product resulting from: (a) unusual or excessive wear and tear; (b) improper installation; (c) use or maintenance in violation of product usage guidelines; (d) accident, abuse, neglect or misuse; or (e) failure of a third party's product. This limited warranty does not cover variations in dye lots, gauges, textures and finishes that may vary slightly between the samples provided to Purchaser and the Product actually delivered. This limited warranty will be void if the Product is altered or repaired by anyone other than Eleek or its authorized agents. Applied finishes (powdercoat, Artist patina, etc.) and electrical components are guaranteed for one year from the date of purchase.

**LIMITED REMEDY:** If the Product fails to conform to the limited warranty in the preceding section and if: (a) Purchaser provides prompt written notice specifying in detail the nonconformity or defect within five business days of delivery of the Product and in any event before the Product has been installed; (b) within 10 days after written authorization from Eleek, Purchaser returns the nonconforming or defective Product to Eleek at Purchaser expense; and (c) Eleek determines that the Product is in fact nonconforming or defective; then, Eleek will, at its option, either repair or replace the Product or refund the purchase price for that Product. The preceding remedy is Purchaser's sole and exclusive remedy for breach of WARRANTY.

**INDEMNITY:** (a) Purchaser will indemnify, defend and hold Eleek (and its successors and assigns) harmless from and against any and all damages paid or payable to any unrelated person, including reasonable attorney fees, arising from or related to any of the following: (i) if Purchaser designed or furnished the specifications, designs or drawings for the Product, (A) any product liability claim (except product liability claims caused solely by defects in the materials or workmanship supplied by Eleek) and/or (B) any claim that the Product infringes or misappropriates any other person's Intellectual Property Rights; (C) any claim arising from improper alteration, installation, repair, maintenance or use of the Product; and (D) any claims arising from failure

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to provide, implement or enforce any Product safety notices. (b) If Eleek designed or furnished the specifications, designs and drawings for the Product, Eleek will indemnify, defend and hold Purchaser harmless from and against any claim that the Product infringes or misappropriates any other person's intellectual property rights. The obligation of each party (the "Indemnitor") to indemnify the other party under this section is conditioned upon that other party: (i) giving the Indemnitor prompt written notice of the indemnified claim (except any delay in giving notice will not limit the Indemnitor's obligations unless it has been prejudiced by the delay and then only to the extent of the prejudice); (ii) tendering defense and settlement of that claim to the Indemnitor; and (iii) cooperating with the Indemnitor in the defense of the claim.

**LIMITATION OF LIABILITY:** IN NO EVENT WILL ELEEK BE LIABLE FOR ANY LOST PROFITS, LOSS OF USE OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, AND IN NO EVENT WILL ELEEK'S LIABILITY EXCEED THE PRICE OF THE PRODUCT GIVING RISE TO THE LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE.

**CONSUMER DISCLOSURES:** TO THE EXTENT PURCHASER IS A CONSUMER AND A PRODUCT WILL BE USED FOR PERSONAL, HOUSEHOLD OR FAMILY USE, ELEEK MAKES THE FOLLOWING DISCLOSURES: SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

**FORCE MAJEURE:** If a delivery date for any Product is specified in an Order or otherwise, that date will be extended to the extent delivery of a Product is delayed due to war, mobilization, insurrection, rebellion, civil commotion, riot, act of an extremist or public enemy, sabotage, labor dispute, lockout, strike, explosion, fire, natural disaster, accident, power failure,

inability to obtain suitable and sufficient energy, labor or material, delay of carriers, embargo, any existing or future law, ordinance, rule or regulation, whether valid or invalid, of the federal or of any state or foreign government effecting the conduct of business, including priority, requisition, allocation or price control, or any other cause beyond Eleek's reasonable control, affecting Eleek's ability to comply with the Order.

**AMENDMENTS; WAIVERS.** These Terms may not be waived, modified or expanded (including by course of performance, course of dealing or usage of trade), unless otherwise negotiated and approved in writing by Eleek.

**ASSIGNMENT:** Purchaser will not assign any Order without Eleek's written consent.

**JURISDICTION:** Purchaser irrevocably consents to jurisdiction of and venue in any state or federal court located in Portland, Oregon related to the Order, these Terms or any Product, and Purchaser will not initiate any action against Eleek in any other jurisdiction. These Terms and any other dispute between the parties related to any Product or Order will be governed by Oregon law, excluding conflicts of law or choice of law rules, provisions, or principles.

**SEVERABILITY:** If any provision of the Order or these Terms is held unenforceable by a court of competent jurisdiction, that portion will continue in effect only to the extent that it is enforceable, and the remaining portions will remain in full force and effect.