



## TERMS AND CONDITIONS OF SALE – WARRANTY PROVISIONS – 1/2

### THE LIGHTING QUOTIENT

**GENERAL:** Sylvan R. Shemitz Designs, Inc., d/b/a **The Lighting Quotient (Company)** is the maker of **elliptipar, tambient** and **fraqtir** products. We are a “just in time” manufacturer with a fully integrated ERP (enterprise resource planning) system. Our products are made to order. We have no inventory of finished goods; however, most components are stocked. The production process begins immediately upon written acceptance by the Company of an order from the purchaser (**Purchaser**). All orders are subject to the Company’s ability to secure necessary materials and/or labor.

**CONSENT TO TERMS AND CONDITIONS; ACKNOWLEDGMENT:** Acceptance of a purchase order is expressly conditioned upon **Purchaser’s** written consent to the terms and conditions set forth herein (**Terms and Conditions**). The **Company’s** written acceptance of a purchase order (**Acknowledgment**), together with these Terms and Conditions, constitutes the final expression of the agreement (**Agreement**) between the **Purchaser** and the **Company**. The Agreement supersedes all prior oral and written statements regarding the order. In the event of a conflict between these Terms and Conditions and the purchase order, these Terms and Conditions will govern. In the event of a conflict between the **Company’s** Acknowledgment and either these Terms and Conditions or the purchase order, the **Company’s** Acknowledgment will govern.

**ORDER ACCEPTANCE:** A purchase order is accepted and acknowledged in writing by the **Company** when the following conditions are met: (1) **Purchaser** signs the **Company’s** Terms and Conditions; (2) **Purchaser’s** credit is approved; (3) the **Company** has received complete job information; (4) color samples of non-standard offerings have been approved by **Purchaser**; (5) approved shop drawings for modified or special designs have been received; and (6) deposit or payment in full is received, if required (See “**DEPOSITS**”).

**PUBLICATIONS/CATALOGS:** Published product information, including catalogs and data sheets distributed in print, electronically or via the **Company** website, is for convenience only and is **not** an offer to sell. Every effort is made to ensure accuracy; however, specifications, dimensions and other product information are subject to change without notice. Product weights may vary from published weights due to changes in components, packaging or design. Catalog data sheets and product literature are not to be used for installation purposes. Installation instructions are provided with the product and can also be obtained by contacting the **Company**.

**QUOTATIONS:** Written quotations are subject to the terms specified therein. If a written quotation is given, the **Purchaser** must include the quotation number on the purchase order.

**FIRM PRICE; HOLD ORDERS:** Only those orders allowing for shipment within 60 days will carry a firm price. Orders marked “Hold for Release” at **Purchaser’s** request will carry a firm price for 60 days from the date of the **Company’s** acceptance. If the **Purchaser** requires shipment more than 60 days after **Purchaser** authorizes release to production, the price is subject to change. Hold orders that require the **Company** to submit drawings for approval of other than standard (unmodified) catalog cuts require a non-returnable advance payment of \$500 or 10% of the total price of the non-standard items, whichever is greater. This amount will be deducted from the price on the final shipping invoice.

**CREDIT TERMS:** All orders are subject to the **Company’s** terms of credit, which will be established by the **Company** for each **Purchaser** at the **Company’s** sole discretion. The **Company** may cancel or change credit terms at any time either before or after delivery of any part of an order. The **Company** further reserves the right to request payment in advance of shipment at any time and may withhold or stop shipment, without liability to the **Company**, until **Purchaser** submits payment.

**DEPOSITS:** A 50% deposit is required on each item of customized product, including, but not limited to, any item that is to be painted with a non-standard finish or modified from our catalog offering in any way. When the order is ready for shipment, the unpaid balance of the order will be invoiced at standard payment terms, if credit has been established.

**TERMS OF PAYMENT:** A 1% cash discount is allowed if payment is postmarked within 10 days of invoice date and is due in full within 30 days of invoice date. A 1.5% per month (18% per annum) late charge will be added to all accounts more than 30 days old.

**SHIPPING DATES:** When a purchase order is accepted, the **Company’s** written Acknowledgement will contain an estimated shipping date. Our goal is to ship before this date; however, actual delivery time is contingent on our current production capabilities, availability of materials, factory loading and other conditions. We are not responsible for any damages, penalties or labor chargebacks resulting from delayed shipments or from our inability to ship by the estimated shipping date, nor shall the **Company** be liable for damages of any kind resulting from any delay or failure to deliver or perform due to labor difficulties, delay of sources of supply, transportation difficulties, acts of God or any other causes beyond the **Company’s** control.

**SHIPPING TERMS AND COSTS:** Unless otherwise agreed to in writing, the **Company** will ship all orders by the carrier of its choice. All orders will be shipped F.O.B. factory. Shipments totaling \$5,000 or more will be made with freight prepaid and allowed to the continental limits of the United States only. (Shipments of \$5,000 or more to Alaska, Hawaii, or outside the continental United States will be F.O.B. factory with freight prepaid to a point of departure from the continental United States.) Freight will be invoiced on all shipments totaling less than \$5,000. If at the **Purchaser’s** request, an order is split into multiple shipments, freight on any shipment of less than \$5,000 will be billed to the **Purchaser**. If an order is expedited at the **Purchaser’s** request, any costs related to expedited shipping will be charged to the **Purchaser**.

**SHIPPING CLAIMS:** All products are carefully inspected prior to shipment. Risk of loss, including, without limitation, the responsibility for filing claims of non-delivery, passes to the **Purchaser** upon delivery by the **Company** to the carrier. **Purchaser** should carefully inspect all items at time of delivery and note any damage on the delivery receipt. Obvious or subsequently discovered concealed damage must be reported promptly and in writing, to the carrier. For assistance with claims on UPS shipments, **Purchaser** should contact the **Company’s** Customer Service Department at (203) 931-4455.

**OTHER CLAIMS:** Claims for shortages and errors must be made in writing to the **Company** within 10 days of delivery.

**CANCELLATIONS:** Orders for standard **elliptipar** catalog items released to production but not yet shipped are subject to a 50% cancellation charge. RELEASED ORDERS OF MODIFIED OR CUSTOM ITEMS AND EXPEDITED ORDERS MAY NOT BE CANCELLED. ORDERS FOR **tambient** PRODUCTS MAY NOT BE CANCELLED IN WHOLE OR IN PART.

**RETURNS:** No merchandise may be returned without a return goods authorization (**RGA**). No RGA will be issued beyond 90 days from date of shipment except for warranty claims. Goods being returned must be shipped prepaid in original cartons and received by the **Company** within 30 days of the date that the RGA is issued. If original cartons are not available, **Company** can supply cartons at the **Purchaser’s** request. Credit will be issued only after inspection and acceptance by the **Company**. No credit will be issued for damaged material.

**tambient:** Return authorizations will be issued only for defective merchandise or factory errors.

**elliptipar and fraqtir:** Credit for reasons other than valid warranty claims on standard catalog items will be issued as follows:

- The lesser of 50% or \$3,000 per purchase order (no credit issued for freight in or out).
- Credit per catalog item cannot exceed \$1,500.

All other items including modified standard catalog items, such as but not limited to, special paint finishes, lengths, shrouds, mounting hardware parts, etc. are non-returnable.

(continued)

Initial \_\_\_\_\_ Date \_\_\_\_\_



## TERMS AND CONDITIONS OF SALE – WARRANTY PROVISIONS – 2/2

### THE LIGHTING QUOTIENT

**LIMITED WARRANTY:** The **Company** warrants its products (not including lamps, ballasts, drivers and transformers) to be free from defects in material and workmanship for the period specified below.

**tambient:** two (2) year warranty period from the date of manufacture.

**elliptipar:** one (1) year warranty period from the date of manufacture.

**fraqtir LED products:** five (5) year warranty period from the date of manufacture. A "failure" in an LED product occurs when the LED does not operate due to failure of the LED emitter, LED circuit board and/or LED circuit board connectors.

The product warranties stated above extend only to purchasers of new product from the **Company** and apply only to products placed in service in the United States and Canada. Should any product defect subject to warranty appear within the warranty period, the **Company** will repair or replace, at the **Company's** sole option, without charge, those items found to be defective (other than lamps, ballasts, drivers and transformers). The **Company** reserves the right to determine the best method for correcting such defects. No labor charge back in connection with repair or replacement of **Company** products will be reimbursed without prior written approval from the **Company**. **Purchaser's** invoice for labor charge backs must be submitted in writing within 30 days of authorization.

**THE LIMITED WARRANTY PROVIDED ABOVE IS IN LIEU OF ANY OTHER WARRANTY, AND NO OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. THE COMPANY'S LIABILITY UNDER THIS WARRANTY IS LIMITED TO REPAIR OR REPLACEMENT AND THE PURCHASER AGREES THAT NO OTHER REMEDY (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, INJURY TO PERSON OR PROPERTY, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS) SHALL BE AVAILABLE TO PURCHASER.**

Lamps, ballasts, drivers and transformers furnished as components in our products carry the warranty of the manufacturer of that equipment. Defective ballasts, drivers or transformers under warranty are to be delivered by the user to the manufacturer's designated service distributor for replacement in accordance with their standard terms. Lamp problems should be directed to the lamp manufacturer's representative in your area.

(NOTE: We recommend the checking of each fixture at the job site by the contractor before fixtures are actually installed. Some field assembly may be required.)

**EXCEPTIONS TO WARRANTY:** The warranty described above shall **not** apply to normal wear and tear, to "Customer's Own Materials" (i.e., any use of paint or any other material specified by the **Purchaser** that is not a standard **Company** product offering), or to damage and/or product failure resulting from:

- transportation or storage;
- accident, abuse or misuse or usage in violation of any electrical code;
- alteration or modification of the product or integration with other manufacturers' products;
- operation at more than the rated voltage or subjected to a lightning strike or power surge;
- improper selection, installation or maintenance;
- failure of color stability in non-standard paint colors;
- LED product operating in an ambient temperature higher than recommended and/or in conditions of abnormal use or stress, including over/under voltage conditions, excessive switching cycles and improper environment (such as a dry rated fixture installed in a damp location);
- LED product subjected to static electricity due to failure to discharge prior to connecting or disconnecting the lead from the LED board.

**CONSUMER PRODUCTS:** With respect to any "consumer product," as defined under the Magnuson-Moss Warranty Act ("MMWA"), the following statements are made: (i) If any implied warranty is provided under the MMWA, it is limited to the duration of the limited warranty provided above; (ii) Some states do not allow limitations on implied warranties or the exclusion or limitation of incidental or consequential damages; accordingly, certain of the above limitations or exclusions may not apply to you. (ii) The **Company's** limited warranty gives the **Purchaser** specific legal rights. **Purchasers** may have other rights that vary from state to state.

**FEES AND EXPENSES:** **Purchaser** shall pay any and all reasonable expenses, including, without limitation, reasonable attorney's fees, incurred by the **Company** in enforcing the terms of any agreement with, sale to, or collection of any amounts owed to, the **Company** by **Purchaser**.

**GOVERNING LAW:** These Terms and Conditions and the terms of any sale or agreement between the **Company** and **Purchaser** shall be governed by and construed in accordance with the laws of the State of Connecticut and the **Purchaser** hereby agrees to submit to the personal jurisdiction of federal and state courts located in the State of Connecticut.

**OTHER DOCUMENTS:** This Agreement may not be altered, supplemented or amended by the use of any other document(s) unless otherwise agreed to in a written agreement signed by both an officer of the **Company** and the **Purchaser**.

Revision 08/01/10

### BLANKET ACCEPTANCE – TO COVER ALL ORDERS

The undersigned **Purchaser** acknowledges, accepts and agrees to the **Company's** Terms and Conditions attached hereto for all orders entered. We understand that failure to pay in accordance with the Terms and Conditions will result in future orders requiring cash in advance. We also understand that any past due amounts are subject to a 1.5% per month late charge. We agree to pay all reasonable expenses incurred by the **Company** to enforce these Terms and Conditions. The person signing this Acceptance on behalf of **Purchaser** acknowledges that he/she is an officer of the **Purchaser** and/or has the authority to sign on behalf of the **Purchaser**.

Name of Purchasing Entity \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State/ZIP Code \_\_\_\_\_

Name (print) \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Please complete and sign this page, initial front page, and return **both pages** to **The Lighting Quotient's** credit department. Fax 203.931.4464