

## BINDING TERMS AND CONDITIONS OF SALE

The following are the terms and conditions ("Terms and Conditions") for the sale of products and services ("Products") by BE Design Lighting Consultants Inc. ("BE Design") to BE Design's customers ("Customers").

### 1. ACCEPTANCE AND CANCELLATION OF ORDERS

All orders are subject to acceptance in writing by BE Design. Orders accepted by BE Design may be cancelled by Customer upon written consent of BE Design provided such order is not "NC/NR" or "Non-Cancelable/Non-Returnable" or governed by a Purchase Agreement Letter. In the event of cancellation or other withdrawal of an order for any reason, and without limiting any other remedy which BE Design may have as a result of such cancellation or other withdrawal, reasonable cancellation or restocking charges shall include all expenses incurred and commitments made by BE Design, and shall be paid by Customer to BE Design. Customer requests to reschedule are subject to acceptance by BE Design in its sole discretion. Product specifications and availability are subject to change without prior notice.

#### 1a. Returns

Returns are normally accepted when completed within 30 days of the ship date. If BE Design agrees to accept a return, return freight charges must be prepaid by customer. BE Design will not accept COD shipments. Some products may require return directly to the manufacturer. All items must be in the original packaging and in resalable condition. Contact BE Design for a Return Materials Authorization Number and addressing instructions prior to returning product. Any product returned that has not been handled properly will not be eligible for credit. The foregoing statements concerning Returns do not apply to NON-CANCELABLE/NON-RETURNABLE PRODUCTS. (See the NON-CANCELABLE/NON-RETURNABLE PRODUCTS section in these terms.)

### 2. PRICES

Orders are billed at the prices in effect at the time of invoicing. Prices will be as specified by BE Design and will be applicable for the period specified in BE Design's estimate. If no period is specified, quoted prices will be applicable for thirty (30) days. Prices are subject to increase in the event of an increase in BE Design's costs or other circumstances beyond BE Design's reasonable control. If Customer does not purchase the quantity upon which quantity prices are based, Customer will pay the non-discounted price for the quantity actually purchased and/or a cancellation or restocking fee. Prices are exclusive of taxes, impositions and other charges, including sales, use, excise, value-added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, bank fees, consular fees, and document fees.

### 3. TERMS OF PAYMENT

All payments must be made in United States dollars (USD).

Credit cards accepted include major credit cards, purchase cards, and major bank debit cards including MasterCard, VISA, Discover, and American Express. Credit Card billing information must be verified prior to shipment of order. Payment via business check is available to businesses, schools, and agencies with three references or as otherwise specified by BE Design. Net 30 days terms are not available, all invoices are due and payable on receipt; any exception is solely at the discretion of BE Design and must be arranged prior to invoicing of the order.

Prepaid Wire Transfer/EFT/Proforma: Customers can wire the funds to our bank. After the order is placed, BE Design will e-mail a Proforma invoice which includes bank information, the merchandise

total and shipping charges. The order will be held for 72 hours awaiting funds. Orders will be canceled after 20 business days if funds have not been received. Customer is responsible for duties and taxes.

BE Design will accept electronic payments via PayPal and Zelle. Arrangements for electronic payment must be made prior to invoicing of order.

### 3.1 TERMS OF PAYMENT

#### For All Orders

Customer agrees to pay the entire net amount of each invoice from BE Design pursuant to the terms of each such invoice, without offset or deduction. Orders are subject to credit approval by BE Design, which may in its sole discretion at any time change the terms of Customer's credit, require payment in cash, bank wire transfer/EFT or by official bank check, and/or require payment of any or all amounts due or to become due for Customer's order before shipment of any or all of the Products. If BE Design reasonably believes that the Customer's ability to make payments may be impaired or if Customer fails to pay any invoice when due, BE Design may suspend delivery of any order or any remaining balance thereof, until such payment is made or cancel any order or any remaining balance thereof. Customer will remain liable to pay for any Products already shipped. Customer agrees to submit such financial information as BE Design may reasonably require for determination of credit terms and/or continuation of credit terms. Checks are accepted subject to collection and the date of collection will be deemed the date of payment. Any check received from Customer may be applied by BE Design against any obligation owing by Customer to BE Design under this or any other contract, regardless of any statement appearing on or referring to such check, without discharging Customer's liability for any additional amounts owing by Customer to BE Design. The acceptance by BE Design of such check will not constitute a waiver of BE Design's right to pursue the collection of any remaining balance. Invoices not paid when due will bear interest to date of payment at the annual rate of eighteen (18%) percent or such lower rate as may be the maximum permitted by law. If Customer fails to make payment when due, BE Design may pursue any legal or equitable remedies, in which event BE Design will be entitled to reimbursement of costs for collection, court costs and reasonable attorneys' fees. There is a \$25 (USD) service charge on all returned checks.

### 4. SALES TAX

#### US Shipments

When required by law BE Design will collect Federal, State and/or Local sale, use, excise, and other taxes that apply to a Customer's shipment. These taxes are in addition to the purchase price of the Products subject to an order. Customer will remit the correct tax unless customer is tax exempt and BE Design has a valid signed tax exemption certificate on file.

#### INTERNATIONAL Shipments

All applicable VAT, PST, HST, and/or GST charges along with brokerage fees will be the responsibility of the Customer and due at the time of delivery.

### 5. DELIVERY AND TITLE

All shipments by BE Design are F.O.B. point of shipment from BE Design's facility and the amount of all transportation charges will be paid to BE Design by the Customer in addition to the purchase price of the Products. Subject to BE Design's right of stoppage in transit, delivery of the Products to the carrier will constitute delivery to Customer and title and risk of loss will pass to Customer. BE Design will make reasonable efforts to initiate shipment and schedule delivery as close as possible to Customer's requested delivery date(s). Customer acknowledges that delivery dates provided by BE Design are estimates only and that BE Design will not be liable for failure to deliver on such dates. Selection of the carrier and delivery route will be made by BE Design unless specifically designated by

Customer. BE Design reserves the right to make deliveries in installments. Delay in delivery of one installment will not entitle Customer to cancel any other installment(s). Delivery of any installment of Products within thirty (30) days after the date requested will constitute a timely delivery. Delivery of a quantity that varies from the quantity specified shall not relieve Customer of the obligation to accept delivery and pay for the Products delivered.

#### 6. BE DESIGN'S LIMITED WARRANTY

BE Design agrees to transfer to Customer whatever transferable warranties BE Design receives from the manufacturer of Products sold to Customer. BE Design agrees to warranty its own Products and installations for a period of three (3) years after the invoice date. BE Design makes no other warranty, express or implied, with respect to the Products. IN PARTICULAR, BE DESIGN MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR RESPECTING INFRINGEMENT. BE Design's liability arising out of any sale of products to Customer is expressly limited to either (1) Refund of the purchase price paid by Customer for such Products (without interest), or (2) Repair and/or replacement of such Products, at BE Design's election, with such remedies exclusive and in lieu of all others. Customer must notify BE Design within 90 days from date of shipment of any defective product. This warranty is in lieu of any and all other warranties, whether oral, written, expressed, implied or statutory. Implied warranties of fitness for a particular purpose and merchantability are specifically excluded and shall not apply. Customer's obligations and BE Design's remedies with respect to defective or nonconforming products, are solely and exclusively as stated herein. Furthermore, no warranty will apply if the Product has been subject to misuse, static discharge, neglect, accident, modification, or has been altered in any way.

#### 7. BE DESIGN CORPORATE RoHS COMPLIANCE AND LEAD-FREE POLICY

It is the policy of BE Design to identify and offer products to the Customer as RoHS Compliant or Lead Free, only after specific requirements have been met. BE Design does use lead-based solder in the manufacture and installation of its own Products. BE Design performs no testing of product and relies solely on the manufacturer of the product for identification of RoHS Compliance and for absence of lead. Furthermore, BE Design makes no warranty, certification or declaration of compliance concerning said Products. Product is advertised or offered as RoHS Compliant or Lead-Free only after sufficient evidence is received from the component manufacturer; and any inventory, either in a bin or on order, has been determined to be RoHS compliant and/or Lead Free. Any relevant evidence will be filed and maintained for at least four years from the date of receipt. BE Design defines the term "RoHS" as supplier declared compliance to all restricted hazardous substance regulations under the ELV, WEEE or RoHS EU directives, regulations or laws. BE Design defines the term "Lead Free" as pertaining to any product that has been declared by a Supplier to be "Lead Free". All statements by BE Design of RoHS compliance are based on producer documentation.

#### 7a. BE DESIGN CORPORATE WEEE POLICY

BE Design is not registered as a "producer" in the European Union, and does not provide a WEEE recycling program within the EU.

#### 7b. PRODUCT COUNTRY OF ORIGIN

BE Design maintains Country of Origin information on all products in its inventory. This information is provided to customers on product labels. This information is based on manufacturer-provided information according to US Treasury, US Customs Regulations. BE Design's manufacturers do not provide BE Design with the country of origin of each raw material or subcomponent that is incorporated into the manufacturer's final product.

## 8. LIMITATION OF LIABILITIES

IN NO EVENT SHALL BE DESIGN BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE including, but not limited to, damages resulting from loss of profit or revenue, recall costs, claims for service interruptions or failure to supply downtime, testing, installation or removal costs, costs of substitute products, property damage, personal injury, death or legal expenses. Customer's recovery from BE Design for any claim shall not exceed the purchase price paid by Customer for the Products, irrespective of the nature of the claim, whether in warrant, contract or otherwise. CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD BE DESIGN HARMLESS FROM ANY CLAIMS BROUGHT BY ANY PARTY REGARDING PRODUCTS SUPPLIED BY BE DESIGN AND INCORPORATED INTO THE CUSTOMER'S PRODUCT.

## 9. PRODUCT SAFETY NOTICE AND RESTRICTIONS

Products are intended for commercial use only. Products are traceable to the OEM manufacturer and Lot/Date Code where available and when requested at the time of customer order. Specification sheets provided to Customers are produced by the manufacturer or transcribed from information provided by the manufacturer. BE Design is not a Qualified Manufacturers List (QML) supplier or a supplier of Qualified Product Listing (QPL) components. Customer agrees that all purchases are for commercial or other applications that do not require QPL components. Any reference to military specifications is for reference only and does not modify these terms and conditions. BE Design does not participate in any product safety engineering, product safety review or product safety testing. BE Design cannot provide any safety testing, safety evaluation or safety engineering services. Products sold by BE Design are not designed, intended or authorized for use in life support, life sustaining, human implantable, nuclear facilities, flight control systems, or other applications in which the failure of such Products could result in personal injury, loss of life or catastrophic property damage. This includes, but is not limited to, Class III medical devices as defined by the US Food and Drug Administration (FDA) and Federal Aviation Administration (FAA) or other airworthiness applications. If Customer uses or sells the Products for use in any such applications: (1) Customer acknowledges that such use or sale is at Customer's sole risk; (2) Customer agrees that BE Design and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD BE DESIGN AND THE MANUFACTURER OF THE PRODUCTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES AND LIABILITIES ARISING OUT OF OR IN CONNECTION WITH SUCH USE OR SALE.

## 10. STATEMENTS AND ADVICE

If statements or advice, technical or otherwise, are offered or given to Customer, such statements or advice will be deemed to be given as an accommodation to Customer and without charge. BE Design shall have no responsibility or liability for the content or use of such statements or advice. BE Design Technical support is limited in scope which prevents BE Design from the direct participation in the design of any customer products. BE Design does not conduct product suitability studies or engineering reviews of Products that it sells, nor for the final product that a Customer produces.

## 11. NON-CANCELABLE/NON-RETURNABLE PRODUCTS

From time to time, BE Design will notify Customer of a product that is "NC/NR", (Non-Cancelable/Non-Returnable) upon determining that an order requires such conditions of sale. Customer understands that "NC/NR" products are obtained by BE Design from the manufacturer specifically for the Customer. Irrespective of circumstances, the Customer agrees that "NC/NR"

products may not be cancelled, returned or rescheduled by the Customer without the written consent of BE Design.

## 12. INTELLECTUAL PROPERTY

If an order includes software or other intellectual property, such software or other intellectual property is provided by BE Design to Customer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement. Unopened software may be returned for credit. Opened software may not be returned unless defective.

## 13. FORCE MAJEURE

BE Design will not be liable for delays in delivery or for failure to perform its obligations due to causes beyond its reasonable control including, but not limited to, product allocations, material shortages, labor disputes, transportation delays, unforeseen circumstances, acts of God, acts or omissions of other parties, acts or omissions of civil or military authorities, Government priorities, fires, strikes, floods, severe weather conditions, computer interruptions, terrorism, epidemics, quarantine restrictions, riots or war. BE Design's time for delivery or performance will be extended by the period of such delay or BE Design may, at its option, cancel any order or remaining part thereof, without liability by giving notice to Customer.

## 14. EXPORT CONTROL

BE Design is committed to compliance with all U.S. Export Regulations and Laws. BE Design will not sell or ship to countries embargoed by the U.S. Treasury Office of Foreign Asset Control (OFAC). BE Design will not sell or ship to individuals or organizations identified by the U.S. Treasury as Specially Designated Nationals and Blocked Persons. BE Design will not sell or ship products prohibited under Export Administration Regulations to individuals or organizations identified by the U.S. Department of Commerce, Bureau of Industry and Security (BIS). BE Design will not seek export licenses pursuant to Export Administration Regulations. BE Design participates in BIS Export Enforcement and OFAC transaction reporting. Furthermore, BE Design prohibits the re-export, brokering or transshipment of its products to any individual, organization or country prohibited by the OFAC or BIS. The sale, resale or other disposition of Products, and any related technology or documentation, are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Customer agrees to comply with all such laws, regulations and orders. Customer further acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Customer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

### 14.1 Export Classification Disclaimer

Any use made of BE Design's classifications, whether it be ECCNs or any variation of Harmonized Tariff codes, is without recourse to BE Design and at the user's risk. Export classifications are subject to change. If Product is exported or re-exported, the Customer, as the exporter of record, is responsible for determining the correct classification of any item at the time of export. Any export classification by BE Design is for BE Design's internal use only and shall not be construed as a representation or warranty regarding the proper export classification nor relied upon to make licensing determinations.

## 15. GENERAL

The Terms and Conditions may not be modified or canceled without BE Design's written agreement. Accordingly, all Product, goods furnished and services rendered by BE Design are sold only on the

terms and conditions stated herein. The sale of Products hereunder will be governed by the Terms and Conditions, notwithstanding contrary or additional terms and conditions in any order purchase order, planning schedule, acknowledgment, confirmation or any other form or document issued by either party affecting the purchase and/or sale of Products. Any conflicting statements or terms listed on the Customer purchase orders, invoices, confirmations or other Customer generated documents ("Customer Documents"), whether heretofore or hereafter submitted, are negated by submission of the order. All different or additional terms and conditions contained in any Customer Documents are hereby objected to by BE Design. BE Design's performance of any contract is expressly made conditional on Customer's agreement to BE Design's Terms and Conditions of Sale, unless otherwise specifically agreed upon in writing by BE Design. In the absence of such agreement, commencement of performance and/or delivery shall be for Customer's convenience only and shall not be deemed or construed to be acceptance of Customer's terms and conditions or any of them. If a contract is not earlier formed by mutual agreement in writing, acceptance by Customer of any goods or services shall be deemed acceptance by Customer of the terms and conditions stated herein. No rights, duties, agreements or obligations hereunder, may be assigned or transferred by operation of law, merger or otherwise, without the prior written consent of BE Design. The obligations, rights, terms and conditions hereof will be binding on the parties hereto and their respective successors and assigns. The waiver or breach of any term, condition or covenant hereof, or default under any provision hereof, will not be deemed to constitute a waiver of any other term, condition, or covenant contained herein, or of any subsequent breach or default of any kind or nature. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction, or affecting the validity or enforceability of such provision in any other jurisdiction. The Terms and Conditions will be governed by and construed in accordance with the laws of the state of California and the applicable laws of the United States.