



# STANDARD TERMS AND CONDITIONS

## **SECTION 1. DELIVERY & SHIPPING COSTS**

**1.1 Delivery of the Product.** EcoFit shall use its best commercial efforts to arrange for delivery of the Product to the Customer at the address stated above, within [30] business days of the execution of this Agreement. Customer acknowledges that delivery delays are possible, and that no additional rights or liabilities shall accrue to Customer or EcoFit if delivery does not occur within 30 business days (subject to Section 3.2 below).

**1.2 Shipping/Freight Costs.** Customer shall bear the freight and/or shipping costs for all orders, regardless of the number of units. All freight or shipping costs to be born by Customer shall be added to Customer's account balance, and shall be paid in accordance with the payment terms listed above and herein. Prior to Customer incurring any freight or shipping charges, EcoFit shall advise the intended shipping arrangements, and Customer shall have the right to make alternative shipping or freight arrangements on terms acceptable to EcoFit. Title to the Product(s) shall pass to Customer upon the date of Customer's receipt of such Product(s) ("Receipt").

**1.3 Receipt.** Upon Receipt of the Product, Customer shall promptly inspect and count the Product, and notify EcoFit within five (5) days of Receipt if Customer finds any defects, damage, unusual wear and tear, or variance in the amount of Product from that stated in this Agreement. A FAILURE TO NOTIFY ECOFIT WITHIN FIVE (5) DAYS SHALL BE DEEMED AN ACCEPTANCE BY CUSTOMER. UPON ACCEPTANCE OF THE PRODUCTS, THE PURCHASE SHALL BE NON-CANCELLABLE AND IRREVOCABLE, AND PAYMENT DUE CUSTOMER SHALL BE UNCONDITIONAL.

## **SECTION 2. INSTALLATION & CUSTOMER OBLIGATIONS**

**2.1 Installation.** EcoFit has or shall provide installation instructions (the "Instructions") to Customer, and Customer agrees to follow all aspects of the Instructions when installing the Product, including, but not limited to, inspecting the luminaire and light pole prior to installation. Prior to installing the Product, Customer acknowledges its duty to make a good faith determination, taking into account the Product's size, shape and weight, that the Product can be safely installed in the poles, fixtures, and luminaires in which Customer intends to utilize the Product. If Customer, or a third party hired by Customer, finds that the Product cannot properly and safely be installed in accordance with the Instructions (or non-material deviations therefrom), Customer or the third party shall not install the Product, shall immediately contact EcoFit, and shall work with EcoFit engineers to find a mutually agreeable solution. As stated elsewhere in this Agreement and related documents, a material deviation from the Instructions or a failure to contact EcoFit in accordance with above, shall void the Limited Warranty.

**2.2 Customer Obligations.** Customer or its agent shall be solely responsible for (a) installation; (b) maintaining and supporting the Product once it has been installed; (c) selecting and training adequate personnel with the requisite skill and experience necessary to install and maintain the Product; (d) compliance with any and all local, state, federal or other laws applicable to its use of the Product; and (e) periodic monitoring of the fixtures in which the Product has been installed to ensure the Product is functioning as intended.

## **SECTION 3. PAYMENT & CANCELLATION**

**3.1 Payment.** Customer shall pay to EcoFit the purchase price, freight and/or shipping (if applicable), any interest, and any cancellation fees, as set forth herein. Customer acknowledges that the monetary obligations of Customer to EcoFit hereunder constitute a commercial account. If Customer does not pay all of its obligations within thirty (30) days of invoice (including freight, shipping, and/or cancellation fees), Customer shall pay, in addition to all other amounts owed to EcoFit, monthly interest charges at the rate of 1.5% per month, accruing on all unpaid amounts. If EcoFit employs any legal process to recover any amount due and payable from Customer hereunder, Customer shall pay all costs of collection and reasonable attorney fees.

**3.2 Cancellation.** Customer may cancel orders at any time prior to the Product being shipped from EcoFit's warehouse (the "Cancellation Deadline"), provided that (a) such cancellation is received in writing or via e-mail prior to the Cancellation Deadline, and (b) Customer shall be charged 25% of total amount due with respect to the Product, as stated above. Customer acknowledges that the Product is built-to-order, the 25% cancellation fee represents restocking and reshipping expenses, and that the cancellation fee is not a penalty. Notwithstanding the foregoing, if the Cancellation Deadline has not occurred within 180 days from the date this Agreement was executed, Customer may cancel the order without paying the cancellation fee described in part (b) above.

## **SECTION 4. LIMITED WARRANTY, DISCLAIMER & LIMITATION OF LIABILITY**

**4.1 Disclaimer of Limited Warranty and Exclusive Remedy.** THE LIMITED WARRANTIES PROVIDED IN SECTION 5.1 OF THIS AGREEMENT AND ELSEWHERE ARE THE SOLE WARRANTIES ECOFIT MAKES REGARDING THE PRODUCT (AS FURTHER ELABORATED AND DISCUSSED THEREIN). CUSTOMER ACKNOWLEDGES ITS SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECT OR NONCONFORMITY IN THE PRODUCT SHALL BE TO MAKE A CLAIM UNDER THE LIMITED WARRANTY, AND ECOFIT'S SOLE OBLIGATION SHALL BE TO COOPERATE WITH CUSTOMER TO PROVIDE IT WITH THE BENEFIT, IF ANY, PROVIDED IN THE LIMITED WARRANTY.

**4.2 Customer Indemnification.** Customer shall indemnify, defend and hold EcoFit, and its members, officers, shareholders, directors, employees, agents and affiliates (each, an "EcoFit Indemnified Party") harmless from and against any and all costs, liabilities, losses and expenses, including, but not limited to, reasonable attorneys' fees resulting from or arising out of any claim, suit, action, arbitration or proceeding brought or threatened by a third party against any EcoFit Indemnified Party relating to: (a) a breach or alleged breach by Customer of any of its representations, warranties, covenants or obligations hereunder, (b) damage or injury caused during installation of the Product, unless such damage or injury was caused solely by a defect in the Product, (c) damage or injury caused by a collapse or toppling of a light pole or other structure housing the Product, (d) damage or injury caused by the Product falling from a light pole or other structure housing the Product (e) damage or injury caused by acts or omissions, negligent or otherwise, of third party installation and maintenance personnel engaged by Customer, or (f) incidental and consequential damages that allegedly arose due to improper lighting or illumination of a particular area.

**4.3 Indemnification Procedures.** With respect to indemnification discussed in Section 4.2 above, EcoFit agrees that the Customer shall have sole and exclusive control over the defense of any such third party claim; provided, however, that the EcoFit Indemnified Party shall have the right to obtain its own counsel at its own cost and expense. Customer shall not acquiesce in any judgment or enter into any compromise or settlement that adversely affects the EcoFit Indemnified Party's rights or interests without prior written consent of the EcoFit Indemnified Party (not to be unreasonably withheld). EcoFit shall promptly notify Customer of any such claim of which it becomes aware and shall (a) at Customer's expense, provide reasonable cooperation to Customer in connection with the defense of any such claim and (b) at the EcoFit Indemnified Party's expense, be entitled to participate in the defense of any such claim.

## **SECTION 5. GENERAL PROVISIONS**

**5.1 Warranties.** EcoFit represents and warrants to Customer that (a) it has full power and authority to enter into and fully perform this Agreement; and (b) it has the right to sell the Product to Customer in accordance with the terms and conditions of this Agreement. Customer represents and warrants to EcoFit that (i) it has full power and authority to enter into and fully perform this Agreement; and (ii) it has the current ability to pay its obligations hereunder to EcoFit in accordance with the terms hereunder.

**5.2 Entire Agreement; Amendment; Consent to Electronic Amendment and Signatures.** This Agreement, including any exhibits and other schedules or documents attached hereto or referenced herein, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, both oral and written, with respect to the subject matter hereof. Except as otherwise provided herein, no amendment or modification of this Agreement or any exhibit or schedule shall be effective unless in writing and signed (electronically or manually) by both parties. In the event any provisions contained in any other exhibit or schedule expressly conflict with any terms, conditions or clauses contained in this Agreement, the provisions of such exhibit or schedule shall govern to the extent of such conflict. The terms and conditions of any inconsistent present or future purchase order submitted by Customer shall not alter the terms of this Agreement unless expressly consented to in writing by EcoFit. No use of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement or alter in any manner the terms of this Agreement. The parties consent to the use of electronic agreement and electronic signatures and agree that the electronic signature of their authorized representatives as affixed to writings and documents relating to this Agreement are the legal equivalent of such representatives' manual signature on such documents. The parties further agree that (a) sending an email or other electronic correspondence to the other party consenting to or accepting certain terms relating to this Agreement, or (b) any other similar act or action in submitting documents to the other party, constitute

such party's electronic signature. The parties also agree that no certification authority or other third party verification is necessary to validate their electronic signature, and the lack of such certification or third party verification shall not in any way affect the enforceability of an electronic signature or any resulting agreement between the parties.

**5.3 Multiple Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**5.4 Severability.** If any term or provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining terms and provisions of this Agreement shall remain in full force and effect, and such invalid, illegal or unenforceable term or provision shall be deemed not to be part of this Agreement.

**5.5 Governing Law; Venue.** This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Kansas, without reference to its conflicts or choice of law principles. The parties agree that the sole and exclusive jurisdiction and venue for any and all disputes arising under this Agreement shall be in any trial court located in or having jurisdiction over Johnson County, Kansas. Each of the parties hereby irrevocably submits and consents to personal jurisdiction of the above-named courts in the foregoing circumstances.

**5.6 Waiver.** Except as specifically provided in a written waiver signed by a duly authorized representative of the party seeking enforcement, the failure to enforce or the waiver of any term of this Agreement shall not constitute the waiver of such term at any time or in any circumstances and shall not give rise to any restriction on or condition to the prompt, full and strict enforcement of the terms of this Agreement.

**5.7 Assignments & Benefit.** Neither party may assign this Agreement without the prior written consent of the other party; provided, however, EcoFit may assign this Agreement in connection with the sale, merger or disposition of the business operations relating to the Product. This Agreement shall be binding upon and shall inure to the benefit of Customer and EcoFit and their respective successors and permitted assigns, subject to the other provisions of this Section.

**5.8 Intellectual Property.** Customer shall treat all materials, manuals, data, reports, and other information relating to the Product as confidential. The Customer shall not disclose to any third party any information with respect to the attributes, specifications, use, and results of the Product, nor shall the customer provide the Product to any third parties for purposes other than immediate installation of the Product in the Customer's street lighting equipment. All patents, service marks, trademarks, trade names, logos, and slogans related to EcoFit's products are exclusively owned and retained by EcoFit, and may not be used by the Customer without the expressed consent of EcoFit.

**5.9 Force Majeure.** Each party to this Agreement shall be excused from any delay or failure in its performance hereunder, other than for payment of money, if such delay or failure is caused solely by supervening conditions beyond that party's control, including acts of God, civil commotions, wars, strikes, labor disputes, and governmental demands or requirements.

**5.10 Third Parties.** Nothing in this Agreement, express or implied, shall create or confer upon any person or entity not a named party to this Agreement any legal or equitable rights, remedies, liabilities or claims with respect to this Agreement, except as expressly provided herein.

**5.11 Taxes.** The Customer shall pay (i) all federal, provincial, state and local taxes, however designated, levied or based on account of the purchase price of the Product or on account of the acquisition or ownership or use of the Product by the Customer (exclusive only of taxes based on net income derived by EcoFit), and (ii) all foreign taxes, export or import tariffs, and custom duties, however designated, levied or based in connection with the sale conducted hereby, the purchase price of the Product, or the acquisition or ownership or use of the Product by the Customer.

**5.12 Security Interest.** Customer agrees that EcoFit and its assigns shall have a security interest in the Product until the full purchase price set forth in this Agreement shall have been fully paid by the Customer. The Customer agrees that this Agreement shall be a security agreement as defined by the Uniform Commercial Code in effect in the jurisdiction in which the Product is located and that it shall execute a financing statement, if requested by EcoFit, in order that EcoFit or its assigns may record its security interest.



# LIMITED WARRANTY

ECOFIT LIGHTING, LLC (“EcoFit”), manufacturer of this Product, warrants to the original purchaser (“Customer”) that the parts comprising this Product shall be free from defects in material and workmanship under normal operations, for the respective time periods as set forth below. The warranty term shall begin upon the date of Customer Receipt, as defined in Section 1.3 of the EcoFit General Terms and Conditions.

LEDs: 5 years – A defect with respect to the LEDs shall mean (a) with respect to the DuraStreet Series 30 model, at least 3 or more LEDs are not functioning; (b) with respect to the DuraStreet Series 42 model at least 4 or more LEDs are not functioning, and (c) with respect to the DuraStreet Series 63 model, at least 6 or more LEDs are not functioning. This limited warranty shall not apply with respect to the LED if less than the number of lamps stated in the previous sentence are then failing.

Power Supply: 5 years

Chassis/housing: 10 years

## WARRANTY CONDITIONS

This limited warranty does not cover costs incurred in connection with the normal wear and tear of the EcoFit Products. This limited warranty is intended to cover normal use and does not cover the Product and components if damaged by unreasonable use, neglect, accident, abuse, misuse, improper service, mishandling, modification, improper operation or maintenance, connection to improper voltage supply, improper installation, any natural acts of God and/or other causes NOT arising from defects in materials or workmanship. The Customer has been provided installation instructions (the “Instructions”), and any deviation by the Customer or its agents from the Instructions shall constitute an “improper installation,” as that term is used in the previous sentence, and void the warranty. If the Customer or its agent determines during the installation process that the Product cannot be installed pursuant to the Instructions, the Customer or its agent shall immediately contact EcoFit, and EcoFit shall work with Customer to determine how best to proceed. If it is determined that the Product cannot safely be installed in the Customer’s fixtures pursuant to the Instructions, this shall NOT be deemed a Product defect hereunder.

EcoFit, in its sole discretion, shall supply new or refurbished Products in satisfaction of this limited warranty. This limited warranty excludes, and by EcoFit expressly disclaims the service or disposal costs associated with replacement of the Product or Products covered under this limited warranty. EcoFit reserves the right to make design modifications so long as any replacement Product is of equal or greater quality as the original Product. Any replacement parts or components furnished by EcoFit in fulfillment of this limited warranty are warranted only for the unexpired portion of the original limited warranty. Any replacement Product shall carry the same limited warranty as set forth herein beginning from the date it is provided by EcoFit. Any parts or Product(s) that are subject to any warranty claim hereunder must be returned by the Customer to EcoFit at Customer’s expense. Ecofit, in its sole discretion, may deny replacement of returned parts or Products if, in its sole determination, returned parts or Products are deemed to have been subject to modification, tampering, use in applications not intended by EcoFit, excessive wear and tear resulting from use in other than normally expected operating environments, or any other deviation from the part’s or Product’s original state.

THIS LIMITED WARRANTY CONSTITUTES THE ONLY WARRANTY MADE BY ECOFIT WITH RESPECT TO THE PRODUCT. ECOFIT HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS WARRANTY ARISING FROM ANY DESCRIPTION OR SPECIFICATION PROVIDED FOR THE PRODUCT, OR ANY SAMPLE OR MODEL PRESENTED TO CUSTOMER, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE OR NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES OF ECOFIT PERTAINING TO THE PRODUCT NOT EXPRESSLY SET FORTH HEREIN.

This limited warranty is provided for the benefit of the original purchaser, and any representations or statements herein shall benefit and be enforced solely by the original purchaser.

EcoFit is not responsible for damages of any kind including, but not limited to, direct or indirect damages or any special, incidental, exemplary or consequential damages whether for breach of contract, negligence, strict liability, tort or otherwise, or whether arising out of the failure or partial failure of the Product to perform the intended function, even if EcoFit or any dealer, distributor or authorized agent has been advised of the possibility of such damages, or any claim by any other party. Such damages include, but are not limited to, loss of profits, loss of savings or revenue, loss of use of the product, or any associated equipment, cost of capital, cost of any substitute equipment, facilities or services, downtime, the claims of third parties, and injury to persons or property.

Some states do not allow the exclusion or limitation of incidental or consequential damages, or limitations on implied warranties, so the above exclusion or limitation may not apply to you. This warranty gives you specific legal rights, and you may also have other legal rights which vary from state to state.

## TO OBTAIN WARRANTY SERVICE

If a problem with this Product develops during the limited warranty period, please contact EcoFit at:

**EcoFit Lighting, LLC., 8527 Bluejacket Street, Lenexa, KS 66214 913.859.9449 / 866.789.9449 (Toll Free)**