



APS LIGHTING & SAFETY PRODUCTS PURCHASE ORDER TERMS AND CONDITIONS

1. Offer, Acceptance, and Notification. These Purchase Order Terms and Conditions (“Terms and Conditions”), together with all documents specifically referenced herein (whether in writing or electronically), as those documents may be amended from time to time, are expressly incorporated into, and become a part of, all purchase orders of APS Lighting & Safety Products (“Buyer”) and together represent the entire agreement between Buyer and Seller (the “Purchase Order”) for the materials ordered and any related services (collectively, “Goods”). Each Purchase Order is Buyer’s offer to purchase the Goods referenced therein. Seller will be deemed to have accepted a Purchase Order as issued (1) if Seller fails to object to it in writing within 10 business days after receipt and has begun or later begins performance under the Purchase Order, or (2) if Seller acknowledges in writing its acceptance of the Purchase Order. These Terms and Conditions will apply to the Purchase Order except as expressly modified or waived on the face of the Purchase Order. Any references in the Purchase Order to Seller’s quotation or other form of offer for the Goods is for information only and Buyer hereby rejects all terms and conditions proposed by Seller therein. Buyer may cancel at any time prior to acceptance by Seller. Without Buyer’s written consent, no additional or different terms proposed by Seller in its acknowledgement will be effective to modify the Purchase Order and Seller will be deemed to have accepted the Purchase Order without such modifications. The terms of the Purchase Order may not be varied or modified in any manner, unless in a subsequent writing signed by an authorized representative of Buyer. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of the Purchase Order shall be deemed material and are expressly objected to and rejected. The Purchase Order shall be valid without signature if issued by an expressed authorized agent of Buyer through its computer system or other electronic means.

2. Price. All prices stated in this Order are firm and not subject to escalation unless specified in this Order. The purchase price stated in this Order is deemed to include the cost of delivery to and off loading at the destination specified overleaf and packaging of the Specified Goods in accordance with the delivery instructions specified overleaf unless expressly stated to the contrary.

If delivery of the Specified Goods is made at a time or place other than stated in this Order the Purchaser may refuse or reject the Specified Goods and may procure similar goods elsewhere and the Seller shall be liable for any additional costs of the Purchaser in consequence thereof.

Payment shall be made by the date specified on the Purchase Contract or if not specified separately, then within 45 days of the last day of the month in which delivery of the Specified Goods occurs provided that no payment shall be claimed by the Seller unless the Seller has first furnished to the Purchaser a Tax Invoice for the Specified Goods showing the date and place of delivery of the Specified Goods and the calculation of any applicable Government Tax, charge or levy applicable to the Specified Goods.

3. Quantities and Delivery Schedules. Deliveries shall be made both in the quantities and at the times that are specified in the Purchase Order. The specified “due date” shall mean the date of delivery at Buyer’s facility. Time of delivery and quantity are of essence to the Purchase Order. Buyer reserves the right to charge the Seller an administrative fee for all non-conforming shipments (late shipments, early shipments, incorrect quantities, etc.). The Goods shall be properly packed, marked, loaded and shipped as required by this agreement and by the transporting carrier. Seller shall reimburse Buyer for all expenses incurred due to improper packing, marking, loading or routing. The risk of loss or damage in transit shall be upon Seller.

4. Termination for Convenience. In addition to any other rights of Buyer to cancel or terminate the Purchase Order, Buyer may at its option, immediately terminate all or any part of the Purchase Order for Buyer’s convenience, at any time and for any or no reason by giving written notice to Seller.

5. Termination for Default.

(a) Buyer may cancel or terminate all or any part of the Purchase Order in the event of any default by the Seller. The following are defaults, among others, allowing Buyer to terminate the Purchase Order: (i) Seller repudiates or breaches any of the terms of the Purchase Order, including Seller’s warranties;

(ii) late delivery; or (iii) delivery of Goods that are defective or that do not conform to the Purchase Order. In the event of cancellation or termination for default, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for all damages sustained by reason of the default.

(b) If Seller for any reason anticipates difficulty in complying with the required delivery date or in meeting any of the other requirements of the Purchase Order, Seller shall promptly notify Buyer in writing of the potential default, the cause thereof, and the estimated length of the anticipated default. Buyer is under no obligation to waive any default.

(c) If any of the Goods are found at any time to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of the Purchase Order, Buyer, in addition to such other rights, remedies and choices as it may have under the Purchase Order or by law, at its option and sole discretion may: (i) reject and return such Goods at Seller’s expense; or (ii) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to the Purchase Order. If Buyer elects option (ii) and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller’s cost, inspect and repair or replace the Goods.

(d) Seller hereby grants to Buyer a security interest in the Goods to secure Seller’s return of any deposits and the performance of its obligations to Buyer. Seller’s continued holding of the Goods and property delivered to Seller after demand has been made for delivery will substantially impair the value of the Goods and property, and Buyer shall be entitled to a court order for possession without bond.

6. Assignment. Seller shall not assign any rights, or subcontract or delegate any duties, under the Purchase Order, including claims for monies, without the prior written consent of Buyer. Buyer may freely assign its rights, and delegate its duties, under the Purchase Order.

7. Changes. Buyer reserves the right at any time, by way of written notice, to make changes in quantities, drawings, specifications, testing or quality control, packing, shipment, scope of work, delivery schedules and other terms of the Purchase Order. Any difference in price or time for performance necessarily and reasonably resulting from such changes may be adjusted equitably and an amendment to the Purchase Order shall be issued to reflect such adjustment if made; provided, that Seller must make written demand for such adjustment and deliver all supporting documentation to Buyer within ten (10) days of Seller’s receipt of Buyer’s notice of change. Time is of the essence for such demand. If Seller does not within ten (10) days of Seller’s receipt of Buyer’s notice of change provide written notice to Buyer that a requested change will result in a difference in price or time for performance, the parties agree that the Buyer’s requested change did not affect the price or time for performance. The price may be adjusted solely to compensate Seller for increased direct costs necessarily incurred as a result of the changes. Seller may not substitute materials or change the specifications of the Goods in any way without written authorization from Buyer. Seller will not make any change in the quantities, drawings, specifications, testing or quality control, packing, shipment, scope of work, delivery schedules and other terms of the Purchase Order unless done pursuant to Buyer’s instructions and with Buyer’s written approval.

8. Inspection. Buyer may, at its option, inspect the Goods during any stage of their manufacture, construction, preparation, delivery or completion. Provided, however, that nothing in this agreement shall relieve Seller from the obligation of testing, inspection and quality control.

9. Nonconforming Goods. Notwithstanding payment or prior inspection, if any of the Goods and/or services are found to be defective in material or workmanship or otherwise not in conformity with the requirements of this agreement, in addition to any other remedies that it may have, Buyer may at any time correct or have corrected the non-conformity at Seller’s expense or reject and return the Goods. Goods may be rejected by defects or defaults revealed by inspection, analysis or subsequent sale even though such items previously may have been accepted. Goods rejected shall be removed by the Seller at its expense and at its risk. Any return shall be FOB Buyer’s plant, transportation collect (declared at full value). Seller shall have all risk of loss during shipment. Final acceptance shall not be conclusive with respect to latent defects or

misrepresentations. If Buyer rejects Goods as nonconforming, the quantities under the Purchase Order will not be reduced by the quantity of nonconforming Goods unless Buyer notifies Seller in writing. Seller will timely replace nonconforming Goods with conforming Goods unless Buyer notifies Seller in writing. The Seller shall be responsible for all costs and expenses incurred to replace nonconforming Goods with conforming Goods. Buyer will hold nonconforming Goods for disposition in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions, within ten (10) days or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the Goods without liability to Seller. Upon the return of any nonconforming Goods, Seller shall reimburse Buyer for (a) any amounts paid by Buyer to Seller for the nonconforming Goods which have been returned, and (b) any costs or expenses incurred by Buyer as a result of the nonconformity, including, without limitation, costs of inspection, sorting, testing evaluations, storage, rework, etc., and (c) an administrative fee for the nonconforming Goods. Payment for nonconforming Goods shall not constitute an acceptance of the nonconforming Goods, nor shall payment limit or impair Buyer's right to assert any legal or equitable remedy with respect to nonconforming Goods.

10. Warranty.

(a) Seller expressly warrants and represents to Buyer, Buyer's successors, assigns and customers that all Goods shall be: (i) merchantable, safe and fit for the Buyer's intended purposes, which purposes have been communicated to Seller; (ii) free from failure for the period of Buyer's express warranty to its customer; (iii) free from all defects including but not limited to defects in design, workmanship and materials; (iv) in strict compliance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Buyer; (v) composed of all new components; and (vi) free and clear of any liens, encumbrances and any actual or claimed patent, copyright, trade secret or trademark infringement. All services performed by Seller shall be performed in a competent, workmanlike manner and in accordance with industry standards. These warranties shall be in addition to all other warranties, express, implied or statutory. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers and the users of Buyer's products. Buyer's approval of Seller's design, material, process, drawing, specifications or the like shall not be construed to relieve Seller of the warranties set forth herein, nor shall a waiver by Buyer of any drawing or specification request for one or more articles constitute a waiver of any such requirements for the remaining articles to be delivered hereunder unless so stated by Buyer in writing. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgment or otherwise, in accepting or performing the Purchase Order, shall be null, void, and ineffective without Buyer's prior written consent. All warranties and remedies provided herein are in addition to those provided by law.

(b) Seller will indemnify and hold Buyer harmless in respect of the cost of recall campaigns and other corrective service actions that, in Buyer's or Buyer's customers reasonable judgment, are required to rectify non-conformities in the Goods that are the result of a breach of the foregoing warranty, whether such recall campaigns are mandated by any governmental entity or by the Buyer.

(c) Seller represents and warrants to Buyer that the prices charged and to be charged Buyer are the same or lower than all prices charged others for the Goods or similar goods during the past 12 months. Prices charged in violation of this clause shall be reduced and any overpayment shall forthwith be refunded by Seller to Buyer.

11. Indemnification. To the fullest extent permitted by law, Seller agrees to indemnify, save harmless and defend Buyer and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all attorney's fees and any other cost of litigation ("Liabilities") arising out of a breach hereof, warranty claims, product recall claims, product liability claims, intellectual property claims, injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, including without limitation, breach of contract, breach of warranty or product liability; provided, however, that Seller's obligation to indemnify Buyer shall not apply to any liabilities solely arising from Buyer's negligence. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity.

12. Compliance with Law. Seller shall keep itself fully informed of all federal, state, or local laws, regulations, codes, ordinances, standards, or rulings, including without limitation orders of any regulatory or certifying governmental agencies and any customer and/or industry standards (collectively the "Laws") that in any manner affect the Goods specified in the Purchase Order, and Seller shall comply with all such Laws. Seller warrants that the Goods comply with all such Laws. All purchased materials used to manufacture goods covered by the Purchase Order shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale. All production suppliers (components, materials, tooling, and production related services) must be in compliance with the requirements of Buyer's customers to whom the Goods will be sold.

13. Shipping. Seller agrees (a) to properly pack, mark and ship Goods in accordance with the requirements of Buyer and to involve carriers in a manner which secures the lowest transportation cost; (b) to route shipment in accordance with Buyer's instructions; (c) to comply with the requirements of common carriers (d) to make no charge for handling, packaging, storage, transportation or drayage of Goods unless otherwise stated in the Purchase Order; (e) to provide with each shipment papers showing the purchase order number, amendment or release number, Buyer's part number, Seller's part number where applicable, chemical identification number if applicable, certificate of analysis for raw materials listing the product specification and test results, MSDS documentation if applicable, part description, date of manufacture, date of shipment, packing slip number, quantity in shipment, unit of measure, number of cartons or containers in shipment, Seller's name and number and the bill of lading number; and (f) to promptly forward this original bill of lading or other shipment receipt for each shipment in accordance with Buyer's instructions and carrier requirements. The marks on each package and identification of the Goods on packing slips, bills of lading and invoices shall be sufficient to enable Buyer to easily identify the Goods purchased. All pre-production shipments must be identified with the Buyer's approved pre-production shipping label. The Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing slips.

14. Invoices. To ensure timely payments, invoices and/or advanced shipping notices ("ASNs") for shipment against the Purchase Order must reference: (a) supplier name; (b) purchase order number; (c) amendment or release number (if applicable); (d) Buyer's part number (if applicable); (e) Seller's part number (if applicable); (f) quantity shipped or service duration; (g) unit price and extended price; (h) number of cartons or containers; (i) bill of lading number/packing slip number before any payment will be made for material by Buyer. Buyer reserves the right to return all invoices or related documents submitted incorrectly, and payment terms will be determined as of the date of the latest correct invoice or ASN received.

15. Setoff.

(a) Seller agrees that all of its accounts with Buyer will be administered on a net settlement basis and that Buyer may set off and recoup debits and credits, including Buyer's attorney fees and costs of enforcement, against any of Seller's accounts regardless of basis for such debits or credits and without additional notice. In this Section 15, "Buyer" includes Buyer's parent, subsidiaries and affiliates, and "Seller" includes Seller's parent and subsidiaries.

(b) If an obligation of Seller or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Buyer or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Purchase Orders between Buyer and Seller have not been assumed, then Buyer may defer payment to Seller, via an administrative hold or otherwise, for Goods against potential rejection and other damages.

16. Applicable Law. The construction, interpretation and performance of this Purchase Order and all transactions thereunder shall be governed by the law of the State of California, without regard to principles of conflicts of law. The United Nations Convention on the International Sale of Goods is expressly excluded. Seller consents to the exclusive jurisdiction of the appropriate state court in San Diego County, California or, if original jurisdiction can be established, in the United States District Court for the Southern District of California, for any legal or equitable action or proceeding arising out of, or in connection with, each Purchase Order. Seller specifically waives any and all objections to venue in such courts.

17. Confidentiality.

(a) Seller acknowledges and agrees that it will be obligated to maintain the secrecy and confidentiality of all information disclosed by Buyer to Seller during the course of work under any Purchase Order (“Confidential Information”), including, but not limited to, any information regarding Buyer or its business or its customers, the existence and terms of any Request for Quotation or Purchase Order, and any drawings, specifications, or other documents prepared by either party in connection with any Request for Quotation or Purchase Order. Seller agrees that it will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without prior written authorization from Buyer. Seller also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances. Confidential Information shall not include any information that (i) was in the possession of Seller before receipt from Buyer; (ii) is or becomes available to the public through no fault of Seller; or (iii) is received by Seller in good faith from a third party having no duty of confidentiality to Buyer.

(b) The obligations of Seller with respect to Confidential Information shall remain in effect during the time that any Confidential Information is considered by Buyer to be secret or confidential or otherwise qualify for protection under the Uniform Trade Secrets Act. At the request of Buyer, Seller will return to Buyer all materials (in any form) that include, incorporate, or otherwise Confidential Information of Buyer.

(c) All information provided by Seller to Buyer in connection with each Purchase Order shall be disclosed on a non-confidential basis, and Buyer shall have no duty to maintain the secrecy or confidentiality of such information.

18. Intellectual Property.

(a) Buyer’s Intellectual Property. Buyer does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right (“Intellectual Property Right”) of Buyer in information, documents, or property that Buyer makes available to Seller under the Purchase Order, other than the right to use Buyer’s Intellectual Property Rights to produce and supply Goods to Buyer.

(b) Seller’s Intellectual Property. Except as stated in this Section 18(b), Seller does not transfer to Buyer any Intellectual Property Right of Seller related to the Goods, other than the right to sell, offer for sale, import, and export those Goods. If the Purchase Order is terminated or cancelled, Seller grants to Buyer a non-exclusive right and license to use Seller’s Intellectual Property Rights to obtain from alternate sources products and services similar to the Goods for the balance of the Purchase Order term at the termination effective date. There will be no fee for this license.

(c) Seller expressly warrants that all Goods will not and do not infringe any patent, trademark, copyright or other intellectual property of any third party. Seller (i) agrees to defend, hold harmless and indemnify Buyer and its customers against all claims, demands, losses, suits, damages, liability and expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Goods, including infringement arising out of compliance with specifications furnished by Buyer or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller’s actions; and (ii) waives any claim against Buyer and its customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Buyer.

19. Excused Performance. If the performance of any part of the Purchase Order by Seller or Buyer is prevented, hindered or delayed by reason of any extraordinary cause or causes beyond the reasonable control of Seller or Buyer, and which cannot be overcome by due diligence, including, but not limited to, acts of God, the party affected shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed during the continuance of any such happening or event, provided that the affected party provides immediate written notice of such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence. During the period of delay or failure to perform by Seller, Buyer at its option may purchase Goods from other sources and reduce the Purchase Order by such quantities without liability to Seller. In addition, if Seller’s inability to supply Goods shall be caused by labor disruption or expiration of Seller’s labor contract(s), then the Seller shall at its sole expense take any actions

necessary to ensure the supply of Goods to the Buyer for a period of at least thirty (30) days from the commencement of the disruption of the expiration of the labor contract(s). If requested by the Buyer, Seller shall, within ten (10) days, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Buyer may immediately terminate this contract without liability. Notwithstanding, Seller’s performance under any circumstances shall not be excused by labor dispute or inability to obtain material.

20. Severability. If any term(s) of the Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance or rule, and the remaining provisions of the Purchase Order shall remain in full force and effect.

21. Entire Agreement and Waiver. The Purchase Order, together with all attachments, exhibits or supplements specifically referenced therein, constitutes the entire agreement between Seller and Buyer with respect to the matter contained in the Purchase Order, and supersedes any previous oral or written representations, including but not limited, to provisions in Seller’s quotations, proposals, acknowledgments, invoices or other documents. No prior written or oral agreement, express or implied, shall be admissible to vary, or alter the provisions of the Purchase Order. No waiver of any breach of any provision of the Purchase Order will constitute a waiver of any other breach of such or any other provision.

22. Remedies. The remedies described in the Purchase Order will be cumulative and in addition to any other remedies provided in law or equity. Buyer is further entitled to all costs, including reasonable attorney’s fees, incurred or necessitated in connection with any breach by Seller, and to all other rights provided for in these Terms and Conditions. Any attempt by Seller to limit Buyer’s warranties, remedies or the amount and types of damages that Buyer may seek shall be null and void. Seller agrees that in no event shall Buyer be liable to Seller for any incidental, consequential, or special damages, including but not limited to, Seller’s loss of profits.