



## ***APS LIGHTING & SAFETY PRODUCTS COMPANY (APS) STANDARD TERMS AND CONDITIONS APPLYING TO ALL SALES***

All sales of material or equipment by APS Lighting & Safety Products are expressly conditioned upon the terms and conditions set forth below. Any additional or different terms or conditions set forth in the purchase order of the Purchaser or in any similar such communication are hereby objected to by APS Lighting & Safety Products and shall not be binding nor effective unless assented to in writing by an authorized representative of APS Lighting & Safety Products

**1. Prices and Terms.** Prices listed do not include freight, handling fees, taxes, and/or duties and are subject to correction or change without notice. Market sensitive commodity products will be priced according to current market conditions. Customer should contact the local APS branch for current pricing. Export orders may be subject to other special pricing. APS reserves the right to accept or reject any order.

**2. Sales Tax.** Customer is responsible for payment of all applicable state and local taxes, or for providing a valid sales tax exemption certificate. When placing an order, customer shall indicate which products are tax exempt.

**3. Delivery.** Factory shipping dates given in advance of actual shipment are estimates by the manufacturer and are based upon prompt receipt of all necessary information. Quoted shipping dates are based on time after receipt of order at factory, with complete information, until merchandise is delivered to common carrier. Seller shall not be liable for failure to deliver or for delays in delivery or performance due to (1) causes beyond its reasonable control, or (2) acts of God, acts of Purchaser, acts of civil or military authority, priorities or other governmental allocations or controls, fires, strikes or other labor difficulties, riots and other civil disturbances, delays in its usual source of supply, delays in transportation, or (3) any other commercial impracticability. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

**4. Payment.** Each shipment or delivery shall be deemed to have been sold under a separate and independent contract. If, in the judgment of Seller, the financial condition of the Purchaser at the time of manufacture or shipment does not justify the terms of payment specified, seller reserves the right to require full or partial payment before shipment and to suspend any further performance until such payment has been received.

**5. Security Interest.** Customer hereby grants to APS a first priority purchase money security interest and/or chattel mortgage in the products and any accounts receivable or cash from resale thereof until full payment is made to APS. Customer agrees to file, and its permits and it authorizes APS to file, any financing statements or other appropriate documents with its governmental authorities to perfect the validity, priority, and enforceability of APS's lien or security interest.

**6. Credit Balance.** Customer agrees that any credit balance(s) issued by APS will be applied to the customers account within one (1) year of its issuance. IF CUSTOMER HAS NOT REQUESTED THE CREDIT BALANCE WITHIN ONE (1) YEAR, ANY REMAINING CREDIT BALANCE WILL BE CANCELLED, AND APS SHALL HAVE NO FURTHER LIABILITY.

**7. Warranties.** Material and equipment distributed by Seller are the products of reputable manufacturers sold under their respective brand or trade names. Seller shall use its best efforts to obtain from each manufacturer, in accordance with the manufacturer's warranty (copies of which will be furnished upon request) or customary practice, the repair or replacement of products that may prove defective in material or workmanship. The foregoing shall constitute the exclusive remedy of the purchaser and the sole obligation of Seller. Except as to title, THERE ARE NO WARRANTIES, EITHER WRITTEN, ORAL, IMPLIED, OR STATUTORY relating to the described material or equipment,

which extend beyond that described in this paragraph. NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.

**8. Limitation of Liability.** Seller's liability on any claim for loss or damage arising out of this contract or from the performance or breach thereof or connected with the supplying of material or equipment hereunder, or its sale, resale, operation or use, whether based on warranty, contract, negligence or other grounds shall not exceed the price allowable to such material or equipment or part thereof involved in the claim. Seller shall not, under any circumstances, be liable for any labor charges unless agreed upon in advance by Seller. Seller shall not in any event be liable for special or consequential damages including, but not limited to, loss of profits or revenue, liquidated damages, loss of use of the product or any associated product, cost of capital, cost of substitute products, facilities or services, downtime costs, or claims of customers of the Purchaser for such damages.

**9. Product Compliance and Suitability.** Jurisdictions have varying laws, codes and regulations governing construction, installation, and/or use of products for a particular purpose. Certain products may not be available for sale in all areas. APS does not guarantee compliance or suitability of the products it sells with any laws, codes or regulations, nor does APS accept responsibility for construction, installation and/or use of a product. It is customers responsibility to review the product application and all applicable laws, codes and regulations for each relevant jurisdiction to be sure that the construction, installation, and/or use involving the products are compliant.

**10. Cancellation.** Purchaser may cancel any order by mutual agreement based upon payment to Seller of reasonable and proper cancellation charges.

**11. Returned Goods.** Material and equipment must not be returned without the advance written consent of Seller. Buyer has a duty to inspect all materials upon delivery and failure to object in writing within 30 days of delivery shall constitute an irrevocable acceptance of the goods and a waiver of any and all claims relating to those goods.

**12. Export Controls and Related Regulations.** Customer represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. Government restricted parties lists, including without limitation, the US Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the US Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the US State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List. Customer shall comply with all applicable US economic sanctions and export control laws and regulations, including without limitation, the regulations administered by OFAC, the Export Administration Regulations administered by BIS, and the International Traffic in Arms Regulations administered by DDTC.

**13. Foreign Principal Party in Interest: Freight Forwarder and Documentation.** It is specifically agreed that customer shall be the foreign principal party in interest and/or that its freight forwarder shall act as customers agent in such capacity for purposes of the foreign trade regulations or other regulatory purposes, and customers and its freight forwarder are responsible for all routed export transactions documentation. Including but not limited to the filing of the required Electronic Export Information/Automated Export System records. At APS request, customer or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by customer or its freight forwarder related to sales to customer by APS.

**14. Assignment.** Any assignment of any contract involving this order, or any rights thereunder, by the Purchaser without the advance written consent of Seller shall be void.

**15. Material Safety Data Sheets.** MSDS for OSHA defined hazardous substances are prepared and supplied by the manufacturers. APS MAKES NO WARRANTIES AND EXPRESSLY DISCLAIMS ALL LIABILITY TO ANY CUSTOMER OR USER WITH RESPECT TO THE ACCURACY OF THE INFORMATION OR THE SUITABILITY OF THE RECOMMENDATIONS IN ANY MSDS. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY RELIANCE ON OR USE OF ANY INFORMATION, AND FOR USE OR APPLICATION OF ANY PRODUCT.

**16. Hazardous Business.** Material and equipment distributed by Seller has been designed and manufactured for use in standard commercial, industrial and residential applications. If the material or equipment is to be applied in any location which might be of a hazardous nature, such as atomic installations, commercial or military aircraft, missile installations, space explorations or other critical applications where a failure of a single component could cause substantial harm to persons or property, Seller disclaims all responsibility. Such concurrence must be signed by an officer of the APS Lighting & Safety Products. Any questions should be referred to the manufacturer through Purchaser's local APS Lighting & Safety Products office.

**17. General Terms.** Any of the terms and provisions of Buyer's order which are inconsistent with the terms and provisions hereof shall not be binding on Seller and shall not be considered applicable to the sale or shipment of the merchandise referred to herein. Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt of this quotation by Buyer, acceptance of the terms and conditions hereof by Buyer shall be indicated, and, in the absence of such notification, the sale and shipment by Seller of the merchandise covered hereby shall be conclusively deemed to be subject to the terms and conditions herein. A standard, form purchase order or similar document shall not constitute written objection to the terms herein. Rather a written objection must be separately stated, and addressed to "Attn: Credit Manager, APS Lighting & Safety Products, Suite 1304, 4905 Morena Blvd, San Diego CA 92117 USA," and must state with particularity those specific terms to which Buyer objects. In the event this written notice is not timely sent, before shipment or delivery of the product, then Buyer waives any and all rights to object to the terms herein.

**18. Attorney's Fees, Jurisdiction, and Venue.** Buyer agrees that in the event there is a dispute between Buyer and Seller, the prevailing party shall pay all costs of such proceedings, including but not limited to attorney fees, court costs and other costs (including without limitation all expert witness or other fees incurred, and any and all costs charged by any law firm or attorney). Buyer agrees that any and all disputes with Seller, including not just contract but also tort claims, shall be resolved in the state or federal courts situated in Salt Lake County, Utah, and that these courts shall have the exclusive jurisdiction over all such disputes and Buyer consents to personal jurisdiction in these courts. Any legal action brought by Buyer against Seller shall be filed in one of the above referenced jurisdictions within one (1) year after the cause of action arises or it shall be deemed forever waived.

**19. Intellectual Property and Indemnification.** Seller makes no warranty or representation with regard to any patent, trademark, copyright, trade dress, or trade secret, relating to or claimed to arise from any product sold to Buyer. Seller will not and does not indemnify or otherwise hold harmless Buyer from any claim of misappropriation or infringement of any patent, trademark, trade dress, trade secret, copyright or other rights relating to any merchandise. Buyer agrees that Buyer will not make any such claim, or seek any such indemnification, and that such a claim or demand by Buyer constitutes a breach of these Standard Terms, and that Buyer shall pay all attorney fees and other court costs incurred by Seller in defending against any such claim or demand, whether or not a legal action is commenced or filed.

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SERVICE CONTACT : [accounts@aps-supply.com](mailto:accounts@aps-supply.com)

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