

ATLAS LIGHTING PRODUCTS INC. GENERAL PURCHASE ORDER PROVISIONS

1. **Acceptance:** Acceptance of any purchase order by Seller shall be deemed to be in accordance with these General Purchase Order Provisions. Acceptance shall be acknowledged either by the return of the acknowledgement, copy of the Purchase Order or by the commencement of performance by Seller. Buyer hereby rejects any additional or inconsistent terms and conditions that may have been offered by Seller in any quote or that might be tendered with the acceptance of the Purchase Order.
2. **Prices, Taxes, Invoices and New Material:** Seller warrants that its price to Buyer is no less favorable than the terms offered to any other customer for the same or like items in equal or less quantities. The prices indicated are deemed to be complete including packaging, crating and taxes and no additional charges of any type will be added without Buyer's express written consent. Seller further warrants that none of the items furnished under this order are Government or commercial surplus, used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof.
3. **Deliveries and Shipments:** Unless stated otherwise in the purchase order, all prices shall be F.O.B. destination and shall include the entire cost of delivery and unloading at the destination identified in the purchase order. Title to the materials and supplies shall pass to Buyer upon acceptance at the F.O.B. point specified, subject to the right of Buyer to reject. Time is of the essence and the purchase order is subject to termination for failure to deliver on time. Seller will at its expense ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered. All items shall be packaged in a manner sufficient to ensure arrival in an undamaged condition. Seller shall be responsible for costs or damages incurred by Buyer, directly or indirectly, not otherwise covered by insurance and reimbursed to Buyer, as a result of or caused by improper packaging. Seller shall give notice of shipment to Buyer at the time of delivery of any shipment of items to a carrier. Seller shall be liable to Buyer for all damages, costs and expenses, including without limitation incidental and consequential damages, resulting from any failure by Seller to deliver items in compliance with these terms.
4. **Inspection and Quality Control:** Notwithstanding payment, passage of title or prior inspection or test, all items are subject to final inspection and acceptance or rejection upon installation and reasonable period of operation.
5. **Warranties:** Seller warrants as follows: (a) all items and services furnished hereunder will conform to applicable specifications, drawings, and samples; (b) all items and services furnished hereunder will be merchantable; (c) all items and services furnished hereunder will comply with all applicable industry standards and all statutes, codes and regulations; (d) that Seller knows of Buyer's intended use and purpose for the items and services furnished hereunder and such items will be fit and sufficient for such use and purpose; and (e) the items and services furnished hereunder will be free from all liens and encumbrances. Warranties shall commence as of the date of installation and first operation of the items by the ultimate user and continue until the last to occur of the following: (i) the expiration of all warranties made by Buyer to its customer concerning Buyer's product incorporating the item or (ii) the expiration of the longest time period during which Buyer's customer may be required, by contract or law, to replace or repair the item or Buyer's product incorporating the item if the item is defective or nonconforming to any warranties. These warranties will be in addition to all other warranties, expressed or implied, and will survive acceptance of and payment for any and all items and services furnished hereunder and will inure to the benefit of Buyer, its successors, assigns, customers, and users of its products.
6. **Defective or nonconforming items/breach of warranty:** In the event that Seller delivers defective or nonconforming items or Seller's breach of warranty, Buyer may at its election and in addition to any other rights or remedies it may have at law or equity or under this order, recover from Seller the cost of removing any such items from property, equipment or products in which such items have been incorporated and the cost of reinstallation of the same or similar items. In addition or alternatively, Buyer may elect to (a) return the items at Seller's risk and expense and recover from Seller the price paid therefor; (b) purchase or manufacture similar items and recover from Seller the costs and expenses thereof, (c) accept or retain the items and equitably reduce their price or; (d) require Seller, at Seller's expense, promptly to replace or correct the items and pending redelivery to repay to Buyer any amount previously paid for such items. Notwithstanding the exercise of any other remedy hereunder, Seller shall further be liable to Buyer for all consequential and incidental damages, including lost profits, incurred by Buyer as a result of the Seller's breach of warranties or delivery of defective or nonconforming items.
7. **Termination:** (a) Buyer may terminate this order in whole or in part for its convenience at any time by fourteen (14) day written notice stating the extent and effective date of such termination. Upon receipt thereof, Seller will to the extent directed by Buyer (i) stop work under this order and place no further orders hereunder, (ii) terminate any outstanding orders which relate to work terminated by such notice; and (iii) protect property in Seller's possession in which Buyer has or may acquire an interest. (b) Buyer also may terminate this order in whole or in part for cause (material breach of the terms of the Purchase Order including these Provisions (i) if Seller fails to perform in accordance with any of the requirements of this order; or (ii) if Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization receivership or assignment for the benefit of creditors. Buyer shall have no liability for any termination for cause. If, after a default termination, it is determined that Seller was not in default, the termination shall be considered to have been made pursuant to subparagraph (a) of this clause.
8. **Right to Setoff:** If Seller provides goods that are defective in whole or in part, Buyer may, at its sole discretion, withhold payment for completed items previously delivered and accepted by Buyer as damages or partial damages to Buyer. Regardless of the exercise of this right to Setoff, Seller will still be liable for damages caused by or resulting from its default including but not limited to the cost of inspecting or determining any defect, the cost of removal of the defective goods, the cost of disposal or return of defective goods, the cost of finding replacement goods and the cost of installing conforming goods.
9. **No Waiver of Remedy:** Buyer's remedies described herein shall be in addition to any other remedies provided by law.
10. **Force Majeure:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default if and to the extent that such party's performance is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
11. **Intellectual Property Hold Harmless and Indemnification:** Seller shall indemnify and hold harmless Buyer, its successors, assigns, customers and users of its products, from and against all costs, losses, expenses, damages, claims, suits, judgments or any liability whatsoever, including attorney's fees, resulting from any claim that the manufacture, use, sale or resale of any items or services supplied under this order infringe any patent, copyright, trademark, trade secret right or other intellectual property right, and Seller shall defend against any such claim through legal counsel approved by Buyer and further shall hold Buyer harmless for all costs and expenses associated with such claim, including any direct or indirect costs associated with assisting in such defense.
12. **Other Indemnification and Insurance:** Seller will indemnify and hold harmless Buyer, its employees, agents and invitees from and against all liability demands, claims, loss, cost, damage and expense by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with the manufacture, use, sale or resale of any items or services supplied under this order, which is occasioned by the actions or omissions of Seller or its suppliers. Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workman's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in suitable amounts and Seller will, if requested by Buyer, furnish certificates of insurance indicating the foregoing coverage as follows: (a) Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of any purchase order; (b) Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Contractor's owned, hired, and non-owned vehicles; (c) Workers' Compensation insurance with limits statutorily required by any Federal or state law and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit; and (d) All other insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by Contractor, or any person employed by Contractor, with a limit of not less than \$1,000,000 each claim.
13. **Compliance with laws:** Seller shall comply with all federal, state and local laws, executive orders, rules and regulations applicable to the performance of this order and to the manufacture, provision and sale of any items or services supplied under this order, including but not limited to the National Electric Code, State and local building codes, the Occupational Safety and Health Act of 1970, as amended ("OSHA"), Toxic Substances Control Act as amended ("TSCA"), Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), Fair Labor Standards Act of 1938, as amended ("FLSA") and the National Traffic and Motor Vehicle Safety Act of 1966 as amended ("NTMVSA"). The Seller warrants that (i) all items sold or furnished under this order will conform to and comply with OSHA standards and regulations. Seller agrees to indemnify and hold Buyer and its customers harmless for any loss, damage or expenses, including attorney's fees, sustained because of Seller's non-compliance in connection herewith.
14. **Cash Discount Periods:** Cash Discount periods will be computed from either the date of delivery and acceptance of the items ordered or the date of receipt of correct and proper invoices prepared in accordance with the terms of this order, whichever is later.
15. **Design Changes:** During performance of this order, Seller shall not make any changes in the design of items to be furnished by Seller under this order without advance notification to and approval of the Buyer.
16. **Assignment:** Any assignment of this order or the work to be performed, in whole or part, or of any other interest hereunder without Buyer's written consent, except an assignment confined solely to monies due or to become due hereunder shall be void. Any such assignment of monies shall be void to the extent that it attempts to impose upon Buyer obligations to the assignee additional to the payment of such monies, or to preclude Buyer from dealing solely and directly with Seller in all matters pertaining hereto, including the negotiation of amendments or settlements of amounts due, or to preclude Buyer from any right of setoff or recoupment otherwise available to Buyer without regard to whether such right of setoff or recoupment arises out of this or any other transaction. In the event of any such assignment of monies due or to become due, Seller will file, in addition to a written notice of assignment, a true copy of the instrument of assignment with Buyer.
17. **Rights and remedies of Buyer-No Waiver:** The rights and remedies of Buyer set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay by Buyer to exercise any rights or remedies under this order shall not operate as a general waiver thereof.
18. **Choice of Law:** The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of North Carolina.
19. **Disputes:** Except as otherwise specifically provided in this order any dispute concerning a question of fact and/or law arising under this order which is not disposed of by agreement of the parties shall be decided by a court in Greensboro, North Carolina which shall be deemed to be the exclusive venue of any dispute. Pending settlement or final decision of any such dispute, Seller shall proceed diligently with the performance of this order in accordance with the directions of the Buyer. To the extent permitted by law, Seller hereby waives the right to a jury trial.
20. **Entire Agreement:** These terms and conditions constitute the entire agreement between the parties and no change to or modification of this order shall be binding upon Buyer unless signed by the authorized representative of Buyer.
21. **Subcontracting:** Seller agrees not to subcontract for any complete or substantially complete materials, supplies and/or services called for by this order without the prior written approval of Buyer.
22. **Equal Opportunity/Affirmative Action:** Unless otherwise exempt under rules and regulations of the secretary of Labor, Seller agrees to comply, during performance of this order, with the following clauses as set forth in the indicated Code of Federal Regulations reference, Equal Opportunity/41 CFR Part 60 1.4 / Affirmative Action for Disabled Veterans and Veterans to the Vietnam Era/41 CFR Part 60 250.4, and Affirmative Action for Handicapped Workers/41 CFR Part 60 741.4.