

AMERICAN LITEPOLE STANDARD TERMS AND CONDITIONS OF SALE

Acceptance of this order by American Lite Pole ("ALP") is expressly conditioned upon the Terms and Conditions contained therein. If these Terms and Conditions differ in any way from Purchaser's order or if transmission of these Terms and Conditions to Purchaser constitutes or is construed as an acceptance of Purchaser's order, then additional or different terms or conditions set forth in Purchaser's purchase order or similar communication are objected to and will not be binding upon ALP unless specifically assented to in writing by an Officer of ALP. In any event, Purchaser's receipt of any submittals or shop drawings shall constitute and manifest Purchaser's assent to these Terms and Conditions.

1. PRICES AND TERMS:

All prices by ALP are payable and due in U.S. Dollars. Prices are subject to change without notice. Prices do not include any present or future sales, excise, value-added or any taxes and, where applicable such items shall be billed separately and paid by the Purchaser.

2. QUOTATIONS:

Prices are subject to receipt and acceptance of order within thirty (30) days of the price quotation by ALP.

3. TERMS OF PAYMENT:

Unless otherwise agreed in writing by ALP, Purchaser shall pay in full the amount of each invoice, within thirty (30) days from the date of the invoice, at ALP's principal office or such other location as ALP may specify. If payment is not made when due, Purchaser agrees to pay to ALP interest on the amount past due at the rate of one and one half percent (1 1/2 %) per month (18% per annum) or the maximum lawful rate, whichever is less. Nothing herein shall be deemed to extend or otherwise modify Purchaser's obligation to make payment when due.

4. CREDIT HOLD, C.O.D. AND PURCHASES:

ALP reserves the right to place Purchaser on credit hold when any invoice has not been paid in full forty-five (45) days after the invoice date. The credit hold will apply to existing pending shipments and to all affiliates of Purchaser. ALP may in its sole discretion require that any purchase be made on a pre-paid or C.O.D. basis.

5. COSTS:

If ALP is required to retain an attorney to collect balances due under this Purchase Order, or is required to defend claims brought against it by Purchaser arising out of this Purchase Order, the Purchaser shall indemnify and hold harmless ALP for all costs incurred in collecting balances due or defending such claims, including but not limited to the fee of any collection agency, attorneys fees, and court costs.

6. FREIGHT:

All sales are priced F.O.B. destination, except that anchor bolts and templates will be shipped at the expense of, and invoiced to, the Purchaser. Any re consignment, re delivery or storage expenses shall be the responsibility of the Purchaser.

7. ROUTING, HANDLING AND STORAGE:

Routing will be determined by ALP with delivery to the common carrier delivery point nearest to destination. Handling, unloading, storage, extra labor or mechanical facilities, and movement from the shipping destination to Purchaser's job site required in connection therewith will be the responsibility of Purchaser.

8. TITLE, RISK OF LOSS, ACCEPTANCE:

In all cases, title shall pass upon delivery at common carrier delivery point nearest to destination and thereafter all risk of loss or damage shall be upon the Purchaser. Purchaser agrees to reasonably inspect products within ten (10) days of delivery. After such inspection, the products shall be accepted by Purchaser by an authorized and qualified representative. Purchaser agrees to accept delivery of the products in accordance with these Terms and Conditions with ten (10) days after the delivery date. If the products are not in conformance with these Terms and Conditions, Purchaser shall give written notice to ALP of any claim to that effect setting forth in reasonable detail the manner in which the products do not conform and Purchaser's intent to claim breach of the Purchase Order Agreement. If Purchaser retains the products after their delivery without giving ALP such notice as required within ten (10) days after delivery, such failure shall constitute and irrevocable acceptance of the products by Purchaser except with respect to defects not reasonable discoverable by such inspection. Purchaser's sole remedy for any defects or nonconformance shall be in accordance with the warranty herein provided.

9. BACK-CHARGES:

ALP will be notified promptly of any potential back-charges by Purchaser. Upon notification ALP shall have five (5) business days to investigate the source of the problems and perform or commence to perform corrective work as required failing which the Purchaser will have the right to perform corrective work with back-charges. ALP will have the option to repair or replace, in a timely manner, any materials or equipment not in accordance with drawings or specifications. Purchaser's assistance in correction work shall be mutually agreed upon in a timely manner, between ALP's and Purchaser's representatives on site prior to commencing work, in regard to scope and costs. All back-charges will be deducted from progress payments or retainage.

10. DELIVERY:

Factory shipping dates given in advance of actual shipment are estimated by ALP and shall not be deemed to represent fixed or guaranteed shipping dates. ALP shall not be liable for failure of or delay of performance due to (i) cause beyond its reasonable control or (ii) an act of God, act or omission of Purchaser, act of civil or military authority, government priority of other allocation or control, fire, strike or other labor difficulty, riot or other civil disturbance, acts of terrorism, insolvency or other inability to perform by the manufacturer, delay in transportation or (iii) any other commercial impracticability. In the event of any such delay, the date of delivery or performance by ALP shall be extended for a period equal to the time lost by reason of delay. In addition to any other right which it may have hereunder or at law, ALP may suspend shipment of any goods for which ALP has not already received payment whenever Purchaser is in default under this or any other contract of sale between ALP and Purchaser.

11. JOB SITE VISIT TERMS

Job site visits by ALP personnel to assist with installation must be pre-arranged with ALP, if the job site is within the continental United States, or a minimum of thirty (30) days in advance, if the job site is outside the continental United States. The Purchaser will receive a written confirmation of the scheduled visit once travel arrangements have been secured and purchased by ALP. If the Purchaser changes the job visitation itinerary after confirmation, any additional ex-

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penses incurred by ALP due to the change will be the responsibility of, and invoiced to, the Purchaser. Job site visits pursuant to this paragraph shall not create or increase any rights of Purchaser beyond those expressly set forth in paragraph 12 below.

12. WARRANTY, LIMITATION OF LIABILITY:

ALP warrants that the ALP "Products" will, upon shipment be free from defects in materials and workmanship. Products will be manufactured according to Purchaser's approved Submittals if Purchaser has given, in its entirety, an original approved stamped copy of the Submittal to ALP, which has been approved by the Owner or Owner's Representative. ALP agrees to correct, and retains the right, in its sole discretion, to correct by repair or replacement, at its sole expense, and at its option, either at ALP's factory or at the installation site, defects in materials or workmanship which may appear as a result of normal and proper use within one (1) year from the date of shipment (the "Warranty Period"), if inspection proves that such defects existed at the time of shipment, if the Purchaser gives to ALP written notice of such defects within ten (10) days of discovery and within the Warranty Period, and if during the Warranty Period the Products have been properly cared for and operated under normal condition by competent personnel under competent supervision. Any transportation cost in connection with correction of defects in ALP's Products shall be payable by the Purchaser. ALP does not warrant any Products that are altered, except as approved by written notice to Purchaser from ALP's Customer Service Department prior to alteration; otherwise, this Warranty is null and void as to the altered Products. Repair or replacement of any Products shall be ALP's only obligation and the sole and exclusive remedy of the Purchaser in the event of a failure to conform to this Warranty.

ALP shall not be responsible for any damage resulting from improper storage or handling by employees, agents or contractors of Purchaser. ALP shall not assume any expense or liability for repairs made to any purchased equipment and accessories not warranted by ALP, but ALP hereby passes the original manufacturer's warranties to the Purchaser to the fullest extent possible. This warranty covers ALP's own Products only and does not extend to the failures in performance due either to defects in any equipment or compo-

nent not manufactured by ALP or to improper or insufficient information furnished to ALP regarding the performance of the equipment in question.

ALP EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES (EXCEPT THAT OF TITLE) EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE MAXIMUM LIABILITY OF ALP WITH THE RESPECT TO ANY PRODUCTS (WHETHER IN TORT, IN STRICT LIABILITY, IN CONTRACT OR OTHERWISE) WILL NOT EXCEED THE PURCHASE PRICE PAID BY THE PURCHASER. IN NO EVENT WILL ALP BE LIABLE IN TORT, IN STRICT LIABILITY, IN CONTRACT, OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING (BUT NOT LIMITED TO) LOSS OF ANTICIPATED PROFITS OF REVENUES, LOSS OF USE, NON-OPERATION OR INCREASED OPERATION COST, COSTS OF CAPITAL, UNABSORBED OR EXTENDED HOME OFFICE OVERHEAD, OR CLAIMS OF CUSTOMERS OF PURCHASER.

13. CLAIM FOR SHORTAGES:

All claims for shortages must be submitted by Purchaser to ALP in writing within ten (10) days of receipt of shipment at common carrier delivery point nearest to destination.

14. RETURNED GOODS:

Specific written request must be made in advance by Purchaser to obtain credit or replacement on goods returned, and return of goods will be only in the sole discretion of ALP and only upon prior written notice to Purchaser from an officer of ALP. On goods accepted for return, Purchaser must pre-pay return shipment and pay minimum restocking charge of thirty-five (35 %) plus any charges necessary to rework goods to a resalable condition. Custom fabricated products are not subject to return.

15. CANCELLATION:

Written consent of ALP must be obtained prior to a cancellation of any order. Cancellation of an order will subject the Purchaser to a cancellation charge based upon expenses already incurred and commitments made by ALP.

16. ASSIGNMENT:

Purchaser may not delegate or assign of

any or all of its duties or rights hereunder without the prior written consent made by ALP.

17. GENERAL:

ALP reserves the right to change any feature of its published specifications without notice to promote production improvement and/or allow for materials availability. Any representation, affirmation of fact and course of dealings, promise or condition in connection therewith or usage of trade not incorporated herein, shall not be binding on either party. No waiver, alteration or modification of any of the provisions hereof shall be binding upon ALP unless specifically assented to in writing by an Officer of ALP. The contract of the sale of goods between ALP and Purchaser shall be performed in Tarrant County, Texas. The validity, performance, and all matters relating to the interpretation and effect hereof and any amendment hereto shall be governed by the laws of the State of Texas. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, taking place in Tarrant County, Texas. Judgment of the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties also expressly agree that they will cooperate in the exchange of documents and lists of witnesses (including any experts) before the arbitration as well as interviewing or deposing of witnesses. The prevailing party in any arbitration shall be entitled to recovery of its reasonable expenses from the other party incurred in enforcing these Terms and Conditions, including costs for attorney's fees, expert witnesses, and the arbitrators of the American Arbitration Association.

18. AUTHORITY:

The person signing on behalf of Purchaser represents and warrants to ALP that such person is an authorized agent of Purchaser, with full power and authority to enter into the agreement defined by these Terms and Conditions.