

# TERMS AND CONDITIONS OF SALE

For Shipments Within the United States\*

Effective February 2, 2009

## TERMS:

The words we, our and us shall refer to American Electric Lighting ("AEL"), a division of Acuity Brands Lighting, Inc. and the words *purchaser, you and your*, shall refer to the person or entity purchasing products under this Agreement.

## PAYMENT TERMS:

A 1% cash discount will be allowed on invoices paid in full by the 10th of the month following the month of billing. All payments made after the 10th are due on a net basis to the 25th (1% 10th prox, net 25th prox).

## FREIGHT ALLOWANCE:

Shipments are F.O.B. our plants, distribution centers or field warehouses as follows:

- All factory orders having a distributor price of \$1,000 or more for one consignee for one release qualify for freight allowed.
- Warehouse orders of stock items having a distributor price of \$1,000 or more for one consignee for one release qualify for freight allowed.
- All orders having a distributor price of less than \$1,000 will be assessed freight and handling charges.
- Anchor bolts are included with American Electric Lighting poles. Pre-shipped anchor bolts having a distributor price of less than \$1,000 will be assessed freight and handling charges.

We reserve the right to route all orders that qualify for freight allowance at our discretion. AEL will ship in the manner selected by the purchaser provided that the purchaser assumes all additional transportation costs.

## DELIVERY:

AEL shall not be liable for any delay or default in delivering products for any reason beyond the reasonable control of AEL, including, but not limited to, armed conflict or economic dislocation resulting therefrom; embargoes; shortages of labor, raw materials, fuels, energy, production facilities or transportation; labor difficulties, civil disorders of any kind; action of civil or military authorities (including priorities and allocations); fires, floods, and accidents. No liability shall be incurred by AEL by reason of its not filling any order or portion thereof due to any of these or similar circumstances.

## TRANSPORTATION CLAIMS:

AEL's equipment is tested for mechanical defects prior to shipping. AEL's packaging is regularly inspected by transportation authorities who assume responsibility for both apparent and concealed damages sustained by improper handling. Title passes to purchaser upon delivery by AEL to the carrier, and all claims for damages or shortages in transit shall be made by the purchaser to the delivering carrier. AEL will be glad to assist when called upon, provided notification is given in writing within 15 business days of receipt of shipment.

## PACKAGING:

AEL reserves the right to alter the quantities of any order so as to conform to standard packaging.

## PRICES:

Prices are subject to change without notice. In the event of price increases, all orders on hand will be filled at the lower prices provided that such orders are released for shipping prior to the effective date of the price increase. If the orders are not released for shipment prior to the effective date of the price increase, the orders will be billed at the prices in effect at the time of shipment. Special quoted orders which cannot be released for shipping prior to the price increase effective date may be subject to an increase in price. Minimum billing is \$100 net excluding orders for replacement parts only. Orders for parts totaling less than \$15 will be billed \$15 lump sum. Prices do not include lamps unless so specified.

## RETURN MERCHANDISE:

No merchandise may be returned without prior written authorization from AEL factories. Requests to return merchandise must be made with AEL's agents for transmittal to the factory within four (4) months from date of shipment by AEL. All returns must be shipped prepaid to the location designated on the return authorization. Credit will be issued based on the original invoice price, or price in effect at time of return, whichever is lower, less a restocking charge of 25% (minimum) of the purchase price (to partially defray our cost of handling), less reconditioning and replacing costs if necessary, and less the freight expense of the original shipment. The reconditioning charge will be determined by the amount of repairs, refinishing or reconditioning required to restore the merchandise to saleable condition. All non-stocking, special, custom-made, outdated, or modified versions of normal factory stocking items are not returnable. Authorization will not be granted when the value of all items to be returned is less than \$100. Returns from any one order will be limited to not more than 10% of the total order value.

## SERVICE AREA LIMITATION:

AEL reserves the right to refuse to make quotations, accept orders or make shipments to points of destination outside of the regular or assigned selling and service area of the distributor.

## GUARANTEE:

AEL warrants all equipment to be free from defect in manufacturing, under normal and proper storage, installation, and use, for a period of one (1) year. In addition we provide a six (6) year warranty on the factory installed electrical system (which consists of the ballast, ignitor, capacitor, lamp socket, terminal board, PEC receptacle, and wiring) inside AEL products. AEL's guarantee liability extends only to the repair or replacement of the defective part, at AEL's option, and no labor charges for correction of the defect by repair or replacement will be honored by AEL unless prior written authority has been granted by AEL's Customer Service Department.

THE FOREGOING GUARANTEE TERMS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER GUARANTEES. AEL MAKES NO REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, AND AEL EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO DISTRIBUTOR OR SUPPLIER OF AEL HAS THE AUTHORITY TO MODIFY OR AMEND THIS GUARANTEE.

## LIMITATION OF LIABILITY:

The foregoing guarantee provides the purchaser's sole and exclusive remedy relating to AEL's products. The total liability of AEL on any and all claims of any kind, whether in contract, warranty, tort (including negligence), strict liability or otherwise, arising out of or in connection with, or resulting from, AEL's performance or breach of the foregoing limited warranty or from AEL's sale, delivery, repair, or replacement of any products, or the furnishing of any services, shall in no event exceed the purchase price allocable to the specific product which gives rise to the claim, and any and all such liability shall terminate upon the expiration of the limited warranty set forth above. IN NO EVENT SHALL AEL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER AS THE RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY.

## CANCELLATION CHARGES:

Orders for stocking items may be cancelled prior to shipping without charge. All other orders may not be cancelled unless AEL is reimbursed for all work already performed and for all special materials purchased by AEL. If an order is cancelled after shipment or if delivery is refused at the delivery destination, all warehousing, delivery and return costs will be charged to the purchaser.

## GENERAL:

Possession of a price sheet does not entitle you to purchase any merchandise. Specifications are subject to change without notice. Consult factory for verification. The compliance of AEL's product to individual project specifications and the approval for their use is not warranted by AEL.

## ACCEPTANCE:

Acceptance of orders can be made only at AEL's plants, distribution centers or field warehouses for warehouse orders on the basis of these terms and conditions of sale. Acceptance of orders is limited to the terms and conditions hereof. AEL hereby objects to any additional or different terms offered by the purchaser in its sales order or any other document of purchaser. Such additional or different terms shall not become a part of any order without the express written consent of AEL.

## ENTIRE AGREEMENT:

Except as expressly agreed in writing signed by AEL, the terms and conditions stated above shall constitute the entire sales agreement between AEL and the purchaser. Any contrary or additional terms or conditions submitted by the purchaser (other than the description of the products being ordered and the requested quantities, shipping date, and shipping location contained in purchaser's purchase order) shall be deemed to be of no force or effect and are hereby rejected. Purchaser's submission of a purchase order shall indicate purchaser's acknowledgment of and agreement with these Terms and Conditions.

**American Electric Lighting reserves the right to change these Terms and Conditions of Sale without notice.**

\* For shipments outside the United States, contact factory for applicable Terms and Conditions of Sale.