

# Bridgelux Purchase Order Terms and Conditions

## AGREEMENT

1.1. **Parties.** The terms and conditions set forth below, together with those appearing on the face of this purchase order and any attachments hereto (collectively, "Order"), constitute an agreement between BRIDGELUX TECHNOLOGIES, INC., or any other BRIDGELUX entity identified on the face of this purchase order, including any and all applicable subsidiaries ("BRIDGELUX"), and the party identified in the "Issued To" box on the face of this purchase order ("Seller").

1.2. **Existence.** In the event of a conflict between this Order and any other written agreement between the parties and specifically covering the same goods or services, the terms and conditions of such agreement shall prevail to the extent of such conflict. Notwithstanding the above, this Order shall prevail over any differing or additional terms and conditions proposed by Seller, including, without limitation, those contained in any invoice.

1.3. **No Modification.** No modification of this Order shall be binding unless in writing and signed by an authorized representative of each party.

## 2. PRICES AND PAYMENT

2.1. **Price.** Seller shall sell to BRIDGELUX the goods ("Goods") or services ("Services") shown on the face of this Order at the prices specified. Any forecasts provided by BRIDGELUX were provided as an accommodation to Seller, and shall not constitute a commitment of any type by BRIDGELUX. All quantities listed in this Order are only estimates and may be revised by BRIDGELUX if its requirements change. Except as otherwise provided in this Order, prices are exclusive of applicable freight charges and duties. Seller warrants that such prices are not in excess of the lowest prices charged by Seller to other similarly situated customers for similar quantities of Goods or Services of like kind and quality.

2.2. **Taxes.** BRIDGELUX shall be responsible for any applicable sales taxes, provided Seller has submitted appropriate tax documentation to allow BRIDGELUX to recover such taxes as appropriate. BRIDGELUX shall include such taxes with the payment or provide Seller with the appropriate information or documentation to support exemption from such taxes. BRIDGELUX shall have no other or further liability to Seller with respect to any tax, duty, levy or like imposition for which Seller may be liable as a result of the supply of the Goods or Services.

2.3. **Payment.** Unless indicated otherwise on the face of this purchase order, payment shall be due forty-five (45) days after the latter of BRIDGELUX'S receipt of either an appropriate invoice from Seller or the relevant Goods or Services. BRIDGELUX may deduct from such payment any monies owed by Seller to BRIDGELUX.

2.4. **Not Acceptance.** Payment by BRIDGELUX shall neither constitute acceptance of the Goods or Services, nor impair BRIDGELUX'S right to inspect such Goods or Services or invoke any available remedies.

## 3. SHIPMENT AND DELIVERY

3.1. **Shipment Terms.** Seller shall ship Goods in the method identified by BRIDGELUX to permit Seller to meet the delivery date(s) identified by BRIDGELUX on the face of this purchase order ("Delivery Date"). If Seller ships by any other method, Seller shall pay any resulting increase in the cost of freight. Except as specified below, shipments of Goods shall be FCA (as that term is defined in the Incoterms 2000 handbook). Seller's place of shipment/export, and title and risk of loss or damage shall pass from Seller to BRIDGELUX upon Seller's delivery of the Goods to the "Ship To" address identified by BRIDGELUX on the face of this purchase order.

3.2. **Costs.** Except as otherwise provided in this Order, BRIDGELUX shall bear all shipping and transport expenses. Seller shall bear all expenses related to handling, packing, packaging, loading, clearing for export, and delivery of Goods to the designated carrier, and loading of Goods onto carrier's conveyance.

3.3. **Packaging.** Seller shall handle, pack and package the Goods so as to protect the Goods from loss or damage, in conformance with good commercial practice, BRIDGELUX specifications, government regulations (including those applicable to chemicals and hazardous materials) and other applicable requirements. Without limiting the generality of the foregoing sentence, Seller shall use packaging materials, including pallets, that are free of pests and comply with all applicable regulations regarding Solid Wood Packing Materials; Seller shall use recycled or reusable packaging materials and minimize the number of different types of packaging materials whenever possible; and Seller shall comply with all applicable requirements regarding packaging recycling, re-use and return, and furnish to BRIDGELUX, upon request, information or documentation of Seller's compliance. Seller shall be responsible for any loss or damage due to its failure to handle, pack and package the Goods in a proper and lawful manner. BRIDGELUX shall not be required to assert any claims for such loss or damage against the carrier involved. In each shipment, Seller shall include a packing list that contains the following: (a) this Order number; (b) the BRIDGELUX part number; (c) the quantity shipped; and (d) the date of shipment. The information on the packing list must agree with the information on Seller's invoice.

3.4. **Prospective Failure.** Failure to meet the Delivery Date specified on the face of this Order shall constitute a breach of this Order. Seller shall give BRIDGELUX notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date. If only a portion of Goods is available for shipment to meet the Delivery Date, Seller shall ship the available Goods unless directed by BRIDGELUX to reschedule shipment. If only a portion of the Services can be performed on the Delivery Date, Seller shall perform such Services unless directed by BRIDGELUX to reschedule performance. Parties to this Order shall not be deemed to have agreed to completely opt out when all Goods and Services have been shipped. Notwithstanding the above, upon Seller's notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date, BRIDGELUX reserves the right to terminate the Order and any subsequent Orders without any charge or liability.

3.5. **Late Shipment.** If Seller fails to ship Goods in a timely manner, the identified method of transportation would not permit Seller to meet the Delivery Date, Seller shall ship the Goods by air transportation or other means acceptable to BRIDGELUX and Seller shall pay for any resulting increase in the cost of freight.

3.6. **Early Shipment.** BRIDGELUX receives any shipment more than three working days prior to the Delivery Date, BRIDGELUX may either return the Goods or delay processing the corresponding invoice until the Delivery Date.

3.7. **Non-Complying Goods.** Seller shall be responsible for all risk and expenses, including transportation charges, associated with (a) the return of all Non-Complying

Goods (as defined in section 6.1 below), over shipments, and early shipments returned by BRIDGELUX to Seller; and (b) the shipment to BRIDGELUX by Seller of all repaired, replacement and reworked Goods.

## 4. CHANGES

4.1. **Change or Cancellation.** BRIDGELUX may, without any charge or liability, change or cancel any portion of this Order, provided BRIDGELUX gives Seller notice (a) for customized Goods or Services (i.e., supplied exclusively in accordance with BRIDGELUX'S designs or specifications), at least thirty (30) calendar days prior to the Delivery Date; and (b) for all other Goods or Services at any time prior to shipment.

4.2. **Actual Costs.** If BRIDGELUX changes or cancels any portion of this Order after the time periods set forth above, BRIDGELUX shall be responsible for any resulting costs incurred by Seller that cannot be avoided by commercially reasonable mitigation efforts including but not limited to the shipment of Goods, or provision of Services to other parties.

4.3. **Design or Specification Changes.** BRIDGELUX may, without any charge or liability, change, effective upon notice to Seller, BRIDGELUX'S designs or specifications at any time prior to shipment of corresponding Goods or receipt of corresponding Services. If any such change directly affects the prices or delivery schedules of Goods or Services, an equitable adjustment may be made, provided that Seller makes a written claim for an adjustment within 30 days of BRIDGELUX'S notice and prior to shipment of the Goods or provision of the Services, and provided that such equitable adjustment is documented in writing signed by authorized representatives of both parties. If, after reasonable and good-faith efforts, the parties are unable to agree upon the amount of the adjustment, BRIDGELUX may terminate, without any charge or liability, this Order for all such Goods and Services.

4.4. **No Process or Design Changes.** Seller shall not, without the prior written consent of BRIDGELUX, make any process or design changes affecting the Goods.

## 5. QUALITY AND WARRANTY

5.1. **Quality Control.** Seller shall maintain an objective quality program for all Goods and Services in accordance with (a) the latest revision of BRIDGELUX'S Supplier Quality Systems Requirements DWG A-5951-1665-1; and (b) any general specification set forth in this Order or otherwise supplied by BRIDGELUX. Seller shall furnish to BRIDGELUX, upon request, a copy of Seller's quality program and supporting test documentation.

5.2. **Conformance Defects and Liens.** Seller warrants that all Goods and Services shall (a) conform strictly to the specifications, design criteria, quality requirements, descriptions, drawings, samples and other requirements described or referenced in this Order or provided by Seller; (b) be free from defects in design, materials and workmanship; and (c) be free of all liens, encumbrances and other claims against title.

5.3. **Non-Infringement Warranty.** Seller warrants that all Goods and Services do not and shall not infringe any patent, trademark, copyright, trade secret or other intellectual property right of a third party.

5.4. **General Warranties.** Seller warrants that (a) Goods are new and do not contain any used or reconditioned parts or materials, unless otherwise specified or approved by BRIDGELUX; and (b) all Services shall be performed in a professional manner.

5.5. **Duration of Warranties.** All of Seller's warranties referenced in this Order shall be in effect for the longer of either (i) Seller's normal warranty period, or (ii) one year following the date of acceptance of the Goods or Services by BRIDGELUX. All other warranties provided by Seller under this Order shall be in effect perpetually.

## 6. NONCOMPLYING GOODS AND SERVICES

6.1. **BRIDGELUX'S Options.** In addition to the remedies specified in Section 10 below, if any Goods or Service is defective or otherwise not in conformity with the requirements of this Order ("Non-Complying Goods" and "Non-Complying Services", respectively), BRIDGELUX may either (a) return the Non-Complying Goods for repair, replacement or reworking at Seller's expense; (b) repair the Non-Complying Goods itself and recover its reasonable expenses of repair from Seller; or (c) require Seller to re-perform the Services at Seller's expense.

6.2. **Time for Compliance.** If BRIDGELUX returns the Non-Complying Goods, Seller shall return the repaired, replacement or reworked Non-Complying Goods no later than five working days after receipt of the Non-Complying Goods from BRIDGELUX. If BRIDGELUX requires Seller to re-perform the Non-Complying Services, Seller shall re-perform the Services within five working days after notice from BRIDGELUX that Services are defective or not in conformity with the requirements of this Order. The cure period specified in Section 10.1 below shall apply only once to any breach of this section.

6.3. **Failure to Provide Complying Goods.** If Seller fails to return repaired, replacement or reworked Goods to BRIDGELUX within five working days of receipt of Non-Complying Goods as referenced in Section 6.2, BRIDGELUX may reject the Non-Complying Goods, and Seller shall reimburse BRIDGELUX all associated costs paid by or incurred by BRIDGELUX. If BRIDGELUX rejects the Non-Complying Goods, BRIDGELUX may procure, upon such terms and in such manner as BRIDGELUX deems appropriate, replacement Goods. Seller shall reimburse BRIDGELUX upon demand for all additional costs incurred by BRIDGELUX in purchasing any such replacement goods.

6.4. **Failure to Re-Perform Services.** If Seller fails to re-perform the Services within five working days after notice from BRIDGELUX, BRIDGELUX may procure, upon such terms and in such manner as BRIDGELUX deems appropriate, replacement Services. Seller shall reimburse BRIDGELUX upon demand for all additional costs incurred by BRIDGELUX in purchasing any such replacement services.

6.5. **End-of-Life Returns.** Where lawfully required, Seller shall accept from BRIDGELUX, without any charge or liability to BRIDGELUX, any material included in the Goods or their packaging by return freight prepaid by BRIDGELUX.

## 7. LICENSE

7.1. **License Grant.** If Goods include software, Seller grants to BRIDGELUX a non-exclusive, royalty-free, worldwide license to use, import, reproduce, copy, distribute and otherwise disseminate such software in its original form, as well as as integrated into BRIDGELUX products. Seller also grants to BRIDGELUX a non-exclusive, royalty-free, worldwide license to use, import, distribute and offer for sale any copies of the software purchased that remain in the original shrink-wrapped packaging. If Goods include documentation, Seller grants to BRIDGELUX a non-exclusive, royalty-free, worldwide license to use, reproduce, distribute and prepare derivative works in BRIDGELUX'S name all documentation furnished by Seller. BRIDGELUX may reproduce such documentation without Seller's logo or other identification of source, subject to affixing all copyright notices to all copies of such documentation, and Seller hereby waives and shall cause to be waived all applicable moral rights with respect to such documentation. These rights with respect to software and documentation shall extend to (a) third parties to use and reproduce the Goods for BRIDGELUX'S internal use; and (b) third-party

channels of distribution.

## 8. INDEMNIFICATION, INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

8.1. **Indemnification.** Seller agrees to defend, indemnify and hold harmless BRIDGELUX and its affiliates, subsidiaries, agents, subcontractors and customers from and against all claims, losses, demands, fees, damages, liabilities, costs, expenses (including attorney's fees), obligations, causes of action, suits or injuries of any kind or nature arising from, in connection with or related in any way to any breach or alleged breach of this Order or any of the warranties made by Seller or any actual or claimed infringement of patents, trademarks, service marks, trade secrets or copyrights with respect to the Goods or Services.

8.2. **Infringing Goods And Services.** Without limiting the above remedy, if BRIDGELUX'S use of any Goods or receipt of any Service is enjoined because of any actual or claimed infringement of patent, trademark, copyright, trade secret or other intellectual property right of a third party (collectively, "Infringing Product"), Seller shall at its expense use its best efforts to procure the right for BRIDGELUX to continue using or receiving the Infringing Product. If Seller is unable to do so, Seller shall at its expense (a) replace the Infringing Product with non-infringing goods or service (as applicable) without loss of functionality; (b) modify the Infringing Product to be non-infringing; or (c) if unable to replace or modify the Infringing Product, refund in full all costs paid by BRIDGELUX for the Infringing Product and reimburse BRIDGELUX upon demand for all additional costs incurred by BRIDGELUX in purchasing any replacement goods or services.

8.3. **Removal of BRIDGELUX'S Trademarks.** Unless otherwise specified or approved by BRIDGELUX, Seller shall remove BRIDGELUX'S name and any of BRIDGELUX'S trademarks, trade names, insignia, part numbers, symbols or creative designs from all products rejected or returned by BRIDGELUX or not sold or shipped to BRIDGELUX.

8.4. **Confidential Information.** Except as required to supply Goods or Services pursuant to this Order or as otherwise instructed by BRIDGELUX, Seller shall not use or disclose any confidential information of BRIDGELUX. Confidential information includes, without limitation, information designated by BRIDGELUX as confidential; all information or data concerning BRIDGELUX'S Goods (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to any BRIDGELUX information assets systems ("IAS"), including but not limited to, computers, networks and voice mail; and any other information that is of such nature that a reasonable person would believe to be confidential.

8.5. **Limited IAS Access.** Seller's access to BRIDGELUX'S IAS is limited to those specific IAS, time periods and personnel authorized by BRIDGELUX, and is subject to BRIDGELUX'S standard protection policies. Any other access is expressly prohibited. Seller warrants that it shall comply with these obligations and that access granted hereunder shall not impair the integrity and availability of BRIDGELUX'S IAS. BRIDGELUX may audit Seller to verify compliance. Seller warrants that each employee, agent or subcontractor who performs work pursuant to this Order has been informed of the obligations contained herein and has agreed to be bound by them.

## 9. LEGAL COMPLIANCE

9.1. **General Compliance.** Seller shall comply with all applicable federal, state, local and foreign laws, rules, and regulations. Without limiting the generality of the foregoing sentence, Seller warrants the following:

9.1.1. **Environmental Compliance.** All Goods and their packaging shall comply with all applicable environmental, health and safety (EHS) laws, rules, and regulations, including The General Specification for the Environment (GSE) DWG A-5951-1745-1.

9.1.2. **Chemical Substances.** Each chemical substance contained in Goods is on the inventory of chemical substances compiled and published by the U.S. Environmental Protection Agency pursuant to the Toxic Substances Control Act, and all required Material Safety Data Sheets, Chemical Safety Data Sheet and all other product-content information shall be provided to BRIDGELUX prior to or with the shipment of the Goods and shall be complete and accurate.

9.1.3. **Substance Classification.** No Goods nor any component of any Goods contains any "Class I substance" or "Class II substance" as those terms are defined by U.S. law at 42 U.S.C. Section 7671, as now in existence or hereafter amended; or has been manufactured with a process that uses any Class I substance or Class II substance within the meaning of U.S. law at 42 U.S.C. Section 7671(d) (2), as now in existence or hereafter amended; and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. We further certify that any and all additional contract deliverables shall be produced in compliance with the same requirements."

9.1.4. **Procurement Regulations.** If the Goods and Services are to be sold by BRIDGELUX under a contract or subcontract with the U.S. government, all applicable procurement regulations required by U.S. law or regulation to be inserted in contracts or subcontracts apply to this Order.

9.1.5. **Fair Labor Practices.** Seller shall comply with all applicable laws, rules, information or documentation of Seller's compliance with applicable laws, rules and regulations, as well as any other information or documentation required to enable BRIDGELUX to comply with such laws, rules and regulations applicable to its use of any Goods or receipt of any Service.

## 10. BREACH

10.1. **Breach by Seller.** If Seller breaches any provision of this Order, BRIDGELUX may terminate the whole or any part of this Order, unless Seller is in compliance with all applicable laws, rules and regulations within ten (10) working days after receipt of BRIDGELUX'S notice of breach.

10.2. **Definition of Breach.** For purposes of section 10.1 above, the term "breach" shall, without limitation, include (a) any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Seller;

(b) the appointment, with or without Seller's consent, of a receiver or an assignee for the benefit of creditors; (c) Seller's failure to provide BRIDGELUX, upon request, with reasonable assurances of performance; or (d) any other failure by Seller to comply with this Order.

10.3. **Consequences.** In the event that BRIDGELUX terminates this Order in whole or in part as provided above, BRIDGELUX may procure, upon such terms and in such manner as BRIDGELUX deems appropriate, replacement goods or services, and Seller shall reimburse BRIDGELUX upon demand for all additional costs incurred by BRIDGELUX in purchasing such replacement goods or services.

10.4. **Rights and Remedies.** The rights and remedies granted to BRIDGELUX pursuant to this Order are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

## 11. IMPORT/EXPORT REQUIREMENTS

11.1. **General Compliance.** Seller shall comply with all applicable import and export requirements, and shall furnish to BRIDGELUX, upon request, information or documentation of Seller's compliance, as well as any other information or documentation required to enable BRIDGELUX to comply with such requirements applicable to its receipt of any Goods. Without limiting the generality of the foregoing sentence, Seller warrants the following:

11.1.1. **Certification.** Upon BRIDGELUX'S request, Seller shall provide BRIDGELUX with an appropriate certification stating the country of origin for Goods, sufficient to satisfy the requirements of (a) the customs authorities of the country of receipt; and (b) any applicable export control requirements, including those of the United States.

11.1.2. **Required Marking.** All Goods shall be marked (or the container shall be marked if there is no room on the Goods themselves or unless exempted from marking) with the country of origin, and shall be in compliance with the requirements of the customs authorities of the country of receipt.

11.1.3. **Commercial Invoice.** Seller shall issue a commercial invoice containing, without limitation, the following information: invoice number, invoice date, name and address of the shipper, name and address of the seller (if different from the shipper), name and address of consignee, name and address of the buyer (if different from the consignee), a detailed description of the Goods, model number, BRIDGELUX part-numbers, serial number of Goods (if goods are serialized), BRIDGELUX-assigned Harmonized Tariff Schedule (HTS) number for the destination country, order number, box number, total number of boxes, total box weight (in kilograms), country of origin, quantities in the weight and measure of the country to which the Goods are shipped, unit price of each Good, value of any customs assays, total invoice value, currency of the invoice, invoice type, Incoterms 2000 term of sale, carrier name and bill of lading number. The invoice must be issued in the language required by the country to which the Goods are shipped.

11.2. **Importer of Record.** If any Goods are imported, Seller shall when possible allow BRIDGELUX to be the importer of record, unless otherwise specified or approved by BRIDGELUX. If BRIDGELUX is not the importer of record and Seller obtains duty drawback rights to the Goods, Seller shall furnish to BRIDGELUX, upon request, information and documentation required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to BRIDGELUX.

## 12. MISCELLANEOUS

12.1. **Assignment.** Neither party may, directly or indirectly, in whole or in part, either by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this Agreement without the other party's written consent. Any attempted assignment, transfer or delegation without prior written consent shall be void. Notwithstanding, either party, may, without obtaining the prior written consent of the other party, assign or transfer this Agreement or delegate any rights or obligations hereunder: (1) to any entity controlled by, or under common control with such party, or its permitted successors or assigns; or (2) in connection with merger, reorganization, transfer, sale of assets or product lines, or change of control or ownership of such party, or its permitted successors, assigns or transferees; provided, however, that, prior to such assignment or transfer, such party shall provide the other party hereto with reasonable assurances that the performance of all of such party's obligations hereunder shall continue after such assignment or transfer. Such assurances shall include, without limitation, reasonable assurances from Supplier that BL shall continue to receive its supply of Products hereunder, or reasonable assurances from BL that Supplier shall continue to receive timely payments as required under any Purchase Orders. Without limiting the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

12.2. **Waiver.** The waiver of any term or condition of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition, nor as a waiver of any subsequent breach of the same term or condition.

12.3. **Choice of Law.** The laws of the State of California, without giving effect to any conflicts of laws principles, and each party hereby expressly consents to the personal jurisdiction and venue in the state and federal courts of Santa Clara County, California for all disputes arising from or related to this Order.

12.4. **LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, UNLESS EXPRESSLY PROVIDED OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, NOTWITHSTANDING THE FOREGOING. SELLER SHALL BE RESPONSIBLE FOR ANY DAMAGES OF ANY KIND UNDER SECTIONS 8 AND 9 ABOVE.**

12.5. **Restrictions on Advertising and Promotion.** Nothing in this Order shall be construed to preclude BRIDGELUX from producing, distributing or marketing the same or similar goods or services as the Goods or Services provided under this Order or purchasing such same or similar goods or services from other third parties.

12.6. **Severability.** If a body of competent jurisdiction holds any term or provision of this Order to be invalid or unenforceable, such term or provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions