

**Rochester Precision Optics**  
**Standard Terms and Conditions for Vendors**  
(RPO-TCV rev. 20190507c, effective May 7, 2019)

**1. Terms and Conditions Applicable**

These terms and conditions ("Terms and Conditions") shall apply to the purchase by Rochester Precision Optics, LLC ("RPO" or "Buyer") of any Goods or Services provided by seller ("Seller," "Supplier" or "Vendor") as described in an order.

Any offer or quote made by Seller, any acceptance by Seller of any offer or purchase order by Buyer, and any contract formed by Buyer and Seller is expressly conditioned upon Seller's agreement to these Terms and Conditions. A contract is formed only upon the express condition that Seller assents to all terms herein and terms incorporated by reference, including terms that are consistent with, different from and additional to any terms in Seller's offer or acceptance, if any; if Seller does not assent, this document shall serve solely as an offer or counteroffer, and shall not cause or be deemed to cause any contract between the Parties to come into effect.

Except with respect to a Prior Agreement between the Parties (see Prior Agreement defined herein), if any, Buyer expressly objects to and rejects any additional, different, conflicting or inconsistent terms submitted by Seller at any time, including previously and subsequently, whether in an order, acceptance, or otherwise, and notification of such objection and rejection is hereby given.

These Terms and Conditions do not supersede any effective and applicable confidentiality or nondisclosure agreements between Buyer and Seller. Seller's failure to make written objection within five (5) days of receipt of these Terms and Conditions shall constitute Seller's acceptance of these terms and conditions.

Regardless of its construction as an offer, acceptance, confirmation or use to place orders for Goods or Services pursuant to an earlier contract, these terms incorporate by reference all terms of the Uniform Commercial Code or its corresponding and applicable state statutes ("UCC") providing any protection for Buyer, including, without limitation, all express and implied warranty protections and all Buyer's remedies.

**2. Definitions**

**"Anti-Corruption Laws"** means: any and all anti-bribery, anti-kickback, anti-corruption and similar laws, statutes, regulations, codes, and official guidance applicable to any Party, including, without limitation, U.S. Foreign Corrupt Practices Act of 1977 (FCPA), as amended (15 U.S.C. §§ 78dd-1 et seq.); similar provisions of the U.S. Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS); the Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Convention of 1997; the U.K. Bribery Act of 2010; European Union and Council of Europe anti-bribery rules; and other similar laws.

**"Change in Control"** means: the sale or transfer of all or substantially all the assets of a Party; any merger, consolidation, or acquisition of a Party with, by, or into another corporation, company, entity, or person; or any change in the ownership of fifty percent

(50%) or more of the voting capital stock or equity of a Party in one or more related transactions.

**"Conflict Minerals Laws"** means: any and all applicable laws and regulations relating to minerals and substances defined by the Securities and Exchange Commission (SEC) at 17 C.F.R. §§ 240, 249b (Dodd-Frank Act § 1502) ("Conflict Minerals").

**"Export Control Laws"** means: the import, customs, export control, sanctions and U.S. anti-boycott laws, regulations, and orders applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data, Goods or Services including, without limitation, (i) Export Administration Regulations (EAR) administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 C.F.R. §§ 730–74; (ii) International Traffic in Arms Regulations (ITAR) administered by Directorate of Defense Trade Controls (DDTC), U.S. Department of State, 22 C.F.R. §§ 120–30; (iii) Arms Export Control Act of 1976 (AECA), 22 U.S.C. § 39; (iv) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury, 31 C.F.R. §§ 500–598; (v) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (vi) International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701 et seq.; (vii) Customs regulations administered by U.S. Customs and Border Protection, Title 19 U.S.C. and Title 19 C.F.R.; and (viii) applicable import, customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.

**"Force Majeure"** means: any event or cause beyond the reasonable control of a Party that prevents performance by that Party, including, without limitation, any Act of God, fire, flood, natural disaster, unusually severe weather, accident, riot, act of government, war, embargo, quarantine, epidemic, strike or labor dispute, shortage of materials or supplies, failure of transportation or communication, or failure of suppliers of goods or services.

**"Intellectual Property"** or **"IP"** means: all copyrights, database rights, industrial design or property rights, inventions, know-how, mask works, moral rights, patents and patent rights, proprietary information, publicity rights, service marks, software, trade secrets, trademarks, all rights attaching to such property, as well as any other intellectual property rights recognized under applicable law. Such IP includes, without limitation, data, designs, drawings, instructions, prints, processes, reports, specifications, and technical information.

**"Order"** (noun) means: regardless of capitalization, any mutually accepted purchase order, agreement, or contract between the Parties, including the corresponding Related Agreement Documents, to which these Terms and Conditions are attached, referenced, or otherwise incorporated.

**"Party" or "Parties":** Buyer and Seller are each a "Party," and together the "Parties."

**"Personal Data"** means: any information by which a natural person may be identified. Such information may relate to the person's private, professional or public life, and may include, without limitation, names; identification numbers; location data; identifiers to factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; phone numbers; home and work addresses; photographs; email addresses; bank details; posts on websites; medical information; and computer IP addresses.

**"Personal Data Protection Laws"** means: the European Union General Data Protection Regulation 2016/679, the United Kingdom Data Protection Act of 2018, and any other similar and applicable laws and regulations protecting Personal Data.

**"Prior Agreement"**: see relevant section below.

**"Goods"** and **"Services"** shall be synonymous and interchangeable for the purposes of these Terms and Conditions. Goods and Services shall not include, assign, convey or transfer from Seller to Buyer any rights or ownership in any Intellectual Property, and any such IP developed by Seller in the course of providing Services shall not be considered work made for hire, unless Buyer and Seller have expressly contracted in writing for the purpose of such IP transfer and Buyer has fully paid Seller for same.

**"Related Agreement Documents"** (singular or plural) means: any documents (a) incorporated by reference by Terms and Conditions; (b) Seller-authored or Seller-signed documents that incorporate by reference, or are attached to, these Terms and Conditions; (c) Seller-authored or Seller-signed documents that identify or describe the Goods, Services or related agreement terms, including, without limitation, applicable quotes, sales order acknowledgments, delivery documents, or other related agreement documents; and (d) Seller's sales order acknowledgments and the corresponding Buyer's purchase orders accepted by Seller.

### 3. **Prices and Shipping; Taxes; Payment Terms**

(A) Buyer shall pay the purchase price set forth on the face of the attached order or other Related Document, including appropriate nominal handling charges. Pricing and shipping shall be DAP (Incoterms 2010) freight pre-paid to Buyer's location.

(B) Any and all taxes or fees imposed by any federal, state, municipal, or other governmental authority applicable to the Goods, together with any freight, insurance, duties, tariffs, and brokerage charges, shall be included in the price and paid by Buyer, except where Buyer has provided a proper certificate of exemption therefrom. Seller shall be responsible for the payment of such taxes and fees if not included in the invoice price.

(C) Unless otherwise expressly agreed by Buyer in writing, Buyer shall make full payment for Goods ordered: (i) within thirty (30) days of the date that Seller delivers Goods to Buyer; (ii) within thirty (30) days of the date of the mailing of Seller's invoice to Buyer; (iii) within thirty (30) days of the electronic, digital, facsimile, email or express courier delivery of Seller's invoice to Buyer; whichever is later. All prices and charges are denominated and shall be paid in United States currency.

### 4. **Shipment; Risk of Loss**

Title and risk of loss to the Goods shall pass to Buyer according to the shipping terms provided in Section 3(A) (Prices and Shipping). Passage of title and/or risk of loss shall not be affected by other delivery terms, shipping instructions, or storage on Buyer's behalf by Seller at its facilities. Seller shall obtain adequate insurance to cover the Goods until the risk of loss has passed from Seller to Buyer.

## 5. Orders Subject to Licenses

Purchase orders, sales order acknowledgements, and other acceptance of order terms shall be subject to and conditional upon the Parties obtaining any necessary and applicable export licenses or other governmental agency authorization, if needed; agency denial of any application for such license or authorization shall be deemed to rescind, annul, void, cancel, or terminate such orders and all acceptance of such orders without cost or liability to either Party; agency terms attached to the granting of such license or authorization shall apply to the related purchase orders and acceptance of the transaction by the Parties.

## 6. Inspection and Rejection

Buyer will fully inspect all Goods within thirty (30) days of delivery ("Inspection Period"). In the event that such inspection reveal any nonconformity, other than nonconformity caused after risk of loss passed to Buyer, Buyer shall notify Seller in writing as per Section 7 (Warranty).

## 7. Warranty

Seller warrants its Goods to be free from defects in materials and workmanship and to conform to mutually agreed-upon specifications for a period of one (1) year after delivery to Buyer ("Warranty"). Seller shall promptly replace, repair or rework defective Goods, or return that portion of the purchase price applicable to such defective Goods, as mutually agreed by Buyer and Seller. If the Goods have been designed by Seller for Buyer in whole or in part, Seller warrants the portion of such Goods designed by Seller to be merchantable and fit for the purpose intended.

## 8. Limitation of Liability

Neither Party shall be liable to the other Party for loss of business revenue, profit or any other economic loss, or any incidental, indirect, special, exemplary, punitive or consequential damages. In the event that a jurisdiction does not allow exclusions or limitations of liability, each Party's liability will be limited to the greatest extent permitted by law in the subject jurisdiction.

## 9. Indemnification

Buyer shall Indemnify Seller only for the portion of any liability, damage or injury attributable to Buyer, and Seller shall Indemnify Buyer only for the portion of any liability, damage or injury attributable to Seller.

## 10. Confidential Information

(a) Proprietary Information. In the absence of an effective and applicable nondisclosure agreement mutually signed by the Parties, a disclosing Party's ("Discloser") information disclosed to the receiving Party ("Recipient") shall be deemed confidential and proprietary information ("Proprietary Information") and protected against unauthorized disclosure and use for five (5) years: (i) if such information is in physical, human- or machine-readable form, and the information has been clearly marked or labeled by Discloser as "[Discloser Party name] Proprietary," "[Discloser Party name] Confidential," "[Discloser Party name] Private," or with words of similar meaning, or (ii) if such information is disclosed in a form

not capable of bearing a label as provided above, is identified by Discloser as confidential at the time of disclosure, and is designated as confidential in a writing, delivered to Recipient within twenty (20) days of disclosure, describing the information sufficiently for identification and identifying the place and date of such disclosure and the names of each Party's representatives who disclosed and received such information, or (iii) if the nature of the information or the context of the disclosure to Recipient is such that the information would reasonably be understood to be confidential or proprietary.

(b) Order Is Confidential: Notwithstanding any other terms to the contrary, the terms of any order by a Party or agreement between the Parties shall be deemed Proprietary Information.

(c) Trade Secrets. Recipient's obligations regarding the Discloser's Proprietary Information, including obligations of nondisclosure and non-use, shall survive (i) provided that Discloser has labeled or identified in writing such Proprietary Information as a "trade secret" consistent with this section, and (ii) so long as such Proprietary Information remains legally protected or protectable as a trade secret under applicable law.

## 11. Governing Law and Dispute Resolution

These Terms and Conditions, and any applicable purchase orders and agreements, shall be governed, construed and interpreted by, and in accordance with, the laws of the State of New York, USA, without regard to any applicable choice-of-law or conflict-of-law rules. The Parties agree that jurisdiction and venue shall be proper in the state and federal courts in Monroe County and the city of Rochester in the State of New York, USA, and Seller hereby accepts the pertinent secretary of state, or other applicable government authority that has authorized or regulates the Seller's corporate formation or status, as agent for receiving service of process on behalf of Seller. This Agreement excludes the application of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (and any amendments or successors thereto).

The Parties shall endeavor to promptly settle any dispute that arises hereunder by direct negotiation between their managing directors or similar senior executives.

If direct negotiation fails to resolve the dispute, it shall be settled by final and binding arbitration conducted in English by a single arbitrator, who shall be a fully qualified lawyer. Arbitration of disputes involving purely U.S. domestic transactions or issues, or in which the Parties' principal places of business with respect to the dispute are located in the United States, shall be governed by rules of the American Arbitration Association; all other arbitration shall be governed by the International Arbitration Rules of the International Centre for Dispute Resolution. The Parties may undertake to carry out any arbitration award, without delay, under the terms of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention") or other applicable conventions or treaties. Arbitration proceedings will be confidential; no Party will publicize the nature of any dispute or the outcome of any arbitration proceeding except to the extent required by applicable law, provided in such case the Party required to make any disclosure informs the other Party of such requirement to allow the other Party to seek a protective order. The arbitrator will issue appropriate protective orders to safeguard each Party's confidential information disclosed in the arbitration.

## **12. Attorney's Fees**

If it is necessary for either Party to obtain legal representation to enforce any part of these Terms and Conditions or applicable Related Agreement Documents, the non-prevailing Party agrees to bear reasonable court costs and other tribunal or dispute resolution costs and reasonable attorney fees of the prevailing Party.

## **13. Severability**

If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any Party. Upon such determination that any provision is invalid, illegal or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

## **14. Remedies**

Except as expressly provided herein, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

## **15. Non-Solicitation**

Neither Party will directly solicit to hire, employ, contract, or otherwise engage any employee, former employee, contractor or former contractor of the other Party, with whom their personnel have had contact in the course of performance of any agreement to which these Terms and Conditions apply, and for an additional period of twelve (12) months after the term of such agreement, without prior written consent of the other Party. This section shall not apply to non-solicited, non-recruited responses to general advertisements for employment.

## **16. Compliance with Applicable Laws and Regulations: International Trade and Export Control; Anti-Corruption; Conflict Minerals; Personal Data; Counterfeit Goods**

(A) Seller shall comply with all laws and regulations that are applicable to this order or agreement, and to the provision of products and services identified therein, including applicable International Trade and Export Control Laws, Economic Sanctions (e.g., CAATSA 2017), Trade Embargoes, Anti-Corruption Laws, Conflict Minerals Laws, and Personal Data Protection Laws. Seller shall not, by any act or failure to act, cause Buyer to be liable under, or to be in jeopardy of liability under, such laws and regulations. Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer against that portion of any and all claims, charges, penalties and any other liabilities whatsoever attributable to Seller's breach of this section. Breach of this section shall constitute a material breach of these Terms and Conditions and any related order or agreements, and Buyer shall be entitled to terminate any such order or agreement, at its discretion, upon written notice to Buyer without cost or liability to Seller.

(B) Seller accepts and agrees to the terms of Buyer's Anti-Corruption Policy (available on Buyer's website, [www.rpoptics.com](http://www.rpoptics.com), or upon request), hereby incorporated by reference as if set forth fully herein.

(C) Seller represents that it shall not furnish "counterfeit goods" to Buyer, defined as Goods or separately-identifiable items or components of Goods that may without limitation: (i) be an unauthorized copy or substitute of an original equipment manufacturer or original component manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes, or (vi) fail to meet the requirement of an "Approved Part" as defined in U.S. Federal Aviation Administration ("FAA") Advisory Circular 21-29C and any updated version thereof. Counterfeit goods shall be deemed non-conforming, and in addition to any other rights Buyer may have at law or pursuant to an order, the Agreement or these Terms and Conditions, Seller shall disclose the source of the counterfeit good to Buyer and cooperate with Buyer with respect to any investigations or remedial actions undertaken by Buyer.

(D) Seller shall provide to Buyer, upon Buyer's reasonable request, the identity of its suppliers and/or the location of manufacture of the Goods or any subcomponents of the Goods, as applicable, to confirm compliance with legal and regulatory requirements, the Agreement, the order and/or these Terms and Conditions.

## **17. Force Majeure**

Neither Party shall be deemed in default or otherwise liable hereunder for any delay or failure of performance (other than payment obligations) resulting from Force Majeure, provided that the Party affected by Force Majeure cause gives written notice to the other Party within ten (10) days of learning of such cause.

## **18. Termination for Default; Change in Control**

Each Party shall give the other Party reasonable advance notice of, but no less than thirty (30) days' notice of, any Change in Control of the first Party. Upon such notice, both Parties shall reasonably cooperate and assist the other Party with any such transition in good faith for the purpose of maintaining the validity and effectiveness of any related agreement. Notwithstanding the foregoing, each Party shall retain the right to terminate any related agreement in the event that such Change in Control would create a conflict of interest or would conflict with that Party's business activities, policies, or strategy.

## **19. Survival**

Provisions hereunder that by their terms, sense, or context are intended to survive expiration or termination, including but not limited to confidentiality obligations, shall survive these Terms and Conditions and any applicable agreement.

## **20. Relationship of the Parties**

The relationship between the Parties will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.

## **21. Assignment; Delegation; Subcontracting**

This Agreement is not assignable by any Party without prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, that a Party may, without consent, assign this Agreement as a result of a Change in Control, or to a parent, subsidiary or affiliate corporate entity as part of an internal company reorganization. This Agreement shall be binding upon, and will inure to the benefit of, the Parties and their respective successors and permitted assigns.

Notwithstanding the foregoing, Seller may not delegate or subcontract any of its obligations under this Agreement without RPO's written consent, which may be revoked at any time. Seller must enter into a written agreement with its subcontractor that contains terms that are at least as protective of RPO as the terms of this Agreement. Seller will remain liable for all subcontracted obligations and all acts or omissions of its subcontractors.

## **22. Order of Precedence; Prior Agreement Governs**

(A) These Terms and Conditions shall govern the agreement between Buyer and Seller. In the event of differences or conflicts between these Terms and Conditions and any other applicable agreement documents, the order of precedence, in order of decreasing authority, shall be as follows:

- (i) Any written agreement terms signed by both Parties that expressly supersede the documents identified in this subsection 26(A);
- (ii) These Terms and Conditions;
- (iii) Seller's Sales Order Acknowledgment, or any similar order acceptance terms provided by Seller to Buyer;
- (iv) Buyer's purchase order;
- (v) Seller's written quote provided to Buyer;
- (vi) Any other written agreement terms executed by Buyer and Seller.

(B) Notwithstanding the foregoing, in the event that Buyer and Seller have previously agreed, in a writing signed by both Parties, to terms or any other form of written agreement ("Prior Agreement"), and that Prior Agreement (a) expressly supplements or supersedes these Terms and Conditions, and (b) has not expired, and has not been expressly terminated or superseded, then, in the event of a conflict between the Prior Agreement and these Terms and Conditions, the Prior Agreement shall govern with respect to that conflict.

## **23. Hold Harmless – Work on RPO Premises**

In the event Seller, its agents, and/or employees perform this order or contract or any part thereof on the premises of RPO (including any premises under RPO control or

responsibility), Seller agrees (a) to save harmless and defend RPO from and against any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorneys' fees arising out of claims on account of, or in any manner predicated upon loss of, or damage to the property of, the injuries to, or the death of, any or all persons whatsoever (including employees of Seller), in any manner caused or contributed to by Seller, its agents or employees while in, upon, or about RPO's premises, and (b) to indemnify and save RPO harmless, from and on account of damages or liability of any kind which RPO may suffer as a result of the acts of any of Seller's agents or employees in or about the area involved. RPO reserves the right to participate in the defense of any such suit without relieving Seller of any obligation thereunder. Seller shall not employ, or engage, in the performance of the work any person unfit or unskilled in the work assigned to it. The foregoing obligations of Seller shall not apply to any such loss, damage, injury or death proximately and solely caused by the negligent acts or omissions of RPO or its employees.

[ End of Terms and Conditions. ]