

**Rochester Precision Optics**  
**Standard Terms and Conditions for Sellers**  
(rev. 20180416a, effective April 16, 2018)

**1. Terms and Conditions Applicable**

These terms and conditions ("RPO-TCSs") shall apply to the purchase by Rochester Precision Optics, LLC ("RPO" or "Buyer") of any Goods and/or Services from Seller as described on the face hereof, attached hereto, or in Related Agreement Documents (defined herein).

Any offer or purchase order made by Buyer, and any acceptance by Buyer of any offer or quote by Seller, is expressly conditioned upon Seller's agreement to these RPO-TCSs. A contract is formed only upon the express condition that Seller assents to any terms herein, and any terms incorporated by reference, that are different from or additional to any terms in Seller's offer. If Seller does not assent, this document shall serve solely as a counteroffer, and shall not cause any contract between the Parties to come into effect.

Buyer expressly rejects any additional, different, conflicting or inconsistent terms previously or subsequently submitted by Seller, whether in a quote or otherwise, and to the extent there are any differences between terms submitted by Seller and these RPO-TCSs, these RPO-TCSs and any document to which they are attached shall be construed as a counteroffer and not an acceptance of Seller's terms, except with respect to a Prior Agreement (see Prior Agreement terms below).

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

**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"**: are defined by the Securities and Exchange Commission (SEC) at 17 C.F.R. §§ 240, 249b (Dodd-Frank Act § 1502).

**"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) 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; (iv) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (v) International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701 et seq.; (vi) Customs regulations administered by U.S. Customs and Border Protection, Title 19 U.S.C. and Title 19 C.F.R.; and (vii) 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.

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

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

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

**"Related Agreement Documents"** (singular or plural) means: any documents (a) incorporated by reference by RPO-TCSs; (b) Buyer-authored or Buyer-signed documents that incorporate by reference, or are attached to, RPO-TCSs; (c) Buyer-authored or Buyer-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) Buyer's purchase order and the corresponding Seller's quote accepted by Buyer.

### 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 FCA (Incoterms 2010) Seller's facility, freight pre-paid to Buyer's destination, or in the case of international shipments, shall be CPT (Incoterms 2010) Buyer's destination, freight pre-paid.

(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 added to the price and paid by Buyer, except where Buyer has provided a proper certificate of exemption therefrom. Buyer shall be responsible for the payment of such taxes and fees even if not added to the invoice price.

(C) Unless otherwise agreed to by Buyer, any invoices shall be payable no sooner than thirty (30) days following the date of delivery of Goods to Buyer. All prices and charges are denominated and shall be paid in United States currency.

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

Title and risk of loss shall pass to Buyer as soon as the Goods have been delivered to the carrier for shipment to Buyer per shipping terms provided in Section 3(A) (Prices and Shipping). Passage of title and/or risk of loss shall not be affected by delivery terms, shipping instructions, or storage on Buyer's behalf by Seller at its facilities. Upon written notice to Buyer, Seller may elect to obtain insurance covering the Goods during shipping, and Buyer shall promptly reimburse Seller the cost thereof.

#### **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 Standard and/or Custom Goods delivered within thirty (30) days of receipt ("Inspection Period"). In the event that such inspection and testing reveal any deficiency or nonconformity, Buyer shall notify Seller in writing as per Section 7 (Warranty).

#### **7. Warranty**

(A) Seller warrants its Goods to be free from defects in materials and workmanship and to conform to Seller's standards or agreed-upon specifications, whichever are applicable for such Goods, for a period of one (1) year after delivery to Buyer by Seller or an authorized reseller, provided that Buyer notifies Seller in writing of any such defects or nonconformity within thirty (30) days of (i) receipt by Buyer or (ii) first evidence of a latent defect that would not have been discoverable by Buyer through due diligence and reasonable inspection appropriate for the type of Goods at issue, whichever is later ("Warranty"). The sole and exclusive obligation of Seller under this Warranty is limited, at Seller's option, to the

replacement, repair or reworking of defective Goods, or the return of that portion of the purchase price applicable to defective Goods. The determination of whether a claimed defect or nonconformity is covered by this Warranty shall be at Seller's discretion, and such claims shall not be unreasonably denied.

(B) Seller makes NO WARRANTY with respect to any Goods that have damage, nonconformity, or failures occurring after passage of title to Buyer and resulting from: (1) abnormal conditions of temperature; abuse; accident; alteration; corrosion; dirt; disaster; improper handling, installation, maintenance, operation, storage, or testing; misuse; modification; moisture; neglect; or negligence; (2) modification or repair by anyone other than an authorized representative of Seller; (3) failure of Goods to meet Buyer-provided specifications where Seller previously indicated the Goods may not meet Buyer's specifications; or (4) ordinary wear and tear.

(C) Seller is not responsible for expenses incurred by Buyer to correct or repair any alleged defect unless pre-approved by Seller in writing.

(D) Buyer must inspect Goods within the Inspection Period. To return any Product, Buyer must obtain a Return Authorization Number, which will expire after thirty (30) days. All Goods returned for warranty service must be returned in the original packaging and protected by an appropriate shipment carton. Buyer is responsible for risk of loss and all costs associated with the return of Goods to Seller. For returned Goods found to be conforming, Buyer is responsible for the costs of diagnosis and testing, and costs of shipping the conforming Goods back to Buyer. Seller will bear the cost of shipping new, repaired or reworked Goods to Buyer for the purpose of replacing Goods found to be defective or nonconforming (valid warranty claims).

(E) Seller's Warranty does not extend to materials or equipment purchased by it from other manufacturers and resold (either in its original form or as a component of the Goods) to Buyer, and Seller assigns to Buyer any transferable rights it may have arising from warranties given by any such manufacturer with respect to such materials or equipment.

(F) Seller makes no other express warranties, and disclaims implied warranties of any kind, including warranties of merchantability and fitness for a particular purpose.

## **8. Limitation of Liability**

The sole and exclusive remedies of Buyer for any claim or cause of action shall be those specifically set forth in Section 7 (Warranty). Buyer agrees that Seller's liability for any and all claims shall be limited to general money damages and shall not in the aggregate exceed the amounts paid by Buyer to Seller for the corresponding Goods involved.

Under no circumstances shall Seller be liable to buyer or any third 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, Seller's liability will be limited to the greatest extent permitted by law in the subject jurisdiction.

Buyer agrees that, regardless of any claim it may have against Seller, including successful claims, Buyer will continue to pay all invoices and charges that may come due during the

term of any applicable agreement until expiration or termination of such agreement according to its terms.

The limitations and exclusions provided in this section shall apply to all claims or causes of action individually and in the aggregate, whether for breach of warranty or for any other claim, whether asserted in contract or tort (including negligence, misrepresentation, and strict liability), and regardless of whether the Party has advised or has been advised of the possibility of any such loss or damage. Buyer waives any claim that these limitations or exclusions deprive Buyer of an adequate remedy.

## **9. Indemnification**

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

## **10. Confidential Information**

The Parties shall enter into Buyer's Nondisclosure Agreement, unless an alternate agreement is mutually agreed upon, to set forth the terms and conditions applicable to confidential information.

## **11. Nonpayment**

In the event of nonpayment, Seller may exercise all rights and remedies under applicable Uniform Commercial Code provisions, and any other rights and remedies to which it is entitled at law or equity.

## **12. [ Reserved ]**

## **13. [ Reserved ]**

## **14. Governing Law and Dispute Resolution**

These RPO-TCSs, 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 Buyer hereby accepts the pertinent secretary of state, or other applicable government authority that has authorized or regulates the Buyer's corporate formation or status, as agent for receiving service of process on behalf of Buyer. 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.

#### **15. Attorney's Fees**

If it is necessary for either Party to obtain legal representation to enforce any part of these RPO-TCSs 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.

#### **16. 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.

#### **17. 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.

#### **18. [ Reserved ]**

#### **19. 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 RPO-TCSs 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.

## 20. Compliance with Laws

(A) Seller agrees that in the performance of the Purchase Order it shall comply with all applicable foreign, federal, state, and local laws, regulations, rules and orders, and Executive Orders, and Seller shall procure all necessary licenses, permits, and pay all fees, and other required charges, and shall comply with all applicable policies and guidelines (individually and collectively, "Applicable Laws").

(B) Applicable Laws include, without limitation:

(i) Export Control Laws, including without limitation, U.S. International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120–130; U.S. Export Administration Regulations (EAR), 15 C.F.R. 730–774; and other comparable U.S. and non-U.S. laws;

(ii) Anti-Corruption Laws, including without limitation, U.S. Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd-1, *et seq.*;

(iii) Child Labor Laws, including without limitation, U.S. Fair Labor Standards Act, 29 U.S.C. 203;

(iv) Conflict Minerals Laws, including without limitation, Securities and Exchange Commission (SEC) regulations, 17 C.F.R. 240 and 249b (Dodd-Frank Act § 1502);

(v) Acquisition Regulations, including without limitation, U.S. Federal Acquisition Regulations ("FAR") and U.S. Department of Defense FAR Supplement ("DFARS"), as applicable;

(C) and each Party shall perform appropriate due diligence regarding its supply chain in order to ensure compliance with all such Applicable Laws.

## 21. 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.

## 22. 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.

**23. 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 RPO-TCSs and any applicable agreement.

**24. 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.

**25. Assignment**

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.

**26. Order of Precedence; Prior Agreement Governs**

(A) These RPO-TCSs shall govern the agreement between Buyer and Seller. In the event of differences or conflicts between these RPO-TCSs 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 RPO-TCSs;
- (iii) Seller's Sales Order Acknowledgment, or any similar order acceptance terms provided by Seller to Buyer;
- (iv) Seller's written quote provided to Buyer;
- (v) 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 RPO-TCSs, 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 RPO-TCSs, the Prior Agreement shall govern with respect to that conflict.