

# Rochester Precision Optics, LLC Standard Terms and Conditions for Buyers

(RPO-TCB rev. 20201209b, effective December 9, 2020)

**1. Terms and Conditions Applicable** These terms and conditions ("Terms and Conditions") shall apply to the sale by Rochester Precision Optics, LLC ("RPO" or "Seller") of any Goods or Services to buyer ("Buyer") as described in an order. Except with respect to a Prior Agreement between the Parties (see Prior Agreement terms below), if any, Seller expressly objects to and rejects any additional, different, conflicting or inconsistent terms submitted by Buyer 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 ("NDA") between Buyer and Seller, except unless expressly provided herein (see, e.g., Sec. 13, Confidentiality). Buyer's failure to make written objection within five (5) days of receipt of these Terms and Conditions shall constitute Buyer'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 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").

**"Equal Opportunity Laws"** means: To the extent applicable, all parties agree that they will abide by the following U.S. laws: (a) 29 CFR 471 ("Notification of Employee Rights under Federal Labor Laws"), Appendix A to Subpart A of Part 471 ("Text of Employee Notice Clause"); (b) the following Equal Opportunity Clauses: 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a); and the VETS-4212 Clause: CFR § 60-300.10. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered U.S. government prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

**"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 reasonably related or necessary in the performance of an order.

**"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" or "Agreement"** (noun, singular or plural) 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"** (singular or plural) means: the goods and services that are the subject of an order, and 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 these Terms and Conditions; (b) mutually-accepted documents that incorporate by reference, or are attached to, these Terms and Conditions; (c) mutually accepted documents that identify or describe the Goods, Services or related agreement terms, including, without limitation, applicable quotes, sales order acknowledgments, delivery documents, or other applicable documents; and (d) Seller's sales order acknowledgments and the corresponding Buyer's purchase orders accepted by Seller.

**3. Acceptance of Order** Only written acceptance of an Order shall constitute acceptance of the Order by Seller. Lead times presented begin upon Seller's issuance of Sales Order Acknowledgment.

**4. Prices and Shipping; Taxes; Payment Terms** (A) Buyer shall pay purchase price set forth on the face of the attached order or other Related Agreement Document, including appropriate nominal handling charges. Pricing and shipping shall be FCA (Incoterms 2010) Seller's facility in W. Henrietta, New York, 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. Buyer shall be responsible for the payment of such taxes and fees even if not added to the invoice price. (C) Buyer shall make full payment for Goods ordered: (i) within thirty (30) days of the date that Seller delivers Goods to the applicable carrier for shipment to Buyer; (ii) within thirty (30) days of the date of 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 earlier. All prices and charges are denominated and shall be paid in United States currency. (D) In the event of nonpayment or late payment of an invoice, Seller reserves the right, without incurring any liability or cost, in addition to any other remedies to which Seller may be entitled to: (i) suspend deliveries; (ii) terminate or cancel the order; (iii) terminate or cancel any of Seller's outstanding obligations under any purchase order from Buyer; (iv) refuse any purchase orders placed by Buyer, or cancel or delay any pending shipments to Buyer under any purchase order; (v) declare all sums owed by Buyer to Seller immediately due and payable, notwithstanding any credit terms previously in effect; (vi) charge an interest fee of (a) 3% (three percent) per month or (b) up to the maximum rate allowed by applicable law, whichever is lower, on all unpaid amounts calculated on a daily basis until the actual date of full payment; and (vii) if Seller chooses to continue making further sales or to extend other credit to Buyer, to do so on a C.O.D. or pre-paid basis. (E) Seller reserves the right at any time to alter or suspend credit or to change any credit terms. In any such case, Seller may require cash payment, irrevocable letter of credit or additional security from Buyer before further production or shipment, may accelerate payment date, and may suspend production, withhold any shipment, or cancel any further production in addition to any other rights or remedies it may have pursuant to applicable law. In the event of the bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under bankruptcy or similar insolvency laws, Seller is entitled to cancel any order then outstanding, without liability whatsoever, and shall receive Cancellation Fees as per Section 9 (Cancellation) hereof.

**5. Shipment; Risk of Loss** (A) Seller will determine the shipping schedule after it receives all items and information necessary for the design, manufacture, and testing of the Goods. (B) All shipment release schedules requested by Buyer for blanket purchase orders must be submitted in writing to Seller. Seller will use commercially reasonable efforts to meet the requested shipment schedule and will acknowledge the actual schedule in writing within ten (10) days of receipt of the shipment schedule request. (C) In the event that a method of shipment other than set forth in Section 4(A) (Prices and Shipping) hereof is specified, the price will be adjusted to reflect any increase or decrease to the extent that the cost of shipment is or will be included therein. (D) Title and risk of loss to the Goods shall pass to Buyer according to the

shipping terms provided in Section 4(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. Buyer shall obtain adequate insurance to cover the Goods from the time that risk of loss has passed from Seller to Buyer.

**6. Orders Subject to Licenses** Purchase orders, sales order acknowledgments, 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 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.

**7. Shipment in Place and Storage Fees** In the event that Buyer wishes to temporarily delay shipment and delay taking physical delivery of Goods scheduled for delivery, Buyer may request that Seller take delivery of the finished Goods on behalf of Buyer and store such Goods at Seller's facility ("Ship-in-Place Request"). Seller will reasonably endeavor to accept and accommodate Buyer's Ship-in-Place Request, but reserves the right to reject such request for any reason. Upon Buyer's reasonable advance notice in writing to Seller, Seller shall allow Buyer to inspect Goods shipped in place within the Inspection Period; Goods not inspected by Buyer within the Inspection Period shall be deemed accepted. Buyer must pay for all accepted (or deemed accepted) Goods shipped in place as if they had been delivered to Buyer. Buyer must take delivery of all such Goods shipped in place no later than six (6) months following the date on which such Goods were shipped in place and stored by Seller. All goods shipped in place shall be subject to a storage fee of \$1.00 per unit per week, unless negotiated otherwise by the parties.

**8. Schedule Changes; Shutdown Fees; Holding Fees** (A) **Schedule Changes** (i) Buyer-requested changes to a mutually-agreed delivery schedule are not permitted for Goods scheduled to be delivered within sixty (60) days of Buyer's written request. For volume blanket purchase orders, the initial three (3) months of scheduled deliveries must be committed to (i.e., must be released) and are not subject to change; subsequent shipment releases may require minimum release quantities and must allow a minimum of ninety (90) days for related deliveries to begin. Written requests for delivery schedule changes that are consistent with the above are subject to acceptance by Seller and may be subject to purchase price adjustments as determined by Seller. Should Seller incur additional costs because of Buyer's inability to accept delivery of Goods when scheduled or to permit normal and unrestricted installation of Goods when such installation is required, Buyer shall promptly reimburse such additional cost to Seller upon written notice. (ii) Once scheduled or released for delivery, Goods may not be unscheduled or reclassified as unreleased by Buyer. All Goods must be released by the Buyer to allow delivery by the contract's end date. Those Goods not released as described may be considered by Seller to have been cancelled by Buyer, in which case Cancellation Fees shall apply. In the event of failure of or delay in delivery or acceptance resulting from Force Majeure, the quantity provided for in the order may be reduced accordingly by written notice by either Party to the other. (B) **Shutdown Fees and Holding Fees** (i) In the event that Buyer requires or causes production or a scheduled delivery to halt, contrary to a mutually-agreed delivery schedule or mutually-agreed schedule change (each such event, a "Shutdown"), and Seller has not cancelled the contract for Buyer's default (see, e.g., Sec. 25, Default), Buyer will pay a "Shutdown Fee" equal to fifteen percent (15%) of the price of the halted delivery within thirty (30) days of being invoiced by Seller. (ii) Following such a Shutdown, Buyer will pay a monthly pro rata "Holding Fee" equal to four percent (4%) of the price of the above-referenced delivery that was halted by Buyer within thirty (30) days of being invoiced by Seller, until the parties mutually agree to re-start delivery. (iii) Upon Buyer's request, Seller may, in its sole discretion, agree to re-start production and delivery of such Goods upon terms and prices that are mutually acceptable to both parties. If mutually acceptable terms and prices cannot be determined, Cancellation per Section 9 (Cancellation) will apply. (iv) Shutdown Fees and Holding Fees are non-refundable and are not credited toward the purchase price of any Goods. The terms in this Section 8(B) are in addition to, and not exclusive of, any other terms applicable to Buyer's order.

**9. Cancellation** (A) For the purposes of these Terms and Conditions, "cancellation" and "termination" shall be synonymous terms. Once accepted by Seller, the order cannot be "cancelled for convenience" by Buyer, and may be cancelled by Buyer only upon written consent of Seller. Written request to cancel any Goods must be given to Seller at least sixty (60) days prior to any scheduled shipment date, and as early as possible for any unscheduled or unreleased Goods. If Seller consents to such cancellation, or if Seller terminates or cancels an order as provided herein (see, e.g., Sec. 26, Termination for Default), Buyer shall pay to Seller, within thirty (30) days of being notified in writing, cancellation fees and charges determined by Seller in accordance with the following ("Cancellation Fees"): (B) For catalog Goods ("Standard Goods"): (1) all unpaid non-recurring charges; (2) regarding materials, parts, components, subcontracted items, and other items or services that Seller ordered or purchased prior to the cancellation date in reasonable reliance upon the order or that were reasonably necessary to complete the order ("third-party items"); all cancellation or returns charges incurred by Seller, and Seller's costs for third-party items; and (3) twenty-three percent (23%) of the sales price of the cancelled portion of the order. Such cancelled Goods and materials shall remain the property of Seller. (C) For build-to-print Goods, Goods designed in whole or part for Buyer by Seller, or any other Goods that are not Standard Goods ("Custom Goods"): (1) all unpaid non-recurring charges; (2) the contracted price for all Goods completed prior to such cancellation ("Finished Custom Goods"); (3) an amount equal to the portion completed of each of the remaining Goods ("work in progress" or "WIP")—including the corresponding materials, parts, components, subcontracted goods, and other items that Seller ordered or purchased prior to the cancellation date in reasonable reliance upon the order or that were reasonably necessary to complete the order ("Materials"), excluding cancelled or returned Materials addressed under sub-part (4) below—multiplied by the unit sales price for that Good; (4) Seller's incurred cancellation charges and unfunded expenses for Materials that have been cancelled or returned to suppliers; and (5) reasonable Close-Out Costs (defined below), which shall be promptly negotiated by the parties in good faith within thirty (30) days following cancellation, or within a longer time period mutually agreed by the parties in writing. In the event the parties do not reach agreement regarding Close-Out Costs within the time allowed, the matter may be immediately submitted for dispute resolution as provided herein without further negotiation or delay. "Close-Out Costs" means all of the Seller's other reasonable direct costs resulting from termination of operations relating to the order, which may include, without limitation: (i) Seller's costs resulting from decommissioning production line equipment that had been allocated to Buyer's project; (ii) Seller's costs resulting from idled workers' wages; (iii) Seller's reasonable fees on incurred costs; and (iv) twenty-three percent (23%) of the sales price of the canceled portion of the order. Seller will provide Buyer with itemized Close-Out Costs for negotiation purposes and when invoicing Buyer for the final mutually agreed amounts. (6) Notwithstanding ongoing negotiations regarding Close-Out Costs, if any, Buyer shall pay all other applicable Cancellation Fees within thirty (30) days of receiving written notice of such fees, and shall pay all other fees relating to Close-Out Costs, if any, within thirty (30) days of executing a mutual written agreement or receiving a written dispute resolution determination regarding such amount. (7) Upon Buyer's written request delivered to Seller within thirty (30) days following Buyer's full payment of all applicable Cancellation Fees for Custom Goods, Seller and Buyer will cooperate in good faith to arrange for delivery of all corresponding Finished Custom Goods, WIP and Materials, and such delivery shall be at Buyer's sole expense. In the event that Buyer fails to request, arrange or pay for such delivery, as described in this subsection, all such Finished Custom Goods, WIP and Materials shall be deemed unclaimed and abandoned and will become the property of Seller at no cost to Seller with no liability or obligation to reimburse any fees, costs, or payment to Buyer.

**10. Inspection and Rejection** Buyer will fully inspect all Standard and/or Custom Goods within thirty (30) days of delivery ("Inspection Period"). In the event that such inspection reveals any nonconformity, other than nonconformity caused after risk of loss passed to Buyer, Buyer shall notify Seller in writing as per Section 11 (Warranty). If Buyer fails to make any claim within such time, or uses the Goods, such failure or use shall constitute irrevocable acceptance of the Goods. In the event of nonconformity caused after risk of loss passed to Buyer, it shall be Buyer's responsibility to file any appropriate claims with the shipping carrier or Buyer's insurance. In the special case of rejection of Standard Goods for convenience, such rejection shall be made in writing within thirty (30) days of shipment of the Standard Goods from Seller, shall be subject to the charges specified in Section 9 (Cancellation), and shall be returned to Seller as per Section 11 (Warranty). Returns for convenience of custom or customized Goods are not allowed and will not be accepted by Seller. In all cases, no Goods shall be returned to Seller by Buyer unless a Return Merchandise Authorization (RMA) is first requested in writing and Seller authorizes such return.

**11. 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 ("Delivery") to Buyer by Seller or an authorized reseller, provided that Buyer notifies Seller in writing of any such defects or nonconformity: (i) within the Inspection Period; or (ii) within thirty (30) days following first evidence of a latent defect that would not have been discoverable through due diligence and reasonable inspection appropriate for the type of Goods at issue, but in no event later than one (1) year after Delivery; whichever of (i) and (ii) occurs 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 refund of that portion of the purchase price applicable to defective Goods, which refund will be in the form of a credit if there is any outstanding balance owed by Buyer. The determination of whether a claimed defect or nonconformity is covered by this Warranty shall be at Seller's sole discretion, and such Warranty claims shall not be unreasonably denied by Seller. (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 Seller or 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) To return any Good, Buyer must obtain a Return Merchandise Authorization from Seller, 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 and adequate shipment carton. Buyer is responsible for risk of loss and

**Rochester Precision Optics, LLC Standard Terms and Conditions for Buyers**  
(RPO-TCB rev. 20201209b, effective December 9, 2020)

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 components 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 components. (F) Seller makes no other express warranties, disclaims all other warranties, and disclaims implied warranties of any kind, including warranties of merchantability and fitness for a particular purpose or purposes intended by Buyer.

**12. 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 11 (Warranty). 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 specific 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.

**13. Indemnification** Buyer acknowledges that Seller has no control over, and is not responsible for, the manner in which the Goods will be used by Buyer, Buyer's customers, or other third parties. Buyer shall indemnify, hold harmless, and at Seller's request, defend Seller against: (a) any and all claims, counterclaims, suits, demands, negligent actions, causes of action, damages, penalties, injuries, setoffs, liens, attachments, judgments, debts, costs, expenses, including third-party claims, attorneys' fees and litigation costs, or other liabilities of every character whatsoever (collectively, "Liabilities") arising out of or connected with, caused by, or resulting directly or indirectly from the use or operation of the Goods by Buyer or by third parties; and (b) Liabilities arising from claims of infringement of intellectual property or other IP claims relating to Goods developed pursuant to instructions, specifications, concepts, designs, build-to-print designs, technology or any intellectual property provided by Buyer, and relating to Custom Goods or other Goods developed for Buyer that are not Standard Goods or catalog items (individually and collectively, "Indemnify" or "Indemnification"). If both Seller and Buyer are negligent or otherwise at fault, or both are strictly liable without fault, then the obligations of Indemnification under this section shall continue, but Buyer shall Indemnify Seller only for the portion of damage or injury attributable to Buyer, and Seller shall Indemnify Buyer only for the portion of damage or injury attributable to Seller.

**14. Confidential Information** (a) **Proprietary Information.** If a nondisclosure agreement ("NDA") between the Parties is in effect at the time of this order, that NDA shall remain effective for at least as long as the longest period of performance of either Party or the Parties under this order, notwithstanding any terms to the contrary in such NDA. In the absence of an NDA signed by both Parties, 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 **three (3) 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," 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 writing 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. (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 a trade secret under applicable law.

**15. Nonpayment** (A) Seller shall have the right to immediately suspend performance by it or otherwise terminate all or any part of this order in the event Buyer fails to pay any amount to Seller when due. (B) 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. Buyer shall be liable to Seller for all costs of collection, including reasonable attorney's fees, costs of executing on any security interest that Seller may have in the Goods, and any reasonable expenses incurred by Seller as a result of Buyer's nonpayment. To the extent that any other terms herein conflict with the terms of this subsection, the terms of this subsection shall control to protect and benefit Seller to the maximum extent allowable. (C) It is Seller's policy ("IP Policy") that it shall retain ownership of all of its Intellectual Property existing prior to, or developed by Seller in the course of, providing Goods and Services to Buyer, and any agreement between Buyer and Seller shall be construed so as to comply with this IP Policy unless expressly agreed in writing and signed by a corporate officer of Seller.

**16. Security Agreement** Buyer agrees that until Buyer has completed payment of the purchase price in full, plus any accrued interest, and has fully performed all other terms and conditions hereof: (1) Seller reserves, and Buyer grants to Seller, a continuing security interest in the Collateral pursuant to the Uniform Commercial Code and any other applicable laws or regulations; (2) the security interest applies to those Goods that Buyer has accepted or of which Buyer or Buyer's authorized agent or customer has taken possession, as described herein or in Related Agreement Documents, and also all proceeds of such Goods (collectively the "Collateral"); (3) Buyer pledges the Collateral and all of Buyer's rights in the Collateral to secure Buyer's debt and obligation to make payment in full; (4) by accepting or taking possession of the Goods, Buyer thereby confirms and authenticates this security agreement; (5) upon request, Buyer will promptly execute and deliver to Seller any instrument, financing statement, assignment or other writing or electronic communication needed to attach and perfect Seller's security interest in the Collateral, if any; (6) Buyer appoints Seller its attorney in fact, if needed, in order for Seller to execute any and all documents to protect Seller's security interest in the Collateral; and (7) Seller is hereby entitled to perfect its security interest in the Collateral, including preparing and filing financing statements and other documents, and to exercise any rights and remedies granted to secured parties under applicable laws or regulations.

**17. Excusable Failure or Delay** Seller shall not be held responsible for failure of or delay in delivery of Goods scheduled to be delivered within the first **sixty (60) days** of Buyer's accepted written request. With respect to volume blanket purchase orders, the initial **three (3) months** of scheduled deliveries must be committed to (be released) and are not subject to change. Subsequent shipment releases may require minimum release quantities and must allow a minimum of **ninety (90) days** for related deliveries to begin. Written requests for delivery schedule changes that are consistent with the above are subject to acceptance by Seller and may be subject to purchase price adjustments as determined by Seller. Should Seller incur additional costs because of the inability of Buyer to accept delivery of the Goods or to permit normal and unrestricted installation of Goods, when such installation is required, Buyer promptly upon demand shall reimburse such additional cost to Seller.

**18. Governing Law and Dispute Resolution** These Terms and Conditions, and any applicable purchase orders and agreements, shall be governed 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, New York, USA, and Buyer hereby accepts the pertinent secretary of state, or other applicable government authority that has authorized 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 qualified and licensed 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. 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.

**19. Attorney's Fees** If it is necessary for Seller 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 the court costs and other tribunal or dispute resolution costs and reasonable attorney fees of the prevailing Party.

**20. 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 in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

**21. 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.

**22. Non-Recurring Engineering** (a) Custom mold tooling, other tooling, related physical components, manufacturing processes, know-how, designs and other non-recurring engineering (individually and collectively "NRE") developed by Seller for the purpose of fulfilling Buyer's order or any other agreement between Buyer and Seller are proprietary to Seller and shall be kept in the sole possession of Seller. (b) Regarding Buyer-paid exclusive NRE: (i) such NRE shall be proprietary to Buyer, possession and location of such NRE shall be determined and controlled by Seller, and such NRE shall be used exclusively for Buyer, unless Buyer provides written approval to Seller to use the NRE for another purpose or the Period of Exclusivity (defined in (d) below) has lapsed, whichever is earlier; (ii) Seller shall be responsible for all care and maintenance of such NRE while it is in Seller's possession or control; (iii) and Seller shall not relocate such NRE from Seller's designated facility without Buyer's prior written consent. (c) Upon termination of applicable agreements relating to Buyer-paid exclusive NRE, Seller may destroy such NRE, or retain such NRE for possible use in a future agreement with Buyer, or, upon expiration of Period of Exclusivity, may repurpose such NRE. (d) Period of Exclusivity is defined as twelve (12) consecutive months following Seller's acceptance of an Order for Goods derived from such Buyer-paid exclusive NRE; such Order shall adhere to the minimum order quantity identified by Seller. Upon the passing of twelve (12) consecutive months with no Orders involving purchase of Goods derived from such Buyer-paid NRE, all ownership and rights of such NRE shall immediately transfer from Buyer to Seller.

**23. 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.

**24. Compliance with Applicable Laws and Regulations: International Trade and Export Control.** (A) To the extent applicable, the Parties shall comply with all laws and regulations that are applicable to this order or agreement, and to the provision of Goods and Services identified therein, including applicable International Trade and Export Control Laws. Buyer shall not, by any act or failure to act, cause Seller to be liable under, or to be in jeopardy of liability under, such laws and regulations. Buyer shall indemnify, hold harmless, and at Seller's request, defend Seller against that portion of any and all claims, charges, penalties and any other liabilities whatsoever attributable to Buyer's breach of this section. Buyer's breach of this section shall constitute a material breach of these Terms and Conditions and any related order or agreements, and Seller 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) It shall be Buyer's responsibility to apply for and obtain any needed re-export licenses or other agency authorization required under Export Control Laws prior to exporting or re-exporting any Goods or effecting any deemed exports, if such licenses and authorizations have not already been obtained by Seller or cooperatively by Seller and Buyer together. Buyer and Seller shall cooperate fully with each other in providing any needed documentation or other reasonable assistance requested by the other Party for the purpose of obtaining such licenses or agency authorization.

**25. 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.

**26. Termination for Default; Change in Control** Seller may, by written notice, terminate an order or related agreement, or any portion thereof, for default without any liability against Seller for the portion terminated ("Default Termination"): (i) when Seller has reasonable grounds for insecurity regarding Buyer's performance, and Buyer fails to provide adequate assurances of performance within **ten (10) days** following Seller's demand; or (ii) should Buyer (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition; or (iii) Buyer fails to perform any obligation hereunder. In the event of Default Termination, Buyer shall pay Seller all Cancellation Fees as provided herein (see Section 9). Each Party shall give the other Party reasonable at least **thirty (30) days** advance written notice of any Change in Control of the first Party, after which 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 or policies.

**27. 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 related agreement.

**28. 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.

**29. 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.

**30. 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 (A); (ii) Seller's sales order acknowledgment, or any similar order acceptance terms provided by Seller to Buyer; (iii) Seller's written quote provided to Buyer; (iv) These Terms and Conditions; (v) Any other written agreement terms between 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) relates to or is applicable to the Goods or Services, (b) expressly supplements or supersedes these Terms and Conditions, and (c) has not expired, and has not been expressly cancelled, 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.

[ End of Terms and Conditions. ]