

# Rochester Precision Optics Standard Terms and Conditions

(rev. 20161121a, effective November 21, 2016)

## 1. Terms and Conditions Applicable

These terms and conditions ("RPO-TCs") shall apply to the sale by Rochester Precision Optics, LLC ("Seller" or "RPO") of any Products and/or Services to Buyer as described on the face hereof, attached hereto, or in Related Agreement Documents (defined herein). Any offer made by Seller, and any acceptance by Seller of any offer by Buyer, is expressly conditioned upon Buyer's agreement to these RPO-TCs. Seller expressly rejects any additional, different, conflicting or inconsistent terms previously or subsequently submitted by Buyer, whether in a purchase order or otherwise, and to the extent there are any differences between terms first submitted by Buyer and these RPO-TCs, these RPO-TCs and any document to which they are attached shall be construed as a counteroffer and not an acceptance of Buyer's terms, except with respect to a Prior Agreement (see Prior Agreement section below). These RPO-TCs do not supersede any existing confidentiality or nondisclosure agreements between Buyer and Seller. Buyer's failure to make written objection within five (5) days of receipt of these RPO-TCs 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"**: 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"**: the parties to these RPO-TCs and any related agreement are each a "Party" and together the "Parties."

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

**"Products"** and **"Services"** shall be synonymous and interchangeable for the purposes of these RPO-TCs. Products 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) referenced by, incorporated by, that refer to, that are attached to, or that incorporate RPO-TCs, and which (b) identify or describe the Products, Services or related agreement terms, including, without limitation, applicable quotes, purchase orders, sales order acknowledgements, delivery documents, or other related agreement documents, if any.

### 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 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 Products, 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 Seller, any Product ordered shall be paid for within thirty (30) days from the date of shipment. All prices and charges are denominated and shall be paid in United States currency.

(D) In the event of nonpayment or late payment of invoices, which shall be paid within thirty (30) days of receipt, Seller reserves the right (i) to suspend deliveries and/or cancel any of its outstanding obligations; and (ii) to charge an interest fee of (a) 1.5% per month or (b) up to the maximum rate allowed by applicable law, whichever is lower, on all unpaid amounts calculated on a day-to-day basis until the actual date of full payment.

(E) Seller reserves the right at any time to alter or suspend credit or to change any credit terms when, in its sole discretion, the financial condition of Buyer so warrants. 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 the date of any payment, 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 reimbursement for its cancellation charges as per Section 5 (Cancellations) hereof.

### 4. 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 Products.

(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 3(A) (Prices and Shipping) hereof is specified, the price shall 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 shall pass to Buyer as soon as the Products 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 Products during shipping, and Buyer shall promptly reimburse Seller the cost thereof.

### 5. Orders Subject to Licenses; Cancellations; Requests for Schedule Changes

(A) 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.

(B) Once accepted by Seller, the order may be cancelled only upon the written consent of Seller. If Seller consents to such cancellation, Buyer shall pay to Seller, within thirty (30) days of being notified, cancellation fees and charges determined by Seller in accordance with the following;

(i) For catalog products ("Standard Products"): One hundred percent (100%) of any nonrecurring charges related to Buyer's order plus any materials, labor, and subcontract costs, including cancellation fees related to the cancelled units that is owed to Seller's suppliers and subcontractors, plus twenty-five percent (25%) of the cancelled order's sales price. The cancelled Products and materials remain the property of Seller.

(ii) For build-to-print products or products designed for Buyer by Seller ("Custom Products"): Written

notice of cancellation of any Product scheduled for shipment must be given at least sixty (60) days prior to such scheduled shipment date, and as early as possible for any unscheduled or unreleased Products.

Cancellation fees shall include one hundred percent (100%) of non-recurring charges. Buyer must pay Seller the contracted price for all Products completed prior to such cancellation notice (finished goods), and an amount equal to the percentage completed of each of the remaining Product units multiplied by the unit sales price for that Product. Buyer shall also be responsible for all cancellation charges incurred by Seller for materials, components, and subcontracted items that Seller purchased, prior to the cancellation date, which were necessary to complete the cancelled orders. Buyer is entitled to receive all finished Custom Products for which cancellation charges are paid in full.

(C) Buyer-requested changes to the delivery schedule for Standard Products are not permitted for Products scheduled to be delivered within sixty (60) days of Buyer's written request. With respect to 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 the inability of Buyer to accept delivery of the Products 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.

(D) Once scheduled or released for shipment, Products shall not be unscheduled or reclassified as unreleased. All Products must be released by the Buyer to allow shipment by the contract's end date. Those Product units not released as described will be considered cancelled and the terms of this section 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.

## **6. Inspection and Rejection**

Buyer will fully inspect all Standard and/or Custom Products delivered within thirty (30) days of receipt ("Inspection Period"). In the event that such inspection and testing reveals any deficiency or nonconformity, Buyer shall notify Seller in writing as per Section 7 (Warranty). If Buyer fails to make any claim within such time, or uses the Products, such failure or use shall constitute irrevocable acceptance of the Products. In the special case of rejection of Standard Products for convenience, such rejection shall be made in writing within thirty (30) days of shipment of the Standard

Products from Seller, shall be subject to the charges specified in Section 5 (Cancellations), and shall be returned to Seller as per Section 7(C) (Warranty). Returns for convenience of custom or customized Products are not allowed. In all cases, no Product shall be returned to Seller by Buyer unless a Return Authorization Number is first requested in writing and Seller authorizes such return.

## **7. Warranty**

(A) Seller warrants its Products 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 Products, 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 within thirty (30) days (i) of receipt or (ii) of 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 Products at issue, whichever is later. The sole and exclusive obligation of Seller under this warranty clause is limited, at Seller's discretion, to the replacement or reworking of defective Products, or the return of that portion of the purchase price applicable to defective Products. The determination of whether a non-conformity is a valid warranty claim is at Seller's discretion.

(B) Seller makes NO WARRANTY with respect to any Products that have damage, nonconformity, or failures occurring after passage of title to Buyer and resulting from: abnormal conditions of temperature, abuse, accident, corrosion, dirt, disaster, misuse, moisture, neglect, negligence; improper handling, installation, maintenance, operation, storage, or testing; or modification or repair by anyone other than an authorized representative of Seller. Seller is not responsible for expenses incurred by Buyer to correct or repair any alleged defect unless pre-approved by Seller in writing. This warranty does not apply to, and Seller assumes no liability for, the failure of any Products to meet Buyer-provided specifications where Seller previously indicated its Products may not meet Buyer's specifications.

(C) Buyer must inspect Product within the Inspection Period. To return any Product, Buyer must obtain a Return Authorization Number, which will expire after thirty (30) days. All Products 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 Product to Seller. For returned Products found to be conforming, Buyer is responsible for the costs of diagnosis and testing, and costs of shipping the conforming Product back to Buyer. Supplier will bear the cost of shipping new or reworked Product to Buyer for the purpose of replacing Product that was found to be non-conforming (valid warranty claims).

(D) 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 Products) 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.

(E) Seller makes no warranty with respect to any goods that have damage, nonconformity, or failures resulting from accident, disaster, neglect, abuse, misuse, alteration, modification, improper handling, testing, storage or installation occurring after passage of title to Buyer.

(F) Seller makes no other express warranties, and disclaims implied warranties of any kind, including warranties of merchantability and fitness for any 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 related Products 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, a Party'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. EACH PARTY WAIVES ANY CLAIM THAT THESE LIMITATIONS OR EXCLUSIONS DEPRIVE SUCH PARTY OF AN ADEQUATE REMEDY. SELLER'S PRICING REFLECTS THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THE LIMITATION OF LIABILITY PROVIDED HEREIN.

## **9. Indemnification**

Buyer acknowledges that Seller has no control over, and is not responsible for, the manner in which the Products will be used by Buyer or third parties.

Buyer shall indemnify, defend and hold harmless ("Indemnify" or "Indemnification") Seller against: (a) any and all claims, counterclaims, suits, demands, 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 Products by Buyer or by third parties; and (b) Liabilities arising from claims of infringement of intellectual property or other IP claims relating to Products developed pursuant to instructions, specifications, concepts, designs, build-to-print designs, technology or any intellectual property provided by Buyer, and relating to Custom Products or other Products developed for Buyer that are not Standard Products or catalog items. 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.

## **10. Confidential Information**

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

## **11. 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. 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 Products, and any other reasonable expenses incurred by Seller as a result of Buyer's nonpayment.

(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 Products 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. In the exceptional case, if Seller were to agree to assign or

transfer ownership of any IP to Buyer, such IP shall remain the sole and exclusive property of Seller until such time as all applicable invoices and fees have been paid.

## **12. Security Agreement**

Buyer agrees that until Buyer has completed payment of the purchase price in full, plus accrued interest, if any, and has fully performed all other terms and conditions hereof: (1) 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 Products that Buyer has accepted or of which Buyer has taken possession, as described herein or in Related Agreement Documents, and also all proceeds of said Products (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 Products, 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.

## **13. Excusable Failure or Delay**

Seller shall not be held responsible for failure of or delay in delivery of Products 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 Products 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.

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

These RPO-TCs, and any applicable purchase orders and agreements, shall be governed by the laws of the State of New York, USA, without regard to any applicable law's or jurisdiction's choice of law or conflict of law rules,

and the Parties hereby submit to jurisdiction of the state and federal courts in Monroe County and the city of Rochester in the State of New York, USA. 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. Arbitration of disputes involving purely 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.

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

If it is necessary for Seller to obtain legal representation to enforce any part of these RPO-TCs or applicable Related Agreement Documents, the non-prevailing Party agrees to bear the court costs and other tribunal or dispute resolution costs and the 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. Custom Mold Tooling**

Tooling developed under non-recurring engineering ("NRE") is designed explicitly for Buyer utilizing Seller's intellectual property. As such, the physical components, implementations and use of such tooling

are proprietary to Seller and shall be kept in the sole possession of Seller. Buyer-paid exclusive NRE shall be proprietary to Buyer, and tooling developed pursuant to such NRE shall be used exclusively for Buyer, unless Buyer approves or instructs Seller otherwise in writing. Upon termination of applicable agreements relating to Buyer's exclusive NRE, at Seller's option Seller may either destroy or retain such tooling for its possible use in a future agreement with Buyer, unless Buyer instructs Seller in writing to destroy such tooling.

#### **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-TCs apply, and for an additional period of twelve (12) months after the term of such agreement, without prior written consent of the other Party.

#### **20. Compliance: Export Control; Anti-Corruption; Conflict Minerals**

(A) Buyer shall comply with all applicable Export Control Laws and Anti-Corruption Laws and their related regulations, and 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. Breach of this section shall constitute a material breach of these RPO-TCs and any related agreements, and Seller shall be entitled to terminate any such 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 Products 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.

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

(D) If Buyer is to provide to Seller materials or goods pursuant to an agreement between Buyer and Seller, (i) such materials or goods shall be free of any known Conflict Minerals, as defined by the Securities and Exchange Commission (SEC) at 17 C.F.R. §§ 240, 249b (Dodd-Frank Act § 1502), and (ii) Buyer shall perform appropriate due diligence on its supply chain in order to ensure compliance with Conflict Minerals laws and regulations.

#### **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. 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 or obligation whatsoever incurring against Seller for the portion terminated, in the following circumstances: (i) Buyer fails to perform any obligation hereunder; (ii) 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, (iii) 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.

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-TCs 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. Prior Agreement Governs**

These RPO-TCs, together with any Related Agreement Documents, are the only terms that shall govern any related or applicable agreement or purchase order by Buyer. No other agreement or quotation, or any acknowledgement of Buyer in any way modifying any of the terms of the order, will be binding upon Seller unless

made in writing and expressly and specifically accepted in writing by Seller.

Notwithstanding the foregoing, in the event that Buyer and Seller have previously agreed, in writing and signed by both Parties, to terms and conditions or to any other form of written agreement ("Prior Agreement"), and that Prior Agreement (a) substantially covers the purpose of these RPO-TCs and any attached or referenced documents, and (b) has not expired as of the date of any such attached or referenced documents, then, in the event of a conflict between these RPO-TCs and the terms of the Prior Agreement, the terms of the Prior Agreement shall govern.