

RPC ELECTRONICS INC. - Terms and Conditions of Purchase

All purchases are made subject to the following terms and conditions, and RPC ELECTRONICS INC, a corporation organized under the laws of the State of Ohio, United States of America ("Buyer") objects to any different or additional terms or conditions contained in any invoice or purchase order acknowledgement or any other document submitted by the vendor ("Seller").

- 1. ACCEPTANCE OF TERMS AND CONDITIONS:** Buyer hereby orders from the Seller identified on the Contract/Purchase Order ("Order") the goods ("Goods") and/or services ("Services") specified on the Order, subject to and upon the express terms and conditions set forth below ("Terms and Conditions"). This Order shall be deemed accepted by Seller and shall constitute the exclusive agreement between the parties upon any of the following: (a) Seller's acknowledgement of the Order, (b) Seller's commencement of performance, or (c) Seller's acceptance of any payment under this Order. Buyer shall not be bound by any terms and conditions not appearing hereon. SHIPMENT BY SELLER OF THE MATERIAL ORDERED SHALL CONSTITUTE IRREVOCABLE ACCEPTANCE OF AND AGREEMENT TO THESE TERMS AND CONDITIONS AND AN IRREVOCABLE WAIVER BY SELLER OF ALL TERMS AND CONDITIONS CONTAINED IN ANY ACCEPTANCE FORM OF ANY OTHER COMMUNICATIONS WHICH ARE INCONSISTENT WITH THE TERMS AND CONDITIONS SET FORTH ON THIS ORDER UNLESS SPECIFICALLY AGREED TO IN WRITING BY BUYER.
- 2. PRICES AND PAYMENTS:** All prices are firm and shall not be subject to change unless evidenced by a written amendment to this Order signed by Buyer and Seller. No charges of any kind, including, without limitation, boxing, packing, or transporting to the point of delivery stated in the Order, will be allowed unless specifically agreed to in writing by Buyer. The cost of freight (including freight insurance) is to be borne by Seller unless otherwise indicated in writing in the Order or in another writing by Buyer. Unless otherwise specified in these Terms and Conditions or the Order or otherwise agreed in writing by Buyer and Seller, payment by Buyer shall be made according to discount terms offered by Seller or, if not offered, according to such other terms as agreed upon by Buyer and Seller.
- 3. SPECIFICATIONS:** All Goods ordered to Buyer's specifications must comply with such specifications, designs, and plans provided by Buyer as of the date of this Order unless otherwise specified by Buyer. Any manufacturing or other specifications referred to in this Order are hereby made a part hereof, as if fully set forth herein.
- 4. CHANGES:** Buyer shall have the right to make changes in this Order, but no additional charge by Seller will be allowed unless authorized in writing by Buyer. If such changes cause a material increase in Seller's contract price or delivery schedule, Seller shall notify Buyer immediately and within 10 days of such notice shall submit a detailed cost breakdown comparing original requirements and costs to the changed requirement and costs. The parties will then negotiate an equitable adjustment in contract price, delivery schedule or both. Such adjustment shall not become effective until the execution by Buyer and Seller of an Order amendment. Nothing in this clause shall excuse Seller from proceeding with the Order as changed.
- 5. DELIVERY:** Time is of the essence in this Order. If Seller's delivery of the purchased Goods or Services is not made in the quantities and at the times specified herein, Buyer reserves the right without liability and in addition to any other rights and remedies, to terminate this Order and to procure substitute goods or services and charge Seller with any loss incurred including lost profits and special damages. Buyer shall have the right to reject any Goods or Services which are tendered by Seller in advance of the date scheduled for delivery, to accept early delivery of Goods or Services and defer payment until after the scheduled delivery date or to accept early delivery of Goods and place such Goods in storage at Seller's expense until the scheduled delivery date. In the event of termination or change, no claim will be allowed for any such manufacture or procurement in advance of Seller's reasonable flow time unless Buyer's prior written consent has been obtained. Neither party shall be liable for delays or defaults due to causes beyond its control and without its fault or negligence, provided that when Seller has reason to believe that performance will not be made as scheduled written notice setting forth the cause of the anticipated delay is immediately given to Buyer. If Seller's delay or default is caused by a delay or default of a subcontractor or supplier, such delay or default shall be excused only if it arose out of causes beyond the control of both Seller and the subcontractor or supplier and without the fault or negligence of either of them and the Goods or Services were not obtainable from other sources in sufficient time to meet the required delivery or performance schedule.
- 6. PACKING:** All articles shipped under this Order are to be packaged in accordance with Buyer's instruction as specified in this Order, or in the absence of such instruction, in a manner that will provide for efficient handling and will preclude damage to the articles during shipping and/or storage. Damage to any article resulting from improper packaging will be charged to the Seller. No additional charges will be allowed for packing, or transportation thereof, unless stated on the face of this Order. The Buyer's weight determination will be accepted as final and conclusive on all shipments. The Buyer's order number must appear on all invoices, packages and bills of lading.
- 7. INSPECTION:** All materials or articles ordered may be subject to (i) inspection during the period of manufacture, (ii) inspection prior to shipment and (iii) final inspection and acceptance at destination, notwithstanding any prior payment or inspection and acceptance. Buyer may reject and hold at Seller's expense, subject to Seller's disposal, all materials or articles not conforming to applicable drawings, specifications and/or samples. Seller agrees to replace at its expense or at Buyer's option, to refund the price of any article which fails to meet the requirements of applicable drawings, specifications and/or samples. Materials or articles rejected and returned to Seller shall not be retendered by Seller to Buyer unless notification of that fact is submitted with the retender and Buyer agrees to acceptance thereof. Final inspection and acceptance by Buyer of any materials or articles delivered hereunder shall not be conclusive as to latent defects, fraud, such gross mistakes as to amount to fraud, or Seller's warranty obligations hereunder. During performance of this Order, Seller shall maintain a Quality Control/inspection system hereunder acceptable to Buyer. The system is subject to review, verification, and analysis by authorized Buyer representatives. All process work must be performed by sources approved by Buyer or Buyer's customer, as applicable.
- 8. REJECTION:** If any of the Goods and/or Services ordered hereunder are found at any time to be defective, or otherwise not in conformity with the requirements of this Order or any other specifications furnished by Buyer, then Buyer, in addition to its other legal rights, may, at its option: (i) reject and return in whole or in part such Goods at Seller's expense; (ii) take such actions as may be required to cure all defects and/or bring the Goods into conformity with all requirements, at Seller's own expense, and (iii) by written notice to Seller require Seller to re-perform, at its own expense, any defective portion of the Services performed.
- 9. DISPUTES:** Pending the final resolution of any dispute involving this Order, Seller agrees to diligently proceed with performance of this Order, including the delivery of Goods. Seller shall submit to Buyer's authorized representative a written demand for Buyer's final decision regarding any dispute between the parties relating to this Order, unless Buyer, on its own initiative has already rendered such a final decision. Any final decision by Buyer shall be expressly identified as such, in writing, and signed by Buyer's authorized representative. Buyer's failure to render a final decision within ninety (90) days after receipt of Seller's demand shall be deemed a final decision adverse to Seller's contentions. Buyer's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

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10. **ENTRY, AUDIT AND INSPECTION:** Seller agrees that its plant, books and records so far as they relate to the performance of this or a related order, or costs incurred under this or a related order (to the extent consistent with laws and regulations), shall at all practical times be subject to review, inspections and audit by any authorized representative of the Buyer and any authorized representative of the Buyer's customer.
11. **WARRANTIES:** Seller hereby warrants that all Goods and Services covered by this Order will conform with Buyer's instructions, specifications, drawings and data, will be merchantable, will be free from defective design, materials or workmanship and will be fit for Buyer's purposes. Seller further warrants that the Goods and Services furnished under this Order shall conform to all representations, affirmations, promises, descriptions, samples, designs or models forming the basis of this Order. Seller agrees that these warranties shall survive acceptance of the Goods and Services. Seller further warrants that all Services performed by or on behalf of Buyer will be performed in a competent workmanlike manner and shall be free from faults, and any warranties of additional scope given by Seller to Buyer shall apply. None of said warranties and no other implied or express warranties shall be deemed disclaimed or excluded unless evidenced by a purchase order change notice or revision issued and signed by Buyer. The warranties hereunder shall inure to the benefit of Buyer, its successors and assigns and Buyer's customers. If there is a breach of warranty, Buyer may remove the product from any component, assembly or system into which the product may have been incorporated and return such product, at Seller's expense, for correction, replacement or credit as Buyer may elect.
12. **PRICE WARRANTY:** The Seller warrants that the prices of the Goods set forth herein do not exceed those charged by the Seller to any other customers purchasing the same goods in like or lesser quantities and under the same or similar circumstances.
13. **BUYER MATERIALS.** Title (including right of immediate possession) to all parts, components, and other materials furnished by Buyer to Seller ("Buyer Materials") shall remain the sole property of Buyer. Any Buyer Materials are held by Seller as a bailee. Buyer Materials must be: (a) maintained in good condition, (b) permanently identified as Buyer's property, (c) adequately insured at Seller's expense for Buyer's protection, and (d) used only for work ordered by Buyer. Seller will ensure that all Buyer Materials are readily identifiable as Buyer's property and not commingled with property belonging to Seller or others. Upon Buyer's request, Seller will return Buyer Materials to Buyer in good condition. Seller shall indemnify Buyer for any damages or Losses to or arising from the use of Buyer Materials during any period where said Buyer Materials are in Seller's possession or control.
14. **INDEMNIFICATION:** Seller agrees to indemnify and save Buyer harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogations, and expenses including court costs and attorney fees ("Losses"), arising from or relating to Goods delivered or to Services or labor performed pursuant to this Order, (hereinafter collectively referred to as "Claims") which are made by any third party, including but not limited to Buyer's customers and employees, workers, servants or agents of Seller or its subcontractors. In addition, Seller agrees to indemnify Buyer for any Losses arising out of the breach by Seller of any of the representations, warranties, covenants and agreements contained in the Order and/or these Terms and Conditions. Seller further agrees upon receipt of notification, to promptly assume full responsibility for the defense of any and all such Claims which may be brought against Buyer. In the event Buyer Materials are used by Seller in the performance of this Order, Buyer Materials shall be considered in the full custody and control of Seller during the period of use by Seller. Seller's obligations pursuant to this provision shall survive the completion of performance and the expiration or termination of this Order. Notwithstanding the foregoing, Seller shall have no obligation to indemnify Buyer in any breach of warranty or product liability action brought by a third party which is directed to Goods delivered hereunder which was designed entirely by Buyer and which were manufactured by Seller in accordance with Buyer's specification.
15. **INSURANCE AND HOLD-HARMLESS:** If this Order includes the performance of labor for Buyer, or if Seller or any of Seller's employees, representatives, agents, or subcontractors perform work on or visit the premises of Buyer in connection with performance of this Order, Seller agrees to indemnify and save Buyer harmless against all liability, claims, or demands for injuries or damages to any person or property, and agrees to defend any suit or action brought against them, resulting directly or indirectly from the work under this Order. In addition, with respect to all such work or visits to Buyer's premises, Seller shall provide Buyer a Certificate of Insurance naming Buyer as an additional insured, with the following coverages: General and Contractual Liability (\$1,000,000 policy limit minimum); Workers Compensation Coverage (statutory limits).
16. **COMPLIANCE WITH LAWS, EXECUTIVE ORDERS, AND REGULATIONS:** In the performance of this Order, Seller agrees to comply with all applicable federal, state or local laws and executive orders and regulations issued pursuant thereto and agrees to indemnify Buyer against any loss, cost, damage, or liability by reason of Seller's violation of this clause.
17. **LABOR DISPUTES:** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof including all relevant information with respect thereto to Buyer. Seller shall insert the substance of this clause, including this sentence, in any subcontract hereunder wherein a labor dispute may delay the timely performance of this Order except that any subcontractor need give the required notice and information only to its next higher-tier subcontractor.
18. **DEFAULT:** The Buyer may terminate this Order or any part thereof for (1) default, (2) if Seller becomes insolvent or (3) any bankruptcy proceedings are instituted by or against Seller.
19. **PROPRIETARY RIGHTS:** Seller shall keep confidential all technical and proprietary information furnished to Seller by Buyer in connection with this Order, including blueprints, data, designs, drawings, engineering data for production, processes, product know-how, reports specifications, and the feature of all equipment, gauges, parts, patterns, and tools furnished to Seller by Buyer in connection with this Order. Seller shall not use such items or information in the design, manufacture or production of any goods or for any other purchase or for the manufacture or production of larger quantities than those specified, except with the express consent in writing of the Buyer. Seller, including its agents, employees and representatives will exercise extreme caution to prevent disclosure of such information to their parties. The obligations of this provision shall survive the completion of performance and expiration or termination of this Order.
20. **SUBCONTRACTING:** Seller shall not procure or Order for the procurement of any item covered by this Order in completed or substantially completed form without first securing the written approval of the Buyer.
21. **ASSIGNMENTS:** No assignment of this Order or of any monies due or to become due hereunder or delegation of any duties or performance under this Order, shall be binding upon Buyer until Buyer's written consent thereto is obtained.
22. **PRODUCT LIABILITY INSURANCE:** Seller shall at all times maintain product liability insurance and vendor's insurance of not less than \$2,000,000 per occurrence and \$5,000,000 in the aggregate and, upon Buyer's request, shall name Buyer as an additional insured thereunder. Upon Buyer's request, Seller shall provide Buyer with a copy of a certificate evidencing that such product liability insurance coverage is in full force and effect as of the date of this Order. Seller further agrees that not less than thirty (30) days prior to the expiration of any such product liability insurance or vendor insurance policy, Seller will deliver to Buyer evidence of a renewal or a new policy to take the place of the policies expiring.
23. **ATTORNEYS' FEES:** If any legal action is necessary to enforce the terms of this Order, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

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24. **RIGHT OF SETOFF:** Buyer shall be entitled to set off, deduct, or recoup any credit, claims, or refunds to which Buyer is entitled under any purchase order, invoice, contract, or transaction between Buyer and Seller, against any amounts due or arising under this Order.
25. **ASSIGNMENT OF ACCOUNTS RECEIVABLE:** Seller covenants it will not assign, pledge, discount, or factor its accounts receivable or invoices arising out of sales to Buyer or any purchase order issued by Buyer to a third party (factor). Any assignment or attempted assignment or pledge will be null and void and of no effect.
26. **WAIVER:** Buyer's failure to insist upon the performance of any term or condition of this Order or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of Buyer's right to demand future performance of such item or condition or to exercise such right in the future.
27. **ENTIRE AGREEMENT AND AMENDMENT:** This Order, together with such documents (if any) as are expressly incorporated herein by reference, constitutes the entire agreement and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof. No course of prior dealings between parties hereto and no usage of the trade shall be relevant or admissible to supplement, explain or vary any of the terms of this Order. This Order may be amended only by written agreement executed by an authorized representative of each of the parties hereto.
28. **SEVERABILITY:** Where possible, each provision of this Order shall be interpreted in such manner as to be effective and valid, but if any provision of this Order shall be prohibited by applicable law, unenforceable in any jurisdiction or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition, unenforceability or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Order, or affecting the validity or enforceability of such provision in any jurisdiction.
29. **GOVERNING LAW:** The rights and obligations of the parties hereto under this Order shall be governed by and interpreted in accordance with the internal, substantive laws of the State of Ohio, United States of America, applicable to contracts made and performed in the State of Ohio. Jurisdiction and venue for any action arising under this Order will lie in the Courts of Common Pleas of Cuyahoga County, Ohio or in federal courts situated in the Northern District of Ohio (Eastern Division), in addition to any other court of competent jurisdiction. The parties irrevocably consent and submit to the personal jurisdiction of said courts. The parties hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.