



SUPPLIER TERMS AND CONDITIONS OF PURCHASE

1. TERMS OF AGREEMENT

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the “Purchase Order”), constitutes the entire and exclusive agreement between Rochester Precision Optics (“RPO”) and the supplier (the “Supplier”) identified in the Purchase Order. RPO’s submission of the Purchase Order is conditioned on Supplier’s agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on RPO’s agreement to such different or additional terms. Supplier’s electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Supplier’s acceptance of these terms and conditions. Notwithstanding the foregoing, if a master agreement covering procurement of the Products or Work described in the Purchase Order exists between Supplier and RPO, the terms of such master agreement shall prevail over any inconsistent terms herein.

2. DEFINITIONS

- 2.1 “Deliverables” means the deliverables specified in the Purchase Order (and any Statement of Work) to be delivered on or before the Delivery Date.
- 2.2 “Delivery Date” means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Work.
- 2.3 “Harmful Code” means any software intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.
- 2.4 “Intellectual Property Rights” means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- 2.5 “Product” means tangible goods specified the Purchase Order to be delivered on or before the Delivery Date.
- 2.6 “Services” means the services that Supplier is to perform for RPO specified in the Purchase Order.

- 2.7 “Statement of Work” or “SOW” means the document specifying, without limitation, the scope, objective, and time frame of the Work that Supplier will perform for RPO.
- 2.8 “Subcontractor” means a third party performing Work under an agreement (a “Subcontract”) with Supplier.
- 2.9 “Supplier Personnel” means Supplier’s employees, consultants, agents, independent contractors and Subcontractors.
- 2.10 “Third Party Intellectual Property” means the Intellectual Property Rights of a third party which Supplier uses or incorporates into the work.
- 2.11 “Work” means the Deliverables, Products, and Services specified in the Purchase Order, including any SOW.

3. DELIVERY

- 3.1 Time is of the essence in Supplier’s performance of its obligations under Section 3 of the Purchase Order. Supplier will immediately notify RPO if Supplier’s timely performance under the Purchase Order is delayed or is likely to be delayed. RPO’s acceptance of Supplier’s notice will not constitute RPO’s waiver of any of Supplier’s obligations.
- 3.2 If Supplier delivers Work after the Delivery Date, RPO may reject such Work.
- 3.3 RPO will hold any Work rejected under this Purchase Order at Supplier’s risk and expenses, including storage charges, while awaiting Supplier’s return shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges RPO incurs on Supplier’s behalf. RPO may, in its sole discretion, destroy or sell at a public or private sale any rejected Work for which RPO does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.
- 3.4 Supplier will preserve, pack, package, and handle the Deliverables and Products so as to protect the Deliverables and Work Product from loss or damage and in accordance with best commercial practices in the absence of any specifications RPO may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous Work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.
- 3.5 Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, the RPO part number for each of the Products (if applicable), a description and the quantity of each of the Products, and the date of shipment.
- 3.6 Unless RPO expressly instructs otherwise, Supplier will deliver all Work to RPO’s plant at the address set forth in the Purchase Order. Seller assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss of the Work passes to RPO upon acceptance in accordance with Section 6.

4. PRICE AND PAYMENT

- 4.1 Unless otherwise specified in the Purchase Order, the price for the Work includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Supplier will, at RPO's request, break-out from the price all such taxes and other charges, in its invoices. Supplier shall use its best efforts to assist RPO in all legal efforts to minimize the taxes resulting from the performance of this Purchase Order.
- 4.2 RPO will pay Supplier the price set forth in the Purchase Order within 30 days following the later of: (i) the Delivery Date; (ii) the date of RPO's acceptance of all of the Work; or (iii) RPO's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Supplier's certification of conformance of the Work to the requirements. Payment will be in the currency of the country in which the RPO Company identified in the Purchase Order is located, and if the price set forth in the Purchase Order is not in the local currency, then RPO will determine the local currency equivalent of the price as of date of payment. RPO may, at any time, set-off any amounts Supplier owes to RPO against any amounts RPO owes to Supplier or any of its affiliated companies.

5. OWNERSHIP AND LICENSE

- 5.1 RPO is the sole and exclusive owner of all Deliverables. Supplier irrevocably assigns and transfers to RPO all of its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights.
- 5.2 Notwithstanding Section 5.1, Supplier grants to RPO a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, sub licensable license to any Intellectual Property Rights in the Deliverables which arose outside the scope of the Purchase Order to the extent necessary for RPO to exercise its rights in the Work Product as reasonably contemplated by the Purchase Order.
- 5.3 Supplier grants to RPO a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, sub licensable license to any Intellectual Property Rights in Products or Services which are necessary for RPO to use, import, copy, execute, reproduce, display, perform, and distribute copies of and modify (including creating improvements and derivative works based on) the Products or Services.

6. INSPECTION AND ACCEPTANCE

RPO may reject any or all of the Work which does not conform to the applicable requirements within 10 business days of Supplier's delivery of the Work. At RPO's option, RPO may (i) return the non-conforming Work to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Work; or (iii) repair the non-conforming Work so that it meets the requirements. As an alternative to (i) through (iii), RPO may accept the non-conforming Work conditioned on Supplier providing a refund or credit in an amount RPO reasonably determines to represent the diminished value of the non-conforming Work. RPO's payment to Supplier for Work prior to RPO's timely rejection of such Work as non-conforming will not be deemed as acceptance by RPO.

7. CHANGES

- 7.1 RPO may, at any time, change the work by changing (i) the quantity of the Work (ii) the scope of Services; (iii) the Delivery Date; (iv) applicable drawings, designs, and specifications, (v) the method of shipment or packing; (vi) the place of delivery of the Work; or (vii) the location for Services to be performed.
- 7.2 If a change by RPO under Section 7.1 causes an increase or decrease in the cost of or the time required for Supplier's performance, then the price, Delivery Date or both will be equitably adjusted, and the parties will amend the Purchase Order accordingly in writing. Supplier will request an equitable adjustment no later than 20 days from Supplier's receipt of RPO's notification of a change; provided, however, that RPO may extend the request period upon Supplier's request.
- 7.3 Supplier will proceed with the Work, both changed and unchanged, pending negotiation of an equitable adjustment and amendment of the Purchase Order.

8. REPRESENTATIONS AND WARRANTIES

- 8.1 Supplier represents and warrants that (i) it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order; (ii) it has the right and unrestricted ability to assign the Work to RPO including, without limitation, the right to assign any Work performed by Supplier Personnel and Subcontractors; (iii) the Work, and RPO's use of the Work, do not and will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law; (iv) Supplier will not disclose to RPO, bring onto RPO's premises, or induce RPO to use any confidential or proprietary information that belongs to anyone other than RPO or Supplier which is not covered by a non-disclosure agreement between RPO and Supplier; (v) Software supplied by Supplier does not contain any Harmful Code; (vi) Supplier's Work conforms to RPO's specifications, Supplier's quotation or proposal, and Supplier's brochures or catalogs, and if none of the foregoing is applicable, then such Work is suitable for the intended use; and (vii) no Products contain or include components (a)containing PCB' (polychlorinated biphenyls) chemical substances, (b) manufactured using a cadmium plating process or contain a chemical substance or mixture that is or becomes subject to a reporting requirement under section 8(e) of the Toxic Substances Control Act , 15 U.S.C Section 2607(e), as in effect at time of shipment.
- 8.2 RPO warrants and represents to Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.
- 8.3 TO THE EXTENT ALLOWED BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE, EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. ASSIGNMENT AND SUBCONTRACTING

- 9.1 Supplier may not assign any of its rights or delegate any of its obligations under the Purchase order without RPO's prior written consent, which RPO will not unreasonably withhold. RPO may, at its option, void any attempted assignment or delegation undertaken without RPO's prior written consent.

- 9.2 Supplier may not subcontract any of its rights or obligations under the Purchase Order without RPO's prior written consent. If RPO consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify RPO for all damages and costs of any kind, subject to the limitations in Section 12 (Indemnification), incurred by RPO or any third party and caused by the acts and omissions of Supplier's Subcontractors' and (iii) make all payments to its Subcontractors. If Supplier fails to timely pay a Subcontractor for Work performed, RPO will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify and hold RPO harmless for all damages and costs of any kind, without limitation, incurred by RPO and caused by Supplier's failure to pay a Subcontractor.
- 9.3 To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

10. TERM AND TERMINATION

- 10.1 The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Work is completed and accepted.
- 10.2 RPO may terminate this Purchase Order, any SOW, or both at any time, for no reason or for any reason, upon 15 days written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform RPO of the extent to which it has completed performance as of the date of the notice, and Supplier will collect and deliver to RPO whatever Work then exists. RPO will pay the Supplier for all Work performed and accepted through the effective date of the termination, provided that RPO will not be obligated to pay any more than the payment that would have become due had Supplier completed and RPO had accepted the Work. RPO will have no further payment obligation in connection with any termination.
- 10.3 Either party may terminate the Purchase Order, any SOW or both, immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceedings are not dismissed within 60 days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.
- 10.4 RPO may immediately terminate the Purchase Order upon written notice to Supplier if there is a change in ownership representing 20 percent or more of the equity ownership of Supplier.
- 10.5 Either party may terminate this Purchase Order, any SOW or both, immediately by delivering written notice to the other party for any material breach not cured within 30 days of receipt of notice of the breach. RPO shall have no further payment obligation to Supplier under any terminated SOW if RPO terminates the SOW under this Section 10.5.
- 10.6 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

11. CONFIDENTIAL INFORMATION AND PUBLICITY

- 11.1 If RPO and Supplier have entered into a Non-Disclosure Agreement (NDA) which covers disclosure of confidential information under the Purchase Order, and if the term of the NDA expires before the expiration or termination of the Purchase Order, then the term of the NDA shall be automatically extended to match the term of the Purchase Order.
- 11.2 The parties shall treat the terms, conditions, and existence of the Purchase Order as Confidential Information as defined in the NDA.
- 11.3 Supplier shall obtain RPO's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to RPO.

12. INDEMNIFICATION

- 12.1 As used in this Section 12, a "Claim" is any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs as incurred) for which one party (the "Indemnifying Party") may be obligated to defend, indemnify and hold the other party (the "Indemnified Party") harmless.
- 12.2 Supplier shall defend, indemnify and hold RPO harmless from and against any and all Claims as incurred, arising out of or in connection with any (i) act or omission of Supplier (including its Subcontractors) in the performance of the Work; or (ii) any infringement of a third party's Intellectual Property Rights or any other rights.
- 12.3 RPO shall indemnify and hold Supplier harmless from and against any and all Claims as incurred, arising out of or in connection with: (i) Supplier's use of RPO's products or services in connection with the Work; (ii) Supplier's use of information or materials provided to Supplier by RPO; or (iii) infringement a third party's Intellectual Property Rights or any other rights resulting from Supplier's adherence to RPO's written instructions.
- 12.4 Each party will indemnify and hold the other party harmless from and against any and all Claims, as incurred, arising out of any negligent or willful acts or omissions of the Indemnifying Party which results in personal injury (including death) or damage to tangible property (not including lost or damaged data).
- 12.5 The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnified Party's behalf.
- 12.6 If a third party enjoins or interferes with RPO's use of any Work, then in addition to Supplier's obligations under Section 12.2, Supplier will use its best efforts to (i) obtain any licenses necessary to permit RPO to continue to use the Work; (ii) replace or modify the Work as necessary to permit RPO to continue to use of the Work; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to RPO the amount paid for any Work for which a third party enjoins or interferes with RPO's use of the Work.
- 12.7 Nothing in this Section shall limit any other remedy of the parties.

13. LIABILITY

- 13.1 NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, RPO WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASER ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT RPO PAID TO SUPPLIER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.
- 13.2 IN NO EVENT WILL RPO BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER, WHETHER OR NOT RPO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 13.3 THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

14. INSURANCE

- 14.1 Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect RPO in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.
- 14.2 Any supplier coming onto Rochester Precision Optics grounds will be required to submit, prior to the appointment, valid proof of insurance, a W9, and any other document that are requested by RPO.

15. COMPLIANCE WITH LAWS

Supplier represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under this Purchase Order. In particular and without limitation, Supplier shall not act in any fashion or take any action that will render RPO liable for a violation of the U.S. Foreign Corrupt Practices Act ("FCPA"), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality to assist it or RPO in obtaining or retaining business or in carrying out the Services. Supplier's failure to comply with the FCPA shall constitute a material breach of this Purchase Order.

16. GOVERNING LAW

The Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the State of New York, without regard to its conflict of laws rules. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for

Monroe County, New York, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

17. GENERAL

- 17.1 Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, as such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.
- 17.2 If there is a conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:
- 17.2.1 A conflict between the terms of the Purchase Order and those set forth in an exhibit or hyperlink will be resolved in favor of the Purchase Order.
- 17.2.2 A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favor of the SOW.
- 17.2.3 A conflict between the terms of an exhibit or hyperlink and those set forth in an SOW will be resolved in favor of the SOW.
- 17.3 If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.
- 17.4 A party's election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order.