

**1. TERMS AND CONDITIONS APPLICABLE.**

Purchaser has offered to purchase from Rochester Precision Optics LLC. (RPO) the Products and/or services described on the face hereof. RPO's acceptance of the offer is expressly conditioned upon Purchaser's assent to the terms and conditions set forth herein. RPO expressly objects to any additional, different, or inconsistent terms previously submitted by Purchaser, whether in a purchase order or otherwise, and to the extent there are any differences between this order and that submitted by Purchaser, this order will be construed as a counteroffer and not an acceptance of Purchaser's terms. Purchaser's failure to make written objection within five (5) days from receipt hereof, or its acceptance of the shipment of the Products or the performance of the services, shall constitute its acceptance of these term end conditions.

**2. PRICES; TAXES; PAYMENT TERMS.**

A. Purchaser shall pay the purchase price set forth on the face of this order, including appropriate nominal handling charges. Prices are FOB. RPO's W. Henrietta, New York facility.

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 Purchaser, except where Purchaser shall have provided a proper certificate of exemption therefrom. Purchaser 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 RPO, 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 State currency.

D. Delinquent payments after 30 days can be subject to late fees or penalties.

E. RPO 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 Purchaser no warrants. In any such case, RPO may require cash payment, irrevocable letter of credit or additional security from Purchaser 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 Purchaser or in the event any proceeding is brought by or against Purchaser under the bankruptcy or insolvency laws, RPO may be entitled to cancel any order then outstanding, without liability whatsoever, and shall receive reimbursement for its cancellation charges as per Section 4 hereof.

**3. SHIPMENT; RISK OF LOSS.**

A. RPO 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 Purchaser for blanket purchase orders must be submitted in writing to RPO. RPO will use its 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 net forth in Section 2(A) 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 Purchaser as soon as the Products have been delivered to the carrier for shipment to Purchaser at the FOB point, RPO's W. Henrietta, New York facility. Passage of title and/or risk of loss shall not be affected by delivery terms, shipping instructions, or storage on Purchaser's behalf by RPO at its facilities. Upon written notice to Purchaser, RPO may elect to obtain insurance covering the Products during shipping, and Purchaser shall promptly reimburse RPO the cost thereof.

**4. CANCELLATIONS AND REQUESTS FOR CHANGES IN DELIVERY SCHEDULES.**

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

(I) For Standard Optical and Mechanical Products: One hundred percent (100%) of any nonrecurring charges related to Purchaser's order plus any materials, labor, and subcontract costs, including cancellation fees related to the cancelled units that is owed to RPO'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 RPO.

(H) For Custom Optical 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. Purchaser must pay RPO 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. Purchaser shall also be responsible for all cancellation charges incurred by RPO for materials, components, and subcontracted items that RPO purchased, prior to the cancellation date, which were necessary to complete the cancelled orders. Purchaser is entitled to receive all finished custom optics Products for which cancellation charges are paid in full.

'B. Purchaser requested changes to the delivery schedule for standard Products are not permitted for Products scheduled to be delivered within sixty (60) days of Purchaser's written request. With respect to volume blanket purchase orders, the initial three (3) months of scheduled deliveries must be committed to (released) and are not subject to change. Subsequent shipment releases may require minimum release quantities and must allow a minimum of 90 days for related deliveries to begin. Written requests for delivery schedule changes that are consistent with the above are subject to acceptance by RPO and may be subject to purchase price adjustments as determined by RPO. Should RPO incur additional costs because of the inability of Purchaser to accept delivery of the Products or to permit normal and unrestricted installation of goods, when such installation is required, Purchaser promptly upon demand shall reimburse such additional cost to RPO.

C. Once scheduled or released for shipment, Products shall not be unscheduled or reclassified as unreleased. All Products must be released by the Purchaser 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.

**5. INSPECTION AND REJECTION**

Purchaser will fully inspect all standard and/or custom Products delivered within 30 days of receipt. In the event that such inspection and testing reveals any deficiency or non-conformity, Purchaser shall notify RPO in writing as per Section 6. Warranty. If Purchaser 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 RPO, shall be subject to the charges specified in Section 4.A (i) and shall be returned to RPO as per Section 6. C. Returns for convenience of custom or customized Products are not allowed. In all cases, no Product shall be returned to RPO by Purchaser unless a Return Authorization Number is first requested in writing and RPO authorizes such return.

**6. WARRANTY.**

A. RPO warrants its Products to be free from defects in materials and workmanship and to conform to RPO's standards or agreed upon specifications, whichever are applicable for such Products, for a period of one (1) year after shipment by it or as authorized reseller, provided that Purchaser notifies RPO in writing of any such defects within thirty (30) days of first evidence of such defect. The sole end exclusive obligation of RPO under this warranty is limited, at RPO's sole discretion, to the replacement or reworking of the defective Products or the return of that portion of the purchase price applicable to the defective Products. The determination of whether a non-conformity is a valid warranty claim is at RPO's sole discretion.

B. This warranty is not applicable to Products damaged by, or failures due to; abuse, misuse; alteration; accident; negligence (other than that of RPO); improper storage, maintenance or operations; abnormal conditions of temperature, moisture, dirt, or corrosion; or repair or alteration by anyone other than an authorized representative of RPO. RPO is not responsible for expenses incurred by Purchaser to correct or repair any alleged defect unless pre-approved by RPO in writing. This warranty does not apply to; and RPO assumes no liability for, the failure of any Products to meet Purchaser provided specifications where RPO previously indicated its products may not meet purchaser's specifications.

C. Purchaser must inspect product within 30 days of receipt. Purchaser must obtain a Return Authorization Number to return any Product, which expires after thirty (30) days. All Products returned for warranty service must be returned in the original packaging and protected by an appropriate shipment carton. Purchaser is responsible for risk of loss and all costs associated with the return to RPO of the Product. Purchaser is also responsible for any return shipping charges and for the price of labor associated with the diagnosis and retesting of Products found to be conforming. Products found to be non-conforming (valid warranty claims) will be returned prepaid.

D. RPO's warranty does not extend to materials or equipment purchased by it from other manufacturers end resold (either in its original form or as a component of the Products) to Purchaser and RPO assigns to Purchaser any transferable rights it may have arising from warranties given by any such manufacturer with respect to such materials or equipment.

7. **LIMITATION OF LIABILITIES.** The sole and exclusive remedies of Purchaser shall be those specifically set forth in the Warranty section hereof. RPO's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations hereunder shall not in the aggregate exceed the purchase price of the Products involved. UNDER NO CIRCUMSTANCES SHALL RPO BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR LOSS OF BUSINESS OR PROFIT OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. THE FOREGOING CONSTITUTES THE SOLE LIABILITY OF RPO AND THE EXCLUSIVE REMEDY OF PURCHASER WHETHER OR NOT BASED UPON NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, TORT, OR ANY OTHER COURSE OF ACTION.

8. **INDEMNIFICATION.** Purchaser acknowledges that RPO has no control over, and is not responsible for, the manner in which the Products will be used or otherwise dealt with by Purchaser. Purchaser shall indemnify, hold RPO harmless from end against, and agrees to assume all responsibility for any and all actions, claims, or demands arising out of or in any way connected with, and any end all amounts which RPO and/or Purchaser becomes obligated to pay, caused by or resulting directly or indirectly from the use or operation of the Products.

9. **CONFIDENTIAL INFORMATION.** The parties shall enter into RPO's standard Non-Disclosure Agreement, unless an alternate agreement is mutually agreed upon, to set forth the terms and conditions applicable to confidential information.

**10. NONPAYMENT.**

A. RPO shall have the right to immediately suspend performance by it or otherwise terminate all or any part of this order in the event Purchaser fails to pay any amount to RPO when due.

B. In the event of nonpayment, RPO shall have and may exercise all rights and remedies under the Uniform Commercial Code. Purchaser shall also be liable to RPO for all costs of collection, including reasonable attorney's fees and costs, incurred by RPO upon the default by Purchaser.

**11. EXCUSABLE FAILURE OR DELAY**

RPO shall not be held responsible for failure of or delay in delivery nor Purchaser for failure or delay in accepting material hereunder if such failure or delay is due to act of God or the public enemy, war, governmental acts or regulations, fire, flood, embargo, quarantine, epidemic, labor strikes, accident, unusually severe weather, or other cause, either similar or dissimilar to the foregoing, beyond its control. In the event of failure of or delay in delivery or acceptance for any such cause the quantity provided for in the order may be reduced accordingly by written notice by either party to the other.

**12. CHANGES IN WRITING GOVERNING LAW**

The terms and conditions of this acceptance constitute the only terms which shall govern this customer order. No other agreement or quotation or any acknowledgement of Purchaser in any way modifying any of the provisions of the customer order will be binding upon RPO unless made in writing and accepted in writing by RPO. This order shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law principles thereof.

**13. CUSTOM MOLD TOOLING**

Tooling fabricated under exclusive NRE development is designed explicitly for RPO fabrication methods. These methods are considered proprietary to RPO and tooling must be kept under control and in facility at RPO. Customer paid exclusive tooling is proprietary to the customer and will only be used for customer unless approval is given to RPO.