

# GENERAL TERMS AND CONDITIONS OF SALE

Effective July 1, 2023

**General Terms:** These terms and conditions (“Terms and Conditions”) herein written shall govern the legal relationship between buyer (“Buyer”) and seller (“Seller”) and shall supersede all previous communications, agreements or contracts, and no term, condition or trade custom in conflict or inconsistent herewith shall be binding upon Seller unless agreed to in writing. All orders for product (“Product”) are subject to acceptance by Seller in the form of a written acknowledgment from Seller’s home office or commencement of performance. Seller’s failure to enforce any right it may have under the Terms and Conditions shall not be construed as a waiver thereof, nor shall such failure or failures be deemed to establish any custom, usage, course of dealing or course of performance. The failure of Seller to exercise any rights resulting from Buyer’s default or otherwise shall not be deemed a waiver of such right or any other right. These Terms and Conditions may be enforced at any time, in whole or in part. Any provision hereof which is prohibited or unenforceable in any applicable jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability in any other jurisdiction. **In the event Buyer’s terms and conditions of purchase conflict with the Terms and Conditions herein the Parties hereby agree that all payment, warranty, liability and indemnity terms in these Terms and Conditions will supersede any related terms in Buyer’s terms and conditions of purchase.**

**Payment:** Products may require full or partial payment upon delivery, may require other security for payment or performance, or may impose such other credit or payment terms as Seller deems appropriate in its sole discretion. Product prices are subject to change without notice and the price for the product shall be the prices in effect at the time of shipment. Prices are exclusive of taxes which shall be Buyer’s responsibility (other than taxes on Seller Products including net income or gross receipts). In the event Buyer claims an exemption from any tax, a valid tax exemption certificate must be furnished to Seller. Payment terms are Net 30 days unless otherwise specified. Sums not paid when due shall bear interest at a rate of 1.5% per month, or the maximum rate permitted by law, whichever is less. Buyer may not withhold or set-off payment for

products delivered for any reason whatsoever. Seller reserves the right, among other remedies, either to terminate the sale and/or to suspend future deliveries upon failure of Buyer to make any payment pursuant to these Terms and Conditions or any other contract between the parties hereto. Buyer shall reimburse Seller in full for all damages, costs and expenses, including reasonable attorneys’ fees, which Seller incurs with respect to Buyer’s breach of these Terms and Conditions or any collection efforts by Seller to recover past due amounts from Buyer.

**Security Interest:** Buyer, by ordering and then accepting the Product, is deemed to have affirmatively represented to Seller that it is solvent at the time of delivery of the Product. Until all amounts due have been paid in full, Seller hereby retains a security interest in the Product and has all rights of a secured party under the Uniform Commercial Code, including, without limitation, the right to take possession of the Product without legal process and the right to require Buyer to make the Product available to the Seller at a place reasonably convenient to both parties. At Seller’s request, Buyer shall execute any financing statement or statements submitted by Seller in order that Seller’s security interest in the Product may be formally perfected.

**Credit Terms:** If applicable, credit terms are subject to Seller’s continuing approval of Buyer’s credit, and if, in Seller’s sole judgment, Buyer’s credit or financial standing is impaired so as to cause Seller to deem itself insecure, Seller may withdraw the extension of credit and require other payment terms. Buyer agrees to submit such financial information, from time to time, as may be reasonably requested by Seller for the establishment and/or continuation of credit terms.

**Changes:** Any request to change any order with respect to the quantity or packaging of Products must be communicated in writing prior to shipment. If such changes result in increased cost or time to manufacture the Product(s) or if there is a decrease in the quantity requested which invalidates any discounts offered by Seller, then the price and timing of the original order shall be adjusted accordingly. Buyer agrees to pay any increased costs associated with the changes. Once orders have been accepted by Seller, no changes with respect to specifications will be made or allowed unless they are requested and accepted in writing and the resulting new price

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and delivery time are agreed upon by both Parties in writing. Additional costs for changes, including any costs for additional engineering, will be reflected in the new price. Cancellations are subject to cancellation charges which are determined in the sole discretion of the Seller.

**Shipments/Freight Costs:** All applicable Product shipments are either FCA (Incoterms 2000) or FOB shipping point, unless specifically noted as freight allowed. A minimum charge may be applicable for orders. Shipping and/or delivery dates are estimates only and Seller shall not be liable for any delay or discrepancy in the shipping or delivery of Products. Seller reserves the right to make deliveries in installments. Delay in delivery of one installment shall not entitle Buyer to cancel other installments. Any applicable freight costs will be added to the invoice unless Buyer specifies collect on the purchase order.

**Field Service:** Any applicable field service, technical support, installation supervision, or related service shall be governed by a separate written agreement.

**Product Back Orders:** Seller reserves the right to cancel Product back orders.

**Return of Products:** Written authorization is required from Seller prior to any return shipment, which may be granted or denied by Seller in its sole discretion. In certain circumstance no more than ten percent (10%) of any one item may be eligible for return. Custom colors, special orders, or limited-shelf-life materials are not returnable. Authorized returns must be shipped using the carrier selected by Seller and routed to the location of Seller's choice. Buyer is responsible for all freight charges. Returns must be shipped in their original unopened cartons. A minimum 25% re-stocking fee will be charged on all authorized returns. Obsolete, discontinued, and/or merchandise over six months old is not eligible for return in any instance. Likewise, excess product due to Buyer's overestimate of requirements or need is not subject to return.

**Claims:** Claims resulting from losses, shortages or damage in transit must be acknowledged on the delivery papers at receipt. Buyer shall further promptly notify Seller of any delivery of any damaged Product(s) purchased from Seller, or of any complaint whatsoever Buyer may have concerning delivery. Buyer's failure to give such notice and to note such damage constitutes a waiver of any claim against Seller relating to the damaged Product. Any other

claim pertaining to the ordering, shipment (including timeliness), suitability, accuracy, or delivered condition of the Product not specifically set forth in these Terms and Conditions shall be deemed waived and released by Buyer unless made in writing within five (5) business days after Buyer's receipt of the Product.

**Warranty:** Seller warrants that the Product purchased by Buyer is free of manufacturer's defects and further guarantees to replace any Product which is determined by Seller, in its sole discretion, to be defective or not in conformity with Seller's most current published specifications. Seller further warrants that the Product delivered will be produced in compliance with the Fair Labor Standards Act of 1938, as amended. If applicable, additional warranty terms are stated on the Product label and supersede any conflicting terms herein. No claims will be considered until the Product in question has been inspected by a Seller representative. All claims for allegedly non-conforming or defective Products shall be made by Buyer in writing within thirty (30) days of receipt of shipment of Product, after which the Product shall be deemed accepted for all purposes and Seller shall have no liability for same. **SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND DISCLAIMS EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCT.** The warranty set forth on the Product label shall be void, and shall not apply to any Products (i) which have been altered, modified or combined with any other materials other than materials as specified on the Products' labeling, (ii) which have been subject to improper storage or handling, or (iii) which have been exposed to conditions beyond the operating constraints specified by Seller in its labeling. With the exception of the warranty terms set forth herein or, if applicable, on the Product label, it is Buyer's sole responsibility to test the Product to ensure that it is fit for the use intended by Buyer or any end user.

**Limited Liability: SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMERS OR ANY PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES (INCLUDING, WITHOUT, LIMITATION LOST PROFITS OR BUSINESS INTERRUPTION LOSSES) AS A RESULT OF SUPPLYING PRODUCT TO CUSTOMERS OR OTHERS AND**

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**WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR DAMAGES TO PROPERTY, OR FOR DEATH, DISABILITY OR OTHER INJURIES TO PERSONS, ARISING OUT OF THE USE OF ITS PRODUCTS, INCLUDING ANY PRODUCT WHICH WAS NOT KEPT OUT OF THE REACH OF CHILDREN AND ANIMALS. SELLER'S EXCLUSIVE LIABILITY AND BUYER'S SOLE REMEDY IN THE EVENT OF A NON-CONFORMING PRODUCT SHALL BE REPLACEMENT OF THE DEFECTIVE PRODUCT WITH CONFORMING PRODUCT. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT AT ISSUE.** To the fullest extent possible under applicable law, no Seller affiliate will have any liability to Buyer and Buyer will not bring any claim against any affiliate in any way in respect of, or in connection with, the Product. All Seller affiliates are hereby intended third-party beneficiaries.

**Time Limitation:** No lawsuit or other legal action, regardless of form, may be brought by Buyer for any breach by Seller or any other claim relating to or arising out of the Product, including negligence or any other tort-based claims, after one (1) year from the date of delivery of the Product, unless otherwise agreed to in writing by both Parties.

**Availability:** Certain Products may not be available in your area due to federal, state or local regulations.

**Force Majeure:** Seller shall not be liable for any failure or delay in performance with respect to manufacture, delivery, or otherwise if such failure or delay is due to an act of God, war, civil disturbance, riot, labor difficulties, factory capacity, fire, other casualty, accident, inability to obtain containers or raw materials, supplier's failure or inability to perform, governmental acts or restrictions, including shutdowns and inability to perform due to epidemics or pandemics, or any other cause of any kind whatever beyond the reasonable control of Seller. Seller shall have the right at its option and without liability to apportion its supply of Product among its customers, including its affiliated divisions and companies, in such a manner as Seller, in its sole discretion, believes equitable or appropriate. In no event shall Seller be obligated to purchase Products from others in order to enable it to deliver Products to Buyer.

**Indemnity:** Buyer shall assume full responsibility for the use of the Products and shall defend, indemnify

and hold harmless Seller and its respective affiliates, officers, directors, shareholders, employees, agents and representatives from and against any and all losses, liabilities, claims, damages, demands, costs and expenses (including without limitation attorneys' fees and court costs) arising out of or relating to same.

**Governing Law:** All sales are governed by the laws of the country, state, province, or territory of Seller's home office, without application of conflict of law principles and Buyer irrevocably and unconditionally submits to the exclusive jurisdiction of the country, state, provincial or territorial courts in the country, state, province or territory of the location of the Seller's home office and waives to the fullest extent possible any defense of any inconvenient forum to the maintenance of such action or proceeding. **THE PARTIES KNOWINGLY AND WILLINGLY WAIVE ANY RIGHT THEY HAVE UNDER APPLICABLE LAW TO A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATED TO THESE TERMS AND CONDITIONS OR THE ISSUES RAISED BY THAT DISPUTE.** The United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended, shall not apply to the Contract.

**Compliance with Instructions:** Buyer shall comply with all applicable instructions furnished by Seller relating to the installation, maintenance and use of the Product(s) and Buyer agrees not to misuse, modify or misapply such Product in any manner. Seller shall not be liable for Buyer's failure to apply or use the Product in accordance with such instructions. Buyer agrees to indemnify and hold Seller harmless from any and all claims, costs, liability, damages and expenses, including attorneys' fees, against or incurred by Seller due to injuries to persons or property in connection with Buyer's application or use of the Product(s). Buyer acknowledges receipt of and familiarity with Seller's labeling and literature concerning the Product(s) and will forward such information to its employees who handle, process or sell such product(s) and to customers of such Product(s), where applicable.

**Compliance with Applicable Law:** Buyer shall comply with all applicable laws and regulations, including but not limited to, the Foreign Corrupt Practices Act, the anti-money laundering provisions of the USA Patriot

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Act and Bank Secrecy Act, and United States export control laws. Buyer shall not sell, export, re-export, transmit, divert or otherwise transfer any goods or Products into or through Cuba, Russia, Iran, Syria, North Korea, Venezuela, the Crimea, Donestsk, or Luhansk Regions of Ukraine, or any other prohibited jurisdiction, or with or to any party listed on any United States Government or European Union blocked-persons list, as amended from time to time.

**Compliance with Applicable Policies:** Buyer shall comply with all applicable Seller policies including but not limited to Seller's Values & Expectations of 168 which can be accessed at the following URL <https://www.rpminc.com/pdf/CodeGuidelines.pdf> and Seller's Distributors and Applicators Code of Conduct, which can be accessed at the following URL <https://www.rpminc.com/distributors-and-applicators-code-of-conduct/>.

**License:** Nothing in these Terms and Conditions is intended or shall be construed to grant any license or other permission by Seller to Buyer to use any trademarks, trade names, copyrighted materials, patents or other intellectual property rights or interest of Seller at any time. In the event the Parties have entered into a separate License Agreement, that agreement is hereby incorporated by reference and made part hereof, to the extent applicable. If any inconsistency shall exist between these Terms and Conditions and the separate License Agreement, the terms of the License Agreement shall prevail.

**Entire Agreement:** These Terms and Conditions represent the entire agreement between the parties hereto, and there are no understandings, representations, or warranties of any kind except those expressly set forth herein.