

# STANDARD TERMS & CONDITIONS

**1. AGREEMENT.** These Standard Terms and Conditions shall apply to all offers made by RPC ELECTRONICS INC. (hereinafter referred to as "the Seller"), and all contracts (hereinafter referred to as "the Contract ") made between the Seller and any person, firm or entity (hereinafter referred to as "the Buyer ") purchasing products, material, parts and services (hereinafter "the Products ") from the Seller. These Standard Terms and Conditions contained in any quotation given by the Seller or in any order issued by the Buyer and fully accepted by the Seller shall constitute the entire agreement between the Seller and the Buyer with respect to the sale and delivery of the Products and the performance of any work by the Seller, and no variation or waiver or addition to these Standard Terms and Conditions shall be binding unless expressly confirmed by the Seller in writing. These Standard Terms and Conditions shall have precedence over and be preferred to any conditions appearing on the Buyer's purchase order document or other documents emanating from the Buyer and any such Buyer's conditions shall be of no force and effect unless expressly accepted in writing by the Seller. No person has authority to make any representations on the Seller's behalf and the Buyer shall not rely on any representation unless made or confirmed in writing by the Seller.

**2. OFFERS AND ORDERS.** Unless previously withdrawn, Seller's offer is open for acceptance within the period stated therein, or when no period is stated within thirty (30) days from the date thereof. Any purchase order received by the Seller, whether in response or not to such offer, and any agreement and contractual change shall only be binding on the Seller at such time as the Seller gives to the Buyer its written acceptance thereof. All price lists, brochures and other literature are as accurate as possible. They shall only be binding on the Seller if they are expressly confirmed in writing. In the event of any variations in the order requested by the Buyer and accepted by the Seller, the Seller shall be entitled to charge the Buyer all additional costs and expenses incurred by the Seller in connection therewith and the Seller may set a new delivery date, all this subject to payment by the Buyer of the work already performed by the Seller. No order for the Products may be cancelled by the Buyer without the written consent of the Seller. The Buyer shall indemnify the Seller against all costs incurred by the Seller in connection therewith.

**3. PRICES.** Prices shall be quoted for delivery of the Products to the agreed location in US Dollars. The price shall include Seller's standard packing and any special packing shall be charged to the Buyer. Prices quoted relate to the stipulated quantity only. The quoted prices are based on the costs of materials and labor prevailing on the date of quotation. Unless otherwise agreed in writing, if before the date of actual delivery variations occur in the above mentioned costs, the Seller shall be entitled to revise the prices quoted to provide for such variations. In the event of a change or an introduction by any governmental regulations of any taxes, levies or import duties, the Seller shall be entitled to pass on the Buyer the price increase resulting thereof.

**4. PAYMENT.** Unless otherwise agreed in writing, all accounts are strictly net and are due for payment within thirty (30) days following dispatch of the Products or, where applicable, the date on which the Products are available for collection. Interest on late payment will be charged to the Buyer at a rate of one and half percent (1.5%) a month (or part month) on the

amount still outstanding. In addition, all costs and expenses, legal judicial or otherwise, incurred by the Seller in recovering the sums due shall be fully borne by the Buyer.

If the Buyer fails to effect payment on the due date, the Seller reserves the right, in addition to any other legal rights and remedies available to it, to suspend further deliveries of Products until such time as payment is received from the Buyer or to terminate the Contract. Should the Contract be terminated by the Seller, the Buyer will be liable to the Seller for the price of all Products actually delivered or completed and ready for delivery. The Seller further reserves the right to claim the fair and reasonable price for partly completed Products based on manufacturing costs up to the date of termination.

If the Buyer fails to take delivery of the Products under any Contract within eight (8) days of the date of notification that they are ready for delivery the Seller shall have the right to invoice for payment at any time after the expiry of said period and payment shall be due thereon as if delivery had been made.

The Seller reserves the right at any time, even in the course of performance of the Contract, to require the Buyer to furnish a guarantee of payment whose terms shall be agreed upon in writing by the Seller.

If the event that Buyer makes an assignment for the benefit of creditors, files a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or has a receiver or trustee in bankruptcy appointed to all or part of its assets, or if any action is taken to dissolve, liquidate or wind up the Buyer, the Seller shall have the right to terminate upon written notice and with immediate effect the Contract, without prejudice to its rights to claim compensation for all costs and damages incurred by the Seller in connection therewith.

**5. RESERVATION OF TITLE.** Title to any Products sold under any contract shall not pass to the Buyer until the Seller has received payment in full of all sums invoiced together with any interests accrued thereon and other charges. In the meantime the Seller shall remain the full legal and beneficial owner of the Products and the Buyer shall hold any proceeds of sale of the Products as trustee or as bail for the Seller free from any charge, lien or other encumbrance. The Buyer agrees that it will assign to the Seller upon the Seller's request all of its rights under a contract of sale against any subsequent Buyer of the Products or any of them or of the equipment in which the Products have been incorporated. Until such time as title to the Products passes to the Buyer or until such time as the Products are sold, the Buyer shall keep the Products fully insured with a reputable insurer and shall store them in such a way as they can be readily identified as being the Seller's property. The Seller has the right to recover possession of all or any of the Products or to seize any of the Products at any time and is entitled to enter upon any of the premises of the Buyer for the purpose of doing so. If the Buyer makes an assignment for the benefit of creditors, is adjudicated bankrupt or insolvent, has any proceedings commenced against it for reorganization, readjustment of debt, dissolution or liquidation, or has its business wound up, the Seller shall be entitled to claim back as its property any Products delivered but not yet paid for or not paid for in full, without prejudice to its rights to demand compensation for any losses or damage resulting thereof.

**6. DELIVERY.** Unless otherwise agreed in writing, all deliveries of Products shall be made Ex Works of Seller's factory. All risks of loss or damage to the Products shall pass from the Seller to the Buyer when the Products are delivered to the Buyer in accordance with the agreed trade term as defined in. The Seller may make deliveries in installments which will be invoiced

individually. The Buyer will make payment in accordance with clause 4 of these Standard Terms and Conditions.

Times specified for delivery of the Products are given and intended as estimates only unless otherwise agreed in writing. Where a firm time for delivery has been expressly agreed upon, no delivery shall be considered overdue until the Buyer has made a written request for delivery and given the Seller a reasonable opportunity to comply therewith. The Buyer shall have the right to cancel the Contract by serving written notice to the Seller if the Seller is unable due to circumstances for which it is fully responsible to comply with the extended or postponed delivery time and the Buyer has stated in writing when agreeing to the new delivery time that it will refuse to take delivery if the new delivery date is not met. In no event shall the Seller be liable for indirect, special, consequential or punitive damages arising out of or in connection with the late delivery of the Products.

The Buyer shall inspect or have inspected the Products delivered and shall notify the Seller in writing of any discrepancy regarding the quantity, specification or quality of the Products to the order within fourteen (14) days of receipt of the Products. Once this time period has elapsed, the Buyer shall be deemed to have accepted the Products. The Seller shall replace incorrect Products and deliver additional Products to meet the ordered quantity and the Buyer shall have no claim to compensation whatsoever. The Buyer shall not return any Products without the prior written permission of the Supplier. Submitting a claim shall at no time release the Buyer from its obligations under the Contract.

**7. THE SELLER Warranty.** RPC ELECTRONICS INC. (THE SELLER) warrants to the original Customer only (not any lessees, transferees or assignees) that the following products will be free from defects in material and workmanship for 1 year. This warranty applies only to THE SELLER Products and excludes any software incorporated therein. In the event that THE SELLER receives returned THE SELLER Products with defects in material or workmanship, it will, at its option, repair or replace the Products to whatever extent it deems necessary to restore the Products to proper operating condition, or provide a credit or refund of the purchase price or fair market value, whichever is lower. Replacement parts may be refurbished or repaired. All material and labor required for such a restoration will be provided at no charge when a Product with material or workmanship defects is properly returned within the applicable warranty period under the procedure described herein. Not covered under the warranties are: failures due to accident, misuse, abuse, neglect, improper installation, product modification, or unauthorized repair or attempted repair, or shipping damage. Customer expressly understands and agrees that THE SELLER does not warrant that any product is free of claims of patent infringement by any third party. THE SELLER disclaims any such warranty or indemnification against patent infringement. Customer acknowledges that it is not authorized on behalf of THE SELLER to make any other warranties or representations not expressly set forth herein on behalf of THE SELLER concerning any THE SELLER Products.

**8. Manufacturer's Warranties; Non-THE SELLER Products.** Customer acknowledges that unless it is purchasing a THE SELLER Product described in the immediately preceding paragraph, only the warranties offered by the manufacturer are available. In purchasing such a product from THE SELLER, Customer agrees to rely upon the manufacturer's specifications and warranties and is not relying upon any statements, specifications, illustrations, photographs, or other document provided by THE SELLER. Customer has familiarized itself with the manufacturer's

warranty prior to purchasing the product from THE SELLER and understands that warranty claims must be presented directly to the manufacturer and not to THE SELLER.

**9. TOOLING.** All tools, molds and fixtures which are developed by the Seller under the Contract or made by the Seller under any purchase order from the Buyer shall be and remain at all times the exclusive property of the Seller.

**10. CONFIDENTIALITY.** All parties to the Contract shall maintain in strict confidence and shall not, without the other party's prior written authorization, disclose to third parties any documents and confidential information designated by the furnishing party as confidential, and furnished to the other party pursuant to the Contract. The receiving party shall not use the other party's confidential information for any other purpose than the performance of the Contract. Neither party shall be liable for disclosing any confidential information if it is known or becomes known to the general public otherwise than through an act of negligence by the receiving party. Upon termination of the Contract either party shall return to the other party all confidential information which is in its possession. The Buyer shall not make any advertisement, publicity or communication regarding the Contract or the Seller's relationship with the Buyer without the Seller's prior written consent. The parties' obligations under this Clause shall survive the termination of the Contract.

**11. WAIVER.** Any waiver of any provision of these Standard Terms and Conditions of sale, or a delay by either party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver, nor create an exception of non-enforcement of that or any other provision or right. If any provision of these Standard Terms and Conditions of Sale is held illegal or unenforceable by any court of competent jurisdiction, such provision shall be deemed separable from the remaining provisions of these Terms and Conditions and shall not affect or impair the validity or enforceability of the remaining provisions.

**12. NOTICES.** Any notice required to be given under these Terms and Conditions must be in writing and is effective upon delivery by certified mail or confirmed facsimile transmission to the other party at the address identified in the Order.

**13. EXPORT CONTROL** Products acquired under these Terms and Conditions may be subject to U.S. and other government export control regulations. Customer agrees that it will comply with those regulations whenever they export or re-export controlled products obtained from the Seller.

**14. FORCE MAJEURE.** Neither party shall be liable for the failure to perform any of its obligations under these Terms and Conditions if such failure is caused by the occurrence of any act of force majeure or any other contingency beyond its reasonable control. The Seller shall promptly notify the Buyer of the occurrence of the Force Majeure event with the indication of the scope and effect. The performance of the Seller's obligations shall be suspended for the term of the Force Majeure event. Should the Force Majeure event last for more than sixty (60) days from the date of the excused performance due date, the Buyer shall be entitled to terminate the Contract with fifteen (15) days prior written notice.

**15. ASSIGNMENT.** **The Buyer shall not assign the Contract in whole or in part to any third party.**

**16. APPLICABLE LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of Ohio. Each party agrees that any dispute between the parties will first be submitted in writing to the designated senior executives of the Seller and The Buyer who will

meet in an effort to resolve such dispute within thirty (30) days. In the event the executives are unable to resolve the dispute, if both parties agree, the dispute may be arbitrated in accordance with the rules and procedures set forth in a mutually agreed arbitration agreement.

**17. LIABILITY.** In no event shall the Seller be liable to the Buyer and any third party for loss of production, loss of business or profit or any other indirect, special or consequential damages.

**18. INDEMNITY.** The Buyer shall indemnify and hold the Seller harmless from any liabilities, claims, costs (including reasonable attorney's fees), expenses and damages in connection with the infringement by the Seller of a third party's patent, copyright or other intellectual property right which arises from the Seller's compliance with the Buyer's design or specifications.

**19. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE EQUIPMENT, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE SELLER, ITS LICENSORS OR REPRESENTATIVES, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE AND CONFORMITY TO MODELS OR SAMPLES, OR WARRANTY OF NON-INFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED, AND DISCLAIMED.

THIS DISCLAIMER DOES NOT APPLY TO THE MANUFACTURER'S WARRANTY, IF ANY.

**20. SPECIAL LIMITATIONS.** THE SELLER DOES NOT WARRANT THAT THE PRODUCTS IT SELLS WILL WORK IN ALL COMBINATIONS OF HARDWARE AND SOFTWARE SELECTED FOR USE BY THE CUSTOMER AND THE SELLER MAKES NO WARRANTY FOR THE DESIGN, FUNCTIONALITY OR PERFORMANCE OF ANY INTEGRATED SYSTEM CREATED USING A THE SELLER PRODUCT.

**21. CONSEQUENTIAL DAMAGES.** WITH THE EXCEPTION OF CLAIMS FOR DEATH OR PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY, UNDER NO CIRCUMSTANCES WILL THE SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON THE SELLER' CLAIMS OR THOSE OF ANY CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK, OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH THE SELLER MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE GREATER OF THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT THAT DIRECTLY CAUSED THE DAMAGE OR \$25,000.

**22. CONTRACT TERMS.** This Agreement constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof except as specifically set forth herein and each of the parties hereto acknowledges that he or it has relied on his or its own judgment in entering into the same.

