

**RK Manufacturing Corporation  
Terms and Conditions of Sale**

**Revised August 24, 2021**

**1. Application; Order of Precedence**

a. **Entire Agreement.** These Terms and Conditions of Sale (these “**Terms**”) are the sole and exclusive terms governing the sale of goods (“**Goods**”) by RK Manufacturing Corporation (“**RKM**”) to any buyer or purchaser thereof (“**Buyer**”). These Terms, together with any quotation, purchase order, invoice or other confirmation of sale (“**Purchase Order**”) shall comprise the entire agreement between RKM and Buyer, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, whether written or oral, in any medium whatsoever. These Terms shall prevail over any of Buyer’s standard or general terms and conditions of purchase, regardless of whether Buyer has provided its own form of Purchase Order, or whether Buyer has provided its own terms of sale.

b. **Buyer’s Terms Not Deemed Accepted.** Fulfillment of any Purchase Order by RKM shall not constitute, and shall not be deemed or construed as either an acceptance by RKM of any Buyer’s terms and conditions or as an amendment, modification or waiver of any part or the whole of these Terms.

c. **Revisions; Amendments.** RKM reserves the right to periodically review and update these Terms, and may revise these Terms without notice to Buyer, at any time and from time to time, in its sole discretion. The version of these Terms applicable to a Purchase Order shall be that version of these Terms in effect as of the date of such Purchase Order. These Terms shall be deemed effective as of the revision date first set forth above.

**2. Shipment; Delivery; Packaging**

a. **Shipping.** Unless otherwise agreed in writing by RKM, Buyer is responsible for all shipping costs of Goods. Goods shall be shipped using Buyer’s requested shipping method in a Purchase Order or, if no such method has been requested, using RKM’s standard method of shipment or such other appropriate method as RKM may determine in its reasonable discretion given the nature of the Goods being shipped. RKM may, without liability or penalty, make partial shipments of Goods to Buyer. Delivery of all Goods shall be FOB Origin unless otherwise provided in a Purchase Order. Quoted prices are for delivery of Goods FOB Origin and any request for different shipping terms may result in an increase in shipping costs paid by Buyer.

b. **Packaging.** Buyer shall provide RKM with all necessary packaging and labeling requirements for the Goods. RKM shall package and label all Goods in accordance with the instructions provided by Buyer. Buyer shall indemnify, defend and hold RKM harmless for any and all Losses (as defined in Section 5.f) arising out of or related to a failure of packaging or labeling instructions provided by Buyer to meet any applicable minimum standards imposed on or required of Goods by any governmental authority.

c. **Delivery.** RKM shall deliver Goods to the location specified by Buyer in a Purchase Order (the “**Place of Delivery**”). Buyer acknowledges that all times quoted for delivery of Goods are approximate and are contingent on factors outside of RKM’s control, including, but not limited to, component availability, availability of finished Goods, hardware and consumable shortages, freight and shipping agent delays and other circumstances outside the control of RKM. If no delivery date is stated in a Purchase Order, the requested delivery date will be deemed to be the lead-time quoted to Buyer by RKM after receipt of a Purchase Order. Evidence of the shipment by RKM of any quantity of Goods shall be deemed conclusive evidence of the quantity thereof received by Buyer in the absence of conclusive proof to the contrary. Notwithstanding any other provision of these Terms, RKM shall not be liable for any delays, loss or damage to Goods in transit. Goods shall not be deemed late or non-delivered until at least twenty-four (24) hours have passed from the date when Goods would have, in the ordinary course and in accordance with a corresponding Purchase Order, been delivered (the “**PO Delivery Date**”). RKM shall not be liable for non-delivery of Goods unless Buyer notifies RKM of such non-delivery within four (4) business days of the PO Delivery Date.

d. **Title and Risk of Loss.** Title and risk of loss to Goods shall pass to Buyer upon delivery of Goods to the Place of Delivery.

### **3. Price; Costs; Payment Terms; Taxes.**

a. **Price.** Except as otherwise provided in a Purchase Order, all prices quoted in Purchase Orders (“**Prices**”) are exclusive of all sales, use, documentary, excise and other taxes, duties and charges of any kind imposed by any governmental or other taxing authority on amounts payable by Buyer (“**Taxes**”). Buyer is solely responsible for remittance and/or payment of any Taxes; *provided*, however, that neither Buyer nor RKM shall be liable for any Taxes imposed on, or arising out of, the other party’s income, revenues, gross receipts, personnel or real or personal property.

b. **Prepayment.** Notwithstanding the provisions of Section 3.c, RKM may, in its sole discretion, require pre-payment by Buyer of the costs of any equipment, tooling, components or special order or custom materials (“**Custom Supplies**”). Amounts prepaid by Buyer for Custom Supplies are nonrefundable. Custom Supplies consisting of equipment or tooling shall be the sole property of RKM except as otherwise agreed by RKM and Buyer.

c. **Payment Terms.** Except as otherwise provided in Section 3.b, payment terms for all Goods are Net 30 days, subject to credit approval of Buyer by RKM, unless otherwise agreed in writing by RKM. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with RKM.

d. **Late Payment.** Interest shall accrue on all late payments and other overdue amounts payable hereunder at the lesser rate of One and One-Half percent (1.5%) or the higher

rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse RKM for the costs and expenses of collecting any overdue payments and interest, including, without limitation, reasonable attorneys' fees. RKM reserves the right to suspend the delivery of Goods if Buyer fails to pay any amounts when due hereunder within three (3) days after demand is made therefor. RKM's rights under this Section 3.d shall be cumulative and in addition to all other rights available to it at law or in equity.

#### **4. Acceptance; Inspection.**

a. Buyer shall inspect all delivered Goods within thirty (30) days of delivery thereof (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies RKM in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation of such nonconformance as RKM may request in its commercially reasonable discretion. For purposes of these Terms, Goods are "**Nonconforming Goods**" only if: (i) the product shipped is different than the Goods identified on an applicable Purchase Order, (ii) the shipped product's label or packaging incorrectly identifies its contents or otherwise does not comply with the requirements set forth on a Purchase Order or provided by Buyer.

b. RKM shall have the right, exercisable in its sole discretion and following its own inspection of any purported Nonconforming Goods, to (i) replace or rework, in RKM's sole discretion, Nonconforming Goods with or into conforming Goods, as applicable or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, Nonconforming Goods to RKM for inspection and replacement or reworking.

c. Buyer acknowledges and agrees that the remedies set forth in Section 4.b are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 4.b, all sales of Goods are final.

**5. Material Supplied by Buyer.** If Goods are to be manufactured using, or in conjunction with, raw materials or tooling or equipment supplied by Buyer (respectively, "**Buyer's Raw Material**" and "**Buyer's Equipment**"), the provisions of this Section 5 shall apply to such supply in addition to the remainder of these Terms.

a. **Material Supplied by Buyer.** Buyer shall supply RKM with all Buyer's Raw Material necessary for the production of Goods. RKM's obligations under this Agreement to manufacture, produce and sell Goods are contingent in all respect upon Buyer's supply of Buyer's Raw Material. RKM hereby expressly disclaims any responsibility, and Buyer waives any right to compel RKM, to source, procure or purchase alternate raw materials for the production of Goods, or to otherwise seek cover, if Buyer breaches its obligation to supply Buyer's Raw Material. Buyer's failure to deliver Minimum Raw Material on a timely basis to RKM shall be deemed to automatically extend any applicable periods of time for the performance of any RKM

duty or obligation or the exercise of any RKM right, option or privilege. Delivery of all Buyer's Raw Material shall be made at Buyer's sole cost and expense. Buyer shall bear all risk of loss to Buyer's Raw Material up to the delivery thereof.

b. **Inspection.** RKM shall have the right to inspect all Buyer's Raw Material within fourteen (14) days of delivery thereof (the "**RKM Inspection Period**"). If RKM timely notifies Buyer of any nonconforming Buyer's Raw Material, the amount of Goods to be supplied by RKM and applicable delivery date of any applicable Purchase Order shall be adjusted appropriately, unless and until Buyer timely replaces such nonconforming Buyer's Raw Material with conforming Buyer's Raw Material.

c. **Equipment.** Buyer shall supply RKM with all Buyer's Equipment necessary for the production of Goods. All Buyer's Equipment shall be promptly returned to Buyer at Buyer's expense in substantially the same condition in which it was delivered, reasonable wear and tear excepted, following fulfillment of all applicable Purchase Orders requiring the use of such Buyer's Equipment.

d. **Storage.** All Buyer's Raw Material, Buyer's Equipment and any and all other tangible property of every description, furnished by Buyer, either directly or indirectly, to RKM in connection with or related to the manufacture and sale of Goods (collectively, "**Bailed Property**") is and will at all times remain the property of Buyer, and be held by RKM on a bailment-at-will basis for no more than one (1) year unless otherwise agreed in writing by RKM.

e. **Disclaimer of Warranties.** Buyer acknowledges and agrees that (a) Buyer is bailing the Bailed Property to RKM for Buyer's benefit, (b) Buyer has inspected the Bailed Property and is satisfied that the Bailed Property is suitable and fit for its intended purposes, and (c) RKM HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE FITNESS OF BUYER'S RAW MATERIAL FOR USE IN THE PRODUCTION OF GOODS. RKM SHALL NOT BE RESPONSIBLE FOR ORDINARY WEAR AND TEAR OR CALIBRATION OR RECALIBRATION OF ANY BAILED PROPERTY CONSISTING OF BUYER'S EQUIPMENT. Buyer represents and warrants to RKM that all Bailed Property shall: (a) fit, form and function in accordance with its intended use in RKM's manufacturing process; (b) be of good and merchantable quality and free from all defects; and (c) be free and clear of all encumbrances and liens of any kind.

f. **Buyer's Special Indemnification.** Buyer shall indemnify, defend and hold RKM and its officers, directors, employees, agents, affiliates, successors and assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees ("**Losses**") arising out or resulting from a breach of Buyer's representations set forth in Section 5,

including, without limitation, Losses associated with damage to RKM's equipment, facilities, personal and real property and personnel.

**6. NO WARRANTIES.**

a. RKM represents to Buyer that, for a period of six (6) months from the date of shipment of Goods, or the expiration date set forth on any applicable Goods, whichever is shorter, that such Goods will materially conform to the specifications set forth in an applicable Purchase Order and will be free from material defects in material and workmanship.

b. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 6.a, RKM MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES CREATED BY THE PROVISION OR CREATION OF SAMPLE GOODS, EXPRESS OR IMPLIED.

**7. Limitation of Liability. RKM SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OF DATA, DIMINUTION OF VALUE OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT RKM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. RKM'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD PURSUANT TO THE APPLICABLE PURCHASE ORDER(S) GIVING RISE TO SUCH LIABILITY, OR TEN THOUSAND DOLLARS (\$10,000.00), WHICHEVER IS LESS.** The foregoing limitation shall not apply to liability resulting from or arising out RKM's gross negligence or willful misconduct, or any death or personal injury resulting from RKM's intentional acts or omissions.

**8. Compliance with Law.** Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits necessary for the satisfaction of its obligations under these Terms and for the lawful handling, storage, ownership or possession, sale (including any sales to end-users or consumers) or disposal of Goods.

**9. Medical Devices.** For purposes of these Terms, "Medical Device" shall mean any Goods for which the United States Food and Drug Administration, or any other non-United States

counterpart thereto, including, but not limited to, the European Medicines Agency, Health Canada and Swissmedic, requires medical device registration, approval, authorization or permitting.

a. RKM shall not be liable for Buyer's commercial release, sale (whether wholesale or retail), end-use or other disposition of any Medical Devices. All decisions regarding such release, sale, end-use or other disposition of Medical Devices are made at Buyer's sole and exclusive risk.

b. Buyer expressly acknowledges that it is solely and exclusively responsible for any and all reporting requirements (including cost reporting requirements) imposed by applicable law, rule or regulation on Buyer's purchase, handling, storage or disposition of Medical Devices.

**10. Termination.** In addition to any remedies that may be provided under these Terms, RKM may terminate this Agreement with immediate effect upon written notice to Buyer if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**11. Governing Law; Submission to Jurisdiction.** All matters arising out of or relating to these Terms and the purchase and sale of Goods shall be governed by and construed in accordance with the internal laws of the State of Connecticut without giving effect to any choice or conflict of law provision or rule (whether of the State of Connecticut or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Connecticut. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the courts of the United States of America or the courts of the State of Connecticut in each case located in Fairfield County, Connecticut, and Buyer hereby irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Buyer and RKM expressly agree that the United Nations Convention on the International Sale of Goods (CISG) shall not apply to these Terms or the sale of Goods to Buyer by RKM.

**12. Severability.** If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

**13. Assignment.** Neither party may directly or indirectly assign, transfer or delegate any of or all of its rights or obligations under these Terms, voluntarily or involuntarily, operation of law or any other manner, without the prior written consent of the other party.

**14. Survival.** Those obligations and covenants set forth in these Terms which by their nature are intended and should apply beyond their terms shall remain in full force and effect following and notwithstanding any termination or expiration of these Terms including, but not limited to, the provisions of Sections 5, 6, 7, 8, 9, 11, 12 and 14.