

## Terms and Conditions of Sale – The Rapid Manufacturing Group, LLC

**Seller.** As used herein, “Seller” means The Rapid Manufacturing Group, LLC, (including machining and sheet metal services) a New Hampshire limited liability company.

**Quotes.** The Rapid Manufacturing Group provides a Quote for the Buyer’s part(s) based on a 3D CAD model submitted by Buyer to Seller. Any change to the 3D CAD model requires an updated Quote. Quotes are valid for 30 days, after which pricing may change without notice. Seller reserves the right to correct clerical and other typographical errors in any quotation.

**Offer and Contract Acceptance.** These Terms and Conditions of Sale, together with a valid Quote, form a legally binding agreement (the “Agreement”) and contains the entire understanding between Buyer and Seller for the goods and services provided by Seller and supersede any and all other agreements, representations and understandings of the parties, if any, whether oral or in writing. Buyer is deemed to have accepted this Agreement when it accepts a Quote or issues a purchase order or other writing expressing the Buyer’s intent to proceed with the Agreement. This Agreement will govern any orders Seller accepts from Buyer and/or Buyer’s authorized purchasers based on the Quote provided to Buyer. The terms and conditions contained herein shall be the only terms that shall govern the purchase and sale of the goods and services between Buyer and Seller, and no other terms and conditions shall apply and are hereby expressly excluded, including, without limitation, any terms contained in a request for quotation, purchase order, website, or elsewhere. The only additional terms in a request for quotation, purchase order, website or other writing that shall apply, if accepted by Seller, shall be terms regarding the description, price, quantity, and shipping destination for goods produced, and any and all other terms and conditions shall be excluded and deemed inapplicable. After Seller accepts an order, Buyer is responsible for any delivery delays or charges, in addition to the original price, due to a Buyer requested change that is agreed to in writing by Seller. Seller may use subcontractors to perform services under this Agreement.

**Termination for Convenience.** Buyer may terminate a CNC machining order in whole or in part at any time by written notice to [rm-customerservice@rapidmanufacturing.com](mailto:rm-customerservice@rapidmanufacturing.com), effective upon receipt by Seller. Buyer may terminate a sheet metal order in whole or in part at any time by written notice to [rsm-customerservice@rapidmanufacturing.com](mailto:rsm-customerservice@rapidmanufacturing.com) effective upon receipt by Seller. In the event of termination, Seller reserves the right to invoice Buyer for all goods produced or services performed prior to receipt of notice of termination as well as for any materials purchased to make Buyer’s parts which Seller is unable to return. This section shall not limit or affect the Buyer’s right to cancel this order for breach by Seller.

**Delivery; Quantity; Title.** Any stated delivery time represents Seller’s intended or typical delivery time, but actual delivery times may vary. Seller reserves the right to limit quantities at any time. Partial shipments may be delivered to Buyer. All parts are shipped FCA (Incoterms 2010) at Seller’s facilities. Title passes to the Buyer at the time and place of delivery to the carrier.

**Price and Terms of Payment.** All prices are quoted and payments shall be made in U.S. Dollars and are exclusive of freight, shipping, special packaging or handling, duties, and unless specifically stated, sales, excise, use or other taxes arising in connection with this transaction (other than taxes based solely on Seller’s taxable income). No discounts are authorized. Payment may be made by Visa, MasterCard, Discover, American Express, or a form of prepayment acceptable to Seller. Upon credit approval, goods or services may be invoiced and all sums are due and payable according to the terms of the invoice. To the extent Buyer desires Seller to present invoices or other information electronically via Buyer’s or a third party’s electronic payment website, any costs associated with such access will be borne by Buyer.

**Nonconforming Goods.** Buyer shall inspect all goods upon delivery by Seller, and should any of the goods be nonconforming goods, Buyer must notify Seller, in writing, within ninety (90) days of delivery of the goods describing the nature of any nonconformity. Seller shall have the right and option to repair or replace any goods agreed between the parties to be nonconforming. Seller shall not have any obligation to repair, replace or otherwise compensate Buyer for nonconforming goods if Buyer fails to notify Seller in writing that goods are nonconforming within ninety (90) days of Seller’s delivery of the goods. Following notification of the nonconformance, if return is approved, Seller will authorize the return. Nonconforming goods must be returned within 15 business days after authorization of return. If the nonconforming goods are not returned within this period, the authorization for return is rescinded.

**Warranties.** Seller assumes no responsibility for the design of the goods that are the subject of this transaction. To the extent Seller’s personnel recommend design modifications or provide design analysis, simulation or advice, they do so only to help meet the requirements of Seller’s own manufacturing process. The Buyer retains sole legal responsibility for the design specifications and performance of the goods that are the subject of this transaction. Buyer is solely responsible for ensuring the goods and services purchased from Seller meet applicable regulatory requirements. The Buyer represents and warrants to Seller that no information furnished or to be furnished by the Buyer to Seller constitutes information classified by the U.S. federal government as confidential, secret or top secret or similar designation by any international government.

SELLER MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER WITH RESPECT TO ANY GOODS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

Without limiting the generality of the foregoing, Seller assumes no responsibility or liability for the selection of any materials for the goods that are the subject of this transaction. Seller does not certify that its manufacturing processes are compliant with any particular regulatory requirements. The Buyer is solely responsible for ensuring that materials selected for goods to be manufactured by Seller meet any applicable regulatory requirements or specifications including but not limited to Directive -2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS Directive) together with any national legislation implementing such Directive, ISO, FDA, UL, CSA, CE, TUV, FCC, NSF, and USP. Any statements made by Seller personnel or specifications provided by Seller regarding materials should be verified by the Buyer with the manufacturer of that material.

**Indemnification.** Buyer agrees to defend, indemnify and hold harmless Seller (and its employees, representatives and agents) from and against all claims, liabilities, losses, damages, penalties, fines and sanctions of any kind (including, without limitation, interest, attorneys' fees and expenses, customs duties, fines, taxes, penalties or any other governmental sanctions of any kind) resulting from or arising out of Buyer's use of Seller's goods or services, a breach of any provision of this Agreement or any third party claim for infringement of patent rights, trademark, copyrights or misuse of trade secret information.

**Force Majeure.** Seller shall not be liable for any failure to perform under this Agreement if such failure or delay is caused by acts of God, fire, storm, strikes, blackouts, labor difficulties, riots, inability to obtain materials, equipment, labor or transportation, governmental restrictions, or any other event beyond Seller's reasonable control. In the event of any shortage of raw materials or other supplies, Seller may allocate materials and supplies among its buyers in such manner as Seller may determine in its sole discretion, and shall have no liability to the Buyer on account of any delay or cancellation on account thereof.

**Buyer-Supplied Materials.** If Seller agrees to use materials supplied by the Buyer, the Buyer shall be solely responsible for supplying and delivering such materials in a timely manner at no cost or expense to Seller, of sufficient quality and in sufficient quantity (including allowances for loss, waste, or scrap that may occur for any reason) as Seller deems necessary to complete its obligations. Seller will not return waste, scrap or de minimis amounts of material. Seller shall not be liable for, and the Buyer shall be obligated to pay any previously negotiated delivery premiums notwithstanding, any failure or delay in delivering any goods to be provided hereunder if such failure or delay is caused by the Buyer's failure to supply and deliver such materials in a timely manner or of such quality or in such quantity as Seller deems necessary. Seller's Buyer-supplied material storage policy is such that after one year of inactivity, Seller may destroy the Buyer-supplied material, in its discretion.

**On-Time Expedited Delivery Guarantee.** If Buyer selects an expedited quick-turn option, Seller guarantees the on-time delivery for the date selected. If Seller is unable to meet the selected date, Seller will refund a prorated portion of the expedite fee to reflect the delivery date actually achieved. For instance, for a CNC machined order, if Buyer selects a quick-turn expedite of three business days, but the order actually ships in five business days, Seller will refund the difference between the 3-day expedite fee and the achieved 5-day expedite fee. The On-Time Expedited Delivery Guarantee does not apply to standard lead times, projects accepted on a "best effort" basis, or limited availability services.

**Buyer Intellectual Property.** Buyer shall retain sole ownership of the copyright in files, all text, illustrations, software files and other materials provided by Buyer to Seller as well as of any deliverables, designs, including modifications or derivative works thereof, that may be produced for Buyer during the course of Seller's performance of services.

**Seller Intellectual Property.** Seller retains sole ownership in all proprietary software, processes, techniques, methodologies and procedures developed by Seller for the quoting, analysis, design, automation, and manufacturing of machined parts and sheet metal fabricated parts. Seller retains ownership of the copyright in all text, illustrations or other materials provided by Seller to Buyer in a Quote. Buyer will not, without prior written approval of Seller (which may be withheld for any reason), remove any of Seller's markings or change Seller's Intellectual Property in any way.

**Federal Government Contracts.** Seller is a Large Business, registered in the System for Award Management (SAM). If this transaction is a subcontract under a federal government contract or subcontract, the Buyer and Seller agree that the goods and services provided by Seller to the Buyer under this agreement constitute "commercial items" as defined in FAR 2.101 (48 CFR § 2.101). In this regard Seller warrants that the goods and services provided under this agreement are priced at the same rate and in the same manner as Seller's comparable commercial agreements for similar goods and services and that such goods and services are sold in the commercial marketplace, subject to modifications of a type customarily available in the commercial marketplace.

**Country of Origin.** Seller makes no country of origin certification under this Agreement unless specifically agreed to in writing. Seller specifically disclaims any "passive" certifications included in any of Buyer's documents or communications related to this Agreement.

**Confidentiality.** "Confidential Information" means any information that Buyer discloses to the Seller that is proprietary to the Buyer and not generally known to the public. The Seller will not use any Confidential Information for any purpose except for the purposes of carrying out its obligations pursuant to this Agreement. The Seller will use the same degree of care (but no less than a reasonable degree of care) to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information as the Seller employs with respect to its own confidential and proprietary information. Upon Buyer's written request, the Seller will destroy all documents containing or representing Confidential Information and all copies thereof, and erase any such Confidential Information from the Seller's computer systems except electronic copies that are electronically archived and not readily accessible. If requested by

Buyer, Seller will provide written confirmation of such return or destruction and erasure to Buyer.

**Export Compliance.** Buyer and Seller will comply with all applicable export, restrictions and regulations of any U.S. agency or authority including but not limited to the Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce, International Traffic in Arms Regulations ("ITAR") under the U.S. Department of State, and embargo controls administered by the U.S. Department of the Treasury's Office of Foreign Asset Controls ("OFAC") with respect to the goods or services that are subject to this Agreement. In order for Seller to conduct appropriate export control checks, the Buyer agrees to identify any export controlled (e.g., ITAR) goods in writing to Seller by the time Buyer accepts a quotation and to provide all pertinent information pertaining to the particular end Buyer, destination and intended use of goods. Seller reserves the right to stop shipping or providing goods if Seller has reason to believe that any shipment or sale of goods may violate any export control law.

**Prohibited Purposes.** Buyer warrants that the goods that are the subject of this transaction will not be implanted in a human body and are not subject to FAA inspection. Buyer certifies that its designs (e.g., 3D CAD models) submitted to Seller and the manufacture and delivery of goods according to the Buyer's design will not yield goods that are in violation of any federal firearms laws.

**LIMITATION OF DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OF ANY OTHER TERM OR CONDITION, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR OTHERWISE. BUYER ACKNOWLEDGES THAT THE ESTIMATED AND ACTUAL FEES AND CHARGES PAID FOR THE SERVICES REFLECT THIS LIMITATION OF LIABILITY AND ALLOCATION OF RISK. THE TOTAL LIABILITY OF SELLER OR ITS SUPPLIERS TO BUYER UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL SUMS PAID BY BUYER TO SELLER FOR THE ORDER GIVING RISE THE LIABILITY.

**Patent.** The goods and/or services that are the subject of this quote/order may be quoted and/or produced under US Patent 9,606,701.

**Miscellaneous.** The Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to principles of conflict of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this transaction. Any suit, action or other legal proceeding arising out of or relating to this transaction shall be brought in a court of record in New Hampshire. Seller and the Buyer each consent to the jurisdiction of each such court in any suit, action or proceeding, and waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

**English Language.** All documents, notices and legal proceedings executed, given or instituted pursuant to or relating directly hereto shall be in the English language, and the meaning of all words and phrases of this offer shall be defined, construed and interpreted in the English language.

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