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ARTICLE 1 - DEFINITIONS

As used throughout this Terms and Conditions document:

- (a) "RPMI" means RPMI Innovations, Inc. and is considered the entity contracting with SELLER for Work and identified in the Purchase Order.
- (b) "GOODS" means all products contracted for and supplied by SELLER under the Purchase Order, including all components, parts, raw materials, software, finished Goods, intermediate assemblies, and associated packaging thereof.
- (c) "PURCHASE ORDER" means the RPMI Purchase Order and any amendments, addendums, subcontracts associated with the Purchase Order, or any document which sets forth the written contractual arrangement between RPMI regarding the Work. The Purchase Order is expressly subject to these Terms and Conditions, which are hereby incorporated in full into the Purchase Order as if fully stated therein.
- (d) "SELLER" means the entity contracting with RPMI to provide Work under the Purchase Order.
- (e) "WORK" means all Goods and/or Services that are provided pursuant to the Purchase Order.
- (f) "CONFIDENTIAL INFORMATION" means any Confidential Information, either oral or written, disclosed by RPMI to SELLER, pursuant to the Purchase Order.
- (g) "INTELLECTUAL PROPERTY" or "IP" means inventions, discoveries, and improvements; know-how, Works of authorship, technical data, drawings, specifications, process information,

reports, documented information, or computer software provided by either RPMI or SELLER in connection with the Purchase Order.

- (h) "RPMI PRODUCT" means any Work, materials, software, parts, applications reduced to drawings or documentation, RPMI customer parts, specifications, applications reduced to drawings or documentation, or any other items not previously in the possession of SELLER prior to the terms of the Purchase Order.
- (i) "BACKGROUND IP" means all IP and IP rights owned or controlled by RPMI and SELLER prior to the effective date or outside the scope of the Purchase Order.
- (j) "FOREGROUND IP" means IP and IP rights conceived, developed, or created by, for, or with SELLER, either alone or with third parties, in the performance of the Purchase Order, including modifications to any RPMI Specification suggested or made by SELLER.
- (k) "RPMI SPECIFICATIONS" means performance specifications, specification control documentation, interface control documents, schematics, definitions, configurations, and certification data, and all IP rights therein, used or intended to be used by RPMI: (i) to establish and define (1) requirements for Work and associated processes, service level, system specification, certification, and configuration; and (2) architecture descriptions for Work, associated processes, and system; and (ii) to procure and certify Work or similar products and to assure integration of Work or Goods with a RPMI Product or other systems and equipment included in a RPMI Product.

ARTICLE 2 - ACCEPTANCE

- (a) The Purchase Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with these Terms and Conditions, constitutes the entire agreement between the parties.
- (b) SELLER's acknowledgment (which is accomplished by signing of Purchase Order), acceptance of payment, or commencement of performance, signifies SELLER's complete acceptance of the Purchase Order and agreement with these Terms and Conditions, quality clauses, and any applicable Federal Acquisition Regulations (FAR) and Supplemental Causes stated along with the Purchase Order.
- (c) Unless directly acknowledged in the Purchase Order or expressly accepted in writing by RPMI, any additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by RPMI and have no effect.
- (d) The captions and subject headings herein are for convenience of reference only and shall not affect the meaning or construction to be given to any of the provisions hereof.

ARTICLE 3 - INSPECTION

- (a) RPMI and its customer(s) may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Purchase Order. RPMI's final inspection and acceptance shall be at destination.
- (c) If RPMI identifies, at or before final inspection, that Seller delivered non-conforming Work, RPMI may, in addition to any other remedies available at law or at equity: (1) accept all or part of such Work at an equitable price reduction; or (2) reject such Work. If Work is rejected, RPMI will either require SELLER, at SELLER's cost, to (i) promptly correct Work; (ii) repair/modify Work; or

- (iii) replace Work at the direction of RPMI necessary to enable such Work to comply in all respects with Purchase Order requirements. The return to SELLER of non-conforming Work and redelivery to RPMI of corrected or replaced Goods shall be at SELLER's expense and risk of loss.
- (d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

ARTICLE 4 - INVOICING

- (a) Preference is for invoices to be submitted via email to: accountspayable@rpm-innovations.com.
- (b) If invoices are submitted by mail, they shall be sent to the following address: RPM Innovations, Inc. Attn: Accounts Payable 500 Turbine Drive Rapid City, SD 57703 USA
- (c) SELLER's invoice must include all data elements required for the timely receipt and payment without error. Minimum invoice data elements shall include SELLER's name, SELLER's invoice number, SELLER's invoice date, invoice terms, RPMI's PO number, RPMI's PO line-item number(s).

ARTICLE 5 - PRICE AND PAYMENT

- (a) Unless otherwise provided on the Purchase Order, RPMI payment terms are Net 30. The thirty days are based off the last date from the following: (1) date RPMI receives SELLER's invoice; (2) scheduled delivery date of the Work; or (3) delivery of the Work at RPMI's dock.
- (b) SELLER shall promptly notify RPMI of any overpayments and quickly remit the amount of the overpayment, unless otherwise directed by RPMI in writing.
- (c) RPMI shall have a right of setoff against payments due or at issue under the Purchase Order or any other Purchase Order between SELLER and RPMI.
- (d) RPMI payment date is considered the date of mailing payment or electronic funds transfer to SELLER.
- (e) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
- (f) All Purchase Order prices are firm and are not subject to increases or additional charges for any reason without written approval from RPMI.

ARTICLE 6 - SCHEDULE

- (a) Time is of the essence in the performance of the Purchase Order, SELLER shall strictly abide to the delivery schedules defined in the Purchase Order. Failure to deliver in accordance with the deliveries, if not excused in writing, shall constitute a breach of the Purchase Order.
- (b) In the event of any anticipated or actual delay, SELLER shall (1) promptly notify RPMI with reason of the delay and actions to reduce the delay, (2) provide RPMI with an updated delivery, and 3) if requested by RPMI, ship product under expediated routing at no additional cost to RPMI as designated in the Purchase Order to minimize any further delay.
- (c) If the Purchase Order explicitly states no early delivery, SELLER shall not deliver Work prior to the scheduled delivery date(s) unless provided written authorization from RPMI.

ARTICLE 7 - TERMINATION

- (a) **Termination for Default** - In the event of a delivery delay, non-delivery, or any other default by SELLER in meeting its obligations under the Purchase Order, RPMI may terminate all or any part of the Purchase Order without further compensation to SELLER, and RPMI's rights will be (1) for Goods and (2) for Work, to procure, upon such terms and from any source or provider as it shall

deem appropriate, Work similar to that which was terminated. In each case, SELLER shall continue performance of the Purchase Order to the extent not terminated and shall be liable to RPMI for any excess costs for RPMI's procurement of similar Goods or Work. Immediately upon termination, SELLER shall refund to RPMI any applicable progress payments for the terminated portion of the Purchase Order.

- (b) **Termination for Convenience** - RPMI may terminate any part or all of the Purchase Order for convenience at any time by giving notice specifying the extent of termination and the effective date. Upon termination, unless otherwise directed by RPMI, SELLER shall immediately: (1) stop Work as directed; (2) place no further subcontracts or Purchase Orders except as necessary to complete the continued portion of the Purchase Order; and (3) terminate all subcontracts to the extent they relate to terminated Work. SELLER shall submit a final termination settlement to RPMI in the form prescribed by RPMI within thirty (30) days from the effective date of the termination. RPMI shall not be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Purchase Order price. In the event that RPMI wrongfully terminates the Purchase Order under Article 7(a), in whole or in part, such termination becomes a termination for convenience under this Article 7(b).

ARTICLE 8 - CONFIDENTIALITY

- (a) **Confidential Information** - Notwithstanding any failure to so identify disclosed information as Confidential Information, (1) the terms of these Terms and Conditions, information pertaining to any RPMI IP rights, or RPMI Product, including without limitation, the manufacture or development status of any RPMI IP rights, or RPMI Product, the functionality of any RPMI IP rights, any components, and any documentation and materials relating to RPMI or RPMI's Products and business which RPMI makes available to SELLER, will be deemed to be Confidential Information; and (2) any information disclosed in circumstances of confidence, or would be understood by SELLER, exercising reasonable business judgment, to be confidential, including information viewed or learned by a visit to RPMI's facilities, will be deemed Confidential Information.
- (b) **Confidentiality** - SELLER will treat as confidential all RPMI Confidential Information, will not use such RPMI Confidential Information except as set forth herein, and will use reasonable efforts not to disclose such RPMI Confidential Information to any third party. Without limiting the foregoing, SELLER will use at least the same degree of care that it uses to prevent the disclosure of its own confidential information or trade secrets of like importance to prevent the disclosure of RPMI Confidential Information disclosed to it under these Terms and Conditions, but in no event will it use less than reasonable efforts. SELLER will promptly notify RPMI of any actual or suspected misuse or unauthorized disclosure of RPMI's Confidential Information.
- (c) **Exceptions** - Notwithstanding the above, SELLER will not have liability to RPMI with regard to any RPMI Confidential Information which SELLER can prove: (1) was publicly known at the time it was disclosed or has become publicly known through no fault of SELLER; (2) was legally known to the SELLER, without restriction, at the time of disclosure; (3) is disclosed with the prior written approval of RPMI; (4) was independently developed by the SELLER without any use of the RPMI Confidential Information; (5) became known to the SELLER, without restriction, from a source other than RPMI, without breach of these Terms and Conditions by the SELLER and otherwise not in violation of RPMI's rights; or (6) is disclosed pursuant to the Purchase Order or requirement of a court, administrative agency, or other governmental body; provided, however,

that SELLER will provide prompt notice thereof to the RPMI to enable RPMI to seek a protective order or otherwise prevent or restrict such disclosure.

- (d) **Press Releases** - SELLER will not, at any time, issue any press releases including RPMI's name without the prior written approval of RPMI. For any mutually agreed press release, RPMI may restate the substance or language of that press release for so long as it remains factually accurate. Further, following the issuance of such mutually agreed press release, RPMI may without obtaining further consent by SELLER identify SELLER as a SELLER to RPMI and a user of SELLER products in press releases and marketing materials, and in demonstrations and presentations.

ARTICLE 9 - INTELLECTUAL PROPERTY

- (a) **SELLER-Owned IP** - SELLER shall retain ownership of its Background IP and of any Foreground IP not assigned to RPMI pursuant to Article 9(c) below. SELLER grants to RPMI an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP rights in SELLER-Owned IP solely to the extent that such SELLER-Owned IP would otherwise interfere with RPMI's, or its SELLERS', or its customers' use or enjoyment of Work, RPMI Product, or RPMI IP.
- (b) **Third-Party IP** - If SELLER incorporates third-party IP into any Work, SELLER shall obtain for RPMI at least the license rights granted in Article 9(a) of this Article in such third-party IP, at no additional cost to RPMI and hereby grants such rights to RPMI.
- (c) **Foreground IP** - Article 9(c) shall not apply to unmodified commercial off-the-shelf goods. If Goods or Works are developed, modified, or redesigned pursuant to the Purchase Order, then the sections below apply.
1. All Foreground IP shall be the exclusive property of RPMI.
 2. SELLER hereby irrevocably assigns to RPMI all right, title and interest in the Foreground IP for no additional charge. SELLER shall protect Foreground IP as RPMI IP and RPMI Product under the Purchase Order and shall mark any applicable documents containing Foreground IP as "RPMI Proprietary" information.
 3. SELLER shall, within two (2) months after conception or first actual reduction to practice of any invention and prior to Purchase Order completion, disclose in writing to RPMI all inventions assigned hereunder, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. SELLER shall promptly execute all written instruments and assist as RPMI reasonably directs in the Purchase Order to file, acquire, prosecute, maintain, enforce, and assign RPMI's Foreground IP rights. If SELLER does not or cannot execute instruments or assist RPMI as described above, SELLER hereby irrevocably appoints RPMI and any of RPMI's officers and agents as SELLER's attorney in fact to act on SELLER's behalf and instead of SELLER, with the same legal force and effect as if executed by SELLER, with respect to executing any such written instruments.
- (d) **RPMI IP** - RPMI shall retain ownership of all RPMI IP provided hereunder, including the RPMI Specifications, and of any Foreground IP assigned to RPMI pursuant to Article 9(c) above. RPMI grants to SELLER a non-exclusive, royalty-free right during the term of the Purchase Order to exercise all IP rights in the RPMI IP solely as necessary for SELLER to perform its obligations under the Purchase Order. SELLER shall not, without RPMI's prior written consent, use RPMI IP or any derivative Works of any of the RPMI IP in any manner not authorized under the Purchase

Order, including developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or work which utilizes or is enabled by RPMI IP.

ARTICLE 10 - FURNISHED MATERIALS

- (a) RPMI shall retain full title to and ownership of all RPMI Product. Unless otherwise agreed to in writing by RPMI, SELLER shall use RPMI Product for the sole purpose of providing Work to RPMI.
- (b) SELLER accepts and will use RPMI Product in "AS IS" and "WHERE IS" condition. RPMI makes no representations or warranties, express or implied, with respect to RPMI Product, and RPMI expressly disclaims all warranties.
- (c) SELLER shall not lease, assign, loan, or sell any RPMI Product or any interest therein, without RPMI's prior written consent. SELLER shall keep RPMI Product free and clear of all liens, claims, and encumbrances while in SELLER's possession. SELLER shall ensure that, at all times, RPMI Product clearly displays signs or markings attached thereto evidencing RPMI's ownership of RPMI Product and is safely stored separate and apart from SELLER's Product.
- (d) SELLER shall have exclusive possession of and control over RPMI Product and SELLER shall assume full responsibility and risk of loss for RPMI Product and its use. SELLER shall insure RPMI Product, at SELLER's expense, for (1) replacement cost with loss payable to RPMI and (2) loss or damage by fire, flood, and common perils by an insurance company acceptable to RPMI. SELLER must return any furnished materials to RPMI within 10 days upon completion of Work, or as agreed upon with written approval by RPMI.
- (e) SELLER hereby agrees that RPMI may, in its discretion, upon reasonable notice, but without legal process, (1) enter the premises where RPMI Product may be and take possession thereof, whether at SELLER's premises or its SELLER's, or (2) request SELLER deliver RPMI Product to a mutually agreed upon location, in which case, SELLER shall prepare RPMI Product for shipment and deliver it as directed by RPMI, at SELLER's expense, in the same condition as originally received by SELLER, reasonable wear and tear excepted.
- (f) Unless otherwise instructed by RPMI in writing, upon completion of performance of all Purchase Order requirements, SELLER shall return all RPMI Product to RPMI at SELLER's expense.

ARTICLE 11 - INDEMNITY

- (a) SELLER shall defend, indemnify, and hold harmless RPMI, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, SELLERs, or subcontractors at any tier, in the performance of any of its obligations under the Purchase Order and these Terms and Conditions.

ARTICLE 12 - EXPORT CONTROL

The following applies to any Purchase Orders that include an Export Control designation on the Purchase Order. SELLER shall flow down the Export Control designation and requirements to any applicable subcontract(s) originating from the Purchase Order:

- (a) SELLER shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations, specifically including but not limited to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Export Control Reform Act of 2018; the Export

Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws").

- (b) SELLER shall not export, re-export, transfer, disclose or otherwise provide or make accessible RPMI's Product (including technical data and/or hardware) controlled by Trade Control Laws ("Export Controlled Information") to any persons, or entities not authorized to receive or have access to the data, services and/or hardware, including third country/dual national employees, lower-tier subcontractors and sub-licensees, or modify or divert such Export Controlled Information to any military application unless SELLER receives advance, written authorization from RPMI and verification of any required export authorization is in place. SELLER shall not provide defense Work as defined by the Trade Control Laws using any or all of RPMI's technical data and/or hardware.
- (c) Upon RPMI's request, SELLER shall demonstrate to RPMI's reasonable satisfaction, SELLER's and SELLER's lower-tier subcontractors' compliance with this clause and all Trade Control Laws. To the extent SELLER's Work provided under the Purchase Order include packing, labeling, processing, and/or handling exports for RPMI, SELLER shall maintain an auditable process that assures accurate packing, labeling, processing, and handling of such exports. SELLER shall also promptly notify RPMI if it becomes aware of any failure by SELLER or SELLER's lower-tier subcontractors to comply with this clause and shall cooperate with RPMI in any investigation of such failure to comply.

ARTICLE 13 - WARRANTY

- (a) SELLER warrants that all Work furnished pursuant to the Purchase Order shall strictly conform to applicable specifications, drawings, descriptions, and other requirements of the Purchase Order and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance of Work at RPMI and extend for a period of either 1) SELLER's warranty period, or 2) one (1) year, whichever is longer.
- (b) If RPMI identifies any nonconforming Work within the warranty period, RPMI will provide written notification. At RPMI's option, SELLER shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, RPMI may elect to return, reperform, repair, replace, or reprocur the non-conforming Work at SELLER's expense. All warranties shall run to RPMI and RPMI's customers (the end users).

ARTICLE 14 - GOVERNING LAW AND VENUE

- (a) These Terms and Conditions shall be interpreted and construed in accordance with the laws of the State of South Dakota without regard to conflict of laws principles or provisions. In the event of any litigation among the parties involving the RPMI Purchase Order, these Terms and Conditions or the transactions contemplated hereby, the parties agree that the exclusive venue for such dispute shall be Pennington County, South Dakota, and the parties hereby submit to the exclusive personal jurisdiction of said court.

ARTICLE 15 - FORCE MAJEURE

- (a) SELLER shall not be responsible to RPMI for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: (1) acts of God; (2) acts of war, terrorism, or insurrection; (3) strikes, lockouts, labor

actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties; (4) compliance with any applicable foreign or domestic court order or governmental regulation, order, or request whether or not such proves to be invalid; (5) shortage of supplies, transportation difficulties; and/or (6) the inability of SELLER affiliates or SELLER to manufacture, purchase, and/or cause delivery of any products used in connection with the manufacture or provision of a SELLER Work.

ARTICLE 16 - MISCELLANEOUS

- (a) **English Language** - All correspondences for data, notices, shipping labels, invoices, and other forms of written communication shall be in the English language. In the event there are any inconsistencies between the Purchase Order and these Terms and Conditions and any further translation into a different language, the English meaning shall control.
- (b) **Assignment** - These Terms and Conditions, the Purchase Order, and the rights, obligations, and duties of the SELLER shall not be assignable or otherwise transferable by SELLER. In the event of assignment that is approved by RPMI, the assignee shall expressly assume, in writing delivered to RPMI, the liabilities and obligations of the assignor hereunder, and the assignor shall remain liable for the full performance of all of the assigned liabilities and obligations under the Purchase Order and these Terms and Conditions, which liabilities and obligations of SELLER shall be a primary liability and obligation for full and prompt performance and payment.
- (c) **Binding on Successors** - The Purchase Order and these Terms and Conditions shall inure to the benefit of, and shall be binding upon, the SELLER, the SELLER heirs, executors, administrators, successors and permitted assigns.
- (d) **Attorneys' Fees** - Should RPMI or SELLER institute any action or proceeding in any court to enforce or interpret any provision of the Purchase Order or these Terms and Conditions or for damages by reason of any alleged breach of any provision of these Terms and Conditions or for any other judicial remedy with respect to the Purchase Order or these Terms and Conditions, the prevailing party will be entitled to receive from the losing party all reasonable attorneys' fees of outside counsel and all reasonable out of pocket costs paid to third parties in connection with such proceeding(s). No attorneys' fees shall be awarded for the respective parties' in-house counsel.
- (e) **Order of Precedence** - In the event of a conflict between the contractual documents, the order of precedence in descending order shall be as follows: 1) the Purchase Order, 2) referenced specifications, drawings, or requirements, 3) RPMI Quality Control Procurement Requirements, 4) these Terms and Conditions, 5) any statements of work applicable to the Purchase Order. Notwithstanding the foregoing, if any of the items (1-5) defined above are listed on the Purchase Order, conflicts will be still be resolved in accordance with the precedence stated above, even if some items are listed on the Purchase Order or not.
- (f) **Construction** – RPMI and SELLER have participated jointly in the negotiation and drafting of this document. If an ambiguity or question of intent or interpretation arises, this document shall be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this document.

(End of Terms and Conditions)



Terms and Conditions

REVISION RECORD	
Revision No. 0	Release Date: July 23, 2025
Initial Release.	