



RAPID PROTOTYPE AND MANUFACTURING LLC STANDARD TERMS AND CONDITIONS

rp+m - TERMS AND CONDITIONS I. Acceptance. No terms and conditions other than the terms and conditions contained herein (the "Agreement") shall be binding upon Rapid Prototype and Manufacturing LLC ("Seller") unless accepted by it in a writing signed by Seller. All terms and conditions contained in any other oral or written communication which are different from or in addition to the terms and conditions herein are hereby rejected and this document is the complete and exclusive statement of the terms, save for purchase orders submitted by Buyer for the purchase of the items contemplated by this Agreement (the "Deliverables") which are consistent with this document and which are accepted by Seller (a "PO") and any written agreement executed by the parties relating to the Deliverables in furtherance of this quotation. "Deliverables" may mean either or both products or services as the context dictates. II. Price and Payment. Terms are net thirty (30) days unless otherwise noted. Seller reserves the right at any time to suspend, limit or otherwise modify the terms of such credit whenever, in Seller's opinion, Buyer's financial condition so warrants (including requiring Buyer to make cash payment or provide other security prior to or upon tender by Seller of delivery of Deliverables or suspending any work in process). A monthly charge of one and one half percent (1.5%) (or the highest rate allowed under applicable law) on all sums outstanding will be added to each past due amount and Seller shall be entitled to all costs of collection (including reasonable attorneys' fees). Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including, but not limited to, federal, state, provincial and local sales, excise value added goods and services taxes and any other taxes. Should Buyer cancel any order for any reason, Buyer shall pay to Seller the following amounts: (i) the agreed to price for all completed Deliverables not previously paid for; and (ii) Seller's standard charges for all labor, materials and work in process expended or incurred through the date of such cancellation. III. Shipment and Inspection. Subject to any contrary terms contained in a PO which are expressly accepted by Seller, all product Deliverables are shipped F.O.B. Seller's facility and Buyer shall be responsible for arranging for and paying the carrier. Risk of loss and title shall pass to Buyer upon delivery to Buyer's carrier. The cost of any special packing or handling required by Buyer or the nature of the Deliverables shall be borne by Buyer. Claims for damage, shortage or errors in shipping must be reported within two (2) days following delivery to Buyer. Buyer shall have ten (10) days from the date Buyer receives any Deliverables to inspect such Deliverables for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such Deliverables. After such ten (10) day period, Buyer shall be deemed to have irrevocably accepted the Deliverables, if not previously accepted. After such acceptance, Buyer shall have no right to reject the Deliverables for any reason or to revoke acceptance. Buyer hereby agrees that such period is a reasonable amount of time for such inspection. Buyer shall have no right to order any change or modification to any PO or otherwise cancel any PO without Seller's written consent and payment to Seller of all charges, expenses and reasonable profits owed to or incurred by Seller. Buyer agrees that Seller may over-ship Deliverables in any delivery in an amount not to exceed five percent (5%) of the total order quantity without penalty and with the right to bill for the entirety of such order. IV. Representations. Buyer represents and warrants that the marketing, sale, distribution and use of the Deliverables by Buyer comply and will comply with all applicable laws and regulations and that none of the goods that are the subject of the Deliverables are firearms, including any firearm frames or receivers or any other parts or components defined as "firearms" under 18 U.S.C. § 921 or 26 U.S.C. § 5845, (c) none of the products are defense articles listed on the U.S. Munitions List (22 C.F.R. § 121.1), Buyer further represents and warrants to Seller that (a) it owns or has the right to use pursuant to license, sublicense or other written permission all intellectual property, trade secrets and other proprietary rights relating to the project or products to which the Deliverables relate or otherwise provided by Buyer to Seller ("Buyer IP"), (b) any such license, sublicense or written permission is valid, binding, enforceable and in full force and effect (and will remain so upon the consummation of the transactions described herein) and no party thereto has breached or repudiated any provision thereof, (c) the

Buyer IP does not infringe upon, misappropriate or otherwise come into conflict with the intellectual property or proprietary rights or interests of any third party, and (d) Buyer is authorized or permitted to disclose all confidential information it provides to Seller. V. Warranty. The exclusive and limited warranty provided by Seller hereunder is that the Deliverables will conform to those specifications provided by Buyer and accepted in writing by Seller (the "Warranty"). The Warranty shall expire twelve (12) months from delivery of the applicable Deliverable. OTHER THAN THE WARRANTY, SELLER MAKES NO WARRANTY WITH RESPECT TO THE DELIVERABLES, AND THE BUYER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Warranty applies only to the extent that any nonconforming Deliverables have been properly handled, used installed and/or maintained. Seller recommends that Buyer independently test the Deliverables to determine suitability for the intended use and of any materials used in the manufacture of the Deliverables (and Buyer is not relying upon Seller to determine said suitability). VI. Limitation of Liability. The liability of Seller and the remedies available to Buyer for any and all claims of any kind arising from or related to the formation, performance or breach of this Agreement, or any Deliverables are limited to the repair, replacement or performance of the Deliverable by Seller or the return of the purchase price of the Deliverable or portion thereof at issue, as determined by Seller in its sole discretion. SUBJECT TO THE FOREGOING LIMITATIONS, SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS OR ANY SERVICE PROVIDED BY IT TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE DELIVERABLE. IN ADDITION, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES AND/OR PRODUCT(S), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. VII. Indemnification. Buyer shall indemnify and hold Seller and its affiliates, shareholders, members, directors, officers, employees and agents (collectively, "Indemnified Parties") harmless from and against any loss, liability, damage or expense, including reasonable attorneys' fees ("Losses"), such parties may incur as a result or, arising out of or by reason of any breach, misrepresentation or nonfulfillment on the part of Buyer of this Agreement. Buyer shall further hold Indemnified Parties harmless from and against Losses resulting from or relating to Buyer's or its customers' use, assembly, manufacturing, development, marketing, distribution or sale of the Deliverables or any goods embodied in the Deliverables. VIII. Nonsolicitation Covenant. Buyer shall not directly or indirectly, individually or in concert with any other person or entity, or through a corporation, partnership, limited liability company or other entity do any of the following during the period Seller is producing products to, providing services to, or doing business with Buyer and for one (1) year following termination of Seller's production of parts, provision of services, or business relationship with Buyer (whichever is later): (a) induce or attempt to induce any employee or agent of Seller to leave Seller's employ, or (b) employ (or engage to act, directly or indirectly, as an independent contractor or agent) any employee, contractor or agent of Seller. If Buyer breaches the foregoing restriction, Buyer shall pay Seller within ten (10) days of written demand the greater of (y) Fifty Thousand Dollars (\$50,000) or (z) fifty percent (50%) of the subject employee's or agent's annual compensation or other remuneration paid during the previous full calendar year (or the annualized amount if less than a full year) as liquidated damages and not as a penalty. In addition, Seller shall be entitled to reimbursement for all costs of enforcement and/or collection associated with or arising from the foregoing obligation, including all attorneys' fees and expenses. IX. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters, including, but not limited to, matters of validity, construction, effect and performance. The parties hereby irrevocably consent to the exclusive jurisdiction of the courts of the State of Ohio in Lorain County, and the United States District Court for the Northern District of Ohio, Eastern Division, and waive any contention that any such court is an improper venue for enforceability of this Agreement. Buyer acknowledges that Seller may have a right to a molder's lien, tool maker's lien or similar possessory lien with respect to amounts due hereunder as provided by applicable law. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller in this Agreement shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions hereof shall not affect the validity of the remaining terms or provisions, and this Agreement shall be construed as if such invalid terms or

provisions had been omitted. Neither party shall be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages.

X. US Government Contracts. This Section X applies only if this Agreement is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government. Buyer agrees that all Deliverables provided by Seller meet the definition of “commercial-off-the-shelf” (“COTS”) or “commercial item” as those terms are defined in Federal Acquisition Regulation (“FAR”) 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Agreement, the country of origin of Products is unknown unless otherwise specifically stated by Seller in this Agreement. Buyer agrees any services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Agreement is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in the Agreement. The version of any applicable FAR clause listed in this Section X shall be the one in effect on the effective date of this Agreement. If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the price of the Deliverables. If Buyer is procuring the Deliverables as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the price of the Deliverables.

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Approved by T. Albers/J. Barlow