

Effective July 1st 2020

## TERMS AND CONDITIONS OF SALE

**Standard Terms and Conditions of Sale.** These Terms and Conditions of Sale are between the buyer (“Buyer”) and RPS America Inc. (“Seller”). These Terms and Conditions of Sale are subject to change.

1. **OFFER.** This document constitutes an offer or counteroffer the Seller proposes to sell goods and services to the Buyer solely in accordance with these terms and conditions. This document is not an acceptance of any offer made by Buyer, and the sale by the Seller of goods and services, and the acceptance of this offer or counteroffer, is expressly limited to and conditioned upon the Buyer’s assent and agreement to, these terms and conditions. A contract must be formed, and Buyer will be deemed to have assented and agreed to these terms and conditions when, at Seller’s sole option, Buyer provides Seller an order or statement of intention to purchase goods and/or services from Seller; Buyer has given any direction to Seller to proceed with engineering, procurement, manufacture, or shipment; or Buyer has received delivery of the whole or any part thereof or made payment for all or part thereof. No amendments to this writing are valid unless in writing and signed by an authorized representative of Seller, and no additional or different terms or conditions whether or not in Buyer’s assent or purchase order must be binding on Seller (whether in conflict with, inconsistent with, or in addition to, the terms and conditions stated in this writing) unless expressly accepted in writing by Seller. Seller hereby expressly objects to any contrary, different, or additional terms or conditions in Buyer’s request for quotation, purchase order, acceptance, assent, or any other form of Buyer, or any alteration to these terms and conditions, and such contrary or additional terms must not become a part of the contract governing the sale of goods and services to Buyer and must not be binding on Seller. Only those terms and conditions specified in any documents of Seller must be binding unless otherwise agreed to in writing by Seller, and no implied terms or conditions must be substituted for any of Seller’s terms or conditions in order to resolve any conflict. In the event of any conflict between these terms and conditions and any terms or conditions stated orally or in any of Buyer’s documents, these terms and conditions must take the precedence.

2. **INFORMATION IN MATERIALS.** Any contrary, different, or additional prices, payment terms, and delivery dates other than those set in this document, are not binding on Seller unless agreed to in writing by Seller. Prices, technical specifications, and other terms and statements appearing in Seller’s catalogs, brochures, advertisements, and otherwise, are subject to change by Seller at any time without notice. In the event of a change to the design or specifications of Seller’s goods, Seller have no obligation to modify any item previously purchased.

All typographical errors in any of Seller’s publications or quotations are subject to correction by Seller. Seller has no obligation to review Buyer’s request for quotation or purchase order, and has no obligation for any errors contained therein.

3. **SAMPLES.** Any sample provided by Seller is for illustrative purposes only, is not part of the basis of the bargain, and is not to be construed as a warranty that any goods will conform to such sample.

4. **PRICES.** The Price of the Products and Services is stated in the Price List or in the Order accepted by Seller. Shipping charges are identified separately to the Price of the Products and Services. Prices are quoted in US Dollars and are subject to change without notice. Price changes do not affect Contracts created after acceptance of Customer Orders. Prices exclude shipping, handling and taxes unless otherwise noted. Customer is responsible for shipping charges, VAT and other sales taxes as specified in the Contract. Seller reserves the right to make any corrections to prices quoted due to clerical errors or errors of omission. In the event of any specific requirements (including without limitation any design, specification, ordered quantity, or shipment changes) representing a price increase, Buyer will be notified about the change and afforded an opportunity to confirm.

5. **PAYMENT.** Invoices will be issued as of the date of shipment, when ready to ship, or otherwise in accordance with an agreed-upon progress payment schedule, in each case in Seller's discretion. Payment in advance must be considered as standard unless otherwise agreed upon by both parties, and must be payable in U.S. dollars. All payments must be made in accordance with these terms and conditions, without deductions of any kind. Remittances marked to indicate payment in full will be deposited with the full reservation of all rights of Seller despite such markings, and such deposit will not indicate Seller's acceptance of the remittance as payment in full unless it actually constitutes payment of all sums owed. All amounts not paid when due are subject to interest charges at 1½ percent per month, provided that payment of such interest does not relieve Buyer of its obligation to pay such invoice in full when due or any other obligations of Buyer. If Buyer fails to meet full terms of payment on any order, in addition to all other remedies, Seller may defer any other shipments until such payments are made, or may, at its option, cancel any other orders. Until all invoices and other charges (including, but not limited to, all interest, late fees, costs of collection, and other costs and expenses incurred by Seller) have been paid in full by Buyer to Seller, and all of Buyer's obligations to Seller have been fully performed, Buyer hereby grants to Seller a security interest and priority lien, purchase money security interest, and/or chattel mortgage in all goods sold to Buyer, and all proceeds thereof, to secure all of Buyer's obligations, and Buyer hereby grants Seller a power of attorney to execute and file on behalf of Buyer all necessary documents required to perfect the security interest herein granted. All costs and expenses incurred by Seller in connection with the collection of any invoices or enforcing any of Seller's other rights must be immediately paid by Buyer to Seller, with interest at 1½ percent per month.

6. **DELIVERY.** All shipments shall be FOB Origin from Seller's facility (unless otherwise agreed to by both parties), with all freight paid by Buyer either collect, prepaid, or added to the invoice, as determined by Seller. Boxing and packing for standard domestic shipment of goods are included in Seller's price unless otherwise specified, with all special domestic or export packing and other special charges to be paid by Buyer. Seller shall select the method and details of shipment in

Seller's discretion, unless a method of shipment is agreed to in the contract between Seller and Buyer. Seller reserves the right to deliver the goods in one or more installments, and all such installments shall be separately invoiced and paid for when due without regard to subsequent deliveries, and any delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Title shall pass to Buyer, and all risk of loss, damage, and theft shall be borne by Buyer, when the goods are ready for shipment from Seller's facility. Shipping dates are approximate and are based on prompt receipt by Seller of all necessary information, licenses, and clearances for shipping. Seller shall not be liable or responsible for any delays, losses, or damages to Buyer or any third party directly or indirectly arising from a labor strike, labor difficulty, shortage of supplies, unavailability of transportation or transportation delays, riot, casualty, omission or act by Buyer, fires, floods, inability to secure fuel, materials, supplies, equipment or power, governmental import or export restrictions, acts of God or public enemy, or other force majeure act, or any other cause, direct or indirect. Delivery may be delayed for Buyer's failure to furnish complete information or failure to perform Buyer's other obligations. Delay in delivery for any reason does not entitle Buyer to cancel any order or to claim damages directly or indirectly attributable to such delay. Seller reserves the right to ship in advance and invoice Buyer. In the event that goods are held on the instructions of Buyer, or if shipment cannot be effected for reasons beyond Seller's control, Seller may store the goods at Seller's discretion at Buyer's expense and risk at prevailing storage rates, and subject to other charges for handling, insurance, and transportation. Seller may approve up to one extension of Buyer's delivery date, provided that such extension shall be requested no later than one week prior to the original delivery date, and shall be extended for a period of no longer than 30 days following the original delivery date. In the event Seller approves an extension for longer than 30 days, Buyer shall be responsible and shall pay immediately to Seller for all storage fees and expenses (which will be charged on a daily basis for any delivery date deferred longer than 30 days), and all other costs and expenses incurred by Seller.

**7. FAT and INSPECTION.** Buyer's inspection during the process of production, or prior to delivery, will not be performed unless expressly agreed to by Seller in writing. If Buyer inspects the goods, the inspection will be made at Buyer's sole expense, and under the supervision and at the convenience of Seller. Buyer will bear the extra costs that may occur. If the Buyer requests a FAT (Factory Acceptant Test), this will be quoted by the Seller accordingly.

**8. DESIGN AND TECHNICAL INFORMATION.** Equipment shall be rated in accordance with the applicable standards and assumes "usual and normal" service condition installations in accordance with industry standards. Installations where intended service conditions exceed "usual and normal", including, but not limited to, nuclear, medical and seismic installations, are not contemplated unless agreed to in writing by Seller. Buyer is responsible at Buyer's expense for providing Seller prior to ordering goods and services with all information relevant to the selection and design of the goods and equipment. Seller has no responsibility or liability where incomplete, inaccurate, or lack of information is provided by Buyer, and is not responsible for any requirements necessary for proper installation, including but not limited to, specific codes, and sizing of equipment and materials involved in the installation. Engineering consideration, where match and line with other existing equipment is required by Seller, may include but not be limited to, site visits, and review of existing drawings and other details, all of which must be at Buyer's expense. Seller reserves the right to amend the pricing after review of the complete information.

**9. PROPRIETARY SOFTWARE/INFORMATION.** Seller claims proprietary rights in the items and information associated with this order including the Products and Services. Drawings and technical information are issued in confidence for engineering information and mutual assistance only and may not be publicly disseminated, reproduced or used by Buyer without Seller's prior written consent, and shall be returned immediately when its purpose has been served or upon Seller's request whichever is earlier. When Seller's software is a component of the goods purchased by Buyer, Buyer has a non-exclusive, limited license to use Seller's software solely in connection with the use of the goods purchased, for their intended use, and for no other use. All information pertaining to Seller's software and Seller's goods, and all other information pertaining to or provided by Seller, shall be proprietary information of Seller, and shall be owned by Seller. The provisions of this Section 9 must survive indefinitely any termination or completion of any contract between Seller and Buyer. Buyer must indemnify and hold harmless Seller from any and all loss, expense, cost, damage, liability, claim, or demand resulting from a breach by Buyer of any of its obligations to Seller, from the use by Buyer of the goods or services purchased by Buyer, or any claim that Buyer's design, drawings, or specifications with respect to the goods or services constitute an infringement on the rights of any third party.

**10. WARRANTY INFORMATION.** Seller warrants that goods will be free from defects in workmanship and materials under normal use for the length of time outlined in the hardware Product manual for the relevant hardware Product. The length of a warranty on a given product may differ by law depending on the country, state, territory or locality that you reside in. Conditions to any warranties are contained in the applicable product manual. Seller's standard warranty for the goods and services sold hereunder shall apply, provided that all items have been installed and used as recommended, and have not been subjected to misuse, alteration, accident, abuse, or unauthorized repair.

**11. LIMITATION OF LIABILITY.** SELLER'S WARRANTY SHALL BE EXCLUSIVE, AND SHALL BE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. IN NO EVENT SELLER IS LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER (INCLUDING ATTORNEYS' FEES) ARISING OUT OF THE SALE OF GOODS AND SERVICES TO BUYER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, OR ARISING OUT OF THIRD PARTY ACTIONS, TORT CLAIMS, OR CLAIMS UNDER STATUTE, AND BUYER HEREBY WAIVES FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS ANY SUCH CLAIMS AGAINST SELLER. Buyer acknowledges and agrees that Buyer has independently determined the suitability of the goods and services for Buyer, and Buyer assumes all risks and liabilities resulting from the use of the goods and services, and shall use such in accordance with all laws, rules, and regulations, and Seller's materials relating thereto. None of Seller's agents, employees, or representatives have any authority to bind Seller to any affirmation, representation, or warranty other than those stated herein.

**12. DEFAULT.** If Buyer defaults in performing any of its obligations to Seller, Seller may, at its option and without incurring liability, elect to cancel all orders from or agreements with Buyer, and pursue all legal and equitable remedies. In addition to the breach or failure to perform by Buyer of any of Buyer's obligations to Seller, if Buyer is insolvent, fails to pay its obligations hereunder,

ceases doing business, or is the subject of any proceeding of bankruptcy, insolvency, or reorganization, Seller may deem Buyer to be in default.

13. **APPLICABLE LAW.** The Terms and Conditions of this Contract shall be exclusively governed by and construed in accordance with the substantive and procedural laws of Ohio, excluding its conflict of laws principles and excluding the UN Convention on Contracts for the International Sales of Goods. Any dispute, controversy or claim arising out of or in connection with any Contract as defined or related thereto, including governing law, validity, invalidity, breach or termination, that cannot be settled amicably within sixty (60) days shall fall within the exclusive jurisdiction of the competent court in the Southern District of Ohio.

14. **RESTRICTIONS.** Goods sold to Buyer hereunder are not intended to be re-sold or distributed to those foreign countries listed by U.S. government agencies as restricted.