

**RPM**  
**CUSTOMER TERMS AND CONDITIONS OF SALE**

**1. General:** This document ("Contract") constitutes an offer by RPM ("Seller") to provide the Products and/or services (the "Products") to the buyer to which this offer is addressed ("Buyer"). If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. These terms and conditions of sale constitute the entire and exclusive agreement between Buyer and Seller. **SELLER'S AGREEMENT TO PROVIDE THE PRODUCTS IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS CONTRACT, NOTWITHSTANDING ANY LANGUAGE IN BUYER'S PURCHASE ORDER, IF ONE EXISTS, OR OTHER WRITING OR ORAL REPRESENTATION. THIS CONTRACT, INCLUDING ALL ITEMS EXPRESSLY INCORPORATED HEREIN BY REFERENCE, CONSTITUTES THE FINAL EXPRESSION OF THE TERMS BETWEEN SELLER AND BUYER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY SELLER AND BUYER.** Seller's sales representatives are without authority to change, modify or alter the terms of this Contract. Buyer shall be deemed to have made an unqualified acceptance of this offer and the terms and conditions herein on the earliest of the following to occur: (a) Seller's receipt of a copy of this Contract signed by Buyer; (b) Buyer's payment of any amounts due under this Contract; (c) Buyer's delivery to Seller of any material to be furnished by Buyer; (d) Seller's delivery of the Products; (e) failure by Buyer to notify Seller to the contrary within ten days of receipt of this Contract or (f) any other event constituting acceptance under applicable law. **SHOULD AN INCONSISTENCY EXIST BETWEEN THE CUSTOMER TERMS AND CONDITIONS OF SALE SET FORTH HEREIN AND THOSE POSTED ON RPM'S WEBSITE, THE CUSTOMER TERMS AND CONDITIONS OF SALE POSTED ON THE RPM WEBSITE SHALL PREVAIL.**

**2. Governing Law:** This Contract shall be governed by and construed according to the internal laws of the State of Wisconsin, including, without limitation, the Uniform Commercial Code as adopted in Wisconsin. Neither this Contract nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court. Upon termination of this Contract for any reason, Seller shall have all of the rights and remedies provided by law.

**3. Delivery:** All prices are F.O.B. shipping point unless otherwise specified. All risk of loss, damage or delay, and title to Products, shall pass from Seller to Buyer upon delivery of the Products to the carrier at the Point of Shipment. Partial shipments shall be permitted. Buyer shall accept overrun and/or underruns not exceeding 10% of quantity ordered, to be paid for or allowed pro rata. Delivery dates provided at the time of acceptance and approval of a purchase order for products or services are approximate, are not guaranteed, and should not be construed to represent definitive delivery dates. Delivery dates given by Seller are based on prompt receipt of all necessary information regarding the order. Seller will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Seller to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence. Claims for shortages or other errors must be made in writing to Seller within ten days after Seller's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. A standard shipping charge is applied to each invoice for goods for product preparation, packaging, freight and/or other additional costs associated with each shipment based on the weight and/or value of the shipment. Additional charges for local delivery may also apply.

**4. Pricing:** Prices in effect at the time of shipment of the goods or performance of services shall prevail. All prices quoted by Seller are subject to change without notice. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Contract, whether or not the order or change order so states. Minimum order value is \$25. Unless prices are stated on the face hereof, prices shall be the higher of Seller's most recent quote to Buyer, prevailing market price, Seller's list price, or the last price charged by Seller to Buyer for the Products. Prices are in U.S. Dollars, F.O.B. the Point of Shipment. Buyer shall pay or reimburse Seller on demand for all taxes, fees and costs including, but not limited to any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, customs agent or broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between Seller and the Buyer, in addition to the prices quoted or invoiced.

**5. Acceptance of Orders:** Buyer's purchase orders shall not be binding on Seller until such time as approval and acceptance has been authorized by a representative of Seller and are subject to the terms and conditions set forth herein. Additional or different terms in Buyer's purchase order will not be binding on Seller and are hereby expressly disallowed. Buyer agrees to inspect Products within seventy-two (72) hours upon receipt of Products and further agrees to promptly alert Seller of any apparent defects in conformity. Failure by Buyer to notify Seller within seventy-two (72) hours from time of receipt of Products of the discovery of defects in conformity, Buyer waives any right thereafter to object to such defects in conformity.

**6. Terms of Payment; Remedies of Seller:** Unless otherwise agreed to in writing, terms of payment are 100% of invoice amount due thirty (30) days net, without set-off or deduction, from date of invoice. Notwithstanding the foregoing, terms of payment on all orders are subject to the prior written approval of Seller's credit department. If Buyer does not pay Seller any amount due under this Contract or any other agreement when such amount is due or if Buyer defaults in the performance of this Contract, Seller may, without liability to Buyer and without prejudice to Seller's other lawful remedies (a) terminate Seller's obligations under this Contract; (b) declare immediately due and payable all Buyer's obligations to Seller; (c) if a credit card is used at any point, I authorize RPM to charge past due invoices on that credit card; (d) change credit terms with respect to any further sales of Products; (e) suspend or discontinue any further sales of Products; and/or (f) repossess the Products. Buyer agrees to reimburse Seller for all costs and fees including, but not limited to attorneys' fees and repossession fees, incurred by Seller in collecting any sums owed by Buyer to Seller. Buyer agrees to pay a late payment charge of 1-1/2% per month, or the maximum amount allowable by law, on all amounts not paid in full when due, payable on Seller's demand. Buyer shall not set off amounts due to Seller against claims against Seller. The remittance portion of the invoice must be received with the payment. Payments and other adjustments must reference the invoice number to assure proper application. Any deductions on a remittance must indicate the reason and reference the Seller issued credit memo number or other supporting documentation.

**7. Cancellations, Changes and Returns:** Undelivered Products may be cancelled by Buyer only upon written approval of an authorized representative of Seller. In the event of any cancellation of an order by Buyer, Buyer shall pay to Seller its reasonable costs and expenses, plus Seller's usual rate of profit for similar work. Buyer may not alter or modify its order or any part thereof without Seller's prior, written consent. Seller reserves the right to change the price, terms of payment and delivery dates for any Products affected by any alterations or modification to which it consents. No Products may be returned to Seller without its prior, written authorization and Products may be returned only on the terms or conditions specified in such authorization. Returned Products must

be of current manufacture, unused, in resalable condition, and securely packed to reach Seller without damage. Any cost incurred by Seller to put equipment in first class condition will be charged to Buyer. All Product returned to Seller shall be subject to a 20% restocking charge plus the costs of freight, packaging, insurance and any import or export costs. No returns shall be accepted following 60 days after delivery from the Point of Shipment.

**8. Return of Products:** No Products or part shall be returned to Seller without an approved Return Goods Authorization (“RMA”) from Seller. Custom and special order Products are non-returnable. Returns are subject to a restocking fee.

**9. Warranties:** Products are sold only with such warranties as may be extended by the manufacturer of the product. Services provided by third parties are subject only to those warranties extended by such third parties. However, Seller does not adopt, guarantee or represent that the manufacturer or third party service provider will comply with any of the terms of warranty of such manufacturer or third party service provider. **RPM MAKES NO WARRANTY AND ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS ARE HEREBY EXCLUDED.** Buyer is responsible for installation and use in accordance with manufacturer’s instructions. RPM personnel are not authorized to alter this policy. **SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER’S ACTS OR OMISSIONS OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER DAMAGES** including but not limited to loss of revenue or profits, loss of use of goods or products, cost of capital, cost of substitute products, facilities or services, downtime costs, cost of field service travel and expenses, labor, inspection, removal or installation of new products or parts or normal maintenance, or claims of customers of Buyer for such claim. Any assistance Seller provides to or procures for Buyer outside the terms, limitations or exclusions of this agreement. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith.

**10. Risk of Loss/Damage:** Risk of loss and/or damage to Products shall pass to Buyer upon delivery at point of shipment to Buyer.

**11. Engineering Data:** All engineering data, design information and engineering and shop drawings used in the completion of this order are and shall remain Seller’s property. Buyer shall not copy, reproduce, distribute, publish or communicate to any third party such data without the prior, written permission of a properly authorized representative of Seller.

**12. Patent Infringement and Defects in Buyer’s Specifications:** Orders manufactured to Buyer’s specifications, drawings, designs or descriptions are executed only with the understanding that Buyer will indemnify and hold harmless Seller from any and all damages sustained by Seller, including, but not limited to, reasonable attorneys’ fees, resulting from any action or threatened action against Seller for (a) infringement of the patents or proprietary right of any other person, or (b) injury to person or property, including death, relating to defects in Buyer’s specifications, drawings, designs or descriptions.

**13. Limitations of Liability:** Seller’s liability for any claim arising out of this contract or from the performance or breach thereof, whether in contract, tort, strict liability, or otherwise, for loss or damage arising out of, connected with, or resulting from the contract or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, or use of, inspection of, or operation of any products, or a result of negligence, or services furnished under the contract, or a result of its advice, shall in no case exceed the purchase price allocable to such products or services or part thereof which gives rise to the claim, regardless of cause or fault. Seller under no circumstances shall be liable for any labor charges without its prior written consent. Seller in any event shall not be liable for incidental, special or consequential damages, including down time and loss of revenue and/or profits.

**14. Indemnification:** Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers (“Seller’s Indemnified Parties”) from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, loss, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, reasonable attorneys’ fees and costs (“Damages”) incurred by or against Seller or any of Seller’s Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (a) misrepresentations, breach of the warranties, representations, covenants or agreement contained in this Contract or any law by Buyer or any of Buyer’s shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns (“Buyer’s Parties”), or (b) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer’s Parties, or (c) losses, damages or injuries caused by Buyer’s products, Buyer’s specifications, designs, approvals or instructions provided to Seller, or due to improper application or use of the Products or otherwise. Prior to settling any claim, Buyer will give Seller an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Seller’s written consent. In the event of any recall affecting the Products, Seller shall have the right to control the recall process and Buyer shall fully cooperate with Seller in connection with the recall.

**15. Compliance With Laws:** Seller makes reasonable effort to ensure Products sold by it conform with the standards and regulations as may affect the Products, however, Buyer understands and accepts that Products are used in varying applications that from time to time can conflict with the prescribed standards and regulations. Seller makes no representation that the Products conform to federal, state and local laws, ordinances, codes or other governing regulations, except as specifically agreed to in writing as part of this contract between Buyer and Seller.

**16. Assignment of Rights:** None of Buyer’s rights assigned under this contract shall be assigned by Buyer to any other person, Party, or entity, whether by operation of law or otherwise, without the prior written consent of an authorized representative of Seller.

**17. Force Majeure:** Seller shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, act of civil or military authority, demand for goods exceeding Seller’s available supply, act or omission of Buyer, insolvency or other inability to perform by the manufacturer, or any other cause beyond Seller’s control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Seller may, at its option and without liability, prorate its deliveries, cancel all or any portion of the contract and/or extend any date upon which performance is due hereunder.

**18. Credit Balance:** Any credit issued, or credit balance, will be applied within one (1) year of its issuance. Credits can be applied against merchandise purchases only, no cash refunds. If not applied within one (1) year, the credit balance remaining shall be cancelled, and RPM shall have no further liability.

**19. Miscellaneous:** The invalidity of any provision or clause of this Contract shall not affect the validity of any other provision or clause hereof. Seller reserves the right to correct clerical or similar errors relating to price or any other term shown in this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment or any right granted hereunder or the future performance of such term, covenant or condition. Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products including, without limitation, to the extent applicable, the U.S. Export Administration Act and all regulations thereunder. Neither party may assign these terms and conditions without the prior written consent of the other party provided, however, that Seller may assign these terms and conditions in whole or in part to any of its affiliates and/or perform through subcontractors. Subject to the foregoing, these terms and conditions shall inure to the benefit of, and be binding upon, the parties' successors and assigns. Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of Seller. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on Seller's behalf. The warranty and damage limitations in Section 7 above, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of Seller's remedies herein are cumulative and not exclusive of any other remedies available to Seller at law, by contract or in equity.