

**RATHBONE PRECISION METALS, INC. ("SELLER")**  
**TERMS AND CONDITIONS ("T & CS") OF SALE**

1. **ACCEPTANCE / CONTRACT FORMATION** - These terms and conditions ("T&Cs") shall apply to any contract of sale for Seller's goods or performance of conversion services irrespective of whether Seller's accompanying documentation constitutes an offer to Buyer or an acceptance of Buyer's prior offer to Seller. Offers or acceptances by Buyer may be communicated orally, delivered in person or by telephone or in writing, delivered by regular mail, hand delivery, overnight courier, facsimile or electronic mail. Additional or conflicting terms from those in these T&Cs in Buyer's offer or acceptance are expressly objected to and shall not be deemed accepted by Seller unless Seller's acceptance is in writing and specifically refers to each such additional or conflicting term.

2. **DELIVERY / FORCE MAJEURE** - All shipping and delivery dates are approximate. Delays in delivery neither entitle the Buyer to withdraw from the contract nor to claim damages. Seller shall not be responsible for any prohibition, failure, interruption or delay in manufacture or delivery that may be caused by sabotage, fire, flood, explosion, virus/disease outbreak, labor dispute, strike, work stoppage, riot, insurrection, war, terrorist act, government order, or priorities granted by request of or for the benefit, directly or indirectly, of any government body, authority or agency, shortage of raw materials or supplies, act of God, insufficient capacity, or any other cause beyond Seller's control. In the event of any such prohibition, failure, interruption or delay, Seller may, at its option, extend the delivery time or cancel the order, in whole or in part. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, PENALTIES OR CLAIMS FOR LABOR OR FREIGHT RESULTING FROM ANY FAILURE OR DELAY IN DELIVERY.**

3. **COMPLIANCE WITH LAWS** - Seller intends to comply with all laws or regulations applicable to the performance by Seller of each order, provided; however, that any failure of Seller to so comply shall not be a defense to, or excuse Buyer from, performance by Buyer of any order.

4. **WARRANTY / CLAIMS / LIMITATIONS OF LIABILITY** - Seller shall, as Buyer's sole and exclusive remedy and at Seller's option, replace or, without replacement, render credit for any material which, if properly selected, stored, processed and used by the Buyer shall prove defective within ninety (90) days from the date of receipt. Seller's material shall be deemed defective only to the extent that it materially deviates from the applicable specifications, as agreed to and accepted by Seller, and Seller's standard manufacturing and commercial tolerances, variations and practices.

Samples supplied by Seller are solely for the purpose of evaluating the suitability of such material or services for potential use and, as such, the samples are not intended to serve as warranties of any type, either express or implied. Buyer shall have sole responsibility for selection and specification of the goods or services appropriate for the end use of such goods or services, even if Buyer has informed Seller of the end use for such goods or services. Buyer acknowledges that it alone has determined that the materials purchased or processed hereunder will suitably meet the requirements of their intended use.

SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR, AND BUYER RELEASES SELLER FROM, ANY AND ALL LIABILITY FOR NEGLIGENCE BY SELLER WITH RESPECT TO ANY ACTIVITY ENGAGED IN BY SELLER WITH REGARD TO THE GOODS OR SERVICES SOLD HEREUNDER AND FROM ANY AND ALL LIABILITY IMPOSED UPON MANUFACTURERS OR SELLERS OF GOODS OR SERVICES UNDER ANY PRODUCT LIABILITY THEORY OR UNDER ANY SIMILAR LEGAL THEORY. SELLER SHALL NOT, UNDER ANY CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, DELAY IN DELIVERY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR USE OF MATERIALS SOLD OR PROCESSED BY SELLER, BE LIABLE TO BUYER OR ANY OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOSSES OF ANY KIND WHATSOEVER. **IN NO EVENT SHALL SELLER'S LIABILITY FOR DEFECTIVE MATERIAL SOLD TO BUYER EXCEED THE PURCHASE PRICE THEREOF.**

EXCEPT AS SPECIFICALLY SET FORTH IN THESE T&CS, AND NOTWITHSTANDING ANY LANGUAGE IN THIS OR ANY OTHER PROVISION TO THE CONTRARY, SELLER NEITHER MAKES, NOR ASSUMES ANY LIABILITY UNDER, ANY WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE BY ANY SALES REPRESENTATIVE OR OTHER AGENT OR REPRESENTATIVE OF SELLER WHICH IS NOT SPECIFICALLY SET FORTH IN THESE T&CS SHALL BE BINDING UPON SELLER.

Buyer agrees to notify Seller within thirty (30) days of discovery of defective goods or non-conforming conversion services. No claim shall be allowed by any party other than the Buyer. Any claim for breach of the express warranty that is not made within the timeframes set forth herein shall be deemed to have been waived. Unless otherwise agreed to in writing by Seller, Buyer shall set aside, protect, and hold such goods without further processing until Seller has an opportunity to inspect and advise of the disposition, if any, to be made of such goods. In no event shall any goods be returned, reworked, or scrapped by Buyer without the written authorization of Seller. The limited warranty provided above does not apply to materials that are supplied for testing and/or evaluation ("prototype material"). Prototype material is supplied "AS IS" without warranty of any kind. Seller will have no liability for any claims relating to prototype material, and Buyer shall indemnify, defend and hold harmless from any such claims.

5. **CONFIDENTIAL INFORMATION** - Buyer acknowledges that it may be entrusted with confidential information of Seller. Buyer will take all commercially reasonable care to avoid disclosure or unauthorized use of confidential information for purposes to any other person or entity. If Buyer is required under applicable law to disclose confidential information in its possession, Buyer must provide thirty (30) days written notice to Seller prior to such disclosure. All other confidential disclosures require prior written consent from Seller. Buyer's obligations hereunder shall survive indefinitely.

6. **PRICES AND FREIGHT** - All quoted prices, extras (including applicable surcharges), and all freight or transportation rates, are subject to change, without notice, to reflect Seller's prices and extras, and applicable freight or transportation rates, in effect as of the date of shipment. Unless otherwise agreed, freight will be charged from the point of original manufacture or processing point.

7. **TITLE / SECURITY INTEREST** - Failure by Buyer to make any payment due hereunder, or on request to give proper shipping instructions, or to accept delivery at times stated, or to comply with all terms of any contract between Buyer and Seller shall give Seller, in addition to all other available remedies, the right at its option to deduct any undelivered quantities of material from the total quantity of material to be furnished whether under this or any other contract between Buyer and Seller. Title to materials shall pass immediately upon delivery to a carrier at the point of shipment. Buyer hereby grants to Seller a security interest (which shall be deemed a purchase money security interest) in all goods and materials provided to Buyer by Seller or upon which Seller performs services for Buyer, to secure payment by Seller for all such goods, materials or services. In the event of nonpayment by Buyer of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have all rights of, and all of the remedies available to, an unpaid secured creditor under the applicable state Uniform Commercial Code (UCC), and all other rights and remedies available at law or in equity. Buyer agrees, and, to the extent permitted by law, Seller is authorized to, execute and file whatever documents are necessary, including security agreements or financing statements, to evidence and perfect the security interest granted herein.

8. **TAXES** - Any excise, levies or taxes which Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby, shall be for the Buyer's account, and Buyer agrees to pay the amount thereof to Seller upon request.

9. **DELIVERY / RISK OF LOSS** - Unless otherwise specifically stated on a document of sale agreed to in writing and signed by Seller, delivery shall occur and risk of loss shall pass to Buyer, upon delivery of the material to a carrier at the point of shipment. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only.

10. **CANCELLATION / CHANGE ORDER REQUESTS** - An order cannot be modified or cancelled by Buyer without the Seller's written consent. In no event shall any order be modified or cancelled for any portion thereof already processed, manufactured, or in process of manufacture, processing or performance, at the time the request for modification or cancellation is received by Seller, except upon terms, satisfactory to Seller, that protect and indemnify Seller against all loss.

11. **QUANTITY** - Seller reserves the right to deliver commercially reasonable overages or underages of weight, length, size and/or quantity. Any reasonable variation shall constitute compliance with Buyer's order and the unit price will continue to apply. Seller's standard ship tolerance is  $\pm 15\%$ . Buyer shall provide information sufficient to confirm actual requirements at Seller's request.

12. **PAYMENT TERMS** - Unless otherwise specifically stated on a document of sale agreed to in writing furnished by Seller or agreed to in writing and signed by Seller, the terms of payment for each order without setoff shall be net cash (U.S. Dollars) in thirty (30) days from invoice date. Complaints for deficiencies or belated deliveries do not entitle the purchaser to modifications of the due date of settlement or an extension of the credit period. Restrictive endorsements on Buyer's checks will not reduce Buyer's obligations to Seller. **The unpaid portion of any amounts due to Seller, beyond the mutually agreed upon payment terms, shall bear interest at the rate of 2% per month, or the maximum legal rate if less, and Buyer is also bound to reimburse extra judicial reminder fees to the Seller. Seller is entitled to immediately demand payment for any overdue balances at any time.**

13. **ADEQUATE ASSURANCE / RIGHTS OF SELLER** - Seller may, at any time or times, suspend performance of any order or require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's sole opinion, the Buyer's financial condition or other grounds for insecurity warrant such action.

14. **ASSIGNMENT / SUBCONTRACTING** - Buyer shall not assign any order or any interest therein without the written consent of Seller. Any such actual or attempted assignment without Seller's proper written consent shall entitle Seller to cancel such order upon notice to Buyer.

15. **INTELLECTUAL PROPERTY / PATENT INFRINGEMENT INDEMNIFICATION** - Nothing herein shall be construed to grant Buyer any rights or license to use any of Seller's intellectual property. Buyer shall indemnify, hold harmless and defend Seller against any liability whatsoever for patent, trademark, trade name or trade secret infringement in any way arising out of the preparation, manufacture or processing of any material, or performance of services, in accordance with Buyer's order, specifications or instructions.

16. **TOOLING** - Unless otherwise expressly agreed, all tools, dies, fixtures, jigs, gauges, and related drawings and designs shall be and remain Seller's property and shall be held by Seller at its expense and disposal. Buyer shall be responsible for all costs of maintenance, repair and replacement of any such items, expressly agreed upon as owned by Buyer, if used exclusively for the manufacture or processing of materials by Seller for Buyer. If any such items remain inactive for a period of three (3) years, Seller reserves the right to dispose of such items at its sole discretion.

17. **GOVERNMENT CONTRACT TERMS / MANDATORY FLOW DOWNS** - If Buyer's order is for a U.S. government contract, and Seller's goods or services are to be used in the performance of said contract, Buyer should notify Seller in writing at time of order of only those mandatory flow down clauses of applicable U.S. government procurement regulations required by federal statute or regulation to be included in U.S. government subcontracts, and such clauses shall be incorporated herein by reference if accepted by Seller at order acceptance.

18. **MERGER CLAUSE / ENTIRE AGREEMENT / MODIFICATION** - These T&Cs and sales documentation, along with any Non-Disclosure Agreement between the Parties, constitute the entire contract between Seller and Buyer. To the extent that any terms in the sales documents and these T&Cs conflict, the terms on the front of Seller's sales documents shall control and prevail, followed by these T&Cs. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby. A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed. If any portion of these T&Cs is declared to be unenforceable by a court of competent jurisdiction, all other portions shall be considered to be valid and enforceable to the extent that they are reasonably severable. The headings contained in these T&Cs are for convenience of reference only and are not intended to have any substantive significance in interpreting this document.

19. **RIGHT OF ACCESS** - Buyer may visit Seller's premises only upon terms set by Seller. No visit shall be allowed without Seller's receipt of written request by Buyer at least one month prior to such a visit. Any such visit may be made only to verify proper execution of Buyer's order, as limited by the need to protect Seller's know-how and trade secrets as well as rights of third parties.

20. **GOVERNING LAW / JURISDICTION / ARBITRATION** - These T&Cs and accompanying sales documentation of Seller shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without application of the conflict of law principles. Any claim, dispute or controversy arising from or relating to any contract for Seller's goods or services, directly or indirectly, may be brought only in the state and federal courts located in the Commonwealth of Massachusetts, and the parties hereto consent to be subject to the jurisdiction of such courts or resolved by arbitration conducted in accordance with the then prevailing Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed, the arbitration shall be held in Springfield, Massachusetts. Each party shall bear its own counsel and expert witness costs, and the parties shall each pay one-half of the fees of the arbitrators; provided, however, the arbitrators may, in their discretion, award fees and costs to either party. Any determination or award in arbitration rendered by all or a majority of the arbitrators shall be conclusive and binding upon the parties and may be entered as a final judgment in any court having jurisdiction. Any action to enforce the arbitration provisions herein, to enforce any determination or award resulting from arbitration, or to seek remedies not available in arbitration, may be brought only in the state and federal courts located in the Commonwealth of Massachusetts, and the parties hereto consent to be subject to the jurisdiction of such courts.