

# TERMS AND CONDITIONS OF SALE

TERMS AND CONDITIONS OF SALE by RPM MECHANICAL INC. PLEASE READ THESE TERMS AND CONDITIONS OF SALE CAREFULLY BEFORE ORDERING.

Your purchase of RPM Mechanical Inc. ("RPM") products is expressly conditioned on your acceptance without modification of the following terms and conditions (the "Terms and Conditions"). By ordering RPM products you signify your acceptance of these Terms and Conditions. **RPM EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS SUBMITTED BY THE PURCHASER UNLESS AGREED TO IN WRITING BY RPM.** RPM's catalogue or telephone quotation is an offer to sell. All purchase orders and shipments shall be subject to RPM's Credit Department approval.

- 1. PRICING:** All prices quoted are in Canadian/US Dollars and do not include shipping charges, GST, PST, QST or HST, and any other taxes, duties or other charges in effect at the time of order. **All prices are F.O.B. RPM's warehouse(s) Burlington, Ontario or Tonawanda, NY.** Due to competitive market pressures, prices are subject to change. RPM reserves the right to correct, at any time, any pricing errors. **CALL 1-888 842-5668 FOR CURRENT PRICES.**
- 2. MINIMUM ORDER:** RPM reserves the right to require a minimum order, exclusive of taxes.
- 3. PAYMENT OPTIONS:** Subject to credit approval, payment in full is due within thirty (30) days from the date of RPM's invoice. A monthly finance charge may be charged to purchasers on overdue accounts which finance charge shall be in the absolute discretion of RPM. RPM has the right to set-off any amount which it may owe to the Purchaser against any amount the Purchaser owes RPM. RPM reserves the right to unilaterally terminate a contract or any portion of it for the sale of RPM products at any time if RPM determines that the purchaser's credit is not satisfactory.
- 4. PERMISSIBLE VARIATIONS:** In accordance with commercial practices, all quantities of product are approximate to within ten (10%) per cent over or under of the total quantity of the products ordered.
- 5. ACCEPTANCE OF GOODS:** The purchaser shall examine all products purchased upon receipt and shall be deemed to have accepted the products as satisfactory unless the purchaser notifies RPM in writing to the contrary within seven (7) days of the date of receipt of the products by the purchaser.
- 6. TELEPHONE ORDERS:** The purchaser must confirm in writing all telephone orders by mail, fax, or e-mail and print the word "**CONFIRMATION**" on the confirming purchase order. If the confirming written purchase order is not received within 24 hours of the telephone order, any and all costs incurred by RPM due to orders being shipped prior to RPM's receipt of the purchase order confirmation, or any variations in the required quantity, delivery date or other change in the purchase order shall be born by the purchaser.
- 7. SPECIAL DOCUMENTATION REQUESTS:** Any and all special documentation, including, but not limited to, certificates of compliance, Canada Customs and Revenue Agency (C.C.R.A.) Drawback Certificates of Importation, Sale of Transfer, cure date certificates or raw material specification certificates must be requested in writing at the time that the purchase order is made by the purchaser.
- 8. DELIVERY INFORMATION:** RPM ships its products using leading delivery providers to provide fast and

reliable service. Method, carrier and route of shipment shall be at the sole discretion of RPM. The number of days required for delivery is an estimate based on the number of business days it would normally take, but it is not a guarantee. Orders to small centres or remote locations may require extra shipping time. Most orders are shipped within two (2) business days of order receipt. RPM shall not be liable to purchaser or to any third party for direct, indirect or consequential damages due to delays in the production, shipment or delivery of RPM's products, however the delay is caused.

- 9. RISK OF LOSS:** Any products purchased from RPM, are delivered by a third party delivery company, pursuant to a shipping contract. The risk of loss for such products passed to the purchaser at the time of delivery by RPM to the third party shipper. Shipments are not insured by RPM.
- 10. PRODUCT WARRANTIES:** The manufacturer's warranty applies to the original purchaser. **RPM makes no other warranty.** If purchaser needs to make a claim on the manufacturer's warranty, purchaser shall notify RPM in writing within thirty (30) days of the date of delivery of the product and provide written proof that the product has been installed and operated in accordance with the manufacturer's recommendations and standard industry practice. At its option, RPM may correct such defects by suitable repair or replacement of the product at its own expense, or at its further option, RPM may refund the purchase price of the product to the purchaser. All descriptive materials such as drawings and illustrations accompanying, referred to or contained in RPM quotations, catalogues, brochures, specifications or any other publication or display shall be regarded as approximations only. Any materials supplied by the purchaser to be entirely or partly covered or processed with, or joined to products manufactured by RPM will be utilized with due care; however, the purchaser assumes any and all risk and/or liability for any and all adverse consequences from such use including but not limited to any damage to or destruction of the purchaser's original materials supplied.
- 11. PRODUCT RETURNS, EXCHANGES AND CANCELLATIONS: Product may not be returned for any reason unless prior written authorization is obtained from RPM.** If the product purchased arrives broken, damaged or defective, upon obtaining a Returned Goods Authorization Number from RPM, purchaser may return the defective product to RPM where it can be repaired or exchanged as outlined below. **The purchaser must obtain a Returned Goods Authorization Number from RPM prior to returning the product or the unauthorized returned product shall be refused.** RPM will be pleased to issue a Returned Goods Authorization Number upon receipt of original Purchase Order Number and RPM's Invoice Number from purchaser. **All returns must be prepaid by the purchaser. Risk or loss for all product returned to RPM shall be born by the purchaser.** All accepted returns will be subject to re-stocking charges and will be credited at original invoiced amount less any applicable re-stocking charges. **Purchaser may not cancel a purchase order unless purchaser obtains RPM's written consent** on terms satisfactory to RPM that shall properly indemnify RPM against loss from such cancellation.
- 12. LIABILITY DISCLAIMER:** Except as explicitly provided in the foregoing paragraphs, RPM makes no representations or warranties of any kind, express or

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implied, regarding any materials and products. RPM does not warrant the accuracy, completeness, currency, reliability or suitability of the products it sells, or any of the content or data found in its catalogues, and RPM expressly disclaims all warranties and conditions, including implied warranties and conditions of merchantability, fitness for a particular purpose, title and non-infringement, and those arising by statute or otherwise in law or from a course of dealing or usage of trade. In particular, the United Nations Convention on Contracts for the International Sale of Goods (the "Vienna Sales Convention") shall not apply. RPM accepts no responsibility for clerical or typographical errors contained in any of its quotations, catalogues, brochures, specifications or any other publication or display and reserves the right to correct same.

13. **LIMITATION OF PURCHASER'S REMEDIES:**

Correction of product defects in the manner and for the period of time outlined above, shall constitute fulfillment of all liabilities of RPM to the purchaser with respect to products sold by RPM, whether based in contract, negligence, tort or otherwise. **PURCHASER BEARS ALL RISKS AND LIABILITY WHATSOEVER as to the result of the use of the products purchased whether used alone or in combination with other materials. In no event shall RPM be liable for any direct, indirect or consequential damages for personal injury or any nature or kind arising out of, as a result of, or in connection with the products of RPM or the purchaser's products in combination with RPM's products including, without limitation, damages or liability for loss of use, revenue or profit or for any other incidental, special or consequential damage, loss, costs or expense.** The above-noted purchaser's remedies are exclusive and in no event shall the liability of RPM exceed the price of the product sold.

14. **INTELLECTUAL PROPERTY AND TOOLS:** Without limiting the generality of the above, RPM makes no representation or warranty whatsoever as to any patent, industrial designs, copyright, trademarks and trade names matters. Purchaser agrees to immediately notify RPM in writing of any actual or possible infringement of any patent, industrial design, copyright, trade mark or trade name of RPM used in connection with any of the products upon such use or possible use coming to the notice of the purchaser. All drawings, diagrams, sketches, illustrations and specifications provided by RPM shall remain the property of RPM and may not be reproduced in whole or in part without the prior written consent of RPM, which consent may be withheld for any reason in RPM's absolute discretion. RPM shall retain ownership of, possession of, and all rights to any patterns, molds, jigs, models, and any other tools used in connection with the contract. **Purchaser may not cancel a purchase order unless purchaser obtains RPM's written consent** on terms satisfactory to RPM that shall properly indemnify RPM against loss from such cancellation.

15. **RETENTION OF TITLE:** Whether or not the risk in product sold has passed to the purchaser, title to the property in product sold shall be and remain in RPM until RPM has received payment in full for the product, together with payment in full of any other product

supplied to the purchaser which payment is overdue. Pending receipt by RPM of such payments, purchaser shall hold the product for RPM as fiduciary bailee. When payment for the product is overdue or the purchaser suffers distress or execution to be levied against the purchaser's effect, makes an arrangement or composition with or an assignment for the benefit of creditors, or being a corporation enters into liquidation (otherwise than for the purpose of amalgamation or reconstruction where the corporation as amalgamated or reconstructed accepts in full the purchaser's liability to pay for the product), or has a receiver appointed for the whole or any part of its undertaking or becomes bankrupt or insolvent or makes a proposal pursuant to the *Bankruptcy Act*, then: (a) if the purchaser remains in possession of the goods, whether or not the purchaser has sold them, RPM shall be entitled to recover the product from the purchaser; or (b) if the purchaser has parted with possession of the product by way of sale, whether or not the product has been mixed with or incorporated into other product, the purchaser has sold the product as fiduciary bailee, and shall hold in trust for RPM so much of the proceeds of sale of the product as represent the purchaser's liability to RPM in respect of the product.

16. **HEADINGS:** Headings used in these terms and Conditions are included for convenience only and will not limit or otherwise affect these Terms and Conditions.

17. **GOVERNING LAW:** The terms and conditions of sale and performance of same shall be governed by the laws of the Province of Ontario, Canada. The purchaser consents and submits to the exclusive jurisdiction of the courts located in Ontario, Canada, in all disputes arising out of or relating to these Terms and Conditions.

18. **SEVERABILITY AND BINDING EFFECT:** These Terms and Conditions shall be deemed severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions. These Terms and Conditions shall be binding upon and insure to the benefit, respectively, of RPM and the purchaser and their respective heirs and assigns.

19. **MODIFICATION AND ENTIRE AGREEMENT:** RPM reserves the right to, without notice, make changes to RPM's Terms and Conditions, including without limitation with respect to products offered, product information, availability, content and pricing, and may at any time modify these Terms and Conditions. Purchaser's purchases of product from RPM will be conditioned upon purchaser's acceptance of the Terms of Conditions in force at the time that the written confirming purchase order is submitted to RPM. These Terms and Conditions constitute the entire agreement between RPM and purchasers relating to the sale of products, and it supersedes any prior understanding or agreements (whether electronic, oral or written) regarding the subject matter, and may not be amended or modified except in writing by RPM making such amendments or modifications available to it pursuant to the Terms and Conditions. **Oral statements made by RPM's employees do not constitute warranties, shall not be relied upon by the purchaser and are not part of the contract of sale of product.**