

Terms and Conditions

General

1. All contract and purchase orders (each a “**Contract**” and collectively, “**Contracts**”) entered by Rosenberger North America Akron, LLC (the “**Company**”) with its customer (the “**Purchaser**”) are governed by these Terms and Conditions. For the purposes of these Terms and Conditions, the term “**Articles**” will refer to the tangible goods, materials and equipment listed on the Contract as well as all equipment or other materials provided in connection with any Services, and the term “**Services**” will refer to the services listed on the Contract as well as all ancillary services provided with any Articles.
2. No request for the purchase of Articles or Services from the Company is binding unless contained in a Contract agreed to by the Company. Any amendment to these Terms and Conditions or any Contract between the Company and the Purchaser must be in writing and executed by the Company.
3. All Contracts entered by the Company shall be deemed to have been entered into in Akron, Pennsylvania, and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law principles thereof.
4. These Terms and Conditions are incorporated by reference into each of the Company’s Contracts and shall be deemed accepted by the Purchaser upon the Purchaser’s receipt of Articles and/or Services. The Company objects to and expressly rejects any conflicting or additional terms and conditions, whether contained in any printed form or document of the Purchaser or elsewhere, unless approved in writing by the Company. This Paragraph constitutes the Company’s notification to the Purchaser of the Company’s objection to additional or conflicting terms and conditions pursuant to 13 Pa.C.S. § 2207.
5. If the Purchaser objects to any of the terms or conditions hereof, such objection must be made in writing and received by the Company within ten (10) calendar days after placing a purchase order. Failure to so object shall be conclusively deemed to be acceptance of the terms and conditions hereof. The Company’s failure to further object (beyond its written objection set forth in Paragraph 4 above) to any term or condition in any oral or written communication from the Purchaser, whether delivered before or after the date hereof, shall not constitute an acceptance thereof or a waiver of any term or condition hereof.

Quotation & Pricing

6. Written quotations automatically expire sixty (60) calendar days from the date issued and are subject to termination by notice within that period. Quotations may not be disclosed to any third party or used in preparation of any request for quotation for goods similar to, or as a substitution for, Articles quoted by the Company.
7. All prices are non-binding and subject to: (i) change, without prior notice to the Purchaser, at any time before the Company enters a written Contract; (ii) the correction of typographical, arithmetical, or clerical errors; and (iii) adjustment as a result of an increase in the price of raw materials, wages or taxes.
8. The Purchaser acknowledges that the Purchaser agrees to pay the Company for all the Company’s out-of-pocket costs associated with the revision of the Purchaser’s Contract or changes in design by the Purchaser or the Purchaser’s end customer, including, but not limited to: (i) raw materials, (ii) work in process, (iii) inventory carrying costs, and (iv) scrapping and disposal fees.
9. Except as otherwise expressly stated herein, any Service calls or other Service work performed by the Company shall be at the Purchaser’s expense in accordance with the Company’s standard rates for such Services. The Purchaser acknowledges that the pricing of the Articles and Services has been set based on these Terms and Conditions, expressly including, but not limited to, the allocation of risk for defective Articles or Services set forth in Paragraph 26 below. The Purchaser further acknowledges that the pricing and Terms and Conditions would have been different had there been a different allocation of the risk.
10. The Purchaser will be liable for such nonrecurring engineering charges as are specified in the written Contract between the Company and the Purchaser. Such charges are intended to reimburse the Company in whole or in part for tools and fixtures that are dedicated to the work required by the Contract. Such charges do not confer on the Purchaser any right or claim with respect to such tools or fixtures, or with respect to their use or disposition, and upon completion of the work the Company may dispose of the tools or fixtures as it sees fit. There will be no charge for upkeep or repair of tools and fixtures.

Taxes

11. In addition to the price(s) set forth in the contract between the Company and the Purchaser, the Purchaser agrees to pay all applicable sales, excise, or use taxes for which the Company may be liable.

Payment Terms and Revocation of Credit

12. Unless otherwise specified in the Contract, the terms of sale shall be net due in 30 days from the date of each invoice. The Company may, in its absolute discretion, charge the Purchaser interest at a rate of 1.5% for each invoice not timely paid, with interest beginning to accrue from the date of the invoice and continuing until the invoice and interest is paid in full by the Purchaser.
13. In the event the Purchaser fails to timely pay any invoice, the Company may, without prejudice to its statutory and contractual rights, decline in whole or in part to make further deliveries under any Contract and/or to make further deliveries dependent upon advance payment or surety.
14. The Company reserves the right at any time to revoke any credit extended to the Purchaser because of the Purchaser's failure to pay for any Articles when due or for any other reason deemed good and sufficient by the Company, and in such event all subsequent shipments will be paid for by the Purchaser prior to shipment from the Company's facilities.
15. If any invoice or set of invoices is placed in the hands of an attorney for collection or if it is collected through a bankruptcy, probate, or any other legal proceeding, then the Company will be entitled to recovery of all costs of collection, including but not limited to its reasonable attorney's fees, from the Purchaser.

Force Majeure

16. The Company shall not be liable for delay in performance or nonperformance of any of its obligations hereunder, in whole or in part, if such performance is rendered impracticable by the occurrence of any contingency or condition beyond the control of either the Company or the Company's suppliers, including but not limited to war, sabotage, embargo, riot, terrorism, civil commotion, failure or delay of transportation, act of any government or any court or administrative agency thereof (whether or not such action proves to be valid), labor disputes (whether or not involving the Company's employees), accident, fire, explosion, flood, earthquake, or other casualty, shortage of labor, fuel, energy, raw materials or machinery or technical failure. If any such contingency or condition occurs, the Company may allocate production and deliveries in any reasonable manner and may include in such allocation any regular customers, whether or not then under contract, and the Company's own requirements. If, as a result of any such contingency, the Company's performance is delayed by more than six (6) months, the prices set forth herein shall be subject to appropriate adjustment by the Company.

Commercial off the Shelf Articles

17. Orders for any commercial-off-the-shelf (COTS) Articles will be fulfilled with the latest Article revision. As such, validation of the Article revision for COTS Articles between the Company and Purchaser will not be performed.
18. The Company reserves the right to make changes to COTS Article designs and specifications on any of its Articles without notice and without any obligation to make the same or similar changes to units previously purchased. The Purchaser acknowledges and agrees that the Company is not liable or obligated to adhere to the Purchaser's purchase order notes and/or quality clauses for any COTS Articles.

Cancellation of Custom Articles

19. If a request for cancellation by the Purchaser is received and the Company determines that the Article(s) is a custom Article, the Company may, in the Company's sole discretion, deny the Purchaser's cancellation request. If the Company permits the cancellation of custom Article, the Purchaser agrees to pay the Company for all of the Company's out-of-pocket costs associated with the cancellation of the order including, but not limited to: (i) raw materials, (ii) work in process, (iii) inventory carrying costs, (iv) scrapping and disposal fees, and (v) a reasonable and equitable profit for the Company, which shall not be less than twenty percent (20%) of such costs. In no case will the cancellation charge be less than the Company's actual costs (including overhead and other indirect costs). The amount of cancellation charge to be charged to the Purchaser shall be determined at the sole discretion of the Company and may equal 100% of the amount of the order at the time of the Company's receipt of the Purchaser's request for cancellation. Upon written request from the Purchaser, the Company will provide the Purchaser with written notice setting forth how the cancellation charge was calculated. Upon payment of the cancellation charge, the Purchaser shall be entitled to receive all raw materials and work in process, and the Company agrees to ship such goods to the Purchaser at the Purchaser's expense.

Delivery

20. The method of shipment and the insurance valuation for all Articles shall be determined by the Company.

Export Control, Sanctions and Debarred Entities

21. The Purchaser acknowledges the Articles, software, and technical information provided under these Terms and Conditions are subject to U.S. and other export laws and regulations. The Purchaser agrees not to export, re-export, transfer, or transmit the Articles, software, or technical information except in compliance with all such laws and regulations. This sale is subject to any applicable governmental approvals, and, at the Company's request, the Purchaser agrees to sign written assurances and other export-related documents as may be required for the Company to comply with export-related laws and regulations.
22. The Purchaser acknowledges that neither it nor any parent, subsidiary, or affiliate is included on any of the restricted party lists maintained by the U.S. government or any non-U.S. government entity or agency, including but not limited to the Specialty Designated Nationalists List administered by OFAC, the Denied Persons List, Unverified List, and Entity List maintained by the Bureau of Industry and Security, the list of Statutorily Debarred Parties maintained by the Directorate of Defense Trade Control, and the consolidated list of asset freeze targets designated by the United Nations, European Union and United Kingdom.
23. The Purchaser shall immediately notify the Company if (1) Purchaser is, or becomes, listed in any such list; (2) Purchaser's export privileges are restricted, suspended, or revoked in whole or in part by any U.S. or non-U.S. government entity or agency; (3) Purchaser enters into an agreement to be acquired by, have its assets acquired by, or otherwise combine with, in whole or in part, any foreign entity or entity owned or controlled by a foreign person; (4) Purchaser becomes aware of a violation or potential violation of any Trade Control Law by the Purchaser; or (5) a pending or initiated government investigation could affect the Purchasers or eligibility to sign or receive an export license or agreement.
24. If Purchaser is engaged in the business of either exporting or manufacturing (whether exporting or not) or brokering defense articles or furnishings defense services, Purchaser represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
25. Purchaser shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlements, and court costs, arising from any act or omission of Purchaser, its officers, employees, agents, or subcontractors at any tier, in the performance of any of its obligations under this clause.

Claims

26. The Purchaser is required to examine Articles immediately upon delivery. The Purchaser shall notify the delivering carrier of any damage to the Article that may have occurred during shipment. Any claim that the Company has shipped an incorrect quantity or that an Article manufactured by the Company does not meet contract specifications must be received by the Company, in writing, within ten (10) days of the Purchaser's receipt of the Article.
27. Any claim received after ten (10) days or that is not in writing shall be null and void. Upon receipt of a timely claim, the Company may, at its sole option, (i) inspect the Articles at the Purchaser's premises, or (ii) request return of the Articles to the Company's plant for inspection. Whether or not a claim is allowed, the Purchaser shall hold the Company harmless, and shall indemnify the Company, for any costs, fees, or damages for which the Company may become liable arising from or related to inspection of the Articles.
28. Any claim relating to damage during shipment shall be made to the delivering carrier in accordance with such terms and procedures as the carrier shall specify, and the Purchaser shall retain the Articles and packaging for inspection by the delivering carrier.
29. No Articles may be returned to the Company without the Company's written authorization. A Return Goods Authorization from the Company will be required for any Article returned to the Company. No claims will be allowed for labor, rework, transportation, or other expense incurred by the Purchaser without prior written approval of the Company.
30. If an Article purchased by the Purchaser from the Company is defective then the Company will, at its option, repair or replace the Article without charge if: (i) the Company received actual, written notice of such defect or deficiency within one (1) year of the date on which the Article was delivered to the Purchaser; (ii) the defective Article was maintained by the Purchaser in the same condition as when the defect or deficiency was first identified; and (iii) the Article was used, operated, and installed in accordance with the Company's instructions and has not otherwise been used, operated, or installed improperly or incorrectly by the Purchaser or the Purchaser's end customer.

Warranty

31. The Company warrants to the Purchaser for a period of one (1) year from the date of shipment of the Article to the Purchaser that (i) the Articles will conform to the Purchaser's specifications for the Articles in effect on the date of shipment, and (ii) the Articles will be free from material defects in materials and workmanship. The Company's sole liability for any breach of warranty under this paragraph will be to repair or replace, at its option and at its expense, the defective or nonconforming Articles to a condition as warranted.
32. EXCEPT AS SET FORTH HEREIN THE COMPANY HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability

33. The Purchaser assumes full responsibility for, shall bear all the expense of, and shall hold the Company harmless with respect to any suit, claim, or damages arising from, or out of any liability arising out of, or in connection with, any Article manufactured to the Purchaser's design or specification, or designed by the Company to meet the Purchaser's requirements.
34. If the Purchaser ceases to operate in the normal course of business (including, but not limited to, the Purchaser's inability to meet its obligations as they mature, or if Purchaser becomes a party to any voluntary or involuntary insolvency proceedings, or a receiver for the Purchaser is sought or appointed), the Company may, at its sole discretion and without any liability whatsoever, immediately terminate any Contract with the Purchaser, cancel any order placed by the Purchaser, and/or order the return by a carrier of Articles in transit from the Company to the Purchaser. Exercise of this right shall not constitute a waiver of any other rights or remedies the Company may have at law or in equity.

Intellectual Property

35. All intellectual and industrial property (together "Intellectual Property") rights existing or coming into existence due to the design, manufacture, and marketing of the Articles and/or the performance of the Services by or for the Company shall be owned by the Company.
36. The Purchaser is expressly prohibited from reproducing, distributing, or using the Company's intellectual property for any purpose other than the intended use of the Article, without the prior written consent of the Company.

Governing Law and Venue

37. Any dispute will be governed by the laws of the Commonwealth of Pennsylvania, exclusive of conflict of laws principals, except that disputes arising out of or in connection with intellectual property matters shall be exclusively governed by the federal laws of the United States. The Purchaser and the Company hereby irrevocably submit to the exclusive jurisdiction of the federal and state courts of Lancaster County, Pennsylvania for the resolution of any claim under these Terms and Conditions, and each party agrees not to assert any defense to any suit, action, or proceeding initiated by the other within Lancaster County based upon improper venue or inconvenient forum.