

# TERMS & CONDITIONS OF SALE

**1. Sale.** As used herein, the term "Seller" or "Rotor Clip" shall mean Rotor Clip Company, Inc., and/or Rotor Clip Holdings, LLC, and "Buyer" shall mean the party issuing a purchase order for or otherwise acquiring goods to be supplied by Seller. The Terms and Conditions of Sale contained herein shall apply to all quotations made and purchase orders entered into by Seller. These Terms and Conditions of Sale constitute an offer by Seller to sell products (the "Products") pursuant to the terms and conditions stated herein. THIS OFFER IS EXPRESSLY CONDITIONED ON ACCEPTANCE WITHOUT ADDITION OR ALTERATION. SELLER HEREBY PROVIDES NOTICE THAT IT OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED IN ANY INSTRUMENT REQUESTING OR CONFIRMING THIS OFFER OF SALE BY OR ON BEHALF OF BUYER. These Terms and Conditions supersede any provisions, terms and conditions contained on any confirmation, purchase order or other writing the Customer may give or receive, and the rights of the parties shall be governed exclusively by these Terms and Conditions. No contrary, additional or different provisions, terms or conditions shall be binding on the Company.

**2. Prices; Payment; Setoff.** Unless otherwise provided in writing by Seller, all prices quoted (i) are EXW Seller Facilities as to domestic shipments, all others shipments are FCA Seller facility in Fort Worth, Texas, or other location specified by Seller; (ii) are based on the quantities specified for delivery; (iii) shall automatically expire sixty (60) calendar days following the quotation date; and (iv) are subject to termination by Seller within such period. Such prices are subject to increase by Seller for (i) any order change made by Buyer and approved by Seller, (ii) with respect to multiple orders pursuant to a single purchase order, for any order confirmed after a general price increase made by Seller, and (iii) orders requiring special inspection, special packaging and certification. In addition, unless otherwise provided in a written quotation or invoice, payment terms shall be Net 30 days and interest shall accrue on all past due invoice amounts at the rate of 1.5% per month (or the maximum amount permitted by applicable law, whichever is lower). Failure to timely pay any Seller invoice shall cause all subsequent invoices to become immediately due and payable. Seller may set off any amount due from Buyer, whether or not under this agreement, against any amount which may become due to Buyer hereunder.

**3. Warranties and Remedies.** SELLER PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THE PRODUCTS SOLD HEREUNDER. FURTHER, SELLER HEREBY DISCLAIMS THE WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. BUYER HEREBY IRREVOCABLY WAIVES ANY RIGHT TO RECOVER PUNITIVE, EXEMPLARY, INCIDENTAL, MULTIPLIED OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALES MADE BY SELLER HEREUNDER. SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF THE PRODUCTS SOLD HEREUNDER SHALL BE LIMITED TO REPLACEMENT OF NONCONFORMING GOODS OR PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE THEREFOR, AT SELLER'S OPTION. Buyer agrees that it shall not make any representation or warranty to any party about Seller and/or the Products to be provided by Seller without Seller's prior written consent.

**4. Default; Cancellation.** Buyer shall be liable to Seller for any and all costs and expenses incurred by Seller (including, without limitation, reasonable attorney's fees) in connection with Seller's collection of any past due invoice amounts. In the event that Buyer cancels any order (in whole or in part) placed in connection with this quote without Seller's consent, Buyer shall be liable to Seller for reasonable cancellation charges, which shall include, but not be limited to, all costs and expenses incurred by Seller in preparing to fulfill such order. Cancellations will be accepted only upon receipt of written notice from Buyer and acceptance by Seller. Buyer shall incur a restocking charge of ten percent (10%) of the total invoice for any order cancelled more than ten (10) calendar days after initially placed with Seller.

**5. Acceptance; Adjustments.** All Products sold by Seller hereunder shall be deemed acceptable by Buyer unless within thirty (30) days following Buyer's receipt of the Product, Buyer notifies Seller in writing of any claim that such Products are damaged or defective. Any claims for shortages or invoice discrepancies must be made to Seller in writing within ten (10) days following the invoice date in order to qualify for an adjustment. Claims for loss or damage as a result of shipment must include a copy of the delivery receipt.

**6. Returns.** No merchandise shall be accepted for credit unless the return has been previously authorized by Seller in writing and Buyer returns the Products in original packaging along with a copy of Seller's authorization for such return. Seller shall replace Products returned to Seller in compliance with applicable Product specifications, provided Seller, in Seller's sole determination, justifies the replacement of such Product. Seller shall not be liable for such replacement Product or Product part. Any credit issued pursuant to the terms herein shall be applied to Buyer's future Product orders. Seller shall not be obligated to issue any refund to Buyer.

**7. Security Interest.** Buyer hereby grants to Seller a purchase money security interest in all Products covered hereby as security for payment of all amounts due hereunder. Buyer agrees that Seller may take any actions reasonably necessary to perfect, preserve, and protect the security interest created hereby. The Seller shall have all of the remedies of a secured creditor under the Uniform Commercial Code or similar law of the country, kingdom, territory or principality in which Buyer is resident or to which the Products are shipped.

**8. Option to Accelerate.** Upon written notice to Buyer, Seller shall have the right to demand immediate payment of amounts due hereunder when Seller believes in good faith that the prospect or payment or performance by Buyer hereunder is impaired. The acceptance of Products by Buyer shall constitute an express representation that Buyer is not then insolvent within the meaning of Title 11, United States Code, or similar federal or state law or similar law of any foreign government.

**9. Taxes.** Any tax, duty, custom, impost or other fee of any nature imposed upon this transaction by any Federal, State, local or foreign governmental authority shall be paid by Buyer in addition to the price quoted or invoiced. In the event Seller is required to prepay any such tax, Buyer will promptly reimburse Seller for same.

**10. Contingencies.** Seller will make reasonable efforts to fulfill orders; however, Seller will not be liable for any delay in performance or nonperformance on the part of Seller, directly or indirectly caused by fire, explosion, accidents, flood, labor trouble or shortage, war, act or regulation of any government, inability to obtain suitable material, equipment, fuel, power or transportation, or act of God; arising from contingencies, happenings or causes beyond the reasonable control of Seller. Quantities so affected by any such circumstances may be reduced by Seller without liability, but this agreement shall otherwise remain unaffected.

**11. Shipment; Risk of Loss; Title.** Unless otherwise agreed to in writing by the parties, deliveries of the goods shall be EXW Seller's facilities for domestic shipments, and FCA Seller's facility in Fort Worth, Texas for all other shipments; or other location specified by seller. Seller shall not be obligated to deliver Product orders totaling less than \$100.00 (\$300.00 for international orders). Seller shall use its reasonable efforts to place the goods in the possession of a carrier and to make a contract for their transportation as may be reasonable, having regard for the nature of the goods and generally accepted commercial standards. Buyer shall be responsible for and pay all expenses paid or incurred by Seller in delivering the goods. Buyer shall be responsible for insuring the goods during shipment. Risk of loss of the goods shall pass to Buyer at the time the goods are tendered to such carrier.

**12. Cancellation; Modification; Suspension.** Cancellation, modification, suspension, or delay in shipment of Buyer's order shall not be accepted on terms which will not full indemnify and reimburse Seller against loss; such indemnity to include recovery of all direct costs incurred and a normal profit.

**13. Credit Approval.** Shipments, deliveries and performances of work shall at all times be subject to the approval of the Seller's credit department. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment in advance or upon such other payment terms as are acceptable to Seller's credit department.

**14. Notice.** Unless otherwise agreed in writing by the parties, all notices to the parties regarding this Agreement shall be sent to Buyer's and Seller's designate all at the address on the signature page of this Agreement.

**15. Waiver.** No claim or right arising out of a breach of any agreement to purchase Products by Buyer may be discharged in whole or in part by a waiver or renunciation of the claim or right by Seller unless supported by consideration and in writing signed by Seller. No waiver of a breach shall operate or be construed as a waiver of any subsequent breach.

**16. Assignment.** Buyer shall not assign or transfer any of its rights or obligations hereunder without Seller's prior written consent.

**17. Governing Law; Venue.** The contract made by acceptance of this offer shall be deemed made in the State of New Jersey and shall be governed by and construed in accordance with the laws of that state, without regard or giving effect to its principles of conflicts of laws principles, as if fully performed in New Jersey. In addition, Buyer agrees that any and all disputes arising out of or in connection with such contract shall be resolved exclusively in the state and/or federal courts located within the State of New Jersey, which shall have exclusive jurisdiction.

**18. Entire Agreement.** Upon acceptance by Buyer, these terms and conditions shall contain the entire agreement of the parties regarding the subject matter hereof and shall supersede any and all purchase orders, bills of lading, invoices, letters of intent, agreements, understandings and negotiations regarding same. Any change affecting these Terms and Conditions of Sale must be approved in writing by Seller.

**19. Severability.** If any provision, clause or part of these Terms and Conditions or any agreement between the Buyer and Seller, or the application thereof is held invalid, the remainder of any such agreement, or the application if such provision, clause or part under other circumstances shall not be affected thereby.

**20. Binding Effect.** These Terms and Conditions shall be binding and inure to the benefit of the parties hereto, their successors and assigns, or other legal representatives.

**21. Miscellaneous.** Orders will be considered complete when shipped within 10% over or under order quantities unless otherwise specified on customer orders. Prepaid transportation charges will be shown as a separate invoice item. Additional charges will be reflected on all orders requiring Special Inspection, Special Packaging and Certification. All orders are accepted on the basis of a \$100 minimum invoice total for each shipping destination; export orders, \$300. All tools remain the property of Rotor Clip.

## TERMS AND CONDITIONS OF SALE--ADDENDUM

**1. Price Adjustment.** As noted in our sales documentation, Rotor Clip reserves the right to adjust our pricing based on current steel market prices or other factors, and unless otherwise expressly stated in writing by Rotor Clip, quoted prices are never guaranteed beyond 60 days from the date of quotation. Any attempt to freeze Rotor Clip's pricing shall be deemed commercially unreasonable.

**2. Contract Requirements.** Rotor Clip shall not accept a purchase order as a contractual agreement between Rotor Clip and a buyer. To be legally binding, a contract shall be a mutually agreed upon document between Rotor Clip and a Buyer and signed by both parties. Also, Rotor Clip shall not accept the position that commencing any work or services in response to Buyer's purchase order or Terms and Conditions constitutes a contract between Buyer and Rotor Clip.

**3. Quotation Term.** Quotations are only valid for 60 days, unless otherwise stated: after this date, all prices for goods must be re-quoted. (Note: Pricing schedules are considered proprietary).

**4. Delivery Terms.** Prices do not include shipping; our delivery terms are EXW Seller's facilities for domestic shipments, and FCA Seller's facility in Fort Worth, Texas for all other shipments; or other location specified by Seller.

**5. Intellectual Property, Product.** All materials, documents and equipment supplied by or developed by Rotor Clip during the Term of this Agreement, including but not limited to tooling, dies, software, product designs, and equipment, is and shall at all times remain, the sole and exclusive property of Rotor Clip. This material shall also be deemed proprietary and shall not be shared with anyone outside of the Rotor Clip organization.

**6. Insurance.** Insurance coverage is already established by existing insurance policies between Rotor Clip and its insurance company and shall be the ones in force for the life of this agreement.

**7. Financial Information.** Rotor Clip Company is a privately held organization and as such all financial information including books and records related to such information is considered proprietary and shall not be disclosed to any outside party.

**8. Chargebacks and Fees.** Rotor Clip understands your need to have in place a cost recovery process to recoup time and resources spent in coping with errors caused by suppliers. However, we ask that you communicate any problems to us as early as possible so that we can be part of the investigative process before any decision is made about financial compensation. Rotor Clip does not agree to any administrative or charge back fees of any kind.

**9. Outside Services.** The disposition of non-conforming product will be determined as soon as possible. Rotor Clip shall be contacted first before any outside services are contracted. If such services are needed, Rotor Clip shall select the vendor or approve the customer's choice of vendor before such services commence.

**10. Raw Material Pricing.** The supply and purchase of raw materials shall be controlled by the Seller and included in the agreed-upon pricing.

**11. Contract Pricing.** Payment Terms are net 30 days. Prices agreed to for parts on a contract shall not be removed from that contract by the Buyer based on a lower price until the expiration date of the agreement. Supplier is under no obligation to meet a lower price for the duration of the contract.

**12. Disposition of Canceled Product.** In the event an order is cancelled Buyer shall pay for the amount of product produced as a result of pending releases supplied prior to the cancellation. (Rotor Clip produces product in the most economical way including anticipating customer volumes based on releases, and purchasing raw material and scheduling process labor time).

**13. Additional Charges.** Any additional requirements placed on an order regarding testing, inspection, packaging, etc. shall be subject to additional charges. Buyer shall bear shipping costs for returning re-usable packaging materials.

**14. Intellectual Property, Trademarks and Copyrights.** All Rotor Clip material, logos or images that are trademarked or protected by copyright shall at all times remain the exclusive property of Rotor Clip. Any intended use by a third party for any reason must be reviewed and approved by Rotor Clip prior to use.

**15. Changes to Initial Agreement.** Changes made to designs, drawings, specifications, samples, descriptions, methods of packing, shipping, labeling, inspection, testing, quality control, the order/ASN process, the date or place of delivery of the Goods, the overall scope of the work and any additional value added services requiring additional processing that results in additional expense to Rotor Clip not covered by the initial agreement between the Buyer and Rotor Clip shall be subject to issuance and acceptance of a new quotation.

**16. Force Majeure.** Any delay or failure to perform any of the obligations hereunder shall be excused to the extent that it is caused by an event or occurrence beyond the influence and control of the non-performing party.

**17. INDEMNIFICATION AND INSURANCE.** Buyer will indemnify and save harmless Rotor Clip, its employees, agents, customers, and invitees from and against all liability, demands, claims, loss, cost, damage and expense by reason or on account of (i) any breach of these Conditions by Seller, and (ii) property damage, death and/or personal injury of whatsoever nature or kind arising out of or in connection with the use or performance of the Goods furnished under an Order which is occasioned by the actions or omissions of Seller or its suppliers.

