

- 1 **General.** All references in the following to “Seller” or “RGEES” shall mean RGEES, LLC, and all subsidiary and affiliated companies. All references to “Buyer” shall mean a buyer of RGEES, LLC product or products. The terms and conditions stated herein (“Terms”) apply to all products and orders accepted by RGEES, LLC. RGEES, LLC objects to any terms or conditions that are different from or additional to these Terms. RGEES, LLC’s acceptance of an order is expressly conditioned on the Buyer’s acceptance of these Terms. Any change in these Terms must be agreed to in writing and signed by an agent of RGEES, LLC.
- 2 **Freight, Shipping, and Risk of Loss.** The Buyer is responsible for all freight and other delivery charges. Freight and other delivery charges may be paid by Seller and charged to the Buyer. Shipping and delivery dates are estimates only, and time is not of the essence. The risk of loss, theft, destruction, or damage to any product will be transferred to Buyer according to the Incoterms specified in the Purchase Order.
- 3 **Terms of Payment, Credit and Late Payment Penalties.** Product prices do not include freight, taxes or duties and are subject to correction or change without notice. Payment terms are 100% advance with Purchase Order. Terms of Net thirty (30) days from the date of the applicable invoice is available with approved credit. Once an order has been acknowledged by Seller, it may not be cancelled, and Buyer’s deposit will not be refunded. Seller may at any time, and for any reason, revoke or reduce all credit extended, and request immediate payment for all amounts then due. For all overdue amounts, interest will be charged at the rate of one and one-half percent (1.5%) for each month or part thereof that the amount remains unpaid. The Buyer shall be liable for all costs and expenses, including but not limited to attorney’s fees, incurred by Seller in the collection of any amount owed by the Buyer.
- 4 **Taxes.** The Buyer is responsible for the payment of any applicable sales, use, excise, or other applicable tax. Buyer shall indemnify, defend, and Seller harmless from any and all claims for such taxes.
- 5 **Limited Warranty.** SELLER WARRANTS THAT THE PRODUCT SOLD SHALL MEET SELLER’S STANDARD SPECIFICATIONS OR OTHER MUTUALLY AGREED WRITTEN SPECIFICATIONS FOR ONE YEAR FROM THE DATE OF SHIPMENT. OTHER THAN THE FOREGOING, SELLER MAKES NO GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY OR FITNESS FOR USE, OR FITNESS FOR ANY SPECIFIC PURPOSE, EVEN IF KNOWN TO SELLER. Seller’s sole obligation for any defective product shall be to either replace the defective product or to issue credit to the Buyer for the purchase price of that product, at Seller’s sole option. This limited warranty excludes any product failures or defects caused after shipment by Buyer’s improper use or application of the product.
- 6 **Buyer’s Inspection.** Buyer shall, within seven (7) days of delivery, carefully inspect all shipments as they are received and report promptly to Seller—but in any event no later than thirty (30) calendar days after receipt of shipment—any alleged error, shortage, defect or nonconformity. Buyer’s failure to inspect and report shall constitute a waiver of any claim for any error, shortage, defect, or nonconformity which could have been discovered by such an inspection.
- 7 **Returns.** Written authorization to return products must be obtained prior to any such return. Any returned product must be shipped to Seller, freight prepaid, at the Buyer’s risk.
- 8 **Hazard Warning Responsibility.** Buyer acknowledges that it has been adequately warned by Seller of the risks associated with handling, using, transporting, storing, and disposing of the product, including, without limitation, those set forth in Sellers Material Safety Datasheets for products (MSDS), and that Buyer is familiar with the Product. Buyer further acknowledges its separate and independent knowledge of such risks, which are known in Buyer’s industry. Buyer shall maintain compliance with all safety and health related government requirements concerning Product shall take all reasonable and practical steps to inform, warn, familiarize its employees, agents, contractors, and customers with all hazards associated with the Product, including handling, shipment, storage, use and disposal.
- 9 **Limitation of Liability.** Seller’s liability on any claim of any kind with respect to the purchase order shall in no case exceed the purchase price of the good or service or part thereof which gives rise to the claim. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR ECONOMIC DAMAGES), OR FOR DAMAGES IN THE NATURE OF PENALTIES.
- 10 **Indemnification.** Buyer shall indemnify, hold harmless and at Seller’s option, defend Seller and its employees and agents, from all claims for loss, cost, or damages (including reasonable attorney’s fees), that may be made, by any person or entity, (including Buyer and its employees and agents, and any third party) arising from any matter relating to (A) any breach or misrepresentation by Buyer under this sales order, (B) product that conform to the specifications established hereunder, or (C) the operator or conduct of the Buyers business; provided, however that Buyer’s obligations hereunder shall be proportionately reduced to the extent caused by Seller’s negligence. Buyer’s obligations hereunder shall not be limited by applicable workers compensation laws and shall survive the fulfillment of this sales order.
- 11 **Force Majeure.** Seller shall not be liable for or be deemed to be in default on account of any failure to perform if such failure is caused, in whole or in part, by any force majeure event, including but not limited to Acts of God, labor disruptions, war or act of terrorism, governmental decrees or controls, insurrections, epidemics, material shortages, fire, accident, explosion, inability to obtain equipment, power, raw material, labor, containers, shipping services, in case of priority or distribution orders, national defense requirement or any other circumstance or cause beyond Seller’s reasonable control. Either party may terminate this Agreement and cancel the pending order should any Force Majeure event continue for more than ninety (90) days; however, Seller will have no obligation to refund any amounts paid under the agreement if the agreement is terminated.
- 12 **Waiver and Modifications.** No delay or omission by Seller in exercising any right under these Terms or applicable law shall operate as a waiver of that or any other right. A waiver or consent given on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.
- 13 **Invalid Term.** Whenever possible, each term and condition of these Terms shall be construed so as to be valid under applicable law. In the event that any term or condition shall be held to be unenforceable, the remaining term and conditions shall be unaffected and continue in full force and effect.
- 14 **Entire Agreement.** These Terms shall incorporate the terms specified on any Purchase Order between Buyer and Seller as if they were fully stated herein. Except as specified in paragraphs 2 herein, in the event of a conflict between the Terms and the Purchase Order, the Terms shall prevail. The Terms and the Purchase Order, construed together, state the entire agreement between the parties with regard to the Buyer’s purchase of products from Seller, and there are no agreements, representations or warranties other than those set forth herein.
- 15 **Governing Law.** These Terms and the transaction to which they relate shall be governed by the laws of the State of North Carolina as applied to contracts wholly performed in such State. The headings in these Terms are for convenience only and shall not be otherwise considered. Venue for any legal action under this contract will be in Superior Court of Buncombe County, North Carolina.
- 16 **Attorney’s Fees.** Should either party be obligated to commence legal action to enforce the Terms stated herein, the prevailing party in that action shall be entitled to recover all costs incurred, including reasonable attorney’s fees.
- 17 **Administration.** RGEES reserves the right to revise these Terms without notice at any time.