



ACOUSTICAL SYSTEMS - LLC

Terms & Conditions

PLEASE READ THIS DOCUMENT CAREFULLY. THE FOLLOWING TERMS AND CONDITIONS (“TERMS AND CONDITIONS”) APPLY TO ALL RPG ACOUSTICAL SYSTEMS LLC (“RPG”) ESTIMATES, UNLESS THE ESTIMATE SPECIFICALLY STATES OTHERWISE. NO AGREEMENT IS CREATED UNTIL THE ESTIMATE IS SIGNED BY ALL PARTIES. THESE TERMS AND CONDITIONS TOGETHER WITH THE ESTIMATE CREATE YOUR AGREEMENT WITH RPG AND SUPERSEDE ANY ORAL OR WRITTEN STATEMENTS MADE IN CONNECTION WITH THIS AGREEMENT.

1. **RPG ESTIMATE/PURCHASE ORDERS.** To initiate an order (“Order”) with RPG, you, the “Purchaser,” must return to RPG the signed Estimate provided by RPG (the “Estimate”) There is no contract between RPG and the Purchaser until the Estimate is signed. Subject to these Terms and Conditions, a Purchaser may also submit a purchase order (“Purchase Order”) to RPG.. The Estimate together with these Terms and Conditions shall be referred to as the Parties’ “Agreement.”

2. **LEAD TIMES/ TIME NOT OF THE ESSENCE.** Lead times **do not** commence upon RPG’s receipt of a signed Estimate and/or Purchase Order. Lead times commence when all submittals with final approvals, the fully signed Estimate, a deposit per the Estimate, and these Terms and Conditions have been received by RPG. Regardless of stated lead times, it is expressly agreed and understood that **TIME IS NOT OF THE ESSENCE** for completion of the Order, and RPG makes no guarantee with respect to estimated lead times.

3. **PRICE/DURATION/PRICE SUBJECT TO CHANGE.** Final scope and pricing of the Order will be determined after receipt of approved submittal documents. RPG is not responsible for omissions or errors in takeoff quantities, sizes, or finishes. RPG does not guarantee the estimated quantities represent all materials or products required for this Order. Estimates based on square foot or linear foot pricing are estimates only and may increase based on final configurations and custom requirements. Materials estimated are not per plans and specifications unless stated otherwise. Price may increase if estimate requires adjustment to match specified products. Prices for fabric-wrapped products assume Guilford of Maine FR701-2100 series fabric unless noted otherwise. RPG reserves the right to require a white scrim under wrap, and prices may increase if there is a mixture of different types of fabric-wrapped products. The Purchaser is responsible for ensuring all codes and building requirements are met. Estimated prices are only valid for the duration noted on the Estimate. After expiration, prices are subject to change without notice. RPG recommends re-quoting orders periodically to ensure accuracy.

4. **PAYMENT.** As described in full in the Estimate, RPG may require receipt of an initial deposit prior to commencing fabrication. Payment of the remainder of the balance shall be due per the Estimate. RPG may charge a late fee and interest on payments not timely received in accordance with the Estimate.

5. **DELIVERY.** All products purchased by Purchaser under this Agreement will be suitably packaged for shipment in RPG’s standard containers. The products shall be delivered to Purchaser’s address as set forth on the Estimate and title to and risk of loss of the products shall pass to the Purchaser upon such delivery by RPG.

6. **RPG RIGHT TO DELAY OR CANCEL.** Notwithstanding any other terms contained in this Agreement, RPG reserves the right to refuse, cancel or delay any shipment to Purchaser if any amounts due to RPG from Purchaser for any reason become past due, when payment for a shipment has not been arranged to RPG’s reasonable satisfaction, or when Purchaser has failed to perform any of its material obligations under this Agreement. Such refusal, cancellation or delay of any shipment shall not be deemed a breach or default of this Agreement by RPG.

7. **RELATIONSHIP OF THE PARTIES.** The relationship of the Parties hereto is that of vendor and purchaser. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or

imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party’s employees or agents. Accordingly, Purchaser shall not be empowered to bind RPG in any way, to incur any liability, make any statements, representations, warranties or commitments, or otherwise act on behalf of RPG. Each Party shall be solely responsible for payment of its employees’ salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits

8. **PURCHASER’S COMPLIANCE WITH LAWS.** Purchaser represents, warrants and covenants that it shall comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the products. Purchaser acknowledges and understands that the products may be subject to various state and local taxes in its jurisdiction, including without limitation sales and use taxes, and represents and warrants that any and all taxes on the products are the sole responsibility of Purchaser and Purchaser shall indemnify and hold RPG harmless from any liability, cost or expense arising from Purchaser’s failure to remit applicable taxes on the products where due.

9. **ASSIGNMENT.** The Purchaser may not assign the Agreement without prior written consent of RPG. RPG reserves the right to sell, transfer, pledge or assign any of the foregoing and related revenues and proceeds for financial purposes or in connection with a sale. The foregoing terms are binding upon the Parties hereto and their respective successors and legal assigns.

10. **FORCE MAJEURE.** RPG shall not be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accidents, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, acts of God, or other similar or different occurrences beyond the reasonable control of RPG, for so long as such force majeure event is in effect and for a reasonable period thereafter. RPG shall endeavor to provide Purchaser with notice of the occurrence of such an event within [number, e.g., five (5)] business days of its occurrence.

11. **JURISDICTION. THE PARTIES TO THIS AGREEMENT HEREBY SUBMIT TO THE PERSONAL JURISDICTION OF THE COURTS OF THE STATE OF NEW JERSEY, AGREE THAT ANY DISPUTE THAT MAY ARISE IN CONNECTION WITH THIS AGREEMENT SHALL BE RESOLVED BY THE COURTS OF THE STATE OF NEW JERSEY, AND GOVERNED UNDER THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REGARD TO CONFLICT OF LAWS. THE PARTIES TO THIS AGREEMENT HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY ON ANY MATTERS ARISING UNDER OR RELATING TO THIS AGREEMENT.**

12. **ATTORNEY’S FEES.** In the event RPG is required to undertake collection efforts for unpaid invoices, the Purchaser shall also be responsible for payment of RPG’s reasonable attorneys’ fees and costs associated therewith.

13. **DISCLAIMER OF EXPRESS AND IMPLIED WARRANTIES. EXCEPT AS MAY BE EXPRESSLY SET**



FORTH IN THE ESTIMATE, RPG MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS PURCHASED BY PURCHASER INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. LIMITATION OF LIABILITY. IN NO EVENT SHALL RPG BE LIABLE UNDER THIS AGREEMENT TO THE PURCHASER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, SHUTDOWN OR SLOWDOWN COSTS, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. THE LIABILITY OF RPG, AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER UNDER THIS AGREEMENT, REGARDLESS OF LEGAL THEORY, SHALL NOT BE GREATER THAN THE ACTUAL PURCHASE PRICE OF THOSE GOODS WITH RESPECT TO WHICH SUCH CLAIM IS MADE. NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

15. NON-WAIVER. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of the Terms and Conditions constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

16. SEVERABILITY. Any provision of these Terms and Conditions that is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction will be ineffective only to the extent of such invalidity, illegality, or unenforceability without affecting in any way the remaining provisions hereof.

17. COMPLETE AGREEMENT. All prior and contemporaneous negotiations and agreements between the parties on matters contained in the Estimate and these Terms and Conditions are expressly merged into and superseded by this Agreement. The Parties agree that the terms of these Terms and Conditions and the Estimate shall prevail over any conflicting terms and conditions in any Purchase Order or any other instrument or document provided by Purchaser. Any additional or different terms or conditions in any Purchase Order or other instrument or submission from Purchaser shall be deemed objected to by RPG without the need of any further or additional notice of objection, and such additional or different term shall be of no effect or in any way binding upon RPG.

18. CONTACTING RPG. The Purchaser may contact RPG by (i) mail, at 99 South Street, Passaic, NJ 07055, or (ii) phone, at (973) 916-1166.

19. EXCLUSIONS (UNLESS NOTED OTHERWISE). Estimate is for products/materials only. The following is an abridged list of common exclusions: installation, field measurements, site visits, site work, fibrous backing or insulation that is not an integral/structural part of an RPG product, stain or paint finishes, edge banding on wood products, and hardware for installation, mounting, or suspending products.