

TERMS AND CONDITIONS OF SALE

These Terms and Conditions govern the relationship between Rheonik Americas Inc., “**SELLER**,” and **BUYER** with respect to any order placed by **BUYER** for any product provided by **SELLER** (the “Goods”). In the event of a discrepancy between any other agreement between **SELLER** and **BUYER** that conflicts with these Terms and Conditions, the other agreement shall control.

1. ACCEPTANCE

Written acknowledgment, acceptance of delivery or commencement of performance by **BUYER** expressly limited to those stated herein unless otherwise agreed to in writing signed by **SELLER's** authorized agent or employee. The signature of an agent or employee of **SELLER** on a document presented by **BUYER** in connection with the delivery of any goods, materials, or equipment, shall only constitute acknowledgment that such goods, materials, or equipment have been delivered and shall not constitute **SELLER's** assent to any terms different from or in addition to those stated in these terms, notwithstanding anything to the contrary in **BUYER's** document. Specifications, drawings, forms, notes, engineering notices or technical data referred to herein are incorporated by reference, and **BUYER** shall contact **SELLER** for any interpretations of these documents, which interpretation shall be binding on **BUYER**. All documents, articles and materials supplied to **BUYER** by **SELLER** in connection with these terms will remain the property of **SELLER** and be subject to removal at any time upon **SELLER's** demand.

2. INSPECTION AND REJECTION

All goods, materials or services shall be received subject to **BUYER's** inspection and rejection. Final inspection shall be on **SELLER's** premises unless otherwise agreed in writing. Items or services rejected as not conforming to these terms will be held for **BUYER's** instruction and at **BUYER's** risk. **BUYER** shall have no right to payment prior to **BUYER's** inspection and acceptance. Risk of loss and title shall remain with the **SELLER** until **BUYER** actually receives, inspects and accepts the goods, materials or services.

3. PRICE, PAYMENT, QUANTITY

- a. Payment. **SELLER** shall invoice **BUYER** for each delivery, or at its option, periodically, but not less than monthly. All invoices shall be paid, net, within thirty (30) days from the date of invoice. In the event payment is not made as required within the specified time, **BUYER** agrees to pay **SELLER** interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less, on the unpaid balance of **BUYER's** account from the date of shipment until paid in full. Said interest shall accrue from the date due and be computed on the basis of 365 or 366 day year, as the case may be, and the actual number of days elapsed. Payments shall be first applied to the principle due and then to interest.
- b. Security Interest. **BUYER** grants **SELLER** a security interest in the Product supplied by **SELLER** as well as the products derived and/or the proceeds of the sales thereof, and agrees to file, upon request by **SELLER**, whatever documents are deemed necessary by **SELLER** to perfect said security interest in the appropriate jurisdiction.
- c. Nonpayment. In the event of nonpayment for Products, in addition to and not in limitation of any other remedies provided herein, **SELLER** shall have the right to stop Products in transit or repossess them. **SELLER** shall be entitled to repossess peaceably, without process, any Products after delivery. **BUYER** shall be liable for any recovery fees, storage charge and



other costs and expenses, including attorney fees, incurred by **SELLER** as a result of **BUYER's** failure to pay.

- d. Financial Responsibility. If **BUYER** fails to pay timely for Product sold hereunder or the financial responsibility of **BUYER** becomes impaired or unsatisfactory to Seller, **SELLER** agrees to give security and/or a guarantee satisfactory to Seller upon demand by **SELLER** who may withhold delivery until payment or such guarantee and/or security is received by **SELLER**. If, in the sole judgement of **SELLER**, the financial responsibility of **BUYER** becomes impaired or unsatisfactory, or if sufficient credit for this and any other pending transaction is not established by **BUYER** satisfactory to **SELLER's**, **BUYER** agrees to prepay at least three (3) business days prior to delivery or to open an irrevocable standby letter of credit in a format and at a bank acceptable to **SELLER** at least ten (10) days prior to delivery. All banking charges relating to the letter of credit will be for **BUYER's** account.
- e. Taxes. The prices specified are exclusive of any sales, use, excise or similar taxes which may be levied on **SELLER** as a result of its sale or shipment or otherwise imposed on the Products, except taxes based on **SELLER's** income. **BUYER** agrees to pay and be responsible for any such taxes and levies which may be so imposed or charged. If **BUYER** is entitled to exemption from such taxes, fees or charges, **BUYER** shall furnish **SELLER** with an exemption certificate. **SELLER** shall invoice **BUYER** for prepaid taxes and levies, which shall be due and payable upon receipt of such invoice. All taxes assessed on the Products after delivery shall be borne by **BUYER**.

4. CHANGES

- a. Specifications. Specifications and/or manufacturing process for the Product are subject to change at any time upon notice to **BUYER**. **SELLER** shall have no obligation to provide updates or enhancements, or to replace units shipped prior to such notice of change.
- b. Changes To Orders. All changes to **BUYER's** orders are subject to written acceptance by **SELLER**. **BUYER** shall bear any risk of changes in purchase price or delivery schedule resulting from such change.
- c. Cancellation of Orders. Upon written notice to **SELLER**, **BUYER** may cancel any order, or part of any order, for Products scheduled for shipment more than sixty (60) days after **SELLER's** receipt of **BUYER's** cancellation notice. **BUYER** shall pay a cancellation charge of forty percent (40%) of the amount of the cancelled order. **BUYER** shall be liable for any price adjustment resulting from decreases in quantity as a result of such cancellation. In no event shall **BUYER** cancel orders scheduled for delivery in less than sixty (60) days.
- d. Insolvency. **SELLER** may cancel all or part of any order without any further liability to **BUYER**, its successors or assigns, if the **BUYER** files for protection under any bankruptcy law, becomes insolvent, is adjudicated a bankrupt, has a voluntary or involuntary petition of bankruptcy filed against it, or makes an assignment for the benefit of creditors, or should **SELLER** become insecure with respect to **BUYER's** ability to perform.

5. DELIVERY, TITLE AND RISK OF LOSS

- a. Delivery. All deliveries shall be FOB **SELLER**. **SELLER** will arrange for shipping (common carrier land freight) and insurance at **BUYER's** risk and expense. **SELLER** shall select most economical transportation unless directed otherwise. **BUYER** shall invoice **SELLER** for freight and insurance.



- b. Title. Title and risk of loss and damage will pass to **BUYER** on delivery to the carrier.

6. WARRANTIES

SELLER warrants that all goods, materials or services furnished hereunder will be delivered free from any and all security interests, liens, encumbrances and claims of any nature, and that **SELLER** has good title to the same and transfer of title is rightful; and that such goods, materials or services conform to **SELLER's** specifications and will be free from material defects in material and workmanship. If any Products furnished by **SELLER** fail to conform to the above warranty for a period of one year after date of shipment, **SELLER's** sole and exclusive liability shall be at **SELLER's** option to repair or replace such Products or credit **BUYER's** account with an amount equal to the price paid for any such Products returned by **BUYER** during the warranty period, provided that:

- a) **BUYER** promptly notifies **SELLER** in writing that such Products failed to conform and furnishes a detailed explanation of any alleged deficiency.
- b) Such Products are returned to **SELLER** at **BUYER's** risk and expense.
- c) **SELLER** is satisfied that claimed deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper handling, installation, repair or testing.

The remedies provided herein are **BUYER's** sole and exclusive remedies. **SELLER** neither assumes nor authorizes any other person to assume any other liabilities in connection with the sale or use of any Products.

7. CLAIMS OF INFRINGEMENT

- a. Claims. If **BUYER** receives a claim that any Product furnished hereunder or part thereof, alone and not in combination with any other product and not prepared to **BUYER's** specifications, constitutes an infringement of any patent, copyright, trademark or trade name, **BUYER** shall notify **SELLER** promptly in writing and give **SELLER** all available information, assistance and exclusive authority to evaluate, defend and settle such claim. **SELLER** shall then, as to any such claim, at its own expense and option:
 - i. settle such claim; or
 - ii. procure for **BUYER** the right to use such technology; or
 - iii. replace or modify the technology to avoid infringement; or
 - iv. defend against such claim.

If any court of competent jurisdiction holds such technology to constitute infringement, **SELLER** shall pay any costs and damages finally awarded on account of such infringement, and if the use of such product is enjoined, **SELLER** shall take at its option one or more of the actions under (ii) or (iii) above. **SELLER** also agrees to indemnify **BUYER** from and against any and all costs, losses, damages and expenses including attorney's fees incurred in defending such actions or proceedings, provided that the obligations of **SELLER** shall not apply to Product to **BUYER's** design specifications.

- b. Indemnity. **SELLER** shall not be liable for, and **BUYER** will indemnify, defend and hold **SELLER** harmless from, any expenses, damages, costs or losses arising from:
 - i. compliance with **BUYER's** designs, specifications or instructions,
 - ii. a modification of the Products by a party other than **SELLER** after delivery by **SELLER**,



- iii. the use of any Products or any part thereof furnished hereunder in combination with any other products, or
 - iv. the infringement of any patent, copyright or trademark, in whole or in part, by **BUYER**.
- c. Disclaimer. The foregoing states the obligations and exclusive remedies of each Party with respect to any alleged patent or copyright infringement. Nothing herein shall be considered to grant any rights in property in which **SELLER** holds a patent, trademark, service mark or copyright or which constitutes a trade secret of **SELLER**. Sale of any Products or part thereof by **BUYER** does not confer upon **BUYER** any license under any patent rights, trade marks or copyrights of **SELLER** except as specified herein.

8. WARRANTY DISCLAIMER

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, **SELLER** MAKES NO REPRESENTATIONS, COVENANTS, GUARANTIES OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, NON-INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY, OTHER THAN AS EXPRESSLY SET FORTH HEREIN.

IN NO CASE SHALL **SELLER** BE LIABLE FOR CONTINGENT, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES.

9. INDEMNITY

BUYER agrees that it will, at its own expense, without regard to whether the goods, materials, or services herein described are made or performed according to specifications furnished by or for **SELLER**, defend, indemnify and hold **SELLER** and **SELLER's** subsidiary and affiliated companies harmless from and against all present and future claims, demands, proceedings, and litigation arising out of any alleged liability on account of any:

- a. personal injury to or death of any person or animal, or damage to any property whatsoever, arising out of or on account of the **BUYER's** performance hereunder or on account of the goods, materials, or services, or any work after receipt by **BUYER**
- b. labor or material liens, fees, commissions, or other compensations claimed by any third party because of any goods, materials, services or work allegedly provided, performed or rendered from **BUYER** in connection with these terms. **BUYER** further agrees that it will, on **SELLER's** demand, promptly pay all losses, costs, damages, obligations, judgments, expenses and fees (including attorneys' fees) suffered or incurred by **SELLER** by reason of any such claims, demands, proceedings or litigation. **SELLER** reserves the right to compromise or settle at any time. **BUYER's** obligation to defend **SELLER** and to hold it harmless shall survive any resale of goods, materials or equipment.

10. DEFAULT

- a. Events: An event of default exists if any of the following occurs and is continuing beyond any period of time provided for cure:
 - i. Payments. **BUYER** fails to pay any sum when due.
 - ii. Unauthorized disclosure. **BUYER** has disclosed confidential information other than as permitted herein.



- iii. **Unauthorized Use.** **BUYER** has marketed or sold rights to third parties other than as authorized herein, including engaging in any activity or entering any agreement which would impair enjoyment of a **SELLER's** Proprietary Rights.
 - iv. **Breach of Agreement.** **BUYER** breaches or fails to comply in any material respect with any provision herein.
- b. **Remedies:** Upon the occurrence of an event of default, **SELLER** may exercise any right, power, or remedy permitted to it by law or at equity, including the remedy of specific performance and of termination of this agreement. In addition, if **SELLER** reasonably believes that the effect of such default may adversely affect its financial condition, operations or prospects under this agreement, **SELLER** may suspend performance of all or any of its obligations hereunder. **SELLER** shall give written notice specifying the claimed particulars of such default or breach. If such default is not remedied within thirty (30) days after submission of such notice, **SELLER** may:
- i. for a material breach, terminate this agreement or order;
 - ii. assess interest as provided herein; and/or
 - iii. enforce the defaulted obligation by any available lawful means.

Any indulgence by **SELLER** shall not be construed as a waiver of rights under this paragraph either with respect to such default or to similar subsequent defaults.

11. FORCE MAJEURE

Any loss or damage, or delays in or failure of performance of either party hereto, other than payment by **BUYER** when due, shall not constitute default hereunder or give rise to any claims for damages if, but only to the extent that, such loss, damage, delay or failure is caused by "Force Majeure". As herein used, the term "Force Majeure" means war, mobilization, revolution, civil commotion, riots, strikes, lockouts, floods, hurricanes, similar storms or other actions of the elements, acts of God or the public enemy, restrictions or restraints imposed by law or by rule, acts or regulation or order of governmental authorities, whether federal, state or local, and whether civil or military, interruption of production or transportation facilities, and any other cause which is beyond the reasonable control of the party affected and which, by the exercise of reasonable diligence, such party is unable to prevent or relieve. **SELLER** or **BUYER** may defer delivery for a period equal to the delay caused by such contingency. In the event of a material shortage for any reason whatsoever, **SELLER** may allocate production among its customers in such manner as **SELLER** may determine.

12. CONFIDENTIAL INFORMATION

- a. **Obligations.** The Parties agree to keep all information designated as confidential in strict confidence and not to divulge or to permit its employees, agents, vendors or subcontractors to divulge such information, or any part thereof, to any other party without prior written consent. The Parties shall assure that said employees, agents, vendors and subcontractors are informed of and bound by confidentiality provisions at least as restrictive as those contained herein.
- b. **Exceptions.** The obligations contained in this Section shall not apply to any information which at the time of disclosure:
 - i. is or comes within the public domain other than by reason of breach hereof;
 - ii. was already in a Party's possession without violation of any secrecy obligation, either directly or indirectly;



- iii. is obtained from a third party who is lawfully in possession of such information and which information is not subject to restrictions on disclosure or use. The obligations contained in this section shall survive the termination hereof regardless of the cause or reason for termination.

13. ASSIGNMENT

Neither these terms nor any rights, obligations or monies due hereunder are assignable or transferable without **SELLER's** prior written consent.

14. EXPORT CONTROLS AND APPLICABLE LAWS

- a. Obligations. The Parties agree to comply with all laws, ordinances, rules, codes, regulations and lawful orders of any federal, state or local governmental authority applicable to performance hereof, including without limitation, those pertaining to social security, safety, health, old age pension, and unemployment compensation. Each Party shall assume full and complete responsibility for compliance with this paragraph and shall indemnify and hold the other Party harmless from and against any damages, loss, penalty, fine or claims thereof, including attorney's fees, resulting directly or indirectly from its failure to comply with this paragraph. Without limiting the foregoing, **BUYER** shall comply with Executive Orders 11246, as amended (Equal Employment and Affirmative Action), 11701 (Veterans), 11625 (Minority Business Enterprises), 11758 (Employment of the Handicapped), the Occupational Safety and Health Act of 1970, and will comply with all rules and regulations relating thereto, the provisions of all such Orders, Act and rules and regulations being incorporated herein by reference; **BUYER** further agrees to submit all reports, programs and certificates required by such Orders, Act, laws, rules and regulations or requested by **SELLER**.
- b. Export Laws: This agreement is subject to and conditioned upon **BUYER's** compliance with the United States Export Administration Act of 1979, as amended, the applicable regulations thereunder, and any other applicable laws or regulations relating to the export of technical data and equipment and the products produced therefrom. To the extent such regulations apply to the Product or to information concerning the Product **BUYER**, agrees that in addition to complying with the terms of this agreement, it will neither directly nor, to its knowledge, indirectly export said technical information (including any plans, apparatus, machines, equipment, processes or services embodied, resulting from or directly relating to such technical information) to any country or entity restricted by such regulations except in strict compliance with such laws and regulations.

15. WAIVER

No waiver of any term herein or modification hereof shall be valid unless set forth in writing and duly executed by all parties to be effected thereby. No waiver of any breach of any term, covenant, warranty or condition herein shall constitute a waiver of any other or subsequent breach of any term, covenant, warranty or condition hereunder.

16. SEVERABILITY

The invalidity or unenforceability of any portion or provision hereof shall not affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this agreement and the balance of the agreement shall be construed and enforced as if the agreement did not contain such invalid or unenforceable portion or provision.



17. GOVERNING LAW:

THE INTERPRETATION OF THIS DOCUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LOCAL, INTERNAL LAWS OF THE STATE OF TEXAS, UNITED STATES OF AMERICA. THE PARTIES AGREE TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS COUNTY TEXAS.

18. ENTIRETY

These Terms and Conditions of Sale, including the order and exhibits attached hereto and the documents delivered pursuant hereto, constitutes the entire agreement between the parties with respect to the subject matter of this transaction and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter.

