

**RAYOTEK SCIENTIFIC, INC**  
**TERMS & CONDITIONS OF SALE**

Version 2018.06.22

**1. APPLICABILITY.** The Sales Order and/or Web Order together with these terms and conditions of sale (the "Terms" and collectively, the "Order") are the only terms which govern the sale of the goods or services ("Product") by Rayotek Scientific, Inc. ("Seller") to any customer ("Buyer"). Order is made conditional to these terms and conditions of sale ("Terms"). The Order, together with any documents incorporated by reference, is the entire agreement with respect to the Order, and supersedes all prior understandings, agreements, negotiations, representations, warranties, and communications, both written and oral, regarding the Order and supersedes all of Buyer's terms and conditions and all other communications between the parties suggesting additional or different terms. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

**2. ACCEPTANCE.** All Orders are subject to approval and written acceptance by an authorized representative of Seller.

**3. MODIFICATIONS.** Accept as otherwise reflected in these Terms, any change to an Order by Seller or Buyer requires written consent by Seller and may include, but is not limited to a change in price, delivery, payment, or performance warranties. Acceptance of change is at the sole discretion of Seller.

**4. DELIVERY & FORCE MAJEURE.** Quotation delivery lead times are only estimates. Actual Order delivery dates are based on the Seller's manufacturing schedule at the time of receipt of Buyer's on-line purchase and/or purchase order and supersedes any prior delivery estimate. Seller reserves the right to make partial shipment(s) and invoice therefor. Seller assumes no liabilities for delays or non-performance resulting from, but not limited to, acts of God, fire, explosion, flood, war, terrorism or threats of terrorism, act of or as authorized by any government, accident, labor trouble or shortage, inability to obtain equipment, material, transportation, acts of Buyer or any acts beyond the control of Seller. Delivery to carrier shall constitute delivery to Buyer and all risk of loss or damage in transit shall be borne by Buyer unless other delivery terms have been agreed to in writing prior to shipment. If, because of Buyer's inability to take delivery, Product is not shipped or is returned, Seller may have them stored for Buyer at Buyer's expense, risk, and account, and for all other purposes they shall be considered "shipped." On receipt Buyer shall unload, handle, inspect, store and install the products in accordance with generally accepted practices or specific instructions provided for Product.

**5. PRICING.** For online website purchases: unless otherwise specified in writing, pricing is as listed on the website at the time of the Order. For Products not available for purchase through the website, shopping cart pricing is as listed on provided quotation. Prices offered do not include any sales, use, excise, occupational or other tax or freight unless otherwise specified. Pricing is subject to revision if Buyer modifies its request. Clerical errors are subject to Seller's correction and/or cancellation of any Orders with respect to pricing or typographical errors.

**6. PAYMENT TERMS.** All payments are due at time of purchase for website Orders or as stated terms on Sales Order Confirmation and Invoice. Custom Product may require deposits and/or milestone or progress payments as designated by Seller. Seller reserves the right to modify its payment terms at any time. Invoices not paid according to terms are subject to a late payment service charge of the lesser of one and one half percent (1.5%) per month or the maximum legal service charge permitted under the law. If Buyer fails to make any payment according to terms, Buyer shall be liable for all expenses related to collection of past due amounts, including, without limitation, attorneys' fees and costs. If, in Seller's judgment, the financial condition of Buyer does not justify continuance of established terms of payment, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer, without liability.

**7. ASSIGNMENT.** Buyer shall not assign, transfer or factor all or any portion of its accounts payable arising under any Order without at least 15 days prior written notice to and written authorization of Seller's accounting department.

**8. PACKAGING & SHIPMENT.** Unless otherwise agreed to in writing by Seller (i) all Products shall be shipped FOB Seller's warehouse, (ii) all shipments will be made using a carrier of Seller's choice, (iii) all shipments will include insurance up to the value of the Product, and (iv) all costs, including international customs fees and import duties, will be the responsibility of the Buyer. Product sold hereunder shall be packed or crated and shipped in accordance with Seller's specifications. Any special packing, crating, shipping or unloading requirements of Buyer must be agreed upon in writing by Seller. Shipping cost shall be based on package size and weight, method of shipment, shipping address and insurance. Weights listed, if any, are approximate. All Products shall be shipped to a physical address. Seller will not ship Product to a Post Office Box. For international shipments, Buyer is the importer of record and must comply with all laws and regulations of the destination country.

**9. INSPECTION.** Buyer shall inspect Product upon arrival and shall give written notice of any damage or shortage to Seller and/or carrier within seven (7) business days of carrier's proof of delivery. Failure to give such written notice of any damage or shortage will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of Product listed as shipped. Claims for shipping damage should be made directly to the carrier by Buyer.

Buyer has the right to inspect and test Products to onsite at Seller or Seller's subcontractors' facilities (Onsite). For Onsite inspection and testing, Buyer must give 72 hours prior written notice of intent to come Onsite and a mutually agreed date and time must be established. Seller assumes no obligation to perform any inspection and test for the benefit of Buyer. If Buyer performs an inspection or test on Onsite Seller shall furnish, and shall require its subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of such inspection and test. Inspection and testing beyond what is reasonable and customary could result in an increase in Order price.

**10. STORAGE.** Stored and unclaimed Buyer materials and equipment are subject to a storage fee of \$50.00 per day commencing on the fifteenth (15) day from notice of availability to the Buyer.

**11. CANCELLATION/RETURNS.** Custom orders and specially manufactured Products may not be canceled or returned. In the event of a stocked Product return or an allowed cancellation, Buyer will be responsible for the costs of all materials, overhead and labor committed to the point of cancellation and all other associated costs of Seller. All Cancellations and returns are subject to a 25% fee, at Seller's discretion.

**12. DEFECTIVE PRODUCT.** Product may not be returned without Seller's prior approval and Seller's issuance of a Return Merchandise Authorization (RMA) Number. If a return is approved, Seller will issue an RMA Number and Buyer will be provided with this number. Shipping costs for return of Product shall be at the cost of the Buyer unless otherwise determined by Seller. Buyer's claim of defective Product must be verified by Seller and determination if Product is defective is at Seller's sole discretion. Issuance of a credit is subject to the return of the Product to Seller, to subsequent inspection by Seller and determination by Seller that such Product is defective.

**13. REPAIRS & ALTERATIONS.** Any repairs or alterations made to Product by anyone other than Seller shall void all warranties and shall be at the expense of Buyer unless specifically authorized in writing by Seller. In no event shall Seller accept financial responsibility or liability for damage, injury or death resulting from unauthorized repairs or alterations.

**14. BUYER SUPPLIED MATERIAL & EQUIPMENT.** Seller and Buyer may mutually agree in writing for Buyer to provide materials and/or equipment ("Buyer Property") to Seller. Buyer must provide a declared value ("Declared Value") of Buyer Property on its Purchase Order. Buyer agrees that it shall maintain adequate Property Insurance that includes all-risk coverage covering Buyer Property in-transit and Buyer Property at other locations (including while at Seller's facility). Except to the extent of Seller's proven gross negligence, Buyer shall retain liability for loss or damage to all Buyer Property including while on Seller's premises or within Seller's care, custody, or control. Buyer hereby waives and forever releases Seller from any and all liability with respect to loss or damage to Buyer Property for any reason whatsoever other than Seller's proven gross negligence and, in such event, Seller's maximum liability ("Liability Limit") shall not exceed the lower of the Declared Value or the Replacement Cost. Seller shall bear no responsibility or liability, financial or otherwise, that results from or is a consequence of incorrect Buyer Property and/or information including drawings, specifications or instructions.

"Replacement Cost" means the total depreciated cost reasonably necessary to replace Buyer Property. As work is performed (Work in Progress), the Replacement Cost of Buyer Property may increase. "Work in Progress" includes materials, labor and burden and outside services performed (such as: coating, measuring, testing, etc.).

Buyer assumes full responsibility for the cost of shipping, and liability and risk of loss or damage to Buyer Property while in transit. Incoming goods shall be inspected upon receipt by Seller, an inspection form will be generated and photographs will be taken to record condition of incoming Buyer Property. For outgoing shipment of Buyer Property and finished goods, Seller will arrange shipping with Buyer's selected shipping company on Buyer's account or Buyer will be billed by Seller for shipping costs. Buyer will be named consignee of goods and Buyer assumes full responsibility for the cost of shipping, liability and risk of loss or damage to Buyer Property while in transit. Buyer supplied crating and packaging must be designed to withstand the rigors of shipping.

In the normal process of manufacturing, breakage and/or damage can occur with no obvious cause, negligence or fault. Breakage from causes such as concealed structural defects, stress fractures, thermal shock and others can occur regardless of the very best manufacturing practices. In the event of an unclear cause, Seller may perform a Root Cause Analysis to attempt to determine the cause of failure and percentage of financial liability to each party.

**15. INSURANCE.** Buyer, at its own cost and expense shall acquire and maintain, with insurance carriers having an AM Best rating of "A- VII" or better, sufficient insurance to adequately protect the respective interests of the Parties, but no less than the following minimum types and amounts of insurance on an occurrence basis: (i) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence, \$1,000,000 products/completed operations aggregate and \$2,000,000 general aggregate, with coverage to include independent contractor, products/completed operations liability, contractual liability, personal injury, cross liability or severability of interests and broad form property damage, (ii) professional liability/errors & omissions insurance in the minimum limit of \$1,000,000 each claim and \$2,000,000 general aggregate to protect Buyer and (iii) statutory workers' compensation insurance and employer's liability insurance in the minimum amount of \$1,000,000 each employee by accident, \$1,000,000 each employee by disease and \$1,000,000 aggregate by disease with benefits afforded under the laws of the applicable state or country.

**16. LIMITED WARRANTY.** Unless expressly stated otherwise in writing by Seller, Seller warrants its Products for one (1) year from date of shipment to Buyer against defects in workmanship and material reported within such one (1) year period. Some Products require re-certification within a specified time from shipment to Buyer. If said Product is not re-certified within the specified time span, the warranty is void. Specifications provided by Seller are guidelines only and the particular use and application will determine the actual performance of Product. Seller's liability under this warranty and Buyer's sole remedy shall be limited to the replacement or repair or refund of price actually received by Seller for the Product at issue (depreciated), at Seller's sole discretion, for any Product which Seller determines is defective. The warranty does not apply to any defect, malfunction or failure caused by repairs or modifications made by other than by, or without the consent of, Seller or if the Product has been subject to abuse, misuse, neglect, tampering, accident or damage by circumstances beyond Seller's control, including without limitation, acts of God, war, acts of government, corrosion, power fluctuations, freeze-ups, labor disputes, differences with workmen, riots, explosions, vandalism, or malicious mischief. The warranty on component parts not manufactured by Seller is limited to that of the manufacturer thereof, if any. The foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, or other expenses which may be incurred in connection with replacement or repair.

OTHER THAN THE FOREGOING, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**17. EQUIPMENT.** Tooling, molds, fixtures, equipment and software ("Equipment") developed by Seller for the purpose of manufacturing Buyer projects may contain Seller's proprietary technology and is and shall remain Seller's sole property. Although Buyer paid Equipment may be owned by the Buyer, it shall be held by Seller as confidential material and shall not be released to the Buyer. Equipment may be viewed and inspected by Buyer solely at Seller's discretion.

**18. CONFIDENTIALITY.** Neither party shall disclose any information regarding any subject matter or proprietary technical information received from the other party, except to the extent that disclosure is required by law or is otherwise agreed to in writing by the parties. Any current and executed confidentiality and/or non-disclosure agreements that exist between Buyer and Seller shall supersede this section.

**19. INTELLECTUAL PROPERTY.** Each party owns or has a license to use its respective patents, copyrights, trademarks, design rights, trade secrets, know-how and other intellectual property and proprietary rights ("IP Rights"). Buyer represents, warrants and covenants that the purchase or use of Products furnished hereunder will not infringe or contribute to infringement of any IP Right, and shall defend, indemnify and hold the Seller harmless against any and all Claims

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which they may sustain or incur as arising from or relating to the Pre-existing IP or of a breach of this Section.

**20. INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its agents and employees harmless from and against all claims, suits, damages, expenses (including reasonable attorneys' fees), including property damage and death or injury, arising out of or relating (i) provided specifications, structure, operation, material, or method of making Product, including, without limitation, any resulting violation of intellectual or proprietary rights, (ii) use, misuse or disposal of Product, (iii) violation of laws including US Export Laws, and (iv) breach of these Terms.

**21. LIMITATION OF LIABILITY.** Under no circumstances shall Seller be liable to Buyer or any other person or entity for incidental, consequential, exemplary, punitive or special damages or any other losses or expenses, including without limitation, for injuries or death to persons or damage to property, loss of profit or revenues, cost of substitute products, loss of use, downtime costs, or claims of Buyer's customers even if Seller has been advised of the possibility of such damages. Seller's maximum aggregate liability arising out of or relating to any Product purchased shall not exceed the Liability Limit.

**22. SECURITY INTEREST.** Buyer hereby grants to Seller a purchase money security interest in the Product, together with all additions and accessions to, substitutions for and replacements, products and cash and non-cash proceeds of all of the foregoing including proceeds of all insurance policies insuring the foregoing (collectively, the "Collateral"). Seller is authorized to file financing statements describing the Collateral and in such jurisdictions it deems appropriate without further consent from Buyer. Buyer shall pay Seller, upon demand, all costs and expenses incurred by Seller with respect to the administration, enforcement, collection or protection of its first position priority purchase money security interest and lien in and to the Collateral, the enforcement of any Claims against the Buyer or the exercise of any of its rights, remedies or privileges granted in the order, including reasonable attorneys' fees.

**23. COMPLIANCE.** Product furnished herein may not comply with all Federal, State, and local laws, regulations or ordinances unless expressly agreed to in writing. It is the Buyer's sole responsibility to insure that Product is compliant and used in a safe manner.

**24. EXPORT COMPLIANCE.** In order to ensure that both parties comply with the export control laws, it is the sole responsibility of Buyer to clearly mark and identify any controlled Technology or Technical Data contained in all communications, documents, specifications, structure, materials, instructions, software, designs provided by Buyer to Seller. Controlled Technology or Technical Data means any such information that falls under the jurisdiction of US Export Laws (collectively "Controlled Items"). US Export Laws include, but are not limited to: the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act, the Export Administration Regulations and any other statute(s) or regulation(s) governing the sale, export, disclosure or exchange of any item by a U.S. Person with, or to, another country or a person who is a citizen of another country and all successor and supplemental laws and regulations to the above. The terms Technology and Technical Data shall have the meanings provided for in the US Export Laws. Buyer represents and warrants that all Technology and Technical Data provided by the Seller which are subject to US Export Laws will be stored, secured, transmitted and disposed of only as authorized by the US Export Laws. Buyer will either (i) represent and warrant that it is a U.S. Person as that term is defined in the US Export Laws, or (ii) if Buyer is a non-U.S. business entity, it must disclose to Seller in writing the country in which it is incorporated or otherwise organized to do business. Buyer must also disclose the citizenships and U.S. immigration status of all persons involved in any sales transaction(s), including any consignees or end users and end uses, as required by the U.S. Export Laws. If Buyer is a natural person, Buyer must disclose to Seller in writing all citizenships and U.S. immigration status. Buyer further covenants that it shall comply with any and all US Export Laws, and any license(s) issued thereunder in regard to the items provided by Seller pursuant to this sale.

**25. APPLICABLE LAW.** The laws of the State of California shall govern these Terms and the courts of the State of California, County of San Diego shall be the exclusive venue and jurisdiction.

**26. ARBITRATION.** Seller may, at Seller's sole option, require Buyer to arbitrate any controversy, claim or dispute arising out of or relating to these Terms or any other issue. If Seller chooses arbitration, such arbitration shall be conducted before the American Arbitration Association in the English language, and shall take place in San Diego, CA. One arbitrator shall preside, and there shall be no discovery rights in the event that the claims at issue do not exceed \$150,000. Otherwise, discovery shall be limited to (per Claimant side or Respondent side): 20 interrogatories, 25 document requests, 30 requests to admit, 12 hours of deposition time and each party may call no more than one expert to provide opinions and/or to testify. The arbitration shall be completed in no longer than 90 days after receipt of the initial demand by the respondent.

**27. GOVERNANCE.** Buyer and Seller each agree that these Terms shall govern and control with respect to all orders issued by Buyer to Seller, and no term, condition, warranty or representation appearing in any purchase order or other documentation of Buyer will govern unless agreed to in writing by Seller.

**28. SEVERABILITY.** In the event that any provision herein shall be found to be void or unenforceable, this shall not be construed to render any other provisions void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by the parties.

**29. ENTIRETY.** The Order embodies the entire understanding between Buyer and Seller and there are no agreements, understandings, conditions, warranties, or representations, oral or written, express or implied, with reference to the subject matter hereof which are not merged herein. Any changes or revisions to these terms and conditions by Buyer must be authorized in writing by an authorized officer of Seller.

**30. MISCELLANEOUS.** These Terms may be modified by Seller from time to time. The headings are for convenience of reference only and are not intended to influence the construction of any provisions of the Order. Unless a particular context clearly provides otherwise, the word "including" will mean "including but not limited to".