



## RESONON TERMS AND CONDITIONS OF SALE (DOMESTIC)

The Terms and Conditions of Sale ("Agreement") contained herein constitute the entire agreement between Resonon, Inc. ("Resonon") and you ("Customer") with respect to the sale and purchase of Resonon Products (defined below). Resonon will not be bound by any terms of Customer's order. No form of acceptance except Resonon's written acknowledgment sent to Customer, or Resonon's commencement of performance shall constitute valid acceptance of Customer's order. Any such acceptance is expressly conditioned on assent to the terms hereof and the exclusion of all other terms. Customer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of any Product shipped by Resonon. If tender of these terms is deemed an offer; acceptance is expressly limited to the terms hereof.

### 1. PRODUCTS:

1.1 "Products" shall mean any products identified on (a) any of Resonon's proposals or quotations, (b) current applicable price lists, or (c) any of Resonon's invoices.

1.2 Alterations to any Product which Resonon deems necessary to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property or other proprietary interest, or to otherwise improve a Product may be made at any time by Resonon without prior notice to, or consent of, Customer and such altered Product shall be deemed fully conforming.

2. **ORDERS:** Customer shall purchase Products by issuing a written purchase order signed by an authorized representative, indicating specific Products, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications if applicable, and any other special instructions. Any contingencies contained on such order are not binding upon Resonon. All orders are subject to acceptance by Resonon, which will accept or reject orders according to Resonon's then current processes.

3. **PRICES:** All prices are (a) firm for 60 days from the date of quotation or as otherwise provided on Resonon's quote sheet, (b) FOB Resonon manufacturing facility in Bozeman, Montana USA, and (c) exclusive of Taxes (as defined herein) and all handling or other charges including without limitation insurance, brokerage fees, transportation or special packaging ("Charges"). All sales are final. Title and all risk of loss to the Products shall pass from Resonon to Customer upon delivery to the shipping carrier. Any tax or other charge which Resonon is liable to collect on behalf of any governmental authority ("Taxes") as a result of the sale, use or delivery of Products, including without limitation, duties, value added and withholding taxes, is the responsibility of the Customer, and if paid by Resonon shall be charged to Customer as a separate item on the invoice, to the extent possible.

4. **TERMS OF PAYMENT:** Upon credit approval by Resonon, payment terms shall be net 30 days from the date of each shipment invoiced except as otherwise provided on Resonon's quote sheet. Resonon reserves the right to require alternative payment terms including, without limitation, a letter of credit or payment in advance. If at any time Customer is delinquent in the payment of any invoice or is otherwise in breach of this Agreement, Resonon may, at its discretion, withhold shipment (including partial shipments) of any order or may, at its option, require Customer to pre-pay for further shipments. All payments not received when due shall be subject to an additional charge of one and one-half percent (1.5%) per month of the unpaid amount or the maximum rate permitted by law, whichever is less, until the date of payment. Customer grants Resonon a security interest in Products purchased under this Agreement to secure payment for those Products purchased. If requested by Resonon, Customer agrees to execute financing statements to perfect this security interest. There is no set-off right for the Customer.

5. **PERFORMANCE AND SHIPPING:** Performance and shipping dates specified or communicated by Resonon to the Customer are approximate dates only and the failure to perform or ship on such dates shall not be considered a breach by Resonon. Delivery shall be deemed upon Resonon's notification to the Customer that Products are available to the Customer at Resonon's manufacturing facility. All claims for shortage of Products ordered or for incorrect charges must be presented to Resonon within 15 days after receipt by Customer of the particular shipment of Products. Customer shall be responsible for all Charges. Unless given written instruction, Resonon may select the carrier. Resonon shall not be liable for damages or penalty for delay in delivery or for failure to give notice of any delay, and the carrier shall not be deemed to be an agent of Resonon.

6. **CANCELLATION:** The Customer may not cancel, terminate, suspend performance of, or issue a hold on, any Customer order, in whole or in part, without the prior written consent of Resonon, which consent, if given, shall be upon terms that will compensate Resonon for any loss or damage therefrom, including but not limited to,

the price of Products shipped to, manufactured for, or held separately for, the Customer, and loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses relating to the Products.

7. LIMITED PRODUCT WARRANTY:

- 7.1 Resonon warrants the Product (other than Software, as defined and warranted below) against defects in materials and workmanship under normal use for a period of ONE (1) YEAR from the date of retail purchase ("Warranty Period") by the Customer. Should a Product defect arise and a valid claim be received by Resonon during the Warranty Period, Resonon will, at its option, repair or replace the defective Product at no charge to the Customer or refund the purchase price of the Product, provided that the Customer return the Product during the Warranty Period, with transportation and customs charges prepaid, to Resonon's service center at 123 Commercial Drive, Bozeman, Montana 59715. Prior to return, the Customer must contact Resonon by phone at (406) 586-3356 or by e-mail at inquiry@resonon.com for authorization to return a Product under this warranty. Resonon may use remanufactured, refurbished or serviceable used parts and modules in making warranty repairs. Repaired or replaced Products will be covered for the remainder of the Warranty Period. This warranty does not apply: (a) to damage caused by accident, abuse, misuse, use in hazardous activities, mishandling, flood, fire, earthquake or other external causes; (b) to damage caused by improper installation, misapplication, or operating the Product outside the environmental parameters specified in section 7.6; (c) to a Product that has been modified to significantly affect functionality or capability without the prior written permission of Resonon; or (d) to consumable parts, such as batteries, unless damage has occurred due to a defect in materials or workmanship.
- 7.2 All third parties' Products (including software) sold by Resonon carry only the original manufacturer's warranty applicable to Customer. Resonon will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party.
- 7.3 Customer must claim under the warranty in writing not later than 30 days after the claimed defect is discovered. The Customer must make all claims under this warranty and no claim will be accepted from any third party.
- 7.4 Any Product which has been returned to Resonon but which is found to meet the applicable specification for the Product and not defective in workmanship and material, shall be subject to a reasonable examination charge which may be charged to the Customer. Where any Product is returned without an itemized statement of claimed defects, Resonon will not evaluate the Product but will return it to the Customer at the Customer's expense.
- 7.5 TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES, AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, RESONON SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. IF RESONON CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE DURATION OF THIS EXPRESS WARRANTY AND TO REPAIR OR REPLACEMENT SERVICE AS DETERMINED BY RESONON IN ITS SOLE DISCRETION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
- 7.6 Environmental parameters. Storage temperature: -20 to 45 degrees C; Maximum operating temperature: 0 to 40 degrees C; Recommended operating temperature: 10 to 32 degrees C; Operating Relative Humidity: 20% - 80% (non-condensing); Storage Relative Humidity: 20% - 95% (non-condensing).

8. SOFTWARE LICENSE AND WARRANTY: For software developed by Resonon and used with any Product, including but not limited to Resonon's Spectronon and SpectrononPro software, and all related documentation (collectively "Software"), Resonon does not transfer ownership (which shall remain solely with Resonon) but only grants the Customer a non-exclusive license to use the Software. The terms and conditions of such license shall be as set forth in the End-User Software License Agreement ("EULA") applicable to the particular Software made available for use with the Product. The applicable EULA is made available in the documentation accompanying the Software, and Resonon will furnish a copy of the EULA at Customer's request. The EULA for Spectronon software is also available in the online users manual at Spectronon.com.
9. LIMITATION OF LIABILITY: EXCEPT AS SPECIFICALLY PROVIDED IN THE LIMITED WARRANTIES STATED HEREIN, RESONON SHALL NOT BE LIABLE OR RESPONSIBLE TO THE CUSTOMER OR ANY OTHER PERSON FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF

MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; LOSS OF OR DAMAGE TO OTHER EQUIPMENT OR PROPERTY; OR ANY OTHER INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED.

10. EXPORT RESTRICTIONS: Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies, and procedures of the applicable government and other competent authorities. Customer will indemnify and hold Resonon harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products or any technical data (including processes and services) received from Resonon, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that none of the products or technical data supplied by Resonon under this Agreement will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.
11. RIGHTS IN INTELLECTUAL PROPERTY AND TOOLING: All right, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs and related documentation, other works of authorship fixed in any tangible medium of expression, mask works, or other forms of intellectual property, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by Resonon solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order, and any related tooling, set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of Resonon. Customer agrees not to reverse engineer all or any portion of any Product nor allow or assist others to do so. Customer agrees not to remove, alter, erase, deface or cover over any markings on the Product or its packaging.
12. D.O.D. CONTRACTS. If the order is made pursuant to a subcontract under a prime contract from the United States Department of Defense, the terms and conditions stated herein are hereby modified to include those provisions of the Armed Services Procurement Regulations that are applicable hereto and in effect at the time of Resonon's acceptance of the order.
13. GENERAL TERMS:
  - 13.1 The validity, interpretation and performance of this Agreement shall be governed by and construed under the applicable laws of the State of Montana and the United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of laws. The parties specifically disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.
  - 13.2 Resonon shall not be liable for any delay or failure in performance whatsoever due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, explosion, epidemics, or other occurrences beyond Resonon's reasonable control or due to unforeseen circumstances.
  - 13.3 If Customer becomes insolvent or is in default under the terms of this or any other agreement between Customer and Resonon, Resonon may, at its option discontinue further performance of all or part of the order, and Resonon shall have any and all other rights available to it in law or in equity.
  - 13.3 Waiver by Resonon of any provision herein must be in writing and shall not be deemed to be a waiver of such provision (or of any other provision) in the future.
  - 13.4 Customer shall hold confidential and shall not use, disclose or permit others to use any confidential information identified as such in writing or orally by Resonon or information which Customer knows or ought to reasonably know is confidential, proprietary or trade secret information of Resonon, including, without limitation, trade secrets embodied in Products.
  - 13.5 Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of Resonon. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.
  - 13.6 If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining portions will remain in full force and effect.
  - 13.7 Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
  - 13.8 Resonon neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for Resonon with regard to Resonon services or the Products.

- 13.9 This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, apart from existing non-disclosure agreements, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of Resonon and Customer.