



UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

**GENERAL**

Donner Technologies ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that the Buyer agrees to accept and be bound by the terms and conditions set forth herein.

This is the complete and exclusive statement of the contract between Seller and Buyer with respect to the Buyer's purchase of the Products.

No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by both Seller and Buyer.

Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein.

All orders are subject to acceptance in writing by an authorized representative of Seller.

**PRICE**

All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing.

All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment.

All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

**TAXES AND OTHER CHARGES**

Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer.

If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

**TERMS OF PAYMENT**

Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof.

If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice.

If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of three and a-half percent (3.5%) per month, together with all related costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder.

For any case, the ownership of the buyer's ordered equipment will remain the seller's until the entire payment and other terms were conducted by the buyer according to terms and conditions that were set by the seller.

Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified.

**DELIVERY, CANCELLATION OR CHANGES BY BUYER**

The Products will be shipped to the destination specified by Buyer - Seller's shipping point.

Seller will have the right, at its election, to make partial shipments of the Products and to invoice each



shipment separately.

Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder.

All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control.

In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay.

Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account.

Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges.

Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor.

Credit will not be allowed for Products returned without the prior written consent of Seller.

#### **TITLE AND RISK OF LOSS**

Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

#### **WARRANTY**

Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts.

If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period").

Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a return material authorization, which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer.

Replacement parts may be new or refurbished, at the election of Seller.

All replaced parts shall become the property of Seller.

Shipment to Buyer of repaired or replacement Products shall be made in accordance with the delivery provisions of the Seller's Terms and Conditions of Sale.

Consumables are expressly excluded from this warranty.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse,



fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller.

If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates.

If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates.

Any installation, maintenance, repair, service, relocation or alteration to or of, or other tampering with, the products performed by any person or entity other than seller without seller's prior written approval, or any use of replacement parts not supplied by seller, shall immediately void and cancel all warranties with respect to the affected products!

The obligations created by this warranty statement to repair or replace a defective product shall be the sole remedy of buyer in the event of a defective product.

Except as expressly provided in this warranty statement, seller disclaims all other warranties, whether express or implied, oral or written, with respect to the products, including without limitations all implied warranties of Merchantability or fitness for any particular purpose.

Seller does not warrant that the products are error-free or will accomplish any particular result.

## **SOFTWARE**

With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee".

Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes.

This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein.

Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder.

Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent.

Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein.

Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products.

The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder!



## **LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary contained herein, the liability of seller under these terms and conditions (whether by reason of breach of contract, tort, indemnification, or otherwise, but excluding liability of seller for breach of warranty (the sole remedy for which shall be as provided under the written above) shall not exceed an amount equal to the lesser of the total purchase price theretofore paid by the buyer to seller with respect to the products giving rise to such liability.

Notwithstanding anything to the contrary contained herein, in no event shall seller be liable for any indirect, special, consequential or incidental damages (including without limitations damages for loss of use of facilities or equipment, loss of revenue, loss of data, loss of profits or loss of good will), regardless of whether seller (a) has been informed of the possibility of such damages or (b) is negligent.

## **MISCELLANEOUS**

(a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void.

(b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Seller's manufacturing location, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller's manufacturing location, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise.

(c) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial, and both parties waive any right they may have under applicable law or otherwise to a right to a trial. Any action arising under this Agreement must be brought within no later than one (1) year from the date that the cause of action arose.

(d) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

(e) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain.

(f) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

(g) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, the Product is intended for analytical measurements only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals - without seller prior written consent.

(h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller.

Buyer agrees to (1) keep such information confidential and not to disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public.