

## Terms and Conditions of Sale

1. Acceptance. The terms and conditions of sale contained herein apply to all purchase orders accepted by DeNovix, Inc. (DeNovix) for the purchase and sale of DeNovix products. Some of the terms and conditions herein may differ from those in Customer's purchase order. Acceptance is conditional on Customer's assent to the terms and conditions set out here in lieu of those in Customer's purchase order. DeNovix's failure to object to provisions contained in any communication from Customer shall not be deemed a waiver of the provisions of this acceptance.
2. Terms of Payment. Unless otherwise specified by DeNovix in writing, the purchase price shall be due in full by Customer upon tender of delivery of products. Extension of credit, if any, may be changed or withdrawn by DeNovix at any time. Invoices not paid within thirty (30) days after their due date will be subject to carrying charges. Carrying charges shall accrue and be added to the unpaid balance at the rate of one and one-half percent (1½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever rate is less. Customer shall reimburse DeNovix for the costs of collection, including, without limitation, reasonable attorneys' fees, of any overdue amount owed by Customer to DeNovix, and such collection costs shall also be subject to carrying charges. Customer may not retain or set-off any amounts owed to DeNovix in satisfaction of any claims asserted by Customer against DeNovix.
3. Title and Risk of Loss. Notwithstanding the trade terms indicated above and subject to DeNovix's right to stop delivery of products in transit, title to and risk of loss of the products will pass to Customer upon delivery of possession of the products by DeNovix 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 DeNovix or the licensor(s) thereof, as the case may be.
4. Warranty; Disclaimer of Other Warranties; Remedies.
  - a. Thirty-Day Guarantee. Within 30 calendar days of receipt, if Customer is not satisfied with the performance of the product, Customer may return the product to DeNovix for a full refund.
  - b. Limited Warranty. All instruments and accessories manufactured by DeNovix are warranted against manufacturing defects in parts and labor for a period of at least 1 year. This warranty does not apply to any product that has been subjected to misuse, abnormal service or handling, or that has been altered or modified in design or construction, or that has been serviced or repaired by anyone other than DeNovix.
  - c. Disclaimer. THE WARRANTIES SET FORTH IN SUBSECTIONS 4.a AND 4.b HEREIN IS IN LIEU OF ANY AND ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT NO OTHER REPRESENTATIONS WERE MADE TO CUSTOMER OR RELIED ON BY CUSTOMER WITH RESPECT TO THE QUALITY AND FUNCTION OF THE PRODUCT(S) SOLD HEREUNDER.
  - d. Remedies. Customer's sole and exclusive remedy for breach of the warranty set forth in Subsection 4.a is that DeNovix will either (i) repair or replace, at DeNovix's sole option, any product that fails during the warranty period of such defect (if Customer promptly reported the failure to DeNovix in writing) or (ii) if DeNovix is unable to repair or replace, DeNovix will refund the purchase price of the product upon its return to DeNovix.
  - e. Limitation of Liability.
    - i. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN AND PURSUANT TO THE INDEMNIFICATION PROVISIONS OF SECTION 8 (DeNovix's Proprietary Information) HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES, LOSS OF PROFITS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY TO ANY CLAIM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, STRICT LIABILITY OR BREACH OF WARRANTY, BUT SHALL NOT APPLY IF SUCH DAMAGES ARE THE RESULT OF THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. In any event, DeNovix's total liability hereunder shall be limited to the purchase price paid to DeNovix by Customer for product(s) within the immediately preceding 18 month period.
    - ii. THE PARTIES ACKNOWLEDGE THAT THIS SUBSECTION 4.e HEREOF HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT AND THAT THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, BUT FOR THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SUBSECTION 4.e HEREOF.
5. Assignment. Customer may not assign its rights or obligations hereunder without the prior written consent of DeNovix and any purported assignment by Customer without the consent of DeNovix shall be of no effect.
6. Limitations. Any action by Customer under this Order or relating to products must be commenced within one (1) year after acceptance by DeNovix of the respective Order at issue.
7. Software. With respect to any software products incorporated in or forming a part of the products hereunder, DeNovix and Customer 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 "Customer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, DeNovix or its licensor, as the case may be, retains all rights and interest in software products provided hereunder. DeNovix hereby grants to Customer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Customer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Customer's own internal business purposes. This license terminates when Customer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Customer 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. Customer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without DeNovix's prior written consent. DeNovix will be entitled to terminate this license if Customer fails to comply with any term or condition herein.
8. Proprietary Information. DeNovix and its licensors shall own all right, title and interest (including but not limited to all copyrights, trademarks, trade names, service marks, trade secrets, patents (including any divisional, continuation or continuation-in-part, reissue, reexaminations or extension and any and all foreign counterparts thereof), and other proprietary rights) in and to the product(s) and all technology, know-how, inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks and trade secrets, whether or not patentable or registrable under copyright or similar laws, related thereto and/or included therein (collectively, the "DeNovix Proprietary Information"). DeNovix may utilize all ideas, suggestions, feedback, improvements, data, reports or the like that Customer provides to DeNovix with respect to the DeNovix Proprietary Information without any obligation to Customer. Customer agrees that it will not claim or assert title to any such DeNovix Proprietary Information or attempt to transfer any title to the same to Customer or any third parties. Customer will at all times take all actions, and where appropriate refrain from such acts, as may be necessary or appropriate to protect DeNovix's proprietary rights in and to the DeNovix Proprietary Information.
9. Indemnification. Customer shall defend, indemnify, and hold DeNovix harmless from all liability and claims whatsoever for any injury to persons or property or for any loss, expense, or damage incurred by any of Customer's personnel, customers, or invitees or by any other person or party (except agents or employees of DeNovix) arising as a result of or in connection with Customer's use of the product(s).
10. Export Restriction. Customer acknowledges that each product and any related software and technology, including technical information supplied by DeNovix or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Customer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Customer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Customer shall cooperate fully with DeNovix in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold DeNovix harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants, agents, or customers.
11. Governing Law. These terms and conditions shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Delaware, without regard to principles of conflicts of law. Any controversy or claim arising out of or relating to these terms and conditions, or the breach thereof, shall be subject to the exclusive jurisdiction of the Delaware state courts in and for New Castle County, Delaware, or the U.S. District Court for the District of Delaware.
12. Communication. Customers contacts may be sent information regarding DeNovix product updates by email from time to time.