

bioDensity® SALES AND WARRANTY TERMS AND CONDITIONS

1. Ordering; Shipping; Payment; Title; Freight and Shipping.

- (a) All purchases and sales are subject to these Sales and Warranty Terms and Conditions (“Terms”). BUYER shall submit written purchase orders to Performance Health Systems, LLC, as seller of bioDensity®, or “SELLER” which shall be subject to acceptance or rejection by SELLER. These terms shall be subject to change at SELLER’s sole discretion. Any terms or conditions set forth in any purchase order from BUYER that are different than or in addition to the Terms contained here are rejected by SELLER and shall be of no effect.
- (b) SELLER reserves the right in its sole discretion to discontinue bioDensity® models or products “Products” at anytime.
- (c) BUYER shall pay for Products as set forth in SELLER’s acceptance quotation documentation. SELLER reserves the right to refuse to accept orders for Products for any reasonable purpose including credit purposes. SELLER shall charge BUYER interest at a rate of seventeen (17%) per annum, or the highest rate permitted by law, compounded daily, on accounts receivable balances that are over forty five (45) days past due. SELLER shall be entitled to change or revoke any credit terms or suspend its performance under these terms if SELLER, in its sole discretion, deems itself to be insecure based on BUYER’s financial status, credit rating or payment record.
- (d) All sales, use, value added, or other applicable taxes, and all import and/or export duties, tariffs, assessments and charges are BUYER’s responsibility to report and pay.
- (e) In the event SELLER is subject to price increase(s) from its manufacturing or other sources at any time, SELLER shall have the right, **upon notice**, to increase its Product Price to BUYER commensurate with such increases prior to Seller’s acceptance of Buyer’s order.

Title to Products ordered shall not pass to BUYER until SELLER has received full payment. BUYER acknowledges that it holds all unpaid Products as bailee for SELLER until Products are paid for. Freight terms for BUYER shall be FOB SELLER’s U.S. warehouse, and risk of loss passes to BUYER at shipping port or exit.

2. Exclusive Limited Product Warranty.

SELLER provides to BUYER the sole and exclusive limited warranty on Products set forth in the following paragraph and 3 below, which may be revised upon notice by SELLER. SELLER will honor warranty claims made only by BUYER or approved agents on Products that have been sold by BUYER or its approved agents, and will not honor warranty claims made by BUYER on Products that have been sold by others.

The applicable Product warranty term to the original purchaser is: Five (5) years from date of installation for replacement or repair only, at Seller's option, of any defective Product as deemed by SELLER, including parts and labor. Freight costs, travel and other labor costs in the continental United States are included. This warranty is voided if Products are not used in accordance with user instructions as reasonably determined by SELLER.

3. Additional Warranty Agreements of SELLER and SELLER Warranty Disclaimers.

SELLER offers the following additional exclusive limited warranty to BUYER as follows:

- (a) The Products and software supplied to BUYER shall be of satisfactory quality and warranted against defects in materials and workmanship for five (5) years from date of installation. The sole and exclusive remedy for SELLER in respect thereof shall be to provide warranty cover to BUYER in accordance with paragraph 2 above. BUYER'S sole, limited and exclusive remedy for defects shall be as described above and in this paragraph 3.
- (b) SELLER further warrants that for five (5) years from date of installation it will adequately manage and operate the Performance Health Systems Application Service Provider ("ASP") and provide BUYER the necessary specifications for customer facility, network, internet and electrical requirements for such products. The sole and exclusive service remedy for SELLER for defects in the service performance of the ASP shall be as described above herein.
- (c) EXCEPT AS OTHERWISE STATED , SELLER DISCLAIMS ANY EXPRESS, IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY, OR FOR PRODUCT MISUSE, MODIFICATION OR MISAPPLICATION

4. Covenants; Representations and Warranties of BUYER.

The BUYER covenants, represents, and warrants to SELLER as

follows:

- (a) Data may not be assigned, transferred, hypothecated, subordinated, or resold to any entity or party. The BUYER shall not alter or deface Products in any way, including minor details or labels, without the prior written permission of the SELLER, which SELLER may withhold in its sole and absolute discretion.
- (b) BUYER shall make no warranties or guarantees with respect to the Products except as previously approved in writing by the SELLER from time to time.
- (c) BUYER shall inform its customers of all update and refresh fees, and recurring fees associated with maintaining and updating software capabilities and performance.

Sales and Purchases are further subject to the following conditions:

- (d) BUYER shall maintain accurate books and records of customer information, including the customer name, address, contact individual, phone numbers, and serial number of all new or repaired Products "Customer Records", as far back as the first consignee's receipt of new or repaired Products. Such Customer Records shall be in sufficient detail to permit customer traceability.
- (e) Upon written notice, SELLER or its designee shall have the right to perform inspections, make visits and copies, and conduct audits of BUYER's premises and books and records relating to such Customer Records, in connection with the Agreement obligations. BUYER shall maintain Customer Records and all supporting documentation required hereunder, and make them available to SELLER for inspection and copying upon notice for five (5) years after the date the Product was sold by BUYER.

5. Compliance with Laws and Product Markings.

As a material condition BUYER covenants, represents and warrants that it shall comply with all applicable laws and regulations "Laws" in the Territory in the performance of its use of the Product.

6. Intellectual Property Rights.

- (a) Each of the trademarks, and any other trade names, corporate names, service marks, domain names, Google Ad Words, copyrights, patents, and pending applications in any jurisdiction with respect to any of the foregoing, and all of SELLER's products, patents, related designs, trade dress, methods, processes, know-how, specifications, documentation, and materials, and all improvements, modifications and derivatives of any of the foregoing, whether in existence on the date hereof or developed hereafter, whether registered or at common law (collectively, the "Intellectual Property") shall be, and will

remain the exclusive property of SELLER, and nothing herein shall limit SELLER's right and ability to use or exploit such Intellectual Property, and no rights are granted to BUYER with respect to such Intellectual Property except as expressly set forth herein. As used herein, the term "Trademarks" shall also include, but are not limited to, "bioDensity®", and any modifications, and other additional derivations thereof now or hereafter in effect or claimed by SELLER.

- (b) If BUYER promptly fails to cease using Intellectual Property improperly after notice or challenges the validity of any of the SELLER's Intellectual Property the SELLER may terminate this Agreement or any relationship with Buyer with immediate effect by notice. BUYER shall promptly notify SELLER in writing if it learns of any potential infringement of any SELLER's Intellectual Property.
- (c) BUYER shall not register in its own name or for its own account, or permit any other party to register any domain names, or Google AD Words or other Intellectual Property including that containing bioDensity® or any derivation thereof; and if any such registrations do or have occurred BUYER shall fully cooperate and immediately upon request, and at no expense to SELLER, terminate and/or return all such registrations to SELLER at SELLER's direction.

7. Indemnifications; Limitation of Liability and Disclaimer of Consequential Damages.

- (a) BUYER shall hold harmless, defend with competent counsel, and indemnify SELLER from and against any and all alleged or actual claims, lawsuits, actions, costs, expenses damages, losses, actions or liabilities "Claims" received by SELLER, including payment of reasonable attorney fees, expenses and court costs involving or arising out of, and including but not limited to Claims touching upon:
 - (i) the Products and/or from product liability claims or suits relating to the Products; (ii) the alleged breach or breach by BUYER of its covenants, representations, warranties, and obligations hereunder; (iii) the negligence of BUYER or any person acting for, or on behalf of the BUYER, and (iv) alleged or actual violations of law by BUYER.
- (b) BUYER shall also indemnify, hold harmless and defend SELLER from and against (i) any Claims resulting from improper training or use, or marketing materials unapproved by SELLER or Product-related claims of any nature, including guarantees or warranties made by the BUYER, its agents, affiliates, sub licensees, or training center sub licensees, or other third parties or (ii) infringements by BUYER, or by any other third party of Seller's Intellectual Property.

- (c) Except as expressly provided in these Terms, all warranties,

conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- (d) NOTWITHSTANDING ANY OTHER PROVISION AND TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WHATSOEVER SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR MORE THAN AN AMOUNT EQUAL TO ONE (1) TIMES THE GROSS PURCHASE PRICE OF THE PRODUCT(S) PURCHASED FROM SELLER BY BUYER OR A THIRD PARTY WITHIN THE TWELVE-MONTH PERIOD PRECEDING THE DATE OF BUYER OR THIRD PARTY ASSERTION OF ANY CLAIM.
- (e) SELLER SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY, IN CONTRACT, TORT, MISREPRESENTATION, OR OTHERWISE HOWSOEVER ARISING FOR ANY LOSS OF PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, SECONDARY, INCIDENTAL OR CONSEQUENTIAL LOSS OR PUNITIVE DAMAGES, INCLUDING LOST REVENUES OR LOST PROFITS HOWSOEVER OR WHENEVER THE SAME MAY ARISE.

8. Survival. The provisions of paragraphs 1-7, and 10-19 shall survive the termination of this Agreement or purchase order.

9. Independent Contractors; No Joint Venture or Dealer.

SELLER and BUYER are independent contractors, and BUYER has no power or authority to bind SELLER in any manner whatsoever. Nothing in this Agreement shall be construed as creating any relationship such as agency, dealer, franchise, employer-employee, principal-agent, partners or franchisor-franchisee relationship.

10. Governing Law.

These Terms shall be interpreted in all respects in accordance with the laws of the State of Illinois without regard to conflicts of laws rules.

11. Disputes.

SELLER and BUYER agree that all claims or other matters arising out of or involving this Agreement shall be litigated in any competent court located in the City of Chicago, Cook County, Illinois, and each submit to the exclusive jurisdiction of the applicable courts therein. Provided; however, that the foregoing shall not preclude either party from taking provisional measures or pursuing provisional or other remedies, such as injunctions, attachment or similar proceedings, which may be available to such party under the laws of any jurisdiction against the actions or assets of the other party. Any claim or action against SELLER arising under or in connection with this Agreement must be brought, if at all, within one (1) year from the date of the occurrence giving rise to such claim or action, and if not brought within said time period, shall thereupon lapse and shall be deemed waived by BUYER.

12. Notices.

Notices hereunder shall be deemed given when served personally or three (3) days after being mailed by postage-pre-paid certified mail, return receipt requested or other form of recorded delivery including by pdf three (3) business day after being transmitted or sent by overnight courier for next day delivery by either party to the other at the addresses set forth in the parties last known place of business. Either party may change its address for notice by giving notice as herein provided. Signatures or notices transmitted by facsimile or scan shall be considered legally binding. Seller's address is: Performance Health Systems LLC, 401 Huehl Road, Suite 2A, Northbrook, Illinois 60062, attention: Kevin Krantz.

13. Severability.

In the event that any provision (or part) of these terms shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions (and remainder of the provision concerned) of this Agreement shall remain in full force and effect and construed so as to best effectuate the intention of the parties hereto.

14. Waiver.

The failure of either party hereto at any time to insist on the other party's performance of any provision or to exercise any of its respective rights under these Terms shall not be deemed a waiver thereof nor shall such failure in any way prevent either party, as the case may be, from subsequently asserting or exercising such rights. All rights and remedies hereunder may be exercised singularly or concurrently.

15. Amendments; Modifications.

Except as set forth herein, no amendment or modification of these Terms shall be effective unless made pursuant to a written instrument executed by each of the parties hereto.

16. Entire Agreement; Counterpart Copies; Integration of Documents

These Terms and the Sales Quotation for bioDensity® Product and Support form, and any exhibits attached thereto are the entire agreement between the parties hereto, and supersede all prior agreements, negotiations, communications, discussions and correspondence concerning the subject matter hereof. These Terms may be executed in any number of counterparts, each of which together shall constitute one and the same document.

The parties agree and acknowledge that the Convention on the International Sale of Goods (CISG) is not applicable to any transaction arising from these Terms or the interpretation or enforcement thereof. Any different or additional Terms in any purchase order, invoice or other such document submitted by BUYER are expressly rejected by SELLER and shall have no force or effect. If there is a difference between these Terms and the Sales Quotation for

bioDensity® Product and Support form, the latter form shall take precedence.

17. Non Assignment or Transfer.

The original purchase price of a BioDensity® unit includes a 5-year BioDensity® SAAS system (operating software as a service) fee which is non assignable. BUYER shall not without the written consent of SELLER, lend, subordinate, borrow against, sell or offer to sell, assign or transfer any Products, purchase order, acknowledgment, or agreement referring to Products but SELLER may upon written notice assign or transfer a purchase order, or acknowledgement and its obligations with effect upon notice of the assignment.

Seller reserves the right to charge an additional fee, up to \$10,000, for the transfer of the SAAS system after the initial installation of a unit or sooner if transferred to a new owner. Units will continue to be subject to a refresh charge, and annual operating software as a service fee after the fifth year of service.

18. Governing Language.

The English language the governing language of this form even if translated into another language. If a translation of this form into another language is required in the event of a conflict, the English version shall prevail.

19. Force Majeure.

(a) Save for the obligation to pay monies due, the obligations of each party under these Terms shall be suspended during a force majeure period, and to the extent that a party is prevented or hindered from complying with obligations by any cause beyond its reasonable control, including but not limited to (insofar as beyond such control but without prejudice to the generality of the foregoing expression) war, riot, act of terrorism, compliance with any law or governmental order, rule, regulation or direction, fire, flood, storm, other Act of God or difficulty in obtaining supplies or raw materials.

(b) In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause, when it shall be cured, and the omission to give such notice shall forfeit the rights of that party to claim suspension.

Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause, and shall so notify the other party. In the event that the cause continues for more than ninety (90) days after the force majeure event first arose, either party may terminate any agreement or acceptance of these Terms upon no less than thirty (30) days written notice.