

# Equipment Sales Agreement

This Sales Agreement ("Agreement") is entered into by and between Creative Conners, Inc. ("Company") and the customer as stated in the attached Sales Order ("Customer").

**1. Sale of Equipment.** Customer hereby agrees to purchase from Company the equipment (the "Equipment") set forth in the attached Sales Order.

**2. Price.** The price and time for payment for the Equipment is as set forth in the attached Sales Order.

Any amounts payable by Customer hereunder which remain unpaid after the due date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

**3. Delivery.** Company shall use its reasonable efforts to deliver the Equipment to Customer on the delivery date set forth in the attached Sales Order. Delivery shall be made F.O.B. at Company's offices in Providence, Rhode Island. If the delivery is not made within two (2) days of the scheduled delivery date, other than because of the fault of Customer or by *force majeure* (as set forth in Section 9(l)), Customer may cancel its purchase of the Equipment. All transportation, shipping and handling charges shall be paid by Customer. Customer bears all risk of loss or damage to the Equipment after delivery to the transportation shipping point.

**4. Operation of the Equipment.** Customer shall be responsible for operation of the Equipment. Customer shall operate the Equipment in a reasonably competent manner and in compliance with the operations manual for the Equipment. Customer shall comply with all applicable rules, laws, and regulations in connection with operation of the Equipment. **Customer shall not use the equipment in any manner that could threaten the life or safety of any persons. Specifically, though not limited to, Customer shall not use the Equipment for: overhead lifting, or the lifting of people.**

**5. Infringement Indemnity.** Company will defend and indemnify Customer against a claim that the Equipment infringes a United States copyright or patent, provided that: (a) Customer notifies Company in writing within 30 days of the claim; (b) Company has sole control of the defense and all related settlement negotiations; and (c) Customer provides Company with the assistance, information and authority necessary to perform Company's obligations under this Section. Reasonable out-of-pocket expenses incurred by Customer in providing such assistance will be reimbursed by Company. Company shall have no liability for any claim of infringement based on use of Equipment altered by Customer. In the event the Equipment is held or is believed by Company to infringe, Company shall have the option, at its expense, to (a) modify the Equipment to be noninfringing; (b) obtain for Customer a license to continue using the Equipment; or (c) refund the fees paid for the Equipment. This Section 5 states Company's entire liability and Customer's exclusive remedy for infringement, misappropriation or related claims.

## **6. Disclaimers and Warranty.**

**(a)** Company warrants to the original purchaser of Equipment that for the Warranty Period (as defined below), the Equipment will be free from material defects in materials and workmanship. The foregoing warranty is subject to the proper installation, operation and maintenance of the Equipment in accordance with installation instructions and the operating manual supplied to Customer. Warranty claims must be made by Customer in writing within sixty (60) days of the manifestation of a problem. Company's sole obligation under the foregoing warranty is, at Company's option, to repair, replace or correct any such defect that was present at the time of delivery, or to remove the Equipment and to refund the purchase price to Customer.

**(b)** The "Warranty Period" begins on the date the Equipment is delivered and continues for three (3) months.

**(c)** Any repairs under this warranty must be conducted by an authorized Company service representative.

**(d)** Excluded from the warranty are problems due to accidents, misuse, misapplication, storage damage, negligence, or modification to the Equipment or its components.

**(e)** Company does not authorize any person or party to assume or create for it any other obligation or liability in connection with the Equipment except as set forth herein.

**(f)** THE INDEMNITY IN SECTION 5 AND WARRANTY IN SECTION 6(a) ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER INDEMNITIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. Nondisclosure.** By virtue of this Agreement, Customer may have access to information that is confidential to Company ("Confidential Information"). Confidential Information shall include, but not be limited to, the terms and pricing under this Agreement, the technical and other specifications for the Equipment and all information clearly identified as confidential. Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of Customer; (b) was in the Customer's lawful possession prior to the disclosure and had not been obtained by Customer either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the Customer by a third party without restriction on disclosure; or (d) is independently developed by Customer. Customer agrees to hold Confidential Information in confidence during the term of this Agreement and for a period of five years after termination of this Agreement. Customer agrees, that unless required by law, it shall not make Confidential Information available in any form to any third party or to use Confidential Information for any purpose other than the implementation of this Agreement. Customer agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees, representatives or agents in violation of the terms of this Agreement.

**8. Limitation of Liability.** IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, OR USE INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, OR TORT, OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S

LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE DEFECTIVE EQUIPMENT. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND CUSTOMER. COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

#### 9. Miscellaneous.

(a) This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of Rhode Island (exclusive of conflict of laws principles), and shall be deemed to be executed in Providence, Rhode Island.

(b) Any legal action or proceeding relating to this Agreement shall be instituted solely in a state or federal court in Providence, Rhode Island. Company and Customer agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

(c) All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail or by fax to the address listed below.

(d) Prices for Equipment specified herein are exclusive of all city, state and federal taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Customer agrees to pay such taxes directly or to reimburse Company for all such taxes, whether imposed on Customer required to be collected by Company, or imposed on Equipment or on Customer in connection with this sale. Wherever applicable, such tax or taxes shall be added to the invoice as a separate charge on invoiced separately. Customer agrees to pay all personal property taxes that may be levied against Equipment after the date of delivery.

(e) To secure payment and performance of all Customer's obligations hereunder, Company hereby retains title to Equipment and a security interest therein until payment in full and performance by Customer of all said obligations. When requested by Company, Customer shall duly acknowledge this Agreement, and execute, acknowledge and deliver to Customer, in Company's usual form, a supplement hereto, security agreement, financing statement and other appropriate instruments to constitute Equipment as the unencumbered security for the obligations of Customer hereunder, or to enable Company to comply with all applicable filing or recording laws.

(f) In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

(g) The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for non-payment or breach of Company's proprietary rights, no action, regardless of form, arising out of or in connection with this Agreement may be brought by either party more than one year after the cause of action has accrued.

(h) Customer agrees to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that the Equipment is not (1) exported, directly or indirectly, in violation of Export Laws; or (2) intended to be used for any purposes prohibited by the Export Laws. Customer agrees that the Equipment will only be used or operated in the United States and other territories approved in writing by Company.

(i) Company is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or

agency relationship between the parties.

(j) This Agreement constitutes the complete agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, understandings, representations, discussions, proposals, literature, and the like, written or oral. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement shall supersede the terms in any Customer purchase order or other ordering document, if any.

(k) In any proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs incurred.

(l) This Agreement shall be construed as to its fair meaning and not strictly for or against either party.

(m) Company shall not be deemed to be in default of any provision of this Agreement, or for failures in performance, resulting from acts or events beyond its reasonable control. Such acts shall include but not be limited to acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, labor disputes, parts shortages, or other events beyond Company's reasonable control.

(n) No action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action arose, or in the case of non-payment, more than two years from the date of last payment.

(o) This Agreement is not assignable, directly or indirectly, by Customer.

(p) This Agreement may be executed in counterparts and by fax.