

General Terms & Conditions of Sale

1. GENERAL

1.1 Definitions

Driventic: Driventic (Hong Kong) Limited.

Purchaser: Shall mean the company, firm or persons for whom work under this form is performed and shall include executors, administrators, successors and permitted assigns.

Equipment: Shall mean everything, including services, to be supplied by Driventic.

Force Majeure: means an event not within the control of a party which, by the exercise of a reasonable standard of care and diligence that a party is not able to avoid or overcome and which directly or indirectly prevents or delays a party from performing any of its obligations under this Contract and includes war, act of terrorism, insurrection, sabotage, riot or civil disturbance; epidemic, cyclone, tidal wave, flood, fire, earthquake, landslide, lightning or explosion; civil commotion, riot; strikes or other industrial action

Hong Kong: means the Hong Kong Special Administrative Region of the People's Republic of China.

1.2 Contract

The Contract consists of these documents:

- the written Special Conditions (if applicable); and
- these General Terms & Conditions; and
- the written quotation; and
- the terms of Credit (if applicable); and
- the Purchase order.

1.3 Precedence

If there is any inconsistency between the provisions of the Contract, the order of precedence shall be as ranked in Clause 1.2.

1.4 Special Conditions

Special Conditions must be in writing and must be signed by two authorised Driventic employees.

1.5 No additional variations

No documentation, correspondence, verbal agreement or conversation shall form part of or modify the Contract.

1.6 Partial invalidity

In the event of one or more clauses of the Contract being held by a court of law to be legally invalid the remainder of the Contract shall continue in full force and effect.

1.7 Separable portions

The provisions of the Contract shall apply to any separable portion or portions of the Equipment.

1.8 Good Faith

Where any provision of this Contract becomes prohibited or unenforceable, the parties agree to negotiate in good faith to replace that provision with a provision that is in accordance with the applicable law and which must be as close as possible to the original intent of the parties.

1.9 Waiver

A failure to exercise, or any delay in exercising any right, power, or remedy by a party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other right, power or remedy. A

waiver is not valid or binding on the party granting that waiver unless it is made in writing.

2. OFFER AND ORDER

2.1 Acceptance and order

Driventic's written quotation remains valid for the period as stated in the offer or, where no such period is stated, for thirty (30) days from the date of the quotation.

2.2 Variation in quantity

The price offered is based upon the quantity stated in the quotation. Should there be any variation in the quantity of Equipment ordered Driventic reserves the right to amend the price offered.

2.3 Cancellation, variation or suspension

A Contract may be cancelled, varied or suspended only by notice in writing and only if such notice is accepted in writing by the other party. In the event that the Purchaser cancels, varies or suspends the Contract, the Purchaser shall compensate Driventic for costs as required below:

In the event of variation or suspension, the Purchaser shall compensate Driventic for any applicable direct costs arising (excluding any claim for damages or profits) which will be advised after notification of the variation or suspension.

In the event of cancellation, the Purchaser of customised products or parts shall compensate Driventic for the cumulative cancellation costs incurred dependant upon the milestone reached in the table below:

Elapsed Contract Lead Time	Cancellation Cost (as % of Contract Value)
0%-9%	10%
10%-19%	18%
20%-29%	30%
30%-39%	48%
40%-49%	62%
50%-59%	72%
60%-69%	80%
70%-79%	88%
80%-89%	95%
90%-100%	100%

In the event of cancellation, the Purchaser of non-customised products or parts shall compensate Driventic fair and reasonable costs for work-in-progress at the time of termination.

Payment for any costs arising shall be made in accordance with clause 10.1.

3. SPECIFICATIONS AND DRAWINGS

3.1 Not part of Contract

Unless expressly incorporated in the quotation, all descriptive and shipping specifications, drawings, dimensions and weights submitted with the quotation are approximate only. In any event descriptions, illustrations and data contained in catalogues, price lists and other advertisement matter are intended only to present a general idea of the work described therein and none of these shall form part of the Contract.

3.2 Certified drawings

After acceptance of a valid Purchase order, Driventic shall provide, on request, such certified drawings as in Driventic's opinion are reasonable and necessary.

3.3 Confidential information

All drawings, specifications and other written information, samples and the like provided by Driventic, shall be regarded as confidential and shall not be disclosed to a third party except with prior written consent of Driventic.

3.4 Information to be provided

Unless otherwise agreed, the Purchaser shall, within seven (7) days from date of the Purchase order, provide to Driventic sufficient information which, in the reasonable estimation of Driventic, will enable work to proceed immediately and without interruption.

3.5 Approval of drawings

Drawings or other information requiring the Purchaser's approval shall be approved, amended or rejected and returned to Driventic within fourteen (14) days of the date of receipt or such other period as may be agreed in writing. Any delay beyond this period shall constitute grounds for extension of the Contract period under clause 5.4.

3.6 Incorrect information

The Purchaser shall be responsible for, and bear the cost of, any alteration to the Equipment arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by him.

3.7 Responsibility of approvals

In the absence of agreement to the contrary and subject to clause 13, it shall be the Purchaser's responsibility to obtain and provide any approvals, licences or permits, as necessary for performance of the Contract.

4. PERFORMANCE AND TESTS

4.1 Any performance figures given by Driventic are based on Driventic experience and are such as Driventic expects to obtain on test. Driventic shall be under no liability for damages for failure to attain such figures unless Driventic has specifically guaranteed them in writing, subject to recognised tolerances applicable to such figures.

Where Driventic has agreed to performance figures, but fails to achieve such figures, Driventic shall make good such failure as provided for in clause 11 hereof and Driventic's liability shall be subject to clause 12 hereof.

4.2 Inspection and tests

When inspection and tests are performed, they will be in accordance with Driventic's standard practice and will be carried out at the place of manufacture or at some other place at Driventic's option. The costs of these tests and any other tests specified in the offer are to be borne by Driventic. Any further test or witnessed test required by the Purchaser will be carried out at the Purchaser's expense subject to Driventic consent(s) to perform these further tests.

After seven (7) days from date of notification that Driventic is ready to carry out any witnessed tests required, such tests may proceed in the absence of the Purchaser or his representative and shall be deemed to have been made in his presence.

Driventic shall not be responsible for expenses incurred by the Purchaser in respect of his presence or that of his representative at witnessed tests.

If on any such tests or inspection, Equipment shall be found defective due to faulty design, material or workmanship or found not to be in accordance with the Contract, Driventic shall make good such defect or failure as provided for in clause 11 hereof.

5. TIME/DATE FOR DELIVERY OR COMPLETION

5.1 Base Date

All times offered for delivery or completion shall be calculated from the date Driventic either receives an order or sufficient information in accordance with clause 3.4, whichever is the later.

5.2 Offered time

Any delivery or completion date or period offered is a bona fide estimate only and is not to be construed as a fixed time unless expressly incorporated in the offer.

5.3 Liquidated damages

In the event of delay caused by reasons other than those provided in clause 5.4 below, and if as a result of such delay the Purchaser suffers loss, Driventic undertakes to pay for each full week of delay, pre-estimated and liquidated damages at the rate of 0.5% per week (but not more in aggregate than a total of 5.0%) of the Contract price. Such payment shall be in full satisfaction of damages sustained by the Purchaser due to any such delay and shall be in lieu of any other right the Purchaser may have against Driventic.

5.4 Extension of time

The completion/delivery date or period shall be extended in respect of any delay caused by the Purchaser, Force Majeure, currency restrictions, insurrection, import restrictions, shortage of transport, general shortage of materials, restrictions in the use of power, or by any cause beyond the reasonable control of Driventic or as provided for in the Contract.

5.5 Termination for extended delay

In the event of delay in Clause 5.4 above exceeding 180 days, Driventic, at its discretion, is entitled to terminate this Contract by notice in writing, without being liable for any loss or damage of the Purchaser.

6. PACKING

Unless otherwise stated in the offer the Equipment will be packed in accordance with Driventic customary standard of packing, and the cost thereof will be borne by Driventic. Any special packing required by the Purchaser will be for the Purchaser's account.

7. POINT OF DELIVERY

7.1 Delivery ex works

Unless otherwise stated in the offer, the Equipment is supplied ex works as defined in INCOTERMS 2010 and delivery to a carrier, including loading, shall constitute delivery to the Purchaser. The carrier's vehicle shall be of a type allowing vertical or horizontal access for loading as required by Driventic.

7.2 Delivery beyond works

If delivery is required other than ex works, Driventic may, at Driventic's discretion, agree to act as agent for the Purchaser in this matter and all costs for carriage and insurance will be for the Purchaser's account.

7.3 Shortages in delivery

Written claims for shortages in a delivery shall only be accepted by Driventic if it is notified in writing within ten (10) days of receipt of the Equipment.

7.4 Storage

If after a period of fourteen (14) days from the date of notification that the Equipment is ready for delivery, delivery is delayed for any reason beyond Driventic's reasonable control, Driventic shall be entitled at Driventic's option to arrange suitable storage at Driventic's premises or elsewhere and shall take reasonable measures to protect the Purchaser's interest in the Equipment.

7.5 Costs

The Purchaser shall accept all costs of storage, insurance, demurrage, handling and other charges as set out in invoices for payment in accordance with clause 10.1.

7.6 Partial deliveries

Partial deliveries shall be permitted provided the parties agree in writing, and the Purchaser is not otherwise in default under this Contract.

8. INSURANCE, RISK AND PROPERTY

8.1 Insurance

Insurance of Equipment effected by Driventic acting as agent for the Purchaser in accordance with clauses 7.2 and 7.4 will, unless otherwise specified by the Purchaser, be for the Contract price plus 10%. The cost of such insurance will be for the Purchaser's account and Driventic's liability shall be limited to the extent of such insurance.

8.2 Risk

Risk in the Equipment shall remain with Driventic only to the contractual point of delivery (as defined in clause 7.1) and thereupon risk of damage, loss or deterioration of the Equipment from any cause whatsoever shall pass to the Purchaser.

8.3 Reservation of property rights

Notwithstanding that the Equipment may in whole or in part be at the risk of the Purchaser, the property in the Equipment shall be deemed to remain with Driventic until all monies due to Driventic have been paid by the Purchaser. Prior to this the Purchaser shall hold the Equipment as a fiduciary and bailee for Driventic and the Equipment may not be resold, pledged or given in security. Driventic may enter upon the Purchaser's premises or elsewhere at any reasonable time to take possession of and remove any Equipment supplied under the Contract for which payment has not been received.

8.4 INCOTERMS

In the absence of agreement to the contrary the provisions of INCOTERMS 2010 (International Rules for the Interpretation of Trade Terms) as amended from time to time are hereby incorporated in these Conditions and the terms of this offer or of any contract shall be construed in accordance with the said INCOTERMS.

9. PRICES AND CONTRACT, PRICE ADJUSTMENT

9.1 Price Basis

Unless otherwise stated in the offer, the price offered is based on the costs of material, labour, freight, insurance, exchange, duty and other costs and charges ruling at the date of reference as stated in the offer or where no such date is stated shall be deemed to be the date being forty-five (45) days prior to date of offer and shall be subject to adjustment in respect of any variation in such costs, rates or charges or their method of assessment occurring after that reference date and until completion of the Contract or in the case of exchange until final payment is received.

9.2 Sales Tax

The price offered is exclusive of any sales tax or other Government imposts. Actual charges for sales tax or other Government imposts will be for the Purchaser's account.

9.3 Cost of delay or variation

If manufacture or delivery of Equipment is delayed or varied by any act or omission of the Purchaser, his agent, or contractor for whom the Purchaser is responsible, Driventic shall notify the Purchaser of any additional cost which may be incurred as a result of such delay or variation. Actual cost shall be for the Purchaser's account.

9.4 Cost of complying with regulations

If after the date of reference (see clause 9.1 above) the cost to Driventic of performing its obligations under the Contract be varied by reason of the making or amendment

of any law or of any order, regulation or by-law having the force of law, the amount of such increase or decrease shall be added to or deducted from the Contract price.

10. PAYMENT

10.1 Payment due

The extension of credit facilities is in any case at the discretion of Driventic and is subject to confirmation at the receipt of order.

Unless otherwise stated in the offer, the price offered is strictly net. Any payment due to Driventic shall be made in full not later than thirty (30) days from the date of Invoice or from date of transfer of risk in accordance with clause 8.2 whichever is the later.

10.2 Payment when delivery delayed

If delivery of Equipment or any item comprising part thereof is delayed by instructions or lack of instructions from the Purchaser, then payment of the full Contract price or the price of such item then due, shall be made within thirty (30) days after notification by Driventic that the Equipment or such item is ready for delivery.

If delivery is delayed as a result of circumstances beyond the control of both the Purchaser and Driventic then fourteen

(14) days after notification by Driventic that the Equipment or such item is ready for delivery, payment of 90% of the Contract price applicable to the Equipment or such item, referred to in the notice shall fall due and be paid, the balance becoming payable on delivery or within three (3) months of the date of such notification whichever is the earlier.

10.3 Delay or default in payment

Should the Purchaser delay in respect of any payment due to Driventic then Driventic shall have the right, in addition to all other rights to which Driventic is entitled at law, to charge interest on the overdue amount at the rate of 3% per annum in excess of the Hong Kong Dollar Best Lending Rate offered by The Hongkong and Shanghai Banking Corporation Limited to its customers calculated from the date of invoice to the actual date of full and final payment. Any payment by the Purchaser shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the Contract price. In the event of delay in any payment due to Driventic, Driventic may defer manufacture or delivery or cancel any outstanding balance of the order.

11. WARRANTY - DRIVENTIC PRODUCTS

11.1 Defects liability

The Defects Liability Period terminates on the earlier of:

- twelve (12) months after the risk has been transferred to the Purchaser; or
- fifteen (15) months from date of notification of readiness for delivery ex works or if delivery is delayed by circumstances beyond Driventic's reasonable control, notification of readiness has been advised.

11.2 Purchaser's obligations

Driventic shall, at its own discretion, make good by repair or by replacement within a reasonable time after notification by the Purchaser within the Defects Liability Period, defects caused by Driventic's failure to comply with the Contract, or which appear in the Equipment, arising from faulty design, material or workmanship provided always that:

- such Equipment has been properly handled, stored, used, operated and maintained in accordance with instructions issued by Driventic; and,

- b) such defects are not caused by incorrect use of operating material or lubricants, faulty civil or mechanical work, unsuitable soil conditions and all other chemical, electro-chemical and/or electrical influences which have not been provided for in the Contract; and,
- c) Driventic is notified in writing within seven (7) days of the alleged defect first coming to the Purchaser's notice; and,
- d) the Purchaser has fulfilled his obligations under this Contract.

11.3 Repair or replacement

Where in accordance with clause 11, the Purchaser has notified Driventic of an alleged defect, he shall if Driventic so requires, promptly and at his own expense return the defective part(s) to the factory (as specified by Driventic) free-of-charge for repair. The removal of the defective part and the installation of any repaired or replacement part shall be performed by the Purchaser at his own expense. If installation was required for performance of the Contract, Driventic will bear the reasonable costs of installing the replacement for the defective item. Where any defective part(s) has been replaced, such part(s) shall become the property of Driventic.

11.4 Limitation of liability

Driventic shall not be liable for goods of a consumable nature, or where any unauthorised repair or alteration to the Equipment has been performed by the Purchaser.

11.5 Exclusions

This express warranty is in lieu of any other rights that would otherwise be conferred on the Purchaser under any law save that this express warranty does not exclude any conditions or warranties implied into this Contract by the provisions of the Sale of Goods Ordinance, Cap. 26 and/or the Supply of Services (Implied Terms) Ordinance, Cap. 457 to the extent that such conditions or warranties may not be excluded or modified by express agreement. To the extent permitted by law, Driventic's liability in respect of any breach of condition or warranty implied by the Sale of Goods Ordinance, Cap. 26 and/or the Supply of Services (Implied Terms) Ordinance, Cap. 457 shall be limited to:

- (i) The repair or replacement of the Equipment or the supply of equivalent equipment; or
- (ii) The cost of such repair, replacement or supply.

11.6 For non Driventic products, warranty conditions of the manufacturer of the Equipment will apply and prevail.

12. LIABILITY

12.1 Limitation of liability

Subject to clauses 11 and 12, and to the extent permitted by law, Driventic limits any liability in respect of non-insured risks, whether in contract, tort or otherwise, for any damage or loss, arising out of this Contract or the Driventic Standard Products & Parts supplied pursuant hereto up to an aggregate limit of 10% of the Contract price.

12.2 To the extent permitted by law, Driventic excludes all liability for any indirect, incidental or consequential expense, loss, damages or cost, loss of profits, revenue or business interruption arising in any way out of or in relation to these general terms and conditions of sale and otherwise at law, equity, common law or by operation of statute, whether or not the likelihood of such loss or damage was contemplated.

12.3 In respect of insured risks, Driventic accepts liability in relation to damage caused to the Purchaser's and third party property by a fault (excluding damages for loss of use where the failure of a Product to meet the level of

performance, quality, fitness or durability expressly or impliedly warranted or represented by Driventic) attributable to the Product or part to the limit of:

- a) HKD 10M per event; and
- b) HKD 20M in the aggregate for all liabilities arising out of or relating to or in connection with this Contract.

12.4 Nothing in these General Terms & Conditions excludes or restricts Driventic's liability for (a) death or personal injury resulting from its negligence, or (b) any other liability which by law cannot be excluded or restricted.

13. PATENTS AND DESIGN RIGHTS

In the event of any claim or claims in respect of any infringement of a Registered Design, Trademark, Copyright or Patent, the specification of which is published prior to the date of the offer relating to any part of the Equipment supplied by Driventic (other than a part based on a design specified by the Purchaser) Driventic will at its expense either replace or modify such part with a non infringing part or procure for the Purchaser the right to use such part provided. Driventic must first be given full opportunity to conduct all negotiations in respect of such claim and such claim shall not be accepted by the Purchaser without prior written consent of Driventic. In no event shall Driventic incur any liability for losses arising from the use or non-use of any infringing part. If it is not economically feasible or possible to negotiate such a claim within a reasonable period of time, Driventic shall, at its discretion, be able to rescind the contract. The Purchaser warrants that any design or instructions furnished or given by him shall not be such as to cause Driventic to infringe any Patent, Registered Design, Trademark or Copyright in the execution of the order.

The patent and design rights held by Driventic and relating to Equipment offered or supplied by Driventic shall remain the absolute property of Driventic and Driventic's designs and drawings shall not be reproduced or disclosed without Driventic's written consent. The Purchaser will not, without Driventic's previous written consent, copy or allow others to copy any drawings, Equipment or part thereof supplied by Driventic.

14. BANKRUPTCY, LIQUIDATION

If the Purchaser,

- (i) being a person, dies or commits an act of bankruptcy.
- (ii) being a company, takes or shall have taken against it any action for the winding up of the company or the placing of the company under official management, administration or receivership other than for purposes of reconstruction,

then Driventic, at its option, and without prejudice to any other rights Driventic may have under the Contract or at law;

- (a) may by notice in writing to the Purchaser forthwith terminate the Contract or suspend manufacture or delivery of any Equipment then outstanding; and
- (b) retain any security given or monies paid by the Purchaser and apply this against the assessed loss and damages incurred by Driventic in the performance of the Contract.

15. RETURNED GOODS

Returned goods will not be accepted by Driventic and credited to the Purchaser unless Driventic agrees thereto in writing prior to such re-delivery and unless such re-delivery takes place prior to the expiration of fourteen (14) days from the date upon

which the goods left Driventic's place of business. All transport charges in connection with any re-delivery will be prepaid by the Purchaser and goods shall remain at the risk of the Purchaser until returned to Driventic's store. Any credit given will be based on the condition of the goods on arrival at Driventic's store. All goods, if accepted, will be credited less a 15% Restocking Fee.

16. PERSONAL DATA AND INFORMATION

Driventic adheres to the Personal Data (Privacy) Ordinance, Cap. 486 and the Codes of Practice and guidelines issued thereunder in respect of any personal information collected from an individual. In respect of such personal information, Driventic discloses that:

- (i) the identity of Driventic and how to contact Driventic are set out in the offer;
- (ii) the individual is entitled to access to the personal information collected;
- (iii) the personal information is collected for the purpose of supplying the Equipment; and
- (iv) the consequences if the personal information is not provided is that Driventic may be unable to supply the Equipment.

17. USE OF SOFTWARE

- a) If software is supplied, the Purchaser shall be granted a non-exclusive right to use it and its documentation. It shall be provided for use on the intended object supplied. The software shall not be used on more than one system.
- b) The Purchaser shall reproduce, revise, compile or translate the software or convert it from object code to source code only to the extent permitted by law. The Purchaser undertakes not to remove manufacturer's data (in particular copyright notices) or to change them without Driventic's prior written consent. All other rights to the software and documentation, including copies thereof, shall remain with Driventic or the software supplier. Sublicensing of it shall not be permitted.
- c) Before providing the software to the Purchaser, Driventic shall use state-of-the-art, up-to-date protection measures to check it for computer viruses, Trojan horses, virus hoaxes and similar programs, program parts and malicious functions that may result in loss or falsification of data or programs or impairment of systems or parts of them (hereinafter referred to as "computer malware"). Nevertheless, it is not possible to rule out the risk that the software contains unknown or mutated computer malware or that such malware may enter an (operating or control) system of the Purchaser at a later time and possibly change or delete program data of the software or other data or programs or impair systems.

- d) Consequently, the Purchaser himself shall likewise take measures to protect against computer malware and other destructive data. The Purchaser shall be obliged to test whether the supplied software or files are infected with computer malware before executing the software or opening the files. This shall also apply to software the Purchaser wishes to use as part of his (operating or control) systems, where the functionality of his software may be affected thereby.

- e) The Purchaser shall be obliged to back up data himself on a regular basis in order to prevent loss of it as a result of computer malware. If data is lost or manipulated, Driventic shall be liable only for the cost involved in restoring the correct data if the Purchaser has backed it up properly.

18. SERVICE OF NOTICES

For the purpose of service of any document or notice in connection with the offer or Contract it shall be sufficient for either party to forward such document or notice by ordinary mail if within Hong Kong or air mail beyond Hong Kong, with appropriate postage prepaid, or by facsimile, email, telegram or cable to the last known address of the other party.

19. APPLICABLE LAW, JURISDICTION

- a) In the absence of agreement to the contrary, the Contract shall be construed and operate in conformity with the laws of Hong Kong which is hereby deemed to be the proper law of the Contract.
- b) Subject to Clause 19 c), the parties submit to the exclusive jurisdiction of the courts of Hong Kong.
- c) Notwithstanding the preceding subclause, Driventic may at its election institute proceedings against the Purchaser in the courts of the place where the Purchaser carries on business or has assets