

TERMS AND CONDITIONS OF SALE EFFECTIVE AS OF NOVEMBER 1, 1999

1. **OFFER AND ACCEPTANCE.** This writing constitutes an offer or counter-offer by Driventec S. de R.L. de C.V. ("DRIVENTIC") to sell the equipment described herein ("Equipment") in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Purchaser and is expressly conditioned upon Purchaser's assent to these terms and conditions. Purchaser will be deemed to have assented to these terms and conditions when: (a) Purchaser signs and delivers to DRIVENTIC an acknowledgment copy of any of DRIVENTIC's sales, quotation, order acknowledgment or invoice forms; (b) Purchaser has received delivery of the whole or any part of the Equipment described herein; or (c) Purchaser has otherwise assented to the terms and conditions hereof. No additional or different terms or conditions will be binding upon DRIVENTIC unless specifically agreed to in writing. DRIVENTIC hereby objects to any such additional or different provisions contained in any purchase order or other communication heretofore or hereafter received from Purchaser. This offer expires 60 days from its date, unless goods are subsequently shipped by DRIVENTIC and accepted by Purchaser.

2. **PRICES.** All prices listed are payable in the currency quoted. All prices are subject to change without notice, and the price of Equipment on order but unshipped will be adjusted to the price in effect at the time of shipment.

3. **TERMS OF PAYMENT.** Unless otherwise specified on the face hereof or in DRIVENTIC's Order Acknowledgment, payment is due, at DRIVENTIC's option, either upon presentation of shipping documents or 30 days from date of invoice, subject to DRIVENTIC's approval of Purchaser's credit. DRIVENTIC may at any time change credit or payment terms or require payment in advance. If, in the judgment of DRIVENTIC, the financial condition of Purchaser at any time does not justify continuing any terms of payment, DRIVENTIC may require full or partial payment in advance. Invoices will be dated as of the time DRIVENTIC is prepared to make shipment. Delays or deferments of delivery, for any reason, whether or not at the request of Purchaser, shall not extend the terms of payment.

The payment of the price shall be made at the domicile of DRIVENTIC located at _____, against the delivery of the currency quoted or the equivalent in Mexican currency at the rate of exchange published by Banco de Mexico in the Federal Official Gazette on the date of payment, in the event of US dollars and for any other foreign currency, at the rate of exchange published by Banco de Mexico on the Federal Official Gazette on the month prior to the date of payment, which is referenced to US dollars. Interest will be charged at the prime rate in effect the first business day of the given month, on accounts past due, which shall be actualized in the event the due amounts are not paid in the following month. Notwithstanding the above, at its option at any time, DRIVENTIC may require Purchaser to make payment by irrevocable and confirmed letter of credit, and may defer shipment or cancel any order if Purchaser does not promptly provide such a letter of credit. Any such letter of credit shall be issued for DRIVENTIC's benefit by a Mexican bank, shall be subject to and governed by the Mexican laws and shall provide for payment against DRIVENTIC's invoice and bill of lading, and shall be in form and substance satisfactory to DRIVENTIC.

4. **TITLE AND SECURITY INTEREST.** In order to guaranty to DRIVENTIC, in the event of default of the Purchaser, the exact and punctual payment of

the totality of the price of the Equipment, the Purchaser hereby creates and executes a pledge on the Equipment in favor of DRIVENTIC, remaining the Purchaser as depository, who as of now accepts his appointment as judicial depository for civil and criminal responsibility, and at all time in favor of DRIVENTIC.

In view of the foregoing, the Purchaser hereby obligates to register this pledge before the Public Registry of the Property of its corporate domicile and to deliver a copy of such registration to DRIVENTIC within the fifteen (15) days following the date of delivery of the Equipment.

5. **TAXES AND OTHER CHARGES.** Customs duties are included in the prices specified only if specifically stated, and then only in an amount determined by the rate in effect on the date of DRIVENTIC's Order Acknowledgment; otherwise customs duties paid by DRIVENTIC are for Purchaser's account. Any tax, fee or charge of any kind imposed by any governmental authority, on or measured by the transaction between DRIVENTIC and Purchaser shall be paid by Purchaser in addition to the prices quoted or invoiced, except the Income Tax, which shall be paid by DRIVENTIC. In the event DRIVENTIC is required to pay any such tax, fee or charge, Purchaser shall reimburse DRIVENTIC therefor. At DRIVENTIC's request, Purchaser shall deliver to DRIVENTIC proof of payment of all such taxes, fees or charges or evidence of exemption therefrom.

6. **DELIVERY.** All prices hereunder are F.O.B. point of shipment unless otherwise stated in DRIVENTIC's Order Acknowledgment or on the reverse side hereof. Unless otherwise agreed in writing, delivery of Equipment to any carrier constitutes delivery to Purchaser; thereafter, regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by Purchaser. DRIVENTIC reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept remaining deliveries. Method and route of shipment shall be at the discretion of DRIVENTIC unless Purchaser shall specify otherwise; any additional expense of the method or route of shipment specified by Purchaser shall be borne entirely by Purchaser. Purchaser shall bear all costs of bags, barrels, boxes, pallets or other containers used to ship Equipment sold hereunder. No shipping containers may be returned to DRIVENTIC unless such return is accepted in advance by DRIVENTIC in writing and unless all return freight is prepaid by Purchaser.

7. **CLAIMS.** Purchaser shall inspect the Equipment immediately upon arrival and immediately file with the delivering carrier claims for loss or damage during transportation; DRIVENTIC must be notified immediately in writing of any such claims. All other claims must be made in writing to DRIVENTIC within ten days from receipt of the Equipment. Purchaser's failure to give such notice shall constitute unqualified acceptance of all shipments made prior to DRIVENTIC's receipt of Purchaser's notice of claim, and shall constitute a waiver of all such claims by Purchaser. DRIVENTIC shall not be responsible or liable for any damage due to improper storage or handling prior to installation and start-up. Purchaser shall provide DRIVENTIC with an opportunity to inspect all Equipment with respect to which a claim is made, either at Purchaser's or

DRIVENTIC's premises. DRIVENTIC shall not credit Purchaser for any Equipment or parts returned to DRIVENTIC or any costs incurred by Purchaser for the repair thereof, as the case may be, without DRIVENTIC's prior written consent therefor, nor shall DRIVENTIC be responsible for any such Equipment or parts.

8. **DELAYS.** All delivery dates are approximate. DRIVENTIC shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of Purchaser, embargo or other governmental act, regulation or request, fire, flood, accident, sabotage, strike, slowdown or other labor difficulties, war, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials or manufacturing facilities or, without limiting the foregoing, any other delays beyond DRIVENTIC's control. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Purchaser's exclusive remedy for other delays and for DRIVENTIC's inability to deliver for any reason, including DRIVENTIC's inability to produce Equipment which meets the requirements of this contract, shall be rescission of this agreement. In no event shall DRIVENTIC be responsible for any delay after delivery of the Equipment to a carrier at any point of shipment.

9. **STORAGE.** If the Equipment is not shipped within fifteen (15) days after notification to Purchaser that it is ready for shipping, for any reason beyond DRIVENTIC's reasonable control, including Purchaser's failure to give shipping instructions, DRIVENTIC may store such Equipment at the Purchaser's risk and expense in a warehouse or yard or upon DRIVENTIC's premises. During any period of delay or deferment requested by Purchaser, Purchaser shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission by DRIVENTIC of invoices therefor.

Purchaser may not obtain any delay or deferment of delivery unless DRIVENTIC agrees thereto in writing. In no event will DRIVENTIC agree to any such delay or deferment unless Purchaser establishes good and sufficient cause therefor, to the satisfaction of DRIVENTIC, and unless Purchaser agrees in writing to terms acceptable to DRIVENTIC. No period of delay or deferment at the request of Purchaser may exceed 60 days.

10. **CHANGES.** DRIVENTIC may at any time make such changes in design and construction of Equipment as DRIVENTIC deems appropriate, without notice to Purchaser. DRIVENTIC may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

No order may be altered by Purchaser except upon terms and conditions acceptable to DRIVENTIC, as evidenced by DRIVENTIC's written consent. In the event Purchaser requires and DRIVENTIC agrees to any change in the Equipment, DRIVENTIC may, in its sole discretion, adjust the order or the prices specified to compensate DRIVENTIC for any increases in cost to DRIVENTIC, and may likewise adjust the specified delivery schedules to compensate for any increases in the time required to manufacture or procure the Equipment.

11. **LIMITED WARRANTY.** DRIVENTIC warrants to Purchaser that the Equipment supplied by DRIVENTIC hereunder: (a) conforms to the dimensions and

specifications of DRIVENTIC's standard products as described in DRIVENTIC's suppliers catalog, quotation, Order Acknowledgment or on the face hereof, or, if different from the foregoing, to Purchaser's print dimensions, tolerances and material specifications, if provided to and accepted by DRIVENTIC; and (b) is free from defects in materials and workmanship. DRIVENTIC's obligation in this paragraph 11 is limited, however, at its option to a refund of the purchase price or the repair or replacement of any Equipment which DRIVENTIC, in its sole discretion, deems nonconforming or defective before the earlier of 6 months from the first date of operation or 9 months from the date of shipment. Such credit, repair or replacement shall be DRIVENTIC's sole obligation and Purchaser's exclusive remedy hereunder and shall be conditioned upon DRIVENTIC's receipt of notice of any nonconformity within 10 days after receipt of shipment or, as the case may be, notice of any alleged defect within 10 days after its discovery and, at DRIVENTIC's option, return of such Equipment to DRIVENTIC, F.O.B. its factory.

DRIVENTIC's warranty hereunder applies only to Equipment which is properly installed, operated and maintained in accordance with DRIVENTIC's instructions and suppliers operating manuals and under normal conditions and proper supervision.

Equipment or components supplied by DRIVENTIC hereunder which are obtained by DRIVENTIC from a third party supplier are not warranted by DRIVENTIC in any way, but DRIVENTIC agrees to assign to Purchaser any warranty rights in such Equipment or components that DRIVENTIC may have from the original manufacturer or third party supplier.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND DRIVENTIC EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER DRIVENTIC NOR ANY OF ITS SUPPLIERS ASSUMES, OR AUTHORIZES ANY PERSON TO ASSUME ON ITS BEHALF, ANY OTHER WARRANTY OR OBLIGATION.

Any description of the Equipment, whether in writing or made orally by DRIVENTIC or its agents, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Purchaser's order are for the sole purpose of identifying the Equipment and shall not be construed as an express warranty except as otherwise set forth in this paragraph 11. Any suggestions by DRIVENTIC or its agents regarding use, application or suitability of the Equipment shall not be construed as an express warranty unless confirmed to be such in writing by DRIVENTIC.

12. **RETURNS.** Equipment may be returned to DRIVENTIC only when Purchaser obtains in advance DRIVENTIC's written permission, signed by duly authorized personnel of DRIVENTIC. Returned Equipment must be securely packaged and reach DRIVENTIC without damage. Any cost incurred by DRIVENTIC to put Equipment in marketable condition will be charged to Purchaser.

13. **PATENTS, TRADEMARKS AND COPYRIGHTS.** To the best of DRIVENTIC's knowledge, the design and construction of the Equipment (except as the

result of incorporating a design or modification in the Equipment at Purchaser's request) does not infringe any valid Mexican patent. DRIVENTIC shall indemnify Purchaser and its customers against any final judgment awarded in any suit against Purchaser or its customers to the extent that such judgment is based upon a finding that DRIVENTIC breached the foregoing representation, provided that Purchaser, in writing, promptly notifies DRIVENTIC of the commencement of such suit and the assertion of the claims on which such suit is based, and affords DRIVENTIC the opportunity, at DRIVENTIC's option and expense, to settle and defend such suit and claims. If DRIVENTIC elects to defend any such suit and claims, Purchaser agrees to give DRIVENTIC all information, assistance and authority DRIVENTIC deems necessary to do so. This paragraph sets forth, with respect to infringements, DRIVENTIC's exclusive liability to Purchaser, its successors, assigns and customers and users of the Equipment. In no event shall DRIVENTIC's liability hereunder exceed the amount of the judgment on the infringement action.

Notwithstanding the foregoing, DRIVENTIC shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the Equipment in combination with other products or materials not furnished by DRIVENTIC. The foregoing states the entire liability of DRIVENTIC for infringement, and in no event shall DRIVENTIC be liable for consequential damages attributable to any infringement. The sale of Equipment hereunder may in no way be construed as an inducement by DRIVENTIC of any infringement by Purchaser.

As to any Equipment furnished by DRIVENTIC to Purchaser manufactured in accordance with drawings, designs, instructions or specifications proposed or furnished by Purchaser or any claim of contributory infringement resulting from the use or resale by Purchaser of Equipment sold hereunder, DRIVENTIC shall not be liable, and Purchaser shall indemnify DRIVENTIC and hold DRIVENTIC harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to DRIVENTIC's reasonable attorneys' fees and other costs of defense) incurred by DRIVENTIC as a result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary rights of third parties.

14. INSTALLATION AND OPERATION OF EQUIPMENT; INDEMNIFICATIONS. Purchaser shall install, operate and maintain the Equipment, and shall require its employees and agents to operate the Equipment, in compliance with DRIVENTIC's instructions and manufacture operating manuals and under normal conditions, safe operating procedures and proper supervision. Except as otherwise provided herein, DRIVENTIC is not responsible for providing or installing any guards or safety devices, whether or not required or recommended under the safety regulations of any jurisdiction. This remains the responsibility of Purchaser. Purchaser shall provide, install and use, and shall require its employees and agents to use, all such guards and safety devices and shall maintain such guards and safety devices in proper working order. In the event Purchaser shall fail to do so, Purchaser shall indemnify and hold DRIVENTIC free and harmless of and from any and all claims, liabilities and obligations with respect to any personal injuries or property damage directly or indirectly related to the operation or use of the Equipment. Purchaser shall also notify DRIVENTIC promptly, and in any event not later than 10 days after Purchaser has notice or knowledge thereof, of

any accident or malfunction involving the Equipment resulting in any personal injury or property damage and shall cooperate fully with DRIVENTIC in investigating and determining the causes of such accident or malfunction. In the event Purchaser fails to give such notice to DRIVENTIC or to cooperate with DRIVENTIC, Purchaser shall indemnify and hold DRIVENTIC free and harmless of and from any and all claims, liabilities and obligations relating to such accident or malfunction.

15. **EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY; PURCHASER'S INDEMNITY.** DRIVENTIC's liability with respect to breaches of warranty shall be limited as provided in Section 11 hereof. With respect to other breaches of this contract, DRIVENTIC's liability shall in no event exceed the price paid for the part, unit or component of the Equipment on which the claim is based. **DRIVENTIC SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO EQUIPMENT SOLD OR SERVICES RENDERED BY DRIVENTIC, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.** Without limiting the generality of the foregoing, DRIVENTIC specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or business, revenues or goodwill, loss of use of Equipment or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slowdown costs, spoilage of material, or for any other types of damage to property or economic loss. All the limitations and disclaimers contained in this paragraph and in the rest of this contract shall apply to claims of Purchaser's customers or any third party asserted by Purchaser against DRIVENTIC for indemnity or contribution, as well as direct claims of Purchaser against DRIVENTIC.

Purchaser shall indemnify DRIVENTIC against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which DRIVENTIC may incur as a result of any claim by Purchaser or others arising out of or in connection with the Equipment sold hereunder and based on defects not proven to have been caused solely by DRIVENTIC's negligence.

16. **TECHNICAL INFORMATION.** Any sketches, models, samples or designs submitted by DRIVENTIC shall remain the property of DRIVENTIC, and shall be treated as confidential unless DRIVENTIC has indicated in writing a contrary intent. Purchaser shall not, without the express written consent of DRIVENTIC, use or disclose such sketches, models and samples, or any design or production process or techniques revealed thereby.

17. **PURCHASER'S PROPERTY.** Any property of Purchaser placed in DRIVENTIC's custody for performance of this contract is not covered by insurance, and no risk is assumed by DRIVENTIC in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of DRIVENTIC.

18. **MANUALS, BROCHURES, INSTRUCTIONS.** Any and all operating manuals, instructions, brochures, warnings or the like concerning the Equipment supplied hereunder shall be written in the Spanish language and are supplied as an aid to Purchaser and are not represented to be accurate, complete or sufficient. Purchaser warrants that it will accurately translate such manuals, instructions, brochures or warnings to appropriate languages and dialects so that its employees and all third party users of the Equipment will be properly informed of all the contents thereof. Purchaser will indemnify and hold harmless DRIVENTIC against all liabilities and expenses (including attorney fees) arising out of the use of the Equipment by Purchaser or a third party in any case where Purchaser fails to make available adequate warnings, labels, manuals and instructions concerning the proper and normal use of the Equipment.

19. **SEVERABILITY.** If any provisions of these terms and conditions of sale shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provision hereof, which shall be construed as if such illegal and unenforceable provision(s) had not been inserted herein.

20. **DRIVENTIC'S REMEDIES.** In the event that Purchaser fails to make any payments when due, fails to take delivery at the specified time or destination or, by any action or inaction, prevents or frustrates any delivery or any shipment to effect delivery, or otherwise defaults in the performance of these terms, DRIVENTIC may cancel or terminate the Contract of Sale. In the event of any such cancellation or termination, Purchaser shall pay to DRIVENTIC (a) the prices specified for all Equipment completed prior to such cancellation or termination; (b) the amount of DRIVENTIC's expenditures and financial obligations in connection with all unfinished Equipment, including without limitation, any cancellation charges paid by DRIVENTIC or for which DRIVENTIC may be liable with respect to commitments made by DRIVENTIC in connection with the Equipment; and (c) the amount of DRIVENTIC's loss of profits, as determined by DRIVENTIC, arising out of such cancellation or termination. The rights and remedies of DRIVENTIC hereunder are not exclusive but are in addition to any other rights and remedies which shall be available to DRIVENTIC under applicable law.

21. **WAIVER.** No waiver by DRIVENTIC of any default hereunder shall operate as a waiver of any other default or of the same default on a future occasion.

22. **GOVERNING LAW. THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN DRIVENTIC AND PURCHASER, AND SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF MEXICO CITY, FEDERAL DISTRICT (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS).**

23. **ARBITRATION.** Any controversy or claim arising out of or relating to this Contract and these Terms and Conditions, or any breach hereof, including, without limitation, any claim that this Contract and Terms and Conditions, or any part hereof, is invalid, illegal or otherwise voidable or void and that the Parties are not able to settle through friendly consultation, shall be submitted to arbitration in accordance with the rules then in force of the American Arbitration Association. The arbitration proceedings shall be conducted in English. The arbitration shall be

conducted by 3 (three) arbitrators appointed in accordance with such rules. The arbitration shall be final and binding on both parties. The arbitration will take place in the city of Mexico, Federal District.

**TERMS AND CONDITIONS OF SALE
FOR Driventic, S. de R.L. de C.V.**

I. Face of Sales Form.

A. Quotation Form.

Driventic, S. de R.L. de C.V. should replace the current language contained at the bottom of its existing Quotation form with the language set forth below:

"Please complete this section and return the acknowledgment copy to us. This quotation is conditioned upon acceptance by Purchaser of these terms and conditions within _____ days from the date hereof.

ALL SALES ARE SUBJECT TO THESE TERMS AND CONDITIONS OF SALE. THE UNDERSIGNED PURCHASER ACCEPTS THE OFFER DESCRIBED HEREON, SUBJECT TO THE TERMS AND CONDITIONS OF SALE APPEARING ON THE FACE AND REVERSE SIDES OF THIS PAGE AND ON ANY ATTACHMENTS HERETO. THESE LIMIT DRIVENTIC'S LIABILITY.

Acceptance of Terms and
Conditions:

Date

Purchaser

By _____"

B. Order Acknowledgment Form.

DRIVENTIC should replace the current language contained on the bottom of its Order Acknowledgment form with the language set forth below:

"(Acknowledgment Copy 1 - Retained by Purchaser)

WE ARE PLEASED TO OFFER THE EQUIPMENT/SERVICE SUBJECT TO THE TERMS AND CONDITIONS APPEARING ON THE FACE AND REVERSE SIDES OF THIS PAGE AND ON ANY ATTACHMENTS HERETO. THESE LIMIT OUR LIABILITY.

Please acknowledge acceptance hereof by signing and returning to us the attached acknowledgment copy."

"(Acknowledgment Copy 2 - Returned to DRIVENTIC)

**WE HEREBY ACCEPT THE OFFER DESCRIBED HEREON,
SUBJECT TO THE TERMS AND CONDITIONS APPEARING ON
THE FACE AND REVERSE SIDES HEREOF AND ON ANY
ATTACHMENTS HERETO.**

Date

Purchaser

By _____"

C. Invoice Form.

DRIVENTIC should replace the current language contained at the bottom of its existing Invoice form with the language shown below:

**THANK YOU FOR YOUR BUSINESS. ALL SALES ARE SUBJECT
TO THESE TERMS AND CONDITIONS OF SALE. YOUR
ACCEPTANCE OF SHIPMENT CONSTITUTES ACCEPTANCE
OF THE TERMS AND CONDITIONS APPEARING ON THE
FACE AND REVERSE SIDES OF THIS FORM AND ON ANY
ATTACHMENTS HERETO. THESE LIMIT OUR LIABILITY."**