

STANDARD TERMS AND CONDITIONS OF SALE



1. **OFFER AND ACCEPTANCE.** This writing constitutes an offer or counter-offer by Driventic LLC ("DRIVENTIC") to sell the goods and/or provide the services (the "Work") described in the attached Order Acknowledgment or similar document from DRIVENTIC (the "Order") in accordance with these terms and conditions ("Terms"). These Terms and the Order are not an acceptance of any offer made by Purchaser. Any acceptance of an offer from Purchaser for the Work is expressly limited to, and expressly made conditional on, Purchaser's acceptance of these Terms. DRIVENTIC hereby objects to any additional or different terms from Purchaser. This offer expires 30 days from its date, unless Work is subsequently provided by DRIVENTIC and accepted by Purchaser. If the Order contains terms that conflict with these Terms, the Order's terms prevail.

2. **TERMS OF PAYMENT.** The terms of payment are as specified on the Order or on the invoice if not in the Order. Invoices will be dated as of the time DRIVENTIC is prepared to make shipment. Delays or deferrals of delivery shall not extend the terms of payment.

3. **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 then-in effect, on the Order; otherwise customs duties paid by DRIVENTIC are for Purchaser's account. Any manufacturer's occupation, use, sales, excise, or value-added tax; inspection or testing fee; or any other 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. 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.

4. **DELIVERY.** Delivery and risk of loss shall be as designated on the Order Acknowledgment per INCOTERMS (2010). Title to goods passes to Purchaser upon full payment. DRIVENTIC may make delivery in instalments; all such instalments to be separately invoiced and paid for when due per invoice, without regard to remaining subsequent deliveries. Delay in delivery of any instalment shall not allow Purchaser to reject remaining deliveries.

5. **CLAIMS.** Purchaser shall inspect any goods 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 10 days from receipt of the goods or completion of the services. Purchaser's failure to give such notice shall constitute unqualified acceptance of all Work, and shall constitute a waiver of all claims by Purchaser. Purchaser shall provide DRIVENTIC with an opportunity to inspect all Work with respect to which a claim is made, either at Purchaser's or DRIVENTIC's premises. DRIVENTIC shall not credit Purchaser for any goods returned to DRIVENTIC or any costs incurred by Purchaser for the repair thereof, as the case may be, without DRIVENTIC's prior written consent, nor shall DRIVENTIC be responsible for any such Work.

6. **FORCE MAJEURE.** DRIVENTIC shall not be in breach of contract or liable for any damages or losses if it suffers delay in performance 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 (a "force majeure event"). If a force majeure event occurs, performance/delivery date(s) shall be extended by a time at least equal to the period of the delay and its consequences. If a force majeure event delays Seller's performance by more than 30 consecutive days or 90 days in the aggregate, either party may cancel the Order without liability to the other.

7. **DELAYS.** If DRIVENTIC fails to complete any Work by any guaranteed date for reasons solely within DRIVENTIC's control, then DRIVENTIC shall pay to Purchaser, as liquidated damages and not as a penalty, 0.1% of the price payable under the Order for each week of such delayed Work; provided, however, that in no event (a) shall an unexcused delay in Work not substantially necessary for start-up of Purchaser equipment give rise to liquidated damages, nor (b) shall such liquidated damages exceed 5% of the price payable under the Order for such delayed Work. Purchaser and DRIVENTIC agree that in light of the difficulty in ascertaining the actual damages arising from such an unexcused delay, the above liquidated damages constitute a fair and adequate remedy for Purchaser, and shall be Purchaser's sole and exclusive remedy for such delay. Purchaser may not terminate or cancel the Order for any delay unless and until the liquidated damages cap set forth above is reached and DRIVENTIC has failed to continue efforts to diligently complete the Work.

8. **STORAGE.** DRIVENTIC shall have no obligation to store any goods or any of Purchaser's equipment beyond the date that DRIVENTIC is ready to ship such goods or return such equipment. Purchaser shall be liable to DRIVENTIC for reasonable costs for storage, shipment, return delivery, or other costs of care of such goods or equipment beyond any such date. DRIVENTIC may store all such goods or equipment at Purchaser's risk and expense in a warehouse, yard, upon DRIVENTIC's premises, or return them to Purchaser at Purchaser's cost. Purchaser may not obtain any delay or deferment of delivery unless DRIVENTIC first agrees in writing.

9. **CHANGES.** DRIVENTIC may at any time make changes in the design and construction of Work within the general scope of Purchaser's specification 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 in writing. In the event of any such change, Purchaser shall be liable to DRIVENTIC for any increased costs and shall provide DRIVENTIC an adjustment to performance times, in amounts and durations acceptable to DRIVENTIC.

10. **LIMITED WARRANTY.** DRIVENTIC warrants that any services provided under the Order are performed in a professional and workmanlike manner and that any goods provided under the Order are free from material defects in materials and workmanship. Such services warranty lasts for 3 months after performance of the services. Such goods warranty lasts for the earlier of 6 months from the first date of operation of the goods or 9 months from the date of shipment of the goods. If any Work fails to conform to the above warranties, DRIVENTIC shall, at its option, reperform that portion of the services, or repair or replace the goods, which failed to conform to the warranty, or adjust the purchase price. Such reperformance, repair, replacement, or price adjustment shall be DRIVENTIC's sole obligation and Purchaser's exclusive remedy for nonconforming Work and shall be conditioned upon DRIVENTIC's receipt of written notice of any nonconformity within 10 days after Purchaser noticed or should have noticed the nonconformity. Purchaser is responsible for all costs for removal and reinstallation in connection with the foregoing remedies.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DRIVENTIC EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. **RETURNS.** Goods may be returned to DRIVENTIC only with DRIVENTIC's prior written consent on terms acceptable to DRIVENTIC. Purchaser shall be liable to DRIVENTIC for any costs to return goods to marketable condition.

12. **INTELLECTUAL PROPERTY.** DRIVENTIC does not transfer any intellectual property rights to Purchaser under the Order (nor grant Purchaser any right to use any intellectual property other than for purposes expressly agreed to by DRIVENTIC), and any and all proprietary and intellectual property provided or disclosed to Purchaser by DRIVENTIC shall be treated by Purchaser as confidential.

13. **HEALTH AND SAFETY; INDEMNIFICATIONS.** Purchaser is responsible for providing and properly installing any guards or safety devices required under the Occupational Safety and Health Act or the safety regulations of any jurisdiction. Purchaser shall 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. For purposes of applicable environmental law, Purchaser shall be deemed to have charge, control, and management of the Work site with respect to conditions existing as of the date of the Order, and shall notify DRIVENTIC of the existence and specific location of any known hazardous material or substances (including but not limited to asbestos) prior to DRIVENTIC entering any Work site. In the event Purchaser fails to do any of the foregoing, 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, property damage, and other damages or losses directly or indirectly arising out of such failure. Notwithstanding anything in this paragraph or otherwise to the contrary, in no event shall DRIVENTIC's scope of work include handling, removing, or abating asbestos.

14. **DRIVENTIC'S LIMITATIONS OF LIABILITY.** DRIVENTIC'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS ORDER, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, DEVELOPMENT, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, OR USE OF ANY GOODS COVERED BY OR FURNISHED UNDER THIS ORDER SHALL IN NO CASE EXCEED THE ORDER PRICE ALLOCABLE TO THE GOODS, OR PART THEREOF, OR SERVICE WHICH GIVES RISE TO THE CLAIM. NOTWITHSTANDING ANYTHING IN THIS ORDER TO THE CONTRARY, DRIVENTIC WILL NOT BE LIABLE FOR ANY SPECIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF USE OF ANY PROPERTY OR CAPITAL OF PURCHASER OR ANY THIRD PARTY, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO DRIVENTIC IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY DRIVENTIC. THESE EXCLUSIONS OF TYPES OF DAMAGES AND LIMITATION ON THE AMOUNT OF DAMAGES SHALL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY. THESE EXCLUSIONS OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THE ORDER. IF PURCHASER TRANSFERS TITLE TO, OR LEASES THE GOODS SOLD HEREUNDER TO, OR OTHERWISE PERMITS OR SUFFERS USE BY, ANY THIRD PARTY, PURCHASER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING DRIVENTIC AND ITS SUPPLIERS THE PROTECTION OF THE PRECEDING SENTENCE.

15. **INDEMNIFICATION.** Any indemnity by DRIVENTIC shall be limited to claims against Purchaser from third parties for intellectual property infringement, or for bodily injury, wrongful death, or property damage and only to the extent caused by the negligence or intentional misconduct of DRIVENTIC or those in DRIVENTIC's control. In no event shall DRIVENTIC be liable to Purchaser or any third party for the fault, intentional misconduct, negligence, or acts or omissions of Purchaser or any third party. DRIVENTIC shall have the exclusive control of the defense of any claim covered by the above indemnity, including but not limited to settlement negotiations. Purchaser shall provide DRIVENTIC with prompt written notice of any such litigation or claim. If any goods are held to infringe any valid patent and its use is enjoined, or DRIVENTIC deems continued use inadvisable, DRIVENTIC may, at its sole cost and option, procure for Purchaser the right to continue the use of such part of the goods, or replace or modify the same with non-infringing parts maintaining the original performance characteristics of the goods.

16. **PURCHASER'S PROPERTY.** Any insurance coverage for property of Purchaser placed in DRIVENTIC's custody for performance of the Order is limited to coverage currently included in DRIVENTIC's standard insurance program.

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

18. **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, suspend, or terminate the Order. In the event of any such cancellation, suspension, or termination, Purchaser shall pay to DRIVENTIC (a) the prices specified for all Work completed prior to such cancellation, suspension, or termination; (b) the amount of DRIVENTIC's expenditures and financial obligations in connection with all unfinished Work, 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 Work; and (c) the amount of DRIVENTIC's loss of profits, as determined by DRIVENTIC, arising out of such cancellation, suspension, or termination; and (d) in the event of suspension only, the Work schedule shall be extended for the duration of the suspension plus additional time for resumption of Work. 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.

19. **TERMINATION FEE.** If Purchaser terminates the Order for goods for convenience, in addition to other available remedies, Purchaser shall pay DRIVENTIC a termination fee. The fee shall be a % of the contract price based on the % of delivery time lapsed between the date of the Order and the date DRIVENTIC received a written termination notice (in relation to delivery time remaining), per below:

Delivery time lapsed	% of Contract Price
0%	10%
up to 10%	18%
up to 20%	30%
up to 30%	48%
up to 40%	62%

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up to 50%	72%
up to 60%	80%
up to 70%	88%
up to 80%	95%
up to 90%	100%
up to 100%	100%

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

21. **GOVERNING LAW.** These Terms shall constitute the entire agreement between DRIVENTEC and Purchaser, and shall be governed by and construed according to the internal laws of the state of New York and of the United States of America (without reference to principles of conflicts of laws). Any dispute shall be heard in a federal court of competent jurisdiction in New York. **EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL.** The rights and obligations of the parties hereunder shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

22. **EXPORT COMPLIANCE.** Purchaser shall be responsible for compliance with all applicable export control laws and regulations, including but not limited to those of the U.S. Government Office of Foreign Assets Control (OFAC), Export Administration Regulations (EAR), and the International Traffic in Arms Regulations (ITAR). DRIVENTEC shall not be held liable to Purchaser for any failure to deliver products as a result of (i) governmental refusal to grant any export or re-export authorization; (ii) cancellation of any export or re-export authorization; or (iii) any change or subsequent interpretation of a law or regulation after the date of an order that adversely affects or impacts DRIVENTEC's costs or ability to perform its obligations. DRIVENTEC shall not be liable to Purchaser for Purchaser's failure to comply with any export control regulation. Purchaser shall notify DRIVENTEC of any applicable export control classification (e.g., USML category or ECCN) of any item (hardware, software, source code, technology/technical data) prior to furnishing such item to DRIVENTEC or requesting DRIVENTEC manufacture such item. For all items to be received by Purchaser from DRIVENTEC, Purchaser certifies that it will not export, re-export, or transport any such item, or otherwise perform any act, contrary to OFAC, EAR, or ITAR prohibitions and restrictions. This includes but is not limited to observing all OFAC country and list-based sanctions and complying with all EAR Part 736, 744, and 746 restrictions. Under certain circumstances, DRIVENTEC will require that Purchaser provide information on the ultimate destination of items provided to Purchaser, including information regarding the end use and end user. Purchaser shall furnish such information to DRIVENTEC upon such request. Purchaser agrees that the export control requirements listed above shall survive the completion, early termination, cancellation, or expiration of the applicable Order.