

## Terms and Conditions of Sale

Customer and Drivven ("Drivven") agree that the purchase and sales of Drivven hardware and software products ("the Products") and Drivven hardware and software services and support (the "Services") are made under these terms and conditions, and that Drivven SHALL NOT BE BOUND BY CUSTOMER'S ADDITIONAL OR DIFFERENT TERMS. Customer's order and purchase of the Products and Services shall constitute acceptance of these terms and conditions.

- 1. TITLE.** Title to the Products shall pass at Drivven's plant. Drivven retains a security interest and right of possession in the Products until Customer makes full payment.
- 2. TAXES.** Product prices are exclusive of, and Customer shall pay, applicable sales, use, service, value added or like taxes, unless Customer has provided Drivven with an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities.
- 3. PRICES AND PAYMENT.** All quotations shall expire thirty (30) days from date of issuance, unless otherwise set forth on the quotation or agreed in writing. Customer shall make payment in full prior to or upon delivery by cashier's check, credit card, or money order, unless Drivven approves Customer for credit terms. If Drivven approves Customer's credit application, payment shall be due no later than 30 days from the date of Drivven's invoice. All sums not paid when due shall accrue interest daily at the lesser of a monthly rate of 1.5% or the highest rate permissible by law on the unpaid balance until paid in full. Except for Canada where payment shall be in Canadian Dollars, payments for orders accepted in the United States shall be made in U.S. Dollars. In the event of any order for several units, each unit(s) will be invoiced when shipped. Exceptions will be made for government purchase orders.
- 4. ORDERS.** All orders are subject to acceptance by Drivven. Drivven's booking of an order shall constitute its acceptance of an order.
- 5. DELIVERY.** Drivven shall deliver the Products to a carrier at Drivven's plant. Customer shall pay all applicable freight charges. On Products sold to Customers in the United States, Canada, and Mexico, Drivven shall prepay all freight charges and other necessary fees and shall bear the risks of carrying out customs formalities and clearance; Drivven will invoice the customer for applicable charges as shipping and handling fees. Orders are entered as close as possible to the Customer's requested shipment date, if any. Shipment dates are scheduled after acceptance of orders and receipt of necessary documents. Claims for shipment shortage shall be deemed waived unless presented to Drivven in writing within forty-five (45) days of shipment.
- 6. LIMITED WARRANTY.** Drivven hardware Products are warranted against defects in materials and workmanship for one (1) year from the date Drivven ships the Products to Customer ("Delivery Date"). All software Products are licensed to Customer under the terms of the appropriate Drivven license. For a period of ninety (90) days from the Delivery Date, Drivven software Products (when properly installed on Drivven hardware Products) (a) will perform substantially in accordance with the accompanying written materials, and (b) the medium on which the software product is recorded will be free from defects in materials and workmanship under normal use and service. Any replacement of a licensed software product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Customer must obtain a Return Material Authorization number from Drivven before returning any Products under warranty to Drivven. Customer shall pay expenses for shipment of repaired or replacement Products to and from Drivven. After examining and testing a returned product, if Drivven concludes that a returned product is not defective, Customer will be notified, the product returned at Customer's expense, and a charge made for examination and testing. This Limited Warranty is void if failure of the Products has resulted from accident, abuse, misapplication, modification, improper calibration by Customer, Customer supplied third party software not intended for use with the applicable Drivven software, utilization of an improper hardware or software key or unauthorized maintenance or repair.
- 7. CUSTOMER REMEDIES.** Drivven's sole obligation (and Customer's sole remedy) with respect to the foregoing Limited Warranty shall be to, at its option, return the fees paid or repair/replace any defective Products, provided that Drivven receives written notice of such defects during the applicable warranty period. Customer may not bring an action to enforce its remedies under the foregoing Limited Warranty more than one (1) year after the accrual of such cause of action.
- 8. RETURN/CANCELLATION/CHANGE POLICY.** Customer may return unwanted Products within thirty (30) days of the Delivery Date. Customer shall pay a fifteen percent (15%) restocking charge on any unwanted Products returned to Drivven. No returns will be accepted after the thirty (30) day period has expired. Where special equipment or services are involved, Customer shall be responsible for all related work in progress; however, Drivven shall take responsible steps to mitigate damages immediately upon receipt of a written cancellation notice from Customer. A Return-Material Authorization number must be obtained from Drivven for return of any Products. Drivven may terminate any order if any representations made by Customer to Drivven are false or misleading. Changes to orders shall not be binding upon nor be put into effect by Drivven unless confirmed in writing by Drivven's appropriate representative.
- 9. NO OTHER WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED ARE MADE WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. NI DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE PRODUCTS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE AND DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. DRIVVEN EXPRESSLY DISCLAIMS ANY WARRANTIES NOT STATED HEREIN.
- 10. NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** The entire liability of Drivven and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) is set forth above. To the maximum extent permitted by applicable law, in no event shall Drivven and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, exemplary, or consequential damages, expenses, lost profits, lost savings, business interruption, lost business information, or any other damages arising out of the use or inability to use the Products, even if Drivven or its licensors, distributors, and suppliers has been advised of the possibility of such damages. Customer acknowledges that the applicable purchase price or license fee for the Products reflects this allocation of risk. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply. If the foregoing limitation of liability is not enforceable because an Drivven product sold or licensed to Customer is determined by a court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, in no event shall Drivven's liability for property damage exceed the greater of \$50,000 or fees paid for the specific product that caused such damage.

11. **WARNING:** (1) DRIVEN PRODUCTS ARE NOT DESIGNED WITH COMPONENTS AND TESTING FOR A LEVEL OF RELIABILITY SUITABLE FOR USE IN OR IN CONNECTION WITH SURGICAL IMPLANTS OR AS CRITICAL COMPONENTS IN ANY LIFE SUPPORT SYSTEMS WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO CAUSE SIGNIFICANT INJURY TO A HUMAN. (2) IN ANY APPLICATION, INCLUDING THE ABOVE, RELIABILITY OF OPERATION OF THE SOFTWARE PRODUCTS CAN BE IMPAIRED BY ADVERSE FACTORS, INCLUDING BUT NOT LIMITED TO FLUCTUATIONS IN ELECTRICAL POWER SUPPLY, COMPUTER HARDWARE MALFUNCTIONS, COMPUTER OPERATING SYSTEM SOFTWARE FITNESS, FITNESS OF COMPILERS AND DEVELOPMENT SOFTWARE USED TO DEVELOP AN APPLICATION, INSTALLATION ERRORS, SOFTWARE AND HARDWARE COMPATIBILITY PROBLEMS, MALFUNCTIONS OR FAILURES OF ELECTRONIC MONITORING OR CONTROL DEVICES, TRANSIENT FAILURES OF ELECTRONIC SYSTEMS (HARDWARE AND/OR SOFTWARE), UNANTICIPATED USES OR MISUSES, OR ERRORS ON THE PART OF THE USER OR APPLICATIONS DESIGNER (ADVERSE FACTORS SUCH AS THESE ARE HEREAFTER COLLECTIVELY TERMED "SYSTEM FAILURES"). ANY APPLICATION WHERE A SYSTEM FAILURE WOULD CREATE A RISK OF HARM TO PROPERTY OR PERSONS (INCLUDING THE RISK OF BODILY INJURY AND DEATH) SHOULD NOT BE RELIANT SOLELY UPON ONE FORM OF ELECTRONIC SYSTEM DUE TO THE RISK OF SYSTEM FAILURE. TO AVOID DAMAGE, INJURY, OR DEATH, THE USER OR APPLICATION DESIGNER MUST TAKE REASONABLY PRUDENT STEPS TO PROTECT AGAINST SYSTEM FAILURES, INCLUDING BUT NOT LIMITED TO BACK-UP OR SHUT DOWN MECHANISMS. BECAUSE EACH END-USER SYSTEM IS CUSTOMIZED AND DIFFERS FROM DRIVEN'S TESTING PLATFORMS AND BECAUSE A USER OR APPLICATION DESIGNER MAY USE DRIVEN PRODUCTS IN COMBINATION WITH OTHER PRODUCTS IN A MANNER NOT EVALUATED OR CONTEMPLATED BY DRIVEN, THE USER OR APPLICATION DESIGNER IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF DRIVEN PRODUCTS WHENEVER DRIVEN PRODUCTS ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING, WITHOUT LIMITATION, THE APPROPRIATE DESIGN, PROCESS AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION.
12. **FORCE MAJEURE.** Driven shall be excused for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of governments, natural catastrophes, acts of Customer, interruptions of transportation or inability to obtain necessary labor or materials. Driven's estimated shipping schedule shall be extended by a period of time equal to the time lost because of any excusable delay. In the event Driven is unable to perform in whole or in part because of any excusable failure to perform, Driven may cancel orders without liability to Customer.
13. **LIMITED INDEMNITY AGAINST INFRINGEMENT.** Driven shall, at its own expense, defend any litigation resulting from sales of the Products to the extent that such litigation alleges that the Products or any part thereof infringes any United States patent, copyright, or trademark, provided that such claim does not arise from the use of the Products in combination with equipment or devices not made by Driven or from modification of the Products, and further provided that Customer notifies Driven immediately upon its obtaining notice of such impending claim and cooperates fully with Driven in preparing a defense. If Customer provides to Driven the authority, assistance, and information Driven needs to defend or settle such claim, Driven shall pay any final award of damages in such suit and any expense Customer incurs at Driven's written request, but Driven shall not be liable for a settlement made without its prior written consent. If the Products are held to be infringing and the use thereof is enjoined, Driven shall, at its option, either (i) procure for the Customer the right to use the Products, (ii) replace the Products with others which do not constitute infringement, or (iii) remove the infringing Products and refund the payment(s) made therefor by Customer. The foregoing states the Customer's sole remedy for, and Driven's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Products provided hereunder. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.
14. **ACKNOWLEDGMENT/GOVERNING LAW.** Customer acknowledges reading these Terms and Conditions, understands them and agrees to be bound by them. A waiver of any provision of this agreement shall not be construed as a waiver or modification of any other term hereof. With respect to all orders accepted by Driven in the United States, disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of the State of Texas without regard to principles of conflicts of laws. With respect to all orders accepted by Driven outside the United States, disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of the country and locality in which Driven accepts the order without regard to principles of conflicts of laws.
15. **EEO COMPLIANCE.** As applicable, Customer shall comply with the following Equal Employment Opportunity requirements: 41 CFR sec 60-1.4(a), Equal Opportunity; 41 CFR sec 60-250.5, Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era; and 41 CFR sec. 60-741.5, Equal Opportunity for Workers with Disabilities.
16. **SERVICES. Limited Warranty.** Driven warrants that Services will be performed in a good and workmanlike manner. Except as expressly stated in the preceding sentence, Driven makes no express or implied warranties with respect to the Services, including but not limited to (a) any warranty relating to third-party products or (b) any warranty concerning the results to be obtained from the Services or the results of any recommendation Driven may make, including without limitation any implied warranties concerning the performance, merchantability, suitability, non-infringement or fitness for a particular purpose of any of the deliverables or of any system that may result from the implementation of any recommendation Driven may provide. In order to receive warranty remedies, deficiencies in the Services must be reported to Driven in writing within 90 days of completion of the Services. **Limitation of Liability.** Driven is not liable for any incidental, indirect, special, or consequential damages arising out of or in connection with the Services provided by Driven, including without limitation loss of use of the Products or any other software or data, including inability to achieve a particular result, even if Driven has been advised of the possibility of such damages or even if the damage is the direct result of an instruction or suggestion made by Driven. Except for claims that the Services caused bodily injury (including death), Driven's total liability arising out of or in connection with any event or series of connected events occurring in connection with the Services shall not exceed the amount of fees paid under the separate written agreement between Customer and Driven. These provisions allocate the risks under the separate written agreement between Customer and Driven. Driven's pricing reflects this allocation of risk and the limitation of liability specified herein. **High Risk Activities.** Customer understands and agrees that Driven has not tested or certified its Services for use in high risk applications including medical life support, nuclear power, mass and air transportation control, or any other potentially life critical uses and makes no assurances that the Services are suitable for any high risk uses. **Indemnification.** Customer accepts responsibility for, and agrees to indemnify and hold Driven harmless from, any and all liability, damages, claims, or proceedings arising out of (a) the failure of Customer to obtain the appropriate license, intellectual property rights, or any other permissions required to support any Products or Driven's performance of the Services, including but not limited to, the right to make any copies or reproductions of any Customer-provided software or (b) any inaccurate representations regarding the existence of an export license or the eligibility for export of software or other materials without a license.
17. **EXPORT LAWS.** The Products are subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 *et. seq.*) and other applicable U.S. export control laws and regulations. Customer agrees that it will not export, re-export or transfer the Products via any means to any prohibited destination, entity or individual without the required export license(s) or authorization(s) from the U.S. Government. Driven reserves the right not to ship the Products ordered if, at any time, Driven believes that such shipment may violate U.S. export control laws.