

Welcome to Scottdrive limited and thank you for your interest in purchasing our products. We value your business and our goal is to make your purchasing experience as smooth as possible. If you have any questions about our quotation or ordering process, please email our Customer Services at [service@scottdrive.co.nz](mailto:service@scottdrive.co.nz)

**DEFINITIONS** In these Terms and Conditions of Sale, "Seller" means Scottdrive Limited; "Buyer" means the person, firm, company or corporation by whom the order is given

### 1. GENERAL.

- 1.1. These general terms and conditions of sale (along with any associated written specification, quotation and/or supplemental terms and conditions provided by Seller) exclusively will govern the sale or licensing by Seller of all goods and services (including hardware, firmware and software products, training, programming, maintenance, engineering, parts and repair services – hereinafter, "Products") to the Buyer,
- 1.2. All orders must be in writing or by Seller ecommerce system and are accepted subject to these Terms and Conditions of Sale. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.
- 1.3. The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order form or upon the date of fulfilment of all conditions precedent stipulated in the Contract or receipt of Buyer invoice deposit by the Seller, whichever is the later (the "Effective Date "). If the details of the Products described in Seller's quotation differ from those set out in the Acknowledgement of Order Form the latter shall apply.
- 1.4. No alteration or variation to the Contract shall apply unless agreed in writing by both parties. However, Seller reserves the right to effect minor modifications and/or improvements to the Products before delivery provided that the performance of the Products is not adversely affected and that neither the Contract Price nor the delivery date is affected and represents the entire agreement between Buyer and Seller. Buyer's acceptance of delivery of any of the Products ordered or purchased will constitute its acceptance of these terms and conditions. No addition or modification to these terms and conditions will be binding on Seller unless agreed in writing.

### 2. VALIDITY OF QUOTATION AND PRICES:

- 2.1. Time and material services will be provided in accordance with Seller's published service rates (including applicable overtime and travel expenses) in effect as of the date such services are provided, unless otherwise confirmed by Seller's written quotation or order acknowledgment. Billable service time includes travel time to and from the job site and all time Seller's representatives are available for work and waiting (whether on or off the job site) to perform the services
- 2.2. Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date.
- 2.3. Prices are firm within the period stated in Seller's quotation and are exclusive of (a) Value Added Tax and (b) any similar and other taxes, duties, levies or other like charges arising outside New Zealand in connection with the performance of the Contract.
- 2.4. Prices are for Goods delivered EXW (Ex works) Seller's shipping point, exclusive of freight, insurance and handling unless otherwise stated in the Seller's order confirmation.

### 3. PAYMENT TERMS.

- 3.1. Standard payment terms require receipt of payment in

advance of Seller shipping of Products and may request a deposited payment of 50% of the order invoice prior to component manufacture

- 3.2. Seller may render partial invoices and require progressive payments for partial shipments of a complete Buyer order.
- 3.3. Seller reserves the right to render invoices electronically and to receive payment by way of electronic funds transfer or wire transfer. All money transfer fees are to be paid on the Buyer account.
- 3.4. Seller reserves the right to suspend any further performance hereunder or otherwise in the event payment is not made when due
- 3.5. Buyer agrees to pay the entire net amount of each invoice rendered by Seller pursuant to the terms of each such invoice without offset or deduction.

### 4. DELIVERY TERMS.

- 4.1. Unless otherwise expressly stated in the Seller's Quotation or Order acknowledgment, the Products will be delivered Ex Works to the destination named in the Contract. Delivery terms used shall be defined in accordance with the latest version of Incoterms.
- 4.2. Seller reserves the right to choose the shipping route and the mode of transport. Additional costs resulting from special shipping requests by Buyer are for Buyer's account.
- 4.3. Risk of loss of or damage to the Products shall pass to Buyer upon delivery as aforesaid and Buyer shall be responsible for insurance of the Products after risk has passed to Buyer.
- 4.4. Title to the Products shall pass to Buyer upon delivery in accordance with Clause 4.2 except that title to all intellectual property rights associated with the Products remains with Seller or its suppliers and licensors.
- 4.5. If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Products are ready for despatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Products into a suitable store at Buyer's expense. Upon placing the Products into the store, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly.
- 4.6. Claims for shortfalls in quantity or for incorrect delivery shall be void if made more than 10 days after receipt by the customer.

### 5. DELIVERY PERIOD

- 5.1. Scheduled delivery periods may be stated in the Seller's Order confirmation, Quotation Proposal or in Schedule A of this agreement. Delivery periods may include multiple batch deliveries to meet Buyer requirements.
- 5.2. All periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only, not involving any contractual obligations. Buyer also acknowledges that Seller's performance is subject to correct and punctual supply of Seller by its suppliers. Seller disclaims all liability for late delivery.
- 5.3. If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed with its obligations under the Contract), the delivery/completion period and the Contract Price shall

both be adjusted accordingly.

#### **6. PRODUCT USE AND RESTRICTIONS.**

6.1. Buyer must use Sellers products in accordance with instructions. Seller is solely responsible for making sure that the way Products are used complies with applicable laws, regulations and governmental policies. Seller must obtain all necessary approvals and permissions that may be needed. It is solely Sellers responsibility to make sure the Products are suitable for particular use.

#### **7. WARRANTY.**

7.1. Hardware: Seller warrants that new hardware Products furnished hereunder will be free from defects in material, workmanship and design for a period of one (1) year from the date of invoice from Seller. Repaired or replacement Products provided as a result of this warranty subparagraph are similarly warranted for a period of six (6) months from the date of shipment to Buyer or the remainder of the original warranty term for that particular Product, whichever is longer.

7.2. Software and Firmware: Unless otherwise provided in a Seller or third party licence, Seller warrants that standard software or firmware Products, when used with Seller-specified hardware, will perform in accordance with published specifications issued by Seller for a period of one (1) year from the date of invoice from Seller. Seller makes no representation or warranty, that the operation of the software or firmware Products will be uninterrupted or error free, or that the functions contained will meet or satisfy Buyer's intended use or requirements.

7.3. Services: Seller warrants that Products comprised solely of services (e.g., training, on-site repair, engineering and custom application programming services) will be performed by appropriately skilled personnel employed or retained by Seller.

7.4. Buyer Specifications/Compatibility: Seller does not warrant and will not be liable for any design, materials, construction criteria or goods supplied or specified by Buyer (including that sourced from other manufacturers or vendors specified by Buyer). Any warranty applicable to such Buyer specified items will be limited solely to the warranty, if any, extended by the original manufacturer or vendor directly or indirectly to Buyer. Seller does not warrant the compatibility of its Products with the goods of other manufacturers or Buyer's application except to the extent expressly represented in Seller's published specifications or written quotation.

7.5. Recyclable Materials: In keeping with environmental policies and practices, Seller reserves the right to utilise in its product manufacturing, repair and remanufacturing processes certain recyclable materials (e.g., fasteners, plastics and the like) or remanufactured parts equivalent to new in performance or parts which may have been subject to incidental use. However, such utilisation will not affect any provided Product warranty or published reliability statistics.

7.6. Remedies: Remedies under the above warranties will be limited, at Seller's option, to the replacement, repair, re-performance or modification of, or issuance of a credit for the purchase price, of the Products involved, and where applicable, only after the return of such Products pursuant to Seller's instructions. Replacement Products may be new, remanufactured, refurbished or reconditioned at Seller's discretion. Buyer requested on-site warranty service (consisting of time, travel and expenses related to such services) will be at Buyer's expense.

7.7. General: Warranty satisfaction is available only if (a) Seller is provided prompt written notice of the warranty claim and (b) Seller's examination discloses that any alleged defect has not been caused by misuse; neglect; improper installation, operation, maintenance, repair, alteration or modification by other than Seller; accident; or unusual deterioration or degradation of the Products or parts due to physical environment or electrical or electromagnetic noise

environment.

7.8. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR PERFORMANCE OR APPLICATION WARRANTIES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

#### **8. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY PROVISION IN THESE CONDITIONS OF SALE OR ELSEWHERE TO THE CONTRARY: (a) SELLER'S LIABILITY HEREUNDER AT ANYTIME FOR ANY CAUSE WHATSOEVER WILL NOT EXCEED THE PRICE PAID FOR THE PRODUCTS AT ISSUE, (b) SELLER IS NOT LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, INCLUDING LOSS OF REVENUE OR PROFIT.

These limitations of liability shall apply notwithstanding any finding that any remedy fails its essential purpose.

#### **9. INDEMNIFICATION**

9.1. Seller agrees to indemnify, defend and hold harmless the Buyer from and against all third-party claims allegations, lawsuits, losses, damages, verdicts, settlements, costs, penalties, expenses and attorneys' fees ("Claims") asserted against Buyer, arising out of or related to (as applicable): (i) Infringement or violation of patents, copyrights, trademarks or other proprietary rights related to the Products; and (ii) product liability claims related to the Products.

9.2. Buyer will promptly notify Seller of any Claims brought against it by a third party, which are subject to indemnification under this Agreement. Seller agrees to, at its own cost; defend the Claims using counsel acceptable to Seller and Buyer agrees that Seller will have sole control over the defense of such Claim or any settlement and that Seller may defend or settle any Claim in such a manner as Seller deems appropriate, in its sole discretion.

9.3. Buyer may, at its option and expense and subject to the forgoing, participate in the defense of any Claim.

#### **10. LICENCED SOFTWARE AND FIRMWARE.**

10.1. Use of Products comprised of software or firmware may be subject to Buyer's acceptance of additional terms and conditions set forth in separate Seller or third-party licence agreements that will control to the extent necessary to resolve any conflict with the terms and conditions stated or otherwise referenced herein.

10.2. In the absence of a separate Seller's licence agreement, Buyer is granted a non-exclusive, non-transferable licence to use provided Seller's software or firmware only in object code form and solely in conjunction with Seller-provided Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.

#### **11. PACKING AND MARKING.**

11.1. Buyer-specified packing or marking may be subject to additional charges not otherwise included in the price of the Products.

#### **12. WEIGHTS AND DIMENSIONS.**

12.1. Published or advertised weights and dimensions are estimates or approximations only and are not warranted.

#### **13. CHANGES AND SUBSTITUTIONS.**

13.1. Buyer-requested order changes, including those affecting the identity, scope and delivery of the Products, must be documented in writing and are subject to Seller's prior

approval and adjustments in price, scheduling and other affected terms and conditions.

13.2. In any event, Seller reserves the right to reject any change that it deems unsafe, technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with Seller's design or manufacturing capabilities.

13.3. Seller further reserves the right to substitute using the latest superseding revision or series or equivalent Product having comparable form, fit and function.

#### 14. RETURNS.

14.1. All returns of Products will be pursuant to Seller's instructions. Non-warranty returns of unused and resalable Products for credit will be subject to Seller's return policies in effect at the time, including applicable restocking charges and other conditions of return.

14.2. Products returned under warranty must be properly packed and shipped to Seller-specified locations. Shipping containers must be clearly marked per Seller's instruction and shipped freight prepaid by Buyer.

14.3. Notwithstanding the foregoing, all sales of "Open Box" Products and any third-party branded products are final and do not qualify for non-warranty return.

#### 15. ORDER CANCELLATION.

15.1. Cancellation by Buyer prior to shipment is permitted only by written notice and upon payment to Seller of reasonable cancellation and restocking charges, including reimbursement for direct costs.

15.2. Cancellation charges associated with orders for custom Products or Products specifically manufactured to Buyer's specification may equal the actual selling price of the Products.

15.3. Seller has the right to cancel an order for cause at any time by written notice, and Seller will be entitled to cancellation and restocking charges as identified above. No termination by Buyer for cause will be effective unless and until Seller has failed to correct such alleged cause within forty-five (45) days after receipt of Buyer's written notice specifying such cause.

#### 16. SUSPENSION AND CANCELLATION.

16.1. If Buyer omits delivery instructions or fails to accept Delivery, as required by this Agreement, or fails to make any payment when it becomes due or commits any other breach of contract, or if Buyer enters into any composition or arrangement with its creditors or if any distress or execution is levied upon any goods or property of Buyer, or if Buyer commits any act of bankruptcy or, if a corporation, a receiver is appointed of the whole or any part of its undertaking or assets or if Buyer passes a resolution for winding up or if a Court makes an order to that effect or if Buyer has a receiving order made against it, then at Seller's sole option Seller may defer or cancel any further deliveries and treat this Agreement or any other contract between Seller and Buyer as terminated, but such termination is without prejudice to

Seller's right to any unpaid price for products delivered under the Agreement and to damages for loss suffered in consequence of such termination.

#### 17. CONFIDENTIALITY.

17.1. Buyer shall keep confidential and shall not disclose, publish, transfer, provide or otherwise make available any non-public information about the Products or Seller technology or intellectual property (the "Confidential Information") in any form or on any media to any person, except to those employees of Buyer who must have access to the Confidential Information in order to fulfill the Buyer's obligations hereunder. Buyer shall take all appropriate action, whether by instruction, agreement or otherwise, to ensure the protection and confidentiality of the Confidential Information.

#### 18. FORCE MAJEURE.

18.1. Seller will not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes. In the event of such delay, Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay.

#### 19. DISPUTES.

19.1. The parties will attempt in good faith promptly to resolve any dispute arising hereunder by negotiations between representatives of the parties who have authority to settle the dispute. If unsuccessful, the parties further will attempt in good faith to settle the dispute by non-binding third-party mediation, with mediator fees and expenses apportioned equally to each side. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms of this contract. These procedures are the exclusive procedures for the resolution of all such disputes between the parties.

#### 20. GOVERNING LAW AND VENUE.

20.1. The agreement and all disputes arising thereunder will be governed by and interpreted in accordance with the laws subject to the exclusive jurisdiction of the courts of New Zealand.

#### 21. ASSIGNMENT.

21.1. This agreement may not be assigned by either party without the written consent of the other (which consent will not be unreasonably withheld). However, consent will not be required for internal transfers and assignments as between Seller and its parent company, subsidiaries or affiliates as part of a consolidation, merger or any other form of corporate reorganisation.