



## **DIVERGENT TECHNOLOGIES, INC. TERMS OF SALE**

Divergent Technologies, Inc. ("Seller") is making an offer to sell products (the "Products") described in the applicable purchase order ("P.O."), and is not accepting any offer, quotation or other proposal from the contracting party issuing such P.O. (the "Buyer"). Seller objects to any terms which are additional to or different than these Terms of Sale ("Terms"). Buyer irrevocably accepts these Terms upon the earlier of issuing any acceptance or acknowledgement of these Terms or accepting any delivery of Product(s) from or payment to Seller.

1. Payment terms. On shipment, Seller will invoice Buyer for the quantity of Products purchased at the applicable mutually agreed prices set out on the P.O. All invoiced fees are payable within thirty (30) days of the date on which the corresponding Seller invoice has been received by Buyer. All fees exclude taxes (including any applicable federal, state, provincial, use, value-added, products and services, and local taxes) and customs duties. Buyer shall pay to Seller the amount of all such taxes (excluding taxes based on Seller's net income) and customs duties.

2. Delivery. Products shall be delivered Ex Works (Incoterms 2020) Seller's facility ("Delivery Point"). The risk of loss shall pass to the Buyer at the time of delivery at the Delivery Point. Seller may make partial shipments of Products to Buyer.

3. Warranties.

3.1 Product Warranty. Subject to Clause 3.2, the warranty period for the Products is twelve (12) months following the date of delivery of the Products to the Delivery Point ("Warranty Period"). During the Warranty Period, Seller warrants that the Products will comply in all material respects with Seller's product specifications ("Specifications"). If the Products do not meet the warranty set forth in this Section 3.1 as confirmed by Seller, then, as Buyer's sole and exclusive remedy, and Seller's sole and exclusive obligation, Seller shall at its option either replace or provide a refund for any non-conforming Products. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THESE TERMS, SELLER EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND RELATING TO THE PRODUCTS OR ANY INFORMATION THAT IS PROVIDED TO BUYER IN CONNECTION WITH THESE TERMS, INCLUDING BUT NOT LIMITED TO CONDITIONS OF MERCHANTABILITY OR MERCHANTABLE QUALITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.2 Pre-Production Supply. If Buyer engages Seller in connection with Products that involve the design and provision of prototype products ("Prototypes"), Seller's production and supply of any Prototypes will be subject to mutual agreement on a statement of work describing the Prototype and each party's responsibilities in connection with its development. Prototypes may not be used by Buyer for any production purposes unless separately agreed in writing by the parties. Notwithstanding anything to the contrary in these Terms, all Prototypes are for evaluation purposes only and are provided AS-IS without warranty of any kind.

4. Termination. Either party may terminate a P.O. subject to these Terms for the other party's material breach which remains uncured after thirty (30) days from the date of notice from the other party. Each party may also terminate a P.O. subject to these Terms immediately in the event that the other party (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

5. Limitations of Liability. EXCEPT FOR A BREACH OF CONFIDENTIALITY ARISING UNDER THESE TERMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR ECONOMIC DAMAGES, INCLUDING ANY LOSS OF PROFIT OR REVENUE ARISING AS A RESULT OF OR RELATED TO THESE TERMS, INCLUDING THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, EQUIPMENT, MATERIAL OR INFORMATION, PERSONAL INJURY OR DAMAGE TO PROPERTY OF ANY KIND WHATSOEVER WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. SELLER'S TOTAL LIABILITY ARISING UNDER THESE TERMS SHALL BE LIMITED SOLELY TO DIRECT DAMAGES ACTUALLY INCURRED AND SHALL NOT EXCEED THE



AMOUNTS PAID BY BUYER TO SELLER UNDER THESE TERMS IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

6. Indemnification. Seller will defend at its sole cost and expense, indemnify and hold harmless Buyer and its Affiliates and their officers, directors, employees and agents (each a “Buyer Indemnitee”) from and against any and all damages, liabilities, costs, and expenses (including reasonable attorneys’ fees) awarded against the Buyer Indemnitees by a court of competent jurisdiction or agreed by Seller in a settlement with a third party arising out of any third-party claim brought against the Buyer Indemnitees alleging that a Product, as delivered by Seller, infringes or violates such third party’s intellectual property rights. Seller will not be obligated to indemnify or pay damages to an Indemnitee to the extent that the damages were caused by or claims involving (i) a Buyer Indemnitee’s own negligence or willful misconduct; (ii) a Buyer Indemnitee’s use of Seller’s Products in combination with other products if the infringement would not have occurred but for the combination with such other products or if the infringement is due to the other products; (iii) a Buyer Indemnitee’s modification to the Products; or (iv) Seller’s compliance with the specifications provided by Buyer to the extent there is no reasonable non-infringing alternative approach to conformance with such specifications ((i) – (iv) collectively, “Excluded Claims”).

Buyer will defend at its sole cost and expense, indemnify and hold harmless Seller and its Affiliates and their officers, directors, employees and agents (each a “Seller Indemnitee”) from and against any and all damages, liabilities, costs, and expenses (including reasonable attorneys’ fees) awarded against the Seller Indemnitees by a court of competent jurisdiction or agreed by Buyer in a settlement with a third party arising out of any third-party claim brought against the Seller Indemnitees arising from or relating to Excluded Claims.

7. Confidentiality. All information and data that one party (the “Receiving Party”) has received or will receive from the other party (the “Disclosing Party”) about such party’s financial information, business plans, Buyer lists, procedures, formulas, discoveries, inventions, improvements, innovations, concepts and ideas, including proprietary technology and other matters are proprietary and confidential information (“Confidential Information”), including without limitation any information that is marked “confidential” or should be reasonably understood to be confidential or proprietary to the Disclosing Party. Without limiting the foregoing, Seller’s Confidential Information includes its vehicle and chassis structures, materials (including material compositions and alloys), components (including 3D printed, node-based and modular structures and components), automation and assembly systems, and related methods, designs and technology relating to the foregoing (“Seller Technology”). The Receiving Party agrees that during the Term and for five (5) years thereafter, except where longer protection is provided by law (such as for trade secrets), the Receiving Party will not disclose any Confidential Information to any third party, nor use any Confidential Information for any purposes not permitted under these Terms. The nondisclosure obligations set forth in this Section 7 shall not apply to information that the Receiving Party can document is generally available to the public (other than through breach of these Terms) or was already lawfully in the Receiving Party’s possession at the time of receipt of the information from the Disclosing Party without a duty of confidentiality, was independently developed by the Receiving Party without access to or use of the Disclosing Party’s Confidential Information or with respect to which disclosure was required under applicable law or regulation. Notwithstanding the foregoing the rights and obligations regarding the Disclosing Party’s trade secrets shall continue in perpetuity.

8. Intellectual Property. Buyer acknowledges that Products and any related development services to be provided by Seller will be based on Seller Technology. The Seller Technology includes the Divergent Adaptive Production System (“DAPS™”) for adaptive design, manufacture and assembly of complex vehicle structures including (i) the algorithms, data, databases, rules, structures, materials, design components and other technical information to be used in connection with DAPS, and (ii) any feedback, suggestions, additions, improvements, enhancements or modifications with respect to any of the foregoing (“Input”). Seller retains ownership of the Seller Technology and may make the same available to other Buyers. Accordingly, if Buyer provides any Input regarding DAPS or related Seller Technology, Seller may fully use, practice, sublicense and otherwise exploit such Input and related intellectual property rights. No license is granted or implied by Seller to Buyer with respect to DAPS or related Seller Technology. Any license to DAPS must be set forth in a separate signed written license agreement between Seller and Buyer.

9. Force Majeure. Seller shall not be liable to Buyer for any loss or damage which may be suffered by Buyer as a direct or indirect result of the supply of the Products by Seller or its suppliers and/or subcontractors being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond their reasonable control including (but not limited to) Act of God, war riot, strike, lock-out, trade dispute or labor disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the Products or of raw materials therein. If due to such circumstances or events Seller has insufficient inventory to meet all its commitments herein, Seller may apportion available stocks between its customers in its sole discretion.



10. Notices. For purposes of all formal notices required to be given hereunder, the addresses of the parties hereto shall be as indicated on the relevant P.O. All notices shall be in writing and shall be deemed to have been duly given on the date sent if sent by facsimile, the receipt of which is confirmed by return facsimile, or on the date received if sent by first class registered or certified mail or its equivalent, return receipt requested, or overnight delivery service addressed to the parties at their addresses set forth in the applicable P.O.

11. Relationship of the Parties. The parties hereto are independent contractors as to each other and nothing in these Terms shall give rise to a partnership, agent, joint venture, or other relationship between the parties. Neither party is authorized to make commitments on behalf of or otherwise bind the other party without the prior written consent of that party.

12. Entire Agreement. These Terms, including any attachments hereto, all of which are incorporated herein by reference, contain the entire understanding and agreement of the parties with respect to the subject matter contained herein. These Terms supersede all prior oral or written understandings and agreements relating thereto including, but not limited to, contradictory terms in the P.O. or the business documents of the parties exchanged hereunder, and may not be altered, modified or waived in whole or in part, except in writing, signed by duly authorized representatives of the parties. Each party acknowledges that in accepting these Terms, it does not rely on and has not relied on any statement, representation, warranty or other provision (whether oral or written, express or implied and whether made before or after the date of these Terms) of any person which is not expressly set out in these Terms.

13. Severability; Enforceability. If any provision of these Terms is held by a court of competent jurisdiction to be contrary to any law, the remaining provisions will remain in full force and effect and the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid and enforceable. Unless expressly provided in these Terms, none of the provisions of these Terms are enforceable or intended to be enforceable by any party or person who is not a party to these Terms.

14. Assignment. Except as otherwise expressly permitted in these Terms, neither party shall sell, transfer, or assign its rights and duties under these Terms without the prior written consent of the other party, except Seller may assign these Terms in the event of a sale, merger or other business consolidation of all or substantially all of its equity or assets or to an Affiliate (as defined below). These Terms shall inure to the benefit of the parties, their successors and permitted assigns. "Affiliate" means with respect to each party, an entity, directly or indirectly, controlled by, controlling of or under common control with, such party, either now or in the future. Under this definition, an entity shall control another entity when it owns thirty percent (30%) or more of the outstanding shares having voting rights or when it has management or operational control through a management agreement or otherwise.

15. Waiver and Amendments. No waiver, amendment, or modification of any provision of these Terms is effective unless consented to by both parties in writing. No failure or delay by either party in exercising any rights, powers, or remedies under these Terms will operate as a waiver of any such right, power, or remedy.

16. Governing Law and Arbitration. The rights and obligations of the parties under these Terms will not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather such rights and obligations are governed by and construed under the laws of the State of California, including its Uniform Commercial Code, without reference to conflict of laws principles. Any dispute or claim arising out of or in connection with these Terms or the performance, breach or termination thereof, will be finally settled by binding arbitration in Los Angeles, California under the American Arbitration Association Commercial Arbitration Rules by arbitrators appointed in accordance with said rules. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision.

17. Export Controls. Each Party will comply with all applicable export, re-export and foreign policy controls and restrictions imposed by the U.S. and the country in which they are located, including the U.S. Export Administration Regulations and International Traffic in Arms Regulations ("ITAR").

18. Survival. The obligations in the following Sections will survive any expiration or termination of these Terms: Section 3 (Warranties), Section 5 (Limitations of Liability), Section 6 (Indemnification), Section 7 (Confidentiality), Section 8 (Intellectual Property), Section 9 (Force Majeure), Section 10 (Notices), Section 11 (Relationship of the Parties), Section 12 (Entire Agreement), Section 13 (Severability; Enforceability), Section 15 (Waiver and Amendments), Section 16 (Governing Law and Arbitration), Section 17 (Export Controls), and Section 18 (Survival).