

# TERMS AND CONDITIONS OF PURCHASE

M-17 Rev 1.2

Please read these Terms and Conditions of Purchase ("Terms") carefully. Any purchase by Divergent Technologies, Inc., and/or its subsidiaries (hereinafter "Buyer") of any goods, equipment, software or services (each, a "Product") is expressly made conditional on the acceptance of these Terms by the entity identified on Buyer's purchase order ("PO") to which these Terms are attached or referenced (hereinafter "Seller"). Seller agrees to be bound by and to comply with these Terms and all terms set forth on the PO (collectively, this "Order"). A copy of the latest version of these Terms can be found at <https://www.divergent3d.com/terms-and-conditions-of-purchase>.

**1. Order Acceptance.** This Order is an offer to purchase the Product described in the PO, and is not an acceptance of any offer, quotation or other proposal from Seller. Buyer objects to any terms which are additional to or different than the terms of this Order. Seller irrevocably accepts this Order upon the earlier of issuing any acceptance or acknowledgement of this Order or shipping any Product or commencing any work under this Order.

**2. Prices and Taxes.** Unless otherwise specified in the PO, the prices set forth in the PO are firm and not subject to change, and include all applicable federal, state and local taxes. If Seller is legally obligated to charge value added and/or similar tax, Seller shall invoice Buyer in accordance with applicable rules to enable Buyer to reclaim such tax. Seller will credit Buyer for any tax refund or credit adjustments received by Seller on taxes paid to Seller by Buyer. Seller warrants that prices charged for any Product shall not exceed the price offered to any other customer for the same or comparable Products. Prices shall not be higher than last quoted or charged to Buyer unless otherwise agreed in writing.

**3. Invoices.** Seller will submit invoices only after delivery of the Product including services in accordance with this Order. Seller's invoice must conform to this Order and include: PO number, item number, description of item, size of item, quantity of item, unit prices, each applicable tax, extended totals and any other information specified elsewhere herein. A bill of lading or express receipt must accompany each invoice.

**4. Payment.** Unless otherwise specified in the PO, payment will be net 90 days after receipt of the applicable Product (including goods and services) and subsequent submission of a proper invoice or acceptance of the Products under this Order, whichever is later. Payments will be made in U.S. dollars unless otherwise specified in the PO. Buyer's payment of an invoice shall not constitute acceptance or waiver of any right to inspect or test the Products, and is subject to adjustment for errors, shortages, defects or other failure of Seller to meet the requirements of this Order. Buyer shall not be obligated to pay invoices for any Products that are rejected or returned, and may withhold full or partial payment until all requirements of this Order have been met. Unless otherwise specified in the PO, Buyer shall not be required to pay any sales, use or other taxes or any late charge, interest or other extra charge of any

kind. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller or any of its affiliated companies to Buyer.

**5. Delivery.** Unless otherwise specified in the PO, Products must be delivered DDP (Incoterms 2010) Buyer's destination. Time is of the essence. Failure by Seller to meet delivery dates specified in the PO constitutes a material breach of this Order, and Buyer may, at its option, elect one or more of the following: (a) extend the delivery date; (b) cancel the Order in whole or in part; or (c) require expedited shipping by prepaid air freight at Seller's expense. Buyer will not have any liability to Seller for cancellation. Seller shall indemnify and hold harmless Buyer from and against any costs, damages, liabilities or losses arising out of or relating to Seller's failure to deliver the Products on the specified delivery dates. Seller must provide the specific quantity of Product specified in the PO. Unless otherwise specified in the PO, no variation in quantity is permitted. Buyer may return excess shipments at Seller's expense. Unless otherwise specified in the PO, Product delivered by Seller will include all related documentation. For returned shipments, Seller must use the RMA number provided by Divergent.

**6. Packing and Shipment.** Unless otherwise specified, Seller will package, pack and ship all Products in a manner that is (a) in accordance with good commercial practice, (b) acceptable to common carriers for shipment at the lowest rate for the particular goods, and (c) adequate to insure safe arrival of the Products at the named destination. Unless otherwise specified in the PO, Buyer is not responsible for any costs for packaging, packing or carriage. Seller will mark all containers with PO number, Product numbers, quantities, shipping information, and date of shipment. An itemized packing list must accompany each shipment. No partial or complete delivery will be made prior to the delivery date specified in the PO unless Buyer has given prior written consent.

**7. Installation and Training.** If applicable per the PO, Seller shall be responsible for installing the Product at Buyer's facility so that it is fully functional prior to commencement of Buyer's inspection and testing, and shall provide Buyer with training reasonably required for operation of the Product, at no additional charge.

**8. Acceptance.** Notwithstanding any prior inspection or payments, all Products will be subject to final inspection and acceptance at Buyer's facility. Unless otherwise specified in the PO, Buyer will have 90 days from the later of delivery or, if applicable, completion of installation of the Product at Buyer's facility to inspect and test the Product. If any Product is found to be defective or fails to conform to any of the requirements of this Order, then Buyer, at its option, may at Seller's expense (a) reject and/or return the Product, (b) require Seller to promptly repair or replace the Product to conform with all requirements under this Order; (c) if Seller does not promptly repair or replace, Buyer may do so and charge Seller for the costs thereof, including any costs of cover; (d) require an appropriate reduction in price, or (e) cancel this Order in whole or in part without any liability. Acceptance of any Product does not relieve Seller of its warranty or other obligations under this Order.

**9. Inspection.** For quality standards and related certifications, a physical inspection of Seller's facility may be required by Buyer and/or Buyer's customer. If required, Seller agrees

to make its facilities and procedures reasonably available for a site inspection for physical audit by Buyer and/or Buyer's customer. Seller will also make the following available for inspection by Buyer and/or Buyer's customer: (a) goods, materials and services related to the Products purchased hereunder, including raw materials, work in process, tools and finished Products at all locations where the Products are made or located, and (b) Seller's books, records and facilities relating to this Order. Seller will also make the above available to regulatory authorities as may be required by Buyer.

**10. Quality.** Seller shall provide and maintain an inspection, testing and quality control system acceptable to Buyer that complies with Buyer's quality policy at <https://www.divergent3d.com/seller-quality-requirements> and the quality requirements in this Order. Seller shall keep complete records relating to Seller's quality control system, including all testing and inspection data, and make such records available to Buyer and Buyer's customers for at least seven (7) years or such longer period as required by legal or regulatory requirements.

**11. Warranty.**

(a) Seller warrants that all Products shall: (i) be free of all claims, liens or encumbrances, (ii) be new, merchantable, of good workmanship, and free from any defects in design, materials and manufacture, (iii) full comply and continue to operate in accordance with specifications, samples, drawings, descriptions and other requirements of this Order, (iv) be fit for the particular purpose for which they are intended, and (v) fully comply with all legal and regulatory requirements. Seller further warrants that any software will not contain any viruses or other harmful code, any automatic shut-down, license key, lockout, "time bomb" or similar mechanisms that could interfere Buyer's use of the Product or exercise of its rights hereunder, or any open source software (including any software meeting the Open Source Definition promulgated by the Open Source Initiative or Free Software Foundation). Seller further warrants that all work and services will be provided in accordance with the highest industry standards and best practices. Seller further warrants that the Products and use thereof shall not directly or indirectly infringe, misappropriate or otherwise violate any patent, copyright, trade secret, trade mark or other intellectual property or proprietary right (collectively, "Intellectual Property").

(b) If any Products do not meet the warranties specified herein or otherwise applicable, Buyer may, at its option, (i) require Seller to correct any nonconforming Products by repair or replacement at no cost to Buyer, (ii) return such nonconforming Products to Seller at Seller's expense for a full refund, or (iii) correct the nonconforming Product and charge Seller with the cost of such correction. If a recall is required due to legal or regulatory requirements, or advisable due to potential safety hazard, Seller shall promptly notify Buyer and develop and implement a corrective action plan at Seller's expense that is acceptable to Buyer, including recall and/or repair of the Products and all other actions required for such recall.

(c) The foregoing warranties and remedies constitute conditions to this Order. They are in addition to all other warranties, whether express or implied, and will survive any delivery, inspection, acceptance or payment by Buyer. All warranties run to the benefit of Buyer and its resellers and customers.

**12. Replacement Parts, Support and Maintenance.** Without limiting Seller's warranty obligations or Buyer's remedies, Seller agrees to make replacement parts, consumables and services for the Product available to Buyer on terms consistent with this Order at prices no less favorable than those offered to any other customer for the same or comparable products. Unless otherwise specified in the PO, support and maintenance for any software will be provided by Seller to Buyer under this Order without additional charge, including all bug fixes, updates and upgrades. All bug fixes, updates and upgrades will be considered part of the Product for which they are provided under this Order.

**13. Indemnity and Insurance.** Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents, customers, successors and assigns from and against all claims, damages, liabilities, losses, costs and expenses (including attorneys' fees) arising out of or relating to the Products provided under this Order including: (a) personal injury, death or property damages of any person if directly or indirectly attributable to any defect in any Product or any act or omission of Seller, its employees, agents or subcontractors; (b) any claim that any Product or use thereof directly or indirectly infringes, misappropriates or otherwise violates any Intellectual Property; or (c) any breach by Seller of any of its obligations under the Order. Seller shall not settle any suit or claim without Buyer's prior written approval. Seller will maintain appropriate insurance coverages acceptable to Buyer with respect to such liabilities, naming Buyer as an additional insured and not cancelable except upon 30 days advance notice from the insurer to Buyer. Prior to commencing work hereunder, Seller will provide Buyer with reasonable evidence regarding such insurance.

**14. Change Orders.** Seller will not make any changes to the Products or to any processes, materials or manufacturing methods or manufacturing location for the Product without prior written approval of Buyer. Seller shall pay any costs required for re-qualification due to any such change. Buyer may at any time, by a written change order, suspend performance hereunder, increase or decrease quantities, or make changes to schedule, specifications, service requirements or delivery. If the requested change causes an increase in time or cost required for Seller's performance, Seller will promptly notify Buyer and such changes will be made subject to equitable adjustment in schedule or price (based on reasonable and unavoidable costs incurred by Seller due to such change), which must be approved in writing in advance by Buyer prior to commencing such changes.

**15. Cancellation.** Buyer may cancel this Order in whole or in part, at any time by giving written notice to Seller. Cancellation does not waive or release any rights or remedies of Buyer for any breach by Seller. If canceled due to fault of Seller, Buyer may procure substitute product and charge Seller for any additional costs thereof. If Buyer cancels this Order less than 30 days prior to delivery for Buyer's convenience and not due to any fault of Seller, Buyer and Seller will negotiate reasonable cancellation costs, which will include only Seller's reasonable, direct costs necessarily incurred by Seller for custom Product that cannot be resold. Any claim for such costs shall include reasonable supporting documentation and must be made within 30 days of Buyer's cancellation notice. Buyer shall not have any other liability for any cancellation of this Order.

**16. Intellectual Property.** Each party retains its ownership of Intellectual Property owned by such party prior to the date of this Order. Buyer will own, and Seller hereby assigns (and will cause its affiliated companies and subcontractors to assign) to Buyer, all right, title and interest in and to any Intellectual Property created in or resulting from performance of this Order or any work or services paid for by Buyer. With respect to the Products supplied under this Agreement, Seller hereby grants (and will cause its affiliated companies and subcontractors to grant) to Buyer a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, fully paid-up license to (a) incorporate, use, sell, offer to sell, perform, display, distribute, import and otherwise dispose of such Products (including as part of or in combination with any Buyer product or service), and (b) sublicense the foregoing rights, including the right to sublicense through multiple tiers of sublicensees. The above license includes the right for Buyer to modify and create derivative works of any software provided in source code form and to incorporate, reproduce and distribute the software and derivative works thereof in connection with the Products for which such software is provided.

**17. Confidentiality.** Seller will protect as confidential all non-public information disclosed by Buyer, including specifications, drawings, samples and other data furnished by Buyer ("Confidential Information"). Seller will not use any Confidential Information for any purpose other than performance of this Order for Buyer. Confidential Information does not include information that (a) is or becomes generally publicly known through no fault of Seller, (b) becomes known to Seller on a non-confidential basis from a source other than Buyer without breach of any obligation of confidentiality, or (c) is independently developed by Seller without use of or reference to Buyer's Confidential Information. Seller will not disclose or publicize its commercial dealings with Buyer or disclose the price or any other terms of this Order. All Confidential Information will remain the property of Buyer and be returned to Buyer upon request.

**18. Compliance with Buyer's Policies.**

(a) Seller acknowledges that it has read and understands Buyer's policies for suppliers, which are located at <https://www.divergent3d.com/responsible-purchasing-policy> and may be updated or modified by Buyer from time to time ("Buyer's Policies"). Seller agrees to fully comply with Buyer's Policies with respect to this Order.

(b) For each Product supplied hereunder, Seller will appoint a single project manager. The project manager will act as a liaison between the Seller and Buyer with respect to performance of the agreement.

(c) Seller will implement and maintain, at no additional cost to Buyer, a Business Continuity Plan ("BCP") satisfactory to Buyer to ensure that Seller can continue to provide the Products (including any spare parts, consumables, repairs or replacements) in accordance with this Order in the event of a disaster or other disruption of Seller's business operations. Upon request of Buyer, Seller will review its BCP with Buyer and make any updates required to meet Buyer's requirements for business and supply continuity relating to the Products.

(d) Seller will implement and maintain, at no additional cost to Buyer, a supply chain security plan satisfactory to Buyer that complies with the Customs Trade Partnership Against Terrorism ("C-TPAT") program and similar security programs in other applicable jurisdictions.

(e) All equipment provided by Seller shall conform to applicable United States NEC, NFPA, CSA, and/or UL standards and bear the mark of a Nationally Recognized Testing Laboratory (NRTL).

(f) Seller shall comply with the Aerospace Industries Association of America (AIA) Global Principles of Ethics in the Aerospace & Defense Industry, available for review here: <http://ifbec.info/about>. Also, Seller of Aerospace supplies or services shall comply to Divergent Technologies, Inc. M-10 AS9100 Purchase Order Terms and Conditions <https://www.divergent3d.com/as9100-purchase-order-terms-and-conditions>.

(g) If Seller supplies automotive products or services to Buyer, Seller shall develop (if it does not currently have), implement, and improve a quality management system certified to ISO 9001, unless otherwise authorized by Buyer, with the ultimate objective of becoming certified to this Automotive Quality Management System (QMS) Standard. Unless otherwise specified by Buyer, the following sequence should be applied to achieve this requirement:

1) Compliance to ISO 9001 through second-party audits;

2) Certification to ISO 9001 through third-party audits; unless otherwise specified by Buyer, Seller shall demonstrate conformity to ISO 9001 by maintaining a third-party certification issued by a certification body bearing the accreditation mark of a recognized IAF MLA (International Accreditation Forum Multilateral Recognition Arrangement) member and where the accreditation body's main scope includes management system certification to ISO/IEC 17021;

3) Certification to ISO 9001 with compliance to other Buyer-defined QMS requirements (such as Minimum Automotive Quality Management System Requirements for Sub-Tier Suppliers (MAQMSR) or equivalent) through second-party audits;

4) Certification to ISO 9001 with compliance to IATF 16949 through second-party audits; and

5) Certification to IATF 16949 through third-party audits (valid third-party certification of the supplier to IATF 16949 by an IATF-recognized certification body).

(h) Seller is responsible for ensuring its employees are aware of their contribution to product or service conformity and their contribution to product safety.

## **19. Compliance with Laws.**

(a) Seller will comply and ensure that the Products comply with all applicable laws and regulations, including: (i) the United States Foreign Corrupt Practices Act ("FCPA") and any other applicable anti-corruption law of any foreign jurisdiction; (ii) the Export Administration Act, Export Administration Regulations and other laws and regulations of the United States and other applicable jurisdictions relating to import or export of the Products (collectively, "Export Laws"); and (iii) all applicable laws and regulations regarding hazardous or toxic materials, pollution, disposal of waste, environmental contamination, environmental liability, worker health and safety, conflicts minerals and other environmental, health or safety laws (collectively, "Environmental, Health and Safety Laws").

(b) Seller is solely responsible for submitting all documentation and complying with all requirements for import and export of the Products. Seller will provide to Buyer the Export Control Classification Number for each Product when this Order is placed and, if applicable, obtain all required export licenses required for such Products.

(c) Seller will promptly provide Buyer with any data and documentation reasonably necessary to enable Buyer to comply and to confirm Seller's compliance with Environmental,

Health and Safety Laws, including chemical composition of any substances and applicable material safety data sheets for the Products. Seller will not use or incorporate any materials in connection with the Products which do not fully comply with Environmental, Health and Safety Laws and will provide certification to Buyer that the Products are free of any restricted materials and do not include materials originated from restricted countries. Environmental, Health and Safety Laws include the Federal Occupational Safety and Health Act, the Federal Hazardous Substances Act, the Transportation Safety Act, the Clean Air Act, the Toxic Substances Control Act, the Fair Labor Standards Act, the Federal Water Pollution Control Act, the European Union directive on Restriction of Hazardous Substances (RoHS), directive on Waste Electrical and Electronic Equipment (WEEE), directive on Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), Resource Conservation and Recovery Act (RCRA), and similar laws in other jurisdictions.

**20. Governing Law.** This Order is governed by the laws of the state of California, excluding its conflicts of law provisions. Any dispute arising out of or relating to this Order will be resolved exclusively in the state or federal courts located in the Northern District of California. Seller irrevocably submits to the venue, forum and jurisdiction of those courts and waives all defenses of lack of personal jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Order.

**21. Independent Contractor.** Seller is an independent contractor and is solely responsible for all of its employees, agents and subcontractors and will indemnify Buyer, its officers, directors, employees, agents, customers, successors and assigns from and against all claims, damages, liabilities, losses, costs and expenses (including attorneys' fees) arising out of or relating to Seller's activities or those of its employees, agents or subcontractors.

**22. Subcontractors.** Seller will not delegate or use any subcontractors or sub-suppliers in the performance of this Order without the prior written consent of Buyer. Seller shall ensure that all subcontractors and sub-suppliers are bound by and comply with this Order in the same manner as Seller, including with respect to Buyer's inspection rights and compliance with Buyer's Policies and quality requirements under this Order.

**23. Assignment.** No right or obligation under this Order may be assigned by Seller without the prior written consent of Buyer and any purported assignment without such consent will be void. Buyer may assign this Order or any rights hereunder at any time in connection with any sale of Buyer's assets or transfer of its obligations to which this Order or any Product relates.

**24. Remedies.** The remedies of Buyer stated herein are in addition to all other remedies at law or in equity.

**25. Miscellaneous.** This Order, together with the PO and requirements specified therein, contains the entire agreement (and supersedes all prior written and oral agreements) between the parties regarding the subject matter hereof. Notwithstanding anything to the contrary, the confidentiality terms of this Order do not supersede any prior signed, written non-disclosure agreement (NDA) between the parties, and such NDA will remain in full force

and effect, provided that any such NDA will not be construed as limiting Buyer's rights and licenses with respect to the Products purchased by Buyer under this Agreement. If a court or other body of competent jurisdiction finds any provision of this Order (or portion thereof) to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible, and the remainder of this Order will continue in full force and effect. No provision of this Order may be waived except by a writing executed by the party against whom the waiver is to be effective. A party's failure to enforce any provision will not be construed as a waiver of the provision nor prevent the party from enforcing any other provision. As used in this Order, the words "include" and "including" and variations shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation." This Agreement may not be amended or modified except by a writing signed by both parties. All provisions or obligations contained in this Order, which by their nature are required or intended to remain in effect after any cancellation or expiration of this Order shall survive and remain in effect, including, Sections 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25.