

# **3DiVi Inc.**

## **TERMS AND CONDITIONS OF SALE**

### **1. SCOPE**

The Terms and Conditions (“Terms”) contained herein shall apply to all quotations and offers made by and purchase orders accepted by 3DiVi, Inc. and its subsidiary companies (“3DiVi”) for the delivery of components which may either be delivered alone or in combination with software or software packages, of spare parts and consumables (all together hereinafter referred to as the “Products”). These Terms apply to all sales made by 3DiVi. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by a buyer (“Buyer”). In such case, the terms contained herein shall govern, and acceptance of Buyer’s order is conditioned upon Buyer’s acceptance of the terms and conditions herein, irrespective of whether Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of Products ordered hereunder. 3DiVi’s failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing signed by an officer of 3DiVi before becoming binding on either party.

Upon the date of acceptance by Buyer of 3DiVi’s quotation or acceptance of Buyer’s purchase order by 3DiVi, 3DiVi and Buyer shall be deemed on that date to have entered into a legally binding and enforceable agreement of the purchase and sale for the goods and services described therein and, together with these Terms, shall constitute the “Agreement”.

### **2. GENERAL CONDITIONS AND INTENDED USE**

The Products are not destined for commercial use or resale. The Products may only be purchased by a Buyer for personal use. The use of the Products shall further be subject to the legal provisions applicable within the respective country of delivery.

Products sold by 3DiVi are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer’s sole risk; (2) Buyer agrees that 3DiVi is not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold 3DiVi harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

Buyer acknowledges and agrees that Buyer has read all the safety and health warnings provided in *User Guide* prior to the use of Products.

Any shipping costs, customs duty, insurance costs and any other tax, charge, fee, etc. imposed pursuant to foreign regulations as well as any costs associated to it shall be borne by Buyer.

### **3. RETURN AND EXCHANGE**

All sales are final. Buyer assumes the entire risk of product quality and performance. Should the

performance prove insufficient for the project, or the product is damaged, Buyer assumes the entire cost.

Buyer can request return or exchange **during 30 days** after receiving the Product. Any return or exchange request received after 30 days will not be approved as the product is no longer eligible for return or exchange. A 15% restocking fee applies for all returns. Damaged items are not eligible for return.

Buyer is responsible for the return or exchange shipping charges.

The refund will be the Product total price with applicable sales tax from the original order less restocking fee.

If the product is defective due to manufacturing, evaluated at the sole discretion of 3DiVi, Buyer should return Product for a replacement or a full refund.

#### **4. NON-CONFORMING DELIVERY AND RISK OF LOSS**

Shipments will be deemed to have been accepted by Buyer upon delivery of the said shipments to Buyer unless rejected upon receipt. Buyer shall notify 3DiVi of any visible defects, quantity shortages or incorrect Product shipments within seven (7) days of receipt of the shipment. Failure to notify 3DiVi in writing of any visible defects in the Products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return Products on the basis of visible defects, shortages or incorrect shipments. Risk of loss and title shall pass to Buyer as soon as the Products have been placed with a transport agent.

#### **5. WARRANTY (TVico)**

During the Warranty Period of **twelve months** from the date of original purchase, 3DiVi warrants, only to you, that the TVico will not malfunction under Normal Use Conditions. This is the only warranty 3DiVi gives for your TVico and 3DiVi gives no other guarantee, warranty, or condition. No one else may give any guarantee, warranty, or condition on 3DiVi's behalf.

##### **How to Get Warranty Service**

Before starting the warranty process, please reach to [info@3divi.com](mailto:info@3divi.com) for troubleshooting. If the troubleshooting tips don't resolve your problem, we will authorize return shipment to our office.

##### **Return**

After you return your TVico, 3DiVi will inspect it. If 3DiVi determines that the TVico malfunctioned during the Warranty Period under Normal Use Conditions, 3DiVi will (at its option) repair or replace it, or refund the purchase price.

##### **Warranty Exclusions**

3DiVi is not responsible and this warranty does not apply if your TVico is:

- (a) damaged by use with products not compatible with TVico;
- (b) used for commercial purposes (including, for example, rental, pay per play, etc.);
- (c) opened, modified, or tampered with (including, for example, any attempt to defeat any TVico technical limitation, security, or anti-piracy mechanism, etc.), or its serial number is altered or removed;

- (d) damaged by any external cause;
- (e) repaired by anyone other than 3DiVi.

## **6. LIMITATION OF LIABILITY**

IN NO EVENT SHALL 3DIVI'S AGGREGATE LIABILITY FOR ANY BREACH, WARRANTY, INDEMNITY, OR OTHER OBLIGATION OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCTS OR SERVICES HEREUNDER, EXCEED THE PURCHASE PRICE OF THE PARTICULAR PRODUCTS OR SERVICES WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED.

IN NO EVENT SHALL 3DIVI BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE AND LOSS OF GOODWILL), REGARDLESS OF WHETHER 3DIVI HAS BEEN GIVEN NOTICE OF ANY SUCH ALLEGED DAMAGES, AND REGARDLESS OF WHETHER SUCH ALLEGED DAMAGES ARE SOUGHT UNDER CONTRACT, TORT OR OTHER THEORIES OF LAW.

Some states, provinces or countries do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations may not apply to buyer.

## **7. INTELLECTUAL PROPERTY**

All intellectual property rights arising out of Products or services sold under the Agreement shall belong to 3DiVi. Except for Buyer's implied license to use a Product incident to its purchase, the sale of Products does not convey any license by implication, estoppel, or otherwise in respect of a Product alone or in combination with other Products. Buyer may not maintain, correct, reverse engineer, decompile, or disassemble the Products, except to the extent 3DiVi cannot prohibit such acts by law and unless to the extent agreed upon explicitly otherwise in writing.

## **8. LICENSED PROGRAMS**

In the absence of a separate software agreement between Buyer and 3DiVi, the following terms and conditions apply to 3DiVi's licensed programs:

- (a) Licensed programs include computer software and firmware in all forms. Title to the licensed programs delivered hereunder remains vested in 3DiVi and cannot be assigned or transferred without 3DiVi's written authorization. Buyer agrees to respect and not to remove any copyright, trademark, confidentiality or other proprietary notice, mark or legend appearing on the software, and not to reverse engineer, disassemble, decompile, or modify any licensed programs.
- (b) For standalone licensed programs, 3DiVi grants to Buyer a non-exclusive license to use the licensed programs for its own internal use in a single computer system.
- (c) For licensed programs embedded in Products, 3DiVi grants Buyer a license to use such embedded licensed programs in Products subject to the terms and conditions herein.
- (d) EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE IS PROVIDED "AS IS". 3DIVI EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR

PURPOSE, AND ANY WARRANTY OF CONTINUED OR UNINTERRUPTED OPERATION OF THE SOFTWARE LICENSED HEREUNDER.

#### **9. APPLICABLE LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of California and consents to venue in Santa Clara County, California. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and 3DiVi may seek injunctive relief in any United States or foreign court.

#### **10. OTHER MISCELLANEOUS TERMS**

- (a) This Agreement, including all exhibits thereto, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to amend or modify this Agreement.
- (b) Failure by 3DiVi to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- (c) Any notice hereunder shall be deemed to have been given if sent by prepaid by an internationally recognized overnight courier mail to the party concerned at its last known address. Notice to 3DiVi shall be made by email to: [info@3divi.com](mailto:info@3divi.com).
- (d) No modifications to this document shall be binding unless expressly agreed to in writing by 3DiVi.
- (e) If any provision of this documents is held invalid all other provisions shall remain valid.
- (f) This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

**[End of Agreement.]**