



# Terms & Conditions

*Terms & Conditions - Revised September 19th, 2018*

## **Section 1. Introduction; Quotations and Orders**

**(a)** These Terms and Conditions of sale or licensure shall apply to all quotations, offers to sell, offers to license, and purchase orders (collectively, "Orders") accepted by Future Technologies in Sport, Inc. DBA Divinio ("Divinio") with respect to the products, parts, software applications, and any other materials or services ("Goods and Services") of any type referenced in any Order. These Terms & Conditions also apply to other sales and licenses of the Goods and Services when the sale or license is not pursuant to an Order. Divinio's acceptance of any Order issued by the buyer or licensee described in any Order ("Buyer or Licensee") and other sale or license of the Goods or Services is expressly made conditional on and subject to these Terms and Conditions,

irrespective of whether Buyer or Licensee accepts them in writing, by implication, or by acceptance of and payment for the Goods and Services. These Terms and Conditions shall govern the

contractual arrangement entered into between Divinio and Buyer or Licensee with respect to the Goods and Services to the exclusion of any terms or conditions of purchase or licensure proposed by Buyer.

**(b)** Any price and delivery schedule quoted by Divinio in any Order is valid for a period of sixty (60) days from the date of the Order. An Order prepared by Divinio shall only be effective and binding on Divinio if accepted by Buyer or Licensee without modification within such time period. An Order prepared by Buyer or Licensee shall only be effective and binding on Divinio when accepted in writing by Divinio. Buyer or Licensee acknowledges that Divinio uses subcontractors and suppliers for manufacture of its Goods and Services. Some of these subcontractors and suppliers require that Divinio's Buyers and Licensees agree to and abide by additional terms and conditions applicable to the Goods and Services. Accordingly, Buyer or Licensee agrees to abide by additional terms and conditions of the following subcontractors and suppliers to Divinio: Velvetwire, Inc. whose additional terms and conditions may be found at [www.velvetwire.com/stickershock/terms](http://www.velvetwire.com/stickershock/terms)

(c) These Terms and Conditions, together with any Order, shall constitute the agreement ("Agreement") by and between Divinio and the Buyer or Licensee.

## Section 2. Deliveries

(a) Unless notified in writing by Divinio, all goods and services shall be made available or performed by Divinio to or for Buyer or Licensee or Buyer's or Licensee's carrier at Divinio's main office located at 200 Portland St, Boston, Massachusetts 02114, U.S.A. or such other location in the U.S.A from which Divinio makes available the Goods and Services. Buyer or Licensee shall select the carrier and other shipping companies and agents unless otherwise agreed in writing by Divinio. Buyer or Licensee shall be responsible for and shall pay all freight, shipping, other transportation, export clearance, brokerage, insurance, and associated expenses and duties that may be incurred in transporting any Goods and Services to Buyer or Licensee unless otherwise agreed in writing by Divinio.

(b) Risk of loss with respect to the Goods and Services and purchased or licensed by Buyer or Licensee shall pass to Buyer or Licensee at the point where the Goods and Services pass from Divinio's shipping point onto the vehicle used by Buyer's or Licensee's carrier.

(c) Goods and Services shall be packaged by Divinio in accordance with good commercial practice for domestic shipment unless otherwise agreed in writing by Divinio. Any additional handling or preparation for shipment specified by Buyer or Licensee shall be at Buyer's or Licensee's additional expense, including all costs associated with international shipments.

(d) Buyer or Licensee may not terminate, suspend performance, reschedule or cancel delivery or issue a "hold" order in whole or in part, without Divinio's prior written consent and upon terms that will compensate Divinio for any loss or damage

resulting from such action. Buyer's or Licensee's liability shall include, but not be limited to, the price of Goods and Services delivered or held for disposition, the price of services already performed, and for work in process, incurred costs and a reasonable allocation of general and administrative expenses, plus Divinio's loss of profits. If delivery of the Goods and Services is delayed by Buyer or Licensee, Divinio may invoice Buyer or Licensee for the Goods and Services when Divinio is prepared to ship and Buyer or Licensee will reimburse Divinio for any storage costs incurred, including the cost of insuring such Goods and Services.

(e) Divinio shall be excused for delays in meeting any delivery schedule if such delay or failure results from any cause beyond the control of Divinio, including solely by way of example and without limitation, delays caused by Buyer or Licensee or Divinio's suppliers, Acts of God, strikes and other labor disputes, government regulations, war, terrorism, national emergency, public disorder, and catastrophes of nature, fire and explosion, and affecting Divinio or any supplier to Divinio.

(f) Divinio shall not be responsible for any installation, testing, maintenance, or repair of Goods or Services purchased by Buyer or Licensee unless otherwise agreed in writing by Divinio.

## Section 3. Export Controls and Intellectual Property

(a) Buyer or Licensee acknowledges that the Goods and Services sold or licensed by Divinio are subject to export control laws and regulations of the United States of America. Divinio will have no obligation to sell, license or deliver Goods and Services until Buyer or Licensee has obtained all required export authorizations, if required. Buyer or Licensee acknowledges that the laws of the United States of America may

restrict the ability of the Buyer or Licensee to re-sell, re-license or otherwise transfer the Goods and Services. Buyer or Licensee agrees that it will not use, distribute, sell, re-sell, license, re-license, transfer, or transmit the Goods and Services except in compliance with United States laws and regulations.

**(b)** Goods and Services and the manuals and other literature ("Manuals") which may be provided to Buyer or Licensee by Divinio in connection with such Goods and Services contain proprietary information of Divinio including, without limitation, copyright material, trademarks and trade names used by Divinio to brand its Goods and Services, trade secrets, mask works, and patented works (collectively, "Proprietary Information"). All Proprietary Information shall remain Divinio property.

**(c)** Subject to Buyer or Licensee paying Divinio in full for the Goods and Services, Divinio hereby grants to Buyer or Licensee a limited, worldwide, perpetual, royalty-free, and non-exclusive license to (i) use the Goods and Services solely for the purpose for which they are intended to serve as designed by Divinio and for no other purpose and (ii) use any associated Manuals solely in connection with the installation, testing, use, maintenance, and repair of the Goods and Services.

**(d)** Buyer shall not (i) copy, decompile, reverse engineer or disassemble the Goods and Services (ii) create derivative works based on the Goods and Services, (iii) copy any Manuals provided by Divinio, or (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Good and Services during the use and operation thereof or (iv) attempt to do any of the foregoing. Buyer shall not permit any of its employees, agents, or anyone else to do, or attempt to do, any of the foregoing.

## **Section 4. Limited Warranties**

**(a)** When installed, maintained, and repaired in accordance with all of the directions, instructions, diagrams, and safety warnings, cautions, and other notices set forth in Divinio's Manuals, and if not damaged by persons, actions, or inactions unrelated to Divinio, Divinio warrants that the Goods and Services will be free from defects in workmanship and materials in normal use and operation within the thirty (30) calendar day period following the date of delivery of the Divinio Goods and Services to Buyer or Licensee as described in Section 2(a). In the event of any such defect of which Divinio is informed in writing within such thirty (30) calendar day period, Divinio's sole responsibility is, at Divinio's option, to provide replacement parts at no cost to the Buyer or Licensee, to repair the Goods and Services at Divinio's facilities, or to refund the cost of the Goods and Services to the Buyer or Licensee upon the return of the defective Goods and Services. Requests for compliance with this express, limited warranty shall be honored only when made in writing by the Buyer or Licensee. No Goods and Services may be returned to Divinio without its prior authorization. Divinio shall pay transportation charges on Goods and Services found by Divinio to be defective. This express, limited warranty shall be null and void if any modifications or alterations are made to any Goods and Services by any person or entity other than Divinio.

**(b)** THE WARRANTY STATED ABOVE IN SECTION 4(a) IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY DIVINIO. DIVINO DOES NOT MAKE, AND BUYER OR LICENSEE EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED. ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY DIVINIO. DIVINIO SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT, IN RESPECT OF GOODS,

OR OTHERWISE FOR LOST PROFITS OR REVENUES, OR FOR CONSEQUENTIAL, COMPENSATORY, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF DIVINIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS, LIMITED WARRANTY DESCRIBED IN SECTION 4(a) IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF DIVINIO FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS AND ANY ORDER, THE GOODS AND SERVICES, OR OTHERWISE.

**(c)** IN ANY EVENT, THE LIABILITY OF DIVINIO FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER SHALL BE LIMITED TO THE AMOUNT THEN PREVIOUSLY PAID TO DIVINIO BY BUYER FOR ANY GOODS AND SERVICES THAT DO NOT MEET THE EXPRESS, LIMITED WARRANTY DESCRIBED IN SECTION 4(a).

**(d)** Although risk of damage or loss transfers from Divinio to the Buyer or Licensee at the point of shipment as defined in 2(b) Divinio requests immediate notification of any claims arising from damage in transit in order to determine if carrier responsibility exists.

## **Section 5. Buyer Indemnification**

Buyer or Licensee acknowledges and agrees that Buyer or Licensee is responsible for the installation, testing, use, maintenance, repair, and replacement of Goods and Services; that Divinio shall not be responsible for any negligent or improper installation, testing, maintenance, repair, and replacement of Goods and Services, and that Buyer or Licensee shall defend, indemnify and hold Divinio harmless from, against and in respect of any injury, damage, loss or claim, including legal fees with respect to, or arising out of, the installation, testing, use, maintenance,

repair, and replacement of Goods and Services.

## **Section 6. Invoices and Payment**

**(a)** Unless otherwise specified in any Order, Buyer or Licensee shall pay Divinio for any Goods and Services not later than thirty (30) calendar days after the delivery of the Goods and Services as described in Section 2(a). All payments are to be made in United States dollars and shall not include any deductions for exchange fees, currency fluctuations, wire transfer, or other similar charges.

**(b)** Interest charges for late payments shall accrue and are it is agreed that they incur at the lesser of (i) 1.5% per month (18% per year) or (ii) the maximum rate permitted by applicable law.

**(c)** Non-payment of any invoice for over sixty (60) calendar days constitutes a breach of these Terms and Conditions and relieves Divinio of the responsibilities defined herein and in any related or subsequent Order for delivery and warranty. Buyer or Licensee shall pay all of Divinio's collection costs in the event of court enforcement by Divinio, including, but not limited to reasonable attorney's fees.

**(d)** The prices provided for in any Order do not include any of the following: (i) present or future United States, state, or foreign taxes that pertain to the sale, purchase, or use of the Goods or Services including, without limitation, the Federal Manufacturer's Excise Tax, state sales and use taxes, and value added taxes (collectively, "Taxes"), or (ii) United States or foreign import or export customs tariffs, taxes, and other duties (collectively, "Duties"). All Taxes will be invoiced to and paid by Buyer or Licensee, unless paid by the Buyer or Licensee directly with written confirmation thereof to Divinio or Buyer or Licensee submits to Divinio a tax exemption certificate. All Duties shall be paid by Buyer

or Licensee directly to the person, entity, or government authority levying the Duties.

**(e)** This Agreement shall be deemed to be a security agreement by which Buyer or Licensee hereby grants to Divinio a purchase money security interest in the Goods and Services pending payment in full. Buyer or Licensee hereby grants to Divinio a limited power of attorney solely for the purpose of executing and filing one or more financing statements, amendments thereto, and other certificates or instruments necessary for Divinio to perfect such security interest.

## **Section 7. Miscellaneous Terms**

**(a)** This Agreement shall be construed, interpreted, and governed by and in accordance with the laws of the Commonwealth of Massachusetts without regard to, or application of, the Commonwealth's rules regarding the conflict of laws. Any dispute arising between Divinio and the Buyer shall be brought and heard only in a court located in Boston, Massachusetts and Divinio, Buyer and Licensee hereby agree to submit to such jurisdiction exclusively. Notwithstanding the foregoing, nothing shall prevent Divinio from commencing legal proceedings for the purpose of seeking an injunction or similar equitable remedy with respect to Divinio's intellectual property in any appropriate jurisdiction.

**(b)** These Terms and Conditions and any related Order together constitute the entire agreement between Divinio and the Buyer or Licensee regarding the subject matter hereof. No prior agreement, understanding, or discussion between the parties regarding any matter covered by these Terms and Conditions or by any Order shall be referenced or may be relied upon in interpreting or enforcing this Agreement. These Terms and Conditions and the terms set forth in any Order, may not be amended

or terminated without the signed, written consent of Divinio.

**(c)** All of these Terms and Conditions shall inure to the benefit of and be binding upon the respective successors and permitted assigns of Divinio and the Buyer or Licensee.

**(d)** All section headings in these Terms and Conditions or in any Order are for the convenience of the parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties.