



**BEYOND  
THE  
PRODUCT**

Philadelphia  
Albuquerque  
Boise  
Denver  
Harrisburg  
Salt Lake City

**An Employee Owned Company**

**DVL Group, Inc.  
TERMS AND CONDITIONS**

**1. Definitions**

- 1.1. “**DVL**” means DVL Group, Inc., a Pennsylvania corporation with its principal place of business at 115 Sinclair Road, Bristol, PA 19007.
- 1.2. “**Customer**” means the person or entity identified in the applicable quote, statement of work, accepted purchase order, or other ordering document accepted by DVL (each, an “**Order**”).
- 1.3. “**Products**” collectively means third-party IT infrastructure equipment, generators, power distribution equipment, cooling equipment, switchgear controls, cooling products, and related equipment, systems, components, parts, and accessories sold, supplied, or installed by DVL.
- 1.4. “**Services**” collectively means commissioning, testing, preventive maintenance, uninterruptable power supply services, computer room air conditioner services, and any other services provided by DVL under one or more Orders. Services also include Software-related services, including installation, customization, troubleshooting, upgrades, and enhancements, as may be described in the applicable Order.
- 1.5. “**Software**” means third-party software used in conjunction with the Products, including firmware, applications, tools, scripts, and any updates or enhancements, and any related documentation.
- 1.6. “**Site**” means the Customer facility or other location where Products will be delivered, installed, or serviced, or where the Services are provided.
- 1.7. “**Third-Party Terms**” means license terms, warranties, end-user license agreements (EULAs), pass-through conditions, and other terms of third-party manufacturers, suppliers, and licensors applicable to any Products, Software, or Services.
- 1.8. “**Confidential Information**” has the meaning set forth in Section 10.1.
- 1.9. “**Force Majeure Event**” has the meaning set forth in Section 16.1.

- 1.10. “**Work Product**” means deliverables, configurations, customizations, scripts, documentation, reports, and other materials created by or for DVL in connection with the Services, excluding Customer Materials.
- 1.11. “**Customer Materials**” means data, specifications, drawings, site information, and other materials provided by Customer to DVL.

**2. Scope; Orders; Changes**

- 2.1. These Terms and Conditions (these “**Terms**”) govern all sales of Products and performance of Services by DVL to Customer and are incorporated into each Order. If there is a conflict, the order of precedence is: (a) an Order signed by both parties expressly modifying these Terms; then (b) these Terms; then (c) Third-Party Terms as to the applicable item.
- 2.2. Any Customer terms in purchase orders, acknowledgments, or other documents that are additional to or inconsistent with these Terms are rejected and have no effect unless expressly accepted in writing by DVL. DVL’s commencement of performance does not constitute acceptance of Customer terms
- 2.3. Changes to scope, schedule, or requirements must be agreed in a written change order. DVL is entitled to equitable adjustments to pricing, schedule, and other affected terms for any changes or for any delays or additional costs arising from inaccurate or incomplete Customer information, Site conditions, access limitations, safety or compliance requirements, or Third-Party Terms.

**3. Pricing; Taxes; Shipping; Title; Risk of Loss**

- 3.1. Prices are as stated in the applicable Order and are exclusive of taxes, duties, fees, shipping, handling, insurance, and similar charges, which will be invoiced to Customer.
- 3.2. Customer is responsible for all sales, use, excise, VAT/GST, and similar taxes related to the Products and Services, excluding taxes on DVL’s net income. If Customer claims exemption, it must provide valid exemption certificates before invoicing; otherwise DVL will collect applicable taxes.
- 3.3. Title to Products (excluding Software and any embedded intellectual property) passes to Customer upon DVL’s receipt of the full payment

for such Products. Risk of loss passes upon delivery of the Products to the carrier.

- 3.4. Delivery dates are estimates only. DVL is not liable for delays, partial shipments, or failure to deliver caused by lead times, supply chain constraints, Force Majeure Events, Customer acts or omissions, or acts or omissions of third parties.

#### **4. Site Preparation; Access; Safety**

- 4.1. Customer will provide: (a) clear, safe, and timely access to the Site; (b) suitable environmental, electrical, structural, and network conditions; (c) necessary utilities, lifting equipment, staging, permits, and approvals; and (d) accurate as-built drawings, load and wiring diagrams, network information, and hazard disclosures.
- 4.2. DVL may rely on Customer Materials without independent verification. DVL may suspend work if Site conditions are unsafe, noncompliant, or not as represented, and may invoice standby, remobilization, and any other additional costs.
- 4.3. Customer is responsible for asbestos, hazardous materials, and code compliance unrelated to DVL's scope of work expressly set forth in the applicable Order. DVL has no obligation to move, alter, or replace existing equipment except as otherwise expressly stated in the applicable Order.

#### **5. Installation; Commissioning; Acceptance**

- 5.1. DVL will perform installation, commissioning, testing, startup, and related Services in a commercially reasonable manner, consistent with applicable Orders.
- 5.2. Upon substantial completion of Services or delivery of Products, DVL may request Customer's written acceptance. If Customer does not provide a detailed written rejection citing material nonconformities within ten (10) days of substantial completion of the Services or delivery of the Products, the Products and Services will be deemed accepted.
- 5.3. Any use of the Products or Software in live operations or commercial service constitutes acceptance.

#### **6. Software; Licenses; Third-Party Terms**

- 6.1. Software is licensed, not sold. Subject to full payment and compliance with these Terms and the applicable Order, and solely for Customer's internal business purposes at the Site, DVL grants Customer a nonexclusive, nontransferable, revocable license to use Software and related documentation delivered under the Order, in object code only, for the term specified in the Order or, if none, perpetually, subject to termination under Section 14.

- 6.2. Customer will not, and will not permit any third party to: (a) copy, modify, adapt, translate, or create derivative works of the Software or Work Product; (b) reverse engineer, decompile, or disassemble except to the extent expressly permitted by applicable law without the possibility of contractual waiver; (c) remove or alter proprietary notices; (d) use the Software for timesharing, service bureau, or hosting for third parties; (e) circumvent technical restrictions; or (f) access or use the Software or Work Product to develop a competing product or service or for benchmark disclosure.
- 6.3. Software, Products containing software or firmware, and certain Services are subject to Third-Party Terms. Customer agrees to comply with all applicable Third-Party Terms. In the event of conflict between these Terms and Third-Party Terms applicable to a third-party item, the Third-Party Terms control for that item.
- 6.4. Open source components, if any, are licensed under their respective licenses. No open source license grants Customer rights to any of DVL's proprietary code or Work Product.
- 6.5. DVL may implement usage tracking, logs, and technical measures to protect intellectual property, manage licenses, and support Services.
- 6.6.

#### **7. Monitoring and Remote Services**

- 7.1. If monitoring, remote access, or telemetry Services are provided by DVL to Customer, Customer authorizes DVL to connect to and collect operational data from the Products and Software and to use such data to deliver Services, improve offerings, and for analytics, provided that personally identifiable information is not required for such purposes.
- 7.2. Customer will provide secure remote access (e.g., VPN) and necessary credentials reasonably required by DVL in connection with the applicable Order. DVL is not responsible for Customer's network security, connectivity, or data retention policies.

#### **8. Preventive Maintenance; Exclusions**

- 8.1. Preventive maintenance Services are limited to the tasks and frequencies specified in the applicable Order.
- 8.2. Unless expressly included, Services do not include: (a) repair or replacement due to misuse, neglect, accident, power anomalies, environmental conditions, or unauthorized modifications; (b) consumables and wear parts; (c) code upgrades required by changes in law or standards; (d) emergency or after-hours services; or (e) relocation, rigging, or structural work. Such

items may be provided at DVL's then-current time and materials rates.

## **9. Payment Terms; Suspension; Late Charges**

- 9.1. Customer will pay all amounts within thirty (30) days of invoice date unless otherwise stated in the Order. Milestone or progress billing may be used.
- 9.2. DVL may invoice for: (a) Products upon shipment; (b) Services monthly in arrears or upon milestone completion; (c) mobilization and travel in advance; and (d) change orders and additional costs as incurred.
- 9.3. All late amounts accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law. Customer will also be responsible for DVL's reasonable collection costs, including attorneys' fees.
- 9.4. DVL may suspend or withhold performance, delivery, warranty, support, or licenses for Customer's failure to pay any amounts when due and may require advance payment or other adequate assurances.
- 9.5. All amounts are nonrefundable except as expressly provided in these Terms or an applicable Order. Customer may not set off or withhold payments.

## **10. Confidentiality; Data**

- 10.1. "Confidential Information" means nonpublic information disclosed by a party that is designated confidential or that reasonably should be understood to be confidential under the circumstances, including, without limitation, pricing, product plans, software, code, configurations, security information, Customer Materials, and Work Product.
- 10.2. The receiving party of Confidential Information will: (a) use Confidential Information only to perform its obligations or exercise its rights under the applicable Order; (b) not disclose it to third parties except to its personnel, affiliates, and contractors with a need to know and who are subject to obligations no less protective than those set forth in this [Section 10](#); and (c) protect it using at least the degree of care it uses for its own similar information and no less than a reasonable standard of care.
- 10.3. Confidential Information does not include (a) information that, at the time of disclosure to the receiving party, is in the public domain; (b) information that, after disclosure to the receiving party, becomes generally available to the public other than as a result of a disclosure by the receiving party; (c) information that was in

possession of the receiving party prior to disclosure thereof and which was not acquired by the receiving party directly or indirectly from the disclosing party or from any other person or entity under the condition of confidentiality; or (d) information independently developed by the receiving party without use of or reference to any of the disclosing party's Confidential Information.

- 10.4. The receiving party may disclose Confidential Information to the extent required by law, court order, valid subpoena, or similar legal process, provided it gives prompt written notice to the disclosing party (unless prohibited by applicable law) sufficiently in advance of disclosure in order to enable the disclosing party to seek, at its sole cost and expense, a protective order or similar remedy prohibiting or limiting such disclosure.
- 10.5. DVL may retain and use deidentified or aggregated data for analytics and improvement of its products and services.

## **11. Intellectual Property; Ownership**

- 11.1. As between the parties, DVL and/or its licensors own all rights, title, and interest in and to the Software, Work Product, documentation, and any improvements, enhancements, and derivatives thereof, including all associated intellectual property rights. No rights are granted to Customer except as expressly set forth in these Terms or the applicable Order.
- 11.2. Subject to [Section 11.1](#), upon, and subject to, full payment by Customer of all amounts due, DVL grants Customer a nonexclusive, nontransferable, royalty-free license to use Work Product solely for Customer's internal use with the Products at the Site.
- 11.3. Customer retains ownership of Customer Materials and grants DVL a nonexclusive, royalty-free license to use Customer Materials for performance of its obligations under any Order. Customer represents it has all rights necessary to grant this license and that Customer Materials do not infringe on or violate any third-party's intellectual property or any other rights.
- 11.4. Customer feedback may be used by DVL without any restriction and without obligation to Customer.

## **12. Warranties; Remedies; Disclaimers**

- 12.1. [Products](#). DVL will pass through to Customer, to the extent permitted by the applicable manufacturer and by law, any manufacturer warranties for Products. DVL makes no independent warranty for third-party Products and has no liability beyond such pass-through warranties.

- 12.2. Services. DVL warrants that Services will be performed in a professional and workmanlike manner consistent with applicable industry standards for similar services for a period of ninety (90) days from performance. Customer's exclusive remedy for breach of this Services warranty is reperformance of the nonconforming Services or, at DVL's option, a refund of the portion of fees paid for the nonconforming Services.
- 12.3. Exclusions. Warranties do not apply to defects or issues arising from: (a) modifications not made by DVL; (b) use not in accordance with documentation or specifications; (c) failure to implement updates or recommended fixes; (d) Third-Party Terms; (e) accident, abuse, neglect, improper storage or environmental conditions, or electrical anomalies; (f) hardware, software, or services provided by someone other than DVL; or (g) beta, trial, evaluation, or free offerings.
- 12.4. Procedure. Warranty claims must be submitted in writing within the applicable warranty period with reasonable detail and supporting information.
- 12.5. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 12, THE PRODUCTS, SOFTWARE, SERVICES, AND WORK PRODUCT ARE PROVIDED "AS IS" AND "AS AVAILABLE." DVL, ON BEHALF OF ITSELF AND ITS LICENSORS, DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

### 13. Indemnification

- 13.1. Customer will defend, indemnify, and hold harmless DVL, its affiliates, and their respective officers, directors, members, managers, shareholders, employees, and contractors from and against any third-party claims, demands, losses, damages, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising out of or related to (a) Customer's or its contractors' use or misuse of the Products, Software, or Services; (b) Customer Materials; (c) bodily injury, death, or damage to tangible property to the extent caused by Customer's negligence or willful misconduct; (d) any claim that Customer Materials or Customer's combination of Products or Software with third-party products or services infringes any third-party intellectual property right; or (e) Customer's breach of these Terms or applicable laws.

### 14. Term; Termination; Suspension

- 14.1. Term. These Terms apply to each Order from the earlier of Customer's signature on such Order or commencement of performance in connection with such Order, and continue until completion unless earlier terminated in accordance with this Section 14.
- 14.2. Termination for Cause. Either party may terminate an affected Order upon thirty (30) days' prior written notice to the other party if the other party materially breaches these Terms or such Order and fails to cure within such period. It is understood that any failure to pay by Customer of any DVL invoice shall constitute a material breach by Customer.
- 14.3. Insolvency. Either party may terminate any Order immediately upon written notice to the other party if the other party becomes insolvent, makes an assignment for the benefit of creditors, or is the subject of bankruptcy or similar proceedings not dismissed within sixty (60) days after initiation thereof.
- 14.4. Suspension. DVL may suspend performance for nonpayment, unsafe conditions, legal or regulatory requirements, suspected breach, or a Force Majeure Event.
- 14.5. Effect. Upon termination or expiration, (a) all amounts accrued become immediately due; (b) Customer will return or certify destruction of DVL's Confidential Information and any evaluation or loaned equipment; and (c) licenses terminate except as otherwise expressly stated. Sections that by their nature are reasonably expected to survive termination or expiration of these Terms will survive, including Sections 3, 6.2-6.5, 7, 9, 10, 11, 12.5, 13, 14.5, 15, 16, and 18-21.

### 15. Limitation of Liability

- 15.1. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL DVL, ITS AFFILIATES, OR LICENSORS BE LIABLE FOR ANY: (a) INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES; (b) LOSS OF PROFITS, REVENUE, GOODWILL, OR DATA; (c) BUSINESS INTERRUPTION; OR (d) COSTS OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE ARISING OUT OF OR RELATED TO THE PRODUCTS, SOFTWARE, SERVICES, OR THESE TERMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 15.2. TO THE FULLEST EXTENT PERMITTED BY LAW, DVL'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE PRODUCTS, SOFTWARE, SERVICES, OR

THESE TERMS WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO DVL FOR THE SPECIFIC PRODUCT, SOFTWARE, OR SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

#### **16. Force Majeure**

- 16.1. Neither party will be liable for failure or delay in performance (except Customer's payment obligations) due to acts beyond its reasonable control, including acts of God, natural disasters, epidemics, pandemics, acts of government, war or armed conflict, labor disputes, embargoes, cyberattacks, supply chain disruptions, transportation failures, utility outages, or shortages (each, a "**Force Majeure Event**").
- 16.2. The party affected by a Force Majeure Event will provide prompt written notice thereof to the other party and use commercially reasonable efforts to mitigate the effects thereof. Schedules will be equitably extended. If a Force Majeure Event continues for more than sixty (60) days, DVL may terminate any affected Order without liability.

#### **17. Export; Compliance**

- 17.1. Customer will comply with all applicable laws, including export controls, sanctions, anti-bribery, and data protection laws. Products, Software, and technical data may be subject to U.S. and other export laws; Customer will not export, re-export, or transfer Products, Software or technical data in violation of such laws.

#### **18. Independent Contractor; Personnel**

- 18.1. DVL is an independent contractor. Nothing in these Terms or any Order creates a partnership, joint venture, or agency between Customer and DVL.
- 18.2. DVL may use qualified subcontractors and affiliates in performance of its obligations under any Order.
- 18.3. DVL's personnel are not subject to Customer employment policies; however, such personnel will comply with reasonable Site safety rules provided to DVL in advance in writing.

#### **19. Notices**

- 19.1. Notices must be in writing and delivered by personal delivery, nationally recognized courier (e.g., UPS, FedEx), or certified mail to the addresses set forth in the applicable Order or to such other address designated in writing. Notices

are effective upon receipt or when delivery is refused.

#### **20. Governing Law; Venue; Injunctive Relief; Jury Trial Waiver**

- 20.1. Governing Law; Venue. These Terms and each Order shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws principles. Subject to a party's right to seek and obtain injunctive or equitable relief pursuant to Section 20.2 below (which a party may seek and obtain in any court of competent jurisdiction), any action or proceeding arising out of or related to these Terms or any Order shall be brought in either the Court of Common Pleas for Bucks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania, and the parties hereby irrevocably submit to the jurisdiction of and exclusive venue in such courts and waive the defense of inconvenient forum to the maintenance of any action or proceeding in such venue.
- 20.2. Injunctive Relief. Either party may seek injunctive or equitable relief in any court of competent jurisdiction to protect its intellectual property or other Confidential Information. Additionally, DVL may seek injunctive or equitable relief in any court of competent jurisdiction to protect or enforce its rights under Section 27 below.
- 20.3. Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS OR ANY ORDER.
- 20.4. Attorneys' Fees. The substantially prevailing party in any action arising from or related to these Terms or any Order shall be entitled to recover its reasonable attorneys' fees and costs.

#### **21. Safety; Compliance; Environmental**

- 21.1. Customer is responsible for ensuring that the Site and Customer's operations comply with all applicable safety, building, electrical, and environmental laws, codes, and regulations. DVL's Services do not constitute an assumption of responsibility for Customer's compliance obligations.
- 21.2. Any disposal of replaced equipment or materials will be Customer's responsibility unless explicitly set forth otherwise under the terms of the applicable Order.



## **22. Returns; RMA; Restocking**

- 22.1. Returns of Products require DVL's prior written authorization and return merchandise authorization (RMA) number and are subject to the applicable manufacturer's policies.
- 22.2. Returns may be subject to a restocking fee plus freight and handling. Custom or non-stock items, software licenses, and items that were used or installed are nonreturnable.

## **23. Cybersecurity; Backup**

- 23.1. Customer is responsible for implementing appropriate cybersecurity, access controls, and data backups. DVL is not responsible for recovery of Customer data or systems except as expressly stated in an Order.
- 23.2. For any remote Services, Customer will promptly notify DVL of any actual or suspected security incident that may affect the Products or Software.

## **24. Acceptance of Terms; Entire Agreement; Severability**

- 24.1. Customer accepts these Terms by placing an Order, clicking to accept online, or permitting DVL to commence performance.
- 24.2. These Terms, together with the applicable Order and any referenced Third-Party Terms, constitute the entire agreement and supersede all prior or contemporaneous communications regarding the subject matter.
- 24.3. No waiver is effective unless in writing and signed by the waiving party. No failure or delay in enforcing any right operates as a waiver.
- 24.4. If any provision is held unenforceable, it will be deemed modified to the minimum extent necessary to make it enforceable, and the remaining provisions shall remain in effect.
- 24.5. Customer may not assign an Order or these Terms without DVL's prior written consent, except to a successor in interest to substantially all of Customer's assets or business to which the Order relates. Any attempted assignment in violation of this Section 24.5 shall be void and of no legal effect. These Terms shall be binding on and inure to the benefit of permitted successors and assigns.
- 24.6. Headings are for convenience only and do not affect interpretation. "Including" means "including without limitation."

## **25. Substitutions**

- 25.1. DVL may substitute substantially equivalent or better components or models due to supply constraints or product lifecycle changes, provided functionality is not materially degraded.

## **26. Storage; Delays; Abandonment**

- 26.1. If shipment or installation is delayed by Customer by more than ten (10) days after the scheduled date, DVL may invoice for the Products and any completed Services and store the Products at Customer's risk and expense, including storage, handling, insurance, and additional mobilization costs.
- 26.2. If Customer fails to take delivery or provide access within sixty (60) days of notice from DVL, DVL may deem the Order abandoned and dispose of the Products. Customer remains liable for all amounts due to DVL and DVL's disposal costs.

## **27. Non-Solicitation**

- 27.1. During the term of any Order and for a period of twenty-four (24) months after termination or expiration thereof, Customer shall not, directly or indirectly, solicit for employment or hire any DVL employee who participated in the Services without DVL's prior written consent in each instance.

## **28. Construction; Prevailing Terms**

- 28.1. Any preprinted terms on Customer forms shall be void and of no legal effect. Handwritten or typed modifications to these Terms are not binding unless expressly accepted in writing by an authorized representative of DVL.

## **Tariffs and Duties**

Any tariffs, duties, taxes, fees, surcharges, or other governmental charges imposed on or applicable to the Products after the date of the Buyer's acceptance of the applicable order, including any increase in such charges occurring after acceptance, shall be the responsibility of the Buyer. Seller reserves the right to invoice and collect from Buyer any such additional amounts incurred or payable by Seller in connection with the Products, and Buyer agrees to pay such amounts in addition to the purchase price stated in the order. Such charges shall not constitute a change to the agreed purchase price for purposes of cancellation or rejection of the order.