

## Terms and Conditions for Commercial Items

- 1. GENERAL.** This Purchase Order (“Order”) constitutes the entire agreement (“Contract”) between the supplier or seller named on the face of this Order (“Seller”) and Space Dynamics Laboratory (SDL) (“Buyer”), together making the “Parties,” covering the goods and/or services described herein (the “goods”). Seller’s acceptance must be limited to the terms and conditions stated herein, without any modification, addition, or alteration. No terms or conditions in any sales form issued by the Seller shall bind the Buyer or constitute a variance, modification, alteration, or addition to any of the terms, conditions, and provisions in this Order or be a waiver or exception thereto unless specifically agreed to in writing by an authorized agent of Buyer.
- 2. PRICE.** This Order shall not be filled at a higher price than specified herein. Unless otherwise provided herein, prices shown on this Order are deemed to include all costs and expenses of delivering goods to the shipment point designated herein.
- 3. RENEGOTIATION OR MODIFICATION.** This Contract may be modified, amended, or supplemented only by written modification to the Contract, executed by the person holding actual authority to do so on behalf of the Buyer.
- 4. SHIPMENT AND INSPECTION.** The terms and routing of shipment shall be as provided on the face hereof, or as Buyer otherwise directs. Buyer may revise shipping instructions as to any goods not then shipped. Buyer shall have the right to inspect any or all of the goods at Seller’s plant or upon Buyer’s receipt at Buyer selection. This right shall be exercisable notwithstanding Buyer’s having paid for the goods prior to inspection. Buyers, by reason of its failure to inspect the goods, shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications therefore, or to have waived any of the Buyer’s rights or remedies arising by virtue of such defects or nonconformance.
- 5. PAYMENT/CASH DISCOUNTS PERIOD.** Payment shall be made for items accepted by SDL that have been delivered to the delivery destination(s) set forth in this Order. The time period allowed for payments as indicated on the face hereof, and/or any cash discounts period shall commence upon receipt of Seller’s correct invoice or upon receipt of the goods, whichever is later.
- 6. AUDIT OF RECORDS.** The Seller agrees to allow State and Federal auditors and State agency staff, access to all the records to this Order, for audit, inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- 7. TITLE.** Unless specified elsewhere in this Order, title to items delivered under this Order shall pass to the Buyer upon acceptance, regardless of when or where the Buyer takes physical possession.
- 8. RISK OF LOSS.** Notwithstanding any provisions hereof to the contrary, title to, and risk of loss of the goods shall remain with Seller until the goods are delivered at the

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F.O.B. point specified in this Order, or if no such point is specified, then when the goods are delivered to Buyer. However, if the goods are of an explosive, flammable, toxic or otherwise dangerous nature, Seller shall indemnify and hold Buyer harmless from and against any and all claims asserted against the Buyer on account of any personal injuries and/or property damages caused by the goods, or by the transportation thereof, prior to the completion of unloading at Buyer's point of delivery.

9. **WARRANTIES.** In addition to all other warranties expressed or implied in law, Seller warrants that the goods and their packaging delivered hereunder will conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by Buyer and will be merchantable, of good material and workmanship, free from defects and sufficient for the particular purpose intended. Unless otherwise specified in this Order, the goods shall be new and not used or reconditioned. Seller further warrants that goods delivered hereunder will be free and clear of all security interests, liens, charges, restrictions or encumbrances whatsoever and that Seller will convey to Buyer good and marketable title to the goods. Buyer is relying on Seller's skill and judgment in selecting and providing goods specified hereunder. Seller shall indemnify and hold Buyer harmless from and against any claims for damages (personal property or other), losses demands, costs and expenses, including attorney's fees, arising from Seller's negligence or breach of its obligations under this Order. Warranties hereunder shall survive acceptance and shall extend to any successors or users of the goods that Buyer may assign.

10. **REMEDIES.** In the event of Seller's default of this Contract, Buyer may take any or all of the following actions, without limiting any of the rights or remedies available to Buyer by law; (1) require Seller to repair or replace such goods, and upon Seller's failure to do so, repair or replace the same at Seller's expense; (2) reject any shipment or delivery containing defective, suspect counterfeit or non-conforming goods and return for credit or replacement at Buyer's option said return to be made at Seller's expense and risk; (3) return quantities in excess of variation specified on this Order at Seller's expense and risk; (4) cancel any outstanding deliveries hereunder, and treat such breach by Seller as Seller's repudiation of this agreement.

11. **DISPUTES.** Failure of the Parties to this Contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Seller shall proceed diligently with performance of this Contract, pending final resolution of any dispute arising under the Contract. The Parties knowingly and voluntarily waive their right to a trial by jury.

12. **PATENTS.** It is anticipated that the goods will be possessed, used and/or sold by Buyer. If by reason of any of these acts a claim or action is brought or threatened for infringement of any patents, trademark, trade name or copyright with regards to the goods, their manufacture or use, Seller shall at its own expense indemnify and hold Buyer harmless from any such claims or actions and any damages or expenses whatsoever resulting therefrom.

13. **LABOR.** Seller shall perform all work under this Order as an independent contractor and not as an agent or employee of Buyer. If this Order covers the performance of labor or services by Seller on Buyer's premises, Seller shall indemnify and hold Buyer

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harmless from and against all claims and liability and property insurance in amounts acceptable to Buyer insuring against said injuries, deaths and damages, and shall furnish Buyer with insurer's certificates evidencing such insurance, which certificates shall provide that the coverage evidenced thereby shall not be canceled except upon 30 days prior notice to Buyer, unless otherwise agreed in writing when labor or services are performed or furnished under this Order by Seller.

14. **TAXES.** Buyer certifies that the purchase made by this Order is exempt from state sales and use tax and from federal excise tax; Buyer certifies that the goods are to be paid, in whole or in part, with government funds and will be used in the exercise of essential government functions. If the goods purchased are construction materials and unless otherwise indicated on the face hereof, Buyer certifies that these materials will be installed or converted to real property by employees of Buyer and are therefore, exempt from Utah state sales and use tax. Seller shall not include within the price herein any sales, use or excise tax from which Buyer is exempt.

15. **GOVERNING LAW AND VENUE.** This Order and the agreement between the Parties evidenced hereby are deemed to be made in the State of Utah and shall in all respects be construed and governed by the laws of that state. Venue for resolution of any dispute arising hereunder shall be within a Utah court of competent jurisdiction selected by Buyer.

16. **COMPLIANCE WITH LAW.** The Seller shall comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this Order and shall ensure its acts in performance of this Order shall not cause Buyer to be in violation of the same .

17. **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Seller agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

18. **WAIVER AND ASSIGNMENT.** The waiver of any term or condition hereof shall not be construed to be a waiver of any other term or condition, nor shall such waiver be deemed a waiver of a subsequent breach of the same term or condition. This Order may be assigned by Seller only upon prior written approval of Buyer.

19. **FORCE MAJEURE.** The Seller shall be liable for default based on its nonperformance to the terms of this Contract, unless its nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence.

20. **TERMINATION FOR CONVENIENCE.** The Purchasing Agent, by written notice, may terminate this Contract, in whole or in part, when it is in the Buyer's best interest. If

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this Order is terminated, the rights duties & obligations of the Parties, including compensation to the seller shall be in accordance with part 49 of the FAR in effect on the date of this Contract (ref FAR 52.249-2).

21. **TERMINATION FOR CAUSE.** The Buyer may terminate this Contract, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any Contract terms and conditions, or fails to provide the Buyer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Buyer shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to the Buyer for any and all rights and remedies provided by law. If it is determined that the Buyer improperly terminated this Contract for default, such termination shall be deemed a termination for convenience.

22. **DEBARMENT AND SUSPENSION.** (E.O.'s 12549 & 12689) Seller shall fully comply with the requirements stipulated in Subpart C of 45 CFR 620, entitled "Responsibilities of Participants Regarding Transactions". The Seller is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 45 CFR 620, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. The Seller also is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transaction. The Seller acknowledges that failing to disclose the information required under 45 CFR 620.335 may result in the termination of the award, or pursuance of other available remedies, including suspension and debarment. Seller may access the Excluded Parties List System at [www.sam.gov](http://www.sam.gov).

23. **CONFIDENTIALITY.** Seller shall not, without first obtaining Buyer's written permission, advertise, publish, or disclose the terms, details, or specifications of this Order, the amount of revenue generated or to be generated by this Order, or the fact it has furnished or contracted to furnish the Buyer with the goods and/or services. Seller acknowledges that Buyer is subject to the Utah Governmental Records Access and Management Act (GRAMA) and that pursuant to GRAMA, Seller's proprietary information disclosed to Buyer must be in written or other tangible form appropriately marked as proprietary.

### **Flow-down Clauses**

The clauses below in sections A and B, in effect on the date of this Order, are incorporated herein and made part of this Order, as applicable. In all such clauses, unless the context of the clause requires otherwise, the term "Contractor" shall mean Seller, the term "contract" shall mean this Order, and the terms "Government", "Contracting Officer," and equivalent phrases shall mean Space Dynamics Laboratory (SDL) and SDL's Purchaser, respectively. The referenced clauses shall apply to the Seller in such manner as is necessary to reflect the position as a seller to buyer, to ensure the Seller's obligations to SDL and to the United States Government, and to enable SDL to meet its obligations under its prime contract or subcontract.

The referenced clauses are in the same force and effect as if they were given in full text. The full text of a clause may be accessed electronically at this address:

<http://farsite.hill.af.mil/>

As used in the referenced clauses and throughout this Order, FAR 52.202-1 (NOV 2013) "Definitions" is incorporated by reference. The applicability of these clauses are subject to Order amount and the thresholds identified below in sections A and B.

#### **A. FLOW DOWN FAR CLAUSES INCORPORATED BY REFERENCE**

<b>Clause</b>	<b>Title</b>	<b>Date</b>
52.203-13	Contractor Code of Business Ethics and Conduct If the	OCT 2015
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	JUN 2010
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	JUN 2016
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	JUL 2018
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	AUG 2019
52.219-8	Utilization of Small Business Concerns(for PO's >\$700,000)	OCT 2018
52.222-21	Prohibition of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-35	Equal Opportunity for Veterans	OCT 2015
52.222-36	Equal Opportunity for Workers with Disabilities	JUL 2014
52.222-37	Employment Reports on Veterans	FEB 2016
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-50	Combating Trafficking in Persons	JAN 2019
52.222-50 Alt I	Combating Trafficking in Persons	MAR 2015
52.222-55	Minimum Wages	DEC 2015
52.222-62	Paid Sick Leave	JAN2017
52.224-3	Privacy Training	JAN 2017
52.224-3 Alt I	Privacy Training	JAN 2017
52.225-26	Contractors Performing Private Security Functions Outside the United States	OCT 2016
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	DEC 2013
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	FEB 2006

#### **B. FLOW DOWN DFARS CLAUSES INCORPORATED BY REFERENCE**

<b>Clause</b>	<b>Title</b>	<b>Date</b>
252.244-7000	Subcontracts for Commercial Items	JUN 2013
252.246-7008	Sources of Electronic Parts	MAY 2018