

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 Utah State University 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. Buyer, 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. RECORD RETENTION.** The Seller shall maintain applicable acceptance documentation and relevant quality records for a minimum of seven (7) years from date of delivery, unless otherwise stated on the Order. These records will be made available to the Buyer or Buyer’s representatives upon request.
- 8. 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.
- 9. 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 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.
- 10. 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 authentic. No used, reconditioned, counterfeit or suspect counterfeit parts are to be delivered. 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.

11. 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 and/or impound any shipment or delivery containing used, defective, counterfeit, suspect counterfeit or non-conforming goods; (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; (5) turn such items over to the authority having jurisdiction for investigation and reserve the right to withhold payment for the items pending the results of the investigation; and (6) at Buyer's option, return goods for credit or replacement, at Seller's expense and risk

12. 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.

13. 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.

14. 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 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 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).

22. 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.

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.

24. CONFLICT MINERALS. Seller agrees that it will (1) provide Buyer with the information Buyer in its sole discretion deems necessary to comply with the requirements of Section 1502 ("the Provision") of the DoddFrank Wall Street Reform and Consumer Protection Act ("Act") (Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010)) relating to disclosure and reporting obligations concerning the use of "conflict minerals" during each calendar year on or before February 1st of the next year and (2) undertake due diligence on its supply chain and any other measures as necessary to obtain the information necessary for Buyer to comply with such requirements.

25. REQUIREMENTS FLOW-DOWN. The Seller shall have a process in place to ensure that all their external providers and suppliers have the ability to provide defect-free materials and services in accordance with Buyer's requirements. Seller shall flow-down Buyer's requirements to their external providers and suppliers consistent with the requirements of the Order. Buyer shall communicate to Seller its requirements for;

- a. the processes, products, and services to be provided including the identification of relevant technical data (e.g., specifications, drawings, process requirements, work instructions);
- b. the approval of:
 1. products and services;
 2. methods, processes, and equipment;
 3. the release of products and services;
- c. competence, including any required qualification of persons;
- d. the Seller's interactions with the Buyer;
- e. control and monitoring of the Seller's performance to be applied by the Buyer;
- f. verification or validation activities that the Buyer, or its customer, intends to perform at the Seller's premises;
- g. design and development control;
- h. special requirements, critical items, or key characteristics;
- i. test, inspection, and verification (including production process verification);
- j. the use of statistical techniques for product acceptance and related instructions for acceptance by the Buyer;

- k. the need to:
 - 1. implement a quality management system;
 - 2. use customer-designated or approved Sellers, including process sources (e.g., special processes);
 - 3. notify the Buyer of nonconforming processes, products, or services and obtain approval for their disposition;
 - 4. prevent the use of counterfeit parts;
 - 5. notify the Buyer of changes to processes, products, or services, including changes of their external providers and suppliers or location of manufacture, and obtain the Buyer’s approval;
 - 6. flow down to Seller applicable requirements including customer requirements;
 - 7. provide test specimens for design approval, inspection/verification, investigation, or auditing;
 - 8. retain documented information, including retention periods and disposition requirements;
- l. the right of access by the Buyer, their customer, and regulatory authorities to the applicable areas of facilities and to applicable documented information, at any level of the supply chain;
- m. ensuring that persons are aware of:
 - 1. their contribution to product or service conformity;
 - 2. their contribution to product safety;
 - 3. the importance of ethical behavior.

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 (JUN 2020) “Definitions” is incorporated by reference. The applicability of these clauses are subject to the clause requirements including, but not limited to, order amount and thresholds identified in the clause.

A. FLOW DOWN FAR CLAUSES INCORPORATED BY REFERENCE

Clause	Title	Date
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	NOV 2021
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	NOV 2021
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	NOV 2021
52.219-8	Utilization of Small Business Concerns	SEP 2023
52.222-21	Prohibition of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-35	Equal Opportunity for Veterans	JUN 2020
52.222-36	Equal Opportunity for Workers with Disabilities	JUN 2020
52.222-37	Employment Reports on Veterans	JUN 2020
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010

Clause	Title	Date
52.222-50	Combating Trafficking in Persons	NOV 2021
52.222-50 Alt I	Combating Trafficking in Persons	MAR 2015
52.225-26	Contractors Performing Private Security Functions Outside the United States	OCT 2016
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	MAR 2023
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	NOV 2021

B. FLOW DOWN DFARS CLAUSES INCORPORATED BY REFERENCE

Clause	Title	Date
225.872-1	Contracting with Qualifying Country Sources	
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	JAN 2023
252.225-7008	Restriction on Acquisition of Specialty Metals	MAR 2013
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	JAN 2023
252.225-7052	Restriction on the Acquisition of Certain Magnets and Tungsten	JAN 2023
252.244-7000	Subcontracts for Commercial Items	JAN 2023
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System	JAN 2023
252.246-7008	Sources of Electronic Parts	JAN 2023