



Table of Contents

1. DEFINITIONS. 1
2. ACCEPTANCE OF CONTRACT. 1
3. APPLICABLE LAW. 1
4. ASSIGNMENT. 1
5. AUDIT. 1
6. CHANGES. 1
7. DELIVERY. 1
8. TITLE AND RISK OF LOSS. 1
9. PATENT INDEMNITY. 2
10. INDEPENDENT CONTRACTOR. 2
11. INSPECTION AND ACCEPTANCE. 2
12. INTELLECTUAL PROPERTY. 2
13. LIABILITY. 2
14. ORDER OF PRECEDENCE. 2
15. PAYMENT. 2
16. TAXES. 2
17. PROPRIETARY INFORMATION. 2
18. TERMINATION. 3
19. VALIDITY AND WAIVER. 3
20. WARRANTY. 3
21. APPLICABLE FAR PROVISIONS: 3
22. SERVICES. 3

1. DEFINITIONS.

As used throughout this Contract/Subcontract, including any provisions incorporated by reference, the following terms shall have the meanings as set forth below:

- (a) "SI" or "Seller" means SpaceDev, Inc., a corporation operating in the State of Colorado, as represented by an authorized representative.
(b) "Buyer" means the person, firm or corporation that is purchasing Seller's product(s).
(c) "Contract Administrator" means the person executing the contract on behalf of SI and any other person whom is properly designated as an authorized representative of SI.
(d) "Contract/Subcontract" means a contract between SI and a Buyer.
(e) "Supplies" means the materials, articles, services or other items ordered by this Contract.
(f) "Commercial Item(s)" means commercial item(s) as defined in FAR 2.101.

2. ACCEPTANCE OF CONTRACT.

Seller's acceptance of any purchase order issued by Buyer shall be expressly limited to the terms and conditions set forth below and any others expressly set forth or referenced in Seller's acknowledgment form. Any additional or different terms set forth or referenced in Buyer's purchase order are hereby objected to by Seller and shall not be deemed a part of any resulting order. These terms and conditions represent the entire agreement between the Buyer and Seller pertaining to the subject matter of this order and shall supersede all prior oral and written agreements, proposals, communications and documents. Buyer's purchase order shall be deemed accepted only after Seller's written acknowledgment form is executed by an authorized official of Seller and shall not be construed to be accepted by any other action of Seller

including, but not limited to commencement of performance or delivery.

3. APPLICABLE LAW.

The validity, performance, and construction of the contract arising from the acceptance of this offer shall be governed by and construed in accordance with the laws of the State of Colorado. Seller agrees to comply with all applicable laws, orders, rules, regulations and ordinances.

4. ASSIGNMENT.

Neither Seller nor Buyer shall assign any rights or obligations hereunder without the prior express written consent of the other party, except to a third party pursuant to a merger, sale of all or substantially all assets, or other corporate reorganization.

5. AUDIT.

Notwithstanding any language or provisions in this contract to the contrary, Buyer shall not be allowed the right to audit or examine Seller's books and records. The audit of Seller's cost and yield information associated with this contract shall be performed only by the United States Government agency having cognizance over Seller for purposes of audit or by an independent audit agency mutually acceptable to Buyer and Seller. Seller shall bear no costs associated with such audit. All such costs shall be the responsibility of Buyer or Buyer's customer.

6. CHANGES.

No changes, extras or other work (whether deemed to be within or outside of the general scope of this agreement or modification of any kind or description) shall be authorized unless agreed to by both parties as evidenced by a written amendment to this order signed by duly authorized representatives of Buyer and Seller.

7. DELIVERY.

Seller shall not be liable for any delay in performance, in whole or in part, when such delay is directly or indirectly caused by the occurrence of any contingency beyond the reasonable control either of Seller or Seller's suppliers, where Seller has exercised ordinary care in the prevention thereof. All items to be delivered hereunder shall be packed and packaged in accordance with good commercial and business practices. Seller is authorized to deliver product in advance of Delivery Schedule requirements set forth in this order without Buyer's written approval unless this order includes compensation for storage and handling costs.

8. TITLE AND RISK OF LOSS.

Unless otherwise agreed to by Seller in writing, the F.O.B. point shall be Origin, Seller's facility. Title and risk of losses shall pass to Buyer upon delivery of the products to the F.O.B. point specified herein and Seller shall in no way be responsible for safe arrival of the products.

9. PATENT INDEMNITY.

Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based upon a claim that any products manufactured and sold by Seller to Buyer constitute direct infringement of any duly issued United States Patent, and Seller shall pay all damages and costs finally awarded therein against Buyer provided Seller is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance at Seller's expense necessary to defend or settle said suit or proceeding. If the use or sales of a product furnished hereunder is enjoined as a result of such suit, Seller, at its option and at no expense to Buyer, shall obtain for Buyer the right to use and sell the product, or shall substitute an equivalent product acceptable to Buyer and extend this indemnity thereto, or shall accept the product returned and reimburse Buyer the purchase price therefor, less a reasonable charge for wear and tear. Seller shall have no obligation or liability hereunder for infringement that results from compliance with Buyer's specifications or from a combination with or addition to or modification of the product after delivery by Seller or from use of the product or any part thereof in the practice of a process. Seller's obligation above enumerated shall not apply to any infringement occurring after Buyer has received notice alleging the infringement unless Seller has given Buyer written permission therefor. The sale of the products furnished hereunder does not convey any license by implication, estoppel or otherwise under any proprietary or patent rights of Seller covering a combination of these products with other elements.

SELLER SHALL NOT BE LIABLE FOR COLLATERAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS.

The foregoing states the sole and exclusive liability of Seller for patent infringement and is in lieu of all warranties, expressed or implied, in regard thereto.

10. INDEPENDENT CONTRACTOR.

It is understood and agreed that Seller shall be an independent contractor in all its operations and activities hereunder; that the employees furnished by Seller to perform work under this order shall be Seller's employees exclusively without any relation to Buyer as employees, agents, or as independent contractors; that such employees shall be paid by Seller for all services in this connection; that Seller shall carry worker's compensation insurance and that Seller shall be responsible for all obligations and reports covering social security, unemployment insurance, worker's compensation, income tax, and other reports and deductions required by Local, State and/or Federal Law.

11. INSPECTION AND ACCEPTANCE.

All products shall be subject to final inspection and acceptance at Seller's plant. If Buyer does not inspect the products at Seller's plant, acceptance shall be deemed completed upon delivery of the products to the carrier. Buyer agrees that any inspection or test on the premises of Seller shall not delay or disrupt Seller's performance. Buyer further agrees that it shall comply with Seller's security and safety policies during any inspection or test on the premises of Seller. Final inspection and acceptance by Buyer shall be conclusive. Failure of Buyer to accept or provide written notice to Seller of rejection of the

product within Fifteen (15) days after delivery shall be deemed to constitute final acceptance by Buyer of the product.

12. INTELLECTUAL PROPERTY.

Buyer agrees that SI shall be the sole owner of all inventions, technology, designs, works of authorship, improvements, technical information, computer software, and other information conceived, developed or otherwise generated in the performance of this contract. Buyer agrees that the aforementioned has been accomplished by private and independent funding prior to the execution of this contract.

- a. Subject Invention- "Subject Invention" means any Buyer supplied invention, idea, concept, technique, discovery, improvement conceived of or first actually reduced to practice in the performance of work and paid for under this Contract.
- b. Background Invention- "Background Invention" means any invention, idea, concept, technique, design, discovery, improvement other than a "Subject Invention", which is incorporated or utilized in any work by Seller performed under this Contract. Buyer agrees that the only right obtained is to operate and maintain the product purchased under this Contract.

13. LIABILITY.

Seller shall not be liable for any incidental, special or consequential damages of any nature whatsoever, or for any delay or loss of use including, without limitation, lost revenues or lost profits arising out of, resulting from, or in any way related to the sale of any products.

14. ORDER OF PRECEDENCE.

This order and all documents incorporated by reference constitute the entire agreement of the parties as to the subject matter hereof. In the event of any inconsistency among the foregoing, the inconsistency shall be resolved by giving precedence in the following order: (i) Contract to which these terms and conditions are attached; (ii) these terms and conditions; (iii) the specifications; (iv) the drawings; and (v) the other documents incorporated by reference.

15. PAYMENT.

Buyer shall pay for all products within thirty (30) days from (a) the date products are shipped, or (b) date of the invoice, whichever is later. Payment will be deemed to have been made when deposited in U.S. Mail.

16. TAXES.

Any and all taxes, assessments, or duties, which may be imposed upon the production shipment, installation, or sale of the products covered hereby, shall be the sole responsibility of and shall be paid by Buyer.

17. PROPRIETARY INFORMATION.

Buyer agrees that any data, such as Seller's specifications, drawings, Software and information (including, without limitation, designs, reports, software documentation, manuals, models, process information and the like), revealed by Seller to Buyer and containing proprietary information marked or identified as proprietary, shall be kept in confidence by Buyer with at least the same care

and safeguards as are applied to Buyer's own proprietary information. Such data shall not be duplicated, disclosed to others, or used without the written permission of Seller. These obligations shall not apply to any information which, in or comes into the public domain without violation of this agreement; or is received lawfully by Buyer from a third party subsequent to this agreement; or is developed by Buyer independently and without benefit of information received from seller. Nothing contained herein shall be construed as granting an implied license or a license by estoppel or otherwise under any intellectual property of the Seller.

18. TERMINATION.

No purchase order accepted by Seller may be terminated by Buyer for other than Seller's default except by mutual agreement of Buyer and Seller as evidenced by a written purchase order amendment signed by both parties.

19. VALIDITY AND WAIVER.

The invalidity in whole or in part of any provision of this order shall not affect the validity of other provisions. The failure of Seller to enforce any applicable provision of these terms and conditions, or to require at any time performance by Buyer of any provision or obligation hereof, shall in no way be construed to be a waiver of such provision, nor in any way affect the validity of this order or any part hereof, or the right of Seller thereafter to enforce each and every provision.

20. WARRANTY.

Seller warrants that all of its products sold hereunder will at the time of delivery be free from defects in materials and workmanship and will conform to Seller's applicable specifications or, if appropriate, to specifications accepted by Seller. Seller's obligation hereunder shall be limited to, at Seller's option, either correcting, or replacing any product for which written notice of nonconformance hereunder is received by Seller within one year following date of shipment; provided, such nonconforming product is, with Seller's prior authorization, returned to Seller's plant within 30 days of such written authorization. Such remedies are Buyer's exclusive remedies. **IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.** This warranty shall not apply to any products in other than their original condition, or to any products which Seller determines have, by Buyer or otherwise, been subjected to operating and/or environmental conditions in excess of the maximum values in the applicable specifications or operating instructions, or otherwise have been the subject of misuse, neglect, improper installation, repair, alteration or damage. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OR MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.**

21. APPLICABLE FAR PROVISIONS:

All products and/or services provided under the terms and conditions of this contract are Commercial Items as such term is defined by the Federal Acquisition Regulation (FAR). As such, the only FAR provisions or clauses applicable to Seller, and hereby incorporated by reference, are the following:

- a. 52.222-26. Equal opportunity (E.O. 11246)

- b. 52.222-35. Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C.4212(a))
- c. 52.222-36. Affirmative Action for Workers with Disabilities (29 U.S.C.793)

22. SERVICES.

In the event that and to the extent that this order pertains to labor only services being provided by Seller to Buyer in lieu of providing a product, the word "product" shall mean "services". In addition, Articles 8, 9, and 11 are not applicable to such services provided by Seller. As it relates to such services, the language of Article 20 is changed to read: **SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OF THE TESTING OR SERVICES PROVIDED UNDER THIS ORDER INCLUDING ANY EXPRESS, IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.**