

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS (May 2008)

Table of Contents

1. Definitions	1
2. Contract Formation	1
3. Acceptance and Rejection	1
4. Delivery	1
5. Late Delivery Penalties	2
6. Seller's Notice of Discrepancies.....	2
7. Packaging and Shipment	2
8. Cancellation	2
9. Force Majeure	3
10. Disputes	3
11. Labor Disputes	3
12. Remedies	3
13. Buyer Property	3
14. Government Property.....	3
15. Release of Information.....	3
16. Order of Precedence.....	4
17. Warranty.....	4
18. Buyer Approvals and Reviews	4
19. Prices and Taxes	4
20. Invoice and Payment.....	4
21. Choice of Law	4
22. Confidential or Proprietary Information	4
23. Work on the Buyer's or Government's Premises	5
24. Indemnity.....	5
25. Assignments and Organizational Changes	5
26. Bankruptcy	5
27. Waiver/Approval.....	5
28. Insurance	5
29. Independent Contractor	6
30. International Transactions.....	6
31. Export/Import Controls	6
32. Quality Control	6
33. Quality Assurance/ Provisions	6
34. Quality and Workmanship.....	6
35. Compliance with Laws	6
36. Fair Labor Standards Act	6
37. Compliance with Occupational Safety and Health Act (OSHA)	6
38. Hazardous Materials List.....	6
39. Dangerous Goods and Hazardous Materials	6
40. Hazardous Material - Material Safety Data Sheet (MSDS).....	7
41. Priority Rating.....	7
42. Entire Agreement	7
43. Severability.....	7
44. Competition in Subcontracting	7
45. Standards of Business Ethics and Conduct	7
46. Survivability	7
47. Contractual Direction.....	7
48. Clauses Incorporated.....	7

1. Definitions

As used in this Purchase Order, the following terms shall have the meanings set forth below:

- (a) "Buyer" or "SDI" means SpaceDev, Inc., a corporation operating in the State of Colorado, as represented by an authorized representative.
- (b) "Contracting Officer" means the person executing the Prime Contract on behalf of the Government, and any other person who is properly designated as a Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his authority.
- (c) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (d) "Government" means the United States of America or its authorized representative.

- (e) "Prime Contract" means the contract, if any, between Buyer and the Government or the contract between Buyer and a higher tier seller.
- (f) "Purchase Order" means this order in its entirety, including all exhibits, attachments, Statements of Work and releases for any such work issued hereunder.
- (g) "Seller" means the addressee of this Purchase Order or inquiry.
- (h) "SDI Procurement Representative," means a person authorized by Buyer's cognizant procurement organization to administer and/or execute this Purchase Order.
- (i) "Supplies" means the labor, articles, materials, goods, services or other items purchased by this Purchase Order.

2. Contract Formation

Acceptance of this Purchase Order, by acknowledgement, receipt of goods or by beginning performance of services by Seller shall constitute acceptance of the conditions set forth below and on the face of this Purchase Order. Acceptance by Seller is limited to the terms of this offer and Buyer objects to, and is not bound by, any additional or differing terms stated in Seller's acceptance. Seller's acceptance of this Purchase Order creates a binding order between Seller and Buyer ("this Purchase Order"), which shall be governed by the terms and conditions herein. Any change to the terms and conditions of this Purchase Order by Seller shall have no legal effect unless expressly agreed to in writing by Buyer.

3. Acceptance and Rejection

- (a) Buyer shall accept the Supplies or give Seller notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this contract or impair any rights or remedies of Buyer.
- (b) If Seller delivers non-conforming Supplies, Buyer may at its option and at Seller's expense (i) return the Supplies for credit or refund; (ii) require Seller to promptly correct or replace the Supplies; (iii) correct the Supplies or (iv) obtain replacement Supplies from another source.
- (c) Seller shall not redeliver corrected or rejected Supplies without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's Authorized Representative may reasonably direct.
- (d) All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this contract or otherwise.

4. Delivery

- (a) Time is of the essence and failure to deliver in accordance with the delivery schedule under this Purchase Order, including quantities and times, if unexcused, shall be considered a material breach of this Purchase Order. If, for any reason, Seller does not comply with Buyer's delivery schedule, Buyer may, at its option and without liability, either approve a revised delivery schedule or cancel this Purchase Order. If Seller is late, Seller shall pay the difference between the shipping rate specified and the actual expedited rate. Supplies shall not be supplied in excess of quantities specified in this Purchase Order. No acts of Buyer, including, without limitation, modifications of this Purchase Order, acceptance of late deliveries or payment in any amount, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. Buyer may, from time to time, change or direct temporary suspension of delivery schedules.

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS

(May 2008)

- (b) Seller shall promptly notify Buyer in writing of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a written recovery schedule, an explanation of the reasons for delay and the actions being taken to overcome or minimize the delay, but such notice and proposal, or Buyer's receipt or acceptance thereof, shall not constitute a waiver of Buyer's rights and remedies hereunder.
- (c) Neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without fault or negligence on either, Seller shall not be liable to Buyer in damages unless the articles or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule.

5. Late Delivery Penalties

In the event that any Supplies ordered under this Purchase Order are not delivered on or before the delivery date specified in this Purchase Order, then for each calendar day that such Supplies are not completely delivered the price of such Supplies shall be reduced by 5% until delivery of the Supplies is complete or the total price for each applicable delinquent delivery of Supplies has been reduced by 25%, whichever occurs first. These liquidated damages set forth herein reflect the mutual agreement of the parties and are considered a fair and reasonable assessment of the damages resulting from late delivery. In no event shall the provisions of this clause negate any other right, remedy or obligation provided to Buyer by this Purchase Order or applicable law. If liquidated damages are assessed as a result of late delivery, the total price of this Purchase Order shall be reduced by the amount of the liquidated damages incurred prior to payment of the invoice for the affected delivery.

6. Seller's Notice of Discrepancies

Seller shall immediately notify Buyer in writing when discrepancies in Seller's process or Supplies are discovered or suspected regarding Supplies delivered or to be delivered under this Purchase Order.

7. Packaging and Shipment

- (a) Unless otherwise specified herein, the Supplies required under this Purchase Order shall be prepared for shipment and suitably packed to prevent damage or deterioration, and in compliance with transportation regulations. Seller is solely liable for packing design and all charges for design, boxing, drayage, bundling, dungaree, containers, preparation, packing, crating or cartage shall be included in the Purchase Order price. Buyer may charge Seller for any expense incurred by Buyer as a result of improper preservation, packaging, packing marking or method of shipping.
- (b) Buyer reserves the right to specify the mode of shipment. Unless stated otherwise herein, the price includes shipping charges for Supplies sold F.O.B. Destination, Freight Prepaid and Allowed and shall also include all federal state and local taxes and all charges for shipping, hauling, storage, and transportation to the point of delivery.
- (c) Seller shall ship all Supplies to the destination specified by Buyer in this Order. A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading and shipping information, including the Purchase Order number, item number, dates of shipment and the names and addresses of consignor and consignee. All shipping documents, shipping labels, packing sheets and bills of lading must show full and completed information, including this Purchase Order number.
- (d) If any transportation charges paid by Seller are subject to reimbursement under the terms of this Purchase Order, Seller shall show such charges on its invoice as a separate line item with the freight bill receipt attached accordingly.

- (e) If Seller is unable to comply with the shipping instructions in this Purchase Order, Seller will contact Buyer's authorized representative.

8. Cancellation

Buyer shall have the right to cancel this Purchase Order or any part thereof at any time.

- (a) **Without Cause:** Buyer may, by written notice to Seller, terminate this Purchase Order or work under this Purchase Order for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under this Purchase Order. In the event of termination without cause by Buyer, Seller shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit (unless Seller would have sustained a loss on the entire Purchase Order had it been completed) for work performed to date of termination; provided, however, that no amount shall be paid to Seller for (i) any anticipatory profits related to work under this Purchase Order not yet performed, or (ii) costs incurred due to Seller's failure to terminate work as ordered on the effective date of cancellation. Any termination claim shall be submitted to Buyer promptly, but no later than sixty (60) days from the effective date of the termination. In no event shall the total amount paid under this provision exceed the respective prices set forth in this Purchase Order for the work. Buyer may take immediate possession of all work so performed upon written notice of termination to Seller. The provisions of this subparagraph shall not limit or affect the right of Buyer to cancel this Purchase Order for breach of contract and shall not apply to a breach of contract.
- (b) **Breach of Contract:** Buyer may, by written notice to Seller and without any liability to Seller on account thereof, terminate this Purchase Order for default, in whole or in part, if (i) Seller fails to deliver the Supplies within the time specified by this Purchase Order or any written extension; (ii) Seller fails to perform any other provision of this Purchase Order or fails to make progress, so as to endanger performance of this Purchase Order, and, in either of these two circumstances, does not cure the failure within ten (10) days after receipt of notice from Buyer specifying the failure or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business or any assignment, reorganization or arrangement by Seller for the benefit of its creditors. If Seller fails to cure any failure listed in item (ii) above, Buyer may elect to reperform, repair, replace, or reprocure the work at Seller's expense. Seller is not excused from performance of the non-terminated balance of work under this Purchase Order.
- (c) Upon termination of this Purchase Order in whole or in part for any reason, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Supplies, and (ii) any partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the terminated portion of this Purchase Order. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has an interest. Buyer shall pay the contract price for Supplies accepted. Payment for Manufacturing Materials accepted by Buyer and price determined in accordance with the "Without Cause" section of this Purchase Order, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Purchase Order any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- (d) If, after termination, it is determined that Seller was not in default, the rights and remedies of the parties shall be as if this

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS

(May 2008)

Purchase Order had been terminated according to the "Without Cause" section of this Purchase Order.

9. Force Majeure

Except for defaults of Seller's subcontractors at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In the event that performance of this Purchase Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the party whose performance is so affected shall so notify the other party's authorized representative in writing and, at Buyer's option, this Purchase Order shall be completed with such adjustments as are reasonably required by the existence of Force Majeure, or this Purchase Order may be terminated without cause.

10. Disputes

In the event that any claim or controversy arising out of this Purchase Order cannot be settled by the parties themselves, the parties agree to attempt in good faith to resolve such claim or controversy by mediation. Pending any decision, appeal or judgment in such proceedings or other settlement of any dispute arising under this Purchase Order, Seller shall proceed diligently with the performance of this Purchase Order in accordance with the decision of Buyer.

- (a) Any dispute arising under this Purchase Order which is not settled by agreement or pursuant to the following paragraphs of this clause may be settled by appropriate legal proceedings. Notwithstanding any other provision herein, any decision of the Contracting Officer under the prime contract which binds Buyer shall also bind Seller to the extent that it relates to this Purchase Order, provided Buyer shall have notified Seller promptly of such decision, and if requested by Seller, shall have appealed the decision in accordance with the Disputes clause of the prime contract and taken any further action as may be required under this clause. Certification of Seller's claim by Buyer pursuant to the prime contract's Disputes clause shall occur only after the execution of a hold harmless agreement by Seller.
- (b) Any decision on appeal, or any other decision of the Government under the prime contract which cannot be appealed under the Disputes clause of the prime contract if binding on Buyer, shall also bind Seller to the extent it relates to this Purchase Order, provided Buyer shall have promptly notified Seller of such decision and, if requested by Seller, shall have brought suit or filed a claim, as appropriate, against the Government. A final judgment in any such suit or final disposition of such claim shall be conclusive upon Buyer and Seller.
- (c) If any appeal, suit, or claim is prosecuted by Buyer under this clause, Seller shall be permitted, at Seller's expense, to participate fully in such prosecution for purposes of protecting Seller's interest. If requested by Buyer, Seller shall prosecute any appeal, suit, or claim initiated by Buyer at Seller's request. Each party shall cooperate fully in assisting the other in such proceedings. Buyer agrees that after Seller has commenced to participate in any claim or proceeding against the Government pursuant to this clause, Buyer will not enter into a settlement agreement with the Government or take other action which would prejudice Seller's rights in such claim or proceeding without Seller's consent.
- (d) During pendency of any dispute, decision, appeal, suit or claim covered by this clause, Seller shall proceed diligently with performance. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal, suit, or claim initiated by Buyer solely at Seller's request, shall be paid for by Seller, otherwise each party shall bear its allocable share of the

expenses. The rights and obligations of Buyer and Seller under this clause shall survive completion of, and final payment under, this Purchase Order.

11. Labor Disputes

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice thereof, including all relevant information relating thereto, to Buyer's authorized representative.

12. Remedies

- (a) Except as otherwise provided herein, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.
- (b) Buyer shall be entitled at all times to set off any amount owing at any time from Seller or any of its affiliated companies to Buyer, against any amount payable at any time by Buyer or any of its affiliated companies to Seller.

13. Buyer Property

Seller will clearly mark, maintain an inventory of and keep segregated or identifiable all Buyer property and all property to which Buyer acquires an interest by virtue of this Purchase Order. Seller assumes all risk of loss, destruction or damage to such property while in Seller's possession, custody or control and will not use such property, other than in performance of this Order, without Buyer's written consent. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller will promptly notify Buyer if Buyer property is lost, damaged or destroyed. As directed by buyer, upon completion, termination or cancellation of this Order, Seller will deliver such property, to the extent not incorporated in delivered end products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Supplies made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent. Upon completion of this Purchase Order, Seller shall promptly return to Buyer all drawings, specifications and other data furnished by Buyer in connection herewith, together with all copies or reprints then in Seller's possession and control, and Seller shall thereafter make no further use of nor disclose to others, any such drawings, specifications, data or documents or any information derived therefrom without Buyer's prior written consent. Nothing in this clause limits Seller's use, in direct dealing with the Government, of property in which the Government has a vested interest. At the request of Buyer, Seller shall execute any documents, including but not limited to financial statements, required by Buyer to protect its interest in its property.

14. Government Property

Seller shall comply with FAR Clauses 52.245-1 Government Property and Subpart 45.5 of the FAR "Management of Government Property in the Possession of Contractors" in effect on the date of this Purchase Order and which are incorporated by reference. Seller assumes all risk of loss of or damage to said Government Property while in Seller's custody or control and will immediately notify Buyer of loss of, destruction of or damage to such property. The obligation to annually report and be responsible for said Government Property shall survive termination or completion of this Purchase Order until such time that Seller shall deliver such property or be relieved of this responsibility as directed in writing from Buyer.

15. Release of Information

Seller shall not publish, distribute or use any information developed under or about the existence of this Purchase Order, or use the SDI name (or the name of any division, affiliate or subsidiary thereof), logo, trademark, service mark or trade dress, for the purpose of advertising, making, denying or confirming a news release, creating

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS

(May 2008)

a business reference, creating a website content or for products or service endorsement without prior written approval of Buyer. Seller shall include all provisions of this paragraph in all lower tier subcontracts under this Purchase Order.

16. Order of Precedence

All documents in this Purchase Order shall be read so as to be consistent. In the event of conflict, the order of precedence is:

- (a) the Schedule;
- (b) the Terms and Conditions contained herein;
- (c) the Buyer Specification, if any;
- (d) any documents incorporated herein by reference. Seller will not use any specification in lieu of those in this Purchase Order without the written consent of Buyer's authorized representative.

Buyer Specifications shall prevail over those of the Government, and both of the foregoing shall prevail over specifications of Seller.

17. Warranty

Seller warrants that the performance of work and services under this Purchase Order shall conform to the highest professional standards. Seller warrants the Supplies delivered hereunder to be free from defects in workmanship, and materials; to be new and of the most suitable grade of their respective kinds; to conform to application specifications, drawings, samples or other descriptions given; to be suitable for the purpose intended; to be of merchantable quality and, if of Seller's design, to meet all of the performance requirements and to be free from defects in design. Seller also warrants that the Supplies shall be so manufactured or constructed as to operate satisfactorily as specified. This warranty shall run to Buyer, its successors, assigns, customers and the users of Supplies covered by this Purchase Order. The aforesaid express warranties shall be in addition to any standard warranty or guarantee of Seller, shall be construed as conditions as well as warranties and shall not be exclusive. Seller agrees to replace or to correct any Supplies not conforming to the foregoing requirements when notified by Buyer within two (2) years after final acceptance or within one (1) year after installation, whichever is earlier, at no additional cost to Buyer. No inspection, test or approval of any kind, including approval of designs, shall affect Seller's obligation under this paragraph. Supplies which have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction are identified. Replaced or repaired Supplies shall be subject to the provisions of this paragraph to the same extent as the original Supplies, except that the warranty shall run from the last delivery date. Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties.

18. Buyer Approvals and Reviews

The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or documents prepared hereunder shall not relieve Seller of any of its obligations under this Purchase Order, nor excuse or constitute a waiver of any defects or nonconformities in any Supplies furnished under this Purchase Order, nor change, modify or otherwise affect any of the provisions of this Purchase Order, including, but not limited to, the prices and delivery schedules contained herein.

19. Prices and Taxes

Unless this Purchase Order specifies otherwise, the price of this Purchase Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Purchase Order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption. To the extent that Buyer is required to do so under applicable U.S. law or tax regulations, Buyer may deduct from any payments due to Seller pursuant to this Purchase Order such taxes as Buyer is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that Buyer provides Seller with relevant tax receipts or other suitable

documentation evidencing the payment of such taxes promptly after such taxes are paid.

Seller warrants that the price of all goods and services set forth herein does not exceed that price which is charged by Seller to any other commercial customer purchasing similar services or goods of like quantity, quality and circumstance.

20. Invoice and Payment

Invoices shall be supported by such documents in such form as Buyer may reasonably request and bear such certification as may be required by law, regulations or this Purchase Order. All payments are contingent on acceptance of the Supplies by Buyer. Seller shall issue separate invoices for each shipment showing the amount of material shipped and Buyer's Purchase Order number. Part numbers shall appear on all invoices, packages, crates or boxes, bills of lading, express receipts, correspondence and other instruments used in connection with this Purchase Order. Seller shall forward its invoice to the address specified elsewhere in this contract. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery of goods date, the actual delivery of goods date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller.

21. Choice of Law

This Purchase Order shall be governed by and construed and enforced in accordance with the internal law of the state shown in Buyer's address printed on the face of this Purchase Order, including its provisions in the Uniform Commercial Code, but specifically excluding the provisions of the 1980 United Nations Convention on the International Sale of Goods.

22. Confidential or Proprietary Information

- (a) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless (i) otherwise required by the U.S. Government Regulations referred to below, or (ii) Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.
- (b) Unless otherwise expressly agreed in writing to the contrary and subject to subparagraph 22 (d) below, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing goods or services to Buyer pursuant to this Purchase Order and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order.
- (c) Unless otherwise expressly agreed in writing to the contrary and subject to subparagraph 22 (d) below, any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer and Seller shall execute such documents necessary to perfect Buyer's title thereto. Unless otherwise expressly agreed in writing to the contrary and subject to subparagraph 22 (d) below, any work performed pursuant to this Purchase Order which includes any copyright interest shall be considered a "work made for hire."
- (d) Applicable Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision of this Section 25 to the extent that such Regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with subcontractors rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS

(May 2008)

intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted Buyer pursuant to prior agreements between the parties.

23. Work on Buyer's or the Government's Premises

In the event that Seller, Seller's employees or agents enter on to Buyer's or the Government's premises for any reason in connection with this Purchase Order, Seller and such other parties shall take all necessary precautions to prevent the occurrence of any damage to persons or property during the process of such work. Seller shall defend, indemnify and hold Buyer and the Government harmless against all liability, damage or loss resulting in any way from any act, or omission on the part of Seller, its agents, employees or subcontractors. Seller shall also indemnify and hold harmless Buyer and the Government against any liability for any injury to any employee of Seller or any damage to any property of Seller which arises out of, or in connection with, the performance of work under this Purchase Order.

24. Indemnity

- (a) Seller shall keep its work and all items supplied by it hereunder at Buyer's premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Purchase Order by Seller or by any of its vendors or subcontractors. Seller may be required by Buyer to provide a satisfactory release of liens as a condition of final payment.
- (b) Seller shall, without limitation, indemnify and save Buyer and its customer(s) and their respective officers, directors, employees and agents harmless from and against (i) all claims (including claims under Worker's Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death or property loss or damage attributed to, or caused by, the goods, services or other items supplied by Seller pursuant to this Purchase Order, including, without limitation, latent defects in such goods, services or other items, except to the extent that such injury, death, loss or damage is caused solely and directly by the negligence of Buyer, and (ii) all claims (including resulting costs, expenses and liability) by the employees of Seller or any of its subcontractors.

25. Assignments and Organizational Changes

- (a) Seller shall not assign any rights or obligations hereunder without the prior written consent of Buyer. Any purported assignment without Buyer's written consent shall be void. Seller agrees to obtain Buyer's written approval before subcontracting this Purchase Order or any portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial goods or raw material.
- (b) No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Purchase Order or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment.
- (c) Buyer shall not be authorized to pay any proceeds due under this Purchase Order to Seller until Buyer receives written notification that the amount (reasonably identified) has been assigned and that payment is to be made to the assignee. If required by Buyer, assignee must furnish reasonable proof that the assignment has been made and unless he does so, Buyer may pay only Seller.
- (d) Any amounts assigned, pursuant to subparagraph (a) herein, shall be subject to offset or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and/or adjustments in the estimated cost and fee without notice to any assignee.
- (e) Buyer may assign this Purchase Order to (i) any affiliated company, (ii) any successor in interest or (iii) Buyer's customer.

- (f) Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name or ownership changes, mergers or acquisitions.

26. Bankruptcy

In addition to the rights set forth in FAR 52.249-6, Buyer may terminate this Purchase Order for default, in whole or in part, by written notice to Seller if (i) Seller becomes insolvent or makes a general assignment for the benefit of creditors or (ii) a petition under any bankruptcy act or similar statute is filed by or against Seller and not vacated within ten (10) days after it is filed.

27. Waiver/Approval

- (a) Any action or inaction by Buyer or the failure of Buyer, on any occasion, to enforce any right or provision of this Purchase Order, or the granting of an extension for performance hereunder, will not be construed to be a waiver by Buyer of its rights hereunder and will not prevent Buyer from enforcing such provision or right on any future occasion.
- (b) Buyer's approval of Seller's technical documents and data shall not constitute any waiver of Seller's obligation to comply with the requirements of this Purchase Order or any contract at this or any lower tier.

28. Insurance

- (a) Seller shall be solely responsible for any and all Third Party Liability incurred by it in connection with the performance of this Purchase Order.
- (b) Seller shall maintain insurance, and as evidence of acceptance of responsibility, furnish to Buyer Certificates of Insurance, which shall be obtained and held on file at the facility where the work is being performed.
- (c) If the nature of the work is such that Seller will require use of additional contractors, each subcontractor will be required to maintain insurance coverage in the same amounts and likewise shall furnish Certificates of Insurance evidencing such coverage, to Buyer, before performing any work on the subcontract.
- (d) The following types of insurance and limits are required:
 - (1) Worker's Compensation and Employer's Liability insurance in accordance with all applicable Worker's Compensation, Occupational Disease and Occupational Health and Safety statutes
 - (2) Property Damage
 - (3) Professional Errors and Omissions
 - (4) Motor Vehicle Liability (Personal Injury and Property Damage)
 - (5) Employer's Liability Insurance coverage with limits of \$1,000,000.
- (e) Commercial General Liability Insurance, *shall name SpaceDev, Inc. as an additional insured*, and with not less than the following limits required:
 - (1) Bodily Injury \$1,000,000 per person, \$1,000,000 per occurrence
 - (2) Property Damage \$1,000,000 per occurrence
 - (3) Automotive \$1,000,000 per occurrence
 - (4) Completed operations \$1,000,000 aggregate
 - (5) The insurance requirements pursuant to the provisions stated above shall be in such form and for the full period of this Purchase Order. Ten (10) days' advance written notice by mail to Buyer shall be required, in event of any change or cancellation of said insurance.
- (f) Upon request Seller shall provide Buyer one (1) or more certificates evidencing that all required coverage is in place and shall not be altered or terminated without at least thirty (30) days prior written notice to Buyer from the carrier or carriers. Such certificate(s) shall also indicate that Buyer has been named as an additional insured on all such coverage required herein and that the rights of subrogation have been waived.
- (g) Seller shall include all provisions of this paragraph in all lower-tier subcontracts under this Purchase. Seller shall maintain a

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS

(May 2008)

copy of all subcontractor's evidence of required insurance and shall make copies available to Buyer upon request.

- (h) Buyer's insurance shall be secondary to any insurance policy carried by Seller.

29. Independent Contractor

Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform work under this Purchase Order shall be Seller's employees exclusively without any relation whatsoever to Buyer. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorneys' fees, all expenses of litigation and/or settlement and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers or subcontractors at any tier, in the performance of any of its obligations under this Purchase Order.

30. International Transactions

- (a) Payment will be in U.S. dollars unless otherwise agreed to by specific reference in the Purchase Order.
- (b) Seller agrees that Buyer, its subsidiaries, affiliates or its designees may exclusively use the value of this Purchase Order to satisfy any international offset obligations that Buyer may have with Seller's country, subject to the offset qualifying laws, rules and regulations of that country.

31. Export/Import Controls

- (a) If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR").
- (b) Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by Buyer in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of Buyer and Seller's obtaining the appropriate export license, technical assistance agreement or other requisite documentation for ITAR-controlled technical data or items. It shall be the sole responsibility of Seller to determine whether the information provided by Buyer is technical data as outlined in the ITAR (22 CFR 120-130) prior to any release to a third party abiding by the terms outlined herein. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.
- (c) Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked.
- (d) Should Seller's products or services originate from a foreign location, those products may also be subject to the export control laws and regulations of the country in which the articles or services originate. Seller agrees to abide by all applicable export control laws and regulations of that originating country. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller. Buyer shall be responsible for complying with any laws or regulations governing the importation of the articles into the U.S.
- (e) Buyer may be required to obtain information concerning citizenship or export status of Seller's personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct.

32. Quality Control

Seller shall establish and maintain a quality control system acceptable to Buyer or the Government for Supplies purchased under this Purchase Order, and Seller shall permit Buyer or the Government to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer or the Government of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Supplies delivered to Buyer during the period of any such violation or deviation.

33. Quality Assurance Provisions

The Quality Assurance provisions contained in document number D10133 apply when specified by number on the Purchase Order. Suppliers shall impose specified requirements on lower-tier suppliers of parts, materials, and services.

34. Quality and Workmanship

Unless otherwise specifically stipulated in the Purchase Order, all equipment, material and articles incorporated into any Supplies shall be new, free from defects and of the most suitable grade for the purpose intended. All work under this Purchase Order shall be performed in a skillful and workmanlike manner and shall be consistent with the best practices of Seller's industry. If at any time Buyer notifies Seller that any such equipment, material, article or workmanship fails to meet the foregoing standards, Seller shall, at its expense, promptly take all remedial steps required to meet those standards.

35. Compliance with Laws

Seller warrants that it will comply with all federal, state and local laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Purchase Order.

36. Fair Labor Standards Act

Seller represents that all Supplies sold under this Purchase Order have been manufactured in compliance with all terms, rules and regulations issued under the Fair Labor Standards Act of 1938, as amended. The administration and enforcement of the Fair Labor Standards Act are the responsibility of the U.S. Department of Labor, and any question as to the requirements of the Act or its applicability to work required by this Purchase Order should be addressed to the Administrator, Wage and Hour and Public Orders Division, U.S. Department of Labor, Washington, D.C., 20210, or to a Labor Department Regional Office.

37. Compliance with Occupational Safety and Health Act (OSHA)

If Seller furnishes equipment, goods or materials pursuant to this Purchase Order such equipment, goods or materials shall comply with the Occupational Safety and Health Act of 1970 ("OSHA") and regulations issued pursuant thereto. Seller agrees to repair, modify or replace any equipment, goods or materials not complying with OSHA at its sole cost and expense and to hold harmless and indemnify Buyer from any liability and expense (including attorneys' fees) by reason of property damage or personal injury (including death) occasioned in whole or in part from a violation of OSHA standards.

38. Hazardous Materials List

Seller agrees to submit, in triplicate, a list of the hazardous materials (including those considered as ingredients) with their common chemical names and percentage of content of each to be incorporated into the goods under this Purchase Order. A statement will be made to the effect that the degree of toxicity will not be increased by making any change in the composition without first advising Buyer's authorized purchasing representative. All shipments containing hazardous materials will be clearly marked in accordance with all applicable federal, state and local regulations.

39. Dangerous Goods and Hazardous Materials

Packaging, packing, marking, labeling, shipping paper designations and certifications, handling and movement of materials ordered herein will be in accordance with all relevant and applicable U.S. laws and regulations, including 49 C.F.R. Subt. B, Ch. I, Subch. C,

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS

(May 2008)

and all international regulations (e.g., IATA or IMDG) covering shipments of dangerous goods or hazardous materials.

40. Hazardous Material - Material Safety Data Sheet (MSDS)

- (a) Prior to shipping hazardous materials (solids, liquids, cryogenic liquids, gases) hereunder, Seller shall provide Buyer with two copies of the Material Safety Data Sheet ("MSDS") for each material, inclusive of all required information as described in 29 CFR 1910.1200.
- (b) DEFINITIONS - A hazardous material is a material which:
 - (1) Is defined as a hazardous material by OSHA, DOT, EPA, IATA or any other federal, state or local environmental or health agency.
 - (2) In the course of normal operations or foreseeable emergencies, may produce dusts, gases, vapors, mists, fumes or smoke.
 - (3) If used without special precautions, would constitute a health or physical hazard to humans.
- (c) Where two or more hazardous materials are supplied separately or in kit form for the purpose of combining such materials to form an end compound, which is the result, in whole or in part, of a chemical reaction, Seller will provide an MSDS for the end compound as well as for each component part.
- (d) Seller will send one copy of the MSDS to Buyer's authorized purchasing representative prior to shipment and include one copy with the shipment.
- (e) Proprietary or trade secret information about products containing a hazardous material, as defined above, will be disclosed as required by 42 USC 11043, 40 CFR 372.45 and 29 CFR 1910.1200(i).
- (f) Mandatory resubmission of an MSDS is required with each change in formulation of the material that affects its hazardous characteristics, with each change in information regarding the material's hazardous characteristics, and with each change in information regarding handling procedures for the material.
- (g) The following additional information will be included in an attachment to the MSDS:
 - (1) NFPA (National Fire Protection Association) hazard identification signal numbers and symbols.
 - (2) Proper DOT shipping name, UN number, hazard-class number, packing-group number, labeling requirements and any specialized container requirements.

41. Priority Rating

If so identified, this Purchase Order is a "rated order" certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

42. Entire Agreement

The terms and conditions set forth herein, including all referenced documents, exhibits and attachments, constitute the entire agreement of the parties and supersede all previous verbal or written representations, agreements and conditions with respect to the subject matter hereof. No modification of the requirements of this Purchase Order, and no communications which vary from or add to any terms of this Purchase Order will be binding unless in writing and signed by Buyer's authorized representative.

43. Severability

If any provision of this Purchase Order or application thereof is found invalid, illegal or unenforceable by law, the remainder of this Purchase Order will remain valid, enforceable and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.

44. Competition in Subcontracting

Seller shall select lower tier subcontracts (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Purchase Order and shall include all necessary terms in such subcontract.

45. Standards of Business Ethics and Conduct

By the acceptance of this Purchase Order, Seller represents that it has not participated in any conduct in connection with this Purchase Order that violates the Standards of Business Ethics and Conduct of SDI (available at www.spacedev.com) or, alternatively, equivalent Business Ethics and Conduct Standards of Seller. If, at any time, Buyer determines that Seller is in violation of the applicable Standards of Business Ethics and Conduct, Buyer may cancel this Purchase Order upon written notice to Seller and Buyer shall have no further obligation to Seller.

46. Survivability

Seller's obligations, including but not limited to obligations under the Cancellation Without Cause, Cancellation for Breach of Contract, Proprietary Rights, Release of Information, Warranty, Infringement, Compliance with Law, Responsibility and Insurance, Indemnity Against Claims and Export/Import Controls provisions of this Purchase Order, shall survive termination, expiration or completion of this Purchase Order.

47. Contractual Direction

Sole authority to make changes in or amendments to this Purchase Order and to effect deviations (by way of addition or deletion) from the work specified herein is hereby granted by Buyer to the SDI Procurement Representative of this Purchase Order. All contractual direction in order to be valid must be written and signed by the SDI Procurement Representative.

48. Clauses Incorporated

Because this Purchase Order is entered into pursuant to a Government contract, as indicated on its face, this Purchase Order and its subcontracts hereunder (at all tiers) are also subject to the following FAR or equivalent NASAPR or FPR clauses, if appropriate, in effect as of the date of this Purchase Order, which shall prevail to the extent of any inconsistencies with this Purchase Order. Nothing in such clauses, however, shall give Seller or any subcontractor any disputes remedies against the Government.

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS (May 2008)

FEDERAL ACQUISITION REGULATIONS

In addition to the above, the following Federal Acquisition Regulation ("FAR") clauses, as in effect on the date of this Purchase Order, as stated below, are incorporated herein by reference. In such clauses, unless otherwise specified, the term "Contractor" means Seller except in the term "prime contractor," "subcontractor" means Seller's subcontractor, "Contract" means this Purchase Order, except in the term "prime contract," "Contracting Officer" means Contracting Officer and/or Buyer, and "Government" means Government and/or Buyer except in the terms "Government Property," "Government-Owned Property" and "Former Government Surplus Property," or as otherwise indicated.

FAR CLAUSES APPLICABLE TO THIS ORDER IRRESPECTIVE OF THE AMOUNT OF THE ORDER (Except as noted)

52.203-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-7	Anti-Kickback Procedures (except that paragraph (c)(1) shall not apply)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity
52.204-2	Security Requirements (Applies if access to classified information is required. "Government and "Contracting Officer" are not changed.)
52.204-9	Personal Identity Verification of Contractor Personnel
52.211-5	Material Requirements
52.211-15	Defense Priority and Allocation Requirements
52.219-8	Utilization of Small Business Concerns
52.222-1	Notice to the Government of Labor Dispute
52.222-4	Contract Work Hours and Safety Standards Act-Overtime Compensation
52.222-50	Combating Trafficking in Persons
52.223-3	Hazardous Material Identification and Material Safety Data
52.223-5	Pollution Prevention and Right-to-Know Information (Applicable in contracts that provide for performance on a Federal facility.)
52.223-7	Notice of Radioactive Materials (Applicable in contracts for supplies which are, or which contain radioactive materials)
52.223-11	Ozone-Depleting Substances
52.224-2	Privacy Act
52.225-1	Buy American Act - Supplies
52.225-8	Duty-Free Entry
52.225-13	Restrictions on Certain Foreign Purchases
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
52.227-3	Patent Indemnity
52.227-9	Refund of Royalties
52.227-10	Filing of Patent Applications-Classified Subject Matter
52.227-11	Patent Rights-Retention by the Contractor
52.227-14	Rights in Data - General
52.227-19	Commercial Computer Software License
52.228-5	Insurance-Work on a Government Installation
52.234-1	Industrial Resources Developed Under Defense Production Act Title III
52.236-13	Accident Prevention
52.237-2	Protection of Government Buildings, Equipment, and Vegetation
52.242-15	Stop Work Order
52.243-4	Changes
52.243-5	Changes and Change Conditions
52.243-6	Change Order Accounting
52.243-7	Notification of Changes
52.244-5	Competition in Subcontracting
52.244-6	Subcontracts for Commercial Items
52.245-1	Government Property
52.245-2	Government Property Installation Operation Services (The fourth sentence of paragraph (h) is changed to read: "Neither the Government nor the Buyer shall be liable...")
52.246-2	Inspection of Supplies – Fixed-Price
52.246-16	Responsibility for Supplies
52.247-63	Preference for U.S.-Flag Air Carriers
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels
52.249-2	Termination for Convenience of the Government (Fixed-Price) (In paragraph (d) the term "45 days" is changed to "90 days." The term "one-year" in paragraph (e) is changed to "six months." The term "90 days" in paragraph (l) is changed to "forty-five days")

FAR CLAUSES APPLICABLE IF THIS ORDER EXCEEDS \$10,000 (Except as Noted)

52.222-20	Walsh-Healy Public Contracts Act
52.222-21	Prohibition of Segregated Facilities
52.222-26	Equal Opportunity
52.222-36	Affirmative Action for Workers with Disabilities

FAR CLAUSES APPLICABLE IF THIS ORDER EXCEEDS \$100,000 (Except as Noted)

52.203-6	Restrictions on Subcontractor Sales to the Government
52.203-7	Anti-Kickback Procedures (less paragraph (c)(1))

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS (May 2008)

52.203-12	Limitation on Payments to Influence Certain Federal Transactions
52.215-2	Audit and Records – Negotiation
52.215-14	Integrity of Unit Prices (less paragraph b)
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees
52.223-14	Toxic Chemical Release Reporting (less paragraph (e))
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era and Other Eligible Veterans
52.248-1	Value Engineering

FAR CLAUSES APPLICABLE IF THIS ORDER EXCEEDS \$500,000 (Except as Noted)

52.219-9 Small Business Subcontracting Plan – (Note to Seller: This clause requires adoption of small business subcontracting plan and reporting)

FAR CLAUSES APPLICABLE IF THIS ORDER EXCEEDS \$650,000 (Except as Noted)

52.215-10	Price Reduction for Defective Cost or Pricing Data (Applies if Certified Cost and Pricing Data are required. In subdivision (3) of paragraph (a), insert "of this order" after "price or cost".)
52.215-11	Price Reduction for Defective Cost or Pricing Data-Modifications (Applies if original Purchase Order was competitive and Certified Cost and Pricing Data are required for the modification. "United States" means "United States" and/or "Buyer".)
52.215-12	Subcontractor Cost or Pricing Data (The certificate required by paragraph (b) is that set forth in FAR 52.406-2, Subcontracting)
52.215-13	Subcontractor Cost or Pricing Data-Modifications (Applies if original Purchase Order was competitive. The certificate required by paragraph (b) is that set forth in FAR 52.406-2, Subcontracting)

ADDITIONAL CLAUSES – TRUTH IN NEGOTIATIONS (Cost and Pricing Data)

Unless exempt, Seller shall submit a FAR Part 15 compliant cost proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing Data.

(a) Indemnification

If any price (including profit or fee) negotiated in connection with the prime contract between the Government and Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by Seller in connection with any proposal submitted by Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, Seller shall indemnify Buyer in the amount of said reduction.

The phrase "cost or pricing data" as used herein shall be deemed to include any such data which related to a lower-tier prospective or actual subcontract, at any level, which was submitted by Seller or which it procured by submission of, in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate.

If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, Seller shall be liable and shall pay Buyer at the time such overpayment is repaid:

- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to Seller to the date Buyer is repaid by Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

(b) Cost or Pricing Data for Changes

Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit expected to exceed the threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.

FAR CLAUSES APPLICABLE UNLESS OTHERWISE EXEMPT

52.215-15	Pension Adjustments and Asset Reversions
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.215-19	Notification of Ownership Changes
52.215-20	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications

SPACEDEV, INC.

STANDARD MILITARY PURCHASE ORDER TERMS AND CONDITIONS (May 2008)

FAR CLAUSES APPLICABLE TO COST REIMBURSEMENT, TIME & MATERIAL OR LABOR HOUR ORDERS

- 52.215-16 Facilities Capital Cost of Money
52.216-7 Allowable Cost and Payment – Seller agrees to execute assignment documents in order to comply with subsection (h)
52.216-8 Fixed Fee – applicable if this is a cost plus fixed fee order
52.216-10 Incentive Fee – applicable if this is a cost plus incentive fee order
52.216-11 Cost Contract – No Fee – applicable if this is a cost no fee order
52.216-12 Cost Sharing Contract – No Fee – applicable if this is a cost sharing, no fee order
52.222-2 Payment for Overtime Premiums – insert "0%" in paragraph (a) unless indicated otherwise on the face of this Order
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts, in which "schedule" means this Order, "voucher(s)" means invoice(s)
52.232-20 Limitation of Cost (if fully funded)
52.232-22 Limitation of Funds (if incrementally funded)
52.243-2 Changes – Cost-Reimbursement – applicable if this is a cost-reimbursement order
52.243 -3 Changes – Time and Material or Labor-Hours – Applicable if this is a time and material or labor hour order
52.244-2 Subcontracts (paragraphs (h) and (i) only apply)
52.246-3 Inspection of Supplies (Cost-Reimbursement) – "Contracting Officer" means "Buyer's purchasing representative" and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed accepted by Buyer), and where "Government" first appears in paragraph (k) it shall mean "Government and/or Buyer". The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.
52.246-5 Inspection of Services–Cost Reimbursement – "Contracting Officer" means "Buyer's purchasing representative" and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed accepted by Buyer). The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.
52.246-6 Inspection-Time-and-Material and Labor Hour – "Contracting Officer" means "Buyer's purchasing representative" and "Government" means "Buyer and Government" (provided that an inspection system accepted by the Government will be deemed accepted by Buyer), and where "Government" first appears in paragraph (k) it shall mean "Government and/or Buyer". The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.
52.249-6 Termination (Cost-Reimbursement) – "Government" means "Buyer" and "Contracting Officer" means "Buyer's purchasing representative". In paragraph (e) Change "15 days" and "45 days" to "30 days" and "90 days", respectively. In paragraph (f) change "1 year" to "six months". Alternate IV is applicable to time and material or labor hour orders only.
52.249-14 Excusable Delays

ADDITIONAL CLAUSES – CERTIFICATIONS

The Offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

- 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over \$100,000)
52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (over \$100,000)
52.222-22 Previous Contracts and Compliance Reports (over \$10,000)
52.223-13 Certification of Toxic Chemical Release Reporting (over \$100,000)

ADDITIONAL CLAUSES – COST ACCOUNTING STANDARDS (Applicable if Noted in the Order)

- 52.230-2 Cost Accounting Standards
52.230-3 Disclosure and Consistency of Cost Accounting Practices
52.230-5 Cost Accounting Standards – Educational Institution
52.230-6 Administration of Cost Accounting Standards

Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting Cost Accounting Standards, FAR 52.230 -2 and Administration of Cost Accounting Standards, FAR 52.230-6, provided Seller shall not be required to disclose to Buyer such communications containing information which is legally privileged and confidential to Seller. In addition to any other remedies provided by law or under this Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of Seller or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230 -3, 52.230 -5 or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses.