

# Space Vector's Terms and Conditions

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## **1. Complete Terms**

This contract contains the entire agreement between the parties, and no modification, amendment, revision, waiver or other change will be binding on Space Vector Corporation ("Seller") unless assented to in writing by Seller's authorized representative; provided, however, Buyer may request in writing any changes to the purchase order and Seller shall consider such request and provide written acceptance or rejection thereof within 10 Business days of receipt, such acceptance or rejection decision shall be in the sole discretion of Seller. Any oral or written representation warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Seller.

Quotations provided by Seller and Contracts/Orders accepted by Seller are governed by these Space Vector's Terms and Conditions ("Terms and Conditions"). This is an offer conditioned upon the Buyer's acceptance of these Terms and Conditions, together with any attachments, exhibits, specifications, drawings, notes, instructions and other information, and incorporation of the same in the Buyer's contract/purchase order (hereafter referred to as 'Contract'). Further, in the event of a conflict between these terms and conditions, and the Buyer's contract/purchase order terms, the conflict shall be resolved prior to the Seller's acceptance of the contract.

## **2. Definitions**

"Background Intellectual Property" means all intellectual property rights owned or controlled by a Party prior to the Effective Date of this Agreement. Intellectual property rights include, by way of example, patents, patent applications, know-how, trade secrets and other Confidential or Proprietary Information, copyrights and trademarks.

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Contract" means either (1) a contract agreement signed by both parties, (2) a purchase order signed by Buyer and accepted by Seller in writing. The Parties agree that in the event of any conflict, these Terms and Conditions shall take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"Normal Wear and Tear" means the expected decline in condition of equipment due to its normal use for the purpose intended.

"Products" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract. All items are Commercial Items/Commercial Services as defined in Federal Acquisition Regulation, 2.101 and Part 12 (see Article 25 below).

"Seller" means the entity providing products or performing services under the Contract.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are used or Services are performed, including Buyer's premises, but not including Seller's premises.

"Terms and Conditions" means these "Space Vector's Terms and Conditions," including any relevant addenda, together with any modifications or additional provisions specifically stated in Seller's final quotation or Contract.

## **3. Quotation**

All written quotations of price and terms ("Quote") made by the Seller will be valid for a period of ninety (90) calendar days after conveyance, unless otherwise stated in the accompanying quotation document. Prices and terms are not subject to verbal changes or other agreements unless approved in writing by the Seller. Buyer shall have no right to access Seller's cost or pricing data, or other books or records, except as required by a government contract with provisions requiring same.

## **4. Contract**

Performance will commence upon acceptance of Buyer's contract by the Seller and shall be in accordance with the accepted terms and conditions set forth in the contract. At a minimum, the contract shall identify the item(s) to be provided by Seller, unit quantities, descriptions, applicable prices, method of shipment and requested delivery dates, as well as any required flow-down provisions that may be required by the U.S. Government. Contracts can be submitted via email, fax or mail. Email is the preferred media. Seller will provide acknowledge of contracts and provide notice of conflicts (if any) within 5 business days of receipt.

#### **5. Changes**

Buyer may request changes in specifications, shipment packaging, or delivery of any Product or part thereof covered by any Order by providing reasonable prior written notice thereof to Seller, and upon Seller's acceptance of such change, Seller shall be entitled to an equitable adjustment in the price of such Product or part by providing revised terms to Buyer within thirty (30) days of receipt of Buyer's request for change. Buyer and Seller shall negotiate the terms of any such changes in "good faith" provided however, that if Buyer and Seller are not able to agree on the terms of such changes, the terms of the original Order shall apply. Seller reserves the right to make changes in the design of its Products at any time, provided that the Product has equivalent form, fit, and function as defined by Seller's specifications without incurring any obligation to make equivalent changes in Products previously manufactured or shipped.

#### **6. Tax, Fees, Duties**

Net prices shown do not include any federal, state or local taxes, or any other taxes, fees, duties or charges imposed by any government authority or other entity, including, without limitation, sales, use, excise, value-added or similar taxes. Where applicable, such taxes, fees, duties, or other such charges shall be billed as a separate item and shall be borne by Buyer. Orders are accepted with the understanding that such taxes, fees, duties, and other such charges shall be added, as required by law or as may be exempt with appropriate resale certificates filed.

#### **7. Terms of payment**

Terms of payment shall be as set forth in Seller's quotation; Standard terms are NET, Thirty (30) days from date of invoice; Free-on-Board Chatsworth, California. Payment shall be rendered promptly upon Buyer's receipt of goods and/or under agreed to milestone payments. If Buyer fails to pay any sum owed hereunder when due, interest shall accrue to Seller's credit on such sum at the rate of One-and-One-half (1 ½%) percent, compounded per month, or at the highest rate allowed by law, whichever is higher. If Seller, in its sole discretion, finds it necessary to employ an attorney and/or collection agent to recover any past due sum owed hereunder, it may collect, in addition to other delinquent sums, all applicable attorneys/agent's fees and costs.

Credit cards accepted by Seller are MasterCard, Visa and American Express. A 3% processing charge will be added to the balance due for credit card transactions.

Seller does not accept COD orders.

Seller is not required to commence or continue its performance unless and until any required payment security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable payment security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to "make whole" payment or otherwise restructure payments, request additional forms of payment security, suspend its performance or terminate the Contract.

#### **8. Cancellation**

Except with regard to orders for custom products, which orders are not cancelable without the prior written consent of Seller, Buyer may cancel Order(s) only if Seller agrees to cancellation in writing and only after payment agreement by Buyer of all reasonable charges based upon costs and expenses already incurred and commitment made by Seller.

## 9. Delivery

Product shipment terms are "FOB Origin" for domestic shipments and "EXW or FCA Supplier Plant" (INCOTERMS 2000) for international shipments unless otherwise agreed in writing by Seller. Title and risk of loss shall pass to Buyer when Seller places Products at the disposal of Buyer at Seller's facility. The delivery date is our best estimate of the time at which material will be shipped from our factory, but Seller assumes no liability for loss, damage, or consequential or other damages due to delays. Orders shall reflect Seller's standard lead times unless otherwise specifically agreed in writing and executed by the parties. Shipping and delivery dates are approximate and not guaranteed, although Seller shall use reasonable commercial efforts to meet delivery dates designated by Buyer. Except in the case of specially designed shipping containers supplied by Buyer or otherwise agreed in writing by Seller, Seller shall ship all products in specially designed shipping containers to avoid damage due to excessive shock. Partial shipments of complete Orders may be made at Seller's discretion. Delay in delivery of any installment shipments shall not relieve Buyer of its obligation to pay for any installment shipments received; or its obligation to accept remaining deliveries. Orders which have been accepted by Seller, which (a) call for deferred deliveries scheduled over a stated time interval; (b) are subject to subsequent delivery instructions; or (c) are for repair Service, may not designate delivery dates beyond the date originally specified in Seller's quotation of prices

In the event of any such delay or failure in performance, Seller shall have such additional time within which to perform its obligations under this purchase order as may reasonably be necessary under the circumstances. Failure of Buyer to comply with this Article 9 deliver shall void the warranty referred to in Article 11 Warranty.

## 10. Inspection and Acceptance

All products ordered hereunder shall be subject to final inspection and to acceptance by Buyer within thirty (30) from date of delivery. If the products ordered hereunder do not meet the specifications or otherwise do not conform to the requirements of this purchase order, Buyer shall have the right to reject such nonconforming products by providing Seller written notice of nonconformance within thirty (30) days after delivery. To the extent that any product is not rejected in writing within thirty (30) days after delivery, such product shall be deemed accepted hereunder. Buyer shall promptly notify Seller and provide a specific written explanation of the basis for any Product rejection. All claims for shortages must be made in writing within fifteen (15) calendar days after receipt of Products by Buyer or Buyer's agent and specify with particularity the exact shortage. Immediate written notice must be given to the carrier's agent at destination in the event of damage or loss in transit. No Inspectors or other Representatives of Buyer will be allowed in Seller's plant without specific approval in writing signed by a duly authorized representative of Seller.

## 11. Warranty

Seller warrants that each Product provided to Buyer pursuant to any Order will, subject to commercial tolerances, conform to the express specifications prepared, approved, and issued by Seller's headquarters with respect to such Product ("Seller's Warranty"), for a period of one (1) year from the date of shipment ("Warranty Period").

WARRANTY LIMITATIONS: Seller's warranty is Seller's sole warranty with respect to its products and seller disclaims all additional warranties, express or implied, including without limitation warranties of merchantability and fitness for a particular purpose. Supplier also expressly disclaims any liability based in tort such as strict liability or negligence.

No promise or affirmation of fact made by any employee, agent, or representative of Seller, nor any sample provided, shall constitute any additional warranty or give rise to any liability or obligation. Unless otherwise agreed by Seller in writing.

Seller's warranty runs only to the Buyer designated in any order and is non-transferable and non-assignable either directly, indirectly, or by operation of law. Any purported or attempted transfer or assignment of Seller's warranty hereunder shall be deemed null and void, and Buyer agrees to indemnify, defend and hold seller harmless from and against any and all claims and actions of third parties with respect to Seller's warranty.

Buyer's sole remedy and Seller's sole obligation with respect to any product alleged to be in breach of Seller's warranty is, at Seller's sole discretion, the repair or replacement of such product. Replacement parts may be new or reconditioned. Seller is not responsible for normal wear and tear.

**WARRANTY MANAGEMENT:** Buyer must notify Seller in writing concerning any Product allegedly defective or otherwise not in conformity with Seller's Warranty as soon as practicable, but in no event later than one hundred twenty (120) days after discovery of such defect or nonconformity subject to the express Warranty Period set forth above. Buyer's written notice must set forth with particularity the nature and extent of the defect or nonconformity.

In no event shall Seller be responsible for claims resulting in whole or in part, directly or indirectly, from the use, abuse or mishandling of new, serviced, or defective or nonconforming Products or for the costs of labor and/or materials expended on any such Products.

Failure to furnish a written claim within the applicable Warranty Period shall terminate all warranty liability of Seller. Seller must be given the opportunity upon written demand to inspect Products claimed to be defective or nonconforming. Buyer shall return Products that do not conform to Seller upon receipt of Seller's authorization to do so and at Seller's expense. Buyer must demonstrate to the reasonable satisfaction of Seller that any alleged defective or nonconformity of Products was solely caused by a breach by Seller of Seller's Warranty. Buyer shall not, under any circumstances, exercise set-off against outstanding or subsequent invoices of Seller without Seller's written consent for any warranty claim.

#### **12. Best Practices**

Buyer will (i) be solely responsible for determining the suitability of Seller's Product in Buyer's applications prior to use, (ii) familiarize itself and strictly comply with any Product literature, information and instructions Seller provides, including without limitation the MSDS (Material Safety Data Sheet) for each product; (iii) adopt and follow safe and appropriate handling, storage, transportation, use, treatment and disposal practices with respect to the Products, and the containers thereof, including such special care and practices as Buyer's use of the Products requires including, without limitation, all such practices required by federal, state and local government statutes, rules, regulations or ordinances; (iv) provide appropriate warnings to, and instruct, its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, treatment, transportation and disposal of the Product, and the containers thereof, including without limitation information contained in Seller's most current MSDS; and (v) comply with applicable health, safety, security and environmental laws and take action necessary to avoid dangers to persons, property or the environment.

#### **13. Indemnification**

Seller agrees to indemnify Buyer from and against any loss or damage incurred by Buyer as a result of a final judgment of a court of competent jurisdiction that Seller's Products infringe a United States patent or copyright held by a third party. Seller's obligation to indemnify Buyer hereunder shall extend only to infringements in countries which, at the issue date of the patent and time of the infringement, were party to and fully bound by either: (i) Article 27 of the Chicago Convention on International Civil Aviation or (ii) the International Convention for the Protection of Industrial Property (Paris Convention). Buyer will indemnify and hold Seller harmless for all claims, damages and related costs, including reasonable legal fees and costs, arising out of Buyer's noncompliance with any of its commitments under Article 12 Best Practices.

#### **14. Force Majeure**

Subject to the provisions cited herein, Seller shall not be held in default by reason of any failure in the provision of Products or Service in accordance with these Terms which arises out of or relates to causes or events beyond the reasonable control of Seller ("Force Majeure Event"), including, but not limited to, acts of God, acts of government, terrorism, fires, floods, epidemics, earthquakes, quarantine, restrictions, strikes, lock-outs, freight embargoes or failure of any supplier of Seller a result of a Force Majeure Event. Seller shall provide Buyer immediate written notice when Seller becomes aware of any circumstance or event, which causes or may reasonably be anticipated to cause delay in delivery to Buyer. Such notice shall contain a detailed description of the nature of the delay. Within ten (10) days after such notice, Seller shall deliver a detailed written description of any recovery or work-around plan, alternative sources of supply and any other means that Seller shall, at its own expense, use to prevent further delay. If the delivery of Products or Service should be delayed by reason of a Force Majeure Event for more than one hundred twenty (120) days beyond the original scheduled delivery date, Buyer may, upon written notice to Seller, rescind the Order with respect to any undelivered Products or Service.

## **15. Export Compliance**

Buyer agrees that it shall not sell, transfer, or deliver, directly or indirectly, any part or portion of the Products or related documentation supplied by Seller pursuant to this Agreement to any person or organization in any country where such sale, transfer, or delivery by Buyer would be prohibited by law or regulation now or hereafter in effect which imposes any restrictions on United States trade with foreign countries. In addition, Buyer shall provide upon request an End User Certificate identifying any and all foreign or domestic end users and ultimate destinations of Seller's provided product.

The obligations hereunder are conditioned upon Seller (or Buyer) obtaining, from the appropriate agencies or departments of the United States Government, all required export licenses and other governmental permits that may be required by law to enable export of the Products, Services and related documentation. Seller agrees to take all reasonable steps to obtain required licenses and permits; provided, that Buyer shall reimburse Seller for any costs associated with obtaining such licenses and permits. In the event that the required approvals are not granted, withdrawn, or not extended, then either party may terminate this Agreement and such termination for purposes of determination of costs shall be considered caused by excusable delays as defined in Article 14 of these Terms and Conditions.

Buyer shall indemnify and save harmless Seller and its affiliated companies from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Buyer's failure to comply with the provisions of this Article 15.

## **16. Choice of Law**

These Terms and any document subject to these Terms (including any Order) shall be interpreted in accordance with the laws of the State of California, exclusive of any choice of laws provisions. Seller and Buyer expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to these Terms or any document subject to these Terms (including any Order).

## **17. Disputes**

In the event of any dispute arising out of or relating to this Contract, representatives of the parties shall meet promptly in a good faith effort to resolve the dispute without resort to arbitration or court proceedings. If the dispute is not resolved by the parties within thirty (30) days after the representatives' first meeting, then either party, by written notice to the other, may request mediation. Mediation shall be conducted in Los Angeles County, California in accordance with the Commercial Mediation Rules of the American Arbitration Association. If mediation is not timely requested or does not end in resolution of the dispute, then the parties agree to finally and exclusively resolve the dispute through binding arbitration, to be conducted in Los Angeles County, CA in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator may only award or grant to the parties such remedies as a court of competent jurisdiction could award or grant within the locality where the arbitration takes place and may not award consequential or punitive damages. Judgment upon the award rendered by the arbitrator may be entered in any court having proper jurisdiction.

Seller shall not be required to pursue mediation or arbitration under this Article 17 in connection with claims brought by the Seller against Buyer arising out of Buyer's failure to pay for any products in whole or in part.

## **18. Limitations of Liability**

Seller's total liability to buyer with respect to any demand, claim, loss or damage arising out of, connected with, or resulting from any order, or from the performance or breach thereof, or from the design, development, manufacture, sale, delivery, resale, repair or use of any product by or service furnished to Buyer shall in no event exceed the contract price allocable to the product or part thereof, or service that gives rise to such demand, claim, loss or damage whether based on contract, indemnity, warranty, tort, negligence, strict liability or any other legal theory.

Notwithstanding anything herein to the contrary, neither party hereto shall be liable to the other for any special, indirect, incidental or consequential damages, loss of profits, loss of revenues or loss of use of any property, even if the possibility of such damages has been disclosed in advance or could have been reasonably foreseen by Seller.

These exclusions of types of damages shall be deemed independent of, and shall survive, any failure of the essential purpose of any limited remedy under the terms of the agreement.

#### **19. Intellectual Property**

Each party shall retain ownership of all "Background Intellectual Property" it had prior to the Contract. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, that is related to the Seller's background intellectual property, shall be owned exclusively by Seller. All new intellectual property conceived or created by Buyer in the performance of this Contract, whether alone or with any contribution from Seller, that is related to the Buyer's background intellectual property, shall be owned exclusively by Buyer. Seller and Buyer agrees to deliver assignment documentation as necessary to achieve those results. Buyer's background intellectual property shall be specifically identified in the Contract.

In the event any Product to be furnished under the Contract is not to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer, but rather is the design of Seller, Seller agrees that it shall, at its own expense and at its option, defend or settle any claim, suit, or proceeding brought against Buyer or any customer of Buyer, based on an allegation that the product furnished under this purchase order constitutes a direct infringement of any claim of any patent, mask work, copyright or any other intellectual property right. This obligation shall be effective only if (a) Buyer shall have made all payments then due (b) promptly notifies Seller in writing of the Claim, (c) makes no admission of liability and does not take any position adverse to Seller, (d) gives Seller sole authority to control defense and settlement of the Claim, and (e) provides Seller with full disclosure and reasonable assistance as required to defend the Claim. Seller will reimburse Buyer or Customer for out of pocket expenses related to reasonable assistance as required to defend the Claim.

Seller shall have no obligation or liability with respect to, and Buyer agrees to defend, indemnify and hold Seller harmless to, any Claim based upon (a) Products or Services that have been modified, or revised, (b) the combination of any Products or Services with other products or services when such combination is a basis of the alleged infringement, (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim, (d) unauthorized use of Products or Services, or (e) Products or Services made or performed to Buyer's specifications.

Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product or Service, or applicable portion thereof, (b) modify or replace it in whole or in part with a substantially equivalent non-infringing product; or (c) failing (a) or (b), take back infringing Products or Services and refund the price received by Seller attributable to the infringing Products or Services.

#### **20. Confidential or Proprietary Information/Property**

Buyer shall hold all Proprietary and Confidential Information of Seller, whether disclosed by Seller to Buyer in connection with Seller's provision of Product(s) or Service hereunder or otherwise, in confidence and shall not reproduce, use or disclose such Proprietary or Confidential Information in whole or in part to any third party without the prior written consent of the Seller and shall take reasonable precautions to safeguard the secrecy thereof.

Seller grants to Buyer a non-exclusive, nontransferable (except as provided within this clause), limited license to use Seller's Proprietary Information solely as part of and in conjunction with the use of Products provided hereunder. All title, ownership rights, and intellectual property rights in and to such Proprietary Information shall remain with Seller and Buyer shall not: (i) modify, translate, reverse engineer, decompile, disassemble, or otherwise copy such Proprietary Information or create derivative works based upon such Intellectual Property; (ii) distribute, rent, lease, sell, transfer, sublicense, assign or otherwise transfer or allow others to use rights in or to such Proprietary Information; or (iii) remove, obscure or alter any notices or labels identifying or indicating Seller's ownership in and to such Proprietary Information.

#### **21. General Provisions**

These Terms and Conditions constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all previous agreements, communications, or representations, either verbal or written between the parties hereto. If any part of the Terms and Conditions are determined by a court of competent jurisdiction or arbitrator with jurisdiction over a Dispute to be invalid or unenforceable, it will not impact any other provision of the Terms and Conditions, all of which will

remain in full force and effect, and such court or arbitrator shall have the authority, if possible, to revise any invalid or unenforceable provision to most accurately reflect the intent of the parties as shown by the original wording of that provision while rendering it valid and enforceable. No rights, duties, agreements or obligations hereunder, may be assigned or transferred by Buyer by operation of law, merger or otherwise, without the prior written consent of the Seller. These Terms and Conditions and the subject matter that they cover, including without limitation the purchase of Products, do not create any joint venture, partnership, employment, or agency relationship between the Buyer and the Seller or its suppliers. The obligations, rights, terms and conditions hereof will be binding upon and inure solely to the benefit of the parties hereto and their permitted respective successors and assigns, and do not and are not intended to confer any rights or remedies upon third-parties. Neither Buyer nor Seller may assign any rights nor delegate any obligations under these Terms or any portion hereof without the prior written consent of the other party, which consent shall not be unreasonably withheld.

**22. Setoff**

Buyer is expressly prohibited from and shall not deduct or set-off invoiced amounts or any portion thereof against sums that are due or may be due from Buyer to Seller, its parent, affiliates, subsidiaries or other divisions or units.

**23. Changes to Space Vector's Terms and Conditions**

The Seller reserves the right to change the terms of these Terms and Conditions without notice. You are responsible for reviewing these Terms and Conditions prior to your purchasing of Products, and your purchasing of Products after any changes to these Conditions of Order acknowledges your agreement to the then current Terms and Conditions. In the event that a change or update is made to these Terms and Conditions, the "Date of Last Modification" will be updated accordingly.