

Space Micro Inc.

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STANDARD TERMS & CONDITIONS OF SALE

Space Micro Inc.
May 2020, v8

1. Definitions

- (a) "Contract" shall mean the instrument of contracting such as a "Purchase Order", "PO" or "Subcontract"
- (b) "Products" or "Work" shall mean the physical goods, software, firmware, and/or documentation required to be delivered by the Contract.
- (c) "Buyer" shall mean the party issuing the Contract.
- (d) "Space Micro" or "Seller" shall mean Space Micro Inc.
- (e) "Parties" shall mean the Buyer and Space Micro collectively.
- (f) "Party" shall mean either the Buyer or Space Micro Inc. individually.

2. Acceptance of Contract

- (a) Space Micro's written acceptance shall constitute Space Micro's acceptance of this Contract.

3. Terms and Conditions

- (a) Unless expressly accepted in writing by both Parties, additional or differing terms and conditions proposed by either Party are not be accepted.

4. Prices and Taxes.

- (a) Unless otherwise specified, the prices set forth in this Contract do not include any applicable federal, national, state or local taxes, fees, duties, levies or surcharges. ("Taxes and Fees"). These Taxes and Fees, if applicable, will be added to each applicable invoice and shall be paid in full by the Buyer.

5. Price and Payment

- (a) All prices specified herein are in United States Dollars (USD).
- (b) Unless otherwise stated elsewhere in the contract, payment terms shall be Net 30.

6. Packaging and Shipment

- (a) Unless otherwise specified in writing, all Products will be package in accordance with good commercial practices.

7. Unless otherwise specified in writing, delivery shall be EXW Origin (Incoterms 2010)Warranty

- (a) Space Micro warrants that all Work performed and Products furnished hereunder will (i) be free from defects in workmanship, material, and manufacture; (ii) comply with the requirements of this purchase order or contract, including any drawings or specifications incorporated herein; and (iii) be in compliance with all applicable US laws and regulations.

- (b) Space Micro's sole obligation hereunder shall be limited to, at Space Micro's option, either repairing or replacing any products for which (i) written notice of nonconformance hereunder is received within one (1) year after original shipment; (ii) after Space Micro's authorization, are returned to Space Micro's factory of origin, freight charges prepaid; and (iii) after examination, are determined solely by Space Micro to be nonconforming. Any such replacement shall not extend the period within which such warranty can be asserted. This warranty shall not apply to products which Space Micro determines have, by Buyer or any third party, (a) not been properly maintained or have been subjected to operating and/or environmental conditions in excess of the maximum values therefor in the applicable specifications or (b) otherwise have been subjected to misuse, neglect, abuse, repair unauthorized by Space Micro, alteration, damage, or improper installation.
- (c) THE FOREGOING CONSTITUTES SPACE MICRO'S ENTIRE WARRANTY AND BUYER'S SOLE REMEDY WITH RESPECT TO ANY DEFECT OR NONCONFORMANCE IN DELIVERABLES PROVIDED BY SPACE MICRO. THESE WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR THOSE ARISING FROM COURSE OF DEALING OR USAGE IN TRADE.

8. Limited Liability.

- (a) Except for bodily injury, gross negligence, patent infringement or intentional misconduct, Space Micro will not be liable with respect to any subject matter of these terms under any contract, for (i) any amounts in excess in value of this contract or (ii) any incidental or consequential damages, or (iii) cost of procurement of substitute goods, technology or services. Space Micro shall have no liability for any failure or delay due to matters beyond its reasonable control or for any allocation of products between its customers in the event of a shortage.
- (b) Buyer further acknowledges that the pricing and terms would have been different if there had been a different allocation of risk.

9. Compliance with Laws

- (a) The shall comply with all applicable local, state, and national laws, orders, rules, regulations, codes and ordinance ("Laws"). Buyer shall indemnify, defend and hold harmless Space Micro against any liability, fine or penalty that may be imposed upon Space Micro as a result of Buyer's failure to comply with such Laws.

10. Applicable Law

- (a) This Contract shall be governed by and construed according to the laws of the State of California in the United States of America.

11. Access to Work in Progress

- (a) Any examination or evaluation of (i) the Work in progress or (ii) any records pertaining thereto not called out in the Contract shall be subject to an equitable adjustment in the Work's price and delivery schedule prior to any such examination or evaluation.

12. Inspection and Acceptance of Products

- (a) Unless otherwise specified, acceptance of Products shall take place at Space Micro's facility.
- (b) A Product shall be considered "Accepted" when it passes all specified final tests and inspections.

- (c) Any defect or deviation noted during Buyer's incoming inspection shall be treated in accordance with Clause 7.

13. Title and Risk of Loss

- (a) Buyer shall assume all risk of loss and title to all Work shall pass to Buyer when the Work is Accepted as defined in Article 12.

14. Changes

- (a) Buyer may at any time during the period of performance of the Contract issue a Contract Change Notice to unilaterally direct changes within the general scope of this Contract. Such changes may include, without limitation, changes in drawings, designs, specifications, quantities, method of shipment or packing, place or time of delivery, additional or modified work requirements or omissions of work.
- (b) If any such change causes an increase or decrease in the cost of and/or the time required for the performance of this Contract, an equitable adjustment shall be made in the price and/or delivery schedule, provided that Space Micro submits a settlement proposal in writing to the Buyer for an adjustment in the price and/or the time of performance necessitated thereby. This settlement proposal shall include the price of the work, labor, services and materials to be altered, added or modified and all delivery schedule impacts. If the price of supplies or materials made obsolete or excess as a result of a change is included in the negotiated price adjustment, Buyer shall assume title to such supplies or materials and shall prescribe the manner of disposition.
- (c) Upon the receipt by Buyer of Space Micro's proposal the Parties shall attempt to reach agreement on the price and/or delivery schedule impacts of the Contract Change Notice. Upon reaching an agreement the Parties shall mutually execute an Amendment definitizing the results of such negotiations. In the event the Parties are unable to reach agreement on the price and/or schedule impact of the Contract Change Notice, the matter shall be resolved in accordance with Clause 21, Disputes/Arbitration.
- (d) Upon receipt of a Contract Change Notice, Space Micro shall, at its discretion, proceed with the change in the work even if Buyer and Space Micro have not yet reached agreement regarding price and/or delivery schedule adjustments.

15. Termination

- (a) This Contract may be terminated for the convenience of Buyer, at its option, or for default, in whole or in part, at any time during the period of performance of the Contract. Such termination shall be effected by delivery to Space Micro of a written notice of termination ("Termination Notice") specifying the extent to which performance of work under this Contract is terminated, the effective date of the termination and the instructions for accomplishing the termination.
- (b) Upon receipt of a Termination Notice, Space Micro shall:
 - (1) Stop work as directed;
 - (2) Terminate all purchase orders and subcontracts relating to the performance of the work being terminated;
 - (3) With the approval of Buyer, settle all outstanding liabilities and claims, if any, arising out of the termination of such purchase orders and subcontracts;
 - (4) Deliver to Buyer for inspection and acceptance all completed Products, in accordance with the terms of this Contract;

- (5) Transfer title and deliver to Buyer all terminated work in process and inventory items procured specifically for the work being terminated (but not in excess of the amount authorized by Buyer), but only if such work in process and inventory items (1) are of a type and quality suitable for producing Products in conformance with the requirements of this Contract, and (2) cannot reasonably be used by Space Micro for itself or for its other customers;
 - (6) Take all actions necessary to protect property in Space Micro's possession in which Buyer has or may express an interest; and
 - (7) Complete performance of such part of this Contract that is not terminated.
- (c) Upon termination by Buyer under this clause, Buyer's sole obligation shall be to pay the amount indicated in this Contract's termination liability schedule.
- (d) If such a schedule is not included elsewhere in the contract, Seller shall submit within sixty (60) calendar days a termination settlement proposal. In the event the Parties are unable to reach agreement on the termination settlement, the matter shall be determined in accordance with this contract's Disputes/Arbitration clause.
- (e) Space Micro may terminate this Contract if:
- (1) The Buyer fails to perform any material provision of this Contract.
 - (2) The Buyer become insolvent or is the subject of a voluntary or involuntary petition in bankruptcy.
- (f) In the event Space Micro terminates this contract for the reasons noted in 15(e), Space Micro shall:
- (1) Retain ownership of all partially completed Products, supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Sub-Contract rights (collectively, "Manufacturing Materials") Space Micro has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated.
 - (2) Submit an invoice in the relevant amount set forth in this Contract's termination liability schedule and which shall be adjusted as required to reflect the fact that Space Micro is retaining ownership of the Manufacturing Materials. If such a schedule is not included in this contract, Buyer shall submit settlement proposal. In the event the Parties are unable to reach agreement on the settlement proposal, the matter shall be resolved in accordance with Clause 18, Disputes/Arbitration.

16. Stop Work

- (a) Buyer may at any time, by written notice ("Stop Work Notice") to Space Micro, require Space Micro to stop any or all work required by the contract for a period of up to thirty (30) calendar days ("Stop Work Period")
- (b) At the end of Stop Work Period:
- (1) Space Micro will resume work; or
 - (2) Space Micro will issue Buyer an invoice for any work completed prior to the date Buyer issued its Stop Work Notice and the parties will agree on an extension to the Stop Work Period; or
 - (3) Seller may terminate the contract as described in Clause 15.

17. Excusable Delays

- (a) Events beyond the reasonable control and without the fault or negligence of a Party or its employees, agents or subcontractors, which may include, without limitation, acts of God, acts of Government, fires,

floods, epidemics, pandemics, acts of war, quarantine restrictions, labor disputes and embargoes (“Force Majeure Events”), shall constitute a basis for excusable delay, provided:

- (b) Notice is given to the other Party within fourteen (14) days of the occurrence of such Force Majeure Event. The notice shall contain the date of the event, a description of the event, an assessment of the impact of and the anticipated duration of the Force Majeure Event; and
- (c) The Party seeking relief can establish that the Force Majeure Event has delayed its performance under this Contract.
- (d) If a Force Majeure Event affecting Space Micro’s performance is likely to continue for such a duration that will adversely impact Buyer’s performance under its Contract(s), Buyer terminate the contract for convenience in accordance with Clause 15.

18. Intellectual Property (IP)

- (a) Buyer acknowledges it has entered into a Contract with Space Micro for the delivery of Products. Buyer acknowledges it is not buying Intellectual Property.
- (b) Any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, firmware, parts lists, and other information or materials (“Background IP”) used, included, or contained in the Products or deliverable items and are not owned by Buyer.
- (c) Any inventions, technology, designs, works of authorship, mask works, technical information, computer software, firmware, parts lists and other information or materials made, conceived or actually reduced to practice in connection with Space Micro’s performance of this Contract (“Foreground IP”) are not owned by Buyer.
- (d) Solely in conjunction with this Contract, Space Micro hereby grants to Buyer, higher tier subcontractors and Buyer’s customer an irrevocable, non-exclusive, royalty-free license to use in operation, qualification, maintenance and integration of the Products the Foreground IP and Background IP incorporated in or provided with the Products. The use of Foreground IP or Background IP for any other purposes or any other projects is not authorized.

19. Counterfeit Parts

- (a) “Suspect/counterfeit parts” are parts that may be of new manufacture but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. They also include refurbished parts, complete with false labeling, that are represented as new parts or any parts that are designated as suspect by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP).
- (b) Seller represents and warrants that it has policies and procedures in place to ensure that none of the supplies or materials furnished under this Contract are “suspect/counterfeit parts” and certifies, to the best of its knowledge and belief that no such parts have been or are being furnished to Buyer by Space Micro.
- (c) The Parties shall work together to find a mutually agreeable solution should the presence of “Suspect/counterfeit parts” be positively identified on any Products delivered by Space Micro to Buyer.

20. Claims

- (a) The term “Claim” means a written demand or assertion by Space Micro seeking an adjustment or interpretation of the terms of this Contract, payment of money, an extension of time, or any other relief with respect to the work being performed pursuant to this Contract. A Claim must include the following:

- (1) a statement that it is a Claim and a request for decision pursuant to this Clause 20; (2) a detailed description of the act, error, omission, unforeseen event or other condition giving rise to the Claim; (3) a detailed breakdown with supporting back up of all amounts, if any, being claimed; and (4) if the Claim seeks a time extension, a schedule analysis demonstrating Space Micro's entitlement to a time extension.
- (b) Claims must be submitted to Buyer within sixty (60) calendar days after the later of (i) the end of the Contract's period of performance or (ii) Space Micro's final delivery to Buyer.
- (c) Buyer shall review Claims submitted by Space Micro on a timely basis. If Buyer determines that additional supporting data is necessary to fully evaluate a Claim, Buyer will request such additional supporting data, and such data shall be furnished by Space Micro within thirty (30) days after the date of such request. Buyer shall render a decision within sixty (60) days after the later of the receipt of the Claim or any additional supporting data. Buyer's decision shall be final and binding unless appealed in accordance with paragraph (d) of this clause.
- (d) If Space Micro disputes Buyer's decision on a Claim, Space Micro shall have the right, within ninety (90) days after Buyer's decision is issued, to commence arbitration against Buyer in accordance with Clause 21. If arbitration is not commenced by Space Micro within ninety (90) days after Buyer's decision is issued, Buyer's decision on a Claim shall be final and binding and not subject to appeal or challenge.
- (e) Notwithstanding any other provisions herein, any decision of the Customer under the Prime Contract which binds Buyer shall not bind Space Micro.
- (f) During the pendency of any Claim proceeding, Space Micro shall proceed with performance of this Contract at its sole discretion.

21. Disputes/Arbitration

- (a) Any dispute or disagreement arising between Space Micro and Buyer in connection with this Contract, or the validity or enforceability thereof, which is not settled to the mutual satisfaction of Space Micro and Buyer, shall be settled by arbitration in accordance with the JAMS International Arbitration Rules in effect on the date that such notice is given. The Tribunal will consist of one arbitrator. Within fifteen (15) days after the commencement of arbitration, the Parties shall agree on the person to act as sole arbitrator. If the Parties fail to select the arbitrator within 30 days of the date of notice of arbitration, the arbitrator shall be appointed by JAMS in accordance with its rules. The arbitrator shall serve as a neutral, independent and impartial arbitrator. The place of arbitration will be within San Diego County in the State of California in the United States of America. The language to be used in the arbitral proceedings and documents will be English. Each Party shall bear its own costs incurred in connection with the arbitration. The arbitration award shall be final and binding upon the Parties and judgment may be entered thereon, upon the application of either Party, by any court having jurisdiction.
- (b) During the pendency of any arbitration proceeding, Space Micro shall proceed with performance of this Contract at its sole discretion.

22. Severability

- (a) If for any reason any provision hereof is found to be illegal, unenforceable, or void, the Parties shall negotiate in good faith to agree upon a substitute provision that is legal, enforceable, and as consistent as possible with the intentions underlying the original provision. If the remainder hereof is not materially affected by such finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted under law.

23. Confidential Information and Publicity/Disclosure

- (a) Any confidential information provided exchanged between the Parties shall be subject to a separately executed non-disclosure agreement.
- (b) Neither party shall advertise or publish the fact that Space Micro has furnished or contracted to furnish Buyer the goods or services herein mentioned without prior written consent of the other Party. Seller shall not disclose any details in connection with this Contract to any Party except as may be otherwise provided.

24. Waiver

- (a) No delay or omission by either Party to exercise any right or remedy hereunder shall be construed as a waiver of such right or remedy. Further, the waiver by Buyer of a particular breach of this Contract by Seller shall not be construed as, or constitute, a continuing waiver of such breach. However, it shall constitute a waiver of any other breaches of the same or other provisions of this Contract.
- (b) Any waiver of a requirement granted by Buyer or acceptance of a non-compliant condition applies only to the specific unit(s) identified. Said waiver or acceptance of a non-compliant condition does not constitute a change to or a waiver of any requirement of this Contract.

25. Approvals

- (a) Any Seller provided documents requiring Buyer approval shall be either approved, conditionally approved or denied (“Decisions”) with fifteen (15) calendar days (“Approval Window”). All Decisions shall be issued in writing. Any document tendered for approval shall be deemed approved if the Buyer has not formally rejected it within the Approval Window.

26. Proprietary Information

- (a) Proprietary Information. By virtue of this Contract, either Party (“**Discloser**”) may disclose information to the other Party (“**Recipient**”) that is proprietary and confidential to the Discloser. “**Proprietary Information**” is defined as information of any nature and in any form (including, without limitation, written, magnetic or optical media, and oral and visual disclosures) disclosed by the Discloser, or disclosed by an independent contractor, consultant, agent or other representative of the Discloser, to the Recipient in connection with this Contract and for the purpose of the Parties’ performance hereunder (the “**Authorized Purpose**”): (1) that is identified as confidential or proprietary with an appropriate, conspicuous marking; or (2) in the case of oral or visual disclosures, that is identified as confidential or proprietary at the time of disclosure, and then reduced to writing in summary form (including the date, place and method of disclosure, and sufficient detail to identify the proprietary or confidential information), which is identified as confidential or proprietary with an appropriate, conspicuous marking and delivered to the Recipient within fifteen (15) days of such disclosure, except in the event that such information should reasonably have been understood to be proprietary in which case it shall be treated as such hereunder. Additionally, the Parties agree that the terms of this Contract (including the Exhibits and any other attachments hereto) shall be deemed as Proprietary Information hereunder.
- (b) Exceptions. Proprietary Information shall not include any information disclosed by or on behalf of a Party that: (1) is in or enters the public domain, other than by breach of this Contract by the Recipient; (2) was known to the Recipient prior to the time of first receipt from the Discloser, and free of any obligation of confidence of the Recipient, as evidenced by written records; (3) lawfully becomes known to the Recipient, from a source other than the Discloser, and free of any obligation of confidence of the Recipient, as evidenced by written records; or (4) was or is at any time developed by the Recipient independent of and without reference to any Proprietary Information received hereunder, as evidenced by written records.

- (c) **Terms for Handling and Use of Proprietary Information.** Subject to Article 26(b), for a period of ten (10) years after receipt of any Proprietary Information, the Recipient shall not disclose Proprietary Information received hereunder to any third party person or entity, and shall restrict disclosure of the Proprietary Information to only those if its directors, officers, employees or subcontractors who require access to the Proprietary Information for carrying out the Authorized Purpose, and who are obligated to the Recipient (by an employment agreement or other written obligation) to protect the Proprietary Information consistent with the obligations of the Recipient hereunder. The Recipient agrees to advise each person or entity, who will be afforded access to any Proprietary Information of the Discloser, of the Authorized Purpose and that they are obligated to protect and use the Proprietary Information in a manner consistent with the provisions of this Contract. Proprietary Information shall not otherwise be disclosed to any third party without the prior written consent of the Discloser. The Recipient shall not use any Proprietary Information for any purpose other than the Authorized Purpose without first obtaining the prior written consent of the Discloser.
- (d) **Legally Compelled Disclosure.** Notwithstanding the foregoing, in the event that the Recipient becomes legally compelled, by order of a court of competent jurisdiction, or by order of a governmental agency or legislative body under any written law, regulation or legal order (including disclosures required or reasonably determined as being required under applicable securities laws and regulations), to disclose Proprietary Information of the Discloser, the Recipient shall (to the extent permitted under the circumstances) promptly provide written notice to the Discloser thereof, and reasonably cooperate with the Discloser in contesting the disclosure and in redacting such portions of the information as reasonably required by the Discloser and permitted by applicable law. If disclosure is ultimately required, then the Recipient will disclose only such information as is legally required (as reasonably determined by the Recipient), and will cooperate with the Discloser (at the Discloser's expense) in seeking confidentiality treatment for the information ultimately disclosed.
- (e) **No License.** Subject to Article 18, all rights in Proprietary Information are reserved by the Discloser. Other than the rights expressly granted herein, neither this Contract, nor the disclosure of any Proprietary Information hereunder, shall be construed as expressing or implying any other rights, including but not limited to any rights of ownership of such Proprietary Information, or rights to any invention, patent, copyright or other intellectual property right heretofore or hereafter owned, acquired, developed or licensable by the Discloser.
- (f) **Equitable Relief.** The Parties acknowledge and agree that Proprietary Information is unique and valuable to a Discloser, and that breach of the confidentiality obligations or use restrictions provided herein may cause substantial, immediate and irreparable damage to the Discloser for which monetary damages alone would not be an adequate remedy. Upon any such breach, or in the event that the Discloser forms a reasonable and good faith belief that such a breach is imminent, the Discloser shall be entitled to seek preliminary and other injunctive relief from any court of competent jurisdiction, with or without notice to the Recipient and without any obligation to post a bond. This remedy shall be in addition to any and all other rights or remedies to which the Discloser may be entitled at law or in equity.
- (g) **Return of Confidential Information.** At the request of the Discloser, all Proprietary Information (including all copies, extracts, summaries and other tangible materials containing such information) shall be either returned to the Discloser or destroyed by the Recipient, except for one (1) copy which may be retained for legal archive purposes, and where both Parties have proprietary rights in the same Proprietary Information, a Party shall not be required to return such information to the other Party. In the event of destruction, the Recipient shall, within ten (10) days after such destruction, certify in writing to the Discloser that such destruction has been accomplished. The Recipient shall make no further use of any Proprietary Information.

27. Insurance

- (a) Contractor shall procure and maintain at all relevant times during its performance of this Contract the following insurance coverages:
- (1) General Liability Insurance. Comprehensive general liability insurance of a scope and policy limits that are normal and customary in the industry, provided such insurance shall be at policy limits of at least One Million Dollars (\$1,000,000) per occurrence and shall include coverage for injury, death and property damage.
 - (2) Property Insurance. Property insurance against all risks and loss or damage to the Deliverables and any and all materials used or to be used in completing the Work, in an amount not less than the greater of (a) the replacement value of the Deliverables and any and all materials used or to be used in completing the Work, and (b) the amounts to be paid by Hughes under this Contract for the Work.
 - (3) Worker's Compensation and Employer's Liability Insurance. Worker's compensation and employer's liability, or similar social insurance, for all Contractor employees engaged in performing the Work under this Contract, in accordance with law which may be applicable to said employees.
 - (4) Automobile Insurance. Comprehensive automobile liability insurance against liability claims for personal injury (including bodily injury and death) and property damage covering all owned, leased, non-owned and hired vehicles used by Contractor in connection with Contractor's performance under this Contract. Such insurance shall be of and policy limits that are normal and customary in the industry, provided such insurance shall be at policy limits of at least One Million Dollars (\$1,000,000) per occurrence.
- (b) All insurance required pursuant to the provisions of this Article 27 shall be maintained by Contractor until the completion of the Work under this Contract

28. Entire Agreement and Amendments

- (a) This Contract constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, understandings and agreements with respect to the subject matter hereof. Only a written instrument executed by both Parties may amend this Contract.

29. Miscellaneous

- (a) Headings. The section headings appearing in this Contract are inserted only as a matter of convenience and in no way, limit, construe or describe the scope or intent of such section, or in any way affect this Contract.
- (b) Invalidity or Unenforceability. If any provision of this Contract is found to be unenforceable, the remainder shall be enforced as fully as possible, and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.
- (c) Space Micro shall provide all Work hereunder as an independent contractor.