



**TERMS AND CONDITIONS  
FOR  
SUBCONTRACTS AND PURCHASE ORDERS**

(Paragraphs 1 through 31 inclusive)  
Effective January 1, 2011

**1. DEFINITIONS**

The following definitions apply unless otherwise specifically stated:

- (a) "SDI's Procurement Representative" means the SDI official who is authorized to act on behalf of SDI. Unless otherwise expressly set forth in this Order, SDI's Procurement Representative is the person who signs this Order on behalf of SDI.
- (b) "Seller" means the legal entity contracting with SDI.
- (c) "This Order" means this contractual instrument, including all changes and modifications thereto.
- (d) "MPA" means Master Purchase Agreement.

**2. CONTRACT**

This Order is a contract. Unless this Order has been placed under an MPA, the provisions of this Order constitute the complete and exclusive agreement between the parties and supersede all previous communications, representations, or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof. No agreement or understanding varying or extending the terms or conditions of this Order will be binding on SDI unless in writing, signed by SDI's Procurement Representative. Seller will be deemed to have accepted this Order by whichever of the following occurs first, unless the method of acceptance is expressly provided for elsewhere in this Order:

- (a) Seller's written acknowledgment that it accepts the terms and conditions of this Order; or
- (b) commencement of performance by Seller; or
- (c) delivery in whole or in part of the supplies called for hereunder. Seller may not accept this Order through an acknowledgment that contains terms and conditions that are inconsistent with the terms and conditions in this Order and no condition stated by Seller in its acknowledgment of this Order shall be binding upon SDI if it is inconsistent with any of the provisions or terms and conditions of this Order. In the event this Order has been placed under an MPA, the terms of the MPA apply.

**3. ORDER OF PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) typed provisions on the face of this Order; (2) attachments to this Order; (3) the printed portion of this Order, including these terms and conditions; and (4) specifications and other documents, other than these terms and conditions, attached or incorporated by reference. SDI's specification, however incorporated, shall prevail over any subsidiary documents or exhibits referenced therein. Seller shall not use any specification(s) in lieu of those incorporated in this Order without the written consent of SDI's Procurement Representative. If this Order has been placed under an MPA, the terms of the MPA shall take precedence over the printed terms of this Order.

**4. CHANGES**

- (a) SDI may at any time, by prior written notice and without notice to sureties or assignees, make changes within the scope of this Order in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; (iv) delivery schedule' and (v) the Terms and Conditions hereof.
- (b) If any such change causes an increase or decrease in the cost of or the time required for, performance of any part of this Order, SDI shall make an equitable adjustment in the Order price and/or delivery schedule, and modify the Order accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by Seller must be submitted in writing to SDI within 30 days from the date of notice of the change, unless the parties agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Order. However, nothing contained in this "Changes" clause shall relieve Seller from proceeding without delay in the performance of this Order as changed.
- (e) Equitable adjustment means an increase or decrease in the cost of performing this Order, plus an adjustment to profit thereon and excludes any incidental or consequential damages.

**5. CONTRACT DIRECTION**

- (a) All inquiries, including technical inquiries and correspondence regarding this Order, shall be directed to the attention of SDI's Procurement Representative.
- (b) Only SDI's Procurement Representative has authority to make changes in or amendments to this Order. Such changes or amendments must be in writing.
- (c) SDI engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for equitable adjustment. If at any time Seller believes that such an exchange of information requires a change or modification to this Order, it shall promptly so notify SDI's Procurement Representative in writing.
- (d) Except as otherwise provided herein, all notices to be furnished by Seller shall be sent to SDI's Procurement Representative.

## 6. DEFAULT

(a) SDI, by written notice to Seller, may terminate this Order for default, in whole or in part, if Seller fails to comply with any of the terms of this Order, fails to make progress so as to endanger performance of this Order, or fails to provide adequate assurance of future performance. Seller shall have ten (10) days (or such longer period as SDI may authorize in writing) to cure any such failure after receipt of notice from SDI; provided, however that a cure notice is not required in the event Seller fails to meet the delivery schedule.

(b) SDI shall not be liable for any work not accepted; however, SDI may require Seller to deliver to SDI any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Order. SDI and Seller shall agree on the amount of payment for these other deliverables.

(c) The rights and remedies of SDI in this clause are in addition to any other rights and remedies provided by law, in equity, or under this Order.

(d) Seller shall continue to perform all work not terminated.

(e) If after a termination for default, it is later determined that Seller was not in default, Seller agrees that the termination shall be deemed to have been a Termination for Convenience and Seller's sole and exclusive remedy shall be determined pursuant to the Termination for Convenience Clause.

## 7. TERMINATION FOR CONVENIENCE

SDI may terminate this order in whole or in part at any time and for any reason by notice to Seller in writing. On receipt by Seller of such notice, Seller shall to the extent specified therein, stop work hereunder; and stop the placement of subcontracts, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which SDI has or may acquire an interest. In such event, SDI shall pay to Seller, without duplication:

(a) the amounts due for supplies delivered and accepted or services completed in accordance herewith prior to the effective date of termination; plus

(b) actual costs incurred by Seller in performing the terminated portion of the contract, provided such costs are properly allocable or apportionable thereto under generally accepted accounting practices; plus

(c) a reasonable profit on work actually done by Seller prior to such termination; provided that the total amount shall not exceed the contract price and, provided further, that if it appears that Seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed. Such termination claim shall be submitted to SDI within sixty (60) days after the effective date of the termination and any suit to enforce such a termination claim must be commenced within one (1) year of SDI giving written notice of termination.

The remedies provided herein to Seller for such a termination are the exclusive remedies of the Seller. If this Order has been placed under an MPA, the damages to which Seller shall be entitled under (b) above shall be limited to those raw materials and component parts Seller has ordered within twelve weeks prior to the date of termination, including 4-weeks finished goods, 4-weeks work-in-process, and 4-weeks raw materials, combined.

## 8. FURNISHED PROPERTY

(a) If provided for elsewhere in this Order, SDI may provide to Seller property owned by SDI ("Furnished Property"). Furnished Property shall be used only for the performance of this Order.

(b) Title to Furnished Property shall remain in SDI. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership as referenced in this Order.

(c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify SDI of, any loss or damage to Furnished Property. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with terms set forth elsewhere in this order, or absent such terms, good commercial practice.

(d) At SDI's request, and/or upon completion of this Order Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by SDI.

## 9. GRATUITIES/KICKBACKS

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, to any employee of SDI with a view toward securing favorable treatment as a supplier.

## 10. INDEPENDENT CONTRACTOR RELATIONSHIP

Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform work under this Order shall be Seller's employees exclusively without any relation whatsoever to SDI.

## 11. HAZARDOUS MATERIALS IDENTIFICATION AND MATERIAL SAFETY DATA

(a) Hazardous material includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of this Order). Prior to Seller's acceptance of this Order, it shall furnish to SDI's Procurement Representative a copy of OSHA Form 20 or 174, Material Safety Data Sheet. If for any reason beyond Seller's control, the MSDS has not been furnished prior to award it shall be furnished promptly after acceptance of this Order. In no event shall Seller ship any hazardous materials as defined by Federal Standard No. 313A unless no later than seven days prior to such shipment Seller shall have mailed one copy of OSHA Form 20 or 174, Material Safety Data Sheet, to:

SPECIAL DEVICES, INC.  
3431 N. Reseda Circle  
Mesa, AZ 85215  
Attention: Director of Safety

(b) Seller shall provide to SDI an OSHA Form 20 or 174 for each hazardous material being shipped. OSHA Form 20 or 174 shall include SDI stock number or the material specification number as defined in this Order. The packaging, labeling, and shipping of all Hazardous Materials must conform with all current federal and state laws and regulations. In addition to application of proper shipping labels on the outside container, each container of Hazardous Materials shall be marked with the appropriate precautionary label according to the Code of Federal Regulations. Any failure to comply with the above submission requirement shall be grounds for withholding payments due Seller hereunder or terminating this order for default.

## 12. ENVIRONMENTAL, OCCUPATIONAL, HEALTH, AND SAFETY PROTECTION PLANS

By accepting this Order, Seller hereby warrants to SDI that

(a) all materials and/or products supplied to SDI hereunder, and  
(b) all manufacturing and producing phases utilized by Seller in the production, and/or assembly of the supplies and/or services rendered and/or to be delivered to SDI hereunder, are in compliance with all local, state, and federal environmental protection and occupational, health and safety laws and regulations, including without limitation laws and regulations pertaining to electrical, electromagnetic devices, and process safety requirements. No approval of Seller's facilities and/or production methods by SDI shall in any way nullify or modify the obligation of Seller to comply with all local, state, and federal environmental protection and occupational, health and safety laws and regulations, including without limitation laws and regulations pertaining to electrical, electromagnetic devices and process safety management.

## 13. INVOICES AND PAYMENT

Seller shall prepare at time of shipment an invoice for the work performed. Seller shall be paid the price stipulated herein for supplies delivered and accepted, less applicable deductions if any. For purposes of invoice payment, the effective date of the invoice shall be construed to be the date of receipt of goods at SDI (or such other destination as designated in the Order), or the date of receipt by SDI of Seller's correct invoice, whichever occurs later. For purposes of taking any prompt payment discount, payment is deemed to be made on the date SDI mails payment, first class postage pre-paid, to Seller. SDI may at its option, make payment to Seller prior to the delivery and/or acceptance of supplies and/or services.

## 14. WARRANTY

In addition to all other warranties expressed or implied in law, Seller warrants that the items delivered hereunder will conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by SDI and will be merchantable, of good material and workmanship and free from defects. In case any such item shall be defective or otherwise not in conformity herewith, at SDI's sole option and in addition to all other remedies of SDI, including those set forth in section 16, Seller shall either credit SDI for any such nonconformity or defects or, at Seller's expense, replace, repair, or correct any such article. Seller agrees to make all corrections to the satisfaction of SDI. This warranty shall survive acceptance and shall inure to the benefit of SDI, its successors, assigns, customers and users of its products. This warranty is in addition to, and not in lieu of, SDI's right to revoke acceptance as provided for in Section 15, below.

## 15. INSPECTION, ACCEPTANCE AND TITLE PASSAGE

(a) Final inspection and acceptance of items delivered hereunder shall be made after delivery at the SDI designated point, notwithstanding any prior payment or inspection. SDI may reject any shipment containing supplies that fail to conform to the requirements of the Order.

(b) Unless provided elsewhere in this Order, title to all supplies and/or work provided under this Order shall vest in SDI, at the FOB point referenced elsewhere in this Order; provided, however, that in the event the supplies and/or work are subsequently rejected by SDI title will revert immediately to Seller.

(c) During performance of this Order, Seller's quality control or inspection system and manufacturing processes are subject to review, verification, and analysis by SDI officials so designated by SDI's Procurement Representative.

(d) Seller shall maintain quality control, inspection and manufacturing record keeping systems acceptable to SDI.

(e) Inspections and/or tests by SDI shall not relieve Seller of responsibility for defects or other failures to meet the requirements of this Order.

(f) Acceptance by SDI shall not be final if SDI notifies Seller that it is accepting the goods under a reservation of rights, both parties recognizing that it may not be practicable for SDI to reject an entire shipment containing defective supplies. Any such reservation of rights is at the sole discretion of SDI. Acceptance also will not be final with respect to any supplies containing latent defects, accepted as a result of fraud or gross mistakes amounting to fraud, or as otherwise expressly provided in this Order.

## 16. LIQUIDATED DAMAGES AND SDI CUSTOMER ASSESSMENTS FOR DEFECTIVE GOODS.

SDI reserves the right to assess Seller as liquidated damages and not as a penalty, the sum of \$1,000 on each lot of supplies for which SDI has issued one or more Discrepancy Reports detailing a validated deficiency in one or more of the supplies delivered, which sum is intended to compensate SDI for the cost of investigating and reporting on the deficiency. In the event goods shipped by SDI are found to be defective by an SDI Customer, and such rejection results from a latent defect in the supplies, SDI shall have the right either to revoke acceptance of the defective supplies and the lot in which the supplies were shipped or in the alternative charge back to Seller any assessment charged to SDI by its Customer. Irrespective of whether the defective supplies were detected by SDI or SDI's Customer, Seller shall be responsible for sorting all lots determined to contain defective supplies or in the alternative to reimburse SDI the cost of that sampling.

## 17. TITLE TO DRAWINGS AND SPECIFICATIONS

As between Seller and SDI, SDI shall at all times have title to all drawings and specifications furnished by SDI to Seller and intended for use in connection with this Order. Seller shall use such drawings and specifications only in connection with this Order and shall not disclose such drawings and specifications to any person, firm, or corporation other than SDI, Seller's employees or subcontractors to whom disclosure is necessary in order to perform this Order. Seller shall, upon the request of SDI's Procurement Representative or upon completion of this Order, promptly return all drawings and specifications to SDI.

## 18. ASSIGNMENT AND SUBCONTRACTING

(a) Neither this Order nor any interest herein may be assigned, in whole or in part without the prior written consent of the other party except that without securing such consent, either party shall have the right to assign this Order to any successor of such party by way of merger or consolidation or the acquisition of substantially all of the business and assets of the assigning party relating to the subject matter of this Order, provided that such successor shall expressly assume all of the obligations and liabilities of the assigning party under this Order, and provided further that the assigning party shall remain liable and responsible for the performance and observance of all such obligations.

(b) Notwithstanding the foregoing any amounts due or to become due hereunder may be assigned by Seller provided that such assignment shall not be binding upon SDI unless and until the written assignment agreement is received and acknowledged in writing by SDI's Procurement Representative.

(c) Neither all nor substantially all of this Order may be subcontracted by Seller without the prior written consent of SDI.

## 19. TAXES

Except as may be otherwise provided in this Order, the price or prices charged SDI for the supplies and/or services purchased hereunder include all applicable federal, state, foreign country or local taxes and duties.

## 20. RELEASE OF NEWS INFORMATION

Seller shall not, without prior written consent of SDI's Procurement Representative, make any news release or public announcement relating to the subject matter of this Order.

## 21. PACKING, MARKING AND SHIPPING

Seller shall pack, mark, and ship all goods and supplies in accordance with the requirements of this Order so as to be in compliance with transportation regulations and good commercial practice for protection and shipment. No separate or additional charge is payable by SDI for containers, crating, boxing, bundling, dunnage, drainage, or storage unless specifically stated in this Order. Seller shall forward to SDI, with invoice, the express receipt or bill of lading, signed by the carrier evidencing the fact that the shipment was made.

## 22. DISPUTES

(a) All disputes arising under or relating to this Order which are not resolved by mutual agreement shall be decided as provided for herein. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Order as directed by SDI's Procurement Representative in accordance with the provisions of this Order. Seller shall submit to SDI in writing any and all claims relating to this Order, setting forth the full factual and legal bases supporting the claim. SDI shall respond to Seller's claim within 60 days following receipt unless SDI determines that additional time is necessary and notifies Seller when a decision shall be made.

(b) If SDI, at its sole discretion, is potentially liable for any claim asserted by Seller, Seller agrees that it will participate in any form of binding or non-binding alternative dispute resolution provided it has the same rights as SDI in the selection of the mediator, arbitrator or other hearing official(s)

(c) Seller agrees that it will not file suit until SDI has issued a decision on Seller's claim and/or any alternative dispute resolution as set forth in paragraph (b) above, has been concluded.

## 23. CHOICE OF LAW AND FORUM

This Order shall be governed by the law of the State of Arizona without reference to its choice or conflict of laws principles. Seller irrevocably submits to the jurisdiction of the state or federal courts located in Maricopa County, Arizona, and agrees that any cause of action arising out of this Order may be heard only in such state or federal courts. Seller waives the right to a trial by jury.

## 24. INTELLECTUAL PROPERTY

Seller shall, at its expense, hold harmless and defend SDI, its officers, directors, employees, customers and all persons claiming under SDI, against any suit or suits for the infringement of any patent, copyrights, trademarks, and shall indemnify the aforesaid parties against all damages, costs and expenses arising therefrom by reasons of the manufacture, sale or the normal and intended use of the articles covered by this Order. SDI agrees to give Seller prompt notice in writing of any suit for infringement and such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

## 25. INDEMNIFICATION

(a) Seller shall defend, indemnify and hold harmless SDI against any and all damages, claims, liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors in connection with this Order. This indemnification provision shall be in addition to the warranty obligations of Seller.

(b) Seller shall indemnify and defend SDI, its customers or users of its products and all persons claiming under SDI, against any suit or suits for the infringement of any patent, copyrights, trademarks or other proprietary right and shall indemnify the aforesaid parties against all damages, costs and expenses (including attorneys' fees) arising therefrom by reasons of the manufacture, sale or the normal and intended use of the articles covered by this contract. SDI agrees to give Seller prompt notice in writing of any suit for infringement and such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

## 26. NOTICES

Unless otherwise provided for herein, all notices required or permitted to be given under this Order shall be given in writing, and shall be deemed to have been delivered when personally delivered or five days after mailing to the address on the face of this Order by U.S. registered or certified mail, postage prepaid, with return receipt requested. Notices to SDI must be addressed by name to SDI's Procurement Representative.

## 27. WAIVER

Any term or condition of this Order may be waived at any time by the party entitled to have the benefit thereof, but such waiver shall only be effective if in writing signed by such party, and a waiver on one occasion shall not be deemed to be a waiver of the same or any other type of breach or other failure to comply on a future occasion. No failure or delay by a party hereto in exercising any right or power hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right or power.

## 28. SEVERABILITY

If any provision of this Order is held to be unenforceable:

(a) this Order shall be considered divisible, and

(b) such provision shall be deemed inoperative to the extent it is deemed unenforceable, and

(c) in all other respects this Order shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

## 30. REMEDIES

The remedies provided to SDI, whether set forth herein or included in the clauses incorporated herein by reference, are cumulative and SDI may invoke the rights under any one of the clauses incorporated herein even if such rights are in addition to or at variance with any provision set forth herein. All rights and remedies so provided to SDI are in addition to any other rights or remedies available at law or in equity.

## 31. QUANTITIES

In the event this Order is placed under an MPA, the quantities on the front of this Order are not guaranteed quantities. Actual quantities shall be those authorized in Signals issued by SDI. Seller shall have no claim for damages or termination costs resulting from SDI's failure to order the total quantities. This Order shall not be construed as a requirements contract unless either the MPA under which it was issued or the Order itself expressly states that it is for SDI's requirements.