

ADC ACQUISITION COMPANY
dba Automated Dynamics
STANDARD TERMS AND CONDITIONS OF PURCHASE

1. **DEFINITIONS**

- A. Seller: considered the vendor of Automated Dynamics who is selling or providing a product or service.
- B. Buyer: ADC Acquisition Company, dba Automated Dynamics, (hereinafter referred to as Automated Dynamics).
- C. Products: "Product(s)" mean products of Seller's manufacture, including those products which are made utilizing, in accordance with or embodying Automated Dynamics Confidential Information or information derived there from.
- D. Services: "Service(s)" means service incidental to the installation of products and/or technical assistance related to those products thereafter on an as needed basis. "Service" does not mean service on a routine, scheduled or ongoing basis. Any service arrangement for service on a routine, scheduled basis shall be covered by a separate agreement.

2. **ACCEPTANCE OF ORDERS**

- A. This Order may be accepted by Seller by the execution and return of an Acknowledgment. No modification of or release from this Order shall be binding on Buyer unless agreed to in writing and specifically labeled as a modification or release. The terms and conditions of this Order shall be the only terms and conditions applicable hereto and Buyer hereby rejects any terms and conditions submitted by Seller in any proposal or acknowledgment.

3. **PRICE**

- A. This is a firm price Order. In the absence of indication of price by Buyer, Seller must not fill this Order at a price higher than last quoted or charged to Buyer without Buyer's written consent. Seller represents that the prices charged for the items or service covered by this Order are not higher than prices charged for the items or services on similar terms and conditions to other purchasers and that the prices comply with applicable government regulations in effect at the time of Order placement, sale or delivery.
- B. **PRICE ADJUSTMENT:** Notwithstanding paragraph 3.A above, any general price decrease announced by Seller or any decrease in Seller's costs shall automatically result in a reduction of the price charged to Buyer. Buyer shall have the right to audit prices and costs upon reasonable notice to Seller and shall be entitled to retroactive price adjustments and a refund based on the adjusted price.

4. **CHARGES**

- A. Payment terms are net 45 days unless otherwise stated in the Purchase Order or attached addendum.
- B. Charges are exclusive of excise, sales, use, property, occupational or other taxes, however designated. New York State Sales Tax should only be added if directed to do so on the purchase order. Seller is responsible for all other taxes imposed on the sale, license or delivery of products

5. **DELIVERY**

- A. Unless otherwise stated on this Order delivery shall be FCA: destination (INCOTERMS 2010).
- B. Time is of the essence in the performance of Seller's obligations under this Order. Seller recognizes that Buyer utilizes "Just in Time" scheduling and Seller accepts complete responsibility to deliver materials meeting all referenced standards on the exact date and time specified herein. Seller shall furnish sufficient labor and management forces, plant, and equipment and shall work such hours (including night shift, overtime, weekend and holiday work without a premium) as may be required to assure timely delivery. If scheduled delivery date cannot be met, Automated Dynamics should be notified to determine a new scheduled delivery date and/or other changes to the status of the purchase order.

6. **TRANSPORTATION**

- A. Unless otherwise agreed, Seller must comply with Buyer's freight program using any freight forwarder designated by Buyer in this Order or identified by Buyer after submission of this Order but before delivery. Seller shall be liable for all excess shipping or demurrage charges resulting from failure to ship and route as instructed, including shipping prior to date required. Seller's obligations under this Order are not severable if delivery or performance occurs in installments. Buyer is not obliged to accept shipments sent C.O.D. without its consent and may return them at Seller's risk and cost.

7. **PACKAGING, PACKING LISTS AND BILLS OF LADING**

- A. Seller shall be responsible for proper packaging, loading and tie-down to prevent damage during transportation. No additional charges shall be made for packing, crating or cartage unless stated on the front of this Order. Seller must bill all returnable containers on a separate memo invoice, and return transportation charges will be collect

and for Seller's account. Buyer's weight and/or count will be accepted as final and conclusive on all shipments not accompanied by such packing list.

8. *DOCUMENT PRECEDENCE AND ATTACHEMENTS*

- A. Documents designated by Buyer including SPECIAL TERMS AND CONDITIONS, if any, are incorporated by reference the same as if set out in full herein. Should any ambiguity or inconsistency exist in any portion of this Order, including any SPECIAL TERMS AND CONDITIONS – PURCHASE ORDERS or other documents attached hereto, the following precedence of documents shall apply to eliminate any such ambiguity or inconsistency: (1) attachments containing SPECIAL TERMS AND CONDITIONS - PURCHASE ORDERS; (2) attachments containing specifications; and (3) these STANDARD TERMS & CONDITIONS - PURCHASE ORDERS.

9. *QUALITY, INSPECTION AND ACCEPTANCE*

- A. All products will be inspected prior to shipment unless otherwise notified, Seller will consider acceptance on delivery and will invoice accordingly.
- B. Seller understands that Buyer may utilize "Just in Time" scheduling which requires that all materials be delivered defect free and that Buyer may place the materials directly into production without further inspection. Seller shall perform any inspections required to ensure that no defective material is received by Buyer. Seller also assumes all costs for loss or damage to Buyer and indemnifies Buyer against loss for claims of products liability resulting from delivery by Seller of nonconforming materials to Buyer:
- C. (a) Materials delivered hereunder shall meet or exceed all applicable API, ANSI, SAE, AST, NFPA, ASME, ASTM, UL and other industry or trade association standards, Buyer specifications and quality standards and the Seller's own internal quality standards and shall be fit for their intended use. It shall be Seller's responsibility to identify any conflicts between any such specifications and bring those to the attention of Buyer in writing. All goods furnished hereunder will be subject to Buyer's final inspection and approval, irrespective of payment date. Buyer may reject goods not in accordance with the instructions, specifications, drawings, data or Seller's express or implied warranties ("Non-Conforming Goods") or may accept some and reject other Non-Conforming Goods at its option. Buyer reserves the right to source inspect goods to be supplied; however, any election to not source inspect shall not be deemed a waiver of Seller's right of inspection or as acceptance. Buyer may return rejected goods to Seller at Seller's expense and Buyer shall have no further obligation for such goods or Buyer may retain rejected goods and Seller shall pay Buyer its damages due to them. Payment for any goods shall not be deemed acceptance and in no event shall Buyer incur any liability to pay for rejected goods .
- D. (b) Buyer shall have a reasonable time (not less than ten (10) days from receipt) to submit claims of count, weight, quantity, loss or damage to delivered goods. Buyer will calculate damages on claims and deduct the amount from Seller's invoice. If invoice was previously paid, Seller will reimburse the amount of damages to Buyer.
- E. (c) Seller shall assume responsibility for and will pay any and all loss, cost, damage or expense, including attorney fees, and cost of replacement incurred by Buyer attributed to Buyer's rejection of Non-Conforming Goods or to Seller's untimely delivery.

10. *CHANGES*

- A. The Buyer reserves the right at any time to change by written or electronic notification any of the following: (a) Specifications, drawings and data incorporated in this Order where the items to be furnished are to be specially manufactured for the Buyer ; (b) quantity; (c) methods of shipment or packaging ; (d) place of delivery ; (e) time of delivery ; or (f) any other matters affecting this Order. If any change by Buyer causes an increase or decrease in the cost of or the delivery schedule for this Order, Buyer shall make in writing an equitable adjustment in the contract price, delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from Seller's receipt of the change.
- B. Notwithstanding any dispute under this Article, Seller will proceed with performance of the contract as changed.
- C. Seller must obtain Automated Dynamics's authorization before making any substitutions to and/or modifications of the specifications of Products ordered.

11. *TERMINATION*

- A. Buyer may terminate this Order for its convenience, in whole part, at any time with written or electronic notice to Seller. Upon receipt of such termination, Seller shall promptly comply with the directions contained in such notice and shall, as required, (1) take action necessary to terminate the work as provided in the notice, minimizing costs and liabilities associated with such termination, (2) protect, preserve and deliver in accordance with Buyer's instructions any property related to the Order in Seller's possession, and (3) continue the performance of any part of the work not terminated by Buyer:
- B. Buyer may terminate this Order for default, in whole or in part: (1) If Seller fails to deliver items and material or perform the services required according to the terms and conditions contained herein, or (2) if, at any time, reasonable grounds for insecurity arise as to Seller's expected performance (including timely performance) within ten (10) days after Buyer's written demand for adequate assurance. Buyer may also terminate for default if Seller becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.
- C. On termination for Buyer's convenience, Seller at the time of termination may have in stock or on firm order completed or uncompleted items or raw, semi-processed or completed materials for use in fulfilling this Order. (1) For completed items or materials, Buyer shall either require delivery of all or part of the completed goods and

make payment at the Order price, or (without taking delivery) pay Seller the difference, if any, between the Order price and the market price (if lower) at the time of termination. (2) For uncompleted items or raw or semi - processed materials, Buyer shall either require Seller to deliver all or part of such goods at the portion of the Order price representing the stage of completion, or (without taking delivery) pay Seller for such goods which are properly allocable to this Order a portion of the Order price representing the stage of completion, reduced by the higher of the market or scrap value of the goods at that stage of completion. (3) For goods which Seller has on firm order, Buyer may at its option either take an assignment of Seller 's rights under the Order or pay the cost, if any, of settling or discharging Seller's obligation under the Order. (4) In all cases, if Buyer elects to not take delivery of materials, Seller shall return all purchased materials to its suppliers. Buyer shall have no responsibility to make any payments for materials that are not available for its inspection. Payments to Seller hereunder shall be the sole and exclusive remedy available to Seller in the event of a termination by Buyer.

- D. Buyer's rights and remedies regarding termination under this Order shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.
- E. If Buyer terminates all or part of this Order for Seller's default, Buyer may procure from third parties, upon terms and in a manner it deems appropriate, goods and services similar to those terminated. In addition, Buyer may require Seller to deliver any completed or uncompleted goods.

12. ASSIGNMENT

- A. Seller may not assign, transfer or subcontract this Order or any right or obligation hereunder without Buyer's prior written consent. Any purported assignment, transfer or subcontract shall be void and ineffective.

13. EXCUSABLE DELAY/FORCE MAJEURE

- A. Fires, floods, epidemics, accidents, shortages or other causes beyond the reasonable control of the parties, which prevent Seller from delivering or Buyer from receiving any of the goods and services covered by this Order shall suspend deliveries until the cause is removed, subject, however, to Buyer's rights of cancellation under this Order.

14. TAXES

- A. If the goods furnished under this Order are for resale (as indicated on the front of this Order), Buyer will pay any sales or use taxes imposed on such goods after delivery. Seller will pay all other taxes imposed before acceptance or delivery to the destination point, whichever is later, including property taxes imposed on goods for which title has passed to Buyer.

15. PATENTS

- A. Seller shall, at its expense, defend any suit or proceeding brought against Buyer, its successors and assigns, based on any claim that any goods or any component part delivered or furnished hereunder infringes or the like the rightful claim of any third party including any US or foreign letters patent or trademark or copyright (excepting infringement or the like necessarily resulting from adherence to specifications furnished by Buyer). Buyer agrees to immediately notify Seller in writing or electronically of any such claim and to provide such assistance, at Seller's expense, as may be reasonably required in defending the suit or proceeding. Seller shall pay all damages, costs and attorney fees awarded in any suit or proceeding. If the goods or any component part furnished hereunder are held to infringe and their use is enjoined, Seller shall, at its option and its own expense, (a) procure for Buyer and its successors and assigns, the right to continue using the goods, (b) replace them with a substantially equivalent non-infringing product acceptable to Buyer, or (c) modify them so they become non-infringing with substantially equivalent performance acceptable to Buyer. Absent (a), (b), (c), Buyer reserves its rights at law, or at its option may return the infringing goods to Seller at Seller's expense and Seller promptly shall refund the purchase price to Buyer.

16. ARBITRATION

- A. If any controversy or claim arising out of or relating to this agreement or the breach thereof is not resolved within five (5) days after it arises, the disputed matter shall be settled by arbitration in the City of Schenectady, New York, in accordance with the rules, then obtaining, of the American Arbitration Association. Judgment upon the award may be entered in any court of competent jurisdiction in the State of New York.

17. INDEMNITY:

- A. Seller agrees to release, defend, indemnify and save the Buyer harmless from and against all liabilities, claims or demands whether arising in tort, contract, or otherwise for injuries or damages to any person or property arising out of or in connection with this Order. This indemnification obligation shall apply without regard to cause causes, including without limitation, the negligence of any party, whether such negligence be sole, joint or concurrent, active or passive and under any theory of liability, including without limitation, theories in contract, tort or strict liability. This indemnification obligation shall be supported by adequate liability insurance coverage as required by this Order and shall apply without regard to cause or causes, including without limitation, the negligence of Buyer, and under any theory whether sole, concurrent, gross, active or passive. Neither Party shall be liable to the other Party in contract or in tort, directly or under any indemnity, for any indirect, special or consequential damages, arising out of or related to this Order, including lost profits, lost production, down time, reservoir loss/ damage or environmental/pollution damage, however same may be caused.

18. INSURANCE

- A. Seller shall procure and maintain with respect to the subject matter of this Order, appropriate insurance coverage, shall name Buyer as an additional insured, waive all rights of subrogation against Buyer, and Seller shall, prior to the commencement of work under this Order, provide evidence thereof. Such insurance shall include, without limitation, Workmen's Compensation insurance under applicable state law, Longshoreman's and Harbor Workers Compensation coverage, comprehensive automobile liability coverage, and public or general liability and property damage with adequate limits to cover Seller's liability arising directly or indirectly for work performed under the terms of this Order.

19. WARRANTIES

- A. By accepting this Order, Seller warrants that the goods and services furnished will be free from defects in materials and workmanship, merchantable and in full conformity with Buyer's specifications, drawings and data, and Seller's descriptions, promises or samples, and that such goods will be fit for the Buyer's intended use, provided Seller has reason to know of such. In cases where Seller does not understand the intended use of the material, it shall be the Seller's responsibility to learn all that is necessary about the intended use in order to recommend and ensure proper application of the materials by Buyer. Seller will convey good title to the goods, free and clear from all liens, claims and encumbrances. Seller, without cost to Buyer, shall promptly do all things necessary to correct any breach of the above warranties in a manner satisfactory to Buyer. If Seller is unable or refuses to repair or replace as Buyer may require, Buyer may contract or otherwise repair or replace such defective goods and back-charge Seller for the excess cost. This warranty shall survive acceptance of the items and is in addition to any warranties of additional scope given to Buyer by Seller. No implied warranties by the Seller are excluded. Seller agrees that Buyer shall have the option to assign Seller's warranty to a third party. Buyer agrees that the nature and extent of Seller's warranty obligations under this Order shall not be changed under any such assignment.

20. RISK OF LOSS

- A. Risk of loss of all goods shall remain in Seller until receipt of the goods pursuant to the delivery terms.

21. TITLE

- A. Title shall pass to Buyer upon Buyer's acceptance of goods pursuant to the delivery terms. If Buyer makes progress payments, title to the goods shall be transferred to the Buyer as payments are made, and in the same proportions as the cumulative payments bear to the Order price. Seller shall also identify such goods as the property of Buyer, unless Buyer waives identification. Notwithstanding restrictive legends to the contrary, title to plans, drawings and specifications for goods shall be vested and remain with Buyer and may be used by Buyer for any purpose.

22. NONDISCLOSURES

- A. If Buyer discloses or grants Seller access to any research, development, technical, economic or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Seller agrees, as a condition of receiving such information or "know-how", that Seller will not use or disclose any such information to any other person at any time, except as may be necessary in the performance of this Order, without Buyer's written consent. Seller shall use such information only to perform this Order. Notwithstanding the foregoing, Buyer shall bear no responsibility for errors or omissions in Buyer's information.

23. PROPERTY FURNISHED TO SELLER BY BUYER

- A. All special dies, molds, patterns, jigs, fixtures, (APSD ORL) component parts and any other property which Buyer furnished to Seller or specifically pays for, for use in the performance of this Order, shall be and remain Buyer's property, shall be subject to removal upon Buyer's instruction, shall be for Buyer's exclusive use, shall be held at Seller's risk, and shall be kept insured by Seller and at Seller's expense while in its custody or control in an amount equal to the replacement cost, with loss payable to Buyer. Seller will furnish copies of policies or certificates of insurance on Buyer's demand. Seller will not create or allow to arise any lien, claim or encumbrance by any third party against property furnished or owned, through progress payments made, by Buyer. Seller shall execute UCC-1 forms and a separate security agreement, as required by Buyer, identifying Buyer's security interests in such property.

24. ORDER INCONSISTENCIES AND CONFLICT RESOLUTION

- A. It is Seller's responsibility to comply with these and all referenced documents and to clarify with Buyer any inconsistencies or conflicts in any parts of this Order, such as these provisions contained in this document, additional terms and conditions, general specifications, detailed specifications, etc. Should Seller fail to contact Buyer to resolve these conflicts or inconsistencies, Seller will be solely responsible for errors resulting from conflicts or inconsistencies. Where documents are referenced, the version in effect at the time of order placement shall apply.

25. WAIVER

- A. Buyer's failure to insist on Seller's strict performance of the terms and conditions of this Order at any time shall not be construed as a waiver by Buyer for performance in the future.

26. APPLICABLE LAWS

- A. This Order shall be governed by, construed in accordance with, and all disputes governed by the laws of the State or Country of the Buyer's office issuing this Order., (excluding any reference to its conflicts of laws provisions),

specifically including the provisions of the Uniform Commercial Code, as adopted by such State or Country, and without regard to the provisions of the Convention on the International Sale of Goods. Seller submits exclusively to the jurisdiction of the courts in such State or Country in the event of any proceedings therein in connection herewith.

- B. Seller warrants and agrees that it has complied and will comply with all applicable Federal, State and local laws, codes, and regulations, including, without limitation, the following: Fair Labor Standards Act of 1938, as amended, the Equal Employment Opportunity Act, the Occupational Safety and Health Act, the Executive Order 11246, as amended, the affirmative action clauses pursuant to Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, Section 503 of the Rehabilitation Act, as amended, and the Export Administration Act. If this Order indicates that it is placed pursuant to a U.S. Government contract or subcontract at any tier, Form SI-100-GC (the "the General Purchase Order Addendum for Government Contract Procurements") forms and integral part of this Order and supersedes any conflicting provisions contained in the General Purchase Order Terms and Conditions.

27. *GIFTS/GRATUITIES*

- A. Seller or Seller's agents and representatives warrant(s) that it has neither accepted nor provided gratuities of any kind from or to any employee of Buyer in connection with the placement of this Order.