

## **Spacelabs Healthcare U.S. Purchase Order Terms**

### **1. Agreement Terms.**

**1.1. Acknowledgement and Acceptance.** These Terms and Conditions of Purchase ("Terms") have been incorporated by reference into a purchase order, contract, agreement or other written instrument issued or signed by an authorized employee of Spacelabs (each, a "Spacelabs Purchase Document") regarding the purchase of Products ("Products") and provision of related services ("Services"). These Terms and the Spacelabs Purchase Document will be collectively referred to herein as this "Agreement."

**1.2. Entire Agreement.** This Agreement, including any attachments, exhibits or other written documents that are explicitly incorporated by reference by the text of this Agreement, constitutes the entire agreement between Spacelabs and Seller regarding the subject matter of this Agreement and may not be modified except in writing signed by a duly authorized employee of Spacelabs and Seller.

**1.3. Seller Documents.** Spacelabs will not be bound by the terms and conditions of any quotation, order confirmation, sales order or other instrument issued by Seller (each, a "Seller Document") unless such Seller Document is counter-signed by an authorized employee of Spacelabs. Spacelabs' performance under this Agreement will not, under any circumstances, be deemed Spacelabs' acceptance of any of the terms and conditions contained in a Seller Document. If Seller issues a Seller Document, then such issuance will be deemed to constitute Seller's acceptance of the terms and conditions of this Agreement, but all other terms and conditions contained in the Seller Document will be of no force or effect and will not be deemed to supersede, replace, modify, augment, enhance, delete, remove, amend or otherwise alter any of the terms and conditions of this Agreement. Seller's performance or fulfillment of any part of the tasks described in the Spacelabs Purchase Document or Seller's acceptance of any payment by Spacelabs for any Products or Services described in the Spacelabs Purchase Document will also be deemed to constitute Seller's acceptance of all of the terms and conditions of this Agreement.

**1.4. Precedence.** In the event of any conflict between the terms and conditions of a Spacelabs Purchase Document and these Terms, the terms and conditions of the Spacelabs Purchase Document will take precedence.

### **2. License.**

**2.1. License Grant.** Subject to the terms and conditions of this Agreement, Spacelabs hereby grants to Seller, for the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable license for Seller to use the information, materials, knowledge, data, drawings and other specifications involving or relating to the generation, manufacture and processing of the Products (or performance of the Services) provided to Seller by Spacelabs ("Technical Information"), solely to manufacture the Products and perform the Services and solely for sale to and performance for Spacelabs.

**2.2. Restrictions and Reservation of Rights.** Seller agrees not to use the Technical Information except as expressly permitted in Section 2.1. All intellectual property rights in and to the Technical Information are and will at all times be owned by Spacelabs, subject only to the license rights expressly granted to Seller in Section 2.1. Any and all rights not expressly granted to Seller herein are reserved by Spacelabs.

**2.3. Information Exchange.** Spacelabs will provide to Seller such Technical Information as Spacelabs determines in its sole discretion is advisable to facilitate Seller's manufacture and delivery of the Products and performance of the Services. All Technical Information will constitute the Confidential Information (as defined in Section 9.1) of Spacelabs.

### **3. Shipping and Delivery.**

**3.1. Shipping.** Seller will notify Spacelabs at the time of shipment as to the quantity of Products shipped and the specific shipping information. Shipping quantities may not vary from those established by the Spacelabs Purchase Document unless otherwise mutually agreed upon in writing by the parties. In the event any shipment is delayed and may not be timely, Spacelabs may direct Seller to ship such Products by premium transportation designated by Spacelabs, and Seller will bear the expense of any difference in cost due to such premium transportation. Seller will ship the Products to the delivery address(es) set forth in the applicable Spacelabs Purchase Document. Spacelabs may, from time to time, instruct Seller to deliver all or a portion of the Products ordered pursuant to a Spacelabs Purchase Document to non-Spacelabs locations, or to store all or portions of such Products for subsequent shipment without charge following packaging. Until the Products are shipped, Seller will store the Products separately from any other material stocks.

**3.2. Delivery.** All Products will be delivered DDP (INCOTERMS 2010). Title and risk of loss will pass from Seller to Spacelabs at Spacelabs' designated final delivery location.

**3.3. Packing.** Seller will be responsible for the safe packaging of the Products, and Seller warrants that upon their delivery, they will be undamaged and in marketable condition. All special packaging or handling requirements will be noted on the packing slip, including but not limited to static sensitive devices, cleaned for BCG or 02, and limited shelf life conditions. Seller will separately number all containers showing the corresponding number on the invoices. An itemized packing slip, bearing Spacelabs' order number, must be placed in each container. No extra charge will be made for packaging or packing materials.

**3.4. Time of Delivery.** Time of delivery is of the essence. Spacelabs reserves the right to cancel any order and reject any Product upon default by Seller in the time of delivery. Spacelabs also reserves the right to refuse shipments made in advance of the schedule of deliveries requested by Spacelabs.

**3.5. Product Changes.** Supplier agrees to provide Spacelabs with advance notification of proposed changes by Supplier to Product specifications, component specifications, raw materials, manufacture process, manufacture location, test methods, critical suppliers (including suppliers of Product components), or Product components. Such changes will be submitted 60 days prior to the planned implementation date via <http://www.spacelabshealthcare.com/support/supplier-change-request> and are subject to Spacelabs' written approval prior to implementation, which will not be unreasonably withheld.

**3.6. Engineering Changes.** Spacelabs may at any time request that Seller incorporate engineering changes into a Product (each an "Engineering Change"). Such request will include a description of the proposed Engineering Change sufficient to permit Seller to evaluate the feasibility and cost. Seller's evaluation of the Engineering Change will be delivered promptly to Spacelabs and will state the increase or decrease in Seller's actual costs (if any) resulting from such Engineering Change and the amount of time (if any) required to implement such Engineering Change.

Seller will not proceed with the Engineering Change unless and until it receives written instructions to do so from Spacelabs in the form of a released Engineering Change order ("ECO"), in which case: (i) the Product price will be adjusted in the amount of such increase or decrease in Seller's actual costs due to such Engineering Change; (ii) the delivery schedule for the Product will be amended to reflect such additional implementation time; and (iii) the Specifications for the Product will be amended to reflect the Engineering Change. Seller will not refuse to implement any Engineering Change requested by Spacelabs unless Seller reasonably determines that such Engineering Change is technically unworkable.

**3.7. Ownership of Spacelabs Furnished or Paid For Materials.** All tools, drawings, specifications, products, components, documents and any other material, information or data, including the Technical Information, furnished by Spacelabs or paid for by Spacelabs (the "Material") will be and remain the property of Spacelabs. Title to, and the right of possession of, all Material will remain with Spacelabs.

Seller will maintain in good condition and repair, at Seller's expense, all Material, and Seller will use the Material solely for the performance of work for Spacelabs.

**3.8. Cancellation.** Spacelabs may cancel this Agreement for convenience, in whole or in part, at any time by delivery of written notice. To the extent that any unused inventory (or portion thereof) procured by Seller cannot be used by Seller in the manufacture, testing or assembly of other products for Spacelabs or any of Seller's other customers ("Unusable Inventory"), Seller will use its best efforts to (a) cancel any pending orders for such Unusable Inventory and (b) return any such Unusable Inventory in Seller's possession to the applicable suppliers. If Seller is unable to return any Unusable Inventory in its possession to the applicable suppliers, Seller will notify Spacelabs of such Unusable Inventory and, at Spacelabs' instruction, Seller will either deliver such Unusable Inventory to Spacelabs or use its best efforts to resell such Unusable Inventory. After such efforts have been completed, Spacelabs will pay Seller for Products and Unusable Inventory affected by the cancellation as follows: (i) the contract price for all finished Products in Seller's possession that are delivered to Spacelabs and accepted by Spacelabs, (ii) the cost of all Unusable Inventory delivered to Spacelabs, (iii) the difference between the cost of all Unusable Inventory that was resold by Seller at less than cost and the proceeds from such resale, (iv) the difference between the cost of all Unusable Inventory that could not be resold by Seller and the salvage value thereof, and (v) any vendor cancellation charges incurred with respect to the Unusable Inventory accepted for cancellation or return by the vendor. Notwithstanding any of the foregoing, Seller will use best efforts to mitigate the amounts payable by Spacelabs under this Section 3.8.

#### **4. Price and Payment.**

**4.1. Price.** The price for all Products and Services will be as set forth in the Spacelabs Purchase Document.

**4.2. Payment Terms.** Payment terms will be as set forth in the Spacelabs Purchase Document. Invoices for amounts due will reference the Spacelabs Purchase Document, line item (if applicable) and description and quantity of Products shipped and Services rendered and will be sent to the "Bill To" address specified in the Spacelabs Purchase Document. Invoices will be rendered separately for each delivery, with bill of lading attached. Payment of an invoice will not constitute acceptance by Spacelabs of the Products or Services covered thereby and is without prejudice to any and all claims Spacelabs may have against Seller in connection therewith. Seller will be conclusively presumed to have waived Seller's right to receive payment for Products or Services covered by any Spacelabs Purchase Document if Seller has not submitted an invoice for the Products or Services within ninety (90) days of the date the Products or Services (as applicable) are delivered.

**4.3. Taxes.** Except as otherwise may be provided in the Spacelabs Purchase Document, the price of all Products and Services specified in this Agreement will be deemed to include all applicable taxes any kind. All applicable taxes, including, without limitation, sales or use taxes, excise taxes, transaction privilege taxes, gross receipts taxes and other charges such as duties, customs, tariffs, imposts and government-imposed surcharges will be remitted by Seller to the appropriate tax authority. Each party is responsible for its own respective income taxes or taxes based upon gross revenues, including, without limitation, business and occupation taxes.

#### **5. Intellectual Property.**

**5.1. Work Product.** As used in this Agreement, the term "Work Product" will include, without limitation, all discoveries, ideas, inventions, concepts, developments, know-how, trade secrets, works of authorship, materials, software (source and object code), algorithms, HTML, writings, drawings, designs, processes, techniques, formulas, data, specifications, technology, patent applications (and contributions thereto), and other creations (and any related improvements or modifications to the foregoing or to any Confidential Information (defined in Section 9.1)), whether or not patentable, that are conceived, created or otherwise developed by Seller (alone or with others), or result from or are suggested by any work performed by Seller (alone or with others) if (a) based on any of the Confidential Information, including any Technical

Information or (b) stemming from or relating to any non-recurring engineering (NRE) performed under or associated with the fulfillment of this Agreement.

**5.2. Assignment.** Seller agrees to disclose promptly in writing to Spacelabs all Work Product. Seller further agrees that any and all Work Product will be considered "work made for hire" (as such term is defined in 17 U.S.C. §101) and will be the sole and exclusive property and Technical Information of Spacelabs. To the extent that the Work Product may not be considered "work made for hire," Seller hereby irrevocably assigns and agrees to assign to Spacelabs all right, title and interest worldwide in and to the Work Product (whether currently existing or conceived, created or otherwise developed later), including, without limitation, all copyrights, trademarks, trade secrets, patents, industrial rights and all other intellectual and proprietary rights related thereto (the "Proprietary Rights"), effective immediately upon the inception, conception, creation or development thereof. The Proprietary Rights will include, without limitation, all rights, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world, related to the Work Product, together with all national, foreign and state registrations, applications for registration and all renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisionals, reissues, substitutions and reexaminations); all goodwill associated therewith; and all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations of any rights relating thereto; and to settle and retain proceeds from any such actions). Seller retains no rights to use the Work Product and agrees not to challenge the validity of Spacelabs' ownership in the Work Product.

**5.3. License; Waiver of Rights.** To the extent, if any, that any Work Product or Proprietary Rights are not assignable or that Seller retains any right, title or interest in and to any Work Product or any Proprietary Rights, Seller (a) unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Spacelabs with respect to such rights; (b) agrees, at Spacelabs' request and expense, to consent to and join in any action to enforce such rights and (c) hereby grants to Spacelabs a perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable (through multiple levels of sublicensees), exclusive, worldwide right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, make, sell, offer to sell, import and otherwise use and exploit (and have others exercise such rights on behalf of Spacelabs) all or any portion of such Work Product, in any form or media (now known or later developed). The foregoing license includes, without limitation, the right to make any modifications to such Work Product regardless of the effect of such modifications on the integrity of such Work Product, and to identify Seller, or not to identify Seller, as one or more authors of or contributors to such Work Product or any portion thereof, whether or not such Work Product or any portion thereof has been modified. Seller further irrevocably waives any "moral rights" or other rights with respect to attribution of authorship or integrity of such Work Product that Seller may have under any applicable Law (as defined in Section 6.2) or under any legal theory. Seller hereby waives and quitclaims to Spacelabs any and all claims, of any nature whatsoever, which Seller now has or may hereafter have for infringement of any Work Product or Proprietary Rights assigned and/or licensed hereunder to Spacelabs.

**5.4. Assistance.** Seller agrees to cooperate with Spacelabs or its designee(s), both during and after the term of this Agreement, in applying for, obtaining, perfecting, evidencing, sustaining and enforcing Spacelabs' Proprietary Rights in the Work Product, including, without limitation, executing such written instruments as may be prepared by Spacelabs and doing such other acts as may be necessary in the opinion of Spacelabs to obtain a patent, register a copyright, or otherwise enforce Spacelabs' rights in such Work Product (and Seller hereby irrevocably appoints Spacelabs and any of its officers and agents as its attorney in fact to act for and on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller).

## **6. Representations and Warranties.**

**6.1. Products and Services.** Seller represents, warrants and covenants that (a) the Services performed and Products furnished hereunder will meet the quality, operating conditions and performance

requirements described in all applicable specifications and the applicable Spacelabs Purchase Document; (b) any Services furnished hereunder will be performed in a professional and competent manner, consistent with the highest industry standards; (c) the Products will be merchantable, free from defects in design, workmanship, and material, and new, fit and sufficient for the particular purpose of Spacelabs and Spacelabs' customers; and (d) Seller has good and marketable title to the Products to be furnished hereunder and there are no liens, claims or encumbrances of any kind whatsoever against the same. Seller's representations and warranties contained in this Section will survive acceptance of and payment for the Products and/or Services and will inure to the benefit of Spacelabs, its successors, assigns, customers and end users and will not be deemed to be exclusive. Seller agrees to replace or correct any Products or Services not conforming to the foregoing warranty promptly, without expense to Spacelabs, when notified of such nonconformity by Spacelabs, provided Spacelabs elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming Products or Services promptly, Spacelabs may make such corrections or replace such Products and Services and charge Seller for the cost incurred by Spacelabs in doing so.

**6.2. Compliance with Law Generally.** Seller represents, warrants and covenants that (a) Seller will comply with all Laws applicable to its performance pursuant to this Agreement, including, without limitation, the provision of Products and Services hereunder and (b) Seller will at all times perform any work required under this Agreement safely and in a manner which will present no threat of bodily injury or property damage, and will enforce compliance with the highest standards of safety and accident prevention found in applicable Laws. The term "Laws" will mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy or rule of common law, or any governmental requirement or other governmental restriction or similar form of decision or determination, or any interpretation or administration of any of the foregoing by any national, state or local government (or any association, organization or institution of which any of the foregoing is a member, or to whose jurisdiction any of the foregoing is subject, or in whose activities any of the foregoing is a participant), whether now or hereafter in effect.

**6.3. Environmental Laws.** Seller represents, warrants, and covenants that its facilities and operations comply with all applicable Environmental Laws. The term "Environmental Laws" will mean any and all Laws (as defined above) relating to the indoor or outdoor environment, or to the health or safety of natural persons affected by the environment, or to the release or threatened release of hazardous materials into the indoor or outdoor environment, including, without limitation, ambient air, soil, surface water, groundwater, sea water, wetlands, land or subsurface strata, or otherwise relating to the generation, manufacture, processing, distribution, handling, use, treatment, recycling, storage or disposal of hazardous material or transportation to or from the property controlled by such person or entity of hazardous materials, whether now or hereafter in effect. Seller will obtain and maintain all licenses, authorizations, certifications and approvals required under any applicable Environmental Laws. Seller will not permit the release of any hazardous material into the environment and, in the event of any such release, will promptly perform any investigation, study, sampling, testing, cleanup, removal and remedial or other action necessary to remove and clean up any such hazardous materials in accordance with the requirements of all applicable Environmental Laws.

**6.4. Conflict Minerals.** Seller acknowledges and understands that Purchaser's ultimate parent company, OSI Systems, Inc. ("OSI"), is publicly traded in the United States and therefore is subject to Section 1502 of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations of the U.S. Securities and Exchange Commission ("SEC") thereunder (collectively, the "Conflict Minerals Laws"). Under the Conflict Minerals Laws, OSI is required to submit reports to the SEC and disclose on OSI's website (a) whether any Conflict Minerals necessary to the functionality or production of Purchaser's products originate from the Democratic Republic of the Congo ("DRC") or any adjoining country and (b) if any Conflict Minerals do originate in the DRC or any adjoining country, the due diligence measures undertaken by Purchaser and OSI to identify the source(s) of such Conflict Minerals. The term "Conflict Minerals" means (a) columbite-tantalite (coltan), cassiterite, gold, wolframite and their derivatives (which derivatives are currently limited to tantalum, tin and tungsten) and (b) any other mineral or its derivatives, the exploitation and trade of which the U.S. Secretary of State has determined is being used to finance ongoing military conflicts in the DRC or any adjoining country. Seller acknowledges the

foregoing and hereby represents, warrants and covenants that no Conflict Minerals will be used in or necessary to the functionality or production of any of the Products delivered or to performance of any Services rendered under this Agreement. Seller covenants that it will immediately notify Purchaser, in writing, if it learns or at any time has reason to believe that any breach of the foregoing commitments has occurred.

**6.5. ROHS and REACH Compliance.** The Products and Seller's manufacturing processes will comply with the Restriction of Hazardous Substances Directives 2002/95/EC and 2011/65/EU and the Registration, Authorization and Restriction of Chemicals, European Union Regulation (EC) 1907/2006).

**6.6. Representations by Seller.** Seller represents, warrants and covenants that: (a) Seller has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; (b) Seller's execution of and performance under this Agreement will not breach any oral or written agreement with any third party or any obligation owed by Seller to any third party to keep any information or materials in confidence or in trust; (c) the Work Product will be the original work of Seller, and any persons involved in the development of Work Product have executed (or prior to any such involvement, will execute) a written agreement with Seller in which such persons (i) assign to Seller all right, title and interest in and to the Work Product in order that Seller may fully grant the rights to Spacelabs as provided herein and (ii) agree to be bound by confidentiality and non-disclosure obligations no less restrictive than those set forth in this Agreement; (d) Seller has the right to grant the rights and assignments granted herein, without the need for any assignments, releases, consents, approvals, immunities or other rights not yet obtained; and (e) the Products, Services, and Work Product (and the exercise of the rights granted herein with respect thereto) do not and will not infringe, misappropriate, violate or conflict with, any patent, copyright, trademark, trade secret intellectual property, proprietary or other right of any third party ("Third Party Right").

**6.7 No Conflict of Interest.** Seller represents, warrants and covenants that it will not accept work or enter into any agreement or accept any obligation that is inconsistent or incompatible with Seller's obligations under this Agreement or the scope of Services, if any, rendered for Spacelabs.

**6.8. Nondiscrimination.** Seller represents, warrants and covenants that it complies with all Federal, State and Local laws and regulations applicable to its actions in connection with this Purchase Document, including (i) all rules and regulations (including those of the Secretary of Labor) and Executive Orders (including Nos. 11246, 11375, 11625, 11701, 11758) applicable to this Purchase Document regarding nondiscrimination because of race, creed, color, sex, age, national origin, and physical or mental handicap, and ii) the affirmative action commitments for veterans and individuals set forth in 41 CFR 60 et seq. (including 41 CFR 60 – 1.4, 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a), which are incorporated herein by this reference) and related regulations. By accepting this Purchase Document, Seller certifies that it complies with the authorities cited above, and that it does not maintain or perform services at segregated facilities.

**6.9. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SPACELABS DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING.**

## **7. Indemnification.**

**7.1. Indemnity.** Seller will indemnify and hold harmless, and at Spacelabs' request defend, Spacelabs, its subsidiaries and affiliates, and its and their officers, directors, employees, customers successors and assigns (all referred to in this Section 7 as "Spacelabs") from and against any and all losses, liabilities, costs, damages, claims, fines, penalties and expenses (including, without limitation, costs of defense or settlement and attorneys', consultants' and experts' fees) that arise out of or relate to (a) the acts or omissions of Seller, including any of Seller's subcontractors, vendors, employees, consultants or agents; (b) injuries or death to persons or damage to property (including loss of property), in any way arising out

of or caused or alleged to have been caused by the work performed, or Products or Services provided, by Seller; (c) assertions under workers' compensation or similar acts made by persons employed or furnished by Seller; (d) any breach (or claim or threat thereof that, if true, would constitute a breach of) this Agreement, including, without limitation, any breach of any representation or warranty set forth in this Agreement; (e) violation of any Law, including, without limitation, any Environmental Law, in any way arising out of or caused or alleged to have been caused by Seller's work or Services under this Agreement or by a Product; or (f) any claim or threat thereof that a Product, Service or Work Product (or any part thereof) or the exercise of any rights granted herein with respect thereto) infringe, misappropriate, violate or conflict with any Third Party Right.

**7.2. Notice; Cooperation; Settlement.** Spacelabs will notify Seller of any claim or liability for which indemnification is sought ("Claim"), provided, however, that the failure to give such notice will not relieve Seller of Seller's obligations hereunder except to the extent that Seller was actually and materially prejudiced by such failure. Spacelabs may, at its option and Seller's expense, participate and appear on an equal footing with Seller in the defense of any Claim that is conducted by Seller as set forth herein. Seller may not settle any Claim without the prior written approval of Spacelabs. From the date of written notice from Spacelabs to Seller of any such Claim, Spacelabs will have the right to withhold from any payments due Seller under this Agreement the amount of any defense costs, plus additional reasonable amounts as security for Seller's obligations under this Agreement.

**7.3. Additional Remedies.** In the event of any claim or threat thereof that a Product, Service or Work Product (or any part thereof) or the exercise of any rights granted herein with respect thereto) infringe, misappropriate, violate or conflict with any Third Party Right, then, in addition to Seller's indemnification obligations set forth above and all other remedies that may be available to Spacelabs under this Agreement, at law or in equity, Spacelabs will also have the right to demand, and Seller will comply with such demand, that Seller, at Seller's expense, (a) modify the Product, Service or Work Product (as applicable) to be non-infringing, (b) obtain a license (on terms satisfactory to Spacelabs) to continue using the Product, Service or Work Product (as applicable) or (c) refund to Spacelabs the full purchase price.

## **8. LIMITATION OF LIABILITY.**

**8.1. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SPACELABS' TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE PRICE PAYABLE BY SPACELABS HEREUNDER FOR THE UNITS OF PRODUCT, OR THE SPECIFIC SERVICES, THAT ARE THE SUBJECT OF THE DISPUTE.**

**8.2. NO INDIRECT OR CONSEQUENTIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SPACELABS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS OR SAVINGS, INCURRED BY SELLER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SPACELABS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.**

**8.3. ACKNOWLEDGEMENT OF LIMITATIONS. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 8 AND IN THE OTHER SECTIONS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH SPACELABS WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. SELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATIONS OF LIABILITY SPECIFIED HEREIN.**

## **9. Confidentiality.**

**9.1. Confidential Information.** "Confidential Information" will mean any and all information and materials disclosed by Spacelabs to Seller (whether in writing or in oral, graphic, electronic or any other form) that are marked or described as, identified in writing as, or provided under circumstances indicating that such information and materials are confidential or proprietary. The term Confidential Information includes, without limitation, all Technical Information and all Materials provided by Spacelabs relating to Spacelabs' technical requirements and customers. Materials will not be considered Confidential Information to the extent such Materials can be shown to have been (a) available to the public prior to the date of Spacelabs' disclosure to Seller or to have become available to the public thereafter without any unauthorized act or omission by Seller; (b) rightfully in Seller's possession prior to the date of Spacelabs' disclosure to Seller and not otherwise restricted as to disclosure; or (c) disclosed to Seller without restriction by a third party who had a right to disclose and was not otherwise under an obligation of confidence. Materials will not be deemed to be "available to the public" or to be "in Seller's possession" merely if such Materials can be reconstructed, combined or pieced together from multiple sources that are available to the public or Seller if no one of those sources actually leads one to the entire combination, together with its meaning and importance.

**9.2. Restrictions on Disclosure and Use of Confidential Information.** Seller will not use the Confidential Information of Spacelabs except for the purpose of performing its obligations and exercising its rights under this Agreement. Seller will maintain the Confidential Information of Spacelabs with at least the same degree of care as it uses to protect its own proprietary information of a similar nature or sensitivity, but no less than reasonable care under the circumstances. Unless Spacelabs grants specific, written, advance permission to do so, Seller will not disclose any Confidential Information to any third party. Seller will limit access to the Confidential Information of Spacelabs to those employees of Seller who have a need to know such information in order to perform its obligations and exercise its rights under this Agreement and who are bound by confidentiality and non-use obligations to Seller at least equivalent to Seller's obligations to Spacelabs under this Agreement. Should Seller determine that it needs to disclose Confidential Information of Spacelabs to any non-employee (including consultants and contractors) in order to perform its obligations or exercise its rights under this Agreement, Seller will not do so without the prior written permission of Spacelabs. Upon receiving such permission, Seller may proceed, but only after binding any such non-employee to confidentiality and non-use obligations to Seller at least equivalent to Seller's obligations to Spacelabs under this Agreement. Seller will be responsible to Spacelabs for the acts and omissions of any its employees and any such non-employee with respect to such confidentiality and non-use obligations.

**9.3. Return of Confidential Information.** Upon any expiration or termination of this Agreement or upon the request of Spacelabs, Seller will return or destroy, at Spacelabs' option, all Confidential Information of Spacelabs and any copies thereof. In addition, Seller will promptly destroy any electronic or otherwise non-returnable embodiments of the Confidential Information.

## **10. Quality Requirements and Regulatory Compliance**

**10.1. Quality Management System.** Seller will have a quality management system in place that is certified to the International Standard Organization 13485 ("ISO") or equivalent standard to define and maintain the manufacturing process and associated controls so that all Products consistently conform to the Specifications and are in accordance with all applicable laws, regulatory requirements, and international product standards. Seller will provide Spacelabs with all information reasonably necessary for Spacelabs to evaluate such conformance. Seller will immediately notify Spacelabs of any changes in its regulatory registration or ISO certificate status.

**10.2 Regulatory Responsibilities.** Seller will be responsible for complying with all applicable regulatory requirements in connection with Seller's CE marking of any finished device Products in accordance with the and so marking all such Products. If a finished device Product is a medical device, Seller will be responsible for obtaining 510(k) clearance and Health Canada licensing for the Product. Seller will maintain Product compliance with the current version of UL standards, CSA standards, ISO 13485, the Medical Device Directive, and Canadian Medical Device regulation (CMDR) as applicable. Spacelabs will be responsible for applying for and obtaining other regulatory approvals or permits

necessary for the markets in which Spacelabs intends to sell the Products. Seller will provide reasonable assistance to Spacelabs as regards such applications.

**10.3. Government Agency Communication and Inspections.** Each party is responsible for the regulatory agency communications pertaining to the Products for which it owns the regulatory filing and responsibility. The parties will assist each other in responding to requests from any regulatory authority or auditing body for information or documentation related to the Products.

**10.4. Audits.** Seller will have an internal and supplier audit program in place, allowing Seller to identify issues and implement necessary corrective actions. Spacelabs and its notified body and subcontracted agents will have the right to audit Seller's and Seller's Product component supplier's premises, quality management systems, Product testing procedures, and Product related documentation within three days of notice of audit. Seller will immediately notify Spacelabs of all pending, announced or unannounced inspections by regulatory authorities of sites that manufacture, design, develop service and/or distribute Products, sufficient to allow Spacelabs to attend the inspection, if desired. Seller will host unannounced third party audits as required by Spacelabs and Seller's regulatory or certification bodies. In the event Seller rejects a third party audit, Seller will contact Spacelabs immediately and provide a rationale for the rejection of the audit.

**10.5 Quality Assurance Tests.** Seller will perform and adequately document the performance and results of all inspections and tests required to substantiate conformance of the Products and Product components to the Specifications. Seller will implement and document specifications for raw materials, packaging materials, Product labeling, and processing aids that would likely affect Product quality, and have approved written procedures for all required in-process sampling and testing. Process equipment and tooling must be uniquely identified, maintenance timely performed, status tagged and managed with an equipment history log or equivalent system. Process lines will be appropriately identified. Seller will validate and qualify as necessary all critical systems, utilities and equipment/instruments used for the manufacture and control of the Products. Seller will perform its incoming, in-process, and final test and quality acceptance using written procedures for each Product prior to shipment of the Product to Spacelabs. When required by Spacelabs, Seller will provide a declaration of conformance for the Products that certifies testing and compliance with the regulatory requirements, and will generate risk analysis documents, process failure mode effects analysis ("FMEA") for the Products, and provide data showing final acceptance of the finished Product.

**10.6. Measurement and Test Equipment.** Seller will ensure that all inspection, measuring, and test equipment, including mechanical, automated, or electronic inspection and test equipment, is suitable for its intended purpose and is capable of producing valid results. Seller will establish and maintain procedures to ensure that equipment is routinely calibrated, inspected, checked, and maintained. The procedures will include provisions for handling, preservation, and storage of equipment, so that its accuracy and fitness for use are maintained. Seller will ensure these activities are documented and available for review. Seller will ensure calibration is carried out in accordance with ISO/IEC 17025 using written procedures and standards that are traceable to the applicable National Standards organization. Seller will ensure calibration is performed on all equipment used for product acceptance using OEM specifications. Spacelabs' approval is required where lab developed methods are otherwise applied. Calibration records will define what the OEM specification requires, as well as both the "as found" and "as left" readings from the unit under calibration (UUC) when appropriate. When UUC is found to be out of tolerance, there will be procedures in place for remedial action and a written process for evaluating whether the Product or process was impacted by the test equipment found to be out of tolerance. Remedial action will include immediate notification to Spacelabs and will include a conclusion summary report outlining the results of the evaluation on product and processes impacted.

**10.7. Nonconforming Product and Out of Specification Tests.** Seller will have appropriate procedures for identification, investigation, reporting, tracking, trending and closure of Product deviations, segregation, evaluation, and disposition of non-conforming product, and approval of use of out of specification material. Seller will complete investigations within thirty (30) days of commencement, and will trend occurrences of nonconforming material. Seller will provide investigation documentation to

Spacelabs upon request. Where Product will be reworked – subject to a technique or technology that is not a part of the approved process sequence, Seller will have a rework procedure describing the rationale and justification for the rework processes.

**10.8. Traceability; Management.** Seller will maintain a traceability system such that the Products and Product components are traced and identified during all stages of receipt, production, and distribution to Spacelabs and Spacelabs' customers. Spacelabs will maintain a traceability system for the Products as distributed to customers. Seller will provide a unique control number for each unit, lot, or batch for all critical components and provide supporting documentation with each delivery. Seller will manage Product and Product component handling and storage to prevent mix-up, damage, deterioration, lifecycle expiration, and contamination.

**10.9. Approved Suppliers and Manufacturers.** Seller will be responsible for identifying all critical component suppliers for finished medical devices, and will maintain an approved supplier list for the components used in the Products.

**10.10. Labeling; Storage.** Seller will label the Products in compliance with applicable regulatory requirements, including the GS1 Standards Unique Device Identifier requirements if applicable. Seller is responsible for holding and storing individual materials relevant to the Product according to the specifications, labeling and recommended shelf life for such material. Spacelabs will be responsible for storage and distribution of the Product according to its labeling.

**10.11. Metrics.** Seller will maintain data related to the Products, including but not limited to customer complaints, supplier corrective actions, on time delivery to Spacelabs, on time delivery from suppliers on the approved supplier listing, quality holds, incoming inspection, and non-conforming material. This information will be made available to Spacelabs upon request, or during on-site audits.

**10.12. Facilities.** Facilities used in the manufacture, storage, or service of the Product will be designed, constructed and maintained to facilitate cleaning, maintain environmental control and operations processes and to ensure orderly placement of equipment, tooling, and materials to prevent mix-ups and contamination as appropriate to the type and stage of manufacture.

**10.13. Changes to Specifications or Supply.** Seller must notify Spacelabs of, and obtain Spacelabs' consent (which will not be unreasonably withheld) to any changes to the form, fit or function or part numbers of Products; changes to Product Specifications, component specifications, raw materials, manufacture process, manufacture location, test methods, critical suppliers (including suppliers of Product components), or Product components. Such proposed changes will be submitted 60 days prior to the planned implementation date via <http://www.spacelabshealthcare.com/support/supplier-change-request>. Seller will notify its supplier(s) of the need to notify Seller of changes under this section. The modified Products will replace the prior version of the Products, and the terms and conditions of this Agreement will continue to apply.

**10.14. Records.** Seller will maintain all records required to be kept by Seller under the regulatory requirements. Such records will be made readily available for review and copying by Spacelabs and its notified body, and subcontracted agents. Such records will be legible and will be stored to minimize deterioration and to prevent loss. Those records stored in automated data processing systems will be backed up. If Seller stops manufacturing a Product, upon Spacelabs' request Seller will grant Spacelabs custody of a copy of Seller's Product records. Product records will be maintained for a minimum of 15 years after Seller's date of last production of the Product. Records to be maintained by Seller include:

**10.14.1.** For finished medical devices, technical information, documentation, and written procedures concerning the design, processing, manufacture, quality assurance and testing of the Products which the manufacturer is obligated to maintain under the Directive in accordance with the provisions of applicable regulatory requirements (the "Technical File"). Seller will provide Spacelabs with a copy of the Technical File and any updates thereto;

**10.14.2.** Each Product's design history file, device master record, and device history record as required under ISO 13485;

**10.14.3.** Records of Seller's shipments to Spacelabs and its customers (including serial numbers / lot numbers of Products provided);

**10.14.4.** Records of the preventative and corrective maintenance Seller performs; and

**10.14.5.** Records of Product testing and commercial release.

**10.15. Subcontracting.** Where Seller is responsible for a contract relationship to support the Product, Seller is responsible for the quality, compliance, and regulatory aspects of the materials or services provided by the contractor. Seller will provide to Spacelabs, upon reasonable request, such records as required under the Regulatory Requirements related to Seller's qualification of such subcontractors.

**10.16. Personnel Training.** Seller will provide sufficient training to its personnel so that they may meet the Seller obligations in this Agreement. The training program will include current Good Manufacturing Practices and ISO 13485 training. Seller will only assign persons with the necessary awareness, skills, competence and training to perform activities in connection with the Product. Seller will provide an adequate number of personnel qualified by appropriate training and experience to perform and supervise all activities relating to the Product.

**10.17. Complaints; Defects; Serious Incidents.** Seller will have written procedures covering product complaints handling and adverse events as well as necessary notifications to regulatory agencies. If a party becomes aware of a Product complaint, issue, or potential defect, or of a serious incident involving a Product ("Product Issue"), that party will promptly notify the other party of the matter in writing within five business days. If it appears the Product may have contributed to a death or injury, there is a Product malfunction that could contribute to death or injury, or a Customer expresses concern about patient safety, then the party will notify the other party as soon as possible and will use its best efforts to give such notice orally within twenty-four (24) hours from becoming aware of such Product Issue and will use best efforts to confirm such notice by email or fax within 24 hours after giving oral notice. Seller will promptly investigate the Product Issue, will provide a written report to Spacelabs of the results of such investigation, and will implement all necessary corrective or preventive actions to the manufacture or quality assurance of the Product to prevent recurrence of the Product Issue. If the Product is a finished medical device, Seller is responsible for filing any Medical Device Report, MDD Vigilance Report, Health Canada Mandatory Problem Report or other mandatory reporting needed as a result of the Product Issue.

**10.18. Recall Responsibilities.** Each party will have written procedures covering field corrective actions and recall activities, and employees will have appropriate training on these procedures. Each party will promptly notify the other party of any recall or field correction affecting the Product. If a recall or field correction results from a defect in a Seller Product, Seller will be responsible for: (i) the investigation to determine the cause and extent of the problem, while Spacelabs will be responsible for: (iv) locating the Products in question; (v) communications with Customers; (vi) in the event of a recall, requiring that the recalled Products are returned; (vii) in the event of a Product shipment hold, initiating a shipment hold immediately upon notice by Seller; and (viii) requiring and performing field upgrades and/or repairs. If the Product provided by Seller is a finished medical device Product, Seller will be responsible for all regulatory authority contacts and (overall coordination of any corrective activities involving the Products. The Parties will cooperate fully with each other in effecting any recall of a Product. Seller will bear all costs and expenses of such field correction or recall, including, without limitation, the cost of notifying Spacelabs' Customers and costs associated with sending a service engineer to perform field correction and/or shipment of recalled Products from Spacelabs' Customers to Seller, as well as the costs associated with providing Spacelabs' Customers with replacement or modified Products.

**10.19. Change in Management or Company Ownership.** Both Parties are responsible for notifying the other in writing in the event of a change in plant management or company ownership. Such notification must be in writing and provided within ten (10) business days of such change.

**10.20. Emergency Preparedness.** Seller will establish production and supply redundancies that meet emergency preparedness and business continuity planning requirements to ensure commitments to Spacelabs can be fulfilled.

## **11. Additional Provisions.**

**11.1. Remedies.** The parties agree that any breach of Section 9 (Confidentiality) will cause irreparable harm and significant injury to Spacelabs which may be difficult to ascertain. Accordingly, the parties agree that Spacelabs will have the right, in addition to any other remedies available to it, to obtain an immediate injunction, without necessity of posting a bond, enjoining any breach by Seller of Section 9 (Confidentiality). Notwithstanding anything in this Agreement to the contrary, Spacelabs will be entitled under this Agreement to all of the rights and remedies available to a contracting party under the Uniform Commercial Code. Spacelabs' remedies will be cumulative and will include any remedies allowed by Law.

**11.2. Independent Contractor.** Each of Spacelabs and Seller is an independent contractor and neither party's personnel are employees or agents of the other party. This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

**11.3. Inspection.** During normal business hours, upon reasonable notice to Seller, Spacelabs will have the right, but not the obligation, to (a) inspect the work conducted and Services provided by Seller under this Agreement; (b) inspect and test Seller's facility and any equipment used in such work or Services, including, without limitation, any areas where the Products (or components thereof) are stored, handled, packaged or manufactured; and (c) inspect and obtain copies of all books and records (including financial and technical books and records), licenses, authorizations, approvals or written communications from any governmental entity or agency applicable or related to such work or Services.

**11.4. Insurance.** Seller will maintain in effect at all times the following insurance: (a) statutory Worker's Compensation Insurance (or equivalent) for all employees of Seller in accordance with the Laws of the jurisdictions in which they are performing work for Seller; and (b) comprehensive General Liability Insurance (including Owned and Non-Owned Automobile, Contractor's Protective, Contractual and Completed Operation coverage) with policy limits of at least \$1,000,000 per person, \$2,000,000 per occurrence for Bodily Injury Liability, and \$500,000 per occurrence for Property Damage Liability. Such Comprehensive General Liability Insurance will remain in force for the term of this Agreement and Seller will furnish, if requested by Spacelabs, a Certificate of Insurance prior to the commencement of the work naming Spacelabs (including its subsidiaries and affiliates) as an additional insured thereunder. Certificates of Insurance evidencing such coverage will provide that Spacelabs will be given ten (10) days written notice before cancellation or reduction of any of the insurance coverage. The liability of Seller assumed under this Agreement will not be limited to the amount of insurance which the Seller is required to provide.

**11.5. U.S. Government Contracts.** The Products and Services provided hereunder may be used by Spacelabs in fulfilling a U.S. Government prime or subcontract and may, therefore, be subject to the applicable Government procurement regulations (collectively, the "Regulations"), including, but not limited to, all applicable clauses listed in FAR 52.212-5(e) and DFARS 252.212-7001 and 29 C.F.R. part 471, appendix A to subpart A. All applicable Regulations will be deemed incorporated herein by reference and Seller will be bound to comply with them, except that for the purposes of this Agreement, in such Regulations the term "contractor" as used therein will refer to Seller, and the terms "Government" or "Contracting Officer" as used therein will refer to Spacelabs. By submitting a proposal or invoice to Spacelabs, Seller is representing to Spacelabs that, at the time of submission (a) neither Seller nor its principals are debarred, suspended, or proposed for debarment by the U.S. Government (see FAR 52.209-6); (b) Seller has filed all compliance reports required by the Equal Opportunity clause (see FAR

52.222-22); and (c) Seller's representations to Spacelabs about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete. Seller recognizes that it has a duty to maintain its size requirements for the duration of this Agreement and must immediately notify Spacelabs if there is a change in its size standard, ownership, or control.

**11.6. Law and Venue.** Washington law, without regard to conflicts or choice of laws principles, will govern the enforcement and interpretation of this Agreement. The parties agree that all actions or proceedings arising directly or indirectly from this Agreement will be arbitrated or litigated before arbitrators or in courts having a situs within King County, Washington and hereby consent to the jurisdiction of any local, state or federal court in which such an action is commenced that is located in King County, Washington. The parties agree not to disturb such choice of forum.

**11.7. Attorney's Fees.** In the event either party brings legal action to enforce any provision herein, the prevailing party will be entitled to collect from the losing party reasonable attorneys' fees and costs incurred.

**11.8. Severability and Waiver.** In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or portion thereof) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and remain in effect according to its stated terms and conditions. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. No waiver will be valid unless made in writing.

**11.9. Survival.** The following sections will survive any cancellation, expiration or termination of the Agreement: 3.6, 5, 6, 7, 8, 9, 10, and 11.

**11.10. Export Control.** Seller agrees to comply with all applicable export control Laws and regulations including, but not limited to, the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et. seq., and the Export Administration Regulations, 15 C.F.R. 730-774 ("Export Control Laws"). Seller covenants that it will not transfer any export controlled item, data or services to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without first obtaining all required export licenses. Seller agrees to notify Spacelabs if (i) any deliverable under this Agreement is restricted by Export Control Laws, (ii) Seller is or becomes listed in any Denied Parties List or (iii) Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency. Seller agrees to provide Spacelabs with the applicable Export Control Classification Number for each Product and hereby warrants that such classification is correct and accurate in all respects.

**11.11. No Subcontracting or Assignment.** Seller may not subcontract, assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Spacelabs. Any purported subcontract, assignment, transfer, delegation or other disposition by Seller will be null and void. Subject to the foregoing, (a) this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns and (b) Seller will be fully responsible for the acts and omissions of all subcontractors and the acts and omissions of their employees. There will be no contractual relationship between any subcontractor and Spacelabs. Seller will indemnify, defend and hold harmless Spacelabs from and against any and all liability for payment of Seller's subcontractors and suppliers, including without limitation, mechanic's liens.

**11.12. Right of Setoff.** All claims for monies due or to become due from Spacelabs will be subject to deduction by Spacelabs for any setoff or counterclaim arising out of any agreement or other arrangement between Seller and Spacelabs, including any of Spacelabs' subsidiaries and affiliates.

**11.13. No Seller Press Release.** Seller will not issue a press release or other public statement of any kind regarding the Products, Services or terms of this Agreement without Spacelabs' express written consent.

**11.14. Construction.** This Agreement will be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

**11.15. Counterparts.** This Agreement may be executed in counterparts and delivered by way of facsimile, email or other electronic signature.

**End of Terms and Conditions of Purchase**