

## **APPENDIX A**

### **Terms and Conditions**

Automatika, Inc., or its parent company (the “Buyer”) is purchasing assemblies or components from the “Seller” for its proprietary Dragon Runner® Robots. As such Buyer and Seller agrees that for all sales of parts, components, or assemblies that Buyer purchases from Seller, the following terms and conditions shall govern:

**I. Acceptance:** This purchase order constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Seller, either by returning the signed acknowledgement copy hereof or by the commencement of performance. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of this purchase order are hereby objected to, and shall be void and of no effect, unless specifically agreed to in writing by Buyer. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Buyer. This purchase order and modifications that are accepted in writing by Buyer constitute the entire agreement between the parties.

**II. Delivery:** Time is and shall remain of the essence of this order, and no acts of Buyer, including without limitation modifications of this order or acceptance of late deliveries, shall constitute waiver of this provision. Delivery shall be strictly in accordance with the delivery schedule set out or referred to on this purchase order. Buyer may refuse to accept, or return at Seller's risk and expense, any shipments made in excess of Buyer's order or in advance of required delivery dates, or at Buyer's option, to accept early deliveries and defer payment on such deliveries until such dates. Seller shall notify Buyer immediately of any actual or potential labor dispute which is delaying or threatens to delay the timely performance of this order. If deliveries are not made at the specified time, Buyer, in addition to its other remedies, reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefore.

**III. Termination:**

(a) Buyer may terminate this order without liability to Seller, except for work previously performed, if Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding is brought against or instituted by Seller under the bankruptcy or insolvency laws, or if a receiver for Seller is appointed or applied for, or if an assignment for the benefit of creditors is made by Seller.

(b) Buyer may terminate this order without liability to Seller, except for product previously delivered, if Seller fails to deliver in accordance with the delivery schedule specified on the face of this order, provided that such delivery schedule is specifically stated.

(c) Buyer may at any time terminate this order in whole or in part for its convenience upon written notice to Seller in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to termination plus actual direct costs necessarily resulting

from such termination. In no event shall Seller be entitled to anticipatory profits or to special or consequential damages.

**IV. Warranties:** Seller warrants that all materials and work covered by this order will conform to applicable specifications, drawings, samples and/or other descriptions given, be free from defects in materials or workmanship, and suitable for the purposes intended by Buyer. Unless the materials or articles covered by this order are manufactured completely to detailed designs furnished by Buyer, Seller additionally warrants the design to be free from defects. No approval of any design by Buyer shall constitute a waiver by Buyer of Seller, together with its service warranties and guarantees, shall run to Buyer and/or its customers, and shall survive inspection, acceptance and payment.

**V. Inspection:** All articles or work called for hereunder shall be subject to inspection and test by Buyer and by personnel designated by Buyer at all times and places, including the period of manufacture, and in any event, prior to acceptance. Unless otherwise specified herein, final inspection and acceptance shall be made after delivery to Buyer. If any inspection or test is made on the premises of Seller or Seller's Subcontractor, Seller shall provide, without additional charge, reasonable facilities and assistance for the safety and convenience of inspection personnel. Buyer shall have the right to reject articles found upon inspection not to conform to the requirements of this order and to require their correction or replacement at Buyer's option or to terminate this order if paragraph III(c) herein is invoked. Buyer's acceptance of any nonconforming article of work shall not constitute a waiver of requirements for any additional articles of work required to be delivered hereunder. Seller shall provide and maintain complete inspection and test records, which shall be made available to Buyer upon request.

**VI. Change orders:** Buyer reserves the right, at any time, by written or telegraphic notice, to suspend performance by Seller hereunder, whether in whole or in part, however Buyer shall not delay payment for work already performed due to such suspension. The statement of work may be modified by mutual agreement of the parties. Any difference in price or time for performance (schedule) resulting from such change, whether by way of increase or decrease, will be equitably adjusted and the purchase order modified in writing accordingly; provided such claim by Seller, and the amount thereof, shall be made in writing within 30 days from receipt by Seller of notice of change or be conclusively deemed waived; provided further that nothing contained herein shall excuse Seller from proceeding with its performance under the purchase order as changed.

**VII. Confidentiality:** All Buyer originated drawings, specifications, designs or other information furnished by Buyer to Seller shall be maintained in confidence by the Seller and shall not be reproduced, disclosed, duplicated or used, except to the extent required for the performance of this order, without the Buyer's prior written consent. Upon completion of this order, Seller shall promptly return to Buyer all drawings, specifications and other data furnished by Buyer in connection with this order together with all copies or reprints made thereof, and Seller shall thereafter make no further use of any such drawings, specifications, data or any information without Buyer's prior written consent. All U.S. Government originated drawings, specifications, designs or other

information shall be governed by Article XVI. In addition, Seller recognizes that Buyer's remedy at law for this provision's breach would necessarily be inadequate, and Seller thus stipulates that in the event of any such breach, Buyer shall be entitled to appropriate equitable relief (including but not limited to injunctive relief or specific performance) in addition to monetary damages. This clause must flow down to second and third tier subcontractors and suppliers in all cases.

**VIII. Reproduction Rights:** Seller agrees to and does hereby grant to Buyer to the full extent of the Seller's rights to do so without the payment of compensation to others, the right to reproduce, use and disclose for U.S. government purposes only all or any part of the parts, blueprints, drawings, data and technical information specified to be delivered by Seller to Buyer under this Purchase Order; provided, however, that nothing contained in this clause shall be deemed, directly or by implication, to grant any license under any patent now or here after issued.

**IX. Patent Indemnity:** Seller shall indemnify Buyer and its customers against any liability whatsoever for or by reason of any actual or alleged patent infringement arising out of the manufacture, use, sale or disposal of articles furnished hereunder, except where such articles are manufactured according to Buyer's detailed designs.

**X. Assignment:** Neither this Order, nor any interest herein, may be assigned by Seller, in whole or in part, without Buyer's prior written consent.

**XI. Subcontracting:** Neither all, nor substantially all, of this Order may be subcontracted by Seller without Buyer's prior written consent.

**XII. Waiver:** The failure of either party to insist on performance of any provision hereof shall not be construed as a waiver of such provision in any subsequent instance.

**XIII. Applicable Law:** Irrespective of the place of performance, this Order will be construed and interpreted according to the laws of The Commonwealth of Massachusetts and to the federal common law of Government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals and quasi-judicial agencies of the federal government.

**XIV. Price and Payment:** Seller shall furnish certified invoices to Automatika subsequent to the delivery of materials or performance of services. All taxes, duties, fees, and similar charges are included in the prices shown on the face hereof.

**XV. Government Contract Provision:** If the work to be performed hereunder is for use in connection with a Government contract or subcontract, the following additional clauses as set forth in the Federal Acquisition Regulations, Title 48 C.F.R. Chapter 1, ("FAR") and the Department of Defense FAR Supplement ("DFARS") in effect on the date of this Order, are incorporated herein by reference, as set forth in full. In all such clauses, the word "Contractor" shall mean Seller, and except for those clauses marked with an asterisk, the word "Government" shall mean the Buyer. All FAR and DFAR

clauses shall be the clauses effective as the date of the Government prime contract under which this purchase order is issued, however, any CAS applicable clause shall be effective as of the date of this Purchase Order.

**Terms and Conditions of Purchase**

Clause #	Clause Title	Clause #	Clause Title	Clause #	Clause Title
<b>FARS</b>		52.222-35	Affirmative Action for Special Disable and Vietnam Era Veterans	52.246-23	Limitation of Liability
52.203-6	Restrictions on Subcontractor Sales to the Government (applicable over \$100,000)	52.222-36	Affirmative Action for Handicapped Workers	52.249-2	Termination for Convenience of the Government (Fixed Price) (in paragraph (d) change "1 year" to "6 months")
52.203-7	Anti-Kickback Procedures (excl. para. © (1)) (applicable over \$10,000)	52.223-1	(Reserved) Removed and reserved, FAC 97-15 Final Rule, 64 FR 72414, 12/27/99, effective 2/25/2000	52.249-8	Default (Fixed Price Supply and Service)
52.203-11	Certification and Disclosure Regarding Payments to influence Certain Federal Transactions (applicable over \$100,000)	52.223-2	(Reserved) Removed and reserved, FAC 97-15 Final Rule, 64 FR 72414, 12/27/99, effective 2/25/2000		
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (applicable over \$100,000)	52.225-3	Buy American Act – Supplies	<b>DFARS</b>	
52.204-2	Security Requirements	52.225-8	Duty Free Entry	252.208-7000	Intent to Furnish Precious Metals as Government – Furnished Material
52.208-1	(Reserved) Removed and reserved, FAC 90-45 Final rule, 62 FR 224, 1/2/97, effective 1/1/97	52.225-13	Restrictions on Certain Foreign Purchases	252.227-7013	Rights in Technical Data and Computer Software
		52.227-1	Authorizations and Consent		
52.215-2	Audit – Negotiations (applicable over \$100,000)	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement		
52.215-10	Price Reduction for Defective Cost or Pricing Data	52.227-3	Patent Indemnity		
52.215-12	Subcontractor Cost or Pricing Data (applicable over \$500,000)	52.227-9	Refund and Royalties		
52.215-14	Integrity of Unit Prices	52.227-10	Filing of Patent Applications – Classified Subject Matter		
52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan	52.227-12	Patent Rights – Retention by the Contractor		
52.220-4	Reserved	52.242-15	Stop Work Order		
52.222-1	Notice to the Government of Labor Disputes	52.243-1	Changes (Fixed Price)		
52.222-4	Contract work Hours and Safety Standards Act	52.245-2	Government Property (Fixed Price Contracts)		
52.222-20	Walsh-Healy Public Contracts Act	52.245-17	Special Tooling		

52.222-26	Equal Opportunity	52.246-2	Inspection of Supplies (Fixed Price)		
52.215-10	Price Reduction for Defective Cost or Pricing Data	52.227-3	Patent Indemnity		
52.215-12	Subcontractor Cost or Pricing Data (applicable over \$500,000)	52.227-9	Refund and Royalties		
52.215-14	Integrity of Unit Prices	52.227-10	Filing of Patent Applications – Classified Subject Matter		
52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan	52.227-12	Patent Rights – Retention by the Contractor		
52.220-4	Reserved	52.242-15	Stop Work Order		
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52.222-4	Contract work Hours and Safety Standards Act	52.245-2	Government Property (Fixed Price Contracts)		
52.222-20	Walsh-Healy Public Contracts Act	52.245-17	Special Tooling		
52.222-26	Equal Opportunity	52.246-2	Inspection of Supplies (Fixed Price)		

**XVI. Provision Flow-Down:** FAR clauses as well as any Quality Assurance provisions that are enumerated in the face of this order must flow down to second and third tier subcontractors and suppliers as appropriate.

**XVII. Non-Competition:** Buyer is in the competitive business of making and selling Robots. As such, Seller shall not sell any parts, components or assemblies that Seller manufactures for Buyer to any party other than Buyer. In addition, Seller shall not sell any parts, components or assemblies to any party, other than Buyer, whom Seller knows, or should reasonably know, intends to use the parts, components or assemblies for Robots. This clause must flow down to second and third tier subcontractors and suppliers in all cases.

**XVIII. Export:** The Robots and all parts and components thereof are export controlled under the International Traffic in Arms Regulations (“ITAR”). As such, Seller specifically acknowledges that the Robots, and all parts and components thereof, are subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations, and agrees that its receipt and possession of the Robots, and the parts and components thereof, including any parts or components supplied by Seller, are subject to the restrictions and limitations provided for below:

a) The Robots, all parts and components thereof, and all data and information related thereto, shall not be put at the disposal of any Foreign Person (as defined in the ITAR), including any Foreign Person employed by the Seller except as specifically authorized by the prior written approval of the United States Department of State.

b) The Robots, all custom parts and components thereof, and all data and information related thereto, shall not be exported, except as specifically authorized by the prior written approval of the Buyer and the United States Department of State.

c) The Robots, all custom parts and components thereof, all data and information related thereto, and any and all technology related thereto, will not be transferred to any person or Government outside of the United States or to a Foreign Person inside the United States, except as specifically authorized by the prior written approval of Buyer and the United States Department of State.Regulations (“ITAR”).

## **XIX. Quality System**

The seller shall provide, if required, a Quality Assurance Representative (QAR) of the U.S. Government, a Foreign Government, a Commercial Customer, or Automatika or Automatika’s parent, access to any of the subcontractor’s facilities where any of the work is being performed. The QAR shall be afforded unrestricted opportunity to evaluate and verify subcontractor’s compliance with procedures and to validate product conformance with requirements. The subcontractor shall make available for reasonable use by the QAR the equipment necessary for validation purposes. Subcontractor personnel shall be made available for operation of such equipment as required.

Seller compliance and/or certification to AS9100B, ISO9000-2000, or equivalent is preferred, but not mandatory. At a minimum there shall be adequate process controls to ensure the Seller can meet the Purchase Order requirements.

Evidence of unacceptable Quality controls may result in suspension of contract deliveries pending demonstration of appropriate corrective actions.

Record Retention: The Seller shall maintain records that provide objective evidence of compliance to the purchase order requirements. The records shall be maintained for a period of not less than three (3) years from completion of purchase order. The Seller may send records to Automatika to be maintained.

### **Packaging:**

All items must be packaged in such a manner as to prevent damage during shipment and subsequent storage at Foster-Miller. For all components and assemblies that weigh less than 15 pounds each, the pack-out for each shipping container must not exceed 35 pounds total. Individual items that weigh 15 pounds or more, must be packaged so that each package contains only one item plus whatever packaging material are required to prevent damage. If referenced in the P.O. and/or drawing, additional specific packaging requirements may apply.

### **Electrostatic Discharge sensitive materials:**

For Electrostatic Discharge (ESD) sensitive materials, the supplier shall have procedures for protection of ESD sensitive devices during all phases of handling, packaging, storage,

and testing, and storage. The supplier's ESD program shall be in accordance with MIL-STD-1686, MIL-HDBK-263, ANSI/ESD-20-20, or Automatika approved equivalent. A label shall be affixed to each package or container identified as "ESD SENSITIVE."

### **Nonconforming Materials**

Material which fails to meet the requirements of applicable drawings, specifications, etc., referenced on the Purchase Order shall not be shipped without prior written approval of Automatika, Inc.. Use-As-Is and Repair dispositions on subject deliverable nonconforming material must be approved by Automatika, Inc. A copy of the approval shall be enclosed with each shipment made against the P.O.

The Seller shall provide for timely reporting of nonconformities that may affect already delivered product. Notification shall include a clear description of the discrepancy, identification of suspect parts (to include mfg. dates, serial numbers, qty, etc.) and material affected by the deficiency, dates delivered, and any information to the root cause/corrective action steps initiated to address the defective condition and to prevent recurrence.

### **Nonconforming Customer Furnished Material (CFM)**

If this Purchase Order includes the use of material provided by Automatika as Customer Furnished Material (CFM), then the following is applicable:

All CFM must be handled with care and appropriately stored.

Whenever CFM is determined to be non-conforming, follow your company's normal procedure for handling non-conforming material. In addition, promptly notify Automatika that the material is nonconforming.

The notification report must include:

- Part number of the CFM that was furnished by Automatika
- If your firm has altered the material so that it is now a new part number, use the original part number of the item that was received as CFM from Automatika for your report to Automatika.
- Include unique serial number(s), if applicable
- Quantity of the material that is non-conforming or suspected of being non-conforming
- Brief explanation of why the material is non-conforming
- Be as specific as possible in the description of the problem. "Doesn't work" or "Bad" is inadequate. "Camera does not zoom", for example, provides more useful information.
- Was this caused by your firm? While the CFM was in your care,
- Was the item dropped?
- Wired incorrectly and powered up?
- Did someone on your staff scratch or otherwise damage the item?

Returning the non-conforming material:

- After receipt of the notification report, the Buyer who placed the order with you will notify you about where to ship the material.
- Only return the CFM that was furnished by Automatika.
- If your firm has added cables or other attachments to the CFM, please remove the attachments if possible and only return the CFM.
- All items must be packaged in such a manner as to prevent damage during shipment. Even if the item is presumed to be unsalvageable, it is important to package the material appropriately to prevent additional damage from occurring. Additional damage could make it difficult or impossible to determine a root cause for the initial non-conformance.
- Enclose the Packing Slip and a copy of the Non-conformance/defect report in the box.
- Unless directed by the Buyer to ship via an alternate method, ship the material via the usual shipping method for delivery to Automatika.

Ship to:

Automatika Inc.  
Attn: Production Control  
137 Delta Drive  
Pittsburgh, PA 15238

**Inspection**

Material shipped against this Purchase Order is subject to Receiving Inspection at Automatika, Inc.

**General Workmanship**

Unless otherwise specified, material shipped against this Purchase Order shall be free of pits, cracks, dents, scratches, burrs, sharp edges, foreign matter, or any other evidence of poor workmanship that shall render the unit unsuitable for its intended use. Additional requirements are defined in terms and conditions.

**Change Control**

Purchase Order changes that affect the requirements defined in the PO shall be formally communicated from the Seller to Automatika, Inc., via a purchase order change request, and from Automatika, Inc., to the Seller via a purchase order change.

Product and Manufacturing Change Control: No change in specification, materials or manufacturing process that may affect fit, form and function is allowed to items on this order without written notification to Automatika, Inc.

**Certification of Conformance** – Seller shall furnish certification that product shipped complies with all requirements of the P.O., drawings, and specifications. The statement shall identify the articles or materials supplied and shall include the Automatika, Inc., purchase order number, part number, revision, and quantity shipped. Serialized articles shall be identified by serial number and lot controlled articles shall be identified by lot number.

**Certification of Special Processes** – Articles on this P.O. require special processes such as, but not limited to: soldering, painting, welding, heat-treating, electroplating, anodizing, chemical films, or nondestructive testing. These processes shall be validated by the seller and under proper process controls to ensure conformance to product and process specifications/parameters. Seller shall furnish certification to the processes (include process specification number, type, class, color, etc.).

Certification of printed circuit/wiring boards or printed circuit/wiring assemblies. Unless otherwise stated on the drawing or purchase order; Printed wiring boards shall be certified to IPC 600, class 3. Printed Wiring Assemblies shall be certified to IPC 610, class 3.

#### **Record Retention:**

Test Reports must be maintained in accordance with the vendor's Quality Management System or for a minimum of three years, whichever is longer.

Test Reports – Articles on this P.O. require electrical, mechanical, environmental, functional, or other tests in accordance with the testing specifications described on the CD. Seller shall furnish test reports containing as a minimum:

- a. Automatika Purchase Order Number.
- b. Item name, drawing number and revision.
- c. Test specification number and revision as applicable.
- d. Number of units tested.
- e. Serial numbers of units tested as applicable.
- f. Test parameters.
- g. Test results.

**First Article Inspection** The Seller is required to complete a first article inspection to verify compliance to all product requirements and specifications. The Seller shall provide

the results to Automatika at time of shipment (Note: AS9102, First Article Inspection, shall be used as guideline):

- a. The first article unit may be one item or a representative sample from the initial lot, batch, run, or the first 10 units produced from production tooling for this purchase order.
- b. The first article inspection shall provide supporting data to verify 100% of the product drawing requirements, specifications, and notes.
- c. The first article inspection shall consist of all records and inspection/test data related to build history, failures, repairs, acceptance test results, and other pertinent configuration documentation.
- d. Automatika reserves the right to witness the first article inspection at the Seller's facility.

## **XX. ORDER OF PRECEDENCE**

In the event of an inconsistency or conflict between provisions of this Order, the inconsistency or conflict shall be resolved by giving precedence in the following order:

1. FAR Contract Clauses incorporated by reference if applicable to PO type
2. Purchase Order and any purchase descriptions contained therein.
3. Purchase Order Standard Terms and Conditions and Exhibits thereto.
4. Specifications and/or drawings.
5. Other provisions when attached.

**XXI. Miscellaneous:** The rights and remedies of each party hereunder are in addition to any other rights and remedied either party to enforce any provisions hereof shall not be deemed a waiver of such provisions or any other provision hereof.