



# Standard Terms and Conditions of Sale

NO.	CD-A100
REVISION	D

## 1. OFFER AND ACCEPTANCE

SPIKA Design and Manufacturing, Inc. ("SPIKA") offers to sell and deliver Product or Products in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. SPIKA hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless SPIKA expressly agrees to such terms in writing.

## 2. PRICES AND RELEASES

SPIKA's price in effect at the time SPIKA receives Buyer's purchase order shall continue to apply if the quantity ordered is released by SPIKA within twelve (12) months and shipments are scheduled within fifteen (15) months. Otherwise, SPIKA's price in effect on the actual release date for the quantity actually shipped shall apply. In instances where the client requires first article testing of the first article prior to the manufacturing of subsequent units, SPIKA's price for the subsequent units will only be valid for 90 days after shipment of the first article. If approval to move forward with manufacturing is not granted within this 90-day window, SPIKA will re-price the additional units to meet current pricing rates.

## 3. PACKAGING AND SHIPPING

Unless otherwise provided in the agreement, SPIKA shall prepare and package the goods to prevent damage or deterioration and shall use best commercial practice for packing and packaging of items to be delivered. Unless otherwise provided in the agreement, SPIKA shall package the goods for shipment within the contiguous United States and will not guarantee compliance with international packaging requirements.

## 4. TITLE AND DELIVERY

4.1. Unless otherwise provided in the agreement, shipments inside the U.S. shall be delivered F.O.B. EXWORKS (most current Incoterms revision) Buyer's designated carrier. Shipments outside the U.S. shall be delivered EXWORKS (most current Incoterms revision) Buyer's designated carrier. Title and liability for loss or damage shall pass to Buyer upon SPIKA's delivery to Buyer's designated carrier. Any subsequent loss or damage shall not relieve Buyer from its obligations. Buyer shall reimburse SPIKA for insurance and transportation costs on international shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required. SPIKA may deliver Products in installments. Delivery dates are estimates. SPIKA shall not be liable for any damage, losses or expenses incurred by Buyer if SPIKA fails to meet the estimated delivery dates.

4.2. If shipments are delayed by Buyer, goods will be held for Buyer at Buyer's sole risk and expense. Goods held for more than five (5) days may incur reasonable storage charges.

## 5. PAYMENT TERMS

5.1. All quotes and sales orders are in United States dollars and all payments are to be made in United States funds. If SPIKA extends credit to Buyer, payment terms shall be 30% deposit, balance net fifteen (15) days after SPIKA's invoice unless otherwise provided in the agreement. SPIKA may change or withdraw credit amounts or payment terms at any time for any reason. If the Products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms.

5.2. If Buyer fails to make any payment when due, the balance due will be subject to a late payment fee computed daily at a rate equal to one and one-half percent (1.5%) per month. In addition, SPIKA may suspend or cancel performance under any agreements in which SPIKA has extended credit to Buyer. SPIKA's suspension of performance may result in rescheduling delays. If, in SPIKA's judgment, Buyer's financial condition does not justify the payment terms specified herein, then SPIKA may terminate this contract unless Buyer immediately pays for all Products that have been delivered and pays in advance for all Products to be delivered. Termination in accordance with this clause shall not affect SPIKA's right to pursue any other available remedies.

## 6. TAXES

Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. SPIKA will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides SPIKA with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to SPIKA, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

## **7. CONTINGENCIES**

SPIKA shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond SPIKA's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God.

## **8. WARRANTIES AND RELATED REMEDIES**

8.1. Spika warrants that Products shall be free from defects in material and workmanship at the time shipped by Spika and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

8.2. Unless otherwise provided in the agreement or other contract documentation, the warranty for Products shall expire one (1) year from shipment. The warranty for Product subcomponents is limited to the manufacturer's warranty. The warranty for Services shall expire one (1) year after performance of the service.

8.3. Within the warranty period listed above, Spika will replace or repair any warranted parts or components that fail due to such defects in material or workmanship. In the event of a claim covered by this warranty, the exclusive remedies shall be, at SPIKA'S option: (1) repair; or (2) replacement; or (3) the reasonable cost of repair or replacement by an authorized Spika repair or service center. There will be no compensation or reimbursement for transportation costs submitted under a warranty claim without prior written approval from Spika.

8.4. TO THE EXTENT PERMITTED BY LAW, THE REMEDIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT SHALL SPIKA BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFIT, INJURY, LOSS OF LIMB OR LIFE), WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

8.5. ANY EXPRESSED WARRANTY NOT PROVIDED HEREIN AND ANY IMPLIED WARRANTY, GUARANTY OR REPRESENTATION AS TO PERFORMANCE, AND ANY REMEDY FOR BREACH OF CONTRACT, TORT OR `ANY OTHER LEGAL THEORY WHICH, BUT FOR THIS PROVISION, MIGHT ARISE BY IMPLICATION, OPERATION OF LAW, CUSTOM OR TRADE OR COURSE OF DEALING, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, WITH RESPECT TO ANY AND ALL EQUIPMENT FURNISHED BY SPIKA IS INCLUDED AND TO THE EXTENT PERMITTED BY LAW, THE REMEDIES PROVIDED HEREIN DISCLAIMED BY SPIKA.

## **9. CANCELLATIONS AND RESCHEDULING**

No cancellation or rescheduling of orders by Buyer within thirty days of SPIKA's estimated shipping date for the component will be accepted. Any cancellation or rescheduling by Buyer more than thirty, but less than ninety days before SPIKA's estimated shipping date for such components may result in a charge to Buyer. Such charge, if any, shall be reasonably determined by SPIKA based on factors such as whether the Product was manufactured specifically for Buyer, SPIKA's ability to change its production schedule within the period of notice provided by Buyer, whether SPIKA acquired or allocated particular supplies or equipment to meet Buyer's order and such other factors as reasonably determined by SPIKA. Orders may be cancelled or rescheduled by Buyer more than ninety (90) days before SPIKA's estimated shipping date for such Product at Buyer's discretion and without charge (but still subject to repricing per 2. Prices and Releases).

## **10. NON-WAIVER OF DEFAULT**

In the event of any default by Buyer, SPIKA may decline to make further shipments. If SPIKA elects to continue to make shipments, SPIKA's action shall not constitute a waiver of any such default or affect SPIKA's legal remedies for any such default.

## **11. GOVERNING LAW**

This contract shall be governed by and interpreted in accordance with the laws of the State of Montana, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Buyer agrees that exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Montana and consents to exclusive venue in Fergus County, Montana. Notwithstanding

the foregoing, any judgment may be enforced in any United States or foreign court, and SPIKA may seek injunctive relief in any United States or foreign court.

**12. U.S. GOVERNMENT CONTRACTS**

If the SPIKA Products are to be used in a U.S. Government contract or subcontract, those mandatory clauses of the applicable U.S. Government procurement regulations shall be incorporated by reference.

**13. ASSIGNMENT**

This contract shall not be assignable by Buyer without SPIKA's prior written consent. Any unauthorized assignment shall be null and void.

**14. ENTIRE AGREEMENT**

This contract constitutes the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof.

**15. REVISION HISTORY**

REVISION	DATE	DESCRIPTION
REL	2019	Initial Release CD-A101
A	10/7/19	Changed number to CD-A100 Added revision block
B	3/13/20	Added clause regarding payment when FAT is required; 2.1
C	8/3/22	EXW terms for domestic shipments; 4.1 Net 15 terms; 5.1
D	4/14/23	Updated 2 Prices and Releases and 9 Cancellations and Rescheduling to account for price changes

**PROCESS OWNER**

Bekhi Spika, Director of Sales & Marketing

**APPROVED BY**

Kyle Whitcraft, Director of Quality