DATA DEVICE CORPORATION

Terms of Sale

1. Applicability. These terms and conditions (“Terms”) are the only terms that govern the sale of goods or performance of services by Data Device Corporation (“Seller”) to or on behalf of the buyer (“Buyer”). Notwithstanding anything herein to the contrary, if a contract signed by both parties exists covering the sale of goods or performance of services covered hereby, the terms and conditions of that contract will prevail to the extent inconsistent with these Terms. Any quotation or confirmation of order accompanying these Terms, or into which these Terms are incorporated by reference (collectively, the “Agreement”), comprises the entire agreement between the parties and supersedes all prior or contemporaneous understandings, representations, warranties, and communications, written or oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer submitted its order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Delivery and Shipping Terms. Goods or services will be delivered or performed within lead time after receipt of Buyer’s order. Seller is not liable for any delays, loss or damage in transit. Unless otherwise agreed in writing, Seller shall deliver goods FCA (Incoterms 2010) Seller’s facility (the “FCA Point”) using Seller’s standard methods for packaging. Buyer shall take delivery of the goods promptly after receiving notice that the goods have been delivered to the FCA Point. Buyer shall be responsible for loading, if applicable. Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for goods shipped, whether such shipment is in whole or partial fulfillment of Buyer’s order. If for any reason Buyer fails to accept delivery of goods on the delivery date or if Seller is unable to deliver goods on the designated delivery date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the goods shall pass to Buyer; (ii) the goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the goods until Buyer picks them up and Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Quantity. If Seller delivers to Buyer a quantity of goods different than the quantity set forth in the Agreement, Buyer may not object to or reject the goods or any portion of them by reason of the surplus or shortfall and shall pay for such goods the price set forth in the Agreement.

4. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the goods at the FCA Point. As security for payment of the Price, Buyer grants to Seller a purchase money security interest in and to all right, title and interest of Buyer in, to and under the goods. Third Party Products are not covered by the warranty (a) Buyer warrants to Seller that for a period of two years from the date of delivery of the goods or performance of service (“Warranty Period”) such goods and services will materially conform to Seller’s published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship.

(b) THE WARRANTIES, OBLIGATIONS AND LIABILITIES, EXPRESS OR IMPLIED, AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF BUYER SET FORTH IN THE AGREEMENT ARE EXCLUSIVE AND IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN THE GOODS OR SERVICES PROVIDED UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS; ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY ARISING FROM THE NEGLIGENCE OF SELLER OR ANY MANUFACTURER OF AIRCRAFT INCORPORATING THE GOODS OR SERVICES; AND ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OR DAMAGE TO ANY AIRCRAFT.

5. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the goods within thirty days of receipt (“Inspection Period”). Buyer will be deemed to have accepted the goods and quantities delivered unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes documentation reasonably required by Seller. “Nonconforming Goods” means only: (i) goods shipped are different than identified in Buyer’s order; or (ii) the goods’ label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) repair or replace such Nonconforming Goods with conforming goods or (ii) credit or refund the Price for Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Nonconforming Goods from Buyer, ship to Buyer the replaced goods to the FCA Point. No goods may be returned for credit and no goods may be returned to Seller for correction without the Seller’s prior written approval, but if such unauthorized return shipments are made to the Seller, the Seller reserves the right to refuse the shipment or to accept it, and in the latter case, the goods will be held as the Buyer’s property and without the responsibility to the Seller.

(c) The remedies set forth in Section 5(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided in Section 5(b), Buyer has no right to return goods purchased under the Agreement.

6. Price. Buyer shall purchase the goods or services from Seller at the prices (the “Price”) set forth in Seller’s quoted price or published price list in force as of the date that Seller accepts Buyer’s order or as otherwise agreed by the parties. Seller’s price list is subject to change at any time. The minimum order amount is $1,000. All Prices are exclusive of sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by a governmental entity on amounts payable by Buyer. Buyer is responsible for all such charges, costs and taxes, but Buyer is not responsible for taxes imposed on or with respect to Seller’s income, revenues, receipts, personnel or real or personal property or other assets. The price of the goods covered by the applicable order is based upon Seller’s interpretation of the Buyer’s specifications, if applicable.

7. Payment Terms. Unless the parties otherwise agree, Buyer shall pay all invoiced amounts to Seller net 30 days from the date of Seller’s invoice. The extension of credit to Buyer shall be subject to change by Seller at any time. Unless the parties otherwise agree, Buyer shall make all payments by check, in U.S. dollars. Buyer shall pay interest on late payments at the lesser of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for costs incurred in collecting late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller is entitled to suspend the delivery of any goods or services if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due by reason of any set-off of a claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.

8. Limited Warranty.

(a) Buyer warranty to Buyer that for a period of two years from the date of delivery of the goods or performance of service (“Warranty Period”) such goods and services will materially conform to Seller’s published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship.

(b) Seller makes no representations or warranties with respect to any third party product.

(d) Seller is not liable for breach of the warranty set forth in Section 8(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within the Warranty Period and within ten days of the time when Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving notice to examine the goods or services and Buyer (if Seller requests) returns such goods or services to Seller’s facility at Seller’s cost for such examination; and (iii) Seller reasonably verifies Buyer’s claim that the goods or services are defective.
13. Force Majeure. Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond Seller’s reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. If, due to any such circumstances, shortages should occur in Seller’s supply of any specific goods, Seller may allocate deliveries to its customers as it determines in its sole discretion.

14. Amendment and Modification. These Terms may only be amended or modified in a writing that specifically states that it amends these Terms and is signed by each party.

15. Waiver. No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement operates or may be construed as a waiver thereof.

16. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without Seller’s prior written consent. Any purported assignment or delegation in violation hereof is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement.

17. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has authority to contract for or bind the other party in any manner whatsoever.

18. No Third-Party Beneficiaries. The Agreement is for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

19. Governing Law. All matters arising out of or relating to the Agreement are governed by and construed in accordance with the laws of New York without giving effect to any choice or conflict of law provision or rule (whether of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of New York. The United Nations Convention on the International Sale of Goods does not apply to any matter arising out of or relating to the Agreement.

20. Submission to Jurisdiction. Any suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States or the courts of New York, in each case located in New York City, County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Any suit by Buyer, regardless of the relief sought or the legal or equitable theory, upon which the claim or claims are based, must be brought within two (2) years from the date of shipment. The Buyer waives the right to a trial by jury in connection with any and all claims brought hereunder.

21. Notices. Each notice, request, consent, claim, demand, waiver and other communication hereunder (each, a “Notice”) must be in writing and addressed
to the parties at the addresses set forth on the face of the order, quotation or confirmation of sale accompanying these Terms or to such other address that the receiving party may designate in writing. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

22. **Severability.** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

23. **Survival.** Provisions of these Terms that by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement including, but not limited to, the following: Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.

24. **Changes.** Seller shall have the right to accept or reject any changes to the order proposed by Buyer. Seller may adjust prices and schedules in order to accommodate Buyer’s request. Should Buyer not accept Seller’s new price or schedule, the original order shall stand unchanged.

25. **Tools.** Payment of the Seller’s charges for tools, dies, jigs fixtures, or equipment required for the production of the goods does not convey ownership of such items to the Buyer nor the right to remove them from the Seller’s plant, as such charges do not represent prices that would be charged for the sale of such items and oftentimes represent the cost of modifications and/or additions to Seller’s standard tools or equipment.