Spot® Terms and Conditions of Sale

1. INTRODUCTION.

Congratulations on your decision to purchase Spot®, our premiere industrial quadruped robot, or Spot® payloads, software or accessories! We are excited to provide you with this groundbreaking technology, and do so subject to the following “Purchase Documents”:

1.1. These Spot Terms and Conditions of Sale (together with respective Sales Orders, the “Terms”).

1.2. Spot “Sales Orders” identifying the Spot robots and accessories (“Equipment”) you are purchasing, its price, delivery information and billing/shipping instructions.

1.3. Your optional “Service Plan” for extended warranty coverage, as applicable.

In these Terms, “we,” “us,” “our” and “Boston Dynamics” refer to Boston Dynamics, Inc, while “you,” “your” or “Customer” refer to you, the person or entity specified on the Sales Order.

SPOT IS AN AMAZING ROBOT, BUT ITS SAFE USE DEPENDS UPON YOUR COMPLIANCE WITH ITS DOCUMENTATION. IT IS NOT INTENDED FOR IN-HOME USE OR USE NEAR CHILDREN OR OTHERS WHO MAY NOT APPRECIATE THE HAZARDS ASSOCIATED WITH ITS OPERATION, EXCEPT AS THE DOCUMENTATION PROVIDES.

FOR EU CUSTOMERS PURCHASING THE SPOT ARM: YOUR PURCHASED SPOT ARM COMPRISSES PARTLY COMPLETED MACHINERY, AS DEFINED IN THE MACHINERY DIRECTIVE (2006/42/EC), AND YOU AGREE TO COMPLETE A CE DECLARATION OF CONFORMITY THAT SAFELY ADDRESSES YOUR INTENDED MANIPULATION APPLICATIONS BEFORE PUTTING THE SPOT ARM INTO SERVICE.

2. THE BASIS OF OUR AGREEMENT.

2.1. Sale Documents. We are expressly conditioning our sale of Equipment to you on your acceptance of the Terms. By placing an order or paying for Equipment, you shall be deemed to have accepted these Terms. Any conflicting terms on any purchase order or other document are hereby rejected.

2.2. Academic Purchases. If you received an academic discount, you constitute an “Academic Purchaser,” and may only use your Equipment for academic purposes. You may only resell such Equipment to a non-academic institution (a) following your payment to us of the academic discount you received compared with the commercial price in effect at the time of your purchase, or (b) two years or more after the Equipment delivery.

3. PRICES AND TAXES RELATED TO YOUR PURCHASE.

3.1. Prices. We will invoice you for the Equipment in U.S. Dollars upon its shipment to you. You must pay each invoice in full within 30 days of the invoice date. We may adjust any price or delivery detail upon your changes to the specifications, quantities, shipping arrangements or upon a force majeure event. We may require repayment of discounts or apply cancellation charges to reduced or cancelled orders.

3.2. Taxes. List prices do not include federal, state, municipal excise, value-added, sales, use, or other government taxes, tariffs, customs, duties or fees (“Taxes”). You are responsible for paying these Taxes. We may increase your final price to include any Tax that we pay or are required to pay or collect. If you seek to exempt the sale of any Equipment from any Taxes you must obtain all required certifications.

4. EQUIPMENT DELIVERY.

4.1. Shipment. We will ship the Equipment to your shipping address indicated on the Sales Order.

4.2. Title and Risk of Loss. Equipment will be shipped DAP (Incoterms 2010) or as otherwise agreed on the Sales Order. If we hold or store any Equipment at your request or due to your inability to accept delivery, after the scheduled shipment date, you agree to reimburse our reasonable storage expenses and assume all risk of loss of the Equipment.

4.3. Cancellation, Rescheduling, Returns and Modifications. If you wish to change an executed Sales Order we must approve, in writing, such change prior to shipment. Within seven days of your receipt of any Equipment, you may return it in as-new condition, free from defects in material and workmanship (“Defects”) that materially affect its operation or performance (the “Warranty”) as set forth in its “User Guide” for twelve (12) months after its initial delivery to you and any period thereafter covered under any applicable Boston Dynamics extended warranty you purchase (the “Warranty Period”).

4.4. Separate Transactions. Each Sales Order shall constitute a separate contract. If you default on your obligations, we may decline to make further shipments. If we continue to make shipments, it will not constitute a waiver of your breach or reduce our available remedies.

5. WARRANTIES.

5.1. Our Warranty to You.

5.1.1. We warrant to you that the Equipment will be free from defects in material and workmanship (“Defects”) that materially affect its operation or performance (the “Warranty”) as set forth in its “User Guide” for twelve (12) months after its initial delivery to you and any period thereafter covered under any applicable Boston Dynamics extended warranty you purchase (the “Warranty Period”).

5.1.2. If you submit a Service Request during the Warranty Period, we will replace or repair the Equipment, in our sole discretion, in accordance with Section 6. Equipment replacement or repair does not extend the Warranty Period.

5.2. Prohibited Uses. You will void your Warranty upon any of the following “Prohibited Uses”:

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5.21. intentional damage to or abuse or misuse of the Equipment or operation of the Equipment outside of the intended uses or specifications set forth in the applicable Purchase Documents or the User Guide;

5.22. (a) intentional use of the Equipment to harm or intimidate any person or animal, as a weapon, or to enable any weapon; (b) use or attempted use of the Equipment for any illegal or ultra-hazardous purpose; (c) unstructured use of the Equipment in the home or “consumer” environments; or (d) use of the Equipment in any chemical, biohazard, ionizing irradiated or other environment that would contaminate it in a way that is not fully remediable through washing with water and mild soap, or prevent us from servicing the Equipment or create a health risk in doing so (a “Contamination”);

5.23. alteration, opening, breaking or disassembly of the Equipment;

5.24. modification, service, or repair of the Equipment without our pre-authorization or not in accordance with our instructions, except as permitted by law; or

5.25. if you are an Academic Purchaser, Equipment use for non-academic pursuits.

5.3. Disclaimer of Warranties. Except as set forth herein, we disclaim all representations and warranties as to the condition, merchantability, non-infringement, design or operation of the Equipment, its fitness for any particular purpose, the quality or capacity of the materials in the Equipment or workmanship in the Equipment.

6. WARRANTY SERVICE AND SERVICE PLANS.

6.1. Claim Submission. For Warranty service, please submit a “Service Request” to us as per the User Guide or Service Plan. We will, in our sole discretion, repair or replace the Equipment under the Warranty or applicable Service Plan.

6.2. Claims Not Covered. We are not obligated to repair or replace any Equipment under any Service Request not covered under the Warranty or Service Plan. For any such Service Request, we may charge additional fees. We are not obligated to repair or replace any Contaminated Equipment.

7. GOOD STANDING AND LAWFUL EXECUTION.

7.1. Each party represents and warrants to the other party that: (a) it is duly organized and validly existing in good standing under the laws of the jurisdiction of its registration, as applicable, and has full power and authority to enter into and perform its obligations under the Purchase Documents; (b) its execution, delivery and performance of the Purchase Documents have been duly authorized by all necessary corporate action, and are not inconsistent with its organizational documents; (c) its execution, delivery and performance of the Purchase Documents do not violate any law, do not and will not contravene any provision, or constitute a default under, any indenture, mortgage, contract, or other instrument to which it is bound, and, upon execution and delivery thereof, will constitute a legal, valid and binding agreement, enforceable in accordance with its terms; and (d) no action, including without limitation any permit or consent, in respect of or by any state, federal or other governmental authority or agency is required for it to execute, deliver, and perform under the Purchase Documents.

8. YOUR COVENANTS TO US.

8.1. No, Reverse Engineering. You will not, directly or indirectly, attempt to decompile, disassemble, teardown, reverse engineer, or copy any Equipment or any Software.

8.2. Acceptable Use. You will not use the Equipment for any Prohibited Use, and if you do, it is at your own risk.

8.3. Contamination. You will provide written notice to us of any potential Contamination of any Equipment prior to our receipt or performance of any service on such Equipment.

9. INDEMNITY AGAINST CLAIMS.

9.1. Our Indemnity. Except to the extent arising from your negligence, unlawful or willful misconduct or your use of Equipment beyond the requirements or specifications of any Purchase Document or the applicable User Guide, we will defend, indemnify and hold harmless you and your directors, officers, employees and agents from and against all Third Party claims, losses, liabilities (including, but not limited to, negligence, tort, breaches of statutory duties, and strict liability), damages, judgments, suits, and all legal proceedings, and any and all costs and expenses in connection therewith (including reasonable attorneys’ fees) awarded to a Third Party by a court or in a settlement in connection with the above (collectively, “Claims”) arising out of any alleged (a) harm to any person or property caused by your Equipment, but solely to the extent such injury or damage is caused exclusively by Defects in such Equipment, subject to the terms of Section 5; or (b) infringement or misappropriation by the Equipment, as delivered, of the intellectual property rights of any Third Party, except to the extent that such infringement or misappropriation arises from, for such Equipment, your modification, combination with other technology, use to practice any process or method or use after you have received notice of such infringement or misappropriation and we have offered a replacement, modification or credit therefor. As used herein, “Third Party” means persons or entities that aren’t parties to the Purchase Documents or their affiliates. You agree (x) to promptly notify us of any Claim, (y) that we will have sole control of the defense and settlement of any Claim so long as it does not impose any admissions or liability on you, and (z) to cooperate in the defense at our expense. If any Equipment is the subject of a Claim under Section 9.1(b) or is likely to be the subject of such a Claim in our reasonable opinion, we have the option, but not the obligation, to either procure for you the right to continue using such Equipment, replace or modify such Equipment with non-infringing Equipment or require the return or disposal of such Equipment and refund you with a credit for such Equipment as depreciated. The above indemnity sets forth your sole and exclusive remedies for Claims.

9.2. Your Indemnity. Except to the extent arising from our negligence, unlawful or willful misconduct, you agree to defend, indemnify and hold harmless us and our directors, officers, employees and agents against all Third Party Claims, related to any alleged (a)
injury or death to any person or property damage caused by your use of Equipment, including any Prohibited Use, but solely to the extent not covered under Section 9.1; (b) use of Equipment in breach of any applicable law; or (c) actual or alleged infringement or misappropriation of the intellectual property rights of any Third Party arising from your modification of the Equipment or its combination with other technology. We agree (x) to notify you of any Claim; (y) that you will have sole control of the defense and settlement of the Claim so long as it does not impose any admissions or liability on us; and (z) to cooperate in the defense at your expense.

10. LIMITATION OF LIABILITY.

10.1. SUBJECT TO SECTION 10.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, MULTIPLE, PUNITIVE OR OTHER INDIRECT DAMAGES ARISING OUT OF THE PURCHASE DOCUMENTS OR RELATED EQUIPMENT.

10.2. Our total liability to you for any lawsuit, claim, warranty or indemnity shall not exceed the greater of (a) the aggregate amount actually paid to us by you in the twelve months leading up to the event which gave rise to the claim, or (b) the total amount paid by you for the specific Equipment which gave rise to the claim.

10.3. The limitations of liability set forth in sections 10.1 and 10.2 shall not apply to any breach of sections 8.1, 8.2, or 11, but shall otherwise apply to the maximum extent permitted by law. The limitations set forth in this section shall apply even in the event of the failure of an exclusive remedy.

11. SOFTWARE LICENSE. You agree that your access to and use of any software, documentation or website provided or made available by us (the “Software,” including (a) the Equipment application program interfaces; (b) any controller applications; (c) any robot operating software; and (d) any application software), is subject to the following terms, except where such Software is covered under the terms of our end user license agreement:

11.1. License Grant. Subject to your compliance with the Purchase Documents, we grant you a worldwide, limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Software solely on or in connection with Equipment for the term set forth in the applicable Order Form (the “License”). The License will automatically and immediately terminate, and we may disable some or all Equipment functionality, upon (a) intentional use of the Equipment to harm or intimidate any person or animal, as a weapon or to enable any weapon, (b) use or attempted use of the Equipment for any illegal or ultra-hazardous purpose, (c) use of the Equipment in the home or other “consumer” environments, or (d) use of the Equipment by an Academic Purchaser for non-academic pursuits.

11.2. Proprietary Rights. The Software is proprietary to us and our licensors, and protected by copyright and other intellectual property laws. You may use the Software only as specified in the Purchase Documents. You may not remove any copyright, proprietary rights or confidentiality notices included with any Software. You may not: (a) rent, lease, license, sell, sub-license, assign or transfer any Software; or (b) take any action that would place any Software in the public domain. We reserve all rights not expressly granted herein. The Equipment and Software may contain third party or “open source” software. We will provide attributions and terms relating to such components, along with the applicable source code, as required.

11.3. Other. If you create an account with us in connection with the use of any Equipment or Software, you are responsible for maintaining the confidentiality of such account and password, for restricting access to the account, and for all activities that occur under such account.

12. LOG DATA. You acknowledge that the Equipment may capture performance data that we may use to address any Service Request or to improve the performance of any Equipment. See our Privacy Policy at www.bostondynamics.com/privacy-policy and Spot Privacy Notice at www.bostondynamics.com/spot/privacy-notice.

13. EXPORT. You agree to comply with all applicable import and export laws, including those of the U.S.A., its Bureau of Industry and Security regulations, Department of State regulations and Office of Foreign Assets Control regulations. You agree to not export any Equipment or Software in violation of these laws, or enable illegal uses, including nuclear, chemical or biological weapons proliferation, or development of missile technology. See: www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list and www.treasury.gov/resource-center/sanctions/Pages/default.aspx.

14. NOTICE. Any consent, approval, demand or other notice required to be given hereunder shall be given to the applicable party in writing to the address or email address, set forth in the applicable Sales Order.

15. MISCELLANEOUS.

15.1. Governing Law. Any dispute between the parties will be governed by, construed and enforced in accordance with the laws of the State of Delaware, excluding its rules on conflicts of laws. The parties agree to submit to the exclusive jurisdiction of the courts in Delaware and to waive the right to jury trial for matters stemming from any Purchase Document. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to these terms.

15.2. Waiver. Either party’s failure at any time to require strict performance by the other party of any of the provisions hereof shall not waive or diminish such party’s right thereafter to demand strict compliance therewith or with any other provision. Any waiver must be in writing signed by the granting party, and shall be limited to the enumerated defaults.

15.3. Provisions Severable. Headings. Should any of these terms be held by a court of competent jurisdiction to be contrary to law, that term or condition will be enforced to the maximum extent permissible, and the remaining terms and conditions will remain in full force and effect. Captions are for convenience only and shall not define or limit any of the terms.
15.4. **Force Majeure.** We shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay, of any or our obligations under the Purchase Documents, when such delay is due to any cause or event beyond our control, including without limitation any act of nature, pandemic, epidemic, unavailability of any supplies or sources of energy, riot, war, terrorist act, sabotage, fire, strike, labor difficulty, delay in transportation, delay in delivery or default by our vendors, or any act or omission of yours. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and you shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of ninety (90) days, either party shall have the right by notice to the other party to cancel the Sales Order for the delayed Equipment without further liability of any kind.

15.5. **Entire Agreement.** The Purchase Documents constitute the entire agreement between the parties with respect to an Equipment sale and supersede all previous communications, whether oral or written. They may not be supplemented or construed by any evidence of custom or course of dealing.

15.6. **Amendment.** The Purchase Documents may only be amended upon mutual agreement of the parties in writing, and shall bind and inure to the benefit of the parties, their permitted successors and assigns.

15.7. **Counterparts.** The Purchase Documents may be executed in counterparts, each of which shall be deemed an original, and all together shall constitute a single instrument. Signatures provided by electronic transmission or facsimile, or digital signatures, shall have the same force and effect as original signatures and shall be binding upon the parties.

15.8. **No Agency.** You and we are independent parties, and no agency, partnership, joint venture, or employee-employer relationship is created by the Purchase Documents.

15.9. **Ultra Hazardous Use.** Our products are not designed, intended or approved for use in ultra-hazardous activities where use or malfunction can reasonably be expected to result in severe injury, death, extensive property damage or environmental harm. All applicable certifications of compliance to any relevant safety or technical standards can be found in our Equipment’s documentation. You represent and warrant that you will use appropriate safeguards to minimize consequences associated with your use. If you use or resell Equipment for ultra-hazardous uses, you do so at your own risk and agree to defend, indemnify and hold us harmless from all resultant claims, suits, damages or expenses.