

**General Terms and Conditions of Purchase**

**DEUTA America Corp.**

**(Version applies as of September 24, 2018)**

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**I. General Terms and Conditions of Purchase**

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### **1. Applicability**

- 1.1 These Terms and Conditions, together with the terms each agreed upon order document, any agreed upon attachments hereto, and any other agreed upon documents (collectively, this "Agreement") constitute the complete and entire agreement between DEUTA America Corporation, with an office at 510 Research Road, North Chesterfield, VA 23236, or any of its affiliates identified on the face hereof ("DAC") and the seller to whom it is addressed ("Supplier") in accordance with its terms.
- 1.2 This Agreement may be amended, modified, or supplemented only in a writing signed by an authorized representative of DAC.
- 1.3 This Agreement supersedes any prior contracts, proposals, understandings, offers or course of conduct existing with respect to the subject matter of this Agreement. This Agreement shall apply not only to the present order but also to all future transactions with the Supplier.

### **2. Conclusion of an Agreement**

- 2.1 Supplier offers to sell to DAC and DAC is willing to purchase from Supplier the products, items, materials, raw materials, chemicals, goods and/or services identified in this Agreement and DAC's order (collectively "Products").
- 2.2 Supplier accepts this Agreement by any reasonable indication of acceptance, including without limitation if Supplier: 1) fails to object to DAC in writing within five (5) days of receipt of this Agreement, or (ii) begins work on or ships Products to DAC. Acceptance is limited to the terms of this Agreement and DAC rejects any and all additions, exceptions, deletions, modifications, or changes to these terms, whether contained in any printed form of Supplier or elsewhere, unless expressly referencing this Agreement and accepted to in a writing signed by an authorized representative of DAC.

### **3. Prices and Payment Terms**

- 3.1 Pricing is firm and is not subject to change unless otherwise agreed to in writing by DAC. Any general price reduction made by Supplier with respect to any Product ordered, subsequent to the placement of this Agreement by DAC, and prior to DAC's receipt of the Product, will apply to this Agreement. Supplier represents that the prices charged to DAC are the best or lowest prices charged by Supplier to buyers purchasing comparable quantities and similar delivery conditions.
- 3.2 Unless otherwise agreed in writing, prices for Products include all applicable federal, state, provincial, and local taxes, import duties, and packaging and/or shipping fees.
- 3.3 DAC may notify Supplier of changes to the drawings, specifications, quantity, delivery or other requirements (such notice, a "Change Notice"), however the time for performance and price will not change unless Supplier notifies DAC within five (5) days of DAC's providing a Change Notice that such changes will require a price change and Supplier provides supporting documentation reasonably setting forth the basis for any such price change, in which case the parties will negotiate an equitable adjustment regarding the time for performance and/or price. The terms of this Agreement, including without limitation, the nature, type or quality of any services, raw materials or goods used by Supplier or its suppliers, may not be changed without the prior written approval of DAC.
- 3.4 Unless otherwise agreed to in writing by DAC, payment terms are net sixty (60) days. All invoices and/or advance shipping notices must reference the purchase order number, amendment or release number, and as applicable DAC's part / SKU number, Supplier's part number, quantity in units or Units of Measurement shipped and number of cartons or containers, Supplier's name and contact information, and bill of lading number, for payment to be made.
- 3.5 DAC retains the right of setoff. DAC may withhold payment of any amounts due and payable by reason of any set-off, any claim or dispute with Supplier, whether relating to Supplier's breach, bankruptcy or otherwise.
- 3.6 Any estimates, forecasts or projections of future quantity requirements for Products by DAC are provided for informational purposes only and are subject to change and do not constitute an offer or obligation by or of the DAC to purchase Products. If quantities and delivery schedules are not specified in this Agreement, they will be as reasonably determined by DAC and stated in releases or schedules issued to Supplier periodically. If Supplier is under a vendor managed inventory system, Supplier will at all times maintain DAC's supply at the agreed levels.

### **4. Delivery**

- 4.1 Supplier will ship Products using best commercial practices complying with DAC's and all legal and regulatory requirements as to packaging, labeling, shipping notification and freight, warnings, patterns, samples, drawing functionality, installation, maintenance and other relevant instructions and operating environment requirements. Unless otherwise stated in this Agreement, delivery terms will be FCA, Free Carriage, DAC's dock (Incoterms 2010).
- 4.2 All the costs and expenses relating to handling, packaging, storage or transportation (including duties, taxes, fees, and the like) of the Products unless otherwise stated in this Agreement are included in the price. Supplier will bear all risk of loss until Products are delivered and accepted by DAC by DAC's location.
- 4.3 Time is of the essence as deliveries will be made in the quantities and on the dates specified by DAC in this Agreement or subsequent releases or instructions to meet DAC's production requirements. Supplier will be responsible for any premium freight charges required to meet on-time delivery.
- 4.4 DAC will not be required to accept partial deliveries or Products that are delivered in advance of the delivery date or in incorrect quantities or failing to conform strictly to the specifications set forth on the face hereof.
- 4.5 Products received by DAC are subject to inspection and acceptance, notwithstanding any payment, and Products rejected as non-conforming may be returned to Supplier at Supplier's sole cost and expense and shall not be replaced except upon order of DAC.
- 4.6 Payment shall not be construed as a waiver of DAC's rights and if a Product is rejected after payment, DAC shall be entitled to return the same for full refund or, in the case of services DAC may reject the work and receive restitution or require Supplier to perform the work as necessary.
- 4.7 As to Products that are raw material, Supplier will provide a signed quantitative test report showing conformance to the specifications for each shipment – Certificate of Analysis, COA. The certification will identify, when applicable, the material specification; manufacturer (and vendor if different); lot, batch, quantity of material covered; date of shipment and carrier; DAC's purchase order and material code numbers; and statistical test results obtained. If the certification is accompanying the shipment, the shipping unit containing the document must be clearly marked as such so the certification is readily available to the receiving personnel.
- 4.8 As further provided herein, Supplier will provide DAC with a certificate of origin and/or a manufacturer's affidavit, and applicable customs documentation for any Products manufactured in whole or in part outside of the USA as well as any requested NAFTA documentation, as applicable.

### **5. Term and Termination**

- 5.1 Either party may upon written notice to the other party terminate all or any part of this Agreement without further liability on the part of the party who provides such notice, if the other party: (a) is in Default of this Agreement, however, if the Default can be cured then only if such Default is not cured within fifteen (15) days of receipt of written notice of the Default from the non-defaulting party; or (b) has committed a material breach of this Agreement, which cannot be cured. A party shall be in "Default" under this Agreement if it fails to perform any obligation under the Agreement, breaches any representation or warranty under this Agreement, or fails to provide adequate assurance of performance under the Agreement within a reasonable time after written and justifiable demand by the other party. DAC may terminate this Agreement at any time for its convenience, by notice to Supplier, and from and after such notice Supplier shall not make new commitments for any raw materials, inventory or services related to the Products under this Agreement without the prior written approval of DAC. If this Agreement is terminated by DAC for convenience, DAC will pay Supplier for raw materials unique to the Products, work-in-process and finished goods in inventory for the Products authorized under a release or schedule from DAC that are useable and in a merchantable condition ("Inventory") remaining in Supplier's possession on the termination date, after receipt of payment for such Inventory from DAC's customer and delivery of such Inventory to DAC. The purchase price for the Inventory, which shall be Supplier's sole and exclusive recovery from DAC on account of termination for convenience, will be (a) the contract price for all conforming Products that have been completed in accordance with this Agreement as of the termination date and not previously paid for, plus (b) the actual documented costs of work-in-process and raw materials incurred by Supplier in furnishing the Products to the extent such costs are reasonable in amount and which can be apportioned under generally accepted accounting principles to the terminated portion of this Agreement, less (c) the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Supplier with DAC's written consent. If DAC's customer is unreasonably delayed in making payment for Inventory, DAC shall negotiate a good faith settlement with Supplier. In no event will DAC be required to pay for Inventory that Supplier fabricates or procures in amounts that exceed amounts authorized in DAC's delivery release or schedules, nor will DAC be required to pay for any goods or materials that are in Supplier's standard stock or that are readily marketable. Payments made under a termination for convenience will not exceed the aggregate price for finished goods that would be produced by Supplier under a delivery release or schedule outstanding on the date of termination. Within sixty (60) days after the effective date of a termination for convenience, Supplier will submit a detailed termination claim to DAC, with sufficient supporting data to permit an audit by DAC, and will thereafter promptly furnish any supplemental and supporting information DAC reasonably requests.
- 5.2 Upon any termination of this Agreement, Supplier shall: (a) take all actions reasonably necessary to protect property and Inventory in Supplier's possession in which DAC has an interest until disposal instruction from DAC has been received; and (b) return DAC's Confidential Information to DAC.

### **6. Warranty**

- 6.1 Supplier will promote continuous quality improvement and like industry standard processes as may apply to goods or services similar in nature to the Products, in the manufacture, production and distribution of Products, and as otherwise reasonably identified to Supplier by DAC in its technical data sheets, quality manuals, and instructions, and will permit DAC to verify and inspect on site at the applicable manufacturing, production, and distribution facilities of Supplier such processes from time to time and upon DAC's request.
- 6.2 Seller warrants to DAC that for a period of 24 months from the delivery date of the Products to DAC that all Products will:
  - (a) be free from any defects in workmanship, material and design;
  - (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by DAC;
  - (c) be fit for their intended purpose and operate as intended;
  - (d) be merchantable;
  - (e) be free and clear of all liens, security interests and other encumbrances; and
  - (f) not infringe or misappropriate any third party's patent or other intellectual property rights.
- 6.3 The warranties set forth in this Section 6 are cumulative and in addition to any other warranty provided by law or equity.
- 6.4 Any applicable statute of limitations runs from the date of the DAC's discovery of the noncompliance of the Products with the foregoing warranties. If DAC gives Seller notice of the noncompliance pursuant to this Section, at DAC's option, Seller shall, at its own costs and expense, immediately: (a) replace, or repair the defective or nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Products to Seller and the delivery of repaired or replacement Products to DAC, and if applicable, re-perform the applicable services or (b) credit the DAC for the cost of Products, including all related costs and expenses.

### **7. Indemnification**

- 7.1 Supplier will indemnify, defend and hold harmless DAC, its and its affiliates, partners, directors, officers, employees and agents (the "DAC Indemnitees"), from and against any and all actions, claims, demands, judgments, losses, costs, liabilities, damages, any type of liability for environmental contamination and clean-up cost, additional insurance costs and premiums, other expenses and/or fees (including reasonable attorneys' fees) of whatever kind ("Claims") that are incurred by or asserted against DAC related to or arising from any actual or alleged: (a) infringement of any patent, trademark, copyright, trade secret, industrial design right, or other proprietary right, by reason of the manufacture, use or sale of the Products, except to the extent the infringement results directly from a design furnished by DAC; (b) defect in any Products; (c) non-conformance of the Products with specifications hereof; (c) noncompliance by Supplier of its representations, warranties, or obligations under this Agreement; or (d) negligence, fault or willful misconduct of Supplier or its affiliates, its and its affiliates contractors or agents in connection with the design or manufacture of Products or wrong or in-complete installation, shipping, use, maintenance, environmental health or safety instructions, including any reasonably required post-sale warnings.
- 7.2 Supplier will not make any admissions on behalf of DAC or enter into a settlement without DAC's prior written consent. The indemnification obligations of Supplier under this Section are not exclusive and are in addition to, and shall not impair or exclude DAC's rights or remedies otherwise available to DAC, under applicable law, and all such rights and remedies of DAC are cumulative.

### **8. Limitation of Liability**

- 8.1 IN NO EVENT SHALL DAC BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE TO SUPPLIER OR COULD HAVE BEEN REASONABLY FORESEEN BY DAC, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (AGREEMENT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8.2 IN NO EVENT SHALL DAC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT PAID TO SELLER FOR THE PRODUCT WHICH GIVES RISES TO THE CLAIM.

## 9. Insurance Requirements

9.1 Throughout the term of this Agreement and the warranty period of any Products, Supplier shall have and maintain at its expense: (a) general and public liability insurance with coverage limits reasonably acceptable to DAC and naming DAC as an additional insured; (b) all risk property perils insurance covering the full replacement value of bailed property (if applicable) while in Supplier's care, custody, or control and naming DAC as loss payee; and (c) worker's compensation insurance as required by applicable law. Insurance coverage amounts shall in no case be less than as standard in the industry, and shall be with carriers with at least an A.M. Best rating of "A" excellent, and a financial size rating of at least Class V. Supplier will furnish to DAC certificates of insurance setting forth the amount of coverage, policy number, date(s) of expiration, and DAC's status as an additional insured or loss payee. Supplier shall provide at least sixty (60) days' prior written notice to DAC of cancellation or material alteration of insurance.

## 10. Property Rights

10.1 Except as specifically stated in this Agreement, neither party transfers to the other party any patent, trade secret, trademark, copyright or other intellectual property right owned by such party ("Intellectual Property Right"). Supplier grants to DAC a fully paid up, worldwide, non-exclusive right and license of Supplier's Intellectual Property Rights to: (a) use, sell, and modify Products and incorporate Products into other products for use or sale; and (b) in the case where Supplier is unable to perform or breaches this Agreement, to make Products or have Products made by an alternate source. All works of original authorship, ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, and other intellectual property created by Supplier for which the development was directly or indirectly (by amortization) paid for by DAC (collectively, "Proprietary Materials"), and all Intellectual Property Rights in such Proprietary Materials, are exclusively owned by DAC. Supplier agrees to assign and hereby assigns to DAC all its rights, title and interest in Proprietary Materials, free and clear of all liens, charges or other encumbrances. Supplier agrees to cooperate with DAC or its designee(s), both during and after the term of this Agreement, in the procurement and maintenance of DAC's rights in the Proprietary Materials and to execute when requested any other documents deemed necessary to carry out the purposes of this section. Supplier will ensure that all employees, subcontractors, agents and representatives of Supplier will have written contracts on or before the effective date of this Agreement that grant Supplier all such employees', subcontractors', agents' or representatives' ownership and other rights in the Proprietary Materials.

10.2 DAC hereby grants to Supplier a non-exclusive, non-transferable, limited license, with no right to sublicense, to reproduce and use those trademarks, service marks, logos, commercial symbols and other indicia of trade origin of DAC (collectively "DAC Marks") solely for the manufacture and sale of Products to DAC. Supplier may not use DAC Marks in any other manner. Supplier's reproduction and use of the DAC Marks, and all goodwill established and/or symbolized thereby, will inure exclusively to the benefit of DAC and this Agreement does not confer any goodwill or other interests in the DAC Marks upon Supplier. Supplier will not challenge or contest the validity of the DAC Marks, any registration of the DAC Marks with the U.S. Patent and Trademark Office or with any foreign government or the ownership of the DAC Marks by DAC or its affiliates. Supplier shall not represent that it has any ownership interest in the DAC Marks or registrations therefore. Once Supplier no longer supplies Products to DAC, or earlier upon DAC's notice, Supplier will immediately discontinue all use of DAC Marks. The terms of this Section 10 will survive termination of this Agreement.

## 11. Confidentiality

11.1 If Supplier has access to DAC's confidential or proprietary information, including, without limitation inventions, developments, know how, specifications, business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data ("Confidential Information"), Supplier will use Confidential Information only for the purposes contemplated under this Agreement and shall not disclose it to third parties or otherwise use it for any other purpose.

11.2 Confidential Information will not include information which: (a) is or becomes publicly available without breach of this Agreement by Supplier; (b) was known to Supplier prior to its receipt from DAC as evidenced in dated documentation; or (c) is developed by Supplier independently of its access to Confidential Information as evidenced by dated documentation. Supplier is permitted to disclose DAC's Confidential Information only to those of its employees and authorized subcontractors on a need to know basis as is required for Supplier to perform its obligations under this Agreement, provided that such employees and authorized subcontractors have written confidentiality obligations to Supplier that apply to Confidential Information which obligations are no less stringent than the confidentiality obligations under this Section.

11.3 Upon termination of this Agreement, Supplier shall return Confidential Information and shall not use Confidential Information for its own, or any third party's benefit. Supplier's confidentiality obligations shall survive termination of this Agreement for so long as Confidential Information remains confidential. In order to assure that DAC is able to obtain the full benefit of the restrictions set forth in this Section, DAC shall be entitled to injunctive relief, including, but not limited to, emergency, preliminary, temporary and permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law. If the parties have already entered into a Confidentiality or Non-Disclosure Agreement ("NDA"), the terms and conditions of the NDA shall apply and control for confidentiality obligations between the parties in lieu of this section.

## 12. Governing Law

12.1 The business relationship between Seller and DAC shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia without giving effect to its conflict of laws provisions. Trade terms used in this Agreement shall be construed in accordance with the Incoterms 2010.

## 13. Place of Jurisdiction

13.1 All disputes between Supplier and DAC in any way relating to the Products or these Terms shall be decided by, and Supplier consents and submits to the sole and exclusive jurisdiction of, the State or Federal courts of competent jurisdiction in Chesterfield County, Commonwealth of Virginia, which is the venue of DAC's place of business.

## 14. Force Majeure

14.1 DAC shall not be liable or responsible to Supplier nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller 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 Supplier is unable to perform for any reason, DAC may purchase Products from other sources and reduce its purchases from Supplier accordingly without liability to Supplier.

## 15. Notices

15.1 All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail of a Word or PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid) or otherwise agreed in writing between the Parties. Except as otherwise provided in this 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.

## 16. Inspection and Audit

16.1 Supplier agrees to deliver to DAC samples of the Products upon request for testing, whether overseas or in the USA. DAC shall have the right to inspect and audit Supplier's books, records, operations and facilities related to this Agreement, including Supplier's quality system, to insure Supplier's compliance with the terms of this Agreement and DAC and DAC's customer standards. Supplier shall maintain all records necessary to support amounts charged to DAC under this Agreement. Supplier shall provide DAC with reasonable access to its facilities and otherwise cooperate and facilitate any such inspections and/or audits by DAC.

## 17. Independent Contractors

17.1 DAC and Supplier are independent contractors, and nothing in this Agreement makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party. Supplier assumes full responsibility and exclusive liability for the payment of all contributions, unemployment obligations, payroll taxes, federal, state, provincial, local and foreign, if applicable, as to all employees engaged in the performance of Supplier's work under this Agreement.

## 18. Amendment, Assignment, Waiver, Severability

18.1 All amendments and modifications to this Agreement shall only be effective in writing.

18.2 Neither party may assign this Agreement in whole or part without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that DAC may, in its sole discretion, and without Supplier's consent assign this Agreement, in whole or in part or with respect to any of its rights and obligations hereunder, to any affiliate or successor company or entity resulting from a sale of assets, shares or other ownership interest, merger, operation of law, reorganization or consolidation. Subject to the foregoing, all of the terms, conditions, covenants, and agreements contained herein shall inure to the benefit of, and be binding upon, any such affiliate or successor and any permitted assignees of the respective parties hereto. Consent by either party to such assignment in one instance shall not constitute consent by the party to any other assignment. If DAC consents to Supplier subcontracting of any of its duties under this Agreement, Supplier will ensure that the subcontractor agrees to be bound by all of the terms and conditions of the Agreement. DAC may terminate this Agreement upon written notice to Supplier, without any further liability to Supplier, if there is a change of control of Supplier, by operation of law or otherwise.

18.3 The failure of either party to enforce any right or remedy provided hereunder or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

18.4 Any provision found invalid or unenforceable will not affect the validity or enforceability of any other provision and the invalid provision may be judicially modified to the extent enforceable.

18.5 The parties agree that no "click-through," "shrink-wrap," "browse-wrap" or similar terms that have not been specifically negotiated by the parties, whether before, on, or after the date of this Agreement, will be effective to add to or modify the terms of this Agreement, regardless of any party's and/or its representative's "acceptance" of those terms by electronic means.

## 19. Survival

19.1 The provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination of expiration of this Agreement, including, but not limited to the following provisions: Insurance, Compliance, Confidentiality, Governing Law, Limited Trademark License, Jurisdiction and Venue, Limitation of Liability and Survival.

## 20. Compliance

20.1 Supplier will at its expense comply with all federal, state, provincial, local and foreign laws, orders, rules, regulations and ordinances, including import and export laws and regulations ("Laws"), that may be applicable to Supplier's performance of its obligations under this Agreement; and shall identify and procure required permits, certificates, licenses, insurance, approvals and inspections in performance of this Agreement. At DAC's request, Supplier will certify in writing its compliance with all applicable Laws. Supplier will indemnify and hold DAC harmless from and against any liability, claims, demands or expenses (including, without limitation, legal or other professional or expert fees) arising from or relating to Supplier's noncompliance of any laws and regulations. Supplier shall provide DAC with material safety data sheets for Products and all other information required to comply with applicable laws. For programs involving the supply of goods or services to the US Government, Supplier shall accept the flow-down of applicable Federal Acquisition Regulations and shall maintain the capability to meet all of the requirements of such regulations including, without limitation, requirements as to cost and pricing data, truth in negotiation and procurement integrity. Additional or more specific legal compliance and/or social responsibility provisions may be added to this Agreement in: (a) an attached compliance with laws addendum or (b) published on DAC's website.