

## **DELVA MEDICAL TECHNOLOGIES LLC TERMS AND CONDITIONS OF PURCHASE**

**1. PRICE WARRANTY:** By acceptance of this purchase order, Seller certifies that the prices stated herein are not in excess of prices quoted or charged any other purchaser in similar quantities for the same articles.

**2. MODIFICATION OF AGREEMENT (CHANGES):** The Buyer may at any time, by written order or notice make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs or specifications; (ii) Method of shipment or packing, and (iii) Place of delivery. If any such change causes an increase or decrease in the cost or time required for the performance, an equitable adjustment of price or delivery schedule, or both shall be made and the order shall be modified in writing accordingly, provided any claim by the Seller for adjustment be asserted promptly and in all events within sixty days from the date of such written order or notice. Nothing in this clause shall excuse the Seller from proceeding with this order as changed.

**3. DEFAULT AND DAMAGES:** If Seller fails to make deliveries, or perform the services or comply with any other requirement of this order, or becomes insolvent or subject to bankruptcy proceedings, the Buyer may terminate this order in whole or in part and Seller shall be liable for excess costs of re-procurement of the same or similar items in addition to all other damages provided by law. To the extent of any un-terminated portion, Seller shall continue performance thereof.

**4. TERMINATION FOR CONVENIENCE (NONGOVERNMENT ITEMS):** The Buyer shall have the right to terminate this contract for convenience in whole, or, from time to time, in part, in such event, and provided the items ordered are not standard commercial items. The Buyer's sole and maximum liability shall be limited to payment (1) for completed and delivered items at contract price and (2) of costs directly attributable to and incurred by Seller for the performance of the work terminated, less prior payments, if any, plus a profit thereon not to exceed 6 percent. The Buyer shall have the right to delivery of items partially fabricated and to all unused material and inventory acquired and included in Seller's claim, or to credit for the agreed value thereof. If the items ordered are standard commercial items, the Buyer shall have the right to terminate this contract for convenience, in whole, or from time to time, in part without any obligation or liability whatsoever, except for payment of items delivered prior to such termination.

**5. NO LIABILITY FOR EXCESSIVE MATERIAL LABOR OR PRODUCTION COSTS.** In order to minimize liability in case Changes are directed or Termination for Convenience occurs, as provided for in 1 and 3 above with respect to non-standard commercial items. Seller is cautioned that Buyer will not be responsible for material, labor or production costs or charges that are unrealistic, excessive, or inconsistent with the minimum needs to meet the delivery requirements of this order.

**6. GUARANTY AND WARRANTY.** The Seller warrants and guarantees for a period of one year following delivery that the articles to be furnished under this order shall be free from defects in material and workmanship and shall conform to the requirements of this order. In case of breach, Buyer shall have the right to request that the articles be corrected and Seller agrees promptly to comply at its own cost and expense including transportation, if any, and for failures so to do the Buyer may effect correction itself but at the cost and expense of the Seller and/or may terminate this order in accordance with 2 above without liability. In lieu of the foregoing, the Buyer may in its discretion elect to accept and retain the defective articles at a reduction in price corresponding to the decrease value.

**7. SHIPMENT-METHOD, EXCESSIVE, OR IN ADVANCE.**

Shipments shall be in accordance with instructions given herewith, or in the absence of such instructions, in accordance with Seller's practice. All shipments shall be securely packed. No additional charge is allowed for cartage, boxing or packing unless agreed upon elsewhere in this order. Material shipped in excess of quantity ordered may be returned at Seller's expense. Deliveries in advance of schedule without written consent, if retained, will be subject to payment conforming to delivery schedule.

**8. DESIGNS AND DRAWINGS.** The Buyer retains all rights in designs and drawings furnished to Seller in connection with this order which shall be returned promptly to the Buyer after the need therefore has ended. The use of such designs and drawings shall be limited to performance of this order, and except as authorized by the Buyer in writing shall not be incorporated in articles or goods for others or be used, disclosed or duplicated for any other purpose.

**9. ASSIGNMENT.** No right or obligation under this order (including right to receive monies due or become due hereunder) shall be assigned by the Seller without prior written consent of the Buyer. Any assignment without consent shall be void.

**10. VARIATION IN TERMS.** The Buyer shall not except by its written concurrence be bound by any communication or by any typewritten or printed matter on Seller's acknowledgement form or invoice which imposes conditions at variance with the terms of this order.

**11. COMPLIANCE WITH LAWS.** The Seller agrees that all work hereunder shall comply with all applicable Federal, State, and Local laws.

**12. TAXES.** The prices stated herein include all Federal, State and Local taxes and duties in effect and applicable to this order.

**13. PATENTS.** Except where the articles called for by this order require direct and necessary compliance with written specifications, furnished by Buyer, Seller warrants that such articles and their sale, lease or use will not infringe on any United States Patent. Should the Buyer or its customers be charged with any alleged infringement, or should suit be brought alleging infringement. Seller (upon notification and being furnished with pertinent papers) shall defend at its own

expense, reimburse Buyer for expenses relating thereto and pay all judgments resulting therefrom.

**14. SPECIAL TOOLING, EQUIPMENT AND MATERIAL.** True to all toolings, dies, molds, patterns, jigs, fixtures, equipment, material and similar items (hereafter collectively referred to as Buyer's Property) furnished to Seller or to be specifically paid for by Buyer shall at all times remain in Buyer. Seller agrees that "Buyer's Property" will be kept in proper repair, that "Buyer's Property" shall be used only for filling Buyer's orders; that "Buyer's Property" will be returned on demand at seller's expense in the same condition as when received, reasonable wear and tear excepted, and with respect to the tooling paid for by the Buyer, the return of such tooling shall be accompanied by such operation sheets or other appropriate data as are necessary to show manufacturing operations or processes for which such tooling was used or designed. The Buyer shall have the right to inspect "Buyer's Property" during working hours. In case of breach of any of the foregoing provisions, Buyer may terminate this order as provided for in 2 and in any event shall have the immediate right to take possession of "Buyer's Property" and no common law or statutory lien in favor of the Seller shall attach even though payment therefor has not been made or independent disputes exist between Seller and Buyer.

**15. PAYMENTS.** Payments are made subject to final inspection and acceptance. Discounts will be counted from the date of receipt of Seller's shipment or invoice, whichever is later.

**16. DELIVERIES.** Buyer's production schedules are based upon compliance with the specified delivery dates. Time is therefore of the essence of this order. If deliveries are not made on time, Buyer reserves the right (a) to cancel, (b) to purchase elsewhere, or (c) to accept the late delivery, holding Supplier accountable for loss caused by the cancellation, the purchase elsewhere, or the late delivery, as the case may be. Acceptance of late delivery shall not excuse a subsequent late delivery.

**17. INSPECTION AND TEST.** All materials and workmanship furnished in the performance of this purchase order shall be subject to inspection and test by representatives of Buyer and/or the U.S. Government to the extent practicable at all times and places during the manufacture or testing thereof, and, in any event, prior to final acceptance. If such inspection is made on Seller's premises, Seller shall provide to such representatives, without charge, reasonable facilities and assistance. Such inspection and test do not relieve Seller from responsibility regarding defects or other failure to meet contract requirements, as to which Seller's obligation is set forth in 5 above.

**18. PATENTS AND DATA CLAUSE.** The seller agrees to accept such of the following provisions (as supplemented by the Air Force Procurement Instructions, Navy Procurement Directives, or Army Procurement Procedures) as are included, on the date of this order in Buyer's controlling prime contract with the Government or Buyer's controlling sub-contract under a Government Prime Contract (a) Data (1) Basic Data Clause-ASPR 9-203.1, ASPR 9-203.2 for Supply

contracts. (2) Basic Data Clause-ASPR 9-205.1, ASPR 9-203.4 for Research and Development contracts. (3) Limited Rights Provisions for Addition to Basic Data Clause-ASPR 9-203.3 for Supply contracts. (4) Technical Information Clause ASPR 9-206 where work is to be performed outside the United States. (5) NASA "Data" Clause (b) Notice and Assistance (1) Notice and Assistance-ASPR 9-104 (2) NASA "Notice and Assistance" Clause (c) Royalties-ASPR 9-110 (1) Royalty Information-Domestic-ASPR 9-110 (a) (2) (a) Reporting of Royalties (Foreign) – ASPR 9-110 (2) (b) (3) NASA "Payment of Royalties" Clause (b) Classified Contracts (1) Filing of Patent Applications-ASPR 9-106 (2) Filing of Patent Applications – ASPR 9-106.1 (3) NASA "Filing of Patent Applications" Clause (e) Patent Indemnity (1) Patent Indemnity (Predetermined)-ASPR 9-103 1 (2) Patent Indemnity (Not Predetermined)-ASPR 9-103.2 (3) NASA "Patent Indemnity" Clause (f) Patent Rights-ASPR 9-107.2 (b); ASPR 9-107.2 (c) (Domestic Contracts) (g) Patent Rights-ASPR 9-107.3 (Foreign Contracts) (h) NASA "Property Rights in Inventions" clause. In order to make the context of these clauses applicable to this Purchase Order, the term "Contractor" shall mean the Seller, the term "Contract" shall mean this Purchase Order and where necessary the term "Government" or "Contracting Officer" shall include Buyer.

**19. ARMED SERVICES PROCUREMENT REGULATION**

**PROVISIONS.** The following clauses set forth or referred to in the Armed Services Procurement Regulation in effect on the date of this order are hereby incorporated by reference, (6-104.5) Buy American Act, (7-103.13), Renegotiation; (7-103.19), Officials not to Benefit; (7-103.20), Covenant Against Contingent Fees; (7-104.16), Gratuities; (7-104.4), Notice to the Government of Labor Disputes; (7-104.11), Excess Profits; (7-104.12), Military Security Requirements; (12-203), Convict Labor; (12-303.1), Eight-Hour Law of 1912; (12-604), Walsh-Healey Public Contracts Act; (7-104.19), Priorities, Allocations, and Allotments. Where necessary to make the context of these clauses applicable to this order, the term "Government" and equivalent phrases shall mean Buyer, the term "Contractor" shall mean the Seller, and the term "Contract" shall mean this order.

**20. TERMINATION FOR CONVENIENCE.** Work or performance under this Purchase Order may be terminated in whole or from time to time, in part by Buyer in accordance with the Subcontract Termination Clause, set forth in Section 8-706 of Armed Services Procurement Regulation as in effect on the date hereof. Any payments due or payable to the Seller shall be subject to the advanced written approval of the Government, ASPR 6-706 is incorporated herein by reference

**21. NO LIABILITY FOR EXCESSIVE MATERIAL, LABOR OR PRODUCTION COSTS.**

In order to minimize liability in case "Changes" are directed or "Termination for Convenience" occurs, as provided for in 1 of Terms and Conditions of Purchases and 13 above, Seller is cautioned that Buyer will not be responsible for material, labor, or production costs or charges that are unrealistic, excessive or inconsistent with the minimum needs to meet the delivery requirements

of this order.

**22. ACCESS TO PLANT.** This order is subject to any and all rights of the U.S. Government or its authorized representative as to access to Seller's plant, facilities and records.

**23. NON-DISCRIMINATION CLAUSE.** In connection with the performance of work under this contract, the Seller undertakes and agrees to comply, with Executive Order 10925 and the Equal Employment Opportunity Regulations issued by the President's Committee on Equal Employment, the non-discrimination provisions of which are incorporated herein by reference with the same force and effect as if included and set forth in this clause in.

**24. EXAMINATION OF RECORDS.** The Seller agrees that if this purchase order exceeds \$2500 or does not relate to public utility service at rates established for uniform application to the general public that the Department named in the prime contract and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of 3 years after final payment under this purchase order have access to and the right to examine any directly pertinent books, documents, papers, and records of the Seller involving transactions related to this purchase order. The Seller agrees to include a similar clause in all his subcontracts hereunder.

**25. COST-PLUS-PERCENTAGE-OF-COST.** Nothing herein contained shall authorize the use of the cost-plus-percentage-of-cost type of contracting.

**26. TAXES.** To the extent that the transactions or property covered by this order are entitled to tax or duty exemptions, or both, such exemptions shall be excluded from the prices stated herein. Exemption certificates shall be obtained by the State.

**27. UTILIZATION OF SMALL BUSINESS CONCERNS (INCLUDING SMALL BUSINESS SUB-CONTRACTING PROGRAMS) AND UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS.** It is the declared policy of the Government to utilize small business concerns to provide for fair consideration of small business in subcontracting programs and to utilize concerns in labor surplus areas, in conformity, with such policies and requirements the clauses found in ASPRs 1-707.3; 1-707.4, 1-707.5 and 1-805.3 are incorporated herein by reference and made a part hereof. In order to make the context of these clauses applicable to this Purchase Order the term "Contractor" shall mean the Seller and the language, to the extent otherwise necessary, shall be deemed revised to insure compliance by the Seller and all other lower tier suppliers affected.

**28. DESIGNS, DRAWINGS, SPECIAL TOOLING EQUIPMENT AND MATERIAL.** Notwithstanding anything to the contrary contained in 7 and 18 above, and subject to the prior condition that Buyer's scheduled performance requirements will not be hindered or prevented, the State may produce items for direct sale to the U.S. Government in instances where the U.S. Government has the right to use the designs, drawings, special tooling, equipment, material engineering data, or other technical or proprietary information

furnished by Buyer to the extent required for the production of such items.