

**General Terms and Conditions of Sale**  
**DEUTA America Corp.**  
**(Version applies as of September 24, 2018)**

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## **I. General Terms and Conditions of Sale**

### **1. Applicability**

- 1.1 These terms and conditions of sale (these "Terms") are the only terms which govern the sale of Goods, Software and Services (collectively, the "Products") by DEUTA America Corporation ("Seller") to the buyer named in the Order Confirmation (as defined below) ("Buyer"). Seller's quotation and order confirmation are expressly made subject to these Terms. Seller's acceptance of Buyer's order shall not constitute an acceptance of or agreement to any provision on any form or document supplied by Buyer, which are different from or additional to these Terms. Any such different or additional terms and conditions are hereby expressly rejected.
- 1.2 Seller's written order confirmation (the "Order Confirmation") and these Terms (collectively, this "Agreement"), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral.
- 1.3 The Agreement, including any Order Confirmation, may only be modified or amended by a written agreement signed by an authorized officer of Seller.
- 1.4 These Terms shall apply not only to the present order but also to all future transactions with the Buyer.

### **2. Conclusion of a Contract**

- 2.1 Seller's quotations are non-binding and shall be subject to Seller's Order Confirmation, unless they are expressly marked as binding or contain a specific term of acceptance.
- 2.2 Buyer's order shall only become legally binding on Seller upon the Order Confirmation and only to the extent that the terms of Buyer's order are expressly confirmed in the Order Confirmation.

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

- 3.1 Unless otherwise agreed in writing, the prices in the Order Confirmation apply only to the Products described therein. Additional or special Products shall be charged separately and are subject to change. Any general price reduction subsequent to the placement of the order by Buyer will not apply to additional or subsequent orders. Unless expressly agreed otherwise in the Order Confirmation the prices are FCA (Incoterms 2010) excluding in particular shipping, any export customs fees, insurance and any sales, excise or use tax, whether local, state or federal.
- 3.2 Payment terms are net thirty (30) days on all Products without any deduction from the date of Seller's invoice unless otherwise agreed in writing. Payment shall not be deemed to have been received by Seller unless and until the respective amounts have been finally credited to Seller.
- 3.3 A daily finance charge at the lesser of the rate of 12% per annum, or the maximum rate allowed by law, shall be made on any portion of Buyer's outstanding balance which is not paid within thirty (30) days from the date of invoice.
- 3.4 The receipt and acceptance by Seller of partial payment shall not constitute a waiver of any Seller's rights set forth herein or provided by law, including, without limitation, the right to cancel.
- 3.5 Buyer may not withhold payment of any amounts due and payable by reason of any set-off, any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise unless Buyer's counterclaim is confirmed as final and non-appealable or is undisputed or recognized by Seller.
- 3.6 If Seller, in its reasonable discretion, shall determine that the financial condition of Buyer at any time jeopardizes Buyer's ability to perform any of its obligations towards Seller, Seller may require cash payment, immediate payment of an entire outstanding balance, and/or additional security satisfactory to it. Buyer's failure to timely and fully pay an invoice shall operate to make all other outstanding invoices of Seller to Buyer immediately due and payable, and at the discretion of Seller, shall be grounds for cancellation of any further performance by Seller.
- 3.7 Any fees or expenses incurred by Seller in connection with the collection of full payment shall be borne by Buyer. Such collection expenses shall include any bank fees or charges, Seller's reasonable costs and expenses (including attorney's fees and court costs) for pursuing, searching for, receiving, taking, keeping, storing, advertising and selling Goods as well as any deficiency resulting from a sale of Goods. The reasonable costs and expenses (including attorney's fees and court costs) of Seller incurred in any defense against third party claims to Goods shall also become part of Buyer's indebtedness to Seller.
- 3.8 Buyer warrants to Seller, and Buyer agrees, that the Federal Acquisition Regulation ("FAR"), the federal agency supplements, the Federal Transit Administration Master Agreement, Government Cost Accounting Standards, and federal statutes and regulations governing grants, cooperative agreements and contracts, do not apply to this Agreement.

### **4. Delivery**

- 4.1 Unless otherwise agreed in writing, delivery of Goods shall be FCA (Incoterms 2010) Seller's facility. The Risk passes to the Buyer according to the agreed Incoterms.
- 4.2 All shipments and deliveries by Seller shall be made in a manner, and by carriers, determined by Seller in its reasonable discretion, except as otherwise agreed upon in writing. All the costs and expenses relating to handling, storage or transportation (including duties, taxes, fees, and the like) of the Products shall be borne by Buyer.
- 4.3 Any and all delivery dates stated by Seller in the Agreement are non-binding estimates only and are subject to the submission by Buyer of any required documentation and information relating to such Products, including technical details, drawings, plans, specifications, approvals and releases.
- 4.4 If delivery is delayed for any reason caused by Buyer or in its sphere of control, including, but not limited to, requests for changes with respect to the Products or failure of Buyer to comply with its contractual obligations under the Agreement, (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Seller, at its option, may (A) store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and/or (B) demand an extension of the delivery time.
- 4.5 Seller may, in its sole discretion, without liability or penalty, make reasonable partial delivery of Products to Buyer. Each delivery will constitute a separate sale, and Buyer shall pay for all units delivered whether such shipment is in whole or partial fulfillment of the Order Confirmation.
- 4.6 As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Virginia Uniform Commercial Code. To the extent required under applicable law, Buyer hereby authorizes Seller, in its discretion, to file financing statements and similar documents relative to all or any part of the Collateral without the signature of Buyer wherever permitted by law and, if required, with the signature of Buyer executed by Seller as Buyer's attorney-in-fact.

- 4.7 In addition to any other remedies Seller may have under these Terms or under applicable law, in the event of non-payment, when due, of any amount payable hereunder or breach of any agreement by Buyer hereunder or if Seller deems itself insecure for any reason whatsoever, then (i) Seller is authorized to take possession of any collateral and, for that purpose, may enter, with the aid and assistance of any person or persons, any premises where the collateral or any part thereof is, or may be, placed and remove the same, and (b) Seller shall have the right from time to time to sell, resell, assign, transfer and deliver all or any part of the collateral, at any broker's board or exchange, or a public or private sale or otherwise, at the option of Seller, for cash or on credit or for future delivery in a way and upon such terms and conditions as Seller may deem proper; provided, that upon each such sale, Seller may, unless prohibited by applicable statute which cannot be waived, purchase all or any part of the collateral being sold, free from all claims, right of redemption and equities of Buyer, which are hereby waived and released. In addition to the rights and remedies given to Seller hereunder or otherwise, Seller shall have all of the rights and remedies of a secured party under the Virginia Uniform Commercial Code.

### **5. Seller's Warranty; Limitation of Liability**

- 5.1 Seller, as its sole warranty, represents that, for one (1) year from the date of delivery unless otherwise agreed in the Order Confirmation, Products are in compliance with their written specifications. Buyer shall immediately inspect Products upon receipt. Buyer will be deemed to have accepted Products unless it notifies Seller in writing within five (5) business days of their receipt, including written evidence or other documentation as required by Seller. Upon discovery of any purported deviation, Buyer shall immediately notify Seller thereof and grant Seller the time and opportunity to investigate the purported deviation. Following such investigation, if Seller determines that such Goods or Software in fact materially deviate from their written specifications, Seller shall, at its sole discretion, either (i) provide a credit for the price paid for such deviating Goods or the Goods containing the deviating Software or repair; or (ii) replace the same without charge. If Seller exercises its option to replace deviating Goods or Software, Buyer shall ship such deviating Goods or the Goods that contain the deviating Software to Seller's facility in accordance with Seller's instructions. Seller shall, after receiving Buyer's shipment of such Goods, ship to Buyer, at Seller's expense, the replaced Goods. Risk of loss of damage to such Goods shall pass to Buyer FCA Seller's facility (Incoterms 2010).
- 5.2 Seller's exclusive responsibility under this warranty is limited to such credit, repairs or replacement. All sales are made on a one-way basis and Buyer has no right to return Products.
- 5.3 This warranty shall be void if (a) Goods or Software are not operated, maintained, stored, installed, integrated, calibrated or commissioned in accordance with the oral or written instructions furnished by Seller or are repaired or maintained without Seller's express authorization; (b) Goods are damaged as a result of water, fire, misuse, accident, or neglect; (c) Goods or Software are modified or altered;
- (d) any required documentation and information relating to such Goods, including technical details, drawings, plans, or specifications provided by Buyer are inaccurate; (e) Buyer fails to notify Seller within twenty (20) days of any claimed breach of Seller's warranty, said time to run from the time when Buyer learns that Goods or Software are not operating as warranted; or (f) Buyer fails to make any damaged or defective Goods or Software available to Seller for inspection.
- 5.4 Specifically excluded from Seller's warranty is the replacement of parts with a limited life due to normal wear.
- 5.5 Repairs or parts not within Seller's warranty shall be charged to Buyer at Seller's regular rates, plus expenses.
- 5.6 THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES, AND SELLER DISCLAIMS ANY AND ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES WITH RESPECT TO GOODS AND SOFTWARE, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- 5.7 IN NO EVENT SHALL SELLER 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 BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 5.8 IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID BY BUYER TO SELLER FOR THE PRODUCT WHICH IS THE SUBJECT OF THE LIABILITY.

### **6. Property Rights**

- 6.1 Except as specifically stated in this Contract, neither party transfers to the other party any patent, trade secret, trademark, copyright or other intellectual property right owned by such party. Seller reserves the rights of title to quotations, cost estimates, drawings, tools, processes and any other documents, proceedings or other proprietary information provided to Buyer. Buyer agrees to cooperate with Seller or its designee(s), both during and after the term of this Agreement, in the procurement and maintenance of Seller's intellectual property rights to carry out the purposes of this section.

### **7. Confidentiality**

- 7.1 All non-public, confidential or proprietary information of Seller, including but not limited to, deliverables, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential", in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing or as otherwise permitted pursuant to this Agreement. In addition to any other remedies Seller may have under these Terms or under applicable law, Seller shall be entitled to injunctive relief for any violation of this Section 7. This Section 7 does not apply to information that is in the public domain, known to Buyer at the time of disclosure or rightfully obtained by Buyer on a non-confidential basis from a third party.
- 7.2 Upon Seller's request, Buyer shall promptly return or destroy all documents and other materials received from Seller if they are not required anymore in the ordinary course of business. Buyer's confidentiality obligations shall survive termination of this Agreement. In order to assure that Seller is able to obtain the full benefit of the restrictions set forth in this Section, Seller 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.

## 8. Governing Law

8.1 The business relationship between Seller and Buyer 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.

## 9. Place of Jurisdiction

9.1 All disputes between Seller and Buyer in any way relating to the Products or these Terms shall be decided by, and Buyer 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 Seller's place of business; provided, however, that Seller, in its discretion, may elect instead to pursue any legal action related to this Agreement in any other court having jurisdiction over the subject matter.

## 10. Force Majeure

10.1 Seller shall not be liable or responsible to Buyer, 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.

## 11. Notices

11.1 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 set forth on the face of the Sales Confirmation or to such other address 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.

## 12. Amendment, Assignment

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

12.2 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 Seller may, in its sole discretion, and without Buyer'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. Seller may terminate this Agreement upon written notice to Buyer, without any further liability to Buyer, if there is a change of control of Buyer, by operation of law or otherwise.

## 13. Waiver

13.1 No waiver by Seller of any of the provisions of this Agreement is effective unless expressly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## 14. Severability

14.1 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Both parties will negotiate in good faith to replace the invalid provision with a valid provision.

## 15. Independent Contractors

15.1 Buyer 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.

## 16. Survival

16.1 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: Compliance, Confidentiality, Governing Law, Limited Trademark License, Jurisdiction and Venue, Limitation of Liability and Survival.

## 17. Compliance; Indemnification

17.1 Buyer warrants and represents that it has the legal right and authority to enter into this Agreement and to perform its obligations hereunder. Further, Buyer's and the Buyer's end user's use of the Products do not and will not violate applicable law or regulations or infringe the rights of any third party. Buyer 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 Buyer'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 Seller's request, Buyer will certify in writing its compliance with all applicable Laws.

17.2 Buyer shall indemnify and hold Seller 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 Buyer's (a) breach of this Agreement; or (b) noncompliance of any applicable laws and/or regulations. Buyer will not make any admissions on behalf of Seller or enter into a settlement without Seller's prior written consent. The indemnification obligations of Buyer under this Section are not exclusive and are in addition to, and shall not impair or exclude Seller's rights or remedies otherwise available to Seller, under applicable law, and all such rights and remedies of Seller are cumulative.

## II. Special Terms Applicable to Software

### 1. Applicability

1.1 For the sale of software programs ("Software") the following provisions shall apply in addition to the provisions of Parts I, unless otherwise agreed in writing. The provisions in Parts I shall apply to hardware and where there are no specific provisions in this Part II, Firmware shall be part of delivery of Goods. "Firmware" shall mean Software which is pre-installed and embedded in a product.

### 2. Third Party Software

2.1 Where Buyer has been provided with (a) software for which Seller has only a derived right to use or

(b) open-source software, Buyer shall at all times abide by the terms of the agreement between Seller and its licensor. Buyer authorizes Buyer's employees to act as representatives of the Buyer in agreeing to or otherwise accepting any third-party agreement(s) required to access and/or use the Software. Seller disclaims, to the extent permitted by applicable law, all warranties and any liability to third-party licensors for any damages, whether direct, indirect, or consequential, arising from the Software.

### 3. Scope of Supply

3.1 Seller shall provide the Software, consisting of the machine program and the manual, in the agreed format or, otherwise, in the Seller's standard manner.

3.2 Seller reserves the rights of title and copyright as well as other related rights of the Software.

3.3 Seller does not assume any obligation to provide software services which are not specifically included in Seller's Order Confirmation.

3.4 Buyer has informed itself about the functional features of the Software and whether the specifications of the Software meet its requirements.

### 4. Rights of Use

4.1 Buyer is granted a non-exclusive and non-assignable license for the agreed scope of use of the Software in unmodified form and in connection with the Goods, in particular to install, load and run the Software. Any further use or transfer of the Products, in particular to change, reverse engineer or grant a license to the Software, is expressly prohibited unless a separate written license agreement has been entered into with Seller, which permits such further use.

4.2 Seller reserves all other rights in and to the Software including copies and later modifications. Buyer shall not permit the Software, including such copies and later modifications, to be accessed by third parties without Seller's prior written consent.

4.3 Copies of the Software shall only be made for archiving purposes or as reasonably necessary for error checking. Source programs shall only be made available in accordance with a separate written agreement. If any Software is marked with a copyright notice, Buyer must also attach such a notice to all copies.

### 5. Other rights and duties of Buyer

5.1 Buyer shall take all necessary measures to prevent any damage caused by the Software, in particular to ensure the regular backup of programs and data.

5.2 Buyer shall test the delivered Software for errors and usability before use.

5.3 Buyer shall take adequate precautions to ensure the correct functioning of the Software, including taking measures to protect against malicious software. Buyer is responsible to ensure reliability and performance of the working environment of the Software.

### 6. Liability for Defects

6.1 The Software is suitable for the use described in the Agreement or has the qualities typical for software programs of this type. Seller makes no warranty that the Software is deemed completely free of errors.

6.2 Buyer shall support Seller in the rectification of errors, in particular by giving full and complete descriptions of any problems with the Software and allowing a sufficient period of time for such rectification.

## III. Special Terms applicable to Services

### 1. Applicability

1.1 For the provision of services, including, but not limited to, design, testing, support and conditioning ("Services") the following terms shall apply in addition to the provisions of Part I, unless otherwise agreed in writing.

### 2. Scope of Services

2.1 Buyer may use the Services only as provided for in the Agreement.

### 3. Remuneration

3.1 Payment for the Services shall be as agreed between Seller and Buyer in the Order Confirmation.

### 4. Cooperation of Buyer

4.1 Buyer shall provide Seller all cooperation that is necessary for the proper performance of the Agreement, including information, documents and tools, promptly and without cost to Seller.

4.2 On request by Seller, Buyer shall confirm in written form that any such information, documentation or tools is true and complete and appropriate to the circumstances.

4.3 Buyer shall bear the costs of any extra work which is caused by delayed, incorrect or incomplete information or cooperation provided by Buyer.

4.4 If (a) Buyer does not render the necessary acts of cooperation or (b) any of the provided information is incomplete or inappropriate, Seller may in its discretion set a deadline for providing such cooperation or information. Any requests by Buyer for changes in the scope of the Services shall result in an appropriate increase in the price of the Services and an appropriate extension of time for performance. Buyer's failure to comply with the deadline set by Buyer per the first sentence of this Section 4.4 or to agree to an appropriate price increase or extension of the time of performance per the second sentence of this Section 4.4 shall entitle Seller to terminate this Agreement with immediate effects.