

DNS Purchase Order

Standard Terms and Conditions

1. DEFINITIONS

“**Buyer**” or “**DNS**” means Dart NeuroScience, LLC, a Delaware Limited Liability Company having its principal offices at 7473 Lusk Blvd, San Diego, CA 92121 (together with its affiliates, “**DNS**”). “**Seller**” means the person, firm, company, or other entity supplying the goods or services under this Purchase Order (“**contract**”), and includes Seller’s sales representative or other agents, subcontractors, employees, and distributors thereof. Buyer and Seller may each be referred to herein as a “**Party**” and, collectively, as the “**Parties**”.

2. DELIVERY; DEFECTIVE GOODS; EXCUSE

If Seller fails to make timely delivery in accordance with the terms of this contract of all or any portion of the goods covered by this contract or if any of the goods delivered to DNS are defective or not in accordance with the terms of this contract in any manner, then DNS may retain all or portion of the goods delivered under this contract and return, at Seller’s sole cost and expense, those goods not retained – all without waiver of any claim DNS may have the Seller’s breach including, without limitation, the right to damages and the right to cancel this contract. A breach of this contract by Seller will also constitute a breach by Seller of any other contract between Seller and DNS, entitling DNS, in addition to other remedies it may have, to cancel such other contracts. Seller will not be excused for any inability to obtain goods or services necessary for Seller’s performance.

3. MATERIAL TERMS

Seller acknowledges that all terms in this contract as to quantity, quality (see Section 4 following), other specifications in time of delivery are material elements of this contract and they must be strictly complied with. Prices may not be increased for any reason whatsoever, including, without limitation, any changes in currency rates, revenue laws, treasury regulations or tariffs or increases in the appraisal of the value of goods by customs authorities of any country. The goods and work covered by this contract will be subject to inspection and acceptance or rejection by DNS after delivery, notwithstanding prior payment, it being understood and agreed that payment will not constitute acceptance. DNS may charge Seller the expense of unpacking, examining, repackaging, storing and reshipping any goods found defective or not conforming with the terms of this contract. In addition to its other rights under this contract, including, without limitation, any right to damages (a) DNS may require the Seller to replace any item which DNS is entitled to reject hereunder to grant a full refund or credit to DNS in lieu thereof; and (b) DNS may replace any goods or work which is entitled to reject under this contract with other goods or work.

4. SELLER WARRANTIES

Seller warrants to DNS that all products delivered under these Terms and Conditions will be free from defects in materials and workmanship: that all products will conform to the requirements of the Purchase Order including but not limited to, the applicable descriptions and drawings that have been agreed to by the parties; and, to the extent the items are not manufactured pursuant to detailed designs furnished by DNS that all items will be free from defects in design and suitable for the intended purpose. Seller warrants that all goods and work furnished under this contract and all labeling, tagging, manufacturing and testing thereof will comply with all the applicable laws, rules, regulations, orders and ordinances from time to time in effect. Seller will at its expense, execute and furnish DNS with appropriate written certificates of compliance with such laws, rules, regulations, orders and ordinances. Seller also warrants that all labels and tagging will contain adequate and accurate information with respect to use, safety and treatment and will not be misleading.

5. DESIGN AND PROPRIETARY RIGHTS

Seller agrees to keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineer data, or other technical or proprietary information furnished by DNS, and will use the items only in performance under this contract. In no event will the Seller use data, designs or information supplied by or on behalf of DNS or cause others to do so without DNS’s prior, expressed, written consent. On the termination of this agreement, Seller will return all items and copies made by Seller to DNS or make other disposition as DNS directs or approves.

6. CONFIDENTIALITY

Any and all information, data, plans, reports, manuscripts, procedures, schedules, drawings, specifications, results, models, computer programs or any information received or ascertained by the Seller, directly or indirectly, from DNS (“**Confidential Information**”) will not be reproduced, will be confidential and will not be disclosed to others or used for any purpose other than fulfilling this Contract. Any knowledge or information which the Seller may disclose to DNS will not be deemed to be confidential or proprietary information and will be acquired by DNS free from any restrictions as part of the consideration for this Contract. Tangible copies of any such information furnished may be reproduced by DNS.

The Seller agrees that it will not, without prior written consent of DNS, make any news, release, public announcement, denial or confirmation of this Contract or its subject matter, or in any manner advertise or publish the fact that DNS has entered into this

Contract.

This Section 6 will remain in effect for a period of five (5) years from the later of: (i) the completion of all the activities and materials necessary to deliver the Commodities and the Services hereunder; or (ii) the date of termination of the Contract.

7. INTELLECTUAL PROPERTY

Seller warrants that any items purchased pursuant to this agreement, in the sale and or use of them, will not infringe any intellectual property rights, including any patent, and Seller agrees to indemnify, defend, protect, and hold harmless DNS, its successors, affiliates and assigns of its products from all damages, costs, and expenses, including attorney's fees, arising from claim for actual or alleged infringement of any intellectual property rights by reason of the manufacturer use, or sale of items. Seller agrees at its own expense to undertake the defense of any suit against DNS brought in claim. If the use or sale of any item is enjoined as a result of a suit, Seller, at no expense to DNS, will obtain for DNS and its customers the right to use and sell the item or will substitute an equivalent item acceptable to DNS and extend this patent indemnity to the item. To the extent that the items purchased pursuant to this agreement are manufactured in accordance with detailed designs furnished by DNS, DNS agrees to indemnify Seller and hold Seller harmless from all legal expenses that may be incurred as well as all damages and costs that may be finally assessed against Seller in any action for infringement of any United States letters patent by any item delivered pursuant to this agreement. Seller agrees promptly to inform DNS of any claim for liability made against Seller with respect to an item and Seller agrees to cooperate with DNS in every way reasonably available to facilitate the defense against the claim.

8. INDEMNITY

Seller agrees to indemnify and hold harmless DNS, its officers, agents and employees, from and against any and all liabilities, damages, losses, costs, and expenses for injury or death of any officer, agent, or employee of Seller, arising out of or in connection with products and services to be provided under this agreement. DNS agrees to indemnify and hold harmless Seller and its officers from and against all liabilities, damages, losses, and expenses for injury death of any officers, agent, or employer of DNS arising out of or in connection with products and services to be provided under this contract. Seller and DNS also agree to release in the way of any liability of and claim against the other, its officers, agents, and employees, for loss or damage to property, including loss of use, arising directly or indirectly out of or in connection with the other performance under this agreement.

9. SELLER'S INSOLVENCY

DNS will have the right to cancel this contract without obligation or to require assurances of performances satisfactory to it in the event of the insolvency of the Seller or in the event the Seller files a volunteer partition under any bankruptcy or insolvency laws or makes an assignment for the benefit of creditors or in the event of a partition under bankruptcy insolvency laws filed against the Seller.

10. WAIVER BY BUYER; SET-OFF BY BUYER; SECURITY INTEREST

Any waiver of compliance with any terms and conditions of this contract by DNS must be in writing and signed by DNS, and any such waiver will not constitute a waiver of DNS's rights under any other provision of this contract or waiver of DNS's rights to strict compliance with any of the Terms and Conditions of this contract thereafter. DNS may, at its option, set off any and all sums which Seller owes DNS under this contract or otherwise against any and all sums which DNS owes to Seller under this contract or otherwise. In addition, to secure Seller's obligation to DNS under this contract, including, without limitation, owed damages for breach, DNS will have and Seller hereby grants DNS a security interest in any goods rejected by DNS under this contract.

11. SEVERABILITY

In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, invalid, or void, this Agreement will continue in full force and effect without said provision; *provided, however*, that no such severability will be effective if the result of such action materially impairs either Party's expectancy under this Agreement.

12. TERMINATION; MODIFICATION; AMENDMENT

This Purchase Order may be terminated by DNS with or without cause. In the event DNS terminates without cause, DNS will compensate Supplier for the actual and reasonable expenses incurred by Supplier for work in process up to and including the date of termination, provided that such expenses do not exceed the agreed upon prices. No modification or termination of this contract will be binding upon DNS unless it is in writing and is signed by DNS. Modifications and terminations may be effected by facsimile or email.

13. ACCEPTANCE OF CONTRACT BY SELLER

Delivery or tender of delivery by Seller of all or any portion of all or any portion of goods covered by this contract or the performance by the Seller of any the work covered by this contract will, in and of itself, constitute acceptance by Seller of the

terms and conditions hereof. Acceptance of this contract may only be on the terms stated herein.

14. CUMULATIVE RIGHTS OF BUYER

The rights and remedies of DNS under this contract are cumulative and not exclusive of any rights or remedies to which DNS is entitled by law. The exercise by DNS of any rights or remedy under this contract or under applicable law will not preclude DNS from exercising any other right or remedy under this contract or to which DNS is entitled by law.

15. GOVERNING LAW; JURISDICTION

This contract shall be governed by and adjudicated in accordance with the laws of the state of California, without regard to its conflict of law principles. DNS and Seller agree that any legal action or proceeding under or with respect to this contract may be brought in the courts of the state of California or in the courts of the United States having jurisdiction in the city, county, and state of California. For the purpose of any such legal action or proceeding, Seller hereby submits to the non exclusive jurisdiction of such courts. Seller hereby agrees not to raise and to waive any objection it may have, or any defense it has based upon the venue of such courts or based upon an inconvenient forum.

16. NOTICES

Except as provided for in Section 12 above, all notices and other communications to DNS required by or authorized under this agreement will be given in writing either by personal delivery or by registered mail to the address provided in Section 1.

17. ASSIGNMENT

No assignment by either Party of any rights, including rights to moneys due or that have come due under this agreement, or delegation of any duties under this agreement or under any others subject to this agreement will be binding upon the other Party until its written consent has been obtained.

18. CODE OF CONDUCT

Seller acknowledges that all of its business activities conform to all applicable local, state, and national laws pertaining to employment practices, including but not limited to, the prohibited use of prison or forced labor, the prohibited use of child labor, working hours, compensation, nondiscrimination, and a safe and healthy workplace environment.

19. FORCE MAJEURE

Neither Party will be held responsible for the delay or failure in the performance of its obligations hereunder due to event of force majeure, such as war, serious fire, flood, typhoon, and earthquakes, or other events agreed upon by both parties, which is beyond the reasonable control of the Party affected and does not result from the fault or negligence of such Party ("**Force Majeure**"). The affected Party will advise the other Party immediately of the occurrence mentioned above and within fourteen (14) days thereafter, the affected Party will send by airmail to the other Party for a certificate of the accident issued by a competent Government Authority where the accident occurs as evidence thereof.

Notwithstanding the preceding paragraph, however, the Party affected by the Force Majeure agrees to use all commercially reasonable efforts to (a) proceed with its obligations under the Contract to the extent that it is not prevented from doing so by the event of Force Majeure; (b) remove or relieve any event of Force Majeure and its consequences and minimize the effects of the delay caused thereby; and (c) resume performance as soon as practicable after the event of Force Majeure. In case the event of Force Majeure lasts for more than ten (10) weeks, DNS will have the right to terminate the Contract thereof.

20. ENTIRE AGREEMENT

This Contract contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous discussions, agreements and commitments between the Parties with respect thereto, and any prior and contemporaneous agreements executed by the Parties in respect of the transactions contemplated by this Contract, and there are no agreements or understandings between the Parties respecting the subject matter hereof, whether oral or written, other than those set forth herein.

21. DISPUTE RESOLUTION

The Parties agree that they will first attempt to promptly resolve any dispute, controversy, or claim arising out of, relating to, or in connection with this Agreement, or the breach, termination, or validity thereof (collectively "**Dispute**") by good faith negotiations between the Parties. If negotiations are unsuccessful, then either Party may submit the Dispute for resolution by binding arbitration administered by the American Arbitration Association ("**AAA**"), in accordance with the AAA Rules, including the Procedures for Large, Complex Commercial Disputes in effect at the time of arbitration ("**Rules**"), except as they may be modified herein or by mutual agreement of the Parties.