

Terms and Conditions of Purchase

for BioFire Defense, LLC Instruments and Products

These terms, and any terms in other documents specifically and expressly incorporated herein by reference, (collectively, the “Agreement”), are the entire and exclusive agreement between BioFire Defense, LLC (“BFDF”) and the individual or entity providing goods and/or services to BFDF (hereinafter, “Seller”) concerning the purchase and sale of the goods and/or services (individually and collectively, the “Goods”). All prior and/or contemporaneous negotiations and agreements, oral or written, concerning the Goods are superseded by this Agreement. No course of prior dealings between the parties, usage of trade or acquiescence in any course of performance hereunder will be relevant to supplement or explain any term used in this Agreement. After Seller’s acceptance of a BFDF purchase order attaching a copy of these Terms and Conditions of Purchase, BFDF may, at its option, elect not to attach a copy of the Terms and Conditions with subsequent orders placed by it. However, these Terms and Conditions of Purchase will continue to govern the sale and purchase of Goods under all subsequent purchase orders placed by BFDF.

1. ORDER OF PRECEDENCE

In the event of any conflict between this Agreement and Seller’s terms, this Agreement shall control.

2. PRICE & PAYMENT TERMS

BFDF will pay the price agreed upon for each type and quantity of the Goods. Seller will invoice BFDF for the Goods on or after the date that Seller delivers them to BFDF. Each invoice will contain: (i) the BFDF purchase order number, (ii) a description of the Goods delivered, and (iii) quantity and unit price(s). If Seller does not reject these Terms and Conditions in writing within ten (10) days of first receipt, such Terms and Conditions shall be deemed accepted by Seller. Invoices are due and payable thirty (30) days after receipt. BFDF will be entitled to any discounts agreed upon for any invoice paid within ten (10) days after receipt. The purchase price of the Goods is subject to set-off against claims of BFDF. Except for taxes pursuant to the “Taxes” section below, charges not previously agreed upon will not be payable by BFDF.

3. TAXES

Any taxes to be paid by BFDF will be separately stated on Seller’s invoice.

4. PACKING OF GOODS

Seller will pack the Goods in accordance with best commercial practices. Seller will enclose with each shipment a complete packing list including BFDF’s purchase order number and the part number, the quantity shipped, and the remaining quantity to be shipped, if applicable. Seller will mark the containers or packages with necessary lifting, loading, and shipping information, BFDF’s purchase order number and the part number, dates of shipment, and names and addresses of consignor and consignee, if applicable. The bill of lading number and weight of shipment will be shown for shipment on all bills of lading.

5. DELIVER

Seller will deliver the Goods to BFDF, F.O.B. destination, as designated by BFDF, in one (1) or more installments within five (5) business days of the specified delivery date. Seller will bear all expenses of transporting the Goods to BFDF, including, without limitation, any and all shipping, loading, unloading, storage, freight, insurance, and other expenses of transportation. Seller is responsible for obtaining adequate insurance covering the Goods while being transported to BFDF and until risk of loss has passed to BFDF. Upon request, Seller will provide a certificate of insurance to BFDF no later than the date upon which Seller places the Goods in the possession of a transportation carrier to BFDF. Title to, and risk of loss of, the Goods will pass to BFDF upon its actual receipt, provided, however, that if the Goods, or tender of delivery of the Goods, so fails to conform with the terms herein as to give BFDF a right or rejection, or if BFDF rightfully revokes its acceptance, risk of loss of and title to the Goods will be deemed to have remained with Seller.

6. VARIATION IN QUANTITY

Except as approved in writing by BFDF, if Seller delivers more Goods than BFDF ordered, or if the Goods are delivered by Seller to BFDF more than five (5) business days after any delivery date, those Goods need not be accepted by BFDF. Accordingly, BFDF may receive, hold, and return such Goods to Seller at Seller’s sole risk and expense. If BFDF accepts Goods delivered more than five (5) business days prior to any delivery date, the time period for payment and discounts will not commence for those Goods until the later of BFDF’s receipt of Seller’s invoice for such Goods or the specified delivery date.

7. INSPECTION AND ACCEPTANCE

BFDF may, but need not, inspect the Goods ninety (90) days after actual receipt. Acceptance of the Goods is based on BFDF’s standard test procedures for such Goods. Rejected Goods may, at BFDF’s option, either be returned or held for Seller’s instructions. Inspection, reshipment, and return costs incurred with respect to such rejected Goods will be borne by Seller. Unless BFDF directs, Seller will not replace

returned Goods. BFDF will have ninety (90) days (“Notice Period”) from completion of the services to either (i) notify Seller in writing of its acceptance of the completed services, or (ii) if BFDF determines that the completed services are unacceptable, using its good faith reasonable business judgment, BFDF will notify Seller in writing, specifying its non-acceptance of the completed services and its reasons in reasonable detail. Seller will promptly rectify the unacceptable services. Failure of BFDF to provide Seller with its written acceptance or rejection of the completed services within the Notice Period will be deemed acceptance by BFDF of the completed services.

8. WARRANTIES

- a. Seller warrants that all Goods furnished and deliverables created shall conform to all specifications and appropriate standards, and will be free from defects, including, but not limited to, defects in material, workmanship, and title, for a period of one (1) year from of date of acceptance.
- b. Seller warrants that all Goods and services furnished hereunder will be merchantable, safe, and appropriate for the purposes for which goods and services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which BFDF intends to use the Goods or services, Seller warrants that such goods and services will be fit for such purpose.
- c. Seller warrants that the Goods and services furnished will conform in all respects to samples, advertisements, and other representation made to BFDF regarding same.
- d. Seller warrants that the Goods will be free from any and all security interests or other liens and encumbrances.
- e. Seller warrants that the Goods and services to be rendered under this Purchase Order shall be manufactured, sold, and rendered

in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations, including, but not limited to the Foreign Corrupt Practices Act, 15 U.S.C. § 78 et seq. (the "FCPA") and all laws and regulations of Seller's place of performance, and in compliance with applicable international prohibitions on child labor.

- f. Seller certifies that with respect to the production of the Goods and/or the performance of the services covered by this Purchase Order, it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938, as amended, and with regulations and orders of the United States Department of Labor under Section 14 thereof, if applicable.
- g. Seller warrants that all Goods delivered under this Purchase Order are in conformance with the latest OSHA requirements.
- h. Seller warrants that in the performance of this Purchase Order, it will comply with all applicable U.S. Department of Transportation regulations on hazardous materials.
- i. Seller warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of BFDF any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986.

Any breach of subsections (e) through (i) of this "Warranties" section shall be a material breach of each and every contract between BFDF and Seller.

At BFDF's option, and in addition to any other remedies set forth in this Agreement (including, but not limited to, BFDF's right to indemnification as set forth below), Seller will, at its sole expense, repair, replace, or refund the purchase price for any Goods which do not conform to these warranties.

9. BFDF CODE OF BUSINESS CONDUCT AND ETHICAL PURCHASING POLICY

By the acceptance of this Purchase Order, Seller represents that it has not participated in any conduct in connection with this Purchase Order that violates BFDF's Code of Business Conduct (available online at www.biofiredefense.com). Seller acknowledges that BFDF's Code of Business Conduct contains an ethical purchasing policy which prohibits gifts of more than nominal value to BFDF's

purchasing agents. If, at any time, BFDF determines or reasonably believes that Seller is in violation of BFDF's Code of Business Conduct, including but not limited to BFDF's ethical purchasing policy, BFDF may cancel this Purchase Order, and any and all associated agreements, immediately upon written notice to Seller, and BFDF shall have no further obligations to Seller.

10. INDEMNITY

Seller will defend, indemnify and save BFDF, its employees, its agents, affiliates, and customers, harmless from and against all claims, costs, losses, damages, penalties, expenses, and liabilities (including attorney's fees) which may be incurred on account of, or arising out of: (a) the breach of any warranty in the "Warranties" section above; (b) bodily injury, death or property damage rising out of an act or omission of Seller or its agents, employees, or contractors; (c) claims that the Goods infringe any patent or copyright, or misappropriate or violate any trade secret rights or other intellectual property rights of another person or entity, except where such liabilities are due solely to the negligence or wrongful acts of an BFDF; (d) Seller's failure to maintain insurance in accordance with the "Insurance" section of this Agreement; and/or (e) Seller's failure to comply with the "Export Regulations," "Debarment," "Release of Information," "Proprietary Rights," "BFDF Trademarks," or "Relationship of the Parties; Assignment; Subcontracting" sections of this Agreement. Seller will, at its sole expense, defend all claims, suits or actions against BFDF, its employees, agents, affiliates, or customers, provided Seller is notified of such claims, suits or actions and given reasonable opportunity to cooperate in the defense thereof and all negotiations for its settlement or compromise. In the event of a claim of infringement of a third party's copyright, patent, trade secret, or other intellectual property right, Seller's obligation will be, at its option, to (i) obtain a license for BFDF, its employees, agents, affiliates, and customers to continue the use of or the sale of the infringing Good; or (ii) modify or replace the infringing Good with a non-infringing Good which conforms to the specifications for the infringing Good; or (iii) refund the purchase price paid by BFDF for such infringing Good.

11. INSURANCE

Seller shall comply with all the rules and regulations established by BFDF for access to and activities in and around premises controlled by BFDF. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Purchase Order. Seller shall also maintain such general liability, property damage, employer's liability, and workers' compensation insurance, professional errors and omissions insurance, and motor

vehicle liability (personal injury and property damage) insurance as are specified in this Purchase Order or, if none are specified, such amounts as will protect Seller and BFDF from said risks and from any claims under any applicable workers' compensation, occupational disease, and occupational safety and health statutes. Seller shall provide BFDF with certificates evidencing required insurance upon BFDF's request.

12. TIME IS OF THE ESSENCE TO THIS CONTRACT

All Goods will be furnished and services rendered by the time or times specified by BFDF.

13. CANCELLATION

BFDF reserves the right at any time for its convenience to cancel this Purchase Order as to all or any portion of the Goods then not shipped or services then not performed, subject to an equitable adjustment between the parties as to any work or materials (but not to include standard stock) then in progress. Seller shall not be paid for any amount of lost profits on canceled orders, or for any avoidable costs incurred after receipt of notice of cancellation, including, but not limited to any costs incurred by Seller's suppliers which Seller could reasonably have avoided. No termination for convenience shall relieve Seller or BFDF of its obligations as to any Goods or services already delivered hereunder. Any claim for adjustment hereunder must be asserted within thirty (30) days after the date of Seller's receipt of notice of cancellation.

14. TERMINATION FOR CAUSE

BFDF may, by notice in writing, terminate this Purchase Order in whole or in part at any time for (i) breach of any one or more of its terms, (ii) failure to deliver Goods or services within the time specified by this Purchase Order or any written extension, (iii) failure to make progress so as to endanger performance of this Purchase Order, or (iv) failure to provide adequate assurance of future performance. BFDF may also terminate this Purchase Order in whole or in part in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under the Purchase Order. In the event of Seller's default hereunder, BFDF may exercise any or all rights and remedies accruing to it, both at law, including, without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity. In addition, in the event BFDF terminates for default all or any part of this Purchase Order, Seller shall be liable

for BFDF's re-procurement costs. If this Purchase Order is terminated for default, BFDF may require Seller to transfer title to, and deliver to BFDF, as directed by BFDF, any (1) completed Goods and (2) partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that Seller has specifically produced or acquired for the terminated portion of this Purchase Order. Upon direction of BFDF, Seller shall also protect and preserve property in its possession in which BFDF has an interest.

15. MODIFICATION OF AGREEMENT

The terms of this Agreement may not be altered, modified, suspended or amended, and no additional or different terms will become a part hereof, nor may this Agreement be rescinded, except pursuant to a writing specifically referencing this Agreement and signed by an authorized signatory of the party against whom enforcement is sought.

16. EXPORT REGULATIONS

If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). Seller shall control the disclosure of and access to technical data, information, and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including, but not limited to, the ITAR. Seller agrees that no technical data, information, or other items provided by BFDF in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including, without limitation, a foreign subsidiary of Seller, without the express written authorization of BFDF and Seller's obtaining of the appropriate export license, technical assistance agreement, or other requisite documentation for ITAR-controlled technical data or items. It shall be the sole responsibility of Seller to determine whether the information provided by BFDF is technical data as outlined in the ITAR (22 CFR 120-130) prior to any release to a third party. Seller shall immediately notify BFDF if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked. Should Seller's goods or services originate from a foreign location, those goods may also be subject to the export control laws and regulations of the country in which the articles or services originate. Seller agrees to abide by all applicable export control laws and regulations of that

originating country. BFDF may be required to obtain information concerning citizenship or export status of Seller's personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct.

17. DEBARMENT

Seller certifies that neither it nor any of its Principals (defined as officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program (including, but not limited to Medicare and Medicaid and Federal Health Care Programs) by any Federal department or agency. To the extent necessary to assure accuracy of its certification, Seller agrees to conduct searches of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the General Services Administration (<http://epls.arnet.gov/>) and the List of Excluded Individuals and Entities maintained by the Department of Health and Human Services (<http://oig.hhs.gov>) prior to making its certification. Seller acknowledges that the certification is a material representation of fact upon which BFDF is relying in entering into this transaction. Seller agrees to provide immediate written notice to BFDF if it learns at any time that its certification was erroneous when submitted or if, during the term of this Purchase Order, it, or any of its Principals, is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program, including Medicare, Medicaid and other Federal Health Care Programs. Seller agrees that debarment, suspension, proposed debarment or suspension, ineligibility or exclusion of Seller, or any of its Principals shall constitute cause for immediate termination of this Agreement by BFDF.

18. RELEASE OF INFORMATION

Seller shall not publish, distribute, or use any information developed under or about the existence of this Purchase Order, or use the BFDF name, logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a business reference, creating a website content, or for goods or service endorsement without prior written approval of BFDF.

19. PROPRIETARY RIGHTS

(a) Unless otherwise expressly agreed in writing, all specifications, information, data, drawings, software and other items supplied to BFDF by Seller shall be disclosed to BFDF on a non-proprietary basis and may be used and/or disclosed by BFDF without restriction. (b) Unless otherwise expressly agreed in writing, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by BFDF or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by BFDF shall be proprietary to BFDF, shall be used only for purposes of providing Goods or services to BFDF pursuant to this Purchase Order, and shall not be disclosed to any third party without BFDF's express written consent. If requested by BFDF, Seller shall promptly execute a separate nondisclosure agreement with BFDF relating to any such information, but BFDF's failure to request such an agreement shall not relieve Seller of its confidentiality and nonuse obligations as set forth herein. All such items supplied by BFDF or obtained by Seller in performance of this Purchase Order or paid for by BFDF shall be promptly provided to BFDF on request or upon completion of this Purchase Order. If Seller fails to return any such items upon BFDF's demand, BFDF shall have the right, upon reasonable notice, to enter Seller's premises and remove any such items at any time without being liable for trespass or damages of any sort. (c) Unless otherwise expressly agreed in writing, any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of information supplied by BFDF shall be considered to be the property of BFDF, and Seller shall execute such documents necessary to perfect BFDF's title thereto. (d) Unless otherwise expressly agreed in writing, any work performed pursuant to this Purchase Order which includes any copyright interest shall be considered a "work made for hire," and, to the extent any of such works do not qualify as a "work made for hire," Seller hereby assigns to BFDF all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.

20. BFDF TRADEMARKS

BFDF's trademarks, trade names, service marks, logos, and symbols (collectively, the "BFDF Trademarks") are and shall remain BFDF's sole and exclusive property. Seller has not acquired and shall not acquire any right, title or interest in any of the BFDF Trademarks. Any and all goodwill and rights under trademark and copyright law, and all other intellectual property rights, that arise in favor of the BFDF Trademarks

as a result of this Agreement or otherwise, shall inure to the sole and exclusive benefit of BFDF.

21. GOODS PURCHASED FOR RE-MANUFACTURE

BFDF acknowledges that the Goods are being purchased for re-manufacture as per C.F.R. 48-4221-2, and, as such, Seller is exempt from paying the medical device excise tax.

22. SELLER CHANGES

Material changes proposed by Seller that may affect form, fit, function, reliability, serviceability, performance, regulatory compliance or safety must be submitted to BFDF prior to implementation of any such changes along with a (i) written change notice for BFDF approval; (ii) a description of the Good(s) affected; (iii) the proposed date of implementation; (iv) the reason for the change; (v) the specific details of the change; and (vi) supporting data necessary to reasonably evaluate the proposed changes. Such material changes may not be implemented without the prior written consent of BFDF, which shall not be unreasonably withheld.

23. RELATIONSHIP OF THE PARTIES; ASSIGNMENT; SUBCONTRACTING

Neither party is the agent for, or will have the authority to represent, or incur any liabilities or obligations on behalf of, the other. Seller may not assign any rights, delegate any of its obligations due or to become due under this Purchase Order, or subcontract all or substantially all of its obligations under this Purchase Order, without the prior written consent of BFDF. Any purported assignment, delegation, or subcontracting by Seller without such consent shall be void.

24. NOTICES

All notices hereunder will be sent either certified mail, return receipt requested, or delivered personally, to the attention of the authorized signatories of both parties.

25. FORCE MAJEURE

BFDF will not be in default of any of its obligations under this Agreement where the default results from acts beyond its reasonable control including, without limitation, governmental acts (official or unofficial); strikes (legal or illegal); acts of God; fires; flooding; or water damage.

26. GOVERNING LAW AND VENUE

This Agreement will be governed by the laws of the State of Utah without regard to its conflict of laws rules. Seller consents to venue in Salt Lake County, Utah, and hereby waives any objections based on forum non conveniens.

27. SEVERABILITY; HEADINGS; NO WAIVER

If any of the provisions contained in this Agreement are held invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions will not be affected or impaired. The headings and titles of the provisions of this Agreement are inserted for convenience only and will not affect the construction or interpretation of any provision. No failure or delay on the part of BFDF in exercising any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof of any right or remedy. No provision of this Agreement may be waived except in a writing signed by the party granting such waiver.

28. FORM OF PAYMENT; ELECTRONIC SIGNATURES

Payment will be in United States dollars unless otherwise agreed to by specific reference in this Purchase Order. The parties agree that if this Purchase Order is transmitted electronically, neither party shall contest its validity, or any acknowledgment thereof, on the basis that this Purchase Order or acknowledgment contains an electronic signature.