



## BVI Purchase Order Terms and Conditions

1. **Agreement.** This Purchase Order (P.O.) is between BVI ("Buyer") and Supplier and becomes a binding contract subject to the terms hereof, when accepted by acknowledgement or commencement of performance by Supplier. Buyer objects to all additions, exceptions, or changes to these terms or this P.O., unless approved by Buyer in writing. This P.O. constitutes the entire agreement between the parties with respect to the goods and/or services reflected in this P.O. and all prior understandings between the parties related to such goods and/or services are superseded, except to the extent that the terms of the P.O. are in conflict with a written agreement signed by both parties.
2. **Orders.** There may be no substitutes or variations from specifications or instructions, or partial shipments, without the prior written approval of Buyer. Buyer may at any time make changes in the scope of quantity of the goods or services covered by this P.O. or in other terms hereof, in which event an equitable adjustment will be made to any price, time or performance, and other provisions of this P.O., if appropriate. Supplier will immediately give notice to Buyer of any actual or potential interruption in the timely performance of this P.O.
3. **Inspection.** Goods or services purchased under this P.O. are subject to Buyer's reasonable inspection, testing and approval. Buyer reserves the right to reject acceptance of goods or services which are not in accordance with this P.O. or Supplier's representations or warranties, express or implied. Final inspection and approval will be made by Buyer within a reasonable time after receipt of goods or services. Rejected goods or services may be returned to Supplier or held by Buyer at Supplier's risk and expense. Payment for any goods or services under this P.O. shall not be deemed acceptance of the goods or services. Acceptance of any part of the P.O. shall not bind Buyer to accept future shipments of non-conforming goods or services, nor deprive it of the right to return non-conforming goods or services already accepted. Upon the request of Buyer, if Supplier fails to promptly replace or correct any goods or services to Buyer's satisfaction, Buyer may purchase or replace same, and Supplier shall be liable to Buyer for any additional costs thereby incurred by Buyer.
4. **Delivery - Time is of the Essence.** The delivery of goods and/or services, including documents and/or certificates, shall comply with the delivery date or delivery schedule set forth on the P.O. or as specified, in writing, by Buyer. Supplier shall bear all costs for any delay in goods and/or services. Buyer may exercise its other remedies, such as cancellation of the P.O. after 30 days for non-compliance, including incidental and consequential damages.
5. **Price, Shipping and Packing.** Unless otherwise specified on the P.O., the prices stated on the front of this P.O. are fixed for the duration of the P.O. Prices are net and shall be Incoterms Delivered Duty Paid (DDP) to the destination specified on the P.O. and, if applicable, include all charges for packaging handling, shipping, storage, insurance, and transportation and applicable duties, unless otherwise agreed to by the parties. Sales and use taxes not subject to exemption shall be stated separately in Supplier's invoice.

Supplier agrees to comply with any special instructions as to the choice of carrier, routings, shipping and destinations as designated by Buyer. The goods shall be packaged and shipped by Supplier in accordance with good commercial practice or as agreed to by the Parties, to ensure that no damage will result from weather, transportation or handling. Title and Risk of loss or damage to the goods shall be on Supplier until the goods and/or services have been delivered to and accepted by Buyer.
6. **Payment.** Unless otherwise agreed to by the parties, Buyer shall pay the Supplier net sixty (60) days following receipt of invoice and acceptance of goods or services. Invoices will be paid at end of the applicable month. Buyer will not accept any invoices from Supplier which are more than ninety (90) days after the goods have been received or services rendered.
7. **Competitive Price.** Supplier warrants that the prices set forth herein are as low as any net price now given by Supplier to any other customer for similar goods and/or services and agrees that if, during the term of this P.O., lower net prices are quoted by Supplier to any other third party for similar goods or services, such lower net price shall be from that time substituted for the prices contained herein.
8. **Warranty.** In accepting this P.O., Supplier unconditionally represents and warrants, any other representation or agreement to the contrary notwithstanding, that the goods delivered and/or the services performed:
  - a. Shall be merchantable and conform to the specifications, drawings, designs and other descriptions referenced in this P.O., and shall be free from defects in design, materials and workmanship unless the design was supplied by Buyer; and shall be fit and safe for the intended use and purpose. It is the Suppliers responsibility to determine the purpose of Buyers use of goods or services. Supplier warrants that it has clear title to the goods and that the goods shall be delivered free and clear of liens and encumbrances;
  - b. To the extent applicable, the goods shall not be adulterated or misbranded within the meaning of the FDA or within the meaning of any applicable state or municipal law or statutory regulations.
  - c. Do not infringe on any patent, trademark, copyright, trade secret, or other similar rights of any third party;
  - d. Pursuant to 21CFR820.50, Supplier warrants it shall not change or discontinue any material and/or configuration and/or the manufacturing location without the prior notification and written authorization of Buyer. Such notification shall not be less than twelve (12) months to allow Buyer to purchase sufficient quantities of the Product or plan accordingly. In the event such notification is less than twelve (12) months, Supplier agrees to satisfy purchase requirements or work with Buyer to manage supply during the change.
  - e. If for services, such services shall be provided by qualified personnel reasonably skilled and trained in the performance of the services and in a workmanlike and professional manner in accordance with general industry standards; and is currently under no obligation to any third party, nor will it enter into any obligations to a third party, that could interfere with its rendering to Buyer the services set forth in this P.O.;

- f. Comply with all Federal, State, Statutory and local laws and regulations, rules, procedures, declarations, interpretations and orders issued thereunder as it relates to the goods and/or services and with respect to Supplier's operations;
- g. All of these warranties and other warranties as may be prescribed by law shall extend to Buyer, its successors, assigns and customers and to users of the goods, services or products into which such goods or services may be incorporated; and
- h. Supplier shall provide the Buyer with all certifications, manuals, instructions and other appropriate documentation as it relates to the products and/or services set forth on this P.O.

In the absence of documentation indicating otherwise, this warranty shall extend for a period of three (3) years from the date that the goods and services are delivered to and accepted by Buyer. These warranties shall be applicable to Buyer, its successors, assigns, customers and the users of its products.

9. **Indemnification.** Supplier agrees to defend, indemnify and hold Buyer, its subsidiaries, divisions and affiliates, and their respective successors, assigns, officers, directors, employees, agents, customers and users of the goods and services harmless, with respect to any and all claims, liabilities, damages, losses and expenses, including attorney's fees, incurred relating to or caused by, or arising from:
- a. Supplier's breach of any provision of this P.O., including without limitation the confidentiality obligations and the warranties made herein;
  - b. Any negligent or wrongful act or omission of Supplier, its employees, consultants or subcontractors;
  - c. Actual or alleged patent, copyright, or trademark, infringement or violation of other proprietary rights anywhere in the world, arising out of the purchase, sale, or use of the goods or services covered by this P.O.;
  - d. Actual or alleged defects in the services or in the design, manufacture or material of the goods;
  - e. Actual or alleged breach of warranty;
  - f. Failure of Supplier to deliver the goods or services on a timely basis, including liquidated damages and costs to recover such damages; or
  - g. Failure of the goods or services to meet the requirements of applicable Federal, State, Statutory and/or local laws, ordinances, regulations, rules, declaration, interpretations and orders issued thereunder.
  - h. Buyer and Supplier agree that if Supplier fails to provide goods or services as set forth in this P.O., such failure may cause Buyer injury and/or damages, as a result Buyer shall be entitled to any and all damages caused by Supplier, including but not limited to consequential, incidental or liquidated damages.
10. **Limitation of Liability.** IN NO EVENT WILL BUYER OR ITS SUBSIDIARIES, DIVISIONS OR AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, ARISING FROM THE PERFORMANCE OF, OR RELATING TO, THIS P.O. NOTWITHSTANDING THE FORM (E.G. CONTRACT, TORT OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL BUYER OR ITS DIVISIONS OR AFFILIATES BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE LESSOR OF: (a) THE AMOUNT OF FEES PAID BY BUYER FOR THE GOODS OR SERVICES THAT GAVE RISE TO SUCH DAMAGES OR LOSSES, OR (b) \$1,000.
11. **Recalls and Corrective Action.** Supplier agrees that it will reimburse Buyer for all costs associated with product recalls and any corrective action. Supplier shall be responsible for notifying the appropriate Federal, State and local authorities of any customer complaints or other occurrences regarding products which are required to be so reported.
12. **Insurance.** Unless otherwise agreed to by the parties, Supplier shall, at its own expense, procure and maintain with a reputable insurer, (a) Professional Liability Insurance, in the amount of not less than Two Million Dollars (\$2,000,000), (b) worker's compensation statutory coverage as required by law for the applicable jurisdiction, (c) commercial general liability insurance and products liability insurance (including completed operations) covering bodily injury and property damage, in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence (or such higher limits as Buyer shall reasonable request) with endorsements for blanket contractual liability and vendor's liability. Supplier shall furnish Buyer with a certificate of insurance evidencing the foregoing coverage and limits, stating that the insurer shall name Buyer as an additional insured, give thirty (30) days prior written notice of any cancellation, non-renewal in coverage or material change in the policy, and will contain a waiver of subrogation in favor of Buyer.
13. **Confidentiality.** Supplier shall not use, reproduce, disclose to anyone other than Buyer, any goods, tooling, dies, drawings, specifications or other property or information provided by Buyer ("Confidential Information"), nor shall Supplier use the same to manufacture goods or provide services to others, without Buyer's prior written approval. Title to all Confidential Information shall remain with Buyer at all times, and where practicable, the Confidential Information shall be clearly marked to indicate Buyer's ownership and that it is Confidential. Supplier agrees to hold Buyer's intellectual property confidential and not to disclose or use Buyer's name, trademarks, trade names, trade secrets or other intellectual property, other than as required in this P.O., without the prior written consent of Buyer. Supplier shall make no reference, advertisement or promotion regarding Buyer in any manner, without securing the prior written consent of Buyer.
14. **Intellectual Property.** Buyer will be the exclusive owner of all deliverables created by Supplier in connection with or during the performance of Goods or Services provided pursuant to a P.O., including any work based on or derived from such deliverables, and any ideas, concepts, inventions or techniques that Supplier may conceive or first reduce to practice in connection with developing deliverables (the "Deliverables") and all intellectual property rights therein, including patent, copyrights, trade secrets, trademarks, or similar rights of any type under the laws of any governmental authority (collectively "Intellectual Property Rights"). To the extent such assignment of rights and ownership is invalid or any of the foregoing rights may be inalienable, Supplier agrees to waive and agrees not to exercise such rights, and if such waiver and agreement are deemed invalid, to grant to Buyer and its designees the exclusive, transferable, perpetual, irrevocable, worldwide and royalty free right to make, use, market, modify, distribute, transmit, copy, sell, practice and offer for sale and import the Deliverables and any process, technology software, article, equipment, system, unit, product or component part covered of the Deliverables or a claim in any patent for any part of the Deliverables. At Buyer's request, Supplier will obtain the execution of any instrument, including from any employee or contractor that may be appropriate to assign these rights under this paragraph to Buyer or perfect these rights in Buyer's name. Supplier agrees that any copyrightable material prepared for Buyer shall carry on the face thereof in legible form a copyright notice identifying Buyer and the year of publication.

15. **Termination.** Buyer may suspend or terminate this P.O., with or without cause, in whole or in part, at any time prior to shipment or services performed by giving written notice to Supplier. Upon termination all Confidential Information supplied by Buyer shall be returned to Buyer unless Buyer indicates otherwise in writing.
16. **Setoff.** Without limiting Buyer's rights under law or in equity, Buyer and its affiliates, may exercise a right of set off against Supplier for any and all amounts due to Supplier or its affiliates by Buyers or its affiliates, including, but not limited to, amounts under this P.O. or any prior or subsequent agreement.
17. **Compliance with Laws.** Supplier agrees to comply with the applicable provisions of any Federal, State, Statutory or local law, and all orders, rules and regulations issued thereunder, whether now or hereafter in force, including but not limited to, those laws prohibiting discrimination for employment because of age, race, color, religion, sex, sexual orientation, national origin, or physical or mental disabilities and veteran status and any law, regulation, or procedure regarding insider trading, anti-bribery, GDPR, Foreign Corrupt Practices Act or any provision of Buyer's Supplier Code of Conduct, Modern Slavery Statement as set forth on Buyer's website at [www.bvimedical.com](http://www.bvimedical.com). Supplier guarantees that no article shipped pursuant to this P.O. is produced in violation of any law, rule or regulation. Any item deemed to be a medical device under EU MDR Article 2(1) must be EU MDR certified by Supplier.
18. **Governing Law.** If this P.O. is raised in the United States, the terms of this P.O. shall be governed by the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws. If this P.O. is raised outside of the United States, the terms of this P.O. shall be governed by the laws of the United Kingdom.
19. **Assignment.** Supplier may not assign, delegate, subcontract or otherwise transfer this P.O. or any of its rights or obligations without Buyer's prior written approval. Any agreed subcontractor shall be bound the terms and conditions of this P.O. Supplier shall be responsible for any breach and or damages caused by any sub-contractor. Any attempt by Supplier to sub-contract this P.O. without Buyer's prior written approval, shall be null and void. Buyer may assign this P.O. to an affiliated company as part of an internal reorganization, or to a purchaser of Buyer of all or substantially all of its assets and business.
20. **Force Majeure.** Each party will be excused for any failure or delay in performing any of its obligations under this P.O., if such failure or delay is caused by any act of God, explosion, fire, act of terrorism, storm, earthquake, flood, or any similar circumstance or event. In the event of any such event or condition, the party whose performance is excused hereunder shall notify the other promptly thereof and shall make diligent efforts to perform at its earliest opportunity and the other part shall be permitted to suspend its performance under this P.O. If Supplier's performance is excused hereunder, Buyer shall have the right, and Supplier agrees to provide to Buyer the assistance and information necessary for Buyer to make, have made, or otherwise procure replacement goods and or services.
21. **Binding Agreement.** This P.O. shall be binding upon and inure to the benefit of the parties hereto and their respective affiliates, subsidiaries, successors.
22. **Notices.** Notices required hereunder shall be in writing and shall be deemed to be given upon delivery by an overnight courier service, or upon transmission by e-mail or facsimile (provided that in each instance there is written evidence of delivery or transmission), to either parties representative and address set forth herein.