

# DeVore Aviation Corporation of America

## DACA

6104 Jefferson N.E. Albuquerque, NM 87109-3410

Phone (505) 345-8713 Fax (505) 344-3835 e-mail: [info@devoreaviation.com](mailto:info@devoreaviation.com)

### Terms and Conditions of Purchase Order

1. **Acceptance of Contract.** This P.O. becomes a binding contract on the terms set forth herein when accepted by the Supplier of goods and/or services named and addressed on page 1 "Seller" by (1) SELLER giving DACA formal written acknowledgment of this P.O., (2) when Seller delivers to DACA any of the goods ordered, or renders for DACA any of the services ordered by this P.O., or (3) any other conduct of the Seller which recognizes the existence of a contract pertaining to the subject matter of this P.O. Any of these acts by the Seller shall be deemed an unconditional acceptance of this P.O. and all of its terms and conditions, and such contract contains the entire agreement of the parties. ANY TERMS PROPOSED IN THE SELLERS ACCEPTANCE OF THIS P.O. WHICH ADD TO, VARY FROM, OR CONFLICT WITH THE TERMS OF THIS P.O. ARE HEREBY OBJECTED TO AND REJECTED AND SHALL NOT CONSTITUTE ANY PART OF THE CONTRACT. ANY SUCH PROPOSED CONFLICTING ITEMS SHALL HAVE NO FORCE OR EFFECT, AND THE TERMS HEREIN SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS OF THE CONTRACT BETWEEN THE PARTIES. No revisions or additions to this P.O. shall be valid unless issued or accepted in writing by DACA or DACA's authorized representative.
2. **Conflicting Terms.** In the event of any conflict of terms in this P.O. the order of priority is as follows: (1) Typed or handwritten provisions on the face of this P.O., (2) Attachments or Exhibits, and (3) These preprinted Terms and Conditions.
3. **Changes.** DACA reserves the right at any time, by written change order, to make changes to any term of this P.O., including, but not limited to, (1) delivery schedules, (2) drawings and specifications, (3) methods of shipment and packaging, (4) quantities as to goods and services covered by this P.O., and (5) the place of delivery. Any difference in price or time for performance resulting from such change(s) shall be equitably adjusted in the contract price or delivery dates, or both and this P.O. shall be modified in writing accordingly. Any claim for adjustment under this paragraph by Seller must be asserted within 15 days of the date of the written change order.
4. **Packing and Shipping.** No charge shall be made by Seller for packaging or storage, unless authority for such charge is expressly incorporated in this P.O. All goods shall be packaged, marked, and otherwise in accordance with good commercial practice, in such manner as to insure against damage from weather and transportation, and to obtain the lowest practical shipping rates. An itemized packing list clearly stating Sellers name, the goods shipped, the applicable DACA P.O. number, date and item number(s), quantity shipped and weight, shall accompany each shipment.
5. **Delivery Schedules.** DACA's production schedules are based on the materials and/or services covered by this P.O. being delivered to DACA at the agreed time. DELIVERY TIME IS, THEREFOR, THE ESSENCE OF THIS P.O. IF DELIVERIES ARE BEHIND THE SCHEDULE SPECIFIED IN THIS P.O., DACA MAY REQUEST A SELLER TO SHIP BY EXPRESS. IN SUCH AN EVENT, DELIVERIES SHALL BE MADE BY EXPRESS, AND SELLER SHALL PAY FOR THE DIFFERENCE BETWEEN FREIGHT RATE AND EXPRESS RATE. IF DELIVERIES ARE NOT MADE WITHIN THE TIME SPECIFIED, DACA RESERVES THE RIGHT, AT ITS OPTION AND WITHOUT LIMITATIONS, TO CANCEL THIS P.O. IN WHOLE OR IN PART, OR REJECT ANY GOODS DELIVERED AFTER THE TIME SPECIFIED AND HOLD SELLER LIABLE FOR DAMAGES SUSTAINED BY DACA AS A RESULT OF SELLERS FAILURE. Notwithstanding DACA's right to cancel and/or reject goods and/or services, Seller agrees to notify DACA immediately of any failure or potential failure to deliver any part of this P.O. or the exact goods and/or services called for in this P.O. on the delivery date specified. Acceptance of any goods and/or services shall not be construed as a waiver of any of DACA's right resulting from late delivery.
6. **Penalties.** A late penalty of 2% per calendar week will be imposed against the listed price for those items delivered late, beginning the day after the contracted delivery date, unless this P.O. is amended to reflect alternate delivery dates.

7. Price. This P.O. shall not be filled at prices higher than prices specified in this P.O., unless such increase prices are authorized in writing by DACA or its authorized representative. Seller warrants that the prices to be charged for goods and/or services ordered in this P.O. are not in excess of prices charged other customers similarly situated, for similar quantities of goods and/or services of like quality.
8. FOB Instructions. (a) Where FOB point is destination specified by DACA, Seller shall ship prepaid. Invoices will be dated as of date of receipt of acceptable material or invoice, whichever is later. (b) Where FOB is Seller's shipping point is specified, when shipped prepaid, Seller shall attach original, receipted freight bill to invoice. Proof of shipping charges is required by DACA and payment for such will be made only when instructions above are followed by Seller. Invoices, together with freight bills will be dated as of date of receipt of acceptable material or invoice, whichever is later. (c) Title and responsibility for material specified in this P.O. passes to DACA at the FOB point as specified on the face of this P.O.
9. Invoice and Payment. Invoices must show applicable P.O. number and date, item number(s), part number(s), point of shipment, manner of shipment, and cash discount. The invoice discount period will start from the date of receipt of acceptable material or date of invoice, whichever is later. DACA shall issue payment in accordance with agreed upon terms receipt of a correct invoice, provided Seller has delivered conforming material or satisfactorily completed services. Payment of invoice shall not constitute acceptance of goods or services, and all invoices shall be subject to adjustment should the Seller fail to meet the requirements of this P.O. accepted by the Seller. Adjustments for payments made for the failure of Seller to meet the requirements of this P.O. or for any overpayment shall be deducted from subsequent payments due Seller, or, at DACA's option, shall be promptly refunded by Seller upon request.
10. Over and Advance Shipments. Goods shipped to DACA more than 7 days in advance of delivery schedule, without express written consent of DACA, may be returned to Seller at Seller's risk and expense for redelivery to DACA on the scheduled delivery date. All over shipments will be subject to inspection and acceptance. DACA will be liable for payment only for quantities ordered and delivered. Over shipments shall be held by DACA at Seller's risk and expense for a reasonable time waiting shipping instructions. Shipping charges for returns shall be at Seller's expense.
11. Cancellation. DACA may at any time cancel all or any portion of this P.O. prior to shipment by Seller for any breach or anticipatory breach of the terms of this P.O. by the Seller. In addition, in the event any place of business or other premises of DACA shall be affected by lockouts, strikes, riots, war, fire, explosion, inability to obtain fuel or power, national defense requirements, floods, earthquakes, or any other casualty or cause beyond DACA's control which might reasonably tend to impede or delay the reception, handling, inspection, processing, use, or marketing of the goods covered by this P.O. by DACA, its agents, or employees, DACA may at its option cancel all or any undelivered part of this P.O. Any cancellations of any undelivered portion of this P.O. shall be accomplished by giving written notice to Seller.
12. Warranty. Seller warrants that services are performed in a workman like manner and that materials (1) are free from all liens and title encumbrances, (2) are free from defect in design, material, and workmanship, (3) conform to applicable specifications, drawings, samples, or other descriptions referenced on the face of this P.O., and (4) are suitable for the purposes intended, if such purposes were known to Seller. The above warranties shall survive any delivery, inspection, acceptance, payment, termination, or expiration of this P.O. and shall run in favor of DACA its successors, assigns, customers and users of its products. Seller's obligations under this warranty include, at DACA's option: (1) performing the services to DACA's satisfaction, (2) repairing or replacing nonconforming or unsuitable material, or (3) crediting or refunding DACA the purchase price for such material or service. DACA shall have the right to return all defective items to Seller at Seller's risk and expense for repair, replacement, refund and other remedies permitted by law, at DACA's option, among other remedies. THIS WARRANTY IS IN ADDITION TO ALL IMPLIED WARRANTIES, ALL EXPRESS WARRANTIES NORMALLY EXTENDED BY SELLER AND ALL WARRANTIES AND OTHER REMEDIES GRANTED OR ALLOWED BY THE UNIFORM COMMERCIAL CODE FOR THE STATE OF NEW MEXICO.
13. Inspection. Seller shall inspect all material prior to shipment to DACA. Material which fails to pass DACA's incoming acceptance test may be rejected by DACA and returned to Seller at DACA's option. No inspection (including source inspection), tests, approval, (including design approval), or acceptance of goods shall relieve Seller from responsibility for any defects in the goods or other failures to meet the requirements of this P.O. or for latent defects, fraud or Seller's warranty obligations.

14. Onsite Inspection. DACA, its customers, and regulatory authorities reserve the right to perform source inspections and audits of sellers quality control procedures, process control systems, and records / traceability maintenance systems. Seller shall be notified in writing by DACA's Quality Control or Purchasing Dept.'s of any such site inspection if deemed necessary to maintain integrity to the terms and conditions of this contract. Seller shall respond within five (5) working days to schedule said site inspection for a time that is convenient to both parties.
15. Assignments and Subcontracts. This P.O. shall not be assigned nor shall Seller subcontract for completed or substantially completed articles or major components to the subject matter of this P.O. without DACA's prior consent. Any assignment shall be subject to set off or recoupment for any present or future claim which DACA may have against Seller and include requirements for the supplier to flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.
16. Furnished Information. Drawings, specifications, manuals, photographs, and other engineering or manufacturing information supplied to Seller by DACA are recognized by Seller as being proprietary in nature, shall remain DACA's property and shall be duplicated only if authorized in writing by DACA. Seller shall be deemed an insurer of such confidential and proprietary property and shall assume risk for loss or damage to said items while in its possession or in its control, except where otherwise specified in a given contract. Seller shall notify DACA promptly whenever items of DACA's property are in need of repair or replacement. Any part or parts made according to DACA design will not be furnished by Seller to any other person, firm, or corporation. DACA's property may be removed from Sellers possession or control by DACA at any *time*.
17. Compliance with Law. Seller, in performance of this P.O., shall comply with all applicable laws, regulations, ordinances, proclamations, demands, and requisitions of the Federal Government or of any state or local government authority pertaining thereto, in effect on the date of this P.O. or which become effective prior to full performance of this P.O. by Seller. On P.O.'s issued under Government contracts and/or subcontracts, the 'Government Terms and Conditions' shall also apply. Further, the recording of false, fictitious, or fraudulent statements or entries on such a P.O. or related documents may be punished as a felony under Federal Statutes including Federal Law, Title 18, and Chapter 47.
18. Gratuities. Seller warrants that neither it nor any of its employees, agents, or representatives, has offered or given any gratuities to any of DACA's employees, agents, or representatives with regard to the subject matter of any given P.O. and/or contract.
19. Patents. Seller warrants that the goods ordered on this P.O., and the use thereof, do not infringe on any United States or foreign letters Patent, trademarks or copyrights, and Seller agrees to indemnify, defend, protect and hold harmless DACA its successors, assigns, customers and users of such goods from all loss and expense incurred on account of any such alleged or actual infringement.
20. Confidential Information and Advertising. Seller and all subcontractors and agents of Seller shall not, without first obtaining the written consent of DACA, disclose to any person outside their employ, or use for purposes other than performance of this P.O., any information pertaining to the existence of this P.O., including, but not limited to, specifications and descriptions in this P.O.
21. Work on DACA's Premises. If Seller performs any work on DACA's premises, Seller agrees to defend, indemnify, and hold harmless DACA from and against all claims, losses or damages due to injury or death to any persons, including Sellers agents, servants, or employees and all damage odd to the destruction of any property resulting from Sellers negligent acts or omissions incident to or arising out of such work on DACA's premises.
22. Quality Assurance. If "Certificates of Compliance or Specifications"<sup>11</sup> are required when requested on the face of this P.O. Seller agrees, at its own expense and whenever and as often as requested by DACA, to furnish and deliver to DACA satisfactory evidence showing that all goods ordered under this P.O. fully and completely conforms to specifications. Certificates of Compliance or Specifications shall be traceable to the original manufacturer of said goods.

23. Financial Condition and Insolvency. In addition to any other right that DACA may have to cancel any portion of this P.O., DACA reserves the right to cancel all or any of this P.O., by giving notice to Seller, in the event DACA concludes that Seller's financial condition is unsatisfactory to DACA, and Seller, within 10 days after such notice, does not provide acceptable information to DACA upon which it is reasonable for DACA to conclude that Seller will be able to perform its obligations under this P.O. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any proceeding under applicable Federal or State Bankruptcy law currently in effect, DACA shall be entitled to cancel any unfilled part of this P.O. without any liability whatsoever.
24. Records. Seller agrees to maintain on its premises any directly pertinent books, documents, papers, and records (including electronic or magnetic media) of Seller involving transactions related to this P.O. or other contract, and to make available such records for inspection by DACA, during Seller's normal business hours, for a period of 10 years after final payment of this P.O. by DACA.
25. Remedies. The remedies provided in this document are cumulative and in addition to all other remedies provided by law.
26. Laws Governing. This P.O. or contract shall be construed according to the laws of the State of New Mexico.
27. Restocking Charges. Restocking charges, if any, shall be no greater than the lesser of industry standards or that charged to Seller's most favorable customers.
26. Waivers. Any waiver of strict compliance of this P.O. by DACA shall not be a waiver of DACA's right to insist upon subsequent strict compliance with the terms of this P.O., nor shall any single or partial exercise of any right, remedy, or privilege by DACA preclude any other exercise of the same right, remedy, or privilege.
29. Attorney's Fees. If any action is brought by DACA to enforce any provision of this P.O., DACA shall be entitled to reimbursement of its expenses and costs, including reasonable attorney's fees, in addition to award for damages suffered.
30. Commissions and Fees. Seller shall indemnify and hold DACA harmless from any claim by any person, firm or corporation that a commission or fee is due as a result of this P.O.
31. Provisions Severable. The provisions and terms of this P.O. are independent and severable from each other, and no provision or term shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others may be invalid or unenforceable, in whole or in part.
32. Notices. All notices, requests, demands, and other communications required or allowed to be given under this P.O. shall be in writing and shall be deemed to have been duly given and made 5 days after being deposited in the United States Mail, postage prepaid, return receipt requested, to the other party at the address listed on page 1 of this P.O. or contract.
33. Nonconforming Products and Materials: If at any time seller becomes aware that any shipped product or material is nonconforming, the Seller will immediately notify DACA. Seller shall obtain DACA's prior written approval with respect to the disposition of any nonconforming products or materials. Seller must notify DACA conditions which product malfunction, defect, and unairworthy conditions exist and have to be reported and dispositioned.
34. Process, Product or Location Changes: Any changes in Seller's manufacturing process, product or site of manufacture, and/or supplier change shall require advanced notification to and prior written approval of DACA.
35. Sub-tier Suppliers; Flow-down Requirements: Seller may not outsource or subcontract any product, component, service or other work for or on behalf of DACA to any sub-tier supplier without the prior written approval of DACA. DACA approved use of any sub-tier supplier, Seller must flow down to such sub-tier supplier any applicable customer requirements, including, but not limited to, requirements in any purchase order or other purchase document issued by DACA. All service or other work performed by a sub-tier supplier must strictly comply with all customer specifications.

36. Right of Access: DACA, its customers, governmental authorities and their respective representatives intend to perform verification activities at Seller's premises when warranted and to assure product and services conform to specified requirements. Seller shall provide DACA, its customers, government authorities and their respective representatives with access to all of Seller's facilities and records relating to the performance and processing of DACA's orders.