

Note to Users:

These Model Terms and Conditions are offered by BEMA to assist purchasers and sellers in conducting transactions. They are offered for consideration only. All terms and conditions are subject to negotiation and agreement between the parties.

EQUIPMENT PURCHASE AGREEMENT MODEL TERMS AND CONDITIONS

1. PURCHASE AND SALE.

Purchaser agrees to purchase from Seller and Seller agrees to provide the equipment, parts, services and supplies (hereinafter "Equipment") agreed by the parties as evidenced by a list attached hereto, (the "Specifications").

2. PRICES.

Purchaser shall pay the prices set forth on the Specifications for the Equipment and all applicable taxes. All prices and other amounts listed are in U. S. dollars, unless otherwise noted.

3. PAYMENT.

Unless otherwise set forth on the Specifications, invoices for Equipment shall be submitted as follows: ____ upon receipt of order from Purchaser ____ prior to shipment of Equipment to Purchaser, and ____ within ____ days after delivery. Seller shall submit invoices for Services after completion of the Services. Payment shall be due no later than thirty (30) days after receipt of an invoice.

4. SPECIFICATIONS.

The Specifications shall contain the following: scope of supply, description of Equipment purchased, quantity purchased, delivery information, destination, price, acceptance criteria and warranty exceptions. All Specifications issued hereunder shall be governed by the terms and conditions of this Agreement. All changes to Specifications require the written approval of both Purchaser and Seller.

5. TITLE AND RISK OF LOSS.

Title to the Equipment shall pass to the Purchaser when payment is received in full by the seller and risk of loss shall pass to Purchaser upon delivery of the Equipment to Shipper. Seller agrees that the Equipment will be delivered to Purchaser free and clear of all liens, claims and encumbrances. Unless otherwise stated in the Specification, Purchaser shall pay all freight and shipping costs. Seller shall be responsible for properly packing and packaging the Equipment and shall separately label all cases or packages. Purchaser shall pay for transit insurance on the Equipment.

6. MANUALS.

Unless otherwise agreed, Seller shall provide to Purchaser operation and instruction manuals (the "Manuals") in English. The Manuals shall include a list of recommended spare parts, including manufacturer's parts numbers, design and performance data, wiring diagrams, software documentation and lubrication and maintenance service instruction. Seller shall include additional information and/or materials in the Manuals as reasonably required by Purchaser.

7. REPRESENTATIONS AND WARRANTIES.

Seller represents and warrants the following.

Conformance with Specifications.

The Equipment shall conform to the Specifications.

Material and Workmanship.

The machines and parts included in the Equipment which are manufactured by the Seller shall be free from defects in material and workmanship for a period of twelve (12) months from delivery (the "Warranty Period"). Should any failure to conform with this warranty appear during the Warranty Period, Seller shall, at its expense, provide replacement parts.

New and refurbished replacement parts shall be subject to the remaining Warranty Period for original Equipment or ninety (90) days, whichever is longer. Unless otherwise set forth in the Specifications, Seller shall bear all costs associated with warranty service, including, but not limited to, any removal or installation costs, freight or insurance.

If applicable, Seller will assign to Purchaser all warranties applicable to any parts obtained by Seller from third parties, or if not assignable, will assert such warranties on behalf of Purchaser at Purchaser's request. Notwithstanding any other provision of this Agreement; this provision is Seller's sole warranty with respect to such parts.

The warranty in this section shall not apply to any Equipment which has been (i) improperly installed, repaired, altered, or subjected to misuse by anyone other than Seller or Seller's agent or by Purchaser in accordance with the Manuals furnished by Seller or (ii) used in a manner contrary to Seller's written operating and maintenance procedures in the Manuals.

Software.

Any software provided by Seller shall perform in accordance with the Specifications. Seller further warrants that no part of the Equipment contains any 'computer virus' or other 'contaminants', including any codes or instructions that may be used to access, modify, delete, damage, or disable Purchaser's computer system. If Seller incorporates into Equipment any 'third-party' software of other vendors, Seller shall obtain comparable licenses and warranties from such vendors, assign such licenses and warranties to Purchaser and cooperate with Purchaser in the enforcement of such warranties. .

Non-Infringement and Original Work.

The Equipment and/or its use or sale pursuant to this Agreement does not and will not infringe any patent, trademark, trade name, copyright, trade secrets or other intellectual property right and Seller warrants and represents that it has not misappropriated or misused the proprietary rights of a third party by selling the Equipment to Purchaser.

LIMITATIONS ON WARRANTIES

THE WARRANTIES SET FORTH IN THIS SECTION 8 ARE THE SOLE WARRANTIES MADE BY SELLER. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES OR LOSS OF PROFITS.

8. CONFIDENTIALITY.

Use of Confidential Information.

Each party shall regard as confidential and proprietary all of the information communicated to it by the other party or otherwise obtained in connection with this Agreement (which information shall at all times be the property of provider). Neither party shall, without the other party's prior written consent, at any time (i) use such information for any purpose other than in connection with the performance of its obligations under this Agreement or (ii) disclose any portion of such information to any one or more third parties, excluding agents or subcontractors which are directly performing services in connection with this Agreement. Each party may disseminate such information to its employees, agents and subcontractors only on a "need-to-know" basis.

Exceptions.

Notwithstanding the foregoing, neither party's obligations under this Section shall apply to (i) information that, at the time of disclosure, is, or after disclosure becomes publicly known other than as a consequence of Seller's breach as substantiated by corroborating evidence, (ii) information that was known or otherwise available to Seller prior to the disclosure by Purchaser as substantiated by corroborating evidence, (iii) information disclosed by a third party to Seller (other than Seller's agents or subcontractors) after the disclosure by Purchaser, if such third party's disclosure neither violates any obligation of the third party to Purchaser nor is a consequence of Seller's breach (iv) information that Purchaser authorizes, in writing, for release or (v) information that the Seller is legally obliged to release.

9. TERMINATION

Termination for Breach.

Either party may terminate this Agreement or a Purchase Order, upon notice to the other, if the other party fails to perform or otherwise materially breaches this Agreement or defaults any of its material obligations under this Agreement and fails to cure the failure, breach or default within thirty (30) days after notice (or as otherwise agreed by both parties in writing).

Termination for Bankruptcy or Assignment for Creditors.

Either party may terminate this Agreement or a Purchase Order, upon notice to the other, upon the entry of an "Order for

Relief” naming the other party as a “Debtor” under Title 11 of the United States Code or upon the entry of a decree or order by a court having competent jurisdiction in respect to any petition filed or action respecting the other party directly involved in a reorganization, arrangement, creditors composition, readjustment, liquidation, dissolution, bankruptcy or similar relief under any other present or future United States (or other) statute, law or regulation, or, with respect to foreign participating subsidiary companies, the comparable bankruptcy law, statute or regulation applicable in the country where it is headquartered, whether or not resulting in the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official, and the continuation of any such decree or order is unstayed and in effect for a period of thirty (30) consecutive days; or if the other party makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or any other party takes action in furtherance of the above.

10. FORCE MAJEURE.

If either party hereto is prevented from complying, either totally or in part, with any of the terms or provisions of this Agreement by reason of acts of God, acts of a public enemy, acts of any federal, state, local or provincial government, agency or department thereof, quotas, embargoes, acts of any person engaged in subversive activity or sabotage, fires, floods, explosions, or other catastrophes, epidemics or quarantine restrictions, involuntary strikes or other labor stoppages, slowdowns or disputes, or any other cause beyond the control of the parties, then upon prompt written notice to the other party, the affected provisions and/or other requirements of this Agreement shall be suspended during the period of such disability. The disabled party shall make all reasonable efforts to remove such disability as soon as commercially feasible. If the disability continues for more than thirty (30) days (or such other period as may be agreed by the Parties in writing) after the cessation of the reason for such disability, the non-disabled party shall have the right to terminate this Agreement immediately upon written notice, and neither party shall thereafter have any further rights or obligations hereunder, except as set forth in the surviving provisions.

11. NOTICE.

All notices, reports, consents and receipts shall be in writing (in English) and shall be deemed duly given on (a) the date of personal or overnight courier delivery; (b) the date of transmission by facsimile or other electronic transmission service, provided a confirmation copy is also sent no later than the next business day by postage paid, return receipt requested first-class mail; or (iii) three (3) business days after the date of deposit in the United States mail, by postage paid, return receipt requested first-class mail, addressed as follows:

Attn:
Fax:

Attn:
Fax:

Either party may change its mailing address by written notice to the other party in accordance with this Section.

12. MISCELLANEOUS.

Counterparts.

This Agreement may be executed in counterparts, including by means of telecopied signature pages, any one of which need not contain the signature of more than one party, each of which shall be deemed an original, but all of which together shall constitute the entire Agreement.

Entire Agreement/Waiver/Amendment.

This document, including attachments and exhibits hereto and any documents incorporated by reference herein, constitutes the entire agreement and understanding between the parties regarding the subject matter hereof, and supercedes and merges all prior discussions and all oral and/or written agreements between them relating thereto. No waiver, modification or amendment to this Agreement shall be valid unless in writing, signed by the parties hereto. No usage of trade or course of dealing between or among any persons having any interest in this Agreement will be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any party hereunder. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial

exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

Governing Law.

This Agreement shall be governed by and construed in accordance with the substantive laws, but not the laws of conflicts, of the State of _____.

Non-Exclusivity.

This Agreement shall not be deemed exclusive and either party may from time to time enter into similar agreements with third parties which may be the other party's competitors with respect to the goods or services provided hereunder and there is no guaranteed volume awarded under the terms of this Agreement.

Survival.

The provisions of this Agreement concerning representations and warranties, and this subsection regarding survival, shall survive any termination of this Agreement. The confidentiality and non-use obligations herein shall survive five (5) years after termination or expiration of this Agreement.

Preamble/Headings.

The preamble is hereby incorporated in and made a part of this Agreement. The headings and subheadings appearing at the beginning of each section and each subsection are for convenience purposes only and are not a substantive part of the Agreement.

Advertising and Publicity.

Neither party shall use the trademarks of the other party in publicity releases, or promotional or marketing materials or correspondence to others without first securing the written consent of such other party.