



BSI Terms and Conditions of Sale

These BSI Terms and Conditions of Sale (the “Terms”) govern the sale of goods by Breathing Systems Inc. and its affiliates (“BSI”), to the customer, and its affiliates, identified in the Purchase Order (“Buyer”). In the event of any conflict between these Terms and the terms of any Purchase Order (as subsequently defined), or any other document between the parties, these Terms prevail. Buyer acknowledges these Terms control for all matters relating to the sale of goods and that BSI would not sell you the goods unless you agree to these Terms. It is your responsibility to read these Terms completely.

1. **Sale of Goods.** Subject to these Terms, BSI may, on a non-exclusive basis, sell to Buyer, and Buyer may, on a non-exclusive basis, purchase from BSI, certain goods including life support equipment, parts and accessories (the “Goods”). The Goods to be purchased will be described on one or more Purchase Orders. The parties agree that BSI is not obligated to sell, and Buyer is not obligated to buy, any annual minimum quantities.

2. **Purchase Orders.** Buyer shall initiate all orders for the purchase of Goods by providing BSI with a purchase order identifying the particular items or parts to be purchased and the quantity and total estimated purchase price. By providing BSI a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms and on no other terms. BSI has the right, in its sole discretion, to accept or reject any purchase order from Buyer. BSI may accept any purchase order from Buyer by confirming the order through a seller’s order, written confirmation, or invoice or by delivering such Goods, whichever occurs first. For purposes of these Terms, the final document evidencing the terms of the purchase of Goods—with a presumption that such document is the seller’s order from BSI, and if no seller’s order, then the purchase order from Buyer—shall be referred to in these Terms as the “Purchase Order.” Buyer and BSI agree that any Purchase Order, whether a seller’s order, purchase order, estimate, invoice, or other document shall be subject to these Terms, regardless of whether these Terms are referenced on such Purchase Order or the Purchase Order states that its terms are controlling. No Purchase Order is binding on BSI unless accepted by BSI as provided in these Terms. Additionally, BSI may cancel any Purchase Order, without liability or penalty, prior to delivery of the Goods. Any attempted variations made to these Terms by Buyer in any Purchase Order are void and have no effect.

3. **Delivery.**

(a) The Goods will be delivered on, or within a reasonable time after, the date agreed to by BSI in the Purchase Order, subject to availability of finished Goods. BSI shall not be liable for any delays, loss or damage in transit. Buyer shall be responsible for all shipping and handling costs related to the delivery of the Goods, which is separate from the Price of the Goods.

(b) BSI shall deliver the Goods “Ex Works” (as that term is defined in the Incoterm 2010 rules) (the “Delivery Point”) using BSI’s standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within five (5) business days of BSI’s written notice that the Goods have been delivered to the Delivery Point. Buyer will be responsible for arranging all shipping from the Delivery Point (and any other location).

(c) BSI may, in its sole discretion, without liability or penalty, make partial shipments of Goods to the Delivery Point. Each shipment will constitute a separate sale, and Buyer shall pay for the units delivered whether such shipment is in whole or partial fulfillment of the quantity purchased under these Terms.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to BSI’s notice that the Goods have been delivered at the Delivery Point, or if BSI is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods



shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) BSI, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. Non-delivery. The quantity of any installment of Goods as recorded by BSI on dispatch from BSI's place of business Shall be conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. BSI shall not be liable for any non-delivery of Goods (even if caused by BSI's negligence) unless Buyer gives written notice to BSI of the non-delivery within three (3) business days of the date when the Goods would in the ordinary course of events have been received. Any liability of BSI for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

5. Quantity. If BSI delivers to Buyer a quantity of Goods of up to ten percent (10%) more or less than the quantity set forth on Exhibit A, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in these Terms adjusted pro rata.

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer grants BSI a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or later arising or acquired from time to time, and in all accessions and replacements or modifications, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the applicable laws of the State of Texas, including its uniform commercial code.

7. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within twenty-four (24) hours after delivery to the Delivery Point (the "Inspection Period"). Buyer will be deemed

to have accepted the Goods unless it notifies BSI in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by BSI. "Nonconforming Goods" means only the product shipped is different than identified in the Purchase Order.

(b) If Buyer timely notifies BSI of any Nonconforming Goods, and BSI confirms the product is a Nonconforming Good, BSI shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to BSI's facility located at 3903 Cedar Blvd, Suite B, Baytown, Texas 77523. If BSI exercises its option to replace Nonconforming Goods, BSI shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at BSI's expense, the replaced Goods to the Delivery Point. Additionally, if BSI agrees the Good(s) is a Nonconforming Good, BSI will reimburse Buyer for the amount of Buyer's actual shipping costs (including shipping insurance costs) incurred to return the Nonconforming Good.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods, regardless of the legal basis of Buyer's claim whether in contract, tort or other legal basis Except as provided under Section 7(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under these Terms to BSI.

8. Price. Buyer shall purchase the Goods from BSI at the applicable price(s) set forth on the Purchase Order (the "Prices"). If the Prices are increased by BSI before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased Prices were originally inserted in the Purchase Order, and Buyer shall be billed by BSI on the basis of such increased Prices. BSI will inform Buyer of any such increase in Prices within a reasonable time after BSI determines the increased Prices. Additionally, if the Prices increase by more than 10% from the total prices set forth on



the Purchase Order, then BSI and Buyer will agree upon a new Purchase Order for the Goods, and, failing any such agreement, the Purchase Order shall be deemed null and void and neither party shall have any further liability to the other party. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, BSI's income, revenues, gross receipts, personnel or real or personal property or other assets.

9. Payment Terms. Buyer shall pay all invoiced amounts due to BSI upon receipt of BSI's invoice. An invoice will be deemed agreed to and accepted by Buyer unless Buyer objects to such invoice within seven (7) calendar days after receipt from BSI. Buyer shall make all payments hereunder by check or wire transfer and paid in US dollars. Buyer shall pay interest on any invoice that remains unpaid after thirty (30) days of its receipt at the lesser of the rate of two percent (2%) per month or the highest rate permissible under applicable law, calculated daily. Buyer shall reimburse BSI for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

10. No Set-off. Buyer shall not, and acknowledges that it will have no right, under these Terms or any agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to BSI or any of its affiliates, whether under these Terms or otherwise, against any other amount owed (or to become due and owing) to it by BSI or its affiliates, whether relating to BSI's or its affiliates' breach or non-performance of this these Terms or any agreement between Buyer or any of its affiliates, and BSI or any of its affiliates, or otherwise.

11. Warranties.

(a) BSI warrants to Buyer that, for a period of twelve (12) months from the date of shipment of the particular Goods (the "Warranty Period"), such Goods will materially conform with BSI's specifications in effect as of the date of manufacture, and will be free from significant defects in material workmanship.

(b) The warranties set forth in Section 11(a) do not apply:

(i) to any parts or equipment BSI deems as high-wear or high-use, including, for example soft goods, such as: O-rings and springs;

(ii) where the Goods have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any manuals or instructions issued by BSI, including BSI's Operations and Maintenance User Instructions;

(iii) where the Goods have been reconstructed, repaired, or altered other than by BSI, or where the products or hardware has been used with a Third Party Product (as subsequently defined); or

(iv) where the Goods have been used outside BSI's intended purpose for the Goods (limited to use at oil and gas refineries) or outside of any specific ranges or conditions for the Goods.

(c) Notwithstanding any other provision of these Terms, this Section contains Buyer's exclusive remedy for defective Goods ("Defective Goods"). Buyer's remedy under this Section 11(c) is conditioned upon Buyer's compliance with its obligations under Section 11(c)(i) and 11(c)(ii) below. During the Warranty Period, with respect to any allegedly Defective Goods:

(i) Buyer must notify BSI, in writing, of any alleged claim or defect as soon as feasible and in any event within five (5) business days from the date



Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period);

(ii) Buyer must ship, at its expense and risk of loss, such allegedly Defective Goods to BSI's facility located at BSI's principal address for inspection and testing by BSI;

(iii) If BSI's inspection and testing reveals, to BSI's reasonable satisfaction, that such Goods are defective and any such defect has not been caused or contributed to by any of the factors described under Section 11(b), BSI shall in its sole discretion, and at its expense: (i) repair or replace such defective Goods, or (ii) credit or refund the Price of such defective Goods less any applicable discounts, rebates or credits;

(iv) If BSI exercises its option to repair or replace, BSI shall, after receiving Buyer's shipment of such Defective Goods, ship to Buyer the repaired or replaced Goods, or Goods that are new or comparable to the replaced Defective Goods (including Goods containing new or comparable parts to those in the Defective Goods.

(v) If BSI agrees the Good(s) is a Defective Good, BSI will reimburse Buyer for the amount of Buyer's actual shipping costs (including shipping insurance costs) incurred to return the Defective Good. Buyer has no right to return for repair, replacement, credit or refund any Goods except as set forth in this Section. In no event shall Buyer reconstruct, repair, alter or replace any Goods, in whole or in part, either itself or by or through any third party.

(d) **SECTION 11(c) SETS FORTH THE BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(a).**

(e) **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11(a) (AS LIMITED BY THE EXCEPTIONS IN SECTION 11(b) AND AS LIMITED IN SECTION 11(c)), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(f) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(g) If BSI determines that any Goods sold to Buyer may be defective, at BSI's request, Buyer will promptly



withdraw all similar Goods from sale and return such Goods to BSI. After Buyer returns all withdrawn Goods consistent with BSI's instructions, BSI shall repair or replace all such returned Goods consistent with the terms of Section 7, unless any such defect has been caused or contributed to by any of the factors described under Section 11(b). THIS SECTION SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY GOODS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION.

12. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THESE TERMS, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD UNDER THE APPLICABLE PURCHASE ORDER WHERE THE GOODS IN QUESTION WERE SOLD TO BUYER.**

13. Compliance with Law; Maintenance of Goods. Buyer is in compliance with and shall comply with all applicable laws, regulations and ordinances. Buyer has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms. Furthermore, Buyer will ensure the Goods will be maintained and repaired in accordance with BSI's current maintenance and user instructions (including the Operations and Maintenance User Instructions), at Buyer's sole cost and as Buyer's sole responsibility, in working condition and as required for the Goods to comply with all applicable laws, regulations, and standards; provided, Buyer may elect not to maintain and repair a Good so long as Buyer destroys the Good or ensures it is no longer used as a breathing or respiratory apparatus. Failure to maintain and repair the Goods consistent with these Terms nullifies and voids any warranty, express or implied, by BSI. Buyer may not alter or modify any Goods other than as set forth in the preceding sentence, and only to the extent necessary to ensure maintenance or repair of the Goods to the state of a conforming Good (i.e., a Good that would not be considered a Nonconforming Good upon delivery).

14. Indemnification. Buyer shall indemnify, defend and hold harmless BSI and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under these Terms and the cost of pursuing any insurance providers, relating to any claim of a third party or BSI arising out of or occurring in connection with the Goods purchased from BSI or Buyer's negligence, willful misconduct or breach of these Terms. Buyer shall not enter into any settlement without BSI's or Indemnified Party's prior written consent.

15. Insurance. In the event Buyer does not pay the Price for the Goods in entirety prior to Delivery of the Goods, Buyer agrees to maintain insurance on the Goods in accordance with this Section. From the date of delivery of Goods until the Goods are fully paid for, Buyer shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers. Such insurance must include, but is not limited to, shipping and commercial general liability



in a sum no less than the Price of the Goods. Upon BSI's request, Buyer shall provide BSI with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in this Section. The certificate of insurance shall name BSI as an additional insured and as a loss payee as its interests may appear. Buyer waives any and all rights of subrogation against BSI and likewise shall require its insurer to waive all rights of subrogation against BSI's insurers and BSI.

16. Termination. In addition to any remedies that may be provided in these Terms, BSI may terminate its relationship with Buyer with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms or a Purchase Order; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. For purposes of clarification, BSI's rights and Buyer's obligations (including the obligation to pay all amounts owed to BSI) existing immediately prior to termination of these Terms (for any reason) shall survive termination. Buyer shall return all copies of Confidential Information (as defined in Section 17) immediately upon termination of these Terms.

17. Confidential Information. All non-public, confidential or proprietary information of BSI, including, but not limited to, intellectual property, trade secrets, third-party confidential information, templates, forms, procedures, manuals, instructions, QMS, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by BSI to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with these Terms is confidential (collectively, "Confidential Information"), solely for the use of performing these Terms and may not be disclosed or copied unless authorized by BSI in writing. Upon BSI's request, Buyer shall promptly return all documents and other materials received from BSI, including Confidential Information. BSI shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that Buyer proves, with clear and convincing evidence, is: (a) in the public domain; or

(b) rightfully obtained by the Buyer on a non-confidential basis from a third party.

18. Entire Agreement. These Terms, including and together with any related exhibits, schedules, attachments and appendices, constitute the sole and entire agreement of the parties with respect to the subject matter contained in these Terms, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. These Terms apply to the sale of all goods, equipment, devices, and parts, including any repairs, updates, or modifications BSI makes to Goods (each of the foregoing in this sentence shall be included in the definition of "Goods" as that term is previously defined in these Terms). These Terms supersede and replace, in entirety, any (i) terms or conditions used, stipulated, or put forward by Buyer, and (ii) terms of an offer, regardless whether occurring prior to or subsequent to the effective date of a Purchase Order.

19. Survival. Subject to the limitations and other provisions of these Terms: (a) Sections 2, 4, 5, 6, 7, 8, 9, 10, 11(c)-(g), 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, and 31 shall survive the expiration or earlier termination of these Terms; and (b) as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of these Terms.

20. Notices. All notices, requests, consents, claims, demands, waivers and other communications under these Terms must be in writing and addressed to the Buyer on the address listed on the Purchase Order, or to BSI, as applicable at its address set forth below (or to such other address that the receiving party may designate from time to time in accordance with this Section). Unless otherwise agreed by the parties, all notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid), or electronic mail (email). Except as otherwise provided in these Terms, a notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.



Notice to BSI:	3903 Cedar Blvd, Suite B Baytown, Texas 77523 USA Attention: BSI Personal Email: information@breathingsystems.us
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21. Severability. If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the court may modify these Terms to effect the original intent of the parties as closely as possible in order that the transactions contemplated by these Terms be consummated as originally contemplated to the greatest extent possible.

22. Amendments. No amendment to or modification of or rescission, termination or discharge of these Terms is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of these Terms and signed by an authorized representative of each party.

23. Waiver. No waiver by any party of any of the provisions of these Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms shall operate or be construed as a waiver, nor shall any single or partial exercise of any right, remedy, power or privilege under these Terms preclude any other or further exercise of any other right, remedy, power or privilege.

24. Cumulative Remedies. Unless otherwise set forth in these Terms, all rights and remedies provided in these Terms are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

25. Assignment. Buyer shall not assign, transfer, delegate or subcontract any of its rights or obligations under these Terms without the prior written consent of BSI. Any purported assignment, transfer, delegation or subcontract in violation of this Section shall be null and void. No assignment, transfer, delegation or subcontract shall relieve Buyer of any of its obligations hereunder. BSI may at any time assign, transfer, delegate or subcontract any or all of its rights or obligations under these Terms without Buyer's prior written consent.

26. Successors and Assigns. These Terms are binding on and inures to the benefit of the parties to these Terms and their respective permitted successors and permitted assigns.

27. No Third-Party Beneficiaries. These Terms benefit solely the parties to these Terms and their respective permitted successors and assigns and nothing in these Terms, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

28. Choice of Law. These Terms, including all exhibits, schedules, attachments and appendices attached to these Terms, and all matters arising out of or relating to these Terms, are governed by, and construed in accordance with, the laws of the State of Texas, United States of America, without regard to any conflict of laws provisions to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

29. Choice of Forum. Subject to Section 31 hereof (Arbitration), each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to these Terms, including all exhibits, schedules, attachments and appendices attached to these Terms, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than a court with proper jurisdiction in Harris County, Texas, USA, and any appellate court. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in a court with proper jurisdiction in Harris County, Texas, USA. Each party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the



judgment or in any other manner provided by law. For purposes of clarification, the parties agree all disputes will be resolved in accordance with Section 31 of these Terms.

30. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THESE TERMS, INCLUDING EXHIBITS, SCHEDULES, AND ATTACHMENTS TO THESE TERMS, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, ACCORDINGLY, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THESE TERMS, INCLUDING ANY EXHIBITS, SCHEDULES, OR ATTACHMENTS TO THESE TERMS, OR THE TRANSACTIONS CONTEMPLATED BY THESE TERMS.

31. Arbitration. In the event a dispute arises related to these Terms, any Purchase Order, or Goods, the parties agree to work in good faith to amicably resolve the dispute. If the parties are unable to resolve such dispute, the dispute shall be exclusively resolved through binding arbitration in accordance with the commercial rules of the American Arbitration Association as in force upon the execution of these Terms. The arbitration shall take place in Harris County, Texas, USA and shall be conducted in English language. Each party agrees that a final ruling of arbitration is conclusive and may be enforced in any jurisdiction by suit on the judgment or in any other manner provided by law.

32. Counterparts. Each Purchase Order may be executed in counterparts (to the extent applicable), each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 20, a signed copy of a Purchase Order delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of such Purchase Order.

33. Force Majeure. Any delay or failure of BSI to perform its obligations under these Terms will be excused to the extent that the delay or failure was caused by an event beyond its control, without its fault or negligence and that by its nature could not have been foreseen by BSI or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities).

34. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from these Terms.