

Terms & Conditions for Vendors

1. **GENERAL.** This Order is expressly conditioned upon Seller's acceptance of the terms and conditions set forth herein, together with the terms set forth in documents attached to this Order or incorporated by reference on the face of this Order. The Order constitutes the entire agreement between BEMA and Seller and supersedes all other agreements and undertakings, whether written or oral, between the Parties with respect to the subject matter of this Order except for Non-Exclusive Trademark Licenses which may exist between the Parties. The Order shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of this Order shall be effective unless in writing signed by the party to be charged with the modification. No modification shall bind BEMA unless signed by an authorized BEMA Purchasing Representative. BEMA hereby explicitly rejects the inclusion of any different or additional terms proposed by Seller and if such different or additional terms are so included in an order acknowledgement, Seller agrees that a binding contract of sale will result including only the terms stated herein, unless BEMA has agreed by a written Order Modification to accept such different or additional terms. The order of precedence of all terms and conditions in the Order are those designated: (1) on the face of the Purchase Order and/or attachments, (2) in the body of a request for quotation or item specification, and (3) those stated in these Terms and Conditions.

Seller's acceptance of this Order must be by commencement of performance or by seasonable written acknowledgment of this Order, but where Seller's acceptance is by commencement of performance, BEMA reserves the right to treat its offer as having lapsed before acceptance unless BEMA is notified of Seller's acceptance within a reasonable time.

2. **VERBAL ORDERS** are accepted under the terms herein only. Any discrepancies between BEMA's understanding of the verbal order (which is expressed in this Order) and the Seller issued order acknowledgement are the responsibility of the Seller.

3. **ERRORS/CHANGES.** Any clerical errors appearing in the typed portion of a BEMA Order may be corrected at any time by BEMA.

4. **QUANTITIES.** The quantities specified for delivery on this Order are the only quantities required by BEMA. Therefore, if Seller delivers quantities in excess of those specified in this Order, BEMA shall not be required to make any payment for the excess goods and, at BEMA's election, may keep or return the excess goods at Seller's risk and expense.

5. **CONFORMANCE OF GOODS.** Seller warrants that all goods furnished hereunder will conform to the requirements of this Order (including all descriptions, specifications and drawings made as part of this Order), will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and free from defects in design. All warranties, including special warranties specified elsewhere herein or normally offered to buyers of goods of this kind, shall inure to BEMA, its employees, successors, assigns, customers and users of its products. BEMA's approval of designs or specifications furnished by Seller shall not relieve Seller of its obligations under this warranty. Any tender of goods which is nonconforming as to the quality or quantity or the delivery schedule shall constitute a breach of this Order and BEMA shall have the absolute right to reject such goods, in whole or in part, and notify Seller thereof. In addition, Seller shall not deliver any product to BEMA containing any Counterfeit Parts. In the event of such a tender, BEMA shall be entitled to all remedies as provided by law, and in addition thereto shall have the right to do any or all of the following: (1) to hold such nonconforming goods for a reasonable period at Seller's risk and expense pending a determination to accept or reject any or all thereof; (2) to return such nonconforming goods to Seller at BEMA's election and at Seller's risk and expense for replacement or correction; (3) to accept such nonconforming goods subject to an equitable price reduction; (4) to replace or correct such nonconforming goods and charge to Seller the cost occasioned to BEMA thereby; (5) to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by BEMA as a result of such holding, return, replacement, correction, reductions, or rejections of nonconforming goods; or (6) to terminate this Contract as provided herein.

6. **NOTIFICATION OF NONCONFORMING PRODUCTS.** The Seller shall immediately notify BEMA when Seller becomes aware that nonconforming product has been delivered to BEMA against this Order. BEMA's remedies in relation to nonconforming product are as outlined in these terms and conditions in item 5 above.

7. **RIGHT OF ACCESS.** Seller shall grant right of access to BEMA, BEMA's customer(s), and regulatory authorities to all facilities involved in this order and to all applicable records related to this order upon written request from BEMA.

8. **NOTIFICATION OF PRODUCT CHANGES.** The Seller is required to notify BEMA of changes in product and/or processes related to goods to be supplied on this Order and, where required, shall obtain BEMA's approval prior to shipment of product.

9. **SUBCONTRACTING.** Seller will not subcontract without BEMA's prior written consent for the design, development or procurement of the whole or any substantial portion of any goods ordered hereunder. This limitation shall not apply to Seller's purchases of standard commercial supplies or raw material.

10. **PACKING.** All items are to be packed in suitable containers for protection in shipment and storage. Each container of a multiple container shipment shall be identified (a) to show the number of the container and the total number of containers in the shipment, and (b) the number of the container in which the packing sheet has been enclosed. All shipments by Seller must include packing sheets containing the BEMA Order number, quantity, part number/size, and description of the items shipped. Materials for different contracts shall be listed on separate packing sheets.

11. **INVOICES** shall be submitted by the Seller to the BEMA Accounts Payable Department at the address set forth on the face of this Order. The prices set forth in this order includes all taxes, duties, fees, packing, shipping and loading charges, levies and similar charges. All sales and use taxes must be separately itemized. The BEMA Purchase Order Number and Item Number (if applicable) must appear on all shipping documents, invoices, and packing sheets. Determination of payment due date, whether under net or discount terms, will be based on the latest of (1) the date goods are received or services are completed; (2) the date goods are scheduled to be received or services are scheduled for completion under this Order; or (3) the date an accurate invoice and packing sheet (including required product certifications) have been received. Unless early delivery of goods or services is expressly authorized by the BEMA Purchasing Representative, payment for goods or services received in advance of the contractual commitment date shall be made as set forth above. Payment will be deemed to have been made when deposited in the mail.

12. **TIME** is of the essence of this Order. Delivery dates are firm commitments to deliver goods on the specified date(s) unless specifically modified in writing. In the event of delivery before the agreed date, BEMA may refuse the goods, store goods at Seller's expense or return goods to Seller at Seller's expense.

13. **FLOW-DOWN OF TERMS AND CONDITIONS.** The Seller is required to flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.

14. **PLACE OF DELIVERY.** Unless specifically stated otherwise, all deliveries shall be F.O.B. BEMA at the address shown on the face of this Order.

15. **RECORD RETENTION.** Supplier shall retain and maintain quality records pertaining to the purchase from deterioration for a minimum of 10 years unless otherwise specified by the purchase order. BEMA shall be notified in writing 30 days prior to destruction of any records related to material supplied against our purchase order.

16. **INDEMNIFICATION.** BEMA shall not be liable for any incidental or consequential damages or losses incurred by Seller. By accepting this Order, Seller assumes all liability for any damages of any kind which may result from use by BEMA's employees, agents, or any other person(s) including third parties unknown to BEMA or Seller, including damages due to failure of the goods. Seller agrees to indemnify, defend and hold BEMA harmless from any and all such damages or losses, including, without limitation, reasonable attorneys' fees incurred by BEMA in defending against the same, excepting such loss, cost or damage occasioned by fault or negligence of BEMA.

17. **TERMINATION.** BEMA may terminate the whole or any part of this Order in any of the following circumstances:

1. If Seller fails to deliver the goods or to perform the services required by this Order within the time specified herein, or any extension thereof granted by BEMA in writing; or
2. If Seller fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two (2) circumstances does not cure such failure within a period of ten (10) days after receipt of notice from BEMA specifying such failure; or
3. In the event of suspension of Seller's business, insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of creditors.

18. **NOTICES.** Any notice submitted by Seller, unless otherwise specified within this Contract, shall be in writing and directed to the BEMA Purchasing Representative indicated on the face of the Order.

19. **DISPUTES.** Pending the final resolution of any dispute involving this Order, Seller agrees to proceed with performance of this Order, including the delivery of goods, in accordance with BEMA's instructions. Seller shall submit to BEMA's buyer a written demand for BEMA's final decision regarding the disposition of any dispute between the parties relating to this Order, unless BEMA, on its own initiative, has already rendered such a final decision. Any BEMA final decision shall be expressly identified as such, shall be in writing, and shall be signed by BEMA's authorized Purchasing Representative, except that BEMA's failure to render a final decision within ninety (90) days after receipt of Seller's demand shall be deemed a final decision adverse to Seller's contentions. BEMA's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later. BEMA and Seller shall bear their own costs of processing the dispute.

20. **WAIVER AND SEVERABILITY.** Any action or inaction by BEMA or the failure of BEMA, on any occasion, to enforce any right or provision of this Order shall not be construed to be a waiver by BEMA of its rights

hereunder, and shall not prevent BEMA from enforcing such provision or right on any future occasion. A determination that any portion of this Order is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of this Order.

21. **RIGHTS AND REMEDIES.** The rights and remedies of BEMA herein are cumulative, and are in addition to any other rights or remedies that BEMA may have at law or in equity.

22. **GOVERNING LAW.** This Order shall be governed by the laws of the State of California, except that its conflict of law rules shall not apply.

23. **ENVIRONMENT, HEALTH AND SAFETY.** BEMA is committed to safeguarding the environment through adherence to globally accepted policies for environmental protection that necessarily extends to our suppliers.

24. **RoHS.** When required by BEMA, seller shall ensure that applicable orders are compliant with Restrictions of Hazardous Substances (RoHS).

25. **REACH.** In support of Registration, Evaluation, Authorization and Restriction of Chemicals (REACH - EC1907/2006), seller shall provide to BEMA any appropriate safety information on the chemicals and substances present in goods supplied to BEMA, which include safety data sheets.

26. **MSDS/SDS.** Seller shall provide applicable Material Data Sheets (MSDSs) or Safety Data Sheets (SDSs) at time of delivery of any hazardous substances regulated by OSHA 29CFR1910.

27. **CONFLICT MINERALS.** When requested, seller shall provide information to BEMA regarding the potential presence of "conflict minerals" in the goods provided to BEMA.

28. **PART/MATERIAL SUBSTITUTION.** Part and/or materials substitution is not allowed. If unable to fulfill purchase order with specified part number, immediately notify BEMA.

29. **DEVIATIONS AND DESIGN CHANGES.** No changes or deviation from supplied drawings or specifications are permitted without first obtaining written authorization from BEMA. Supplier shall not ship any material, parts, or assemblies which do not conform to all drawings, specifications, or purchase orders, without prior written approval from BEMA.