

Agreement Between OSTI Inc. and Customer for Sale of Goods & Services

General Terms and Conditions

This Agreement shall govern all business transactions made between OSTI Incorporated, a corporation organized and existing under the laws of the State of California, with its principal office located at PO Box 63928, Colorado Springs, CO 80962 (referred to herein as **Dealer**), and its customers.

Dealer and Customer agree that the following terms, provisions, and conditions will apply to all proposals for goods and services sold by Dealer to Customer, and that all such goods and services provided by Dealer to Customer shall be subject to the following terms, provisions, and conditions;

I. Proposals and Purchase Orders.

- A.** Dealer shall make all quotations and accept all orders on the terms and conditions stated in this Agreement and in Dealer's proposals. The terms and conditions set forth in Dealer's proposal can be modified or rescinded only in a writing signed by Dealer. Dealer is not required to accept Customer's orders. The terms and conditions set forth in this Agreement will be deemed incorporated in any order by Customer. No term, provision, or condition stated by Customer in a purchase order or elsewhere will be binding on Dealer if in conflict with, inconsistent with, or in addition to the terms and conditions stated in Dealer's proposal, unless expressly approved in writing by Dealer. If a conflict exists in the terms of the Customer's purchase order and the terms of this Agreement, the terms stated in this Agreement will govern, unless otherwise agreed in writing by Dealer. Dealer's failure to object to provisions in Customer's purchase order will not be deemed a waiver or modification of any of the terms and conditions set forth in this Agreement.
- B.** Unless stated otherwise in the Dealer's proposal, pricing is valid for 90 days from the date of proposal issuance.
- C.** Any delivery or shipment date quoted is approximate and subject to delays caused by production or material shortages, import clearance delays, or failure of suppliers to satisfactorily meet scheduled deliveries. No delay in shipment or delivery will give rise to any liability for damages, including but not limited to incidental or consequential damages, and Customer waives and releases any such claim. Customer's acceptance of goods also constitutes a waiver of any claim for delay.

II. Dealer.

- A.** Notwithstanding any other provision to the contrary, Dealer may, without liability, at any time withhold or terminate performance pending:
1. Receipt of evidence of the authority of individuals signing on Customer's behalf;
 2. Investigation of Customer's credit;
 3. Any assurances of payment that Dealer deems necessary;
 4. Receipt of Customer's purchase order; or
 5. Other documentation or information.

Customer warrants that any and all documents or information that Customer provides Dealer are true and accurate.

B. Customer will inspect the goods at the time of delivery and will notify Dealer in writing of any claims or defects within 30 days after delivery. Failure of Customer to give written notice of a claim within the time period above will be conclusively deemed to be a waiver of that claim and Customer will have waived any right to reject the goods or to revoke acceptance of the goods. In no event may Customer set off payment for any rejected or revoked acceptance goods against payment due on goods accepted.

C. The risk of loss or damage to goods will pass to Customer when placed with a common carrier at the F.O.B. point for delivery to Customer. Insurance against loss or damage to the goods during shipment is the Dealer's responsibility only when shipping costs are included and accepted in the Dealer's proposal.

III. Payment.

- A.** Customer agrees to pay for all goods purchased according to the payment terms stated in Dealer's proposal or invoice for the goods purchased.
- B.** All prices are subject to all federal, state, local sales, use, excise and other taxes on the repair, sale, use, or shipment of the goods sold.
- C.** If payment is not made when due, or if Customer otherwise violates this Agreement, Customer will pay Dealer a late charge at the rate of 6% per annum on the amount due, plus Dealer's reasonable attorneys' fees for all matters including but not limited to appeals, mediation, and bankruptcy proceedings, plus other costs of collection (including but not limited to costs of enforcing or contesting Dealer's security interest in the goods, costs of removing, repairing, and reselling the goods, long distance, copies, postage, filing fees, storage, and other expenses).
- D.** The place of sale of all goods is Dealer's place of business in Monterey, California even if the place of delivery is elsewhere.

IV. Warranty and Claims.

A. Dealer will provide warranty service or replacement of the BMT Messtechnik GMBH products according to the terms of the Warranty Policy for BMT Products dated July 2017. Dealer does not guarantee or otherwise assure performance of the manufacturer's warranty. Any claim on account of any such warranty will be made solely against the manufacturer and, notwithstanding any such claim, the purchase price will be paid on the terms set forth in Dealer's proposal and invoice.

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- B. DEALER MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR SUITABILITY.** Dealer disclaims all express and implied warranties, including but not limited to any warranty of merchantability, fitness for a particular purpose, or suitability.
- C.** Customer waives and releases Dealer from any liability for damages, whether direct, incidental, special, or consequential, for breach of warranty.
- D.** In no event will Dealer have any liability for any incidental or consequential damages arising out of, or in connection with, a breach of the sale or any other duty of Dealer with respect to the goods, including, but not limited to, incidental or consequential damages for lost profits, lost sales or injury to persons or property.
- E.** Dealer's liability on any claim of any kind, including but not limited to warranty, negligence, strict liability, and any other cause of action, for any loss or damage arising out of, connected with, or resulting from the performance or breach of the terms of sale of any goods, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation, or use of any goods or services or part of those goods or services will in no case exceed the purchase price allocable to the goods or services or part of those goods or services that gives rise to the claim.
- F.** No action for breach of any term of sale or any other duty of Dealer with respect to goods or services may be commenced more than one year after the cause of action accrues.
- G.** Customer assumes all responsibility for use of the goods and for training the persons who will use the goods. Customer will indemnify, defend, and hold Dealer harmless from any claim, demand, loss, liability, damage, or expense arising in any way from use of the goods by Customer or its employees, agents, contractors, assigns, or successors.
- H.** Customer agrees to indemnify, defend, and hold Dealer harmless from any and all claims, demands, liability, losses, expenses, attorneys' fees, and other obligations incurred by Dealer which arise out of Customer's acts or omissions with respect to any goods sold by Dealer to Customer or with respect to any other matter or transaction between the parties or which arise out of Customer's violation of any law.

V. Miscellaneous.

- A.** Dealer is not liable in any way for delay, non-delivery, or default in delivery due to labor disputes, transportation shortage, delays in receipt of material, priorities, fires, accidents, acts of God, and all other causes and conditions beyond the Dealer's control.
- B. Severability.** The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
- C. No Waiver.** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- D. Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.
- E. Mandatory Arbitration.** Any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.
- F. Entire Agreement.** This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
- G. Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.
- H. Compliance with Laws.** In performing under this Agreement, all applicable governmental laws, regulations, orders, and other rules of duly-constituted authority will be followed and complied with in all respects by both parties.