



Brumley South, Inc.

Terms and Conditions

Date: 11-05

North Broad St. Mooresville, NC USA 28115,

Tel: 704-664-9251 Fax: 704-664-9246

Freight/Shipping: **Billed to customer account. If customer does not have an account with recommended Shipper, shipment will be sent with (prior customer approval) for Collect on Delivery charges or payable to the shipping company directly by Credit Card for shipping charges. Customer pays for all shipping-taxes-duties charges.**

NOTE: Systems sent from Brumley South to the buyer will have new packing materials with no visible damage to the outside of packing container. Sensors for Tip and Shock conditions will be located on the outside of shipping container. Customer is responsible for checking and providing written documentation on the Delivery Bill of Lading at the time of delivery at the buyer's site in the event the sensors are tripped or any visible damage is evident. The customer is responsible for processing all claim damages with the shipper. Damage occurred during shipping will not be covered under warranty and will be subject to additional repair charges.

Damaged equipment returned to Brumley South must be shipped by AIR RIDE carrier in the Packing unit Brumley South shipped it in. In the event, if container is not shippable contact Brumley South and we will send you (billed to your shipping account) the correct shipping container to return equipment. Replacement insurance value is required unless the buyer is self insured.

F.O.B. Point: BSI Dock, Mooresville NC

Terms: Net 30 with all customers with approved credit. New clients and customers with inactive accounts will require credit check before Purchase Order is accepted. Inactive is when we have not had a business transaction within 12 months. Credit checks will take up to 5 business days. Customers with no credit history or rating will pay by Prepayment with check or wire transfer before shipping. Late payment is subject to void all warranties.

Currency: USD

1. The following are the standard terms and conditions under which Brumley / South, Inc. sells the equipment/parts/services listed and more fully described in the attached Quote Sheet. The prices shown below are F.O.B., Mooresville, North Carolina. The Purchaser is responsible for payment of all transportation, rigging and draying charges.
2. There shall be added to the prices below amounts equal to any taxes, however designated, levied or based on such prices or on this Agreement or the equipment, including state and local privileges or excise taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by Seller in respect of the foregoing, exclusive, however, of taxes on net income. Purchaser will provide proof, satisfactory to Seller, of any applicable tax exemptions. All import/export taxes shall be paid by Purchaser. Brumley South will be paid for any taxes or penalties at a later date if the purchaser has not paid the required taxes. Issuance of purchase order constitutes acceptance of these terms and conditions.
3. Any personal property taxes assessable on the equipment after shipment by the carrier shall be borne by Purchaser.
4. **DEFINITION OF TERMS**
 1. "Shipment" is when Brumley South, Inc. notifies the customer that the unit is ready for pickup.
 2. "Placement" by Purchaser shall include the physical movement and setting in place of equipment in Purchaser's facility.
 3. "Delivery" shall take place when carrier picks up the shipment from Brumley/South, Inc. for delivery to Purchaser.
5. **TERMS OF PAYMENT**

All Sales Final, Restocking fee subject to 50% Net 30 with all customers with approved credit. New clients and customers with inactive accounts, (inactive is determined by 12 months or more of no activity) will require credit check before Purchase Order is accepted. Credit checks will take up to 5 business days. Customers with no credit history or rating will pay by Prepayment with company check or wire transfer before shipping. Late payment on accounts are subject to void all warranties.
6. **TITLE**

Title to the equipment is to remain with Seller until the full purchase price is paid. Failure to pay the purchase price of equipment when due shall give Seller the right, without liability, to repossess that equipment, with or without notice, and to avail itself of any legal remedy.
7. **SECURITY INTEREST**

Brumley South Terms and conditions apply to all quotes attached hereto.



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Seller shall retain a purchase money security interest in equipment until the full purchase price is paid. Purchaser agrees that Seller will have the right to file or record this Quotation or other financing statement pursuant to applicable law to evidence Seller's security interest.

8. RISK OF LOSS/INDEMNIFICATION

Upon tender to carrier, the risk of loss or damage to the equipment shall be on Purchaser. Purchaser shall indemnify and hold Seller, its officers and employees harmless from any loss, cost, damage expense or liability by reason of property damage, personal injury or death arising out of the negligence or willful acts of Purchaser's employees and agents.

Limitation of Liabilities. BUYER ACKNOWLEDGES AND AGREES THAT, IN NO EVENT, SHALL Brumley South BE LIABLE, WHETHER IN CONTRACT OR WARRANTY, FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSS, DAMAGE, COST OR EXPENSE OF ANY KIND WHATSOEVER, HOWSOEVER CAUSED, OR FOR ANY LOSS OF PRODUCTION, COST OR PROCUREMENT OF SUBSTITUTE EQUIPMENT, LOSS OF CAPITAL, LOSS OF PROFIT, LOSS OF REVENUES, CONTRACTS, BUSINESS, LOSS OF GOODWILL OR ANTICIPATED SAVINGS, OR WASTED MANAGEMENT TIME, EVEN IF BUYER HAS NOT BEEN ADVISED OF THE POSSIBILITY OR THEY ARE FORESEEABLE. SELLER IS EXEMPT FROM LIABILITY ON ALL CLAIMS, WHETHER IN CONTRACT OR WARRANTY, OR OTHERWISE SHALL NOT EXCEED THE PURCHASE PRICE OF THE EQUIPMENT/SERVICE/PART.

9. SHIPMENT

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Non-Circumvent

- (a) Buyer agrees not to approach any previously unknown contacts or confidential suppliers the seller may introduce to buyer for 1 year after all business with Brumley South has ceased. BUYER will not try to procure this equipment/services/parts directly or indirectly, whether through Recipient's company or any of its subsidiaries, employees or subcontractors; Buyer agrees to notify Brumley South if a confidential supplier contacts the buyer.
- (b) Recipient agrees not to discuss any purchase price or terms with outside parties at any time;

Force majeure – Brumley South shall not be liable for any delay in its performance obligations due to (a) fires, floods, strikes, or other labor disputes, accidents to machinery, acts of sabotage, riots, precedence or priorities granted at the request or for the benefit, directly or indirectly, of the federal or any state government or any subdivision or agency thereof, delays in transportation facilities, restrictions imposed by federal or state legislation or rules or regulations there under; or (b) any cause beyond its reasonable control.

Indemnification—You agree to indemnify Brumley South against any and all claims for damages, including costs and attorney's fees, for personal injury (including death), and loss or destruction or damage to real or tangible personal property arising from your acts, omissions or misrepresentations, regardless of the form of action brought against Brumley South.

10. LIMITED WARRANTY

Should the equipment fail to be free from defects in material or workmanship during the applicable warranty period, Seller will repair or replace the defective material at no additional charge except set forth as below.

Repair parts will be furnished on an exchange basis and will be either reconditioned or new. All replaced parts become the property of Seller. This limited warranty does not include service to repair damage to the equipment resulting from accident, disaster, misuse, Purchaser's negligence, abuse or modification of the equipment. **(Improper storage of equipment will void warranty. Storage requirements: Inside storage; relative humidity 10% to 70%; temperature: 3 degrees to 100 degrees F; vibration: not greater then 5 g's in any axis for over 500 milliseconds.)**

Limited warranty service may be obtained by notifying Seller of defects in material during the warranty period. **Warranty on the exchanged parts is good for the remainder of the original warranty.** If repair parts are to be exchanged by mail, Purchaser agrees to insure returned parts or assume risk of loss or damage in transit, to prepay shipping charges to the Seller and to use appropriate shipping materials and containers.

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SELLER HEREBY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES FOR THIS EQUIPMENT, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF THIS EQUIPMENT IS NOT FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AS WARRANTED ABOVE, PURCHASER'S SOLE REMEDY SHALL BE REPAIR OR REPLACEMENT AS PROVIDED ABOVE. FAILURE TO GIVE SUCH NOTICE OF DEFECTS WITHIN THE AFORESAID TIME PERIOD SHALL BE CONCLUSIVE EVIDENCE OF DUE FULFILLMENT OF THE WARRANTY ON THE PART OF SELLER AND THAT THE EQUIPMENT IS SATISFACTORY TO PURCHASER, AND SELLER SHALL BE RELEASED FROM ALL LIABILITY UNDER THE AFORESAID LIMITED WARRANTY. IN NO EVENT WILL SELLER BE LIABLE TO PURCHASER FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH EQUIPMENT, EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

11. CANCELLATION CHARGES

In the event Purchaser (a) cancels any order or portion thereof, or (b) fails to meet any obligations of this Agreement, causing cancellation of any order or portion thereof, Purchaser agrees to pay Seller cancellation charges as a percentage of the price of each cancelled equipment. Such charges are as follows:

CANCELLATION NOTICE RECEIVED
3-5 weeks prior to Scheduled Shipment Date
0-1 weeks prior to Scheduled Shipment Date

CANCELLATION CHARGE
50% of total order amount
75% of total order amount

12. MISCELLANEOUS PROVISIONS

This Quotation shall serve as a binding contract with Purchaser upon Purchaser's execution of this document and set forth herein. This Quotation shall not bind Seller until accepted by Seller's representative at Seller's office as set forth herein.

13. GENERAL

The following general terms apply:

*This contract is exclusive to the parties hereto and no part of it may be sold, assigned or otherwise transferred without the written consent of the other.

*In the event Purchaser uses its standard purchase order forms for orders, such orders, change orders or notices will be governed by the terms of this Quotation. No agreement or understanding of modification shall be binding upon Seller unless specified in writing and accepted by the authorized representative of Seller.

*Seller reserves the right to discontinue deliveries of any equipment the manufacture, sale or use of which in Seller's reasonable opinion involves patent infringement.

*Whenever notice is required throughout the foregoing terms and conditions of this quotation from Purchaser to Seller, Purchaser shall provide written notification to Seller at P.O. Box 1237, Mooresville, NC 28115, unless Seller shall otherwise designate, in writing, another acceptable address for notification.

15. INTERPRETATION

No provision of this agreement shall be interpreted for or against any party because that party or that party's legal representative drafted this agreement or drafted particular provisions herein.

16. JURISDICTION

Each party hereby submits themselves to the jurisdiction of the courts of the State of North Carolina in any future action brought by either of them to enforce the provisions of this agreement.

17. PARTIAL INVALIDITY

If any provision of this agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

18. SITUS

All matters affecting the interpretation of this agreement and the rights of the parties hereto in relation to this agreement shall be governed and controlled by the laws of the State of North Carolina.

19. BINDING EFFECT

Every provision of this agreement shall be binding upon each of the parties and their respective heirs, executors, administrators and assigns.

20. SUIT COSTS

In the event Seller shall institute an action to enforce the provisions of this agreement and Seller shall prevail in said action, whether by adjudication or by settlement, Seller shall be entitled to recover suit costs, including reasonable attorney's fee, from the Purchaser.

21. Software -- This is a sale of hardware items only and does not include a sale or license of program code (software) in any form, regardless of whether such software has been packaged with, integrated into or otherwise included with the item(s). Any software included with the item may be the property of a third party. Buyer agrees to destroy all such software or to obtain an appropriate license for its continued use.

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22. Infringement of patents -- The purchase of property does not convey by implication or otherwise any licenses under any patent, domestic or foreign. Brumley South makes no representation or warranty that the use of any material, equipment or technical information furnished hereunder will not infringe any patent, trademark, copyright, trade secret, or other proprietary interests of any third party, and it shall be your sole responsibility to make such determination as is necessary with respect to other rights of third parties. Brumley South shall not be held to any liability with respect to any claim made by any third party on account of, or arising from, the use of such material, equipment, or technical information. You agree to indemnify and save harmless Brumley South from any and all costs, expenses, liabilities, and claims for infringement of any patents or similar instruments or any trademarks, copyrights, trade secrets, or other proprietary interests in any foreign country or in the U.S.A.

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