



Terms and Conditions of Sale BOA Group – American BOA and Flexial

1. **Applicable Terms.** These terms govern the sale of Products by BOA. Whether these terms are included in an offer or an acceptance by BOA The term "BOA" means American BOA Inc., USA or Flexial Corp., USA, such offer or acceptance is conditioned on Buyer's assent to these terms. Any additional, different or conflicting terms contained in Buyer's request for proposal, specifications, purchase order or any other written or oral communication from Buyer shall not be binding in any way on BOA. BOA failure to object to any such additional, different or conflicting terms shall not operate as a waiver of these terms.

2. **Pricing & Payment.** The prices shall be: (a.) as stated in BOA proposal or if none are stated, (b.) BOA' standard prices in effect at the time of release for shipment. In the event of a price increase or decrease, the price of Products on order shall be adjusted to reflect such increase or decrease. This does not apply to a shipment held by request of Buyer. Products already shipped are not subject to price increase or decrease. Discounts, if any, are as specified on the latest discount sheets issued from time to time. Cash discounts are not applicable to notes or trade acceptances, to prepaid transportation charges when added to BOA' invoices or to discountable items if there are undisputed past due items on the account. Cash discounts shall only be allowed on that portion of the invoice paid within the normal discount period.

(a) **Payment -** Unless otherwise stated, all payments shall be net 30 days from invoice date payable in United States Dollars.

(b) **Credit Approval -** All orders are subject to credit approval by BOA. The amount of credit or terms of payment may be changed or credit withdrawn by BOA at any time for any reason without advance notice. BOA may, in its discretion, withhold further manufacture or shipment; require immediate cash payments for past and future shipments; or require other security satisfactory to BOA before further manufacture or shipment is made; and may, if shipment has been made, recover the Products from the carrier, pending receipt of such assurances.

(c) **Installment Shipment -** If these terms require or authorize delivery of Products in separate shipments to be separately accepted by Buyer, Buyer may only refuse such portion of such shipment that fails to comply with the requirements of these terms. Buyer may not refuse to receive any lot or portion of hereunder for failure of any other lot or portion of a lot to be delivered or to comply with these terms, unless such right of refusal is expressly provided for on the face hereof. Buyer shall pay for each lot in accordance with the terms hereof. Payment shall be made for the Products without regard to whether Buyer has made or may make any inspection of the Products. Products held for Buyer are at Buyer's sole risk and expense.

(d) **Taxes, Shipping, Packing, Handling -** Except to the extent expressly stated in these terms, BOA prices do not include any freight, storage, insurance, taxes, excises, fees, duties or other government charges related to the Product, and Buyer shall pay such amounts or reimburse BOA for any amounts BOA pays. If Buyer claims a tax or other exemption or direct payment permit, it shall provide BOA with a valid exemption certificate or permit and indemnify, defend and hold BOA harmless from any taxes, costs and penalties arising out of same. BOA' prices include the costs of its standard domestic packing only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, consult BOA sales offices. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of these terms, shall be for the Buyers account. Orders of less than \$400 are subject to a \$25 handling fee.

(e) **Finance Charge -** Buyer agrees to pay FINANCE CHARGES on the unpaid balance of all overdue invoices, less any applicable payments and credits, from the date each invoice is due and payable at an ANNUAL PERCENTAGE RATE of EIGHTEEN PERCENT (18%), or the highest applicable and lawful rate on such unpaid balance, whichever is lower.

(f) **Disputed Invoice -** In the event Buyer disputes any portion or all of an invoice, it shall notify BOA in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and FINANCE CHARGE on any unpaid portion shall accrue, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to BOA.

(g) **Collection.** Upon Buyers default of these terms, BOA may, in addition to any other rights or remedies at contract or law, subject to any cure right of Buyer, declare the entire balance of Buyers account immediately due and payable or foreclose any security interest in Products delivered. If any unpaid balance is referred for collection, Buyer agrees to pay BOA, to the extent permitted by law, reasonable attorney fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, plus any court costs or expenses incurred by BOA, and any FINANCE CHARGES accrued on any unpaid balance owed by Buyer.

3. **Delivery; Title; Risk of Loss; Same Day Shipment.** Product shall be delivered Ex Works (Incoterms 2010) BOA USA Inc. point of shipment with title to the Product and risk of loss or damage for the Product passing to Buyer at that point. Buyer shall be responsible for all transportation, insurance and related expenses including any associated taxes, duties or documentation. BOA may make partial shipments. Shipping dates are approximate only and BOA shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customers if BOA fails to meet the specified delivery schedule. Orders must be received by Noon (Central Time) to be eligible for same day shipping but shipping dates are in any case approximate and are based upon prompt receipt of all necessary information.

4. **Deferment and Cancellation.** Buyer shall have no deferment rights and Buyer shall be liable for cancellation charges, which shall include without limitation

a) payment of the full product price for any finished Product or works in progress;

b) payment for raw materials ordered pursuant to a firm purchase order; and

c) such other direct costs incurred by BOA as a result of such cancellation.

5. **Force Majeure / Delays.** If BOA suffers delay in performance due to any cause beyond its reasonable control, including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, failure of normal sources of supply, or acts of government, the time of performance shall be extended a period of time equal to the period of the delay and its consequences. BOA will give to Buyer notice within a reasonable time after BOA becomes aware of any such delay

6. **Buyer's Requirements.** Timely performance by BOA is contingent upon Buyer's supplying to BOA all required technical information and data, including drawing approvals, and all required commercial documentation.

7. **Limited Warranty.** (a.) **Limited Product Warranty Statements.** For each Product purchased from BOA or an authorized reseller, BOA makes the following limited warranties: (i) the Product is free from defects in material and workmanship, (ii) the Product materially conforms to BOA' specifications that are attached to, or expressly incorporated by reference into, these terms, and (iii) at the time of delivery, BOA has title to the Product free and clear of liens and encumbrances (collectively, the "Limited Warranties"). Warranties with respect to software which may be furnished by Seller as part of the Product, if any, are expressly set forth elsewhere in these terms. The Limited Warranties set forth herein do not apply to any software furnished by BOA. If software is furnished by BOA, then the attached Software License/Warranty Addendum shall apply.

(b.) **Conditions to the Limited Warranties.** The Limited Warranties are conditioned on (i) Buyer storing, installing, operating and maintaining the Product in accordance with BOA' instructions, (ii) no repairs, modifications or alterations being made to the Product other than by BOA or its authorized representatives, (iii) using the Product within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms, (iv) Buyer discontinuing use of the Product after it has, or should have had, knowledge of any defect in the Product, (v) Buyer providing prompt written notice of any warranty claims within the warranty period described below, (vi) at BOA' discretion, Buyer either removing and shipping the Product or non-conforming part thereof to BOA, at Buyer's expense, or Buyer granting BOA access to the Products at all reasonable times and locations to assess the warranty claims, and (vii) Buyer not being in default of any payment obligation to BOA under these terms.

(c.) **Exclusions from Limited Warranty Coverage.** The Limited Warranties specifically exclude any equipment comprising part of the Product that is not manufactured by BOA or not bearing its nameplate. To the extent permitted, BOA hereby assigns any warranties made to BOA for such equipment. BOA shall have no liability to Buyer under any legal theory for such equipment or any related assignment of warranties. Additionally, any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Limited Warranties and is provided to Buyer "as is" with no warranties of any kind. Also excluded from the Limited Warranties are normal wear and tear items including any expendable items that comprise part of the Product, such as but not limited to fuses, brushes, ball bearings and gear parts.



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(d.) Limited Warranty Period. Buyer shall have 12 months from initial operation of the Product or 18 months from shipment, whichever occurs first, to provide BOA with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence that the Limited Warranties have been fulfilled to the full satisfaction of Buyer, unless Buyer has previously provided BOA with notice of a breach of the Limited Warranties.

(e.) Remedies for Breach of Limited Warranty. Buyer's sole and exclusive remedies for any breach of the Limited Warranties are limited to BOA's choice of repair or replacement of the Product, or non-conforming parts thereof, or refund of all or part of the purchase price. Buyer shall return the Products to the BOA's plant, after having received written Return Material Authorization (RMA) approval from BOA, shipping charges prepaid and with complete information as to alleged defects and the installation, operation and service of the products. The warranty on repaired or replaced parts of the Product shall be limited to the remainder of the original warranty period. Unless otherwise agreed to in writing by BOA, (i) Buyer shall be responsible for any labor required to gain access to the Product so that BOA can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Products. All exchanged Products replaced under this Limited Warranty will become the property of BOA.

(f.) Transferability. The Limited Warranties shall be transferable during the warranty period to the initial end-user of the Product.

THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE BOA'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH IN SECTION 8 BELOW. BOA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

8. LIMITATION OF LIABILITY. NEITHER BOA, NOR ITS SUPPLIERS, SHALL BE LIABLE, WHETHER IN CONTRACT, WARRANTY, FAILURE OF A REMEDY TO ACHIEVE ITS INTENDED OR ESSENTIAL PURPOSES, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE, SAVINGS OR PROFIT, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS. BOA'S MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE THE ACTUAL PURCHASE PRICE RECEIVED BY BOA FOR THE PRODUCT AT ISSUE OR ONE MILLION DOLLARS, WHICHEVER IS LESS. BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH BUYER MAY HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF BOA HAS BEEN ADVISED BY THE BUYER OF THE POSSIBILITY OF SUCH DAMAGES.

9. Patent and Copyright Infringement. BOA will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if BOA is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. BOA will pay the damages and costs awarded in any suit or proceeding so defended. BOA will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, BOA will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes non-infringing. BOA will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused BOA to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against BOA, Buyer shall protect BOA in the same manner and to the same extent that BOA has agreed to protect Buyer under the provisions of the Section above.

THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.

10. Compliance with Laws. Buyer agrees to comply with all applicable laws and regulations relating to the purchase, resale, exportation, transfer, assignment, disposal or use of the goods. Buyer acknowledges that the Products and any technical data related to the Products may be controlled for export by the U.S. Department of Commerce or Department of State and that such items may require authorization prior to export from the United States or re-export. Buyer agrees that it will not export, re-export, or otherwise distribute the Products or any technical data related thereto, in violation of any export control laws or regulations of the United States.

11. Changes in Work and Product Changes. BOA shall not implement any changes in the scope of work unless Buyer and BOA agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle BOA to an equitable adjustment in the prices and any time of performance.

Seller may, at any time and without notice, make changes (whether in design, material, improvements or otherwise) in any Products, and may discontinue the manufacture of any Products, without incurring any obligations of any kind as a result thereof.

12. Non-waiver of Default. Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, BOA may decline to make further shipments. If BOA elects to continue to make shipments, BOA actions shall not constitute a waiver of any default by Buyer or in any way affect BOA legal remedies for any such default. Any waiver of BOA to require strict compliance with the provisions of this contract shall be in writing and any failure of BOA to require such strict compliance shall not be deemed a waiver of BOA's - right to insist upon strict compliance thereafter.

13. Final Written Agreement; Modification of Terms. These terms, together with any quotation, purchase order or acknowledgement issued or signed by BOA, comprise the complete and exclusive agreement between the parties (the Agreement) and supersede any terms contained in Buyers documents, unless separately signed by BOA. These terms may only be modified by a written instrument signed by authorized representatives of both parties.

14. Assignment. Neither party may assign the Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other; provided however that BOA may assign its rights and obligations under these terms to its affiliates and BOA may grant a security interest in the Agreement and/or assign proceeds of the Agreement without Buyer's consent.

15. Applicable Law and Jurisdiction. These terms is governed and construed in accordance with the laws of the State of Georgia, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BUYER WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THESE TERMS. With respect to transactions to which the 1980 United Nations Convention for the International Sale of Goods (UNCISG) would otherwise apply and notwithstanding the venue to which the parties to a particular order may have agreed for dispute resolution, the rights and obligations of the Parties hereto including these Terms and Conditions shall not be governed by the provisions of the UNCISG.

16. Severability. If any provision of these terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.