

# **Brumley South, Inc Terms and Conditions**

The Terms and Conditions of Sale set forth herein, including the terms on the reverse side hereof, constitute the full and final expression of the contract for products or services as described in the written or oral quotation between Brumley South, Inc (North Carolina) Inc. (hereinafter "BSI ") and the Purchaser, and supersede all prior quotations, purchase orders, correspondence or communications whether written or oral between BSI and Purchaser. Notwithstanding any contrary language in the Purchaser's purchase order or other acceptance, Purchaser shall be bound by these Terms and Conditions of Sale at such time as it remits its purchase order to BSI. ACCEPTANCE OF THE CONTRACT IS EXPRESSLY LIMITED TO ACCEPTANCE OF THE TERMS AND CONDITIONS OF SALE STATED HEREIN AND ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY PURCHASER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY BSI. No contract shall exist except as herein provided. No statement, representation or warranty not contained herein shall be binding on BSI unless made in writing by an officer of BSI. Prior dealings, usage of the trade or a course or performance shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

## **Issuance of purchase order constitutes acceptance of these terms and conditions.**

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 or deposit constitutes acceptance of these terms and conditions, in full.

Any personal property taxes assessable on the equipment after shipment by the carrier shall be borne by Purchaser.

### **1. Orders.**

1.1. All orders for products or services are subject to acceptance by an authorized representative of BSI. All orders must be firm commitments giving either complete item description (product numbers where applicable), or customer part numbers, and include prices, quantity, and shipping instructions. Typographical and clerical errors in quotations, orders, and acknowledgements are subject to correction with no penalties to BSI.

2. **Prices.** All prices are subject to change without notice. Written quotations expire thirty (30) calendar days from the date of quotation on the quote. Verbal quotations are not valid. All prices are quoted exclusive of all delivery charges, federal, provincial, state or local sales, excise, use or similar taxes, cost of insurance, and cost of special packaging requested by Purchaser. Any such charges which BSI prepays will be payable by the Purchaser as set forth in the invoice for the products. BSI assumes no liability for import duties or other taxes imposed by any foreign country.

Date: 7-2016 Brumley South Terms and conditions apply to all quotes attached hereto.

### 1. DEFINITION OF TERMS

“Shipment” is when Brumley South, Inc. notifies the customer that the unit is ready for pickup.

“Placement” by Purchaser shall include the physical movement and setting in place of equipment in Purchaser’s facility.

“Delivery” shall take place when carrier picks up the shipment from Brumley South, Inc. for delivery to Purchaser.

### 3. Payment terms of Quote

3.1. BSI reserves the right at any time to Cancel quote for any reason, before proceeding with a contract of sale if, in its sole and absolute discretion, the financial condition of Purchaser shall not justify the terms of payment specified.

3.2. If Purchaser defaults when payment is due, then the whole contract price shall become due and payable upon demand, or BSI, at its option, without prejudice to other lawful remedies, may defer delivery or cancel the contract.

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 100% prepayment prior to shipping. Payment is accepted by credit card (with additional 4% fee), cleared check, or wire transfer. Credit checks will take up to 7 business days and will pre-approve the customer if passing Credit Audit with Net terms for their next order. Please note:

**Late payment on accounts subject void all warranties and Support.**

**All Sales Final.**

**Restocking fee: Equipment. NON-Returning.**

**Restocking Fee: Parts. Opened or installed items will be charged 20% or \$300 whichever is higher per item returned installed. Return Damaged parts will result in Repair Charges billed to customer.**

Currency: USD

### 3. 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.

### 4. SECURITY INTEREST

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.

### 5. 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

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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.

## **6. SHIPMENT**

**Delivery.** All stipulated delivery or shipment dates given by BSI are estimates only. BSI reserves the right to make deliveries in installments and the contract shall be severable as to any such installments. Delay in delivery or other default of any installment shall not relieve Purchaser of its obligation to accept and pay for remaining deliveries. IN NO EVENT SHALL BSI BE LIABLE FOR, LOSS OF PROFITS OR GOODWILL, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES BY REASON OF DELAY IN SHIPMENT OR NONSHIPMENT.

In the event BSI is unable wholly or partially to perform because of any cause beyond its control, BSI may terminate the contract without any liability.

INCO terms apply.

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 Shipping Dock.

## **7. Disclosure and Protection of Confidential Information.**

Confidential Information shall not include information that Recipient can demonstrate, through extant, contemporaneously prepared, written records:

(a) Is or becomes part of the public domain through no fault or breach on the part of Recipient, any of its subsidiaries, affiliates or persons to whom Confidential Information is disclosed as permitted by this Agreement; or

(b) Is known to Recipient or any of its subsidiaries or affiliates prior to the disclosure by conquer and disclosed prior to signature of this agreement; or

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(c) Is subsequently rightfully obtained by Recipient or any of its subsidiaries or affiliates from a third party who has the legal right to disclose or transfer it to Recipient.

(d) As to any information which Brumley South, Inc regards as “Confidential Information”, disclosures by Brumley South, Inc following the Effective Date are subject to and in Brumley South, Inc’s sole and absolute discretion and will be made as follows:

(e) If such information is in writing, or in a drawing, or in some other tangible form, such information at the time of such disclosure will be clearly marked as “Confidential Information”; and

(f) In the event that such information is orally disclosed, as may happen during exchanges between the parties, Brumley South, Inc shall state that the information disclosed is Confidential Information.

**Non-Circumvent**

(g) Buyer/Contact agrees not to approach, hire or sub-contract any previously unknown subcontractors, contacts, BSI employees or Ex-Employee 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 employee directly or indirectly, whether through Recipient’s company or any of it’s subsidiaries, employees or subcontractors; Buyer agrees to notify Brumley South if a confidential source contacts the buyer. If the Buyer/Contact breaches this agreement. Brumley South is entitled to 10 times the amount for loss of damages Brumley South would have invoiced to the Buyer/contact.

(h) Recipient agrees not to discuss any purchase price or terms with outside parties at any time;

(i) In the event of such circumvention, or of any attempt thereof, by any party involved in this transaction, either directly or indirectly, payment equal to the maximum fee the circumvented party should realize from such transaction(s) will be paid by the entity, person or persons engaged in circumventing or attempting to circumvent, as liquidated damages. Payment will additionally, also, include reimbursement for all legal expenses involved in the recovery of said liquidated damages and all other beneficial interest lost by the damaged party, caused by said circumvention or attempt to circumvent.

7.1 As to any information whether or not specifically designated by Brumley South, Inc as “Confidential Information” (as hereinabove described), Brumley South, Inc reserves all of its rights and remedies as may now or in the future be accorded to Brumley South, Inc under the North Carolina and United States laws as may apply to the disclosure or use of such information by Recipient.

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.

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## **8. LIMITED WARRANTY**

**Warranty Travel Expenses-Not covered.**

**Travel Labor-Flight time is not covered.**

All statements that may have been made by any representative of BSI, whether oral or written in email, regarding the products or services are mere expressions of opinion and do not create any expressed or implied warranties. Changes to this warranty must be approved by Tom Norment in writing at the end of this document.

**Consumable Parts Warranty: NO Labor or Travel Expenses covered.**

**Examples but not limited to:**

**Wafer Pucks. Warranty ONLY for part replacement for OEM Sealing Defect from back delamination.**

**Laser: 6 months from Shipment Date or 5000 hours, verified by laser timer.**

**Laser Power Supply: None.**

**CCM tile: None.**

**Photomultiplier Tube: None.**

**Stylus Tip, Stylus Arm, Lamps, Calibration Standards-None**

**Warranty Shipping:**

Equipment/Parts

**BSI pays shipping to Return Item to BSI and by FEDEX Saver (3-Day) Service only. International Shipping/taxes/duties is not paid. Customer requested Overnight Service will be billed to Customer Account number. BSI will not reimburse for shipping expenses. Warranty Request on Equipment determined to be customer induced issues or Lack of Operational Knowledge, customer pays All SHIPPING.**

**Warranty Claims**

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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 for the part 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 Consumable Parts, Labor Service or any Expenses to repair damage to the equipment resulting from Improper Installation by NON BSI AUTHORIZED Service Engineers or Installers or Customer Installed, 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 60%; temperature: 40 degrees to 90 degrees F; Vibration: not greater than 5 g's in any axis for over 500 milliseconds. )

Limited warranty service may be obtained by notifying in writing the Seller of defects in material during the warranty period. Request for Warranty is directed to: [orders@brumleysouth.com](mailto:orders@brumleysouth.com) and [info@brumleysouth.com](mailto:info@brumleysouth.com) Warranty on the warranty parts is good for the remainder of the original warranty. Purchaser agrees to insure returned parts or assume risk of loss or damage in transit, to pay shipping charges to the Seller and to use appropriate shipping materials and containers. Warranty claim Equipment/Parts damaged in shipping due to inadequate packing voids warranty and customer pays ALL Damages to return Unit back to functional condition. Customer Files all Shipping Damages Claims when shipped by Customer.

BSI will not reimburse or pay for Any Warranty Services without Written Prior Authorization from BSI.

Warranty items not returned within 14 days of delivered date or Completion of Service ( not to exceed 45 days from deliver date), customers pays list price for item.

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.

#### 9. CANCELLATION CHARGES

Customers may not cancel orders identified as "custom/special products".

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 CHARGE

Date: 7-2016 Brumley South Terms and conditions apply to all quotes attached hereto.

4 or more weeks prior to Shipment Date 75% of total order amount  
0-1 weeks prior to Shipment Date 95% of total order amount

#### 10. 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.

#### 11. GENERAL

#### 4. **General Terms and Governing Law.**

4.1. Purchaser acknowledges that he has read and understands these Terms and Conditions of Sale and agrees to be bound by them and, further, agrees that they are the complete and exclusive statement of the agreement between the parties and supersede all proposals, oral or written and all other communications between the parties relating to the subject matter hereof.

4.2. Any contract of sale between BSI and Purchaser shall be governed by and construed according to the laws of the State of North Carolina, U.S.A.

4.3. The parties hereto have required that these Terms and Conditions of Sale as well as any notice, document or proceedings relating hereto be written in English.

The following general terms apply:

(a) The provisions of this Agreement are severable, and if any one or more provisions may be determined to be judicially unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. The provisions of this Agreement shall inure to the benefit of and shall be binding on the successors and nominees of both and each Brumley South and Customer.

(b) Any notice given pursuant to this Agreement shall be in writing and sent by Registered or Certified U.S. Mail (return receipt requested) to the appropriate address given above. Such notice shall be deemed to have been duly given when enclosed in a properly sealed and addressed envelope and deposited (postage and registration or certification fee prepaid) in a post office or branch post office regularly maintained by the U.S. Mail.

(c) Either party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any provision, or prevent that party thereafter from enforcing each and every provision of this Agreement.

(d) Unless modified in a writing signed by both Brumley South and Customer, this Agreement is understood to be the complete and exclusive agreement between the parties, superseding all oral or written prior agreements and all other communications between the parties relating to the subject matter of this Agreement, including statements made by salespersons. No employee or agent of Brumley South or any other party is authorized to make any warranty in addition to those made in this Agreement.

(e) Customer acknowledges that customer has read this Agreement, understands it, has authority and is bound by its terms.

Date: 7-2016 Brumley South Terms and conditions apply to all quotes attached hereto.

\*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.

#### 12. 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.

#### 13. 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.

#### 14. 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.

#### 15. 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.

#### 16. BINDING EFFECT

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

#### 17. 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.

18. 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 and OEM possible support.

19. 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.

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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.

**20. Installation-Systems:** Wafer Inspections Tools (All Surfscan Tencor models: 4500-5000-5500-6100-6200-6220-6400-6420) All ADE Technology, Tencor , AS-500, P-Series Profilers, FLX 2320/2900 must be installed By Authorized Field Service Engineer to keep equipment Warranty Valid. Customer self installed tools will void warranty unless Brumley South can verify the Installation Engineer is OEM Trained on the tools and approves in writing to proceed. Verification must occur PRIOR to installation.

Signed:

Thomas M Norment  
Changes Approved

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Date: \_\_\_\_\_