

AMENDMENT NO. 3 TO
EQUIPMENT MASTER SUPPLY PURCHASE ORDER AGREEMENT

This Amendment No. 3 to Equipment Master Supply Purchase Order Agreement ("Amendment No. 3") is made by and between Global Healthcare Product Solutions, LLC ("Seller") and California Governor's Office of Emergency Services ("Buyer") on June 4, 2020 (the "Effective Date").

RECITALS

WHEREAS, on April 7, 2020, Seller and Buyer entered into the Equipment Master Supply Purchase Order Agreement as amended by Amendment No. 1 and Amendment No. 2 (the "MSA") for the purposes of Buyer purchasing from Seller surgical masks and N95 masks; and

WHEREAS, the MSA set forth a National Institute for Occupation Safety and Health ("NIOSH") certification contingency for the N95 masks; and

WHEREAS, on May 6, 2020, the parties executed Amendment No. 2 to the MSA, which included, among other things, a new NIOSH certification contingency date of May 31, 2020; and

WHEREAS, the attainment of the NIOSH certification for the N95 mask continues to require additional time; and

WHEREAS, on June 4, 2020, NIOSH conducted an audit of BYD factory inspection as part of the NIOSH certification process; and

WHEREAS, this Amendment No. 3 strikes and replaces, and adds certain provisions to the MSA.

AGREEMENT

Now, therefore, the parties agree as follows:

1. Paragraph 2, N95 CONTIGENCY, of the MSA is stricken and replaced as follows:

The purchase of N95 masks under this Agreement is contingent upon Seller obtaining the National Institute for Occupation Safety and Health ("NIOSH") certification by or before ~~May 31, 2020~~ June 12, 2020 for the

N95 masks purchased under this Agreement, unless both parties agree in writing to extend this due date.

2. Subdivision (a), Schedule & Location, of Paragraph 4, Delivery, of the MSA is stricken and replaced as follows:

Delivery shall be made in accordance to the schedule stated in Exhibit B ("Delivery Schedule"). The delivery location for the Equipment will be either ~~_____~~ ~~_____~~ (together, the "Delivery Location") a warehouse as designated by Buyer reasonably close to _____, if the Equipment is being flown to _____, or _____, if the Equipment is being flown to _____ (the "Delivery Location"). The Equipment will be shipped via air carrier by Seller. The delivery term shall be INCOTERM 2020 DDP to the Delivery Location, at which time risk of loss and title shall pass to Buyer.

3. Subdivision (b), Buyer's Option to Extend Term, of Paragraph 7, TERM & TERMINATION, of the MSA is stricken and replaced as follows:

Buyer will have the option to exercise a right to extend this Agreement for additional one-month terms, at the same unit price as set forth in Exhibit A B, for a maximum of two (2) additional months. Buyer agrees to provide ~~thirty (30)~~ seven (7) calendar days of advance written notice to Seller of Buyer's intent to exercise this option (these two optional subsequent terms and the related delivery and payment obligations shall be known herein as "Batch B" and "Batch C", respectively).

4. Paragraph 12 (a), AFFILIATE GUARANTEE, of the MSA is stricken, replaced, and added as follows:

For the purposes of this Section, "Guaranteed Material Obligation" will exclusively mean the following: (i) Seller fails to obtain NIOSH certification for N95 masks by ~~May 31, 2020~~ or before June 12, 2020; or (ii) Seller materially fails to deliver the N95 masks as specified in Exhibit B (as modified by this Amendment No. 2 3); or (iii) Seller does not complete wire transfer of \$247,500,000.00, which is half of the prepayment made by ~~Seller~~ Buyer, no later than 4:00 PM Pacific Daylight Time on ~~May 8, 2020~~; or (iv) in the event Seller fails to obtain NIOSH certification for N95 masks by or before June 12, 2020 and Seller does not complete wire transfer of \$247,500,000.00, which is the remaining half of the prepayment made by Buyer (attributed to N95 mask purchases in June 2020), by 10:00 AM Pacific Daylight Time on June 17, 2020, or within three

(3) business days of Seller receiving notice of its failure to obtain NIOSH certification, whichever is sooner.

5. Paragraph 32 (a), RIGHTS AND REMEDIES, of the MSA is stricken and replaced as follows:

Should Seller fail to obtain the certification required in Section 2 "N95 Contingency", Seller will, no later than 10:00 AM Pacific Daylight Time on June 5, 2020 June 17, 2020, or within three (3) business days of Seller receiving notice of its failure to obtain NIOSH certification, whichever is sooner, refund to Buyer the Buyer's entire remaining prepayment to Seller for the N95 masks.

6. Paragraph 5 of Amendment No. 2 to the MSA is stricken and replaced as follows:

Seller and Buyer will agree upon an updated Exhibit B "DELIVERY AND PAYMENT SCHEDULE" of the MSA as pertaining to the surgical masks no later than May 8, 2020. The updated surgical mask schedule will be approved by contract management officers from both parties and incorporated by reference into this Amendment No. 2. Exhibit B "DELIVERY AND PAYMENT SCHEDULE" of the MSA as pertaining to the N95 masks will be approved by contract management officers from both parties no later than May 22, 2020 June 15, 2020, or within 3 days of Seller obtaining NIOSH certification, whichever is sooner, and incorporated by reference into Amendment No. 2 3. The quantity of N95 masks Buyer intends to purchase from Seller for the remaining portion of Batch A will remain at One Hundred Fifty Million (150,000,000). Seller's proposed updated schedule pursuant to this Amendment may include delivery dates in July 2020, reflecting additional days in July necessary to account for the missed June deliveries resulting from the delayed NIOSH certification.

7. This Amendment No. 3 shall be effective as of the Effective Date.
8. Except as expressly amended by this Amendment No. 3, all other provisions, terms and conditions of the MSA, including the amendments, shall remain the same, in full force and effect, and are incorporated herein by this reference.

(Signature Page Follows)

The parties have executed this Amendment No. 3 as of the Effective Date written above.

Buyer:
California Governor's Office of Emergency Services

By: Christina Wong for

Name: Mark Ghilarducci

Title: Director, Governor's Office of Emergency Services

Date: 6/4/2020

Address: 3650 Schriever Avenue, Mather, CA 95655

Email: Mark.Ghilarducci@caloes.ca.gov

Phone: (916) 845-8510

Seller:
Global Healthcare Product Solutions, LLC

DocuSigned by:
By: 
0BAAR10BE45848D

Name: Ke Li

Title: Authorized Representative

Date: 6/4/2020

Address: 919 North Market Street, Suite 950, Wilmington, DE 19801

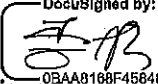
Email: contact@ghps.us

Phone: 

(Additional Signature Page Follows)

By signing below, the Guarantor hereunder agrees to be bound by the terms of this Amendment No. 3, as applicable and consistent with the MSA guarantees.

GUARANTOR:
BYD MOTORS, LLC

DocuSigned by:

By: 0BAA0168F45648D...

Name: Ke Li

Title: President

Date: 6/4/2020

Address: 1800 S Figueroa St, Los Angeles, CA 90015

Email: notices@byd.com

Phone: (800) BYD-AUTO