

AMENDMENT NO. 2 TO  
EQUIPMENT MASTER SUPPLY PURCHASE ORDER AGREEMENT

This Amendment No. 2 to Equipment Master Supply Purchase Order Agreement ("Amendment No. 2") is made by and between Global Healthcare Product Solutions, LLC ("Seller") and California Governor's Office of Emergency Services ("Buyer") on May 6, 2020 (the "Effective Date").

RECITALS

WHEREAS, on April 7, 2020, Seller and Buyer entered into the Equipment Master Supply Purchase Order Agreement (the "MSA") for the purposes of Buyer purchasing from Seller surgical masks and N95 masks; and,

WHEREAS, California's need for personal protective equipment is dynamic, including with respect to the type of PPE, in the context of the evolving COVID-19 pandemic, and California desires to increase the purchase of surgical masks per month under the existing MSA; and,

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

WHEREAS, the attainment of the NIOSH certification for the N95 mask will now require additional time; and,

WHEREAS, Buyer made a partial prepayment to Seller of \$495,000,000 for N95 masks for both the May and June production and deliveries; and,

WHEREAS, because NIOSH certification for the N95 mask requires additional time, Seller will refund \$247,500,000, representing half of the prepayment made by Buyer (attributed to N95 mask purchases in May 2020); and,

WHEREAS, Seller reaffirms that Seller will return the balance of the prepayment should NIOSH certification for the N95 mask not be obtained by the date agreed to in this Amendment or should other conditions of the MSA be triggered; and,

WHEREAS, this Amendment No. 2 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 ~~April 30, 2020~~ May 31, 2020 for the N95 masks purchased under this Agreement, unless both parties agree in writing to extend this due date.

2. Paragraph 6, INVOICE & PAYMENT, (b) Timing & Payment of Invoices, (2) Manner of Remitting Purchase Order Payments, is stricken and replaced as follows:

During the term of this Agreement, Seller will invoice Buyer in accordance to this Section 6, twice a week on every Monday and Thursday, and payment will be made ~~on the~~ within three (3) business days following ~~electronic receipt of the invoice such invoicing date.~~ Invoices payments made on Monday Tuesday of each week will be payment for Purchase Order deliveries made during each of the previous four calendar days, and invoices payments made on Thursday Friday of each week will be payment for Purchase Order deliveries made during each of the previous three calendar days. Buyer will pay Seller, in the manner prescribed in Section 3 "Payment Method". At the end of this Agreement's term, if there are any unpaid Purchase Order deliveries, and where Buyer has not rejected the deliveries pursuant to this Agreement, such invoices will be paid in full within five (5) business days.

3. Paragraph 12 (a), AFFILIATE GUARANTEE, of the MSA is stricken and replaced 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 ~~April 30, 2020~~ May 31, 2020; or, (ii) Seller materially fails to deliver the N95 masks as specified in Exhibit B (as modified by this Amendment No. 2); or (iii) Seller does not complete wire transfer of \$247,500,000.00, which is half of the prepayment made by Seller, no later than 4:00 PM Pacific Daylight Time on May 8, 2020.

4. 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 ~~May 8, 2020~~ June 5, 2020, refund to Buyer the Buyer's entire remaining prepayment to Seller for the N95 masks.

5. 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 and incorporated by reference into this Amendment No. 2.
6. Seller will initiate the process to remit and refund \$247,500,000.00, which is half of the prepayment made by Buyer, on May 6, 2020, and the wire transfer shall be completed no later than 4:00 PM Pacific Daylight Time on May 8, 2020. Buyer will provide Seller with confidential wire transfer instructions to effectuate Seller's refund of \$247,500,000.00 back to Buyer.
7. This Amendment No. 2 shall be effective as of the Effective Date.
8. Except as expressly amended by this Amendment No. 2, all other provisions, terms and conditions of the MSA, including Amendment No. 1, 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. 2 as of the Effective Date written above.

Buyer:  
California Governor's Office of Emergency Services

By: 

Name: Mark Ghilarducci

Title: Director, Governor's Office of Emergency Services

Date: 5/6/2020

Address: 3650 Schriever Avenue, Mather, CA 95655

Email: [Mark.Ghilarducci@caloes.ca.gov](mailto:Mark.Ghilarducci@caloes.ca.gov)

Phone: (916) 845-8510

Seller:  
Global Healthcare Product Solutions, LLC

DocuSigned by:  
By:   
0BAA0168F46048D...

Name: Ke Li

Title: Authorized Representative

Date: 5/6/2020

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


Email: [contact@ghps.us](mailto:contact@ghps.us)

Phone: 

*(Additional Signature Page Follows)*

By signing below, the Guarantor hereunder agrees to be bound by the terms of Amendments 1 and 2 of the Agreement, as applicable and consistent with the MSA guarantees.

GUARANTOR:  
BYD MOTORS, LLC

DocuSigned by:  
By:   
0BAAB105F48348D

Name: Ke Li

Title: President

Date: 5/6/2020

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

Email: notices@byd.com

Phone: (800) BYD-AUTO