

1. **GENERAL** The acceptance of any offer, proposal or bid presented by BMA America, Inc. ("BMA America") to the customer ("Buyer") and any transactions between BMA America and the Buyer concerning After Sales services sold by BMA America (which collectively may be referred to as "After Sales Services") shall be subject to and, governed exclusively by, the following general terms and conditions of After Sales Services (along with any directly associated written specifications, quotations or order acknowledgements executed by an authorized representative of BMA America), notwithstanding anything to the contrary which may be set forth in any documents submitted by Buyer, including, without limitation, Buyer's purchase order. No addition or modification to these terms and conditions will be binding upon BMA America unless and until specifically agreed to in writing signed by an authorized representative at BMA America's headquarters.

2. **AGREEMENT:** There will be no contract between BMA America and Buyer unless and until BMA America, in writing, confirms and accepts the Buyer's purchase order. BMA America's acceptance of Buyer's order will not be deemed to constitute an acceptance of any printed provisions on Buyer's order form which are inconsistent with, modify or in any way supplement these terms and conditions unless any such provisions are specifically accepted in writing by BMA America as a modification to these terms and conditions. No supplementary agreement between the parties will be binding upon or enforceable against BMA America unless said agreement is accepted in writing and signed by BMA America.

If there is an undisputed written order confirmation, these terms and conditions form the material basis for the content of the contract and the scope of the After Sales Service.

If the repair item is not supplied by BMA America, Buyer shall make reference to existing commercial protection rights covering the item, and Buyer shall be deemed to have released BMA America from any potential claims by third parties arising from commercial protection rights.

3. **QUOTATIONS, DRAWINGS AND DESCRIPTIONS:** All illustrations, drawings, specifications and other material as well as all data and information contained in BMA America's general product and After Sales services documentation and price lists, whether in electronic or any other form, or otherwise furnished by BMA America, are given in good faith as being approximately correct, but are not binding in detail unless explicitly stated by BMA America to be so in writing. BMA America does not warrant the accuracy of any such information or its suitability for Buyer's purposes.

All of the materials furnished to Buyer and all technical and commercial information relating to the After Sales Services submitted by BMA America to Buyer, prior or subsequent to the formation of the contract, shall remain the property of BMA America and shall not be used by Buyer for any other purpose than for which they were provided. Buyer agrees that the material and information furnished to it by BMA America will not be copied, reproduced, transmitted or communicated by any person to a third person, without the prior written consent of BMA America. If no contract is formed as provided in Section 2 above, all illustrations, drawings, information and other written material furnished to Buyer will be returned promptly upon BMA America's written request for same.

4. **UNIMPLEMENTABLE AFTER SALES SERVICES:** The services required to provide a cost estimate, as well as all other incurred expenses subject to pertinent proof to be submitted (time spent searching for defects equals working time) will be charged to Buyer in the event that the After Sales Service cannot be carried out for reasons not attributable to BMA America, and in particular because

- the claimed defect did not appear during inspection,
- no spare parts are available,
- Buyer has failed to meet any agreed upon dates,
- the contract has been terminated during implementation.

A After Sales Service item only needs to be returned to its original condition at the express wish of Buyer in return for reimbursement of the costs unless the work undertaken was unnecessary.

When After Sales Services cannot be successfully completed through no fault of BMA America, BMA America shall not be liable for damage to the item, or violation of any contractual obligations or for any damage to the repair item itself regardless of the legal grounds that may be claimed by Buyer.

5. **COST DETAILS, COST ESTIMATES:** Where possible, Buyer will be given an estimate of BMA America's price for the After Sales Services, or Buyer can stipulate cost limits.

If it is determined by BMA America in its reasonable judgment that the After Sales Service cannot be completed in accordance with such cost estimate or limit, or if BMA America considers additional work to be necessary to complete the After Sales Service, BMA America shall obtain written approval from Buyer if the cost estimate or limit is exceeded by more than fifteen percent (15 %).

If a binding cost estimate is required by Buyer, Buyer shall request the same in writing. A cost estimate of this kind is only binding when issued in writing, unless agreed otherwise. The work involved in preparing the cost estimate shall not be charged to Buyer insofar as it is of value in executing the After Sales Services.

6. **PRICE AND PAYMENT:** BMA America shall be entitled to demand an appropriate advance payment prior to commencing the After Sales Service.

The invoice for the After Sales Services shall separately list the prices for the parts, materials or any special services used, as well as the prices for the working hours, travel and transport costs. If the After Sales Service is performed on the basis of a binding cost estimate, reference is only required to the cost estimate, and only deviations from the scope need to be listed separately.

Any adjustment of the invoice by BMA America and any objection by the Buyer must be made in writing within two (2) weeks of Buyer's receipt of the invoice.

The payment shall be made without deduction within thirty (30) days after issuance of the invoice.

Delaying the payment or setting off against any of Buyer's counterclaims disputed by BMA America is not permitted.

If Buyer becomes insolvent, makes an assignment for the benefit of creditors or a proceeding in bankruptcy is brought by or against Buyer under such laws, BMA America may cancel any outstanding order, and Buyer shall reimburse BMA America for its cancellation charges. BMA America reserves the right to ship and to make collection by sight draft.

An interest charge equal to one and one-half percent (1.5%) of the total amount due (or the maximum permitted by law) compounded monthly will be assessed as a service charge on all invoices more than 30 days outstanding until full payment is received. All costs of collection, including, without limitation, attorney fees, shall be paid by Buyer. In the event of Buyer's default, BMA America may take any one or more actions permitted by law without prejudice to any other remedies BMA

America might have, including without limitation (i) suspending any further performance under this agreement, and (ii) availing itself of any remedies granted to a secured party under applicable law.

Any present or future government tax, fee, duty or charge on the sale, purchase, delivery or use of After Sales Services sold hereunder shall be paid by Buyer, in addition to the purchase price, unless otherwise agreed in writing. Certain After Sales Services may be subject to international export control regulations. Buyer shall be responsible for compliance with all regulations related to the export of such After Sales Services to end-users.

The purchase price for the After Sales Services is subject to change at anytime, without prior notice, (i) if changes in governmental actions affect the landing cost of imported After Sales Services; or (ii) if any federal, state or local governmental action taking effect between the date of BMA America's acknowledgement of the purchase order and the date of delivery affects the cost of producing or providing the After Sales Services.

**7. INVOLVEMENT AND TECHNICAL SUPPORT OF BUYER FOR AFTER SALES SERVICES OUTSIDE OF BMA AMERICA'S WORKSHOPS:** Buyer shall support the After Sales Service staff at its own expense in the execution of the After Sales Service.

Buyer shall comply with the special measures required to protect persons and property at the place where the After Sales Service is executed. Buyer shall also instruct the After Sales Service foreman in all any special safety regulations insofar as these are of significance to the After Sales Service staff. Buyer shall give BMA America written notice of any violations by the After Sales Service staff against any such safety regulations.

Buyer is obliged at its own expense to provide technical support, in particular to:

- a) Making available qualified auxiliary personnel required to execute the After Sales Service and for the appropriate length of time; the auxiliary personnel shall comply with the instructions of the After Sales Service foreman. BMA America accepts no liability for the auxiliary personnel.
- b) Undertaking all construction, bedding and scaffolding work including procurement of the necessary construction material.
- c) Providing the necessary equipment and heavy tools as well as the necessary consumable articles and materials.
- d) Making available heating, lighting, power, water, including the necessary connections.
- e) Making available the necessary dry and lockable rooms to store the tools belonging to the BMA America's repair staff.
- f) Protecting the After Sales Service site and repair materials against damaging influences of all kinds and maintaining and cleaning the After Sales Service site.
- g) Making available suitable theft-proof accommodation and working areas (with heating, lighting, washing facilities, sanitary facilities) and first aid for the repair staff.
- h) Making available materials and undertaking all other activities necessary for the After Sales Service and to implement any and all contractually stipulated testing.

Buyer guarantees that all technical support required for After Sales Service shall be available and ready upon the arrival of the After Sales Service staff and shall be available and perform without delay until the After Sales Services are completed. In the event that special plans or instructions are required from BMA America, BMA America shall make these available to Buyer in a timely fashion so as not to delay the Repairs.

In the event Buyer fails to perform in accordance with this Section 7, BMA America, upon no less than two (2) business days' prior notice to Buyer shall have the right, but not the obligation, to undertake in the place of the Buyer and at the expense of the Buyer the obligations that Buyer has failed to perform in accordance with this Section 7.

**8. TRANSPORT AND INSURANCE FOR AFTER SALES SERVICES EXECUTED IN BMA AMERICA'S WORKSHOPS:**

If no other arrangements are agreed upon in writing, outward and return transport of the After Sales Services item shall be provided as requested of the Buyer at the Buyer's expense, including, without limitation, all packaging and loading/unloading; otherwise, the After Sales Service item shall be delivered by the Buyer at its expense to a location specified by BMA America and collected again by the Buyer after completion of the After Sales Service by BMA America. Buyer shall bear all risk of loss or damage to the item to be serviced while in transport. At the request of the Buyer, the outward or return transport shall be insured at the Buyer's expense against insurable transport risks, e.g. loss, theft, breakage, fire.

During the After Sales Service period in BMA America's workshops, there is no insurance cover. The Buyer is responsible for ensuring maintenance of existing insurance cover for the After Sales Service item, e.g. fire, water, storm and mechanical breakage insurance. Insurance cover for these risks can only be provided at the express wish of the Buyer and at its expense.

If the Buyer delays takeover, BMA America shall charge warehouse expenses for storage in its facility. The After Sales Service item can also be stored at some other location deemed appropriate by BMA America. The costs and risks of storage are the responsibility of the Buyer.

**9. AFTER SALES SERVICE DEADLINES:** All After Sales Service deadlines are estimates and are therefore non-binding.

The Buyer may demand binding After Sales Service deadlines, which must be designated as binding in writing, only after precise details on the scope of the work have been defined and agreed upon.

A binding After Sales Service deadline shall be deemed met when the After Sales Service item is ready on or before the deadline for takeover by the Buyer or ready for testing if testing has been contractually agreed.

If supplementary and additional orders are issued at a later date, or if necessary additional After Sales Service work is required, the After Sales Service deadline shall be extended for a length of time reasonably necessary to accommodate such orders.

If completion or delivery of the After Sales Services is delayed by measures arising from industrial disputes, and in particular strikes and lock-outs, or any other occurrence beyond the control of BMA America any applicable deadline shall be extended for a reasonable period of time, but in no event less than the length of the delay.

If completion or delivery of the After Sales Services is delayed due to the actions of Buyer, Buyer will be charged for all costs which BMA America incurs as result of the delay, including, without limitation, overhead and a reasonable profit on all such costs. In addition, Buyer shall make any such payments at such times that they would have become due had Buyer not caused the delay in performance or delivery.

If providing of the After Sales Services is at any time delayed more than thirty (30) days due to circumstances for which

BMA America is solely responsible, then Buyer is entitled to liquidated damages from the date on which rendering of the After Sales Services should have taken place, unless the circumstances prove that Buyer has not suffered any loss. The liquidated damages shall be payable for each completed week of delay at a rate of 0.5 % of the repair price of the item to be serviced by BMA America which cannot be used timely as a result of such delay but shall not in any event exceed 5% of the total purchase price of the After Sales Service.

Such liquidated damages are the only remedy available to Buyer in case of delay caused solely by BMA America. Buyer shall have no other claims against BMA America based on such delay. Buyer shall not be entitled to cancel the order as a result of any delay in delivery of the After Sales Services.

10. **ACCEPTANCE:** BMA America shall give notice to Buyer when the After Sales Services and any required testing by BMA America have been completed. Buyer shall inspect all After Sales Services performed within 7 business days from the date of such notice. Within that 7-day period, Buyer shall send BMA America a written notice of any failure of the After Sales Services to conform to Buyer's purchase order. Failure by Buyer to send a written notice shall constitute an acceptance of the After Sales Services by Buyer and a waiver by Buyer of any and all claims for any nonconformity. Buyer is deemed to have accepted the After Sales Services rendered on terms set forth herein, unless within 7 business days of issue of the announcement that the After Sales Services have been completed Buyer sends a written notice of rejection that provides detailed grounds for rejection.

Notwithstanding the foregoing, the limited warranties specifically provided herein shall apply.

11. **RETENTION OF TITLE, EXTENDED RIGHT OF LIEN:** Notwithstanding any provision of INCOTERMS or anything contained herein, equitable title and accession to all of the accessories, spare parts and replacement equipment shall, where permitted by law, remain with BMA America until Buyer has paid in full. This shall be the case even if legal title to the After Sales Services shall be deemed by law to have passed to Buyer at the time of delivery and prior to performance of all of Buyer's obligations. Until paid in full for the After Sales Services, BMA America shall have a lien against the After Sales Services and shall have the right to retain possession of the After Sales Service item until payment is received. Buyer shall grant, and by acceptance of the After Sales Services is deemed to have granted, to BMA America a first security interest in After Sales Services to secure payment of amounts owed by Buyer. The right of lien can also be asserted with respect to claims arising from earlier work, spare parts deliveries and other services insofar as they are associated with the After Sales item. BMA shall have the right to file a financing statement in accordance with the applicable Uniform Commercial Code with respect to the security interest granted in the preceding paragraph.
12. **LIMITATION OF WARRANTY AND LIABILITY:** BMA America warrants that the After Sales Services shall be free from defects in workmanship for a period of twelve (12) months following Buyer's acceptance of the After Sales Services. This warranty period is inclusive of any statutory warranty.

This limited liability of BMA America does not apply if the defects do not significantly affect the interests of the Buyer or are attributable to conditions for which Buyer is responsible. This applies particularly to parts made available by Buyer.

The foregoing is IN LIEU OF all other warranties and is subject to the LIMITATIONS stated herein. **THE PARTIES AGREE THAT BMA AMERICA MAKES NO OTHER EXPRESS,**

**STATUTORY OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, TO THE EXTENT PERMITTED BY LAW, THE EXCLUSIVE REMEDY OF THE BUYER OR USER, AND THE LIMIT OF BMA AMERICA'S LIABILITY FOR ANY AND ALL LOSSES, INJURIES, OR DAMAGES CONCERNING THE AFTER SALES SERVICES (INCLUDING CLAIMS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE) SHALL BE, AT THE OPTION OF BMA AMERICA, THE AFTER SALES SERVICE OR REPLACEMENT OF THE AFTER SALES SERVICE ITEM OR THE RETURN OF THE DEFECTIVE PART TO BMA AMERICA AND THE REFUND OF A RATABLE PORTION OF THE PURCHASE PRICE FOR THE AFTER SALES SERVICE. IN NO EVENT SHALL BMA AMERICA BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES. BMA AMERICA SHALL NOT BE RESPONSIBLE FOR INSTALLATION, DISMANTLING OR REINSTALLATION COSTS OR CHARGES. In no event shall any recovery of any kind against BMA America be greater in amount than the purchase price of the specific After Sales Services rendered. No action, regardless of form, shall be brought against BMA America more than 12 months after a cause of action has accrued. The After Sales Service items and goods returned under warranty to BMA America shall be at Buyer's risk of loss, and in the event warranty work is required, will be returned, if at all, at BMA America's risk of loss.

Buyer and all users are deemed to have accepted this LIMITATION OF WARRANTY AND LIABILITY, which contains the complete and exclusive limited warranty of BMA America. This limitation of warranty may not be amended, modified or its terms waived, except by writing signed by an Officer of BMA America.

Buyer shall without undue delay notify BMA America in writing of any defect of the After Sales Service which appears within the warranty period, specifying the nature thereof. If Buyer fails to notify BMA America in writing and without undue delay of such a defect of the After Sales Service, he loses his right to have the defect remedied.

Buyer shall return, where applicable, all After Sales Service items claimed to be defective to BMA America with transportation prepaid. If, upon examination by BMA America, the defect is covered by this limited warranty, BMA America shall, in addition to repair or replacement, pay transportation charges both ways. Labor and travel expenses incurred in responding to a warranty claim will be paid by Buyer in accordance with BMA America's then current rates.

13. **ORDER CANCELLATION:** No order may be canceled or altered by Buyer except on terms and conditions accepted in writing by BMA America. BMA America may impose reasonable cancellation charges. After Sales Services may not be returned for credit unless pre-approved in writing by BMA America. A restocking charge will be applied, including reimbursement for direct costs and allowances for disruption as may be determined by BMA America. Cancellation charges associated with orders for After Sales Services specifically executed to Buyer's specification may equal the actual selling price of the After Sales Services.
14. **INSURANCE AND INDEMNITY:** BMA America shall maintain liability insurance and, if requested by Buyer, will provide a Certificate of Insurance confirming such coverage. BMA America will indemnify and hold harmless Buyer against claims or damages arising out of this contract to the extent BMA America recover under the insurance policies maintained

in accordance with the foregoing. THIS WILL BE THE FULL EXTENT OF BMA AMERICA'S LIABILITY FOR DIRECT DAMAGES.

If the After Sales Service items are repaired to Buyer's specifications, or if the After Sales Services are used in conjunction with products not supplied by BMA America, then Buyer shall indemnify and hold BMA America harmless from and against any suits, claims, losses, expenses, and other liabilities including costs and attorney's fees, whether for loss, personal injury, infringement or otherwise, which result from Buyer's specifications or use of product not furnished by BMA America. Goods or equipment furnished to BMA America by Buyer shall be at Buyer's sole risk and expense.

15. **FORCE MAJEURE:** BMA America will in no event be liable for any loss, damage or delay suffered by Buyer arising out of BMA America's failure to perform its obligations hereunder, when such failure is directly or indirectly caused by or arises from causes beyond its reasonable control, including but not limited to the following circumstances: industrial disputes, strikes and lockouts, riots, fires, floods, earthquakes, tempest or other acts of God, war, extensive military mobilization, insurrection, requisition, seizure, epidemics, embargo, civil commotion, terrorist attack, governmental regulation, shortage of labor, fuel, power, materials or supplies, defects and delays in deliveries by sub-contractors caused by any such circumstance referred to in this Section.
16. **MISCELLANEOUS:** All permits, licenses or authorizations necessary for the installation or use of the Repair Services will be obtained by Buyer at its sole cost and expense.

No right or obligation under this agreement will be assigned without prior written consent of BMA America.

Should any single provision or subparagraph of these terms and conditions be deemed invalid, the balance of the agreement will remain binding and enforceable in accordance with its terms and conditions.

17. **LIMITATION OF LIABILITY::** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXPRESS OR IMPLIED, IN ANY AGREEMENT OR THE PROVISIONS OF APPLICABLE LAW, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF AGREEMENT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL BMA AMERICA, INC., OR BMA AMERICA'S PARENT OR AFFILIATED COMPANIES BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURIES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO PLANT DOWN TIME, INCREASED COST OF PRODUCTION, LOSSES IN PRODUCTION, LOSS OF PROFITS, LOSS OF DATA, LOSS OF USE OF EQUIPMENT OR ANY OTHER COMMERCIAL LOSS.  
This Limitation of Liability Clause shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the purchase agreement/contract, except to the extent such conflicting or inconsistent provisions further restrict BMA America's liability.
18. **REPLACEMENT OBLIGATION OF BUYER:** If during After Sales Services conducted outside of BMA America's workshops, any equipment or tools made available by BMA America become damaged for reasons not attributable to BMA America, or if said items are lost for reasons not attributable to BMA America, Buyer is obliged to replace the damaged items. This excludes damage due to normal wear and tear.
19. **DISPUTES AND APPLICABLE LAW:** BMA America may bring an action for nonpayment before any judicial court of competent jurisdiction without need for arbitration. In addition,

the parties will attempt in good faith promptly to resolve any dispute arising out of or in connection with this agreement by negotiations or mediation involving representatives who have authority to settle the controversy. If unsuccessful, any controversy or claim arising out or relating to this contract, or the breach thereof, which cannot be so resolved by negotiation or mediation, shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the dispute by one or more arbitrators appointed in accordance with the said rules. The language for the arbitration shall be English. Venue for any arbitration proceedings shall lie exclusively in Weld County, Colorado, and the award shall be enforceable in any court having jurisdiction. These procedures are the exclusive procedures for the resolution of all such disputes between the parties.

This agreement and all disputes arising thereunder will be governed by and interpreted in accordance with the internal laws of the State of Colorado, U.S.A. The rights and obligations of the parties hereunder shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.