

General Terms and Conditions for Sale of Goods & Services

1. APPLICABILITY.

- 1.1. These terms and conditions of sale (**Terms**) are the only terms which govern the sale of the goods (**Goods**) and services (**Services**) by BMA America, Inc. (**BMA**) to the customer named on BMA's quotation or order acknowledgment (**Buyer**). These Terms together with any directly associated written specifications, quotations, or order acknowledgments executed by an authorized representative of BMA which are hereby incorporated herein by reference (collectively, the **Agreement**), comprise the entire fully integrated agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. No addition or modification to these Terms and conditions will be binding upon BMA unless and until agreed to in writing signed by an authorized representative of BMA.
- 1.2. There will be no contract between BMA and the Buyer unless and until BMA, in writing, confirms and accepts the Buyer's purchase order in the form of an order acknowledgment (the **Sales Confirmation**) and, if required, Buyer has signed and returned the Sales Confirmation to BMA. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order or BMA's performance of the Services does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. BMA hereby provides notice pursuant to Section 2-207 of the Uniform Commercial Code that BMA objects to all terms and conditions contained in Buyer's purchase order or other documents that are different from or in addition to these Terms.
- 1.3. Notwithstanding anything to the contrary contained in the Agreement, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

2. QUOTATIONS, DRAWINGS, AND DESCRIPTIONS.

- 2.1. All illustrations, drawings, specifications, or other materials as well as all data and information contained in BMA's general product documentation and price lists, whether in electronic or any other form, or otherwise furnished by BMA, are given in good faith as being approximately correct, but are not binding in detail unless explicitly stated by BMA to be so in writing. BMA does not warrant the accuracy of any such information or its suitability for Buyer's purposes.
- 2.2. All of the materials furnished to Buyer and all technical and commercial information relating to the Goods or its manufacture or Services submitted by BMA to the Buyer, prior or subsequent to the formation of the contract, shall remain the property of BMA and shall not be used by Buyer for any other purpose than for which they were provided. Buyer agrees that the material furnished to it by BMA will not be copied, reproduced, transmitted, or communicated by any person to a third person, without the prior written consent of BMA. If no contract is formed as provided in Section 1.2 above, all illustrations, drawings, information, and other written material furnished to Buyer will be returned promptly upon BMA's written request for the same.

3. PRICE.

- 3.1. **Price.** Buyer shall purchase the Goods and Services from BMA at the price(s) (the **Price(s)**) set forth in the Sales Confirmation. The Price for the Services is only an estimate of BMA's fees for performing the Services. The actual cost of the Services will be based on the actual days, hours, accommodation costs, and travel expenses incurred by BMA in its performance of the Services which shall be reflected on the final invoice. If it is determined by BMA in its reasonable judgment that the Services cannot be completed in accordance with such cost estimate, or if BMA considers additional work to be necessary to complete the Services, BMA shall obtain prior written approval from Buyer if the cost estimate is exceeded by more than fifteen percent (15%).
- 3.2. **Packing Costs.** The Price includes the cost of packing the Goods, which, in the sole opinion of BMA, will provide adequate protection for the Goods during shipment. The cost of packing will not be refunded, if, for any reason, the packaging is returned.
- 3.3. **Shipping Charges and Taxes.** Unless otherwise expressly stated in the Sales Confirmation, the Price does not include any federal, state, or local taxes including sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by law upon or on account of the manufacture, sale, installation, or delivery of the Goods and performance of the Services. Buyer shall be responsible for all such charges, costs, and taxes; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, BMA's income, revenues, gross receipts, personnel, or real or personal property or other assets. Buyer shall be responsible for compliance with all regulations related to the export of the Goods to end-users.
- 3.4. **Expenses.** Buyer agrees to reimburse BMA for all actual travel and out-of-pocket expenses incurred by BMA in connection with the performance of the Services. These shall be included as separate line items on the pertinent invoice.
- 3.5. **Change to Price.** The Price is subject to change at any time, without prior notice, if (i) changes in governmental actions affect the landing cost of imported Goods or Services; or (ii) any federal, state, or local governmental action taking effect between the date of BMA's Sales Confirmation and the date of delivery affects the cost of producing or providing the Goods or performing the Services.

4. PAYMENT TERMS.

- 4.1. Unless otherwise specifically set forth in the Sales Confirmation, Buyer shall pay all invoiced amounts due to BMA upon receipt of invoice. Buyer shall make all payments hereunder by wire transfer or check and in U.S. Dollars.
- 4.2. **Payment Terms for Goods.** Unless otherwise stated on the Sales Confirmation, BMA shall issue invoices to Buyer for the Goods to be delivered as follows: an invoice for one-third (1/3) of the Price with the issuance of the Sales Confirmation and an invoice for the remaining two-thirds (2/3) of the Price upon shipment of the Goods. Buyer shall pay BMA the full amount of each invoice it receives upon receipt. BMA may require full payment in advance if it believes the financial condition of Buyer does not justify shipment or subsequent deliveries on the payment terms originally specified.
- 4.3. **Payment Terms for Services.** Unless otherwise stated on the Sales Confirmation, BMA shall issue invoices to Buyer for the

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Services to be performed as follows: an invoice for fifty percent (50%) of the Services Price upon Buyer's request to BMA for BMA's performance of the Services and an invoice for the remaining fifty percent (50%) upon BMA's performance of the Services.

- 4.4. **Unsatisfactory Credit Status.** If Buyer becomes bankrupt or insolvent, or a proceeding is brought by or against Buyer under such laws, then in addition to BMA's other rights, BMA may without liability or penalty take any of the following actions: (i) accelerate all amounts owed by Buyer to BMA under the Agreement or any accepted purchase order, (ii) cancel any previously accepted purchase order, (iii) delay any further shipment of Goods to Buyer or performance of Services by BMA, or (iv) any combination of above. Buyer shall reimburse BMA for any costs incurred by BMA as a result of BMA taking any of these actions. BMA reserves the right to ship and to make collection by sight draft.
- 4.5. **Late Payments.** Buyer shall pay interest at the lesser of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly, on all payments that are more than thirty (30) days past due. Interest will continue to accrue until BMA receives payment in full. Buyer shall reimburse BMA for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which BMA does not waive by the exercise of any rights hereunder), BMA shall be entitled to suspend any further performance under the Agreement, including delivery of the Goods or performance of the Services, if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) calendar days after written notice thereof.
- 4.6. **No Set-Off Right.** Buyer shall not withhold payment of any amounts due and payable under the Agreement or any other agreement between the parties by reason of any set-off of any claim or dispute with BMA under the Agreement or any other agreement between the parties, whether relating to BMA's breach, bankruptcy, or otherwise.
- 4.7. **Invoice Disputes.** Buyer shall notify BMA in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute) within fifteen (15) days from the date of such invoice. Buyer will be deemed to have accepted all invoices for which BMA does not receive timely notification of disputes and shall pay all undisputed amounts due under such invoices within the period set forth in Section 4.2 or Section 4.3 above. The parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under the Agreement during any such dispute including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts.
- 4.8. **Purchase Money Security Interest.** As collateral security for the payment of the purchase of the Goods, Buyer hereby grants to BMA a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. BMA may reclaim any Goods delivered or in transit if Buyer fails to make payment when due. The security interest granted under this provision constitutes a purchase money security interest under the North Carolina

Uniform Commercial Code. Buyer agrees to execute a financing statement upon BMA's request.

5. SHIPMENT AND DELIVERY OF GOODS.

- 5.1. **Delivery.** The Goods will be delivered within a reasonable time after the issuance of the Sales Confirmation, subject to availability of finished Goods. Except as otherwise expressly provided herein, BMA shall not be liable for any delays, loss, or damage in transit.
- 5.2. **Shipping Terms.** Unless otherwise stated in BMA's Sales Confirmation, all Goods will be delivered EX WORKS (EX WORKS in accordance with INCOTERMS in force as of the date listed on the Sales Confirmation) on and by the date mutually agreed upon by the parties. Unless otherwise agreed in writing by the parties, BMA shall deliver the Goods to the carrier at the location(s) stated in the Sales Confirmation (the "Delivery Point") using BMA's (or manufacturer's, as the case may be) standard methods for packaging and shipping such Goods. Unless otherwise agreed in writing by the parties, the Goods will be considered delivered and the risk of loss passed to Buyer when the Goods are delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. Where the risk of loss has passed to Buyer, Buyer must obtain redress for freight losses, shortages, or damages from the carrier or its insurer. BMA is not responsible for any such losses.
- 5.3. **Partial Shipments Permitted.** BMA may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- 5.4. **Non-Delivery.** The quantity of any shipment of Goods as recorded by BMA on dispatch from BMA's (or manufacturer's, as the case may be) place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. BMA shall not be liable for any non-delivery of Goods (even if caused by BMA's negligence) unless Buyer gives written notice to BMA of the non-delivery within fifteen (15) days from the date when the Goods would in the ordinary course of events have been delivered to the Delivery Point. Any liability of BMA for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer acknowledges and agrees that the remedies set forth in this Section 5.4 are Buyer's exclusive remedies for any non-delivery of Goods.
- 5.5. **Delivery Delay Caused by Buyer.** If delivery to the Delivery Point is delayed due in whole or in part to the actions of Buyer: (i) risk of loss to the Goods shall pass to Buyer on the date such Goods would have been delivered as contained in the Sales Confirmation; (ii) the Goods shall be deemed to have been delivered; and (iii) BMA, at its option, may store the Goods until Buyer picks them up or directs BMA to ship them, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and a reasonable profit on such costs and expenses. In addition, Buyer shall make any payments owed to BMA under the Agreement at such times that they would have become due had Buyer not caused the delay in performance or delivery.
- 5.6. **Delivery Delay Caused by BMA.** If delivery to the Delivery Point is at any time delayed more than thirty (30) days, and such delay

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(i) is not excused for any reason provided herein (such as, for example, the result of a Force Majeure Event), (ii) the reason for such delay is within the sole responsibility and control of BMA, (iii) is the sole material cause of a delay in the critical path of the work of the project, and (iv) results in loss suffered by Buyer, then BMA shall pay to Buyer an amount equal to 0.5% of the Price relating to that portion of the Goods whose delay is a material cause of delay in the critical path of the work of the project as liquidated damages. BMA's liability for liquidated damages shall be assessed for each complete calendar week of delay, starting thirty (30) days after the date on which delivery to the Delivery Point should have taken place. In no event shall BMA's liability for liquidated damages event exceed 5% of the total Price contained in the Sales Confirmation.

5.7. Liquidated Damages Not Penalty and Are Sole Remedy for Delivery Delay. The parties intend that the liquidated damages described in Section 5.6 above constitute compensation, and not a penalty. The parties acknowledge and agree that Buyer's harm caused by BMA's delay in delivery would be impossible or very difficult to accurately estimate as of the date of the Sales Confirmation, and that the liquidated damages described above are a reasonable estimate of the anticipated or actual harm that might arise from BMA's delay in delivery of the Goods. BMA's payment of said liquidated damages is BMA's sole liability and entire obligation and Buyer's exclusive remedy for any BMA delay in delivery of the Goods. All other claims against BMA based on such delay are hereby waived and released. BMA's payment of the liquidated damages outlined above is BMA's sole liability and entire obligation and Buyer's only remedy for any delay caused solely by BMA. All other claims against BMA based on such delay are hereby waived and released. Buyer shall not be entitled to cancel its order as a result of any BMA's delay in delivery of the Goods.

6. PASSING OF RISK AND RETENTION OF TITLE.

6.1. Risk of Loss. Any agreed trade term shall be construed in accordance with the Incoterms in effect as of the date of the Sales Confirmation unless some other Incoterm date is indicated on the Sales Confirmation and risk will pass to Buyer according to the agreed Incoterm trade term.

6.2. Title. Notwithstanding any provision of the relevant Incoterms or anything contained herein, equitable title and accession to the Goods shall, where permitted by law, remain with BMA until Buyer has paid for the Goods in full. This shall be the case even if legal title to the Goods shall be deemed by law to have passed to Buyer at the time of delivery at the Delivery Point and prior to performance of all of Buyer's obligations under the Agreement. BMA may reclaim any Goods delivered and in transit if Buyer fails to make any payment when due. The retention of title shall not affect the passing of risk under Section 6.1.

7. INSPECTION AND REJECTION OF NONCONFORMING GOODS.

7.1. Buyer shall inspect the Goods within fifteen (15) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies BMA in writing of any Nonconforming Goods during the Inspection Period and furnishes written evidence or other documentation as reasonably required by BMA. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in the Sales Confirmation or (ii) product's label or packaging incorrectly identifies its contents.

7.2. If Buyer timely notifies BMA of any Nonconforming Goods, BMA shall, in its sole discretion, (i) replace such Nonconforming Goods

with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to BMA's facility located at 2020 Starita Road, Suite E, Charlotte, North Carolina 28206 or to such other location as designated by BMA. If BMA exercises its option to replace Nonconforming Goods, BMA shall ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point. If BMA has requested that Buyer return the Nonconforming Goods to BMA, then BMA may not ship the replacement Goods to Buyer until it has received Buyer's shipment of Nonconforming Goods.

7.3. Buyer acknowledges and agrees that the remedies set forth in Section 7.2 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7.2, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under the Agreement to BMA.

8. SERVICES PERFORMANCE DATES.

8.1. BMA shall use reasonable efforts to meet any performance dates specified in the Sales Confirmation; however, any such dates shall be estimates only. If there is no such date in the Sales Confirmation, Buyer shall inform BMA at least one (1) month in advance of Buyer's desired dispatch of BMA's personnel to perform the Services. In either case, the actual date of performance of the Services shall be mutually agreed to by the parties and is contingent upon BMA having received Buyer's down payment for the Services in full. BMA shall not be responsible or liable for any losses or damages incurred or suffered by Buyer resulting from, caused by, or related to the postponement, delay, or cancellation of the Services because Buyer has not paid and/or BMA has not received Buyer's down payment for the Services.

8.2. If Buyer issues orders for supplementary and/or additional services after the date listed on the Sales Confirmation or if additional services are required, the performance date for the Services shall be extended for a length of time reasonably necessary to accommodate such orders.

9. SERVICES PERFORMANCE DELAYS.

9.1. Delays Caused by Buyer. If performance of the Services is delayed due to the actions of Buyer, Buyer will be charged for all costs which BMA 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.

9.2. Delays Caused by BMA. If BMA's performance of the Services is at any time delayed more than thirty (30) days and such delay (i) is not excused for any reason (such as, for example, the result of a Force Majeure Event), (ii) the reason for such delay is within the sole responsibility and control of BMA, and (iii) results in a loss suffered by Buyer, then Buyer is entitled to liquidated damages in an amount equal to 0.5% of the Services Price as outlined in the relevant Sales Confirmation for the Services so delayed. BMA's liability for said liquidated damages shall be assessed for each full calendar week of delay, starting fourteen (14) days from the date on which performance of the Services should have taken place. In no event shall BMA's liability for such liquidated damages exceed five percent (5%) of the total Price of the Services as outlined in the relevant Sales Confirmation.

9.3. Liquidated Damages Not a Penalty and Are Sole Remedy for Performance Delay. The parties intend that the liquidated

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damages described in Section 9.2 above constitute compensation and not a penalty. The parties acknowledge and agree that Buyer's harm caused by BMA's delay in performance would be impossible or very difficult to accurately estimate as of the date of the Sales Confirmation, and that the liquidated damages described above are a reasonable estimate of the anticipated or actual harm that might arise from BMA's delayed performance of the Services. BMA's payment of the liquidated damages described above is BMA's sole liability and entire obligation and Buyer's only remedy for any delay caused solely by BMA. All other claims against BMA based on such delay are hereby waived and released. Buyer shall not be entitled to cancel the order as a result of any delay in BMA's performance of the Services.

10. BUYER'S OBLIGATIONS REGARDING SERVICES. Buyer shall:

- 10.1. support BMA personnel at its own expense in the performance of the Services;
- 10.2. cooperate with BMA in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by BMA, for the purposes of performing the Services;
- 10.3. respond promptly to any BMA request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for BMA to perform the Services in accordance with the requirements of the Agreement;
- 10.4. provide such Buyer materials or information as BMA may request to carry out the Services in a timely manner and ensure that such Buyer materials or information are complete and accurate in all material respects;
- 10.5. obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start;
- 10.6. comply with any and all special measures required to protect persons and property at the place where the Services are performed; and
- 10.7. instruct the BMA personnel performing the Services in any and all special safety regulations applicable to them and give BMA written notice of any violations by them of such safety regulations.

11. BUYER'S TECHNICAL SUPPORT OF THE SERVICES OBLIGATIONS.

- 11.1. Buyer shall, at its sole cost and expense, provide technical support to BMA personnel in connection with the performance of the Services, including, but not limited to, the following:
 - 11.1.1. make available qualified Buyer or other auxiliary personnel for as long as may be required to facilitate the performance of the Services and who shall comply with the instructions of BMA Services personnel. BMA accepts no liability for such Buyer or other auxiliary personnel and shall not be liable to Buyer for any act or omission of the same.
 - 11.1.2. perform all construction, bedding and scaffolding work including procurement of the necessary construction material.
 - 11.1.3. provide the necessary equipment, heavy tools, and the necessary consumable articles and materials required to perform the Services.
 - 11.1.4. make all utilities required for the performance of the Services available, including, but not limited to heating, lighting, power, water, and their necessary connections.

- 11.1.5. provide BMA personnel with dry and lockable rooms at the Services site to store their tools; safe, suitable, and sanitary accommodations and work areas having heating, lighting, and washing facilities; and accessible first aid.

- 11.1.6. protect the Services site and Services materials present there against damaging influences of all kinds; maintain and clean the Services site in accordance with all applicable national, state, and/or local rules and regulations.

- 11.1.7. provide all necessary materials and perform all other necessary activities to facilitate the performance of the Services and to implement any and all contractually stipulated testing.

- 11.2. All technical support required of Buyer for the Services as outlined in Section 11.1 above shall be made available and ready upon the arrival of BMA personnel at the Services site and shall continue to be provided until the Services are completed. BMA shall make any required special plans or instructions related to the performance of the Services available to Buyer in a timely fashion so as not to delay the Services.

- 11.3. Should Buyer fail to perform its technical support obligations as outlined in this Section 11, BMA shall, upon no less than two (2) business days' prior notice to Buyer, have the right, but not the obligation, to undertake in the place of the Buyer and at Buyer's expense such obligations Buyer fails to so perform.

12. **REPLACEMENT OBLIGATION OF BUYER:** If during the performance of the Services by BMA at Buyer's facility, any equipment or tools made available by BMA become damaged for reasons not attributable to BMA, or if said items are lost for reasons not attributable to BMA, Buyer is obliged to replace the damaged items. This replacement obligation does not include damage to such items due to normal wear and tear.

13. TRANSPORT AND INSURANCE FOR SERVICES PERFORMED AWAY FROM BUYER'S FACILITY.

- 13.1. If the Services are to be performed by BMA on equipment (other than the Goods contained in the Sales Confirmation) at a location other than Buyer's facility and if no other arrangements are agreed upon in writing, all costs for transporting the equipment on which the Services are to be performed to and from BMA's facility or such other location as BMA may specify shall be paid for by Buyer, including, without limitation, all packaging and loading/unloading. Buyer shall bear all risk of loss or damage to the equipment to be serviced while in transit. Upon Buyer's request and at Buyer's expense, BMA will obtain insurance to cover the equipment while in transit against insurable transport risks, e.g. loss, theft, breakage, fire.

- 13.2. BMA shall not obtain insurance on behalf of Buyer to cover the equipment on which Services are being performed while it is present at the location where the Services are being performed unless otherwise agreed to by the parties in writing and paid for by Buyer. Buyer is responsible for ensuring maintenance of its own adequate insurance coverage for such equipment while it is at the Services performance location.

- 13.3. If Buyer delays picking up the equipment serviced upon the completion of the Services by BMA, BMA shall charge, and Buyer agrees to pay, warehouse expenses for storage of the equipment in BMA's facility or at some other location deemed appropriate by BMA for storage of the same. The costs and risks of loss to the equipment while in storage are the responsibility of the Buyer.

14. **UNIMPLEMENTABLE SERVICES.** In the event the Services cannot or are not performed for reasons not attributable to BMA,

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including but not limited to, reasons resulting from: (i) the claimed defect not appearing during inspection; (ii) no spare parts being available; (iii) Buyer failing to meet any agreed upon dates related to the Services; and/or (iv) the Agreement being terminated for any reason prior to performance of the Services, Buyer shall be billed and agrees to pay BMA for the time spent creating and providing Buyer with a cost estimate for the Services as well as any other costs and expenses incurred and substantiated with documentation by BMA in relation to the Services. When the Services cannot be successfully completed through no fault of BMA, BMA shall not be liable or responsible for any damages or losses incurred by Buyer resulting from, caused by, or related thereto, including by not limited to, damage to Buyer's equipment or property or the repair thereof; nor shall BMA be deemed in violation of any of its obligations under the Agreement regardless of the legal grounds that may be claimed by Buyer for the same.

15. **ACCEPTANCE:** BMA shall give notice to Buyer when the Services have been performed and any required testing by BMA have been completed. Buyer shall inspect all Services performed by BMA within seven (7) business days from the date of such completion notice. If the Services performed fail to conform to the Sales Confirmation, Buyer must provide BMA with a written notice of rejection within that 7-day inspection period. Failure by Buyer to send a written rejection notice within said inspection period shall constitute an acceptance of the Services by Buyer and a waiver by Buyer of any and all claims for any nonconformity. Buyer is deemed to have accepted the Services rendered on the terms set forth herein, unless within seven (7) business days after BMA's issuance of the completion notice to Buyer, Buyer sends a written notice of rejection that provides detailed grounds for rejection. Notwithstanding the foregoing, the limited warranties specifically provided herein shall apply.

16. LIMITED WARRANTIES

16.1. **Limited Goods Warranty.** BMA warrants that for a period of twelve (12) months from the date of shipment of the Goods ("**Goods Warranty Period**"), that such Goods shall be free from material defects in workmanship and material. The limited Goods warranties under this Section 16.1 do not apply where the Goods have: (i) been subject to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by BMA; (ii) been reconstructed, repaired, or altered by persons other than BMA or its authorized representative; (iii) been used with any hardware or product that has not been previously approved by BMA; (iv) defects originating after transfer of risk; (v) been subjected to normal wear and tear or deterioration, overloading, defective foundation or unsuitable foundation soil, chemical, electro-chemical or electro-influences, effects of climatic and other natural phenomena; (vi) insignificant deviations from the described quality; (vii) insignificant impairment of usability; or (viii) defects or nonconformity arising out of materials provided, or a design stipulated or specified by Buyer. During the Goods Warranty Period, with respect to allegedly Defective Goods, Buyer shall notify BMA, in writing, of any alleged claim or defect within ten (10) days from the date Buyer discovers or should have discovered such alleged claim or defect (but in any event before the expiration of the Goods Warranty Period). "**Defective Goods**" means Goods shipped by BMA to Buyer that do not conform to the warranties in this Section 16.1. BMA shall not be liable for breach of the warranty set forth in this Section 16.1 unless (i) Buyer provides the required notice as outlined herein; (ii) BMA is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do

so by BMA) returns such Goods to BMA's place of business at BMA's cost for the examination to take place there; and (iii) BMA reasonably verifies Buyer's claim that the Goods are defective.

16.2. **Limited Services Warranty.** BMA warrants to Buyer that it shall perform the Services (i) using personnel of required skill, experience, and qualifications; (ii) in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services; and (iii) that it shall devote adequate resources to meet its obligations under the Agreement. BMA shall not be liable for breach of this warranty unless such breach was or should have been discovered by Buyer within twelve (12) months following Buyer's acceptance of the Services as defined in Section 15 ("**Services Warranty Period**") and Buyer gives written notice of the defective Services reasonably described to BMA within ten (10) days after the time when Buyer discovers or should have discovered that the Services were defective (but in any event before the expiration of the Services Warranty Period). The Services Warranty Period is inclusive of any statutory warranty. If Buyer fails to notify BMA in writing of defective Services within the Services Warranty Period, Buyer loses its right to have the defect remedied.

16.3. **Third-Party Product Warranties.** Products manufactured by a third party ("**Third-Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 16.1 or 16.2. For the avoidance of doubt, **BMA MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USE OF TRADE, OR OTHERWISE.** BMA will transfer any Third-Party Product warranties provided to BMA by such third party, if any, to Buyer.

16.4. **Buyer's Exclusive Remedy for Defective Goods.** If BMA determines that the Goods are defective and any such defect has not been caused by any of the factors described in Section 16.1, BMA shall, in its sole discretion and at its expense, either (a) repair or replace such Defective Goods and the Goods Warranty Period for such repaired or replaced Goods shall be the longer of three (3) months from the date of such repair or replacement or the expiration of the Goods Warranty Period; or (b) credit or refund the Price of such Goods at the pro rata contract rate provide that, if BMA so requests, Buyer shall, at BMA's expense, return such Goods to BMA. TO THE EXTENT PERMITTED BY LAW, THIS SECTION 16.4 SETS FORTH BUYER'S SOLE AND EXCLUSIVE REMEDY AND BMA'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 16.1. AND FOR ANY AND ALL LOSSES, INJURIES, OR DAMAGES CONCERNING THE GOODS (INCLUDING CLAIMS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE). IN NO EVENT SHALL BMA BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES NOR SHALL BMA BE RESPONSIBLE FOR INSTALLATION, DISMANTLING, OR REINSTALLATION COSTS OR CHARGES. In no event shall any recovery of any kind against BMA be greater in amount than the Price of the Goods.

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16.5. **Buyer's Exclusive Remedy for Defective Services.** Subject to Section 16.2, BMA shall, in its sole discretion, either (i) repair or re-perform the Services (or the defective part); or (ii) credit or refund the Price of such Services at the pro rata contract rate. BMA's obligations under clauses (i) and (ii) above do not apply if the defects do not significantly affect the interests of Buyer or are attributable to conditions for which Buyer is responsible; specifically, regarding parts made available by Buyer. Travel expenses incurred by BMA in responding to a Services warranty claim will be billed to and paid by Buyer. THE REMEDIES SET FORTH IN THIS SECTION 16.5 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND BMA'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED SERVICES WARRANTY SET FORTH IN SECTION 16.2. IN NO EVENT SHALL BMA BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES. BMA SHALL NOT BE RESPONSIBLE FOR INSTALLATION, DISMANTLING, OR REINSTALLATION COSTS OR CHARGES. In no event shall any recovery of any kind against BMA for defective Services be greater in amount than the Price of the specific Services rendered.

16.6. **Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 16.1 AND 16.2, BMA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

17. CHANGE ORDERS.

17.1. **Changes to Goods.** Buyer requested order changes, including those affecting the identity, scope, and delivery time of the Goods, must be submitted in writing and are subject to BMA's review for equitable adjustments to Price, scheduling, and other affected Terms ("**Adjustments**"). Upon mutual agreement of any Adjustments, Buyer shall issue to BMA a written change order for the requested changes and Adjustments, which shall not be binding on BMA until accepted by BMA in writing. BMA reserves the right to reject any proposed change that it deems technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with BMA's design or manufacturing capabilities.

17.2. **Changes to Services.** If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. BMA shall, within a reasonable time after such request, provide a written estimate to Buyer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges of the Services arising from the change; (c) the likely effect of the change on the Services; and (d) any other impact the change might have on the performance of the Agreement. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change in a change order. Neither party shall be bound by any change order unless mutually agreed upon in writing in accordance with Section 25.6. Notwithstanding anything contained in this Section 17.2, BMA may, from time to time, change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Sales Confirmation. BMA may charge for the time it spends assessing and documenting a change request from

Buyer on a time and materials basis in accordance with the Sales Confirmation.

18. **ORDER CANCELLATION.** No order may be canceled or altered by Buyer except on terms and conditions accepted in writing by BMA. Goods may not be returned for credit unless preapproved in writing by BMA. A restocking charge will be applied, including reimbursement for direct costs and allowances for disruption as may be determined by BMA. If an order cancellation is accepted by BMA, BMA may impose, and Buyer agrees to pay reasonable cancellation charges. Cancellation charges associated with orders for Goods specifically manufactured to Buyer's specifications may equal the Price of the Goods.

19. **INSTALLATION.** BMA is not responsible for installing the Goods unless BMA and Buyer otherwise agree in writing. Should BMA agree in writing to undertake installation of the Goods, BMA's obligation will be limited to installation in a workmanlike manner. If BMA furnishes Buyer with advice or other assistance which concerns any Goods supplied hereunder or any system or equipment in which such Goods may be installed and which is not required pursuant to the Agreement, such advice will be accepted by Buyer at its own risk and Buyer releases BMA from any claim or liability arising from the provision or use of such advice, whether the claim or liability is based upon contract, warranty, tort (including negligence), or otherwise.

20. INTELLECTUAL PROPERTY.

20.1. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Buyer under the Agreement or prepared by or on behalf of BMA in the course of performing the Services, including any items identified as such in the Sales Confirmation (collectively, "**Deliverables**") except for Confidential Information of Buyer or Buyer's materials shall be owned by BMA. BMA hereby grants Buyer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Buyer to make reasonable use of the Deliverables and the Services.

20.2. If the Goods sold incorporate software or firmware containing software, Buyer will not receive title or rights of ownership to such software but will receive a license to use one copy of the software, subject to terms issued by BMA separately from these Terms. Buyer acknowledges and agrees that the software is proprietary and constitutes a trade secret, copyright, or patent of BMA or of third parties. Buyer shall have no right to copy (except for backup), modify, reverse engineer or compile, license others, transfer, or disclose to any third party, all or part of the software.

20.3. Should use of the Goods by Buyer infringe any patent, copyright or other similar third party intellectual property right owned by third parties in Buyer's country, and a court makes a final trial judgment to that effect, BMA shall, as Buyer's sole and exclusive remedy for any deficiencies in title, either (i) enable Buyer to use the Goods supplied either by modifying the Goods or by replacing the parts concerned with other parts of identical function that are not covered by such third party intellectual property rights; or (ii)

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acquire a license from the third party whose intellectual property rights have been infringed.

20.4. BMA's liability under Section 20.3 shall apply only if (i) Buyer promptly notifies BMA of any such claim and/or resulting suit or proceeding in writing, (ii) Buyer gives BMA the sole right to defend or control the defense of the suit or proceeding, including settlement or extrajudicial regulation, (iii) Buyer provides all necessary information and assistance for that defense, and (iv) the infringement of third party intellectual property rights is not based on any instructions given by Buyer. Furthermore, BMA shall have no liability or intellectual property indemnification obligations if (a) the Goods are used in a way not stipulated in the Agreement; or (b) Buyer modifies the design of the Goods, its assemblies, or parts without proper authority.

20.5. BUYER AND BMA EXPRESSLY AGREE THAT THE REMEDIES UNDER THIS SECTION 20 ARE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER TOWARDS BMA FOR ANY INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT. THE AFOREMENTIONED LIMITATIONS OF LIABILITY SHALL NOT APPLY IF LIABILITY IS MANDATORY BY THE APPLICABLE LAW.

21. INSURANCE AND INDEMNITY.

21.1. BMA shall maintain liability insurance and will provide a Certificate of Insurance confirming such coverage to Buyer upon request. BMA will indemnify and hold harmless Buyer against claims or damages arising out of the Agreement to the extent BMA recovers under the insurance policies maintained in accordance with this Section. THIS WILL BE THE FULL EXTENT OF BMA'S LIABILITY FOR DIRECT DAMAGES.

21.2. If the Goods and/or Services sold are manufactured and/or performed to Buyer's specifications, or if the Goods are used and/or Services are performed on or in conjunction with products or equipment not supplied by BMA, then Buyer shall indemnify and hold BMA 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 or BMA's performance of the Services on or in conjunction with products or equipment not furnished by BMA. Products or equipment furnished to BMA by Buyer shall be at Buyer's sole risk and expense.

22. **CONFIDENTIAL INFORMATION.** All non-public, confidential, or proprietary information of BMA, of BMA's parent company, or of BMA's parent's other subsidiaries and/or affiliates, including but not limited to trade secrets, technology, information pertaining to business operations and strategies, specifications, samples, patterns, designs, plans, drawings, documents, data, customer lists, pricing, discounts, or rebates and information pertaining to customers, pricing, and marketing (collectively, "**Confidential Information**"), disclosed by BMA to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the provision of the Goods and Services and the Agreement is confidential, and shall not be disclosed or copied by Buyer without the prior written consent of BMA. Confidential Information does not include information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party. Buyer agrees to use the Confidential Information only to make use of the Goods, Services,

and Deliverables. Upon BMA's request, Buyer shall promptly return or destroy all documents and other materials received from BMA and any copies thereof. BMA shall be entitled, as a matter of right, to injunctive relief for any violation of this Section without proof of actual damages, posting of a bond, or showing of the likelihood of success on the merits.

23. **FORCE MAJEURE.** Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any obligation under the Agreement (except for any obligations of Buyer to make payments to BMA hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including but not limited to the following force majeure events ("**Force Majeure Event(s)**"): (i) acts of God; (ii) flood, fire, earthquake, hurricane, tornado, epidemic, pandemic, viral or bacterial outbreak, tempest, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, insurrection, requisition, or extensive military mobilization; (iv) government order, law, or actions; (v) industrial disputes, strikes, lockouts, labor stoppages or slowdowns, or other industrial disturbances; (vi) embargoes or blockades in effect on or after the date of the Sales Confirmation; (vii) national or regional emergency; (viii) shortage or adequate fuel, power, materials, supplies, or transportation facilities; and (ix) other events beyond the reasonable control of the Impacted Party. Defects and delays in deliveries by subcontractors caused by a Force Majeure Event which prevents the Impacted Party from fulfilling or performing any of its obligations under the Agreement shall also constitute a Force Majeure Event for the Impacted Party. The Impacted Party shall give notice within a reasonable time after the Force Majeure Event to the other party, stating the period of time the Force Majeure Event is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event the Impacted Party's failure or delay remains uncured for a period of ninety (90) consecutive days following written notice given by it under this Section 23, either party may thereafter terminate the Agreement upon fifteen (15) days' written notice.

24. **BUYER'S ACTS OR OMISSIONS.** If BMA's performance of its obligations under the Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, BMA shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

25. MISCELLANEOUS.

25.1. **Licenses and Permits.** All permits, licenses, or authorizations necessary for the delivery and installation of the Goods and/or performance of the Services by BMA will be obtained by Buyer at its sole cost and expense.

25.2. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of BMA. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement.

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- 25.3. **Severability.** If any provision or term of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 25.4. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 25.5. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the Sales Confirmation or to such other address as may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, national recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (i) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- 25.6. **Amendment and Modification.** No amendment to or modification of the Agreement is effective unless it is in writing and signed by an authorized representative of each party.
- 25.7. **Waiver.** No waiver by BMA of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by BMA. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 25.8. **No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confirm upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
- 25.9. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement including, but not limited to, this Section 25.9 and Sections 5.6, 5.7, 9, 16, 20, 21, 22, 25.10, 26, 27, 28, and 29.
- 25.10. **Statute of Limitations.** Notwithstanding any right under any applicable statute of limitations to bring a claim, no claim based upon or arising in any way out of the Agreement may be brought by Buyer after the expiration of the Goods Warranty Period or Services Warranty Period for a Goods or Services warranty claim or, for all other claims, after one (1) year after the cause of such claim was discovered or reasonably should have been discovered by Buyer.
- 25.11. **Headings.** The headings in these Terms are for reference only and do not affect the interpretation of the Agreement.
26. **LIMITATION OF LIABILITY.**
- 26.1. IN NO EVENT, SHALL BMA, OR BMA'S PARENT OR AFFILIATED COMPANIES BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY 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 WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT BMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 26.2. IN NO EVENT SHALL BMA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO BMA FOR THE GOODS AND SERVICES SOLD HEREUNDER.
- 26.3. The limitation of liability set forth in this Section 26 shall prevail over any conflicting or inconsistent provisions contained in any of the sales documents, except to the extent such conflicting or inconsistent provisions further restrict BMA's liability.
27. **COMPLIANCE WITH LAWS.** Each party shall comply with all laws, regulations, and ordinances applicable to the Agreement and the performance of its obligations hereunder. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under the Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. BMA may terminate the Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Goods.
28. **TERMINATION.** In addition to any remedies that may be provided under these Terms, BMA may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the Agreement; (ii) has not otherwise performed or complied with any of the terms of the Agreement including Buyer's obligations hereunder, whether in whole or in part, or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it any proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. In the event of BMA's termination of the Agreement pursuant to this Section 28, BMA shall be paid by Buyer within ten (10) days after providing written notice to Buyer for the pro rata portion of the Price attributable to (a) Goods already delivered or in the process of being delivered; (b) Goods already fully or partially fabricated, manufactured, processed, assembled, or otherwise created by BMA and/or BMA's suppliers, vendors, subcontractors, and other providers for goods or services which were produced, performed, or delivered for use in fulfilling the Agreement; (c) Services already performed or in the process of being performed; (d) all additional amounts BMA is required to pay its suppliers, vendors, subcontractors, and other providers for goods or services which were produced, performed, or delivered for use in fulfilling the Agreement; and (e) BMA's reasonable costs incurred as a result of the termination, including reasonable termination payments to suppliers, vendors,

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subcontractors, and other providers. BMA shall provide prior written notice to Buyer of any amounts due under this Section 28 setting forth the calculation of the amount in reasonable detail.

29. GOVERNING LAW AND DISPUTE RESOLUTION.

29.1. **Governing Law.** The Agreement and all matters arising out of or relating to the Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with the internal laws of the State of North Carolina, U.S.A without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of North Carolina. The parties agree that 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.

29.2. **Negotiation.** Where a dispute, claim, controversy, or difference (collectively, "**Dispute**") arises between the parties out of or in connection with the Agreement or the rights or liabilities of the parties hereto, the principal representatives of the parties shall use their best efforts to resolve the dispute in the normal course of business and without recourse to mediation or arbitration for a period of sixty (60) days after the date that a party gives written notice of such Dispute to the other party. However, if the parties remain unable to resolve the Dispute by negotiation within such sixty (60)-day period (or such other period as the Parties may agree), then either party may refer the matter to mediation in accordance with Section 29.3.

29.3. **Mediation.** If, after such negotiation, the Dispute remains unsolved, either party may require that a non-binding mediation take place. In such mediation, representatives of the parties with authority to resolve the Dispute shall meet for at least three (3) hours with a mediator whom they choose together in a location mutually agreed to by the parties. If the parties are unable to agree on a mediator, then either party is hereby empowered to request the American Arbitration Association (the "**Association**") to appoint a mediator. The mediator's fees and expenses shall be paid one-half by each party.

29.4. Arbitration Procedure.

29.4.1. Any Dispute that is not settled to the mutual satisfaction of the parties pursuant to Sections 29.2 and 29.3 shall (except as provided in Section 29.5) be finally settled by arbitration between the parties conducted in Charlotte, North Carolina, or such other location mutually agreeable to the parties, in accordance with the Commercial Arbitration Rules of the Association in effect at the time of the Dispute, as modified by this Section 29.4, (the "**Rules**") by one or more neutral arbitrators appointed in accordance with the Rules. Each party agrees that a final award issued in any such arbitration may be enforced in other jurisdictions by suit on the award or in any other manner provided by law.

29.4.2. The party submitting a Dispute to the Association shall request and the Association shall: (i) direct the arbitrator(s) to follow substantive rules of law and the Federal Rules of Evidence; (ii) allow for the parties to request discovery pursuant to the rules then in effect under the Federal Rules of Civil Procedure for a period not to exceed sixty (60) days; (iii) require the testimony to be transcribed; and (iv) issue an award that is accompanied by findings of fact and a statement of reasons for the decision.

29.4.3. All costs and expenses, including attorneys' fees, of all parties incurred in any Dispute which is determined and/or settled by arbitration pursuant to this Section 29.4 shall be borne by the party determined to be liable in respect to such Dispute; provided, however, that if complete liability is not assessed against only one party, the parties shall share the total costs in proportion to their respective amounts of liability so assessed.

29.4.4. The arbitration proceedings shall be held in the English language.

29.5. **Exceptions to Arbitration.** The obligation to arbitrate shall not be binding upon any party with respect to: (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable harm pending resolution by arbitration of the actual Dispute; (ii) seeking equitable relief related to a breach or threatened breach of Section 22; (iii) the collection of payments not subject to a bona fide dispute; or (iv) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.

29.6. **Continuing Obligations.** Except where clearly prevented by the area in Dispute, both parties agree to continue performing their respective obligations, including payment obligations, under the Agreement while the Dispute is being resolved.