

1. **APPLICABILITY:**
 - 1.1. These terms and conditions for services (“**Terms**”) are the only terms which govern the provision of 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 acknowledgements executed by an authorized representative of BMA which are hereby incorporated 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 oral and written. In the event of any conflict between these Terms and the Order Confirmation (as hereinafter defined), the Order Confirmation shall govern. Notwithstanding anything to the contrary, if a written contract signed by both parties is in existence covering the provision of the 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 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 Buyer unless and until BMA, in writing, confirms and accepts Buyer’s purchase order in the form of an order acknowledgment (the “**Order Confirmation**”) and, if required, Buyer has signed and returned the Order Confirmation to BMA. These Terms prevail over any of Buyer’s general terms and conditions regardless of whether or when Buyer has submitted its request for proposal, order, or such terms. Provision of the services to Buyer does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify, amend, or in any way supplement these Terms. No supplementary agreement between the parties will be binding upon or enforceable against BMA unless said agreement is accepted in writing and signed by an authorized representative of BMA.
2. **SERVICES.** BMA shall provide the services to Buyer as described in the Order Confirmation (the “**Services**”) in accordance with these Terms and the terms contained in the Order Confirmation.
3. **PERFORMANCE DATES.**
 - 3.1. BMA shall use reasonable efforts to meet any performance dates specified in the Order Confirmation; however, any such dates shall be estimates only.
 - 3.2. If Buyer issues orders for supplementary and/or additional services after the date listed on the Order 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.
 - 3.3. Buyer may request binding Services deadlines if the precise details of the scope of the Services have been defined and agreed upon by the parties. Such requested deadlines will only be binding on BMA if agreed to in writing and signed by an authorized representative of BMA. A binding Services deadline shall be deemed met when the Services have been performed by BMA on or before the agreed upon deadline such that the equipment on which the Services were performed is ready for takeover by Buyer or ready for testing if testing has been contractually agreed.
 - 3.4. 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.
4. **PERFORMANCE DELAYS.**
 - 4.1. **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.
 - 4.2. **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 fees as outlined in the relevant Order Confirmation for the Services so delayed (“**Liquidated Damages**”). BMA’s liability for 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 Liquidated Damages exceed five percent (5%) of the total purchase price of the Services as outlined in the relevant Order Confirmation.
 - 4.3. **Liquidated Damages Not a Penalty.** The parties intend that the Liquidated Damages 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 Order Confirmation, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from BMA’s delayed performance of the Services.
 - 4.4. **Liquidated Damages Sole Remedy for Delayed Performance by BMA.** BMA’s payment of the Liquidated Damages 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.
5. **QUOTATIONS, DRAWINGS AND DESCRIPTIONS.**
 - 5.1. All illustrations, drawings, specifications and other material as well as all data and information contained in BMA’s general product and Services 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.
 - 5.2. All of the materials furnished to Buyer and all technical and commercial information relating to the Services submitted by BMA to 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 and information 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 same.
6. **BUYER’S OBLIGATIONS.** Buyer shall:
 - 6.1. support BMA personnel at its own expense in the performance of the Services;
 - 6.2. 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;
- 6.3. 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;
 - 6.4. 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;
 - 6.5. 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;
 - 6.6. comply with any and all special measures required to protect persons and property at the place where the Services are performed; and
 - 6.7. 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.
- 7. BUYER'S TECHNICAL SUPPORT OF THE SERVICES OBLIGATIONS.**
- 7.1. 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:
 - 7.1.1. 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.
 - 7.1.2. perform all construction, bedding and scaffolding work including procurement of the necessary construction material.
 - 7.1.3. provide the necessary equipment, heavy tools, and the necessary consumable articles and materials required to perform the Services.
 - 7.1.4. make all utilities required for the performance of the Services available, including, but not limited to heating, lighting, power, water, and their necessary connections.
 - 7.1.5. 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.
 - 7.1.6. 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.
 - 7.1.7. 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.
 - 7.2. All technical support required of Buyer for the Services as outlined in Section 7.1 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.
- 7.3. Should Buyer fail to perform its technical support obligations as outlined in this Section 7, 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.
- 8. 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.
- 9. 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.
- 10. CHANGE ORDERS.**
- 10.1. 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.
 - 10.2. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 23.9
 - 10.3. Notwithstanding Section 10.1 and 10.2, 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, or the fees or any performance dates set forth in the Order Confirmation.
 - 10.4. 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 Order Confirmation.
- 11. UNIMPLEMENTABLE SERVICES.**
- 11.1. In the event the Services cannot or are not performed for reasons not attributable to BMA, 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.
 - 11.2. 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 but 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.

12. COST ESTIMATES.

12.1. The price for the Services provided in BMA's quotation and the Order Confirmation is only an estimate of BMA's fees for performing the Services. The actual costs 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.

12.2. 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%).

13. FEES AND EXPENSES; PAYMENT TERMS; INTEREST ON LATE PAYMENTS.

13.1. **Fees.** In consideration of the provision of the Services by BMA and the rights granted to Buyer under the Agreement, Buyer shall pay the fees set forth in the Order Confirmation. Such fees may include, but are not limited to, the price for the parts, materials, and any special services used in the performance of the Services. All fees shall be included as separate line items on the pertinent invoice.

13.2. **Change to Fees.** The fees set forth in the Order Confirmation are subject to change at any time, without prior notice, if (i) changes in governmental actions affect the landing costs of imported Services; or (ii) any federal, state, or local governmental action taking effect between the date of the Order Confirmation and date BMA begins performing the Services affects the cost of providing the Services.

13.3. **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.

13.4. **Taxes.** Buyer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, fees, duties or charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Buyer hereunder.

13.5. **Payment Terms.** Buyer shall pay all invoiced amounts due to BMA within thirty (30) days from the date of BMA's invoice. Buyer shall make all payments hereunder in US dollars. BMA, in its sole discretion, shall be entitled to demand advance payment prior to commencing the Services.

13.6. **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 after 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 13.5 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 this Agreement during any such dispute, including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts.

13.7. **Unsatisfactory Credit Status.** If Buyer becomes bankrupt, insolvent, or makes an assignment for the benefit of its creditors, or a proceeding is brought by or against Buyer under bankruptcy 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 performance of the 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 make collection by sight draft.

13.8. Late Payments.

13.8.1. In the event payment is not received by BMA within thirty (30) days after becoming due, BMA may: (i) charge interest on any such unpaid amounts at a rate of one and one-half percent (1.5%) per month or, if lower, the maximum amount permitted under applicable law, each compounded monthly, from the date such payment was due until the date it is paid; (ii) suspend performance for all Services under the Agreement or under any other agreement between the parties until payment is made in full; and/or (iii) avail itself of any other remedies available to it at law or in equity.

13.8.2. BMA shall be entitled to recover from Buyer and Buyer shall be obligated to reimburse BMA for all costs of collection, including, without limitation, attorney fees.

13.9. **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.

14. TRANSPORT AND INSURANCE FOR SERVICES PERFORMED IN BMA'S FACILITY.

14.1. If the Services are to be performed by BMA on equipment 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.

14.2. 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.

14.3. 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.

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 Order 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. LIMITATION OF WARRANTY AND LIABILITY.

16.1. 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.

16.2. BMA shall not be liable for a breach of the warranty set forth in Section 16.1 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 ("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 ought to have discovered that the Services were defective (but in any event before the expiration of the Warranty Period). The Warranty Period is inclusive of any statutory warranty. If Buyer fails to notify BMA in writing of defective Services within the Warranty Period, Buyer loses its right to have the defect remedied.

16.3. 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 the 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 warranty claim will be paid by Buyer.

16.4. **THE REMEDIES SET FORTH IN SECTION 16.3 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND BMA'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 16.1. 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 be greater in amount than the contract price of the specific Services rendered.**

16.5. **Disclaimer of Warranties. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 16.1 ABOVE, BMA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, 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. LIMITATION OF LIABILITY

17.1. 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, OR BMA'S PARENT OR AFFILIATED COMPANIES BE LIABLE TO BUYER OR TO ANY THIRD PARTY 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, REGARDLESS OF 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.

17.2. 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, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO BMA PURSUANT TO THE APPLICABLE ORDER CONFIRMATION.

17.3. This limitation of liability provision shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Agreement except to the extent such conflicting or inconsistent provisions further restrict BMA's liability.

18. **ORDER CANCELLATION:** No order may be canceled or altered by Buyer except on terms and conditions accepted in writing by BMA. If an order cancellation is accepted by BMA, BMA may impose, and Buyer agrees to pay reasonable cancellation charges.

19. INSURANCE AND INDEMNITY.

19.1. BMA shall maintain liability insurance and, if requested by Buyer, will provide a Certificate of Insurance confirming such coverage.

19.2. BMA will indemnify and hold harmless Buyer against third party claims arising out of or related to BMA's performance under the Agreement to the extent BMA recovers under the insurance policies maintained in accordance with Section 19.1. THIS WILL BE THE FULL EXTENT OF BMA'S LIABILITY FOR DIRECT DAMAGES.

19.3. If the Services are performed to Buyer's specifications, or 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 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.

20. **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 term of 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, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, hurricane, tornado, pandemic, epidemic, viral or bacterial outbreak, tempest, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, insurrection, requisition, or extensive military mobilization; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of the Order Confirmation; (f) national or regional emergency; (g) industrial disputes, strikes, lockouts, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power, fuel, materials, supplies, or transportation facilities; and (i) other similar 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 20, either party may thereafter terminate this Agreement upon fifteen (15) days' written notice.

21. **INTELLECTUAL PROPERTY.** 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 Order 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.

22. **CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of BMA, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, 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 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 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. **MISCELLANEOUS.**

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

23.2. **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 rights, 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.

23.3. **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.

23.4. **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 of provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

23.5. **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.

23.6. **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 Order 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.

23.7. **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 23.7 and Sections 4, 16, 17, 19, 21, 22, 23.10, 24, 25, and 26.

23.8. **Headings.** The headings in these Terms are for reference only and do not affect the interpretation of the Agreement.

23.9. **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.

23.10. **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 Warranty Period for a 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.

23.11. **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.

24. **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 proceedings related 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 24, BMA shall be paid by Buyer within ten (10) days after providing written notice to Buyer for all costs which BMA had incurred as of the date of the termination and which BMA incurs as result of the termination, including, without limitation, overhead and a reasonable profit on all such costs. BMA shall provide prior written

notice to Buyer of any amounts due under this Section 24 setting forth the calculation of the amount in reasonable detail.

25. **COMPLIANCE WITH LAWS.** Each party shall comply with all laws, regulations, and ordinances applicable to the Agreement and the performance of its obligations hereunder.

26. **GOVERNING LAW AND DISPUTE RESOLUTION.**

26.1. **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.

26.2. **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 26.3.

26.3. **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.

26.4. **Arbitration Procedure.**

26.4.1. Any Dispute that is not settled to the mutual satisfaction of the parties pursuant to Sections 26.2 and 26.3 shall (except as provided in Section 26.5) 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 26.4, (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.

26.4.2. The party submitting a Dispute to the Association shall request and the Association shall: (i) require the testimony to be transcribed; and (ii) issue an award that is accompanied by findings of fact and a statement of reasons for the decision.

26.4.3. 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

26.4 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.

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

26.5. **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.

26.6. **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.