

# General Terms and Conditions for Sale of Goods

## 1. APPLICABILITY.

1.1. These terms and conditions of sale ("**Terms**") are the only terms which govern the sale of the goods ("**Goods**") 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 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 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.

## 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 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 from BMA at the price(s) (the "**Price**") set forth in the Sales Confirmation.

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 any related 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. **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 (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.

## 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.** 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. **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 this 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 related 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.

4.4. **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 this Agreement, including delivery of the Goods, if Buyer fails to pay

any amounts when due hereunder and such failure continues for ten (10) calendar days after written notice thereof.

shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

4.5. **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.

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.

4.6. **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 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 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.

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.

4.7. **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.

## 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 this 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.

## 5. SHIPMENT AND DELIVERY.

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.

## 7. LIQUIDATED DAMAGES.

7.1. If delivery to the Delivery Point is at any time delayed more than thirty (30) days, and such delay (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 purchase 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 ("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

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

place. In no event shall BMA's liability for Liquidated Damages event exceed 5% of the total purchase price contained in the Sales Confirmation.

7.2. 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 delivery would be impossible or very difficult to accurately estimate as of the date of the Sales Confirmation, and that the Liquidated Damages 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 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.

7.3. 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.

## 8. INSPECTION AND REJECTION OF NONCONFORMING GOODS.

8.1. 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.

8.2. 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 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.

8.3. Buyer acknowledges and agrees that the remedies set forth in Section 8.2 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8.2, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to BMA.

## 9. PRODUCT WARRANTIES

9.1. **Limited Warranty.** BMA warrants that for a period of twelve (12) months from the date of shipment of the Goods ("Warranty Period"), that such Goods shall be free from material defects in workmanship and material.

9.2. **Warranty Limitations.** The warranties under Section 9.1 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.

9.3. **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 9.1. For the avoidance of doubt, **BMA MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, 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, USE OF TRADE, OR OTHERWISE.** BMA will transfer any Third-Party Product warranties provided to BMA by such third party, if any, to Buyer.

9.4. **Buyer's Exclusive Remedy for Defective Goods.** During the 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 Warranty Period). "Defective Goods" means Goods shipped by BMA to Buyer that do not conform to the warranties in Section 9.1. BMA shall not be liable for breach of the warranty set forth in Section 9.1 unless (i) Buyer provides the required notice as outlined in this Section 9.4; (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. If BMA determines that such Goods are defective and any such defect has not been caused by any of the factors described in Section 9.2, BMA shall, in its sole discretion and at its expense, either (a) repair or replace such Defective Goods and the 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 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 9.4 SETS FORTH BUYER'S SOLE AND EXCLUSIVE REMEDY AND BMA'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 9.1. 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.

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

9.5. **Disclaimer. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 9.1, BMA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

10. **CHANGE ORDERS.** 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.

13.3. BMA's liability 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.

11. **ORDER CANCELLATION.** No order may be canceled or altered by Buyer except on terms and conditions accepted in writing by BMA. BMA may impose reasonable cancellation charges. 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. Cancellation charges associated with orders for Goods specifically manufactured to Buyer's specifications may equal the Price of the Goods.

13.4. BUYER AND BMA EXPRESSLY AGREE THAT THE REMEDIES UNDER THIS SECTION 13 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.

12. **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 this 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.

#### 14. **INSURANCE AND INDEMNITY.**

14.1. 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 this 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.

#### 13. **INTELLECTUAL PROPERTY.**

14.2. If the Goods sold are manufactured to Buyer's specifications, or if the Goods are used in conjunction with products 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 products not furnished by BMA. Product or equipment furnished to BMA by Buyer shall be at Buyer's sole risk and expense.

13.1. 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.

15. **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

13.2. 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

Confidential Information only to make use of the Goods 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.

provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16. **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 uncurd 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.
17. **BUYER'S ACTS OR OMISSIONS.** If BMA's performance of its obligations under this 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 this 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.
18. **MISCELLANEOUS.**
- 18.1. **Licenses and Permits.** All permits, licenses, or authorizations necessary for the delivery and installation of the Goods will be obtained by Buyer at its sole cost and expense.
- 18.2. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this 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 this Agreement.
- 18.3. **Severability.** If any provision or term of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or

18.4. **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.

18.5. **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.

18.6. **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

18.7. **Waiver.** No waiver by BMA of any of the provisions of this 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 this 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.

18.8. **No Third-Party Beneficiaries.** This 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.

18.9. **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 18.9 and Sections 7, 9, 13, 14, 15, 18.7, 19, 20, 21, and 22.

18.10. **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 this 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.

18.11. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

## 19. LIMITATION OF LIABILITY.

19.1. 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.

19.2. IN NO EVENT SHALL BMA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS 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 SOLD HEREUNDER.

19.3. The limitation of liability set forth in this Section 19 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.

20. **COMPLIANCE WITH LAWS.** Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this 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 this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Goods.

21. **TERMINATION.** In addition to any remedies that may be provided under these Terms, BMA may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, 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 this Agreement pursuant to this Section 21, 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 this Agreement; (c) 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 this Agreement; and (d) BMA's reasonable costs incurred as a result of the termination, including reasonable termination payments to suppliers, vendors, subcontractors, and other providers. BMA shall provide prior written notice to Buyer of any amounts due under this Section 21 setting forth the calculation of the amount in reasonable detail.

## 22. GOVERNING LAW AND DISPUTE RESOLUTION.

22.1. **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.

22.2. **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 22.3.

22.3. **Mediation.** If, after such negotiation, the Dispute remains unresolved, 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.

## 22.4. Arbitration Procedure.

22.4.1. Any Dispute that is not settled to the mutual satisfaction of the parties pursuant to Sections 22.2 and 22.3 shall (except as provided in Section 22.5) 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 22.4, (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.

22.4.2. 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.

22.4.3. 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 22.4 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.

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

22.5. **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 15; (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.

22.6. **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.