

TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

In these Terms and Conditions of Purchase the following words shall have the following meanings:

Buyer: BMA America, Inc, 2020 Starita Road, Suite E, Charlotte, NC 28206

Contract: BMA America's Purchase Order accepted or executed by the Seller;

Goods: Any goods and/ or services (including any part or parts of them) agreed in the Contract to be purchased by or supplied to the Buyer from the Seller;

Purchase Order: The Buyer's standard order form for the supply of the Goods, of which these Terms and Conditions of Purchase are automatically a part;

Seller: The person, firm or company who accepts and / or executes the Purchase Order;

Specification: The specification for the Goods provided by the Buyer to the Seller or by the Seller to the Buyer as shall be agreed between the parties.

2. APPLICATION OF TERMS AND CONDITIONS

2.1 The Buyer's Terms and Conditions of Purchase are the only conditions upon which the Buyer is prepared to contract with the Seller; they shall govern the Contract to the entire exclusion of all other terms or conditions and any variation of the Seller to these conditions shall have no effect unless expressly agreed in writing by the Buyer.

2.2 Only a written Purchase Order will be binding on the Buyer.

2.3 The Seller shall be deemed to have accepted the Purchase Order by giving notice of acceptance of the Purchase Order, or upon commencement of performance hereunder. By acceptance of a Purchase Order and/or performance hereunder, Seller agrees to be bound by and to fully comply with these Buyer's Terms and Conditions of Purchase and the specific conditions set out in the Purchase Order.

2.4 Acceptance by the Buyer of the Goods, services or work delivered under the Purchase Order shall not constitute acceptance of the Seller's terms and conditions.

3. INSPECTION

3.1 At any time prior to delivery under Clause 5., the Buyer shall have the right to inspect and test the Goods ordered hereunder, the Seller's plant, process, and procedures. The Seller agrees to permit access to its facilities at all reasonable times for inspection and testing of the Goods by the Buyer's agents or employees. It is expressly agreed that inspection, testing and/ or payments prior to delivery will not constitute a final acceptance and that the Goods will be subject to final inspection after delivery to the Buyer. If the Goods inspected do not conform with the Purchase Order or the Specification, the Buyer shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition, the Buyer shall have the right to require and witness further testing and inspection.

3.2 Notwithstanding any such inspection, or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing will not serve to relieve the Seller of any of its obligations or responsibilities under the Contract.

4. VARIATIONS

4.1 The Buyer shall have the right at any time by submitting a written notice to the Seller to change the quantity, design or Specification for any Goods or services covered by the Purchase Order/ the Contract, the method of packing or delivery, the place or date of delivery, or the performance of the Contract.

4.2 If any such modification proposed in accordance with item 4.1 above affects an increase or a decrease in the cost or time required for the performance of the Contract, the price shall be ratably adjusted and a reasonable adjustment shall be made to the time of delivery or date for performance provided that no increase in the price or extension of time for delivery or performance shall be made unless agreed in writing by the Buyer. The Seller shall notify the Buyer of the request for

such adjustments within thirty (30) days after receipt of the change notice.

4.3 Any substitutions or changes in relation to any Goods or services ordered under the Purchase Order, including substitutions and changes in design, materials, workmanship, manufacturing methods or the processes employed by the Seller in the production or delivery of such Goods or services since the Buyer last purchased or approved like goods, must be promptly disclosed to, and approved by the Buyer in advance of any shipment, delivery, or performance under the Contract.

5. DELIVERY

5.1 Shipping and delivery arrangements shall be as defined in the Purchase Order by INCOTERMS, latest version. If no trade term is specifically agreed, the delivery shall be CIP. Unless otherwise stipulated in the Purchase Orders, deliveries shall only be accepted by the Buyer in normal business hours. Unloading shall only take place under the direction and in the presence of the Buyer.

5.2 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, as a minimum, the order number, date of order, number of packages and contents, and, in case of partial delivery, the outstanding balance remaining to be delivered.

5.3 Time for delivery is of the essence. Without prejudice to any remedy listed in Clause 9 below, if the Goods are not delivered at the time for delivery specified in the Purchase Order or otherwise by the parties, then, in addition to any other rights which the Buyer may have at law or in equity, the Buyer is entitled to:

(a) cancel the Contract in whole or in part;

(b) refuse to accept and to pay for the Goods;

(c) recover from the Seller any costs and expenses reasonably incurred by the Buyer in obtaining the Goods in substitution from another supplier; and

(d) claim damages for any additional costs, losses or expenses incurred by the Buyer which are attributable to the Seller's failure to deliver the Goods on the due date, with a minimum of 3% of the value of the Purchase Order for each week of delay.

5.4 Where the Buyer agrees in writing to accept partial delivery, the Contract shall be construed as a single contract in respect of each installment. Nevertheless, if the Seller fails to deliver any one installment, the Buyer shall be entitled, at its discretion, to treat the whole Contract as rejected.

5.5 If the Goods are delivered to the Buyer in excess of the quantities ordered by the Buyer, the Buyer shall not be obliged to pay for the excess, and any excess quantities shall be and remain at the Seller's risk, and may be returned to Seller at the Seller's expense, including transportation both ways and all handling charges.

5.6 The Buyer shall not be deemed to have accepted the Goods until the Buyer has had seven (7) days following receipt to inspect them. In addition to any other remedy available, the Buyer shall be entitled after inspection or within a reasonable time after Buyer becomes aware of a latent defect to return and to ask for replacement of any defective Goods.

6. PACKING

6.1 All Goods are to be properly prepared, labeled, packed, and tagged, secured and protected for shipment by the Seller to ensure that they may reach the destination specified in the Purchase Order in good condition and that the Goods can be properly handled and identified.

6.2 All dangerous or hazardous Goods shall be packed separately from those of a non-hazardous nature, and in accordance with Clause 7 below.

6.3 No charges will be allowed for non-returnable packages, containers, boxing, crating or other similar materials. Where returnable containers are used in the shipment, the containers will be returned to the Seller at the Seller's expense.

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7. HAZARDOUS GOODS

7.1 Hazardous Goods have to be marked by the Seller with International Danger Symbol(s) and display the names of the ingredient materials. Transportation and other relevant documents have to include a declaration of the hazard(s) and name(s) of the material(s).

7.2 Hazardous Goods are to be accompanied by emergency information in the form of written instructions, labels and markings.

7.3 The Seller shall promptly submit to the Seller all information held by, or reasonably available to the Seller regarding the potential hazards known or believed to exist in the transport, handling or use of the Goods supplied.

8. PRICES

8.1 The Buyer will be charged the prices set forth on the face of the applicable Purchase Order unless other prices are specifically agreed to in writing by both parties.

8.2 The prices determined in accordance with item 8.1 above will include all taxes except those which Seller is required by law to collect from the Buyer, and will include all other charges, including, but not limited to, charges related to packing, shipping, handling, and insurance.

8.3 No variation in the price, nor extra charges shall be accepted by the Buyer.

9. INVOICE AND PAYMENT

9.1 Invoices shall be mailed by the Seller to the Buyer or the company specified by the Buyer upon, but separately from, dispatch of the Goods to the Buyer. All invoices shall indicate the Buyer's Purchase Order number and must be accompanied by an appropriate packing list and bill of lading.

9.2 The Buyer will make payment of the price of the Goods within thirty (30) days of the end of the month following the month of receipt of the undisputed proper invoice, unless otherwise agreed by the parties in writing.

9.3 Without prejudice to any other right or remedy, the Buyer reserves the right to set-off any amount owing at any time from the Seller to the Buyer against any amount payable from the Buyer to the Seller under the Contract.

10. WARRANTY

10.1 The Seller warrants that all Goods covered by the Contract will be of the best available design, quality, material and workmanship and free from defects, will conform in all respects to the Purchase Order, the applicable Specifications, drawings, instructions, data and other requirements, if any, and will be merchantable and fit and sufficient for any specific purpose intended by the Buyer and will be free from all liens and encumbrances. The Seller warrants that all services covered by the Contract will be provided and performed with all reasonable skill and care and in accordance with best professional practice.

10.2 These warranties also constitute conditions precedent, will survive inspection and acceptance of and payment for any and all goods and services ordered pursuant hereto, and will remain in effect for a period of twenty-four (24) months from the date of delivery, or from the completion of performance of the Contract, unless no specific period of time is set forth on the face of the Purchase Order.

10.3 These warranties will be in addition to all other warranties, express implied, or statutory.

11. REMEDIES

Without prejudice to any other right or remedy which the Buyer may have at law, in equity or under the Contract, if any Goods are not supplied in accordance with, or the Seller fails to comply with any of the terms of this Contract, the Buyer shall be entitled to any one or more of the following remedies, at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

(a) to cancel the Purchase Order/ the Contract;

(b) to reject the Goods (in whole or in part) and to return them to the Seller at the Seller's risk and expense against full reimbursement by the Seller of the Goods so returned.

(c) to give, at the Buyer's option, the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods, or to replace the defective Goods and to carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(d) to refuse to accept any further deliveries of the Goods by the Seller;

(e) to carry out, at the Seller's expense, any work necessary to make the Goods comply with the Contract; and

(f) to claim any damages and losses that the Buyer has incurred in consequence of the Seller's breach(es) of the Contract.

12. INDEMNITY

12.1 In addition to all other remedies available to the Buyer at law, in equity and under the Contract, the Seller shall indemnify, defend and hold harmless the Buyer, its directors, officers, employees, agents, customers and their respective successors and assigns, from and against any and all liability, losses, costs, damages, injuries, fines, penalties and expenses (including, but not limited to, all claims and demands resulting from personal injury, property damage, rework or recall of Seller's products or services, the intervention of any government body, and reasonable attorney's and other professional fees) incurred or arising out of or in connection with any of the Goods and services supplied by the Seller and/or resulting from any act or omission of the Seller, its agents, employees and subcontractors, regardless of whether such liability results from breach of Contract, tort, negligence, strict liability or other legal theories).

12.2 The replacement parts supplied by the Seller under the warranty mentioned in Clause 10. above shall be subject to the same indemnity. No time limit shall apply to the above indemnification in relation to latent defects.

13. COMPLIANCE WITH LAWS AND REGULATIONS

The Seller acknowledges and agrees that any Goods or services supplied by the Seller will at all times comply in all respects with all applicable federal, state, municipal and local laws, ordinances, orders, rules, statutes and regulations including the necessary permits.

14. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION

14.1 The Seller warrants that the Goods delivered, or the services rendered under this Contract, and the sale and the use of the Goods in their normal or intended manner, do not infringe, or contribute to infringe, any patent, design, invention, trademark, service mark, trade name, copyright or other similar third party intellectual property right and do not violate the trade secret rights of third parties.

14.2 The Seller will defend, indemnify, and hold harmless the Buyer, its officers, agents, employees, successors, assigns, customers and users of Buyer's products, from and against any and all claims, demands, suits, liability, losses, expenses, damages including reasonable attorney's fees and costs and expenses awarded, either at law or in equity for actual or alleged infringement of any patent, design, invention, trademark, service mark, trade name, copyright or other similar third party intellectual property right or trade secret arising from or related to the manufacture, purchase, use, sale, or resale of the Goods or rendering of the services.

15. BUYER'S PROPERTY

15.1 All materials, equipment, tools, jigs, fixtures, specifications, methods, processes, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller (or not so supplied but used by the Seller specifically in the manufacture of the Goods) and any and all other property owned, furnished or paid for by the Buyer shall at all times be and remain the exclusive property of the Buyer (the "Buyer Property"). The Buyer Property shall be held by the Seller in safe, separate, and dis-

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tinct storage at its own risk, and shall be maintained and kept in good condition by the Seller, until returned to the Buyer. The Seller will maintain adequate liability, damage and fire (including extended coverage) insurance on the Buyer Property, and will not use the same to perform any work or orders other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than for the purpose of the Contract or as authorized by the Buyer in writing. The fact that such items are owned and supplied by the Buyer will not excuse the Seller for failure to meet the applicable drawings, specifications and other requirements contemplated by the Contract.

15.2 Any invention, discovery or technical process, or application made, conceived, or applied by the Seller or its employees, agents, subcontractors, whether solely or jointly with others, in the performance of the Contract, shall be disclosed and documented to the Buyer and shall be the sole and exclusive property of the Buyer and considered as Confidential Information.

16. INSURANCE

Seller shall maintain a comprehensive liability insurance policy, including third party and contractual liability coverage (bodily injury and property damage) and product liability coverage, naming the Buyer as an additional insured and shall, upon request, provide the Buyer with a certificate of insurance. The Seller shall maintain the coverage for a minimum amount of US\$ 2 million per any one occurrence.

17. SUSPENSION

The Buyer is entitled to suspend the Contract in whole or in part at any time. In the event of the exercise of such right, the Buyer shall thereafter extend the time for performance of the Contract by such period as is reasonable and the Buyer shall also pay the Seller any amounts which are due and payable to the Seller at the date of the suspension and thereafter shall reimburse the Seller for such reasonable direct costs as the Seller has incurred in making an orderly suspension in accordance with the Buyer's instructions.

18. TERMINATION

18.1 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon the Seller will, unless the notice directs otherwise, immediately discontinue all work on the Contract. As compensation to the Seller for such termination, unless such termination results from the default of the Seller, the Buyer shall pay to the Seller the percentage of the total Purchase Order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done as the Seller's full compensation for the work completed under the Contract and such compensation shall not include loss of anticipated profits or any other consequential, indirect, or economical loss whatsoever.

18.2 Upon payment to the Seller in accordance with item 18.1, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications information, special tooling and other things for which the Buyer has paid will automatically vest in the Buyer.

18.3 The Buyer shall have the right at any time, by written notice to cancel the Purchase Order/ the Contract, without liability to the Buyer, if:

- (a) the Seller commits a material breach of any of the terms and conditions of the Contract which is not remedied within fourteen (14) days after notification thereof;
- (b) any distress, execution or other process is levied upon any of the assets of the Seller;
- (c) the Seller has a bankruptcy order made against him, or makes arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors, or enters into liquidation (except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation), or has a receiver and/or manager, administrator or administrative receiver appointed, or any pro-

ceedings are commenced relating to the insolvency or possible insolvency of the Seller;

(d) the Seller ceases or threatens to cease to carry on its business; or
(e) the financial position of the Seller deteriorates to such an extent that in the reasonable opinion of the Buyer the capability of the Seller to adequately fulfill its obligations under the Contract is jeopardized.

18.4 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer accrued prior to termination. The Clauses 1, 15, 22, and 25 shall continue to be enforceable notwithstanding termination.

19. FORCE MAJEURE

19.1 Either party shall be entitled to suspend performance of his obligations under the Purchase Order/ Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes, government actions, regulations, strikes, accidents, fires and any other circumstance beyond the control of either party including act of God, war, riot, civil commotion, flood and storm.

19.2 If either party is prevented from performance of its obligations for a continuous period in excess of sixty (60) days, the other party may terminate this agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except those rights and liabilities which accrued prior to such termination shall continue to subsist.

20. SPARE PARTS

20.1. The Seller undertakes that:

- (a) unless and until the Seller gives notice in accordance with (b) below, the Seller shall make goods of the same type as those described in the Purchase Order and spare parts for the repair or part replacement of such Goods throughout the period of the normal duration of life of the Goods in accordance with the Buyer's requirements and at a fair and reasonable price;
- (b) if the Seller intends to cease to be a supplier of the goods or spare parts for the Goods, the Seller shall give the Buyer written notice not less than one-hundred eighty (180) days before so ceasing; and
- (c) in the circumstances described in (b) above, the Seller shall make available to the Buyer on a "one-time buy" basis such quantities of goods and of spare parts for the Goods as the Buyer shall reasonably require for the purposes of future renewal, repair, or replacement of the Goods at a fair and reasonable price.

21. ASSIGNMENT AND SUBCONTRACTING

The Buyer may assign or delegate its rights or obligations under the Purchase Order/ Contract without the Seller's prior written approval. The Seller may not transfer, assign, or subcontract the Contract, in whole or in part, except with the prior written consent of the Buyer. In any event the Seller shall remain jointly and/ or severally liable with the assignee or subcontractor.

22. CONFIDENTIALITY

22.1 The Seller shall keep all technical or commercial know-how, specifications, inventions, processes or initiatives and all related documents and communication which have been disclosed to the Seller by the Buyer or its agents and any other information concerning the Buyer's business or its products which the Seller may obtain strictly confidential and the Seller shall limit disclosure of such confidential material to those of its employees, agents or subcontractors who need to know about for the purpose of discharging the Seller's obligations to the Buyer and who have agreed to be bound by the confidentiality obligations contained in this Clause 22.

22.2 Seller is not entitled to advertise or publish the fact that Seller has contracted to furnish the Buyer the Goods ordered by Buyer from time to time, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials, unless the Buyer has prior consented in writing.

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23. NON-WAIVER OF RIGHTS

23.1 Failure or delay by the Buyer in enforcing or partially enforcing any provision, right or remedy under the Purchase Order/ the Contract will not operate as a waiver of, or impair, any such right or remedy.

23.2 No waiver by the Buyer of any such right or remedy will be effective unless given in signed written notice.

23.3 No waiver by the Buyer of any right or remedy will be deemed a waiver of any other right or remedy.

24. MISCELLANEOUS

Each provision of these Terms and Conditions of Purchase and the Contract will be interpreted so as to be valid under the applicable law. If any such provision should be found invalid, the Seller and the Buyer will endeavor, to the extent possible, to amend it in such a manner that the intent of the provision as written is carried out, and any other provisions of these Terms and Conditions of Purchase and the Contract shall remain valid and binding.

25. DISPUTES AND APPLICABLE LAW

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

The Contract will be governed by and interpreted in accordance with the internal laws of the State of Colorado, U.S.A, excluding those governing conflicts of law. 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.