



Effective Date: March 8, 2017

**General Terms and Conditions of Delivery and Service**

of

**b+m surface systems America corp.**

(referred to below as “**b+m**”, “**us**”, “**we**” or “**our**”).

**1 Terms of Contract.**

**1.1** All purchase orders, purchase agreements and tenders of b+m goods (referred to herein as “**goods**”) or services (referred to herein as “**services**”) are based on our terms and conditions set forth herein and in any contract (defined below). All of such terms and conditions are accepted by order placement or acceptance of delivery and/or service as set forth in Section 6 hereof. Any terms and conditions requested by the purchaser of goods or services (referred to herein as the “**contracting party**”) that differ from our terms and conditions (as set forth in the contract and herein) and that we have not specifically accepted are not binding on us, even if we have not specifically rejected them.

**1.2** Any purchase order, purchase agreement, waybill, confirmation of order or other contract between the contracting party and b+m will not be in force until both parties have signed it or b+m has otherwise confirmed its agreement thereto in writing (referred to herein as the “**contract**”). The right to implement deviations from plans, descriptions and specifications in tenders and documentation for reasons of technical improvement or to comply with legal or regulatory requirements is reserved by us without allowing the contracting party to derive rights from them. Specifications of goods or services (technical data, dimensions, models etc.) are only approximate and do not represent assured properties.

**1.3** In the event of a conflict of any of the terms and conditions herein with those in the contract, the terms and conditions of the contract shall govern. Otherwise, the terms and conditions hereof are deemed incorporated by reference into the contract.

**2 Prices and Payment.**

**2.1** Our prices are F.O.B. our factory, including loading at the factory, but not including packaging and unloading, plus any applicable sales tax.

**2.2** Our prices are calculated based on the wage and material costs applicable at the time the contract is executed. We reserve the right to raise prices to cover price and cost increases if the period between signing the contract and delivery is greater than four months.

**2.3** Installation, assembly, programming, training and other services provided by us that are not specifically stated in the contract will be charged on a case by case basis in accordance with our then-current rates.

**2.4** Any tax or other government charge now or in the future levied upon the production, sale, use or shipment of the goods or services may, at our option, be added to the purchase price.

**2.5** Unless otherwise agreed, payments of the agreed compensation are due as follows:

- 30% after the earlier to occur of receipt of order confirmation by the contracting party or execution of the contract,
- 30% after delivery and start of assembly, but no more than 10 days after notification of readiness to ship,
- 30% on completion of assembly, and
- 10% after the earlier to occur of acceptance pursuant to Section 6 or start of production.

Each of the above payments is due without discount within 10 calendar days of the stated event.

**2.6** If the contracting party is more than two weeks late with a payment or if its creditworthiness is in doubt, upon notice from us, all open invoices for all deliveries made are due in cash immediately, regardless of any differing conditions in the order confirmations.

### **3** Shipping, Transfer of Risk.

**3.1** Selection of the shipping method and the means of transport are our decision unless otherwise agreed in writing. We will select a suitable standard means of transport. Delivery will be at the risk of the contracting party, unless otherwise agreed in writing. We will insure the goods at the written request and sole expense of the contracting party.

**3.2** All of our tenders of goods and services are subject to confirmation. The contracting party will inspect the goods no later than five business days after receipt for shipping damage and for deviations from the specifications in the contract, and notify us of any damage or deviations immediately in writing.

**3.3** When shipping by rail or road transport, the contracting party must inform the shipping company of damage immediately upon discovery of same, and a survey of the damage must be conducted. Delayed notification of transport damage will result in our not being liable for compensation, and void any right of the contracting party to cancellation or withholding of payment.

### **4** Delivery.

**4.1** Agreements on binding delivery deadlines or assembly periods must be in writing. For us to provide timely delivery and services, the contracting party must comply with all obligations, such as the provision of regulatory approvals or making agreed payments.

**4.2** All delivery schedules start on the day when we send to you the order confirmation. They are deemed to be complied with if the goods have left our factory by the end of the delivery deadline or if we have notified you that the goods are ready to ship.

**4.3** Delivery is considered to be delayed only if we have not delivered in accordance with the contract after expiration of a period of at least four weeks for reasons that are our responsibility.

**4.4** There is no right of cancellation to the extent permitted by law.

**4.5** Release orders must be completed within four months of the date of confirmation of the order unless otherwise specified.

**5** Force Majeure. We shall not be liable for the consequences to the contracting party resulting from any event beyond our control, including but not limited to: inability to obtain (on terms deemed economically and commercially practicable by us) raw materials, fuel or transportation; fire, floods, inclement weather and other acts of God; strikes, lockouts and other work stoppages; wars; sabotage; accidents; plant

shut down; equipment failure; and voluntary or involuntary compliance with any law. During the period of delay, we are relieved from our obligations hereunder and may allocate available goods in a fair and reasonable manner among all buyers (including our affiliates) as we determine.

**6      Acceptance.**

**6.1**      If we provide factory services with assembly and commissioning at the installation site, the contracting party will be notified in writing of completion of the delivery, and an acceptance date in the next 10 business days will be offered. The result of the acceptance will be recorded on one of two pages of a signed form.

**6.2**      If the contracting party does not accept the goods or does not respond to the applicable acceptance date described in this Section 6(b), our delivery will be deemed to have been accepted without defects after the 10<sup>th</sup> business day after notification of completion. If we only provide planning or project management services, our deliveries will be deemed accepted 10 business days after receipt of the plans and project documentation by the customer, unless the customer notified us of defects within this period.

**6.3**      Usage of the goods for production purposes by the contracting party is deemed as acceptance.

**7      Retention of Title.**

**7.1**      The goods will be delivered subject to retention of title by us with the following supplements:

**7.2**      The goods will remain in our ownership until all our invoices have been paid in full including future invoices from contracts made simultaneously or subsequently pertaining to such goods. This will also apply if single or all invoices have been included in one single invoice and the balance has been calculated and accepted.

**7.3**      We retain the right to inspect goods that remain in our ownership at any time regardless of their location. If we implement our right of claim for return, the contracting party will permit us irrevocably to reclaim goods that remain in our ownership, even if they have been modified or processed.

**7.4**      As long as we retain title to the goods, the contracting party may not encumber the item or otherwise use it as security. In the case of liens or other encumbrances by third parties, the contracting party must inform us immediately in writing and include a copy of the lien documentation.

**7.5**      In the case of conduct of the contracting party in breach of or otherwise contrary to the contract, particularly in case of delay in payment, we retain the right to reclaim the goods. Reclamation of the goods does not imply cancellation of the contract, unless we have specifically stated so in writing.

**7.6**      For so long as we retain ownership of the goods, the contracting party agrees to treat the goods with care; to insure the goods against fire, flooding and theft at replacement value; and, if maintenance and inspection are required, the contracting party shall conduct this at its own expense.

**7.7**      The contracting party is entitled to resell the purchased goods in the normal course of business; however, all invoices due from the resale to be paid by the subsequent purchaser must be assigned to us in full to the extent our invoice(s) is unpaid.

**7.8**      If the goods are resold by the contracting party after processing or combination with items that do not belong to us, all invoices due from the resale will be assigned to us to the extent our invoice(s) is unpaid along with all ancillary rights and priority over all others. The contracting party is authorized to

enforce payment even after assignment. Our right to enforce payment ourselves is not affected; however, we agree not to enforce payment so long as the contracting party continues to make payments to us when due and complies with other obligations as specified, and does not commence an application for insolvency or bankruptcy proceedings. We may require the contracting party to inform us of the assigned invoices and their purchasers, to provide all information required for enforcement of payments, to provide all associated documentation and to inform such purchasers of the assignment.

**7.9** Any work or processing of our goods will be done for us by the contracting party without requiring us to incur any obligations. In the case of processing, compounding, mixing or combination of our goods with items that do not belong to us, we retain the proportion of ownership in the processed item to the ratio of the value of our goods to the remaining processed items at the time of processing, compounding, mixing or combination.

**7.10** The contracting party is not entitled to assign claims that have been assigned to us to third parties. Assignment to factoring companies requires our approval, which we will not unreasonably withhold.

## **8 Limited Warranty; Liability.**

**8.1** We make no warranty other than that the goods sold pursuant to the contract will meet the specifications for the goods. **WE HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

**8.2** Warranty claims by the contracting party require compliance with the contracting party's required obligation of inspection and notification (see Section 4) as specified. All observed defects must be notified to us without delay - within 10 business days of delivery at the latest – with specification and description of the notified defect; otherwise the goods will be deemed to be accepted.

**8.3** We accept no liability (i) if the goods are improperly stored, installed, operated or used by the contracting party or third parties; (ii) in case of natural wear, absence of confirmation of proper maintenance or noncompliance with the maintenance intervals specified in the documentation or the use of unsuitable operating material; or (iii) with respect to damage caused by repairs or other work by third parties that was not specifically approved by us.

**8.4** If the fault is accepted by us as our responsibility, at our option, we will correct the problem, replace the item or refund any price paid. The contracting party will have the right to cancel the contract only if replacement or repair after notification of the defect has failed twice. However, the right of cancellation of the contract requires that the goods deviate from the agreed delivery and performance data to the extent that the contracting party cannot be expected to retain the goods for business reasons. The contracting party will have no claim for damages apart from cancellation of the contract.

**8.5** The contracting party will have no further claims for defects in the item, unless we have acted improperly or given express written guarantees.

**8.6** The warranty period is one year from acceptance of the goods without defects, but (if applicable) no longer than 15 months after delivery of the last part of the system if the contracting party has good reason for delay in the acceptance.

**8.7** Our liability pursuant to the contract, regardless of the legal reason, is restricted to damages proven to be caused directly by our intentional malfeasance and gross negligence.

**8.8** In no event shall either party be liable to the other for any special, exemplary, indirect, consequential or punitive damages, or loss of profits or revenues in connection with the contract.

Notwithstanding anything herein to the contrary, the contracting party's exclusive remedy and our aggregate liability for any claim or cause of action against us under the contract, whether based on delivery or non-delivery of goods and/or services or in tort, is expressly limited to the price for the quantity of the goods causing the occurrence from which contracting party claims its damages were caused; and in any case such liability shall be limited in the aggregate to the lesser of (x) [\$ \_\_\_\_\_], or (y) the annual sales amount under the contract. All legal proceedings by the contracting party relating to breach of contract or tort must be brought within one year from (as applicable) shipment of the goods or performance of the services. The contracting party waives all legal proceeding not brought within such period and all claims and defenses that could have been asserted in such proceedings.

**9     Software Usage: Intellectual Property.**

**9.1**     If the scope of delivery includes software, the contracting party will have the right to use the supplied software including documentation for the goods.

**9.2**     We retain the right to allow other parties to use the software.

**9.3**     Usage of the software by other users than the contracting party or those persons named as authorized to use it in the order confirmation is prohibited.

**9.4**     The contracting party agrees not to remove or change manufacturer's information, specifically copyright notifications, without specific approval in writing.

**9.5**     All rights to the software and the documentation including copies are retained by us or the software supplier.

**9.6**     We reserve the property rights and copyright of samples, drawings and proposals etc., including any in electronic form. They must not be disclosed or otherwise made available to third parties without our prior written approval and must be returned without delay on demand.

**10    Confidentiality.**

**10.1**    The contracting party agrees to treat all non-published commercial and technical information that has become known to it during the business relationship as confidential and not to disclose to or allow access by third parties.

**10.2**    Without our written approval, models, samples and other production equipment that we provide for the contracting party may not be used for purposes other than operation or other use of the goods.

**11    Arbitration.**

**11.1**    All claims and disputes arising under or relating to the contract are to be submitted to, and settled by, binding arbitration in the Chattanooga, Tennessee metropolitan area. The arbitration shall be conducted on a confidential basis pursuant to (but not under the jurisdiction of) the Commercial Arbitration Rules of the American Arbitration Association. The parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association or any other arbitration organization mutually agreed upon in writing by you and us, and arbitrate pursuant to such arbitrator's or other arbitration organization's rules. Any such arbitration shall be conducted by an arbitrator experienced in resolving commercial contract disputes and shall include a written record of the arbitration hearing. The parties reserve the right to object to any proposed arbitrator who is employed by or affiliated with a competing organization or entity. In the event that the parties are unable to agree upon the arbitrator within sixty (60) days after notice of a demand for arbitration is made by either party, then either party may submit

an application in the state or federal court located in Hamilton County, Tennessee for the appointment of an arbitrator in accordance with T.C.A. §29-5-304, or, if applicable, 9 U.S.C. §5, and the terms of the contract.

**11.2** Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. An award of arbitration may be confirmed in a court of competent jurisdiction.

**11.3** The parties shall share equally the compensation, expenses and fees of the arbitrator. The parties shall be responsible for their own costs and legal fees, if any, provided that the arbitrator shall be empowered to award the prevailing party its costs, expenses and reasonable legal fees.

**12** **Notices.** All notices or other communications that are required or permitted hereunder shall be in writing and deemed duly given, effective to us one business day later if it is sent by a national courier service or e-mail, or four business days later if it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as required herein. You may send any notice or other communication hereunder to us using any other means (including personal delivery or ordinary mail), but such notice shall be effective only when actually received by us. All notices shall be delivered to the following addresses:

b+m surface systems America corp.  
5959 Shallowford Road, Suite 309  
Chattanooga, Tennessee 37421  
Attention: Michael Palenberg,  
President  
Email: [m.palenberg@bm-systems.com](mailto:m.palenberg@bm-systems.com)

With a copy to:

Miller & Martin PLLC  
Suite 1000, Volunteer Building  
832 Georgia Avenue  
Chattanooga, Tennessee 37421  
Attention: Ward W. Nelson  
Email: [wnelson@millermartin.com](mailto:wnelson@millermartin.com)

**13** **Miscellaneous.**

**13.1** The laws of the State of Tennessee will govern the interpretation and enforcement of the contract.

**13.2** The contract shall be binding upon and inure to the benefit of the respective successors and assigns of each party. Neither party may assign the contract without the prior written consent of the other, except that we may assign the contract to a subsidiary or other affiliate provided that we remain liable under the contract.

**13.3** The section and paragraph headings herein are for convenience only, and shall not be interpreted to limit or affect in any way the meaning of the language contained in such paragraphs.

**13.4** We shall not be required to notify contracting party of any changes in our operations, location of manufacturing, raw material supply or any other matter pertaining to our manufacture, handling or shipment of goods unless in our reasonable opinion such change would result in the goods not meeting the specifications.

**13.5** No delay, omission or failure of either party to exercise any right under the contract or to insist upon strict compliance by the other with any obligation hereunder, and no custom or practice of the

parties at variance with the terms and provisions hereof shall constitute a waiver of right to demand exact compliance with the terms hereof with respect to any subsequent default of the same or different nature.

**13.6** The contract, including these general terms and conditions, contains all the understandings and representations between the parties hereto pertaining to the matters referred to herein, and supersedes any and all prior agreements with respect thereto. All amendments of the contract must be in writing duly executed by the authorized officers of the parties. Oral agreements shall be null and void unless added in writing to the contract and signed by the parties. The contracting party acknowledges that it has not relied upon any statements or representations of us (other than those specifically set forth in the contract) in deciding to sign the contract.

**13.7** The contract may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one instrument.

**13.8** The parties hereto agree and stipulate that neither party is to be construed as acting as an agent or representative of the other in any dealings that either may have with any other person, firm, or corporation, and that neither party has the power to act for or to legally bind the other in any such transaction or transactions.

**13.9** We may, without liability or obligation and upon reasonable notice and at any time, from time to time, cease or discontinue the manufacture or sale hereunder of any of the goods. Notice of the foregoing is not required if such action is prompted by a governmental directive or suggestion or, if undertaken for the purpose of safeguarding human health or safety.