

**BBM**  
**E-Solutions**

# General Terms and Conditions

**2020**

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BBM Engineering Solutions Zrt.

## General Terms and Conditions

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- 1. Applicability:** Seller's sale of products and services is expressly conditioned upon the terms and conditions contained herein. All quotations, offers to sell, proposals, acknowledgements, and acceptances of orders by Seller are subject to these Terms and Conditions of Sale, and acceptance by Purchaser is expressly limited to them. Any conflicting terms and conditions set forth in any purchase order or similar communication submitted to Seller by Purchaser are objected to, and are deemed proposals for addition to the contract of sale, and do not become part of the contract of sale between Seller and Purchaser unless expressly and separately agreed to in writing by Seller. Authorization by Purchaser, whether written or oral, for Seller to supply the products and services will constitute acceptance of these Terms and Conditions of Sale.
- 2. Testing Materials:** Upon request by Seller, Purchaser shall furnish to Seller's point of manufacture at Purchaser's expense sufficient product, sample packages and /or containers, packaging materials, complete manufacturing data and other material necessary for full testing of products being sold by Seller. Purchaser shall furnish testing materials to Seller within a reasonable time after Seller's request for testing materials. Seller shall not be responsible for any delays in Seller's performance caused by the failure of Purchaser to provide testing materials to Seller in a timely fashion. Where Purchaser has provided testing materials to Seller for evaluation prior to entering into a contract with Seller, Purchaser represents and warrants to Seller that the actual materials to be handled by Seller's products will be similar in all material respects to those testing materials originally provided by Purchaser to Seller for evaluation. Additional equipment or options required at installation site arising from quality or conditions of material outside of Seller's specifications will be at Buyer's cost.
- 3. Prices:** Prices quoted by Seller are valid for the stated period. If no period is stated, then any proposal shall expire without notice 30 calendar days after issuance, unless terminated earlier by prior written notice. Prices quoted do not include any federal, state, local or other taxes, including but not limited to sales and use taxes, turnover taxes, duties, bank charges, fees, or other specific assessments which may be levied against the products, and Purchaser agrees to pay any and all such taxes which Seller may be required by law to pay or collect on account of the manufacture or sale of goods and performance of any services for Purchaser. All licenses or other approvals required shall be obtained by Purchaser, at Purchaser's expense. All prices quoted are Ex - Works, point of shipment. The contract price for the equipment is set out in the proposal. The payment terms are as specified in the proposal. Payments are due upon presentation of an invoice to Purchaser by Seller. Pricing for refurbished equipment and upgrades are based on original machine condition including any additional upgrade or retrofit since installation, which was originated, designed and installed by BBM Engineering Solutions Zrt.. Additional components, Engineering resources and Field Service labor required, due to any alterations or upgrades not designed and

installed by BBM Engineering Solutions Zrt. are not included and are the responsibility of the customer.

- 4. Specifications:** Specifications are as stated in Seller's written quotation. No other specifications may be deemed part of the contract between Seller and Purchaser unless specifically identified as such in a writing made part of the contract and signed by the Seller. After the contract of sale becomes effective, specification changes requested by Purchaser and agreed to by Seller may become part of the contract only by separate written agreement signed by Seller, in which event the prices quoted in connection with the original specifications will be subject to change. Seller reserves the right, without obtaining Purchaser's approval, to make changes in the design and specifications of the products sold hereunder, or of any component part, which changes do not affect the performance of the goods sold. Product performance is based upon normal production conditions. Common production factors can impact product performance and limit maximum specifications from being achieved. Variables that are outside of BBM Engineering Solutions Zrt 's control which can reduce machine performance include, but are not limited to: operating environment including customer's facility, ambient temperature, power sources and utilities, quality, combination and continuous supply of product materials, order configuration and changes, ancillary equipment, removal of finished product from the line, machine condition and operator skill. The Equipment will be accepted based upon completion of the Acceptance Protocol after start-up.
- 5. Shipment:** Shipments are Ex-Works, plant of manufacture point of shipment. The transfer of title shall take place when the equipment leaves Seller's manufacturing facility unless otherwise specified. Title will be marketable, free and clear of all liens, security interests, pledges, charges, deeds of trust, options or other encumbrances of any kind. Any shipment dates quoted by Seller are approximate. Purchaser shall exercise reasonable care to select the mode of shipment and carrier. Unauthorized modes of transport arranged by Purchaser will void any warranty by the Seller. All shipping costs shall be borne by Purchaser. Seller shall exercise reasonable care in preparing items for shipment. Purchaser agrees to advise Seller and pay for any additional packaging and crating requirements. Purchaser shall insure the products against all risks, including damage and shipment, until final payment is made, with policies payable to Seller's benefit as a loss payable under the policy. Purchaser shall furnish a certificate of insurance with loss payable to Seller. Purchaser shall be liable to Seller for any storage, warehouse or demurrage charges and any extra cartage and handling charges caused by Purchaser's failure or refusal to accept delivery of the products when tendered. If shipment is delayed at Purchaser's request, then any payments otherwise due from Purchaser to Seller upon delivery shall immediately become due and payable, and Purchaser shall pay, prior to shipment, any costs of

handling, storage and insurance of the products incurred prior to delivery of the products.

- 6. Force Majeure; Purchaser's Rights In The Event Of Delays:** Seller shall not be held responsible for any delay or failure in performance of any part of its obligations to Purchaser, to the extent that such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil revolution or military authority takeover, or other similar causes beyond the parties' control. Seller shall not be liable to Purchaser for any damages purported to be due to delays in shipment, regardless of the causes of the delays. Purchaser may cancel the contract due to delays only if
- a) shipment is delayed for more than 120 days by delays caused by Seller,
  - b) after any such 120-day delay period, Purchaser gives Seller notice in writing of Purchaser's intent to cancel the contract unless shipment is made within 30 days of Purchaser's written notice,
  - c) Seller fails to ship within 30 days after Purchaser's written notice, and
  - d) Purchaser provides Seller with written notice canceling the contract after the expiration of the 30 days without shipment. If Purchaser cancels the contract in accordance with the foregoing, then Seller shall refund to Purchaser all funds paid by Purchaser for the products, and shall have no further liability of any kind to Purchaser.
- 7. Installation:** Installation is by Purchaser unless specifically described and incorporated as part of this agreement.
- 8. Cancellation:** Purchaser may only cancel the contract by giving notice in writing to Seller of the cancellation. Purchaser may cancel the contract for delay only in accordance with the provisions stated above. If Purchaser cancels the contract for any reason other than delay in shipment, then Seller may retain all payments made by Purchaser prior to the cancellation, regardless of Seller's costs prior to the cancellation. If Seller's costs at the time of cancellation, plus 15 percent of the costs, collectively exceed the amount of any payments made by Purchaser prior to the cancellation, then Purchaser shall be liable to Seller for such increment in excess of the amount of Purchaser's payments.

- 9. Warranty:** Seller warrants that the products sold are free from defects in material and workmanship when used in accordance with all instructions and directions for installation, operation and maintenance furnished by Seller, for a period of one year from receipt at Purchaser's designated delivery point for new equipment's, or 90 days from receipt at Purchaser's designated delivery point for refurbished equipment, subject to the following conditions:
- a) The installation must be performed by Seller's Field Service personnel, supervised by Seller's personnel or certified prior to power -up by Seller's personnel to validate the warranty. Certification must be defined on a case -specific basis, and includes a minimum requirement safety and maintenance training efforts. Purchaser is responsible for cost of certification by Seller. Certification is invoiced at standard Field Service rates if installation services are not purchased with the product. BBM Engineering Solutions Zrt. machinery and major upgrades are not specifically sold, designed, or documented with Purchaser installation intended.
  - b) Purchaser shall notify Seller in writing promptly upon discovery of facts giving rise to any claim under this warranty, stating specifically the nature of the claim, the date of discovery of same, and identifying the product involved. Failure to so notify Seller within thirty days after discovery of facts giving rise to the claim shall fully and completely relieve Seller from any obligation under this warranty.
  - c) No claim under the terms of the warranty will be accepted by Seller unless approved by an authorized representative of the Seller, and no return of any product claimed to be defective will be accepted unless a document containing the certified, detailed presentation of the defect with the defect identification number is made by the Seller. If a claim is accepted, Seller will issue a credit to the Buyer against the invoiced price of repair or replacement. Warranty includes standard freight (DDP) and handling charges for non-wear parts only. Buyer to pay for expedite services. Buyer is responsible for return of warranty parts via standard freight (at Seller's expense).
  - d) This warranty applies only to products properly used and maintained and is expressly nonapplicable to any products or components which have been repaired, altered or changed other than in accordance with instructions and directions furnished by Seller, or to any product which has not been operated or utilized in accordance with instructions or directions furnished by Seller, or which has been operated or treated in any manner which, in the reasonable judgment of Seller, adversely effects its reliability and performance.

- e) This warranty covers labor for one year to troubleshoot or replace defective items. Seller reserves the right to troubleshoot remotely via phone and /or modem for a reasonable amount of time before dispatching a field service technician. Purchaser is responsible for travel expenses, living expenses, and travel time, of Seller's personnel in accordance with the current rate schedule.
- f) This warranty does not apply to normal wear and tear items or consumable parts. This warranty does not apply to any product or unit not manufactured by Seller, and Purchaser's sole warranty with respect to such items shall be that of the manufacturer, if any.
- g) Seller's entire liability and exclusive remedy to Purchaser or any third-party purchaser of any Product is expressly limited to the repair and replacement, at Seller's sole discretion, of any Product that is determined by Seller to be defective under the terms of this warranty.
- h) Spare parts ordered by Purchaser shall be subject to the original warranty period for the products, so long as the original warranty period remains in effect. If spare parts are ordered by Purchaser at a time when the original warranty period has expired, then the warranty provided for herein will apply to the spare parts (to the spare parts only and not to the products generally) for ninety days after receipt by the Purchaser.
- i) Preowned Equipment (Sold "As Is, Where Is") The equipment is sold "as is, where is". There is no warranty of any kind or description associated with the equipment, expressly including all express or implied warranties, including any implied warranty of merchantability or fitness for particular purpose. Purchaser is responsible for all costs related to crating, loading, and all transportation from point of origin.
- j) The warranties set forth herein are in lieu of all other warranties, whether expressed, implied or statutory, including but not limited to implied warranties of merchantability and fitness for a particular purpose.

**10. Partial Invalidity:** If any provision or portion of a provision of these Terms and Conditions of Sale is determined to be invalid under any applicable law, it shall be deemed omitted, and the remaining provisions and partial provisions hereof shall continue in full force and effect.



**11. Governing Law and Venue for Legal Actions:** The contract between Seller and Purchaser, including these Terms and Conditions of Sale, shall be interpreted and construed in accordance with the laws of the location where Seller manufactures the products. The exclusive jurisdiction for any legal proceedings involving the contract between Seller and Purchaser, including these Terms and Conditions of Sale, shall be the local or federal courts located in the judicial district where Seller manufactures the products. Purchaser expressly consents to the jurisdiction and venue of such courts.

**12. Changes:** No changes of the contract between the parties or to these Terms and Conditions of Sale shall be binding without the written consent of both parties.

**13. Indemnity:**

a) Seller agrees to indemnify, defend (with counsel selected by Seller) and hold harmless Purchaser and Purchaser's directors, officers, shareholders, trustees, partners, members, beneficial owners, agents, employees, successors and assigns from and against any and all liabilities, losses, causes of action, claims, damages, costs, liens, fines, penalties, and expenses directly and provably arising out of or in any way connected with injury (including personal or bodily injury) to or death of any person (other than employees or agents of Seller) or damage to any property or any other direct matter resulting provably from Seller and maximum to the extent attributable, not exceeding the 10% of the related contract price. Above listed are applicable and valid to exclusively any Seller's direct and provable error, omission, negligence, or willful misconduct of Seller, or Seller's agents, subcontractors, or employees in connection with work performed pursuant to the Agreement. However, Seller does not agree to indemnify Purchaser against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense resulting from and to the extent attributable the negligence or willful misconduct of Purchaser, or of Purchaser's agents, or employees, or of other independent contractors who are directly responsible to Purchaser.

b) Purchaser agrees to indemnify, defend (with counsel selected by Purchaser) and hold harmless Seller and Seller's directors, officers, shareholders, trustees, partners, members, beneficial owners, agents, employees, successors and assigns from and against any and all liabilities, losses, causes of action, claims, damages, costs, liens, fines, penalties, and expenses directly or indirectly arising out of or in any way connected with injury (including personal or bodily injury) to or death of any person (other than employees or agents of Seller) or damage to any property or any other matter resulting from and to the extent attributable to any error, omission, negligence, or willful misconduct of Purchaser, or Purchaser's agents, subcontractors, or employees in connection with work performed pursuant to the Agreement. However, Purchaser does not agree to indemnify Seller against liability

for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense resulting from and to the extent attributable the negligence or willful misconduct of Seller, or of Seller's agents, or employees, or of other independent contractors who are directly responsible to Seller.

- 14. Limitation on damages:** Seller shall not be liable for any consequential or incidental damages of any kind. This limitation on damages is intended to have the broadest possible application and is intended to apply to all disputes between purchaser and seller that are directly or indirectly related to the contract between the parties and/or the products to be supplied to purchaser by seller, regardless of whether or not the products are actually manufactured and/or shipped to the purchaser. Except as otherwise provided herein, purchaser's exclusive remedy for all claims arising out of the contract of sale shall be the right to repair or replacement of nonconforming products, or at seller's option, repayment of the purchase price. Seller's liability to purchaser for damages, regardless of whether such damages are disclaimed herein, shall in no event exceed the contract price.
- 15. Assignment:** This agreement benefits Seller, its successors and assigns. Seller may assign its rights under the contract, and the assignee and any subsequent assignee shall have all the rights and remedies of Seller under the contract of sale. Neither the contract of sale nor the obligations thereunder may be assigned or transferred by Purchaser unless separately agreed to by Seller, in writing. Any purported assignment by Purchaser in violation of this provision shall be void as against Seller.
- 16. Security Interest:** Seller reserves a purchase money security interest in all products delivered until Seller receives the full purchase price. Purchaser agrees to execute any documents at Seller's request with respect to creation and perfection of a security interest in the products sold.
- 17. Copying:** Purchaser recognizes that the products have been designed and built through expenditure of substantial time and money by Seller, and Purchaser agrees not to make drawings of the products or any portions thereof, or permit others to do so, and will not duplicate or conspire in the duplication of the products.
- 18. Patent Issues:** Response To Claims: In the event a claim is made against Purchaser alleging that the products sold hereunder constitute an infringement of any local patent, or of any foreign patent for goods sold in a country where such foreign patent has been issued, Purchaser shall give Seller prompt written notice by certified mail to Seller's home office furnishing information concerning the name of the person or firm asserting patent infringement, identification of the products that are alleged to violate

the patent, and identification of the patent or patents that are being asserted. Purchaser shall provide Seller all necessary authority, information and reasonable assistance as requested by Seller to permit Seller to carry out any of the following options. Upon notification of such claim by Purchaser, Seller shall, at its option, perform one or more of the following:

- a) Procure for Purchaser at Seller's cost a license from the patent owner to use the products;
- b) Modify the products at Seller's cost so as to make them non-infringing without materially impairing their performance;
- c) Replace the products at Seller's cost with other products that are substantially equal, but not infringing; or
- d) Upon thirty days' prior written notice or removal, remove the products from Purchaser's premises at Seller's cost, and refund to the Purchaser the purchase price of the Product, reduced by a factor of use allowance of twenty percent per year.

Adoption by the Seller of any of the foregoing options shall excuse Seller from any liability to Purchaser in connection with the assertion of such patent infringement claim against Purchaser.

Response to Legal Actions: Seller agrees that it will defend, with counsel of its choice, any suits that may be instituted by any party against Purchaser for an alleged infringement of any patent relating to the structure of the products as originally furnished. Purchaser agrees to provide Seller with all necessary information, assistance, cooperation and authority to permit Seller to properly defend any such claim. Seller will indemnify Purchaser against all resulting damages, fines, costs and penalties awarded against Purchaser by settlement or judgment as a result of the infringement. In the event that the structure of the products in suit is held to infringe any patent and the Purchaser's use thereof is enjoined, Seller may at its option perform any of the options (a) through (d) identified above. Adoption by the Seller of any of the foregoing options shall excuse Seller from any liability to Purchaser in connection with the assertion of such patent infringement claim against Purchaser.

**19. Software:** The products purchased include all hardware, software, and services set out in the contract documents. Software for Seller's equipment is licensed, not sold, to Purchaser. Seller hereby grants and Purchaser accepts a license to use the software in connection with other equipment and for the purposes set out in the contract documents. Purchaser shall not copy, download, disassemble, decompile, or modify

software in any fashion. Documentation for Seller's equipment is in English or in Hungarian. Documentation may be available in languages other than English or Hungarian. Prices for second and more languages are available upon request.

**20. Safety Devices:** The use of all guards, interlocks, electrical devices, and other safety devices and features on the products, and the operation of the products in accordance with Seller's operating instructions is essential to the safe use of the products and therefore, Purchaser agrees that it will keep in legible condition all warnings or operating instructions affixed to the products by Seller, and that it will not remove, render inoperable, or modify, any guards, interlocks, electrical devices, or other safety devices that are part of the products, or the software controlling such devices, and that it will not add any devices or modify the products in any way that will render the products unsafe, and that it will operate the products in accordance with Seller's operating instructions. Purchaser agrees to indemnify and hold harmless Seller from all actions, claims, demands and damages, including all reasonable attorneys' fees and legal expenses incurred by Seller, arising out of claims made by third parties for personal injury allegedly resulting from actions by Purchaser taken inconsistent with Purchaser's obligations stated in this paragraph.

**21. Repair and Services (BBM Engineering Solutions Zrt. Equipment Only):** BBM Engineering Solutions Zrt. provides replacement parts and repair services for BBM Engineering Solutions Zrt. Equipment as set out in the proposal. Pricing for the same is set out in price lists published by BBM Engineering Solutions Zrt. Such lists are changed by BBM Engineering Solutions Zrt. without notice, and any purchase by Purchaser will be governed by the prices in effect on the date Purchaser's order is accepted by BBM Engineering Solutions Zrt. BBM Engineering Solutions Zrt. provides Remote Support Service consisting of technical support via telephone and modem. Purchaser will bear its own communication costs to access such support. BBM Engineering Solutions Zrt. Field Service Representatives are available to perform repair work for Purchaser. Costs for Remote Support Service and Field Service Representatives shall be based on the current field Service Price List at time of request.

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