

# ***Terms And Conditions Of Sale***

## ***1. Controlling Document***

THE ACCEPTANCE OF PURCHASER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON PURCHASER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND BAZM, LLC. ("BAZM") AGREES TO FURNISH THE SYSTEMS, MATERIALS, AND SPARE PARTS ("PRODUCTS") AND SERVICES COVERED THEREBY ONLY UPON THESE TERMS AND CONDITIONS. This document constitutes the entire agreement of the parties with respect to the subject matter hereof. Any term or condition of Purchaser's order inconsistent with or in addition to these Terms and Conditions hereof shall not be binding on BAZM. Unless Purchaser shall notify BAZM in writing to the contrary within ten (10) days of receipt hereof, acceptance of these Terms and Conditions shall be conclusively presumed. In the absence of such notification, the sale and delivery by BAZM of the items covered hereby shall be conclusively presumed to be subject to these Terms and Conditions. No waiver, alteration, or modification of any of the provisions hereof shall be binding on BAZM unless made in writing and signed by an authorized representative of BAZM. All orders or contracts must be approved and accepted by BAZM at its home office. These Terms and Conditions shall be applicable whether or not they are attached to or enclosed with the products sold hereunder.

## ***2. Payment***

Payment for Products and services is due at or before shipment of Products or provision of services, unless BAZM grants credit in writing. If credit is granted, credit terms for service, system, or spare parts shall require payment in U.S. Dollars thirty (30) days from date of invoice; Unless BAZM's quotation or sales order provides to the contrary, final payment is due net thirty (30) days from the date of invoice. BAZM reserves the right to require an irrevocable letter of credit from a bank which it designates. Sums unpaid thirty (30) days after date of invoice shall be subject to a late payment charge of one and one-half percent (1.5%) per month from the due date, or the maximum amount permitted by law, if less, and, in addition, Purchaser shall pay all costs incurred by BAZM which relate to the credit extension. In the event of any default in payment, Purchaser shall pay all costs of collection. If delivery is delayed or this contract is canceled by Purchaser in accordance with Section 7 hereof, payments already made shall be retained by BAZM and BAZM to payments required pursuant to Section 7.

## ***3. Security Interest***

BAZM retains a security interest in Products delivered hereunder and in proceeds from the sale, exchange, collection, or disposition thereof, until Purchaser has made payment in full for such Products. Purchaser shall, upon request by BAZM, provide all information and signatures required by BAZM to perfect such security interest. BAZM reserves all rights granted to a secured creditor under the California Uniform Commercial Code, including the right to repossess upon default by Purchaser. To simplify such repossession, BAZM

may require the Purchaser to assemble the collateral and make it available to BAZM at a place reasonably convenient to both parties and designated by BAZM.

#### **4. *Delivery and Delay***

Terms of sale are Ex-Works at BAZM's plant or shipping point designated by BAZM. Title to Products shall pass to Purchaser on BAZM's tender of the Products to Purchaser or a carrier. All risk of loss or damage of Products in transit shall be borne by Purchaser. Shipment of Products to Purchaser's desired location, if arranged by BAZM, shall be either freight collect or freight prepaid with charges paid by Purchaser, unless otherwise agreed. BAZM reserves the right to make partial deliveries, and all such partial deliveries shall be separately invoiced and paid for when due. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept such later deliveries. In any event, delivery times shall not be considered absolute and no breach shall be found if the Products herein specified are delivered within a reasonable time after the delivery date set forth.

#### **5. *Force Majeure***

BAZM shall not be liable for any loss or damage as a result of any failure to perform or any delay in delivery or equipment start-up (if required) due to any cause beyond BAZM's control, including but not limited to, acts of God, acts of Purchaser, fire, theft, accident, flood, war, sabotage, slowdown, strikes, or other labor difficulties, riot, embargo, government act, regulation, rule, ordinance or request, or inability to obtain necessary labor, materials, manufacturing facilities, or transportation. In the event of any such contingency, the date of performance or delivery shall be extended by a period equal to the time lost by the delay. If, due to any such contingency, BAZM is unable to supply the total demands for any Product specified hereunder, BAZM shall have the right to allocate its available supply among customers and its departments and divisions. BAZM shall not make or participate in any shipment which does not conform to the requirements of the U.S. Export Administration Act or any other relevant export/import law or regulation.

#### **6. *Taxes and Other Charges***

Any manufacturer's tax, sales tax, use tax, excise tax, custom, inspection or testing fee, or any other tax, fee, or charge of any nature whatsoever imposed currently or in the future by any federal, state, or other governmental authority, upon or with respect to the sale, purchase, delivery, shipment, storage, processing, use, or consumption of any of the Products covered hereby, including taxes, fees, or charges upon or measured by the receipts from the sale thereof shall be borne by Purchaser in addition to the prices quoted or invoiced. In the event BAZM is required to pay any such tax, fee, or charge, Purchaser shall reimburse BAZM therefor.

**7. Cancellations for Convenience, Shipment Holds, and Liquidated Damages Therefor**

Purchaser may request a delay in delivery for a maximum of ten (10) working days from the contract scheduled delivery at no charge, and BAZM shall proceed with completion of the work. Purchaser's payments shall in such event be due and payable in accordance with the contract scheduled delivery. In the event Purchaser is unable to receive any Product at the time BAZM is prepared to make delivery, BAZM may, upon notice to Purchaser, giving Purchaser reasonable opportunity to designate a location for storage, deliver such Product and ship it to storage at any suitable location including BAZM's facilities. All costs incurred by BAZM, including but not limited to preparation for the placement into storage, inspection, insurance, and any taxes shall be borne by Purchaser. BAZM will take all reasonable steps to minimize such expenses. When Purchaser is ready to receive the Product, BAZM shall arrange, at Purchaser's expense, removal of the Product from storage and shipment of the Product to Purchaser.

Purchaser has the right to cancel this contract for convenience upon prior written notice. A request by Purchaser for delay in delivery beyond ten (10) working days from the contract delivery date shall be deemed to be a cancellation of the contract. Inasmuch as contract cancellation would cause substantial damage to BAZM in an amount that would be difficult to ascertain, Purchaser shall pay liquidated damages for cancellation in accordance with the table set forth below. Canceled orders shall be subject to cancellation charges as a function of the number of weeks BAZM receives notice before the stipulated delivery date as follows

NOTICE RECEIVED PRIOR TO STIPULATED SHIPPING DATE	PERCENT OF FACE VALUE OF P.O.
FEWER THAN 2 WEEKS .....	100%
2 - 4 .....	90%
4 - 6 .....	70%
6 - 8 .....	50%
8 - 10 .....	40%
10 - 12 .....	20%
12 & MORE WEEKS .....	10%

**8. Limitation of Liability**

BAZM'S LIABILITY ON ANY CLAIM OF ANY KIND, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE FOR ANY EXPENSE, INJURY, LOSS, OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE PROVISION OF ANY SERVICE OR THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSPECTION, REPAIR, MAINTENANCE, INSTALLATION, OR USE OF ANY PRODUCT FURNISHED UNDER THIS CONTRACT SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE PRODUCT OR SERVICE WHICH GIVES RISE TO THE CLAIM. IN NO EVENT SHALL BAZM BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR CONTINGENT DAMAGES, WHETHER OR NOT BAZM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. Licenses**

BAZM grants to Purchaser a non-assignable, non-transferable, non-exclusive, royalty free license to use, with any Product purchased from or supplied by BAZM, patented methods and processes of BAZM which are appropriately utilizable in such Product. This license does not extend to the use of any of BAZM's patented methods or processes in products not purchased from or supplied by BAZM or in Products which have been substantially altered by Purchaser or any third party, and any and all such use of BAZM's patented processes is expressly not authorized.

Except as set forth in the preceding paragraph, the sale, lease, or other transfer of BAZM Products to Purchaser does not convey any license or right, by implication, estoppel, or otherwise, to any method or process invention of any patent. BAZM grants to Purchaser a non-assignable, non-transferable, nonexclusive, royalty free right to use, in object code form, any software and related documentation furnished under these Terms and Conditions. This grant shall be limited to use with the Products for which the software was obtained. Purchaser may make a single archive copy of this software, provided that any copy must contain the same copyright notice and proprietary markings as the original software. Use of software on any equipment other than that for which it was obtained or any other material breach shall automatically terminate this license. Terms of any agreement packaged with the software shall prevail over these Terms and Conditions.

## **10. Patent and Trademark Indemnity**

BAZM accepts no liability for, and Purchaser shall hold BAZM harmless against any expense or loss from infringement of patents, trademarks, or other intellectual property rights of others arising from BAZM's compliance with Purchaser's design, formulae, processes, specifications, or instructions, or with Purchaser's requirements that a design be produced to perform a specific process.

Except as otherwise provided in the preceding paragraph, BAZM, if notified promptly in writing and given authority, information, and assistance for defense of same, shall defend any suit or proceeding brought against Purchaser, so far as based on a claim that any BAZM Product furnished under these Terms and Conditions constitutes an infringement of any U.S. apparatus patent of any third party which has been issued as of the date of sale of the BAZM Product to Purchaser hereunder. The liability of BAZM stated herein does not extend to non-United States patents, nor to any method or process claim of any patent. In case any such Product is in such suit held to constitute infringement of any U.S. apparatus patent and all use of said Product by Purchaser is enjoined, BAZM shall, at its own expense and option, either procure for the Purchaser the right to continue using said Product, replace same with a non-infringing product, modify it so it becomes a non-infringing Product, or remove said Product and refund the purchase price to Purchaser, together with transportation and installation costs thereof. In no event shall BAZM's total liability to Purchaser under or as a result of compliance with the provisions of this paragraph exceed the aggregate sum paid by Purchaser for the allegedly infringing Product. The foregoing states the

entire liability of BAZM for patent infringement by said Products, or by any part thereof, either alone or in combination with other devices or elements. THE FOREGOING PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT INFRINGEMENT OF ANY KIND.

#### **11. *Start-up of Systems***

Purchaser will provide all support staff and equipment necessary for start-up of Systems supplied hereunder or shall arrange with BAZM in advance of shipment for the attendance of an BAZM Field Service Engineer. Purchaser shall effect start-up within thirty (30) days of receipt of a System. Costs resulting from any delays in the start-up due to lack of preparedness by Purchaser will be billed at standard rates provided by BAZM.

#### **12. *Examination***

Purchaser shall examine all Products promptly upon receipt therefor. Within ten (10) days of such receipt, Purchaser shall notify BAZM in writing of any complaint which Purchaser may have concerning the Products delivered hereunder, including but not limited to any claimed shortages, defects, quality problems, or delivery errors. If Purchaser intends to reject the Products delivered hereunder, it must specify the grounds therefor. If no notice is received from Purchaser within ten (10) days of receipt, the Products delivered hereunder shall be deemed unqualifiedly accepted as of the date of delivery and Purchaser will be conclusively presumed to have waived all such claims and complaints, except as permitted by BAZM's express warranty.

#### **13. *Warranty and Returns***

BAZM warrants to Purchaser that all new Products provided by BAZM hereunder shall conform to the published specifications and shall be free from defects in material and workmanship when used under normal operating conditions, and that all service provided by BAZM shall be performed in a workmanlike manner.

The foregoing warranty shall apply to such period of time and under such conditions as are specified in BAZM's standard warranty for each Product. If not otherwise specified, the warranty for Systems shall apply for one year from the date of start-up and BAZM's sign-off of the System, provided the same is not unreasonably delayed by BAZM. In any event, however, the warranty period and BAZM's responsibilities set forth herein shall terminate twelve (12) months after the date of delivery of the System by BAZM to Purchaser

The warranty provided hereunder shall not include parts or materials which BAZM considers as consumables under normal operating conditions. During this warranty period, customer shall perform all monthly preventative maintenance checks prescribed in the relevant equipment manual.

The foregoing warranty for spare parts shall apply for a period of ninety (90) days from the date of delivery of the spare parts by BAZM. The warranty granted

hereby shall not include spare parts which BAZM considers as consumables under normal operating conditions.

The foregoing warranty for service shall apply for a period of ninety (90) days from ship date.

THE FOREGOING WARRANTIES ARE EXCLUSIVE OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

If any Product delivered hereunder does not meet the above warranty, Purchaser shall promptly notify BAZM and make the Product available for correction. BAZM shall, during its normal business hours, correct any defect at its option either by repairing or replacing any defective part or, if other remedies fail, by replacing the Product. If a spare part delivered hereunder does not meet the above warranty, Purchaser shall promptly advise BAZM and, upon obtaining approval from BAZM, ship the defective spare part to BAZM. If the service provided hereunder does not meet the above warranty, Purchaser shall promptly notify BAZM, and make the affected Product available for correction. BAZM shall, during its normal business hours, correct any defect by re-performing the service.

BAZM is under no obligation to accept, inspect, replace, or repair unauthorized shipments, and Purchaser shall bear all expenses incurred by such unauthorized shipments to BAZM. Unless specifically noted otherwise in writing, return of Products constitutes Purchaser's authorization for BAZM to repair said Products and to invoice Purchaser for any and all reasonable costs of repair, labor, parts, and freight on items not covered by the terms of this warranty. Such authorization includes charges for handling of returned items found not defective, including a fifteen percent (15%) restocking charge for spare parts. Purchaser shall bear the risk of loss or damage during transit of Products whether or not the Product meets warranty requirements. Any parts replaced shall become the property of BAZM. BAZM shall not be obligated to repair or replace any Product rendered defective, in whole or in part, by external causes, such as but not limited to catastrophe, power failure or transients, over-voltage on interface, environmental extremes, or improper use, maintenance, or application.

BAZM's liability arising from the sale or use of Products or service shall be limited to the cost of correcting defects, as provided herein, or the price allocable to the Product, or part thereof which gives rise to the claim, or the amount of purchase order, whichever is least. All such liabilities will terminate upon expiration of the warranty period. THE FOREGOING CONSTITUTES PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR BAZM'S FURNISHING OF NONCONFORMING OR DEFECTIVE PRODUCTS OR SERVICE, AND BAZM SHALL NOT IN ANY EVENT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES BY REASON OF THE FACT THAT SUCH PRODUCTS SHALL HAVE BEEN NONCONFORMING OR DEFECTIVE.

#### **14. *Indemnification***

In the event any of the Products furnished hereunder is subjected to, or a claimed defect arises as a result of, accident, misuse, neglect, alteration, failure to install or removal of safety devices provided or required by BAZM, unauthorized relocation, or improper repair or maintenance, or is installed, maintained, or used contrary to printed warnings, instructions, or recommendations, PURCHASER AGREES TO DEFEND, PROTECT, INDEMNIFY, AND HOLD BAZM HARMLESS FROM AND AGAINST ALL CLAIMS OF ANY KIND, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE FOR ANY LOSSES, EXPENSES, DAMAGES, AND LIABILITIES, DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL which may arise out of the use of Products except those caused solely by defects in materials or workmanship, or by the sole negligence of BAZM.

#### **15. *Drawings and Designs***

All drawings, specifications, photographs, or other data furnished by BAZM, other than that contained in published brochures or product specifications shall be treated as confidential information by Purchaser, shall not be disclosed to any third party, shall remain the sole property of BAZM, and shall be returned to BAZM upon request. Any confidential information transferred from Purchaser to BAZM shall be pursuant to BAZM's standard Confidential Disclosure Agreement.

#### **16. *Assignment***

Purchaser shall not assign its rights hereunder.

#### **17. *California Law and Disputes***

The agreement hereunder shall be governed by and construed in accordance with the laws of the State of California. Any action based on this contract must be commenced within one (1) year after the cause of action arises.