

# SPARE PARTS APPENDICES

## APPENDIX I

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### Standard Terms and Conditions of Sale

**1. Prices:** Prices are firm for a period of thirty (30) days only, unless quoted otherwise in writing. Prices quoted are in U.S. Dollars, Ex Works, Roselle, Illinois, and U.S.A. Air ride moving services are required to maintain our warranty. Special skidding and/or crating, if required, will be quoted separately. Price does not include setup or erection costs at Buyer's plant.

Typographical and clerical errors are subject to correction.

#### 2. Terms of Payment:

a. All payments are due 30 days from the date of the invoice. BBS Automation's quotation, of which these terms are a part, specifies the amounts and the events for which payment will be due.

b. All payments shall be made, unless otherwise agreed in writing, via electronic wire transfer from Buyer's bank to BBS Automation's designated bank as indicated on each BBS Automation invoice.

c. Late payments will be assessed a late payment charge at the rate of one and a half percent (1.5%) per month compounded monthly, which late payment charge shall be payable with such late payment.

d. Any late payments will have a direct impact on the final delivery schedule of the equipment and services BBS Automation is providing. BBS Automation has the right to suspend work on the equipment until all past due invoices have been paid in full.

**3. Assent to Terms and Conditions:** Buyer's assent to these terms and conditions ("Terms and Conditions") will be conclusively presumed from Buyer's failure reasonably to object expressly, in writing, or from Buyer's acceptance of all or any part of the equipment covered hereby, whether or not a copy hereof is signed on Buyer's behalf and returned to BBS Automation Chicago, Inc., hereinafter referred to as BBS.

**4. Modifications and Waivers:** No term or condition of Buyer's order that is inconsistent with, or is in addition to or attempts to reject these Terms and Conditions shall be binding on BBS, and BBS rejects any such term or condition. Unless Buyer notifies BBS in writing to the contrary within ten (10) days after receipt of these Terms and Conditions and BBS accepts such request in a separate writing, Buyer's acceptance of these Terms and Conditions shall be conclusively presumed. The inclusion of any terms in any printed form of Buyer's order shall not constitute such notice. In the absence of such notification and acceptance, the sale and shipment by BBS of the equipment provided hereby shall be conclusively presumed to be covered by these Terms and Conditions. No waiver, alteration or modification of any of the provisions of these Terms and Conditions shall be binding on BBS unless made in writing and signed by a duly authorized representative of BBS.

**5. Technical Changes and Improvements:** Each technical change or improvement proposed by Buyer or BBS shall be specified in writing by BBS and delivered to Buyer in the form of an "Engineering Change Proposal." An Engineering Change Proposal shall include BBS's proposed price impact (addition or reduction) for the change. After the Engineering Change Proposal has been delivered and accepted by both BBS and Buyer, BBS shall implement such change or improvement and the cost adjustment shall be made to the price listed in BBS's quotation. BBS will further advise Buyer of an impact to scheduled deliveries, if any, as a result of any and all technical changes and improvements agreed upon.

**6. Security Interest:** Your order constitutes a security agreement granting to BBS a purchase money security interest in all equipment delivered hereunder, and in the proceeds from the sale, exchange, collection, or disposition thereof, until Buyer has paid for such equipment in full. Buyer shall, upon request by BBS, provide all information and signature required by BBS to perfect such security interest in accordance with the Uniform Commercial Code of any United States state or federal law or foreign counterpart thereof. BBS reserves all rights granted to a secured creditor under the Uniform Commercial Code of the State of Illinois, United States and any foreign counterpart thereof including, if applicable, but not limited to the right to repossess upon demand all equipment delivered hereunder if Buyer fails to make timely payments. To simplify such repossession BBS may require the Buyer to assemble the collateral and make it available to BBS at a place reasonably convenient to both parties and designated by BBS.

**7. Buyer's Ability to Perform:** BBS's performance, shipments and deliveries are subject to BBS's ongoing credit review of Buyer and approval by BBS, and Buyer will provide BBS with such credit information or other assurance as requested by BBS from time to time. Should

Buyer's financial condition become unsatisfactory to BBS, BBS may require cash payments and/or other security, and may also require assurances satisfactory to BBS, prior to BBS's continued performance, shipment or delivery. If, within thirty (30) days after BBS makes a demand on Buyer for reasonable assurances, Buyer has failed to comply with such demand, BBS may, but is not obligated to, treat the contract as repudiated without further obligation to Buyer.

**8. Deliveries:** Delivery dates are approximate and based on BBS's workload at the time of quotation. BBS reserves the right to revise any or all parts of the proposal upon receipt of an order. Delivery dates given at the time BBS receives an order are based on BBS's workload, receipt of Buyer's written purchase order, down payment and all details including prints and sample parts necessary for proper execution of the order. BBS shall have no liability for loss or damage resulting from delays in shipping or nonperformance caused by war, riots, strikes, labor disputes, fires, embargoes, serious accidents, delays in receipt of materials from suppliers or subcontractors, acts of God, or any other circumstances beyond BBS's control.

**9. Risk of Loss:** Unless otherwise specified, the Buyer will assume complete charges and risk of transportation ex works Roselle in accordance with the Incoterms of the ICC. BBS shall in no event be held liable for damages or contingent expenses caused by delays in delivery. Title will remain with BBS until BBS has received full payment for the equipment.

**10. Factory Acceptance:** Buyer will send qualified personnel to the BBS's plant for a specified period of time for training and acceptance runs. Buyer will have the opportunity to inspect the equipment and assess the equipment's performance. If the equipment meets the specifications contained in BBS's quotation, as modified by changes per section 5, then Buyer is obliged to approve the equipment for shipment to Buyer's location.

a. **Sample Product:** The Buyer shall furnish BBS, free of charge and freight, an Adequate Supply of all actual product components and subassemblies for engineering, machine fine-tuning, and test run purposes. BBS will determine "Adequate Supply". All such product components and subassemblies shall be furnished free of scrap and foreign parts, and within the tolerances as quoted. If Buyer requests, any and all such product components and subassemblies will be returned, Ex Works, our plant. BBS shall not be liable for any product components and subassemblies damaged, stolen or lost.

b. **Production Run:** BBS will provide a one (1) day production run at BBS's plant. At Buyer's request, BBS will also provide one (1) week production run at BBS's plant using outside laborers at our current labor rates. BBS will also charge for its machine builder's assistance for setup and supervision at BBS's standard rates.

**11. Site Acceptance:** After delivery of the equipment, Buyer shall have 7 days to schedule a date that is mutually convenient to BBS and Buyer for conducting site acceptance testing.

a. A lack of an Adequate Supply of product components and subassemblies at the time of site acceptance testing or a lack of product components and subassemblies that meet design specifications at the time of site acceptance testing, shall constitute the system passing site acceptance testing, unless agreed in writing by both Buyer and BBS.

b. A delay in the site acceptance testing of more than thirty (30) days as a result of Buyer unavailability to perform site acceptance testing when the equipment is ready for the testing shall constitute the system passing site acceptance testing. In that event, final payment to BBS will immediately become due.

c. The Buyer's use of the equipment for commercial purposes shall constitute full acceptance of the equipment with final payment immediately due unless otherwise agreed in writing by both Buyer and BBS.

**12. Buyer's Obligation to Supply Materials that Meet Specification:** It is Buyer's obligation and a prerequisite to BBS's obligations that Buyer supply BBS with an Adequate Supply of product components and subassemblies that meet design specifications at the time of site acceptance testing. A lack of product components and subassemblies that meet design specifications at the time of site acceptance testing will constitute the system passing site acceptance testing.

**13. Warranty:** BBS warrants that, subject to the terms of this Limited Warranty, the equipment will operate substantially to its specifications and be free from defects due to faulty material, faulty workmanship, and faulty design; provided, however, that this Limited Warranty shall not extend to ordinary wear and tear or defects resulting from misuse of the equipment by Buyer or accidents or failure of Buyer to notify BBS in writing within (30) days of discovery of a defect. This Limited Warranty shall take effect on the date of site acceptance and remain in force for a period of two (2) years from the date of site acceptance or 5,000 machine operation hours (whichever comes first) ("Warranty Period").

During the Warranty Period and provided Buyer has given BBS notice as required above, Buyer shall remove the defective part and ship the defective part, at Buyer's expense, to BBS's plant. BBS shall at its own expense repair any such defective part or, at its option, replace the part with a similar part in comparable condition, free from defects, and shall pay transportation charges for such replaced or repaired part from the BBS's plant to Buyer's site. Buyer shall install or cause to be installed the repaired or replaced part when it is returned to Buyer, at Buyer's expense.



This warranty does not cover commercial components purchased by Seller, components supplied by Buyer, cutting tools, dies or other tooling subject to wear. Seller does not warrant equipment manufactured by others, but does pass on respective manufacturers' warranties to the Buyer; Seller will replace such components at Buyer's expense, F.O.B. Roselle, Illinois, U.S.A. (identical with yellow paragraph above)

BBS will provide Buyer with all necessary maintenance and parts manuals to assist in maintaining the equipment.

If travel by BBS is required, travel and subsistence costs for BBS personnel or designated representative(s) which are required to perform on site repairs and/or services will be the responsibility of Buyer while BBS labor will be the responsibility of BBS.

The Warranty Period will not be extended or restarted if BBS provides new or replacement parts without charge for those parts.

BBS's obligations contained in this section 13 are Buyer's sole and exclusive remedy and it is expressly made in substitution of any and all remedies otherwise provided by law. Failure of Buyer to give timely written notice shall operate to bar this or any other remedy.

**DISCLAIMER OF OTHER WARRANTIES:** THIS WARRANTY AND THE OBLIGATIONS OF BBS HEREUNDER ARE IN LIEU OF AND EXCLUDE ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF OR HEREIN, AND THE WARRANTY CONTAINED HEREIN IS INTENDED TO BE THE COMPLETE AND EXCLUSIVE AGREEMENT OF THE PARTIES CONCERNING WARRANTY OF THE EQUIPMENT. BUYER MUST GIVE BBS WRITTEN NOTICE OF ANY DEFECT WITHIN THIRTY (30) DAYS FROM THE DATE THAT SUCH DEFECT WAS DISCOVERED, OR SHOULD HAVE BEEN DISCOVERED, FAILURE BY BUYER TO GIVE SUCH WRITTEN NOTICE TO BBS OF ANY DEFECT WILL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS OR WARRANTY REMEDIES FOR SAID DEFECT.

**14. BBS'S LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT, AND REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION AND/OR WHETHER OR NOT BUYER PROVIDED ADVANCE NOTICE TO BBS OF THE POTENTIAL FOR DIRECT OR INDIRECT LIABILITY OR DAMAGES, SHALL BBS'S LIABILITY TO BUYER EXCEED THE PRICE ACTUALLY PAID BY BUYER FOR THE EQUIPMENT THAT BBS PROVIDED (OR FAILED TO PROVIDE) GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT SHALL BBS BE LIABLE TO BUYER FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM BBS'S PERFORMANCE, BREACH, OR FAILURE TO PERFORM UNDER THIS AGREEMENT, OR RELATED TO THE FURNISHING OR PERFORMANCE OR USE OF ANY EQUIPMENT OR ANY RELATED SERVICE PURSUANT HERETO, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF THE USE OF THE EQUIPMENT OR ANY OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS OR CLAIMS OF BUYERS' CLIENTS FOR SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THE EQUIPMENT FAILS TO COMPLETELY MEET THE SPECIFICATIONS, BBS'S LIABILITY IS LIMITED TO AN EQUITABLE REDUCTION IN THE PURCHASE PRICE. ANY PRICE REDUCTION WILL BE NEGOTIATED BETWEEN BBS AND BUYER BASED UPON THE RATIO EXPRESSED AS PERCENTAGE OF THE EQUIPMENT'S ACTUAL PERFORMANCE DIVIDED BY THE PERFORMANCE REQUIRED BY THE SPECIFICATION.

**15. License and Proprietary Rights:** Upon delivery of equipment, BBS hereby grants to the Buyer a non-transferable and non-exclusive license to use the intellectual property that BBS has incorporated into the equipment, provided sole ownership of the intellectual property shall remain exclusively with BBS. BBS retains for itself and Buyer acknowledges that BBS retains all proprietary rights in all designs, engineering details and other data or information pertaining to the equipment and retains for itself the sole right to manufacture and sell intellectual property incorporated into the equipment.

The Buyer's right to the intellectual property relates only to its use of the equipment to facilitate Buyer's manufacture of goods. Buyer acknowledges that BBS has developed or otherwise obtained at great expense, certain proprietary information and techniques that have great value to its business, which information has been maintained by BBS on a confidential basis and has been disclosed to Buyer in connection with the purchase of equipment. Therefore, Buyer agrees that the equipment and its configuration and interface are BBS's proprietary intellectual property. All intellectual property developed by BBS in conjunction with the equipment shall be the property of BBS and, unless prior written approval is obtained from BBS, shall be held in confidence by Buyer and shall not at any time be made available or disclosed in any form to any person or entity other than authorized agents or employees of Buyer and then only to the extent that such disclosure is reasonably necessary to Buyer's use of the equipment.

Buyer acknowledges that in the event of any actual or threatened breach of this paragraph by Buyer, the damages to BBS would be substantial, irreparable, difficult to measure and Buyer's or BBS's remedies at law would be inadequate, and therefore Buyer or BBS



notwithstanding the provisions in section 19 shall have the right to enforce this paragraph with the equitable remedies of specific performance or injunction or any other available equitable or legal remedies.

Any software that BBS licenses from a third party and which is incorporated into the equipment is copyrighted and protected information subject to the terms of its license.

**16. Taxes, Custom Charges:** Prices do not include taxes, customs or other charges levied on the sale or transaction by any U.S. or foreign local, state or federal government or any other authorized taxing entity. Such charges include, but are not limited to occupation, use, value added tax, charges or duties on the export and import of the merchandise and similar factors. Buyer is obligated to pay all such taxes, customs and other charges, or to reimburse BBS Automation Chicago, Inc. when paid by BBS Automation Chicago, Inc., without limitation, unless Buyer provides proper tax exemption documentation to the taxing entity, with a copy of such exemption to BBS.

**17. Cancellations:** Any order cancelled or delayed for 30 days or more by Buyer will subject Buyer to a cancellation/delay charge equal to BBS's accrued costs for engineering, labor, materials, and overhead plus 15% of the contract price if the cancellation occurs more than thirty (30) days before completion, and full purchase price if the cancellation occurs within thirty (30) days of completion.

**18. Liability Limits at Buyer's Plant:** BBS will make no allowance for repairs or modifications to equipment by Buyer's personnel, except as authorized by BBS in advance and in writing. Buyer shall operate the equipment in accordance with BBS's Operating and Maintenance Manual, with all guards in place and all safety devices operating. Equipment modifications, addition or removal of components, or improper operation by Buyer's personnel shall be at Buyer's own risk. Buyer agrees not to hold BBS liable for resulting injuries or equipment malfunctions. Buyer's authorized representative prior to shipment of equipment must approve all guards and safety systems. Thereafter, BBS shall not assume any liabilities or responsibility due to improper use of the equipment by Buyer's employees. Buyer must notify BBS within 48 hours of any accidents or malfunctions involving BBS's equipment that results in personal injury or damage to property. Buyer agrees to cooperate fully with BBS to determine the cause of any such accident or malfunction. If Buyer fails to comply with any or all of the obligations set forth in this paragraph, the Buyer agrees to indemnify and hold BBS harmless and free of any liability or obligation in regards to personal injury or damage to property arising from operation of this equipment.

**19. Indemnifications:** The Parties will indemnify, defend and hold harmless each other, its officers, directors, shareholders, agents, employees and their respective successors, assigns and heirs, harmless against and from any and all liability, loss, cost, injury, damage and expense (including, without limitation, reasonable attorney' fees) relating to bodily injury or property damage arising out of, on account of, or related to the use or operation of the equipment, other than such liabilities, losses, costs, injuries, damages and expenses arising out of the gross negligence or willful misconduct of the Party or breach of contract by the Party. This indemnity will survive the payment of the contract price and the Warranty Period.

BBS will indemnify Buyer against any damages and costs (including reasonable attorneys' fees) resulting from any actual infringement of any patent, registered design or other intellectual property rights by the equipment or by the use or operation thereof, provided such infringement does not arise solely from Buyer's conduct with respect to the equipment or the use or operation thereof.

**20. Dispute Resolution:** In the event of any disputes arising out of the contract, the applicable laws shall be the laws of the State of Illinois, U.S.A.

In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or any claimed breach thereof the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, either party may request in writing a meeting between senior executives of each party and those senior executives shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

If the parties' senior executives do not reach such solution within a period of 60 days, then either party may submit the matter to mediation under the Commercial Mediation Rules of the American Arbitration Association.

If the matter is not resolved within 60 days after initiation of mediation, either party may demand arbitration.

All remaining disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules. The arbitrator will issue written findings of fact and conclusions of law, and may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages. The judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**21. Severability:** If any provision of these Terms and Conditions, or the applications of such term to any person or circumstances, is held by an arbitrator(s) or court of competent jurisdiction to be invalid or unenforceable, the remainder of these Terms and Conditions, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.



**22. Waiver:** Any concession, latitude or waiver allowed or to be allowed by one party to the other party at any time will not prevent the granting party from subsequently exercising that party's full rights.

**23. Entire Agreement.** This Agreement embodies the entire contract and agreement between the parties, and there are no other agreements or understandings, oral or written between Buyer and BBS, except as recited herein.

## APPENDIX II

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### Standard Time and Material Rates

Discipline	Hours	Rate
Engineering / Project Management	8:00AM - 4:30PM	\$165.00/Hour
Assembly / Manufacturing	8:00AM - 4:30PM	\$115.00/Hour

**Terms:** Hourly rates will be billed as indicated above for all labor posted directly to the project. This includes preparation, travel (\$105/ hour, portal to portal) and service time.

**Overtime:** Overtime rate is 1.5 times base rates.

#### **Weekend/**

**Holiday:** Weekend and holiday rates are 2.0 times base rates.

**Expenses:** In addition to the hourly rate, all out-of-pocket expenses will be billed at cost plus a 15% administrative fee. Expenses include airfare, car rental, lodging, meals, mileage (at current rate payable to employee), tolls, parking, telephone calls, etc.

**Materials:** In addition to the labor and expenses, purchased material items will be billed with a 15% mark-up to cover procurement and integration costs.