



TERMS AND CONDITIONS OF SALES AGREEMENT

As used herein, BMH shall mean Berry Material Handling. Customer shall mean the person purchasing as listed in the Order, and Equipment shall mean the goods specified in the Order (as modified below). All other capitalized terms are as defined in the Order or below:

Article I. Sales The following items shall apply if Customer is purchasing the Equipment from BMH:

1. Sale of Equipment and Delivery. Subject to available inventory, BMH shall sell and Customer shall purchase the Equipment F.O.B. BMH's Location on the Delivery Date, and all risk of loss shall pass to Customer upon Delivery.
2. Price and Payment. Unless otherwise specified herein, payment in full of the full amount indicated in the Order shall be made to BMH on the date of Delivery, or if partial Delivery, the portion of such payment for the Equipment on the separate dates of Delivery.

Article II. General Terms The following terms shall apply to the relationship between BMH and Customer subject to the conditions set forth:

1. Delivery, Shipping, Acceptance. Customer shall pick up the Equipment at BMH's business location specified in the Order immediately upon notification that the Equipment is available at BMH's Location. If BMH agrees on the Order to cause the Equipment to be shipped to Customer and if shipment is delayed due to unavailability of Customer facilities or any other cause, Customer hereby requests and authorizes BMH to store the Equipment itself or ship the Equipment to storage of BMH's choosing. Customer shall be responsible for and shall reimburse BMH for all storage-related charges, including insurance and shipping costs. BMH shall be authorized to make partial Delivery or shipments of the Equipment. Promptly after Delivery, Customer shall inspect the Equipment, and unless the actions of Customer otherwise indicate acceptance, the Equipment shall be deemed to be irrevocably accepted by Customer upon the earlier of (a) a reasonable time for inspection (not to exceed three (3) days after Delivery), or (b) actual use of the Equipment by Customer. BMH reserves the right, at its sole discretion, to substitute the Equipment with other equipment of the same material functionality.
2. Binding Effect. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and each of their respective heirs, administrators, executors, personal representatives, and permitted successors and assigns. Except to the extent prohibited by law, no third party shall be the beneficiary to any of the rights or obligations hereunder (including but not limited to, warranty obligations).
3. Force Majeure. Notwithstanding anything contained herein, BMH shall have no obligation or liability and shall not be considered in default hereunder for its failure due to (a) any cause not reasonably within the control of BMH including, but not limited to fire, explosion, riot acts of war or terror, acts of God, civil disturbances, floods, earthquakes, and casualties similar in nature to the foregoing, strikes, lock-out, and other labor disturbances, or (b) delays caused by shippers, vendors, or suppliers of BMH, or destruction or significant damage to the Equipment. Should events occur which would give rise to Customer's claim that BMH is in default hereunder, Customer shall first give BMH thirty (30) days written notice of its claim during which time BMH may cure any claimed default and incur no liability therefore.
4. Taxes. Except for amounts attributable to BMH's net income, Customer shall be solely responsible for the amount of federal, state, and local taxes, duties, imposts, tariffs, or other similar levies arising out of or related to the performance of this Agreement. Customer indemnifies and holds BMH harmless from the payment of any such taxes, plus any penalties, interest, or costs connected with the imposition of the same.
5. Additional Remedies, Further Assurances. No failure or delay by BMH to exercise any right of remedy hereunder shall operate as a continuing waiver thereof. Additionally, Customer shall be liable for all damages, costs, expenses (including attorneys fees) incurred or to be incurred by BMH by reason of the occurrence of any breach or threatened breach of this Agreement, including any Event of Default, or the exercise of BMH's remedies thereto, and all incidental and consequential damages. Without limitation of its other remedies, should Customer fail to perform any obligation hereunder, BMH, in its sole option and without obligation, may perform or have performed such obligation on Customer's behalf, and Customer shall be liable for the costs thereof. In order to confirm BMH's interest in the Equipment, Customer agrees that this Agreement shall constitute a security agreement for the Equipment, and promptly upon request, Customer shall, at its expense, do any act and execute, acknowledge, deliver, file, register, record, and ratify all documents requested by BMH to perfect BMH's interest in the Equipment, including but not limited to, any financing statements. Customer hereby irrevocably appoints BMH its attorney-in-fact to do such acts and to execute and file all such documents on Customer's behalf, and which power is delegable by BMH, which such appointment and power be coupled with an interest.
6. Notices. All notices required or permitted under this Agreement shall be in writing and personally delivered or mailed, by certified mail, return receipt requested, and addressed to BMH at BMH's Location and to Customer in the following preference: the Shipping Location, the address where invoices are sent, any address of any Customer places of business, or where Customer may be served by legal process.
7. Choice of Law/Forum. This Agreement shall be governed exclusively by the laws of the State of Kansas with regard to the rules governing conflicts of law. Any action arising out of or related to the Agreement shall be brought exclusively in a court sitting in Sedgwick County, Kansas; but, unless Customer is a "consumer" within the meaning of the Kansas Consumer Protection Act (KSA 50-623, et seq.) as may be in effect from time to time ("KCPA"), the provisions of the KCPA shall not apply to this Agreement or the parties hereto.