

**SYSTEMS TERMS & CONDITIONS OF SALE**

1. **Acceptance.** These terms & conditions and any documents referenced herein represent the entire agreement between the parties. These terms and conditions supersede any previous oral or written representation including any Purchase Order, Quotation or other similar document. Any modification to these terms must be agreed to, in writing, by both parties. Delivery by Babush Material Handling Systems, Inc. ("Seller") to Customer of the materials shall constitute acceptance of both the materials and the terms and conditions herein unless expressly disclaimed in writing by both parties. Customer's acceptance of this order shall be deemed acceptance of all of its terms.
2. **Delivery.** Delivery shall be FOB point of origin, freight billed collect.
3. **Insurance.** The responsibility for loss or damage of all equipment and machinery is the Customers from the time of shipment. The Customer is responsible for providing and maintaining adequate insurance for all equipment and machinery specified in this contract against loss or damage by fire or other causes between the time of shipment and final payment.

4. **Warranty**

**SELLER HARDWARE**

Seller warrants to the original contracted Customer all Seller equipment, that is not manufactured by others, to be free from defects in material and workmanship under normal use and when properly maintained by the Customer. Seller's obligation under this warranty is limited to repairing at Seller's factory or furnishing a replacement for any part, or correcting any workmanship, which shall be demonstrated to Seller's satisfaction to have been defective at the time of delivery. To initiate warranty action a written claim specifying the particular defect or defects shall have been delivered to Seller within one (1) year from the date of system shipment from Seller or before the equipment has had 2080 hours of running use, whichever period is the shorter. If the system is shipped piecemeal, the warranty for each portion shall commence at its date of shipment. All warranty work for which Seller is responsible will be made as promptly as possible within the standard working hours of any day. Overtime, if required by Customer, will be paid for by Customer. Defective parts shall be returned to Seller F.O.B. Seller's factory and repaired or replacement parts shall be shipped by Seller F.O.B. Seller's factory. The removal by Customer of parts returned to Seller for repair or replacement and the installation by the Customer of replacement or repaired parts shall be at Customer's expense. No work will be done by Seller personnel at the site of the installation unless in Seller's opinion it is impractical for the Customer to remove the defective part and return it to Seller's factory. If Seller personnel are requested to assist the Customer to remove the defective part and return it to Seller's factory, Seller personnel will travel to the site only after Seller's acceptance of a separate written purchase order. The purchase order must state that the Customer is responsible for all time, portal to portal Seller factory, at Seller's standard labor rates and expenses incurred by Seller personnel. All work will be performed within standard working hours unless overtime is specifically requested by the Customer.

**SELLER SOFTWARE**

Seller warrants to the original contracted Customer all Seller produced system software to be free from defects. Modifications to software by anyone other than Seller personnel shall render this software warranty as void. Seller's obligation under this warranty is limited to connecting via modems, electronic transfers of files or programs, or supplying the Customer with updated software via computer disks for any defects demonstrated to Seller's satisfaction to have been present at time of delivery for a period of one (1) year from date of system acceptance.

All warranty work which Seller is responsible will be made as promptly as possible within the standard working hours of any day. Overtime, if required by Customer, will be paid for by Customer. If Seller personnel are required to be at the Customer's site, Seller personnel will travel to the site only after Seller's acceptance of a separate written purchase order. The purchase order must state that the Customer is responsible for all time, portal to portal Seller factory, at Seller's standard labor rates and expenses incurred by Seller personnel. All work will be performed within standard working hours unless overtime is, specifically, requested by the Customer.

**SELLER PURCHASED SERVICES, SOFTWARE OR EQUIPMENT**

Seller does not warrant services, software or equipment manufactured or distributed by others. All site licenses, warranty documents and registrations supplied with services, software or equipment purchased for integration of an automated system will be included with the final documentation package or delivery of the system to the original contracted Customer. It will be the responsibility of the Customer to register all site licenses and warranties with the original manufacturer.

Defective parts shall be returned to the original manufacturer of equipment purchased by Seller per the original equipment manufacturer's warranty statement. Seller is not responsible for any expense or loss of equipment or parts, defective or new that might be incurred by the Customer.

All work requiring Seller personnel to be on site for services, software or equipment that is manufactured by others will be performed only after Seller's acceptance of a separate written purchase order. The purchase order must state that the Customer is responsible for all time, portal to portal Seller factory at Seller's standard labor rates and expenses incurred by Seller personnel. All work will be performed within standard working hours unless overtime is specifically requested by the Customer.

**WARRANTY DISCLAIMERS EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OF THE EQUIPMENT OR SERVICES FURNISHED BY SELLER. SELLER SPECIFICALLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.**

**THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.** Seller shall not be liable for, nor does Seller authorize any person to assume for Seller, any other liability in connection with the equipment or services furnished by Seller, including, without limiting the generality of the foregoing, liability for loss of production, product, equipment or profits or liability for direct, incidental, indirect, special or consequential damages or any damages to persons or property. Seller will make no allowances for repairs, alterations or other work done unless specifically agreed to in writing prior to repairs, alterations or other work being started.

Customer agrees that Customer's sole remedy for liability of any kind, including negligence with respect to the equipment, software and services provided by Seller shall be limited to the remedies provided herein.

5. **Limits of Liability** Customer agrees that in no event, whether as a result of breach of contract or warranty, negligence or any other cause whatsoever, and regardless of the form of legal action will Seller or its subcontractors or affiliates be liable for (i) consequential, special or punitive damages including but not limited to loss of profits or revenues, loss of use of equipment, machinery or other property, cost of capital, cost of substitute equipment, facilities or services, downtime costs or claims of Customer's clients for such damages, nor (ii) any losses or damages under any claim of any kind in excess of the contract price agreed to be paid to Seller for the project which gives rise to the claim. All such liability will terminate one (1) year after substantial completion of work under this contract.
6. **Storage of Materials on Site.** Materials stored on site to be installed by others are to be considered delivered to the Customer's care and custody.
7. **System Change Order.** Changes to this specification can only occur through the mutual agreement of the Customer and Seller. Seller will produce a numbered System Change Order that states the change in scope, cost and schedule impact. Seller will only take action on the System Change Order once the required approvals have been recorded at Seller.
8. **Payment.** Seller has the right to apply any monies paid by Customer towards any outstanding sums which Customer or any of Customer's affiliates owe to Seller. Payment by Customer of invoiced amount(s) shall be due per the terms on the invoice. Seller shall invoice Customer in arrears for all accepted modifications. The amount(s) owed are non-refundable, not subject to set-off and do not include any taxes, tariffs, duties or other governmental charges or expenses imposed in connection with this transaction. Until the purchase price and all other sums due pursuant hereto are paid in full, Seller retains a security interest in the materials described on the face hereof (herein sometimes referred to as "Goods") and in all proceeds of said Goods.
9. **Late Payment.** Any payment or charge that is not paid when due, shall in addition to all other remedies available to Seller, bear interest at a rate of one and one half (1½) percent (%) per month or the maximum rate permitted by law (whichever is less) for the number of days payment is delinquent. Seller may suspend or cancel performance if any payment is delinquent more than ten (10) days. A reinstatement fee equal to the costs of mobilization plus any late payment shall be payable upfront in order to restart service after any such occurrence. If Customer is more than ten (10) days late for payment, Seller shall have the right to terminate. Termination fees may be assessed at Seller's sole discretion if Seller terminates this order for late payment. Legal fees incurred by Seller to collect outstanding invoices will be the responsibility of the Customer.
10. **Modification.** The functions and/or features provided by Seller shall be determined by Seller. While Seller may modify the goods or materials at its sole discretion, the goods or materials shall at all times provide the same core functionality specified by customer.

11. **Default** Time is of the essence. The occurrence of any of the following shall constitute a default: 1) non-payment or non-performance of any obligations; 2) any representation by customer which is untrue or misleading at the time it was made; 3) any substantial, uninsured loss, theft or damage to the equipment or materials while in the possession of the customer and not paid for. Upon such event(s), Seller shall have the right to terminate this order as a default, in Seller's sole discretion.
12. **Termination and Delays.** Cancellations or work delay requests by the Customer for any part of this contract must be made in writing. Customer agrees to pay Seller's standard contract labor rates for all work incurred and net material costs plus handling for all purchased materials, services or third party software for this contract, including any applicable restocking charges incurred.
13. **Insolvency.** If Customer ceases to conduct business, becomes insolvent, is insecure, subject to a take-over, bankrupt (involuntary or voluntary), is part of an assignment, placed in receivership or other similar proceeding then this order may be terminated in Seller's sole discretion. Upon such termination, Customer shall immediately cease all use of any goods or materials not paid for and cooperate with Seller so to return such goods or materials to Seller if requested by Seller. Which cooperation will include allowing Seller to enter Customer's premises on which the equipment or materials are located, in whole or part, and to remove same. Customer is to provide to Seller prompt notice of the circumstances described herein. Seller shall have all rights of recovery including but not limited to rights of self-help, lien or replevin.
14. **Seller's Remedies.** Should Customer be in default, Seller shall have the right to terminate. In such event, Seller shall be entitled to either recover all amounts owed and/or to take possession of the goods or materials not paid for. Should Seller take possession, Seller shall be entitled to collect the difference between its recovery and the amount(s) owed. Customer shall have no direct rights to resale. Seller, at its sole option, may sue to recover monies owed, take possession of the goods or materials, place a lien on the property or other similar remedies. Seller's rights are cumulative and non-exclusive. Seller shall have the right to impose a termination fee. This fee will include allocated overhead costs, remaining amounts owed, Seller's standard margin of profit and any costs (including attorneys fees) to collect.
15. **Assignment.** These terms & conditions shall be binding upon and inure to the benefit of the parties and their respective successors, transferees and assigns. Provided, however, any assignment shall be void unless written consent of the other party has been obtained.
16. **Force Majeure**
  1. Neither party shall be liable in damages or have the right to terminate this Contract for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
  2. Neither party shall be liable for any failure or delay in performance under this Contract (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by circumstances beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
17. **Compliance with Government or Industry Codes and Standards.** Customer will apply for and obtain in a timely manner all building permits or related licenses, inspections and surveys necessary for installation or use of the Machinery and Equipment in accordance with all government codes, laws and regulations.
18. **Obligation and Workplace**
  1. At all times all parties are obligated to act in good faith and in a proper and appropriate manner including but not limited to ensuring the contracted system performs as intended and if not, to clearly identify the areas that require attention.
  2. Both parties agree to provide the required staffing, equipment, test product needed to attain but not limited to stated milestones, delivery, testing and system acceptance.
  3. Customer agrees to provide a clear and free workplace location; site access; area preparation; power, compressed air supply and network connectivity as required for completion of this Contract.
19. **Training.** Seller will provide training for the maintenance and supervisory level personnel as described in the proposal to customer. This training is to familiarize the above personnel sufficiently enough to maintain and operate the equipment in a safe and efficient manner. Training can occur during runoff, start-up phase or as required to allow sufficient training of individuals responsible to operate and maintain the equipment provided herein.
20. **Non-solicitation of Employees / Right to Hire.** Both parties have valuable resources in their personnel and have invested significantly in their hiring, education and well being. Neither party shall, directly or indirectly, for itself or on behalf of any other person, firm, corporation, or other entity, whether as a principle agent, employee, stockholder, partner, member, officer, director, sole proprietor or otherwise, solicit, participate in or promote the solicitation of the other party's employees to leave the employ of their company, or hire or engage the services of the other party's employees. Each party agrees that if they violate the non-solicitation/right to hire policy, they will pay the other party 50% of the remuneration paid by the other party during the year immediately prior to the hiring of any Seller or Customer personnel hired by the other party during the period starting with the beginning of this contract and extending for 1 year after the completion of this contract.
21. **Amendment.** Any amendment to this Agreement must be in writing and signed by both parties.
22. **Notices.** Written notices required herein shall be sent to the address and person listed on the order and shall be deemed delivered upon mailing.
23. **Fees.** Each party is responsible for their own legal and accounting fees unless otherwise expressly provided for herein.
24. **Severability.** If any provision of this order is held by a court of competent jurisdiction to be contrary to law or otherwise invalid, the remaining provisions shall remain in full force and effect.
25. **Party's Relationship.** Neither party's a partner, joint venturer, or agent with the other party.
26. **Waiver.** The failure by a party to impose rights hereunder shall not act as a waiver of any subsequent rights.
27. **Governing Law.** This order shall be governed by and construed and interpreted by the substantive and procedural laws of the State of Wisconsin regardless of any choice of law provisions. The parties agree to and consent to the subject matter and personal jurisdiction of the courts sitting in Waukesha County, Wisconsin.
28. **System Acceptance.** All machinery and software will be deemed accepted by the Customer upon the earlier of (i) written acceptance, (ii) 30 days after delivery and completion of work of all contracted machinery, software and services in this contract if the Customer does not notify Seller in writing of any deficiencies, or (iii) commencement of beneficial use of the delivered machinery, software or services. Upon such acceptance, payment of any unpaid balance of the purchase price will be due.
29. **Software License**

This Software License Agreement, including the Warranty Provisions set forth in this document, is a legal agreement between the owner (Licensee) of the proposed Babush Material Handling Systems, Inc. System (System) and Seller (Manufacturer). By signing this document, you are agreeing to the terms of this agreement.

  1. **GRANT OF LICENSE.** This License Agreement permits the Licensee to use a single copy of the Seller created software described in this specification (SOFTWARE) and provided with the delivery of the System on the hardware described in this specification. The SOFTWARE is considered in use on a computer when it is installed into permanent memory (e.g., hard disk or other storage device) and the executable files are loaded into temporary memory.
  2. **OWNERSHIP RIGHTS.** The SOFTWARE is owned by Seller and may be protected by copyright, patent, trademark, trade secret or other proprietary right protection. The Licensee agrees to not modify or alter the SOFTWARE or any portion of it without the prior written consent of Seller. The Licensee agrees that it will not reverse engineer, disassemble or reverse compile the SOFTWARE or any part of it. Seller will provide a single backup and/or archival copies for the protection of the customer. Likewise, Seller will maintain backup and/or archival copies for the protection of the customer.
  3. **TERM OF AGREEMENT.** This agreement term shall begin with the delivery of the System to the Licensee and shall remain in effect for as long as the System is in operation.
  4. **TRANSFER OF OWNERSHIP.** The Licensee may transfer ownership and title of the System with or without the knowledge of Seller. In the event that the System ownership is transferred, this Software License Agreement will remain in effect with the new Licensee. All SOFTWARE and copies must be transferred to the new Licensee.
  5. **LICENSEE RIGHTS.** In the event that Seller is declared bankrupt, insolvent or ceases operation as a corporation, the Licensee will be entitled to copies of all



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development files and source code used to produce the SOFTWARE.

6. GOVERNING LAW. This Software License Agreement shall be interpreted, governed and construed by the laws of the State of Wisconsin.

7. EXPORT RESTRICTIONS. The Licensee agrees to not export or transmit the SOFTWARE or any portion of it to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce, or such other governmental entity as may have jurisdiction over such export or transmission.