



Bradken Standard

Tender, Quotation and Sale Terms and Conditions (Canada)

1. WHOLE AGREEMENT

Acceptance of the offer represented by this quotation and/or sales order acknowledgement is expressly limited to the terms hereof. Any additional or different terms which may be contained in any document furnished by the Buyer are hereby objected to and rejected. All acceptances are subject to acknowledgment in writing by Seller. The quotation and/or sales order acknowledgement, Buyer's written acceptance (which may or may not be in the form of a purchase order), and these General Terms and Conditions of Sale (Canada) constitute the entire agreement between the parties (the "Agreement") concerning each purchase, and there are no other oral or written understandings or agreements modifying this Agreement. No changes herein shall be binding on Seller unless made in writing and signed by an authorized representative of Seller.

2. WARRANTIES

For a period of one-hundred and eighty (180) days from original delivery EXW (Incoterms 2010), Seller warrants that the products, articles, materials, goods and services described in the quotation and/or sales order acknowledgement (collectively, the "Products") will be free from material defects in materials and workmanship and the Products conform substantially to Buyer's specifications. The foregoing warranties are expressly in lieu of all other warranties, expressed or implied, oral or written, including warranties of merchantability, fitness for a particular purpose, non-infringement, and of all other obligations or liabilities on the part of seller. Seller makes no warranty whatsoever in respect to products, accessories or parts not supplied by seller.

3. LIMITATION OF REMEDIES

Buyer's remedy for breach of any of the Seller's warranties shall be limited to (a) the replacement or repair by Seller of defects in the Products or (b) the reimbursement of the price paid by Buyer of the Products. The determination of which remedy shall be applicable shall be determined by Seller, in its sole discretion. The above stated remedies are seller's entire and exclusive liabilities under this agreement and buyer's exclusive remedies for any claim for damages in connection herewith.

For greater certainty, (i) Buyer shall not revoke or reject acceptance of the Products or claim any equitable adjustment to the purchase price and (ii) Seller shall not be liable for any indirect, special, punitive or consequential damages or delay whatsoever, arising out of or in connection with this Agreement, including loss of use or loss of profits, revenue or business or Seller's liability to a third party arising from any source. Seller's total liability under this Agreement will in no circumstances whatsoever exceed the total purchase price paid by the Buyer to the Seller for the Products. Subject to section 2, all claims for breach of any of Seller's warranties shall be barred unless Buyer notifies Seller in writing within 30 days of discovery of the breach. Additionally, any claim arising out of or related to this Agreement must be brought no later than one (1) year after the same has accrued or it shall be deemed waived by the party bringing such claim. Seller shall not be responsible for any repairs performed by third parties unless such repairs are authorized by Seller in writing and in advance. Notwithstanding any of the above, all claims for errors in weight or quantity shall be made by Buyer within 10 days after delivery of the Products to Buyer. Failure to bring such claim shall be a waiver thereof.

4. PRICE

4.1 The prices set forth in Seller's quotation shall be valid for a period of thirty (30) days from the quotation issue date provided however if a specific date or period is provided in the quotation, the prices shall be valid through such date or period. In all other circumstances including where purchase orders are provided without specific price quotations provided by Seller, prices shall be those in effect at the time of the receipt by Seller of the purchase order from Buyer, as established by Seller. Seller reserves the right to add surcharges to the quoted price if the quotation so provides.

4.2 Buyer shall indemnify, defend and hold harmless Seller and its affiliates, and each of their officers, directors, owners, members, employees and agents (collectively, the "Seller Indemnitees") from any loss, claim or damage suffered by Seller as a result of Buyer's failure to pay sums due to Seller.

5. TAXES

In addition to any price specified, Buyer shall be responsible for and pay, (a) all customs duties and taxes on the sale, delivery, storage, consumption or transportation of the Products, including sales, use, excise, retailer's occupation or similar taxes, and (b) all costs and fees for shipping and transportation of the Products, including all freight charges and packing and crating costs. Buyer shall indemnify, defend and hold harmless the Seller Indemnitees from any loss, claim or damage suffered by the Seller Indemnitees as a result of Buyer's failure to pay such sums.

6. DELIVERY, RISK OF LOSS

6.1 All Products shall be delivered EXW Seller's facility unless the quotation states otherwise, and if so, the Products shall be delivered in accordance with the Incoterms provided in the quotation. Seller will make Products available for delivery following completion of production and will invoice the Buyer at such time. At that time, all risks and rewards of ownership of the Products (including loss or damage) shall transfer to the Buyer unless the quotation states otherwise (the carrier of the Products shall be taken to be the agent of the Buyer even if engaged or paid by Seller). All delivered Products shall be made freight collect unless the quotation states otherwise. Unless a specific carrier is agreed to in writing by Seller, Seller shall use its reasonable judgment in making such selection, provided that, in no event shall Seller be responsible for any delays or excess transportation charges resulting from its selection. The Buyer shall bear all risk of loss to the Products after delivery thereof, due to any cause whatsoever. Buyer acknowledges that it shall be Buyer's choice and responsibility if Buyer desires to insure against this risk unless otherwise provided in the quotation.

6.2 Prices quoted are for Products shipped loose by truck or rail. Special packing is available for an additional charge at Buyer's request.

6.3 Delivery schedules acknowledged by the Seller shall be conditioned upon receipt by the Seller of all materials, tools, dies, patterns and fixtures furnished by the Buyer or by any other outside source in reasonable time to meet such delivery schedules.

6.4 Seller reserves the right to make partial or staged deliveries. All such partial or staged deliveries shall be separately invoiced and paid for when due, without consideration to subsequent deliveries. Seller will use all reasonable endeavours to deliver the Products on or before the agreed date of delivery. Seller will not be liable for any loss, damage or other liability (whether in contract, tort (including negligence) or otherwise) and whether directly or indirectly arising from the Products not being delivered by the delivery date for any reason.

7. PAYMENT, TITLE.

7.1 In the event Buyer has obtained written credit approval from Seller, payment for the Products shall be due 30 calendar days net (without discount) upon delivery unless otherwise agreed to by Seller in writing. Payment shall not be conditioned on anything other than delivery of the Products. In the event no written credit approval has been granted by Seller, payment of all fees and costs described herein for the Products shall be due either upon receipt by Seller of a purchase order or prior to shipment of the Products by Seller, at Seller's sole discretion. Payment shall not be subject to any offset by Buyer. If payment is not made when due, Buyer shall pay Seller a finance charge equal to the lesser of (i) 18% per annum, or (ii) the maximum interest rate allowable under law.

7.2 Seller retains full title to the Products until Seller receives payment in full for such Products and all other amounts owed to Seller by the Buyer. Until all such monies have been paid:

- (i) Seller has the right to call for or recover possession of the Products (for which purpose Seller's employees or agents may enter onto the Buyer's premises) and the Buyer must deliver up the Products if so directed by Seller; and
- (ii) the Buyer:
 - a. agrees that the relationship between the Buyer and Seller shall be fiduciary and shall as bailee keep the Products safely, securely and separately stored and marked in a manner which clearly indicates that they belong to Seller;
 - b. shall not resell, encumber or dispose of the Products;
 - c. shall not mix the Products with or attach them to other materials or otherwise make them unable to be returned to Seller in their original state;
 - d. agrees that if, in breach of this clause, the Products are incorporated with goods of the Buyer, other items or products such that the Products are no longer separately identifiable, the resultant products or items shall become and be deemed to be the sole property of Seller. If the Products are incorporated in any way with the property of a party other than the Buyer, the resultant product shall become and be deemed to be owned in common by Seller with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Buyer of the incorporated materials;
 - e. shall, as bailee for Seller, hold any proceeds (as that term is defined in the *Personal Property Security Act* (Ontario)) of any resale, disposal or other dealing with the Products or any product incorporating the Products (including sale or supply to a party other than the Buyer in the ordinary course of the Buyer's business) in trust for Seller and shall pay the proceeds into a separate fiduciary account to be held in



- trust for Seller until accounted for to Seller at the demand of Seller, and
- f. shall insure the Products against theft and damage noting Seller's interest on the policies of insurance and provide Seller, on demand, with proof of the currency of such insurance.

8. FORCE MAJEURE, DELAYS

Seller shall not be liable for delay in or prevention of its performance due to causes beyond its reasonable control, including but not limited to acts of God or the public enemy, fires, floods, strikes or other labour disputes, labour or material or transportation shortages, acts of sovereign governments, terrorism, war or other similar occurrences. Seller shall notify Buyer in writing within ten (10) days of the beginning of any such cause.

9. CANCELLATION OR CHANGES BY BUYER

After written acknowledgment by Seller of Buyer's order(s) (the "Orders"), the Orders may not be changed or cancelled without Seller's written consent. Changes to Orders require the written agreement of Buyer and Seller as to any required equitable adjustments in the purchase price and delivery schedule. Orders that are cancelled by Buyer prior to the scheduled delivery date shall require Buyer to pay for all work performed (including overhead and margin) up to the point of cancellation. In addition, if such cancellation is within two (2) months of the scheduled delivery date, Buyer shall pay a reasonable cancellation fee determined by Seller.

10. SHIPMENTS, CANCELLATION BY SELLER

Partial shipments shall be permitted, and Seller may invoice each shipment separately. Shipments and deliveries shall at all times be subject to the approval of Seller's Credit Department and offered credit payment terms. Where Seller reasonably refuses to ship to Buyer on open credit, Seller may decline to make deliveries except on receipt of cash in advance or other security satisfactory to Seller. If Buyer fails to fulfil the payment terms, Seller may cancel the order, and Buyer shall immediately pay Seller's reasonable cancellation charges.

11. DEFAULT

It shall be deemed a default hereunder and Seller may terminate any previously accepted purchase order(s) upon the occurrence of any of the following events: (a) if Buyer fails to comply with any of the covenants or conditions contained in this Agreement; (b) if a petition in bankruptcy is filed by or against the Buyer or a receiver or trustee of the Buyer is appointed, or if Buyer files a petition for reorganization, voluntarily appoints an administrator under any of the provisions of the bankruptcy laws, or any other laws, state or federal, or makes an assignment for the benefit of creditors, or is adjudged insolvent by any state or federal court of competent jurisdiction; or (c) if a material change occurs in Buyer's financial condition, or Seller believes the prospect of payment or performance of the Buyer's obligations hereunder are impaired, Seller shall provide written notice of such termination in the event of items (a) and (c) above and the termination shall be immediate in the event of item (b) above. Buyer shall pay the entire amount of the agreed purchase price for the Products immediately upon such termination, less any direct costs and fees saved by Seller as a result of such termination. Such rights of Seller shall be in addition to any other rights and remedies of Seller as set forth herein or as allowed by law or in equity.

12. PATTERNS AND TOOLING

12.1 All patterns, core boxes and tooling ("Patterns and Tooling") required to manufacture the Products shall be furnished by the Buyer or paid for by the Buyer as set forth in this Article 12.

12.2 Seller shall have no responsibility and will not be liable for any non-conformity of the Patterns and Tooling, drawings or specifications for the Products furnished by the Buyer.

12.3 Buyer warrants that any Buyer-supplied Patterns and Tooling will comply with Seller's requirements relating to the Buyer's Patterns and Tooling.

12.4 Buyer acknowledges that the Seller will not insure the Buyer's Patterns and Tooling that are in Seller's possession, and that the Seller shall have no liability (whether in contract, tort (including negligence) or otherwise) to the Buyer for or in connection with any loss of or damage to the Buyer's Patterns and Tooling or other materials in the Seller's possession.

12.5 In addition to the price payable for the Products and Patterns and Tooling, the Buyer agrees to pay the Seller any costs incurred by the Seller in connection with altering, maintaining, shipping, crating and storing the Buyer's Patterns and Tooling.

12.6 Seller may, upon sixty (60) days written notice to Buyer, scrap Patterns and Tooling in its possession and retain any proceeds, if such Patterns and Tooling have not been used for two (2) years or longer, unless Buyer objects in writing within such sixty (60) day period.

13. INDEMNIFICATION FOR PRODUCT MISUSE

Buyer shall indemnify, defend and hold Seller Indemnitees harmless from any loss, claim or damage suffered by the Seller Indemnitees as a result of Buyer's negligence, fraud or willful misconduct with respect to the Products, Patterns or Tooling.

14. TECHNOLOGY

14.1 In all cases where Products are made to designs, plans, processes, or specifications furnished by Buyer or a third party at the direction of Buyer, the Buyer shall indemnify, defend and hold harmless the Seller Indemnitees from and against all losses, claims and damages for infringement, misappropriation, unauthorized use or other violation of any patents, copyright, industrial designs, trade secrets, or other intellectual property or proprietary information any third party in the design, plan, process or specification of such Products.

14.2 If the performance of this Agreement by Seller includes experimental design, development, or research work, whether or not such work is paid for in whole or in part by Buyer, Seller shall retain exclusive title to all discoveries, developments, technical data, computer software and other intellectual property developed, arising or resulting from such work in whole or in part (collectively, "Seller's Intellectual Property"), including but not limited to all confidential designs, processes, know-how, trade secrets and inventions, whether or not patentable.

15. INFORMATION

Any drawings, data, designs, or other technical information which Buyer may disclose to Seller with regard to the design, manufacture or sale of Products to be sold hereunder

shall be deemed to have been disclosed on a voluntary basis by Buyer, and Buyer shall not assert any claim against Seller by reason of Seller's use thereof.

16. ASSIGNMENT

Buyer agrees it will not assign this Agreement in whole or in part without Seller's prior written consent, which may be withheld for any reason. Upon prior written notice to Buyer, Seller may assign its rights and responsibilities hereunder to any qualified third party (as determined by Seller).

17. ATTORNEY FEES

In the event an arbitration, suit or action is brought by any party under this Agreement to enforce or interpret this Agreement or in any appeal therefrom or in any bankruptcy action, it is agreed that the non-prevailing party shall pay the reasonable attorney's fees and/or collection costs of the prevailing party.

18. JURISDICTION, VENUE

This Agreement shall be binding upon the successors and assigns of Seller and Buyer, and shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. In the event of litigation or arbitration between the parties to enforce this Agreement, the Seller and Buyer agree that the venue shall be the Superior Court of Justice of the Province of Ontario.

19. SURVIVAL

These General Terms and Conditions of Sale (Canada) shall survive the cancellation, termination and satisfaction of this Agreement.

20. CONFIDENTIALITY

Except as otherwise waived in writing by Seller, Buyer shall keep confidential all of the terms and conditions set forth in this Agreement and all of Seller's Intellectual Property provided to Buyer in connection with the manufacture, sale or delivery of the Products.

21. SECURITY INTEREST

Buyer hereby grants to Seller a first ranking purchase-money security interest in all materials and equipment held by Seller, including the Products, work and all Pattern and Tooling. This security is given to secure the payment and performance of all indebtedness and obligations of Buyer to Seller currently existing or hereinafter arising. Upon any default by Buyer in making any such payment or performing any such obligation, Seller shall be entitled to exercise any and all rights and remedies of a secured party provided herein and under the governing law. Buyer agrees to execute such security agreements and other documents as may be deemed necessary by Seller in order to allow

Seller to take and perfect its security interest in the subject property. Buyer authorizes Seller to file any financing statements and other documents necessary to perfect its interest in its collateral without further approval.

22. EXPORT CONTROL

- Buyer shall strictly comply with such import and re-export restrictions and other applicable laws, rules, regulations and orders as shall from time to time be adopted or imposed by the government of Canada and all other applicable countries, if any.
- Buyer represents and warrants that it shall not use any Products, including software and/or technology relating thereto, provided by Seller to Buyer under this Agreement for the purposes of disturbing international peace and security, including (i) the design, development, production, stockpiling or any use of weapons of mass destruction such as nuclear, chemical or biological weapons or missiles, (ii) other military activities, or (iii) any use supporting these activities.
- Buyer also represents and warrants that it shall not sell, export, dispose of, license, rent, transfer, disclose or otherwise provide the Products (including software and/or technology relating thereto) to any third party whether directly or indirectly with knowledge or reason to know that the third party or any other party will engage in the activities described above. Buyer shall obtain these same representations and warranties from any third party to whom it sells, exports, disposes of, licenses, rents, transfers, discloses or otherwise provides the Products (including software and/or technology relating thereto).

23. ANTI-CORRUPTION COMPLIANCE

- Neither Buyer nor any of its affiliates shall take any actions in connection with this Agreement or otherwise, by way of (but not limited to):
 - Payment of monies; or
 - A promise to pay monies; or
 - Authorization of any payment; or
 - Giving of money; or
 - Giving anything else of value; to
 - Any person who engages in services for national or local governments;
 - Any person who engages in services for an agency or organization affiliated with a government entity;
 - Any person who engages in services for a public enterprise or state-owned entity;
 - Any person who engages in public services for an international public organization;
 - Any political party, party official, or candidate for political office; or
 - Any person authorized by a government entity to exercise a public function; (together "Public Officers")
 or to any person other than a Public Officer while knowing (or where the Buyer and/or its affiliates ought reasonably to know) that all or some portion of the money or value was or will be offered, given or promised to a Public Officer for the purposes of obtaining or retaining business or securing any improper advantage or influencing official action.
- The Products, or any part or component thereof, received from Seller shall not be used for any purpose which would cause a violation of laws, including, without limitation, anti-bribery laws and/or anti-corruption laws of any country or jurisdiction, by the Buyer.
- The Buyer agrees that it will conduct its business in compliance with laws, including, without limitation, the anti-bribery laws and/or anti-corruption of any country or jurisdiction.
- Furthermore, the Buyer shall not participate in other forms of misconduct, including, but not limited to:
 - Fraud;

- ii. Collusion; and
 - iii. Coercion in connection with any transaction or matter associated with its relationship to Seller.
- e) In addition to all other rights and remedies herein, if the Buyer is found or reasonably suspected to be in breach of any of the foregoing compliance provisions, Seller shall have the right to cancel this Agreement immediately, unconditionally and without penalty, upon serving the Buyer a written notice of cancellation. Buyer shall pay the entire amount of the agreed purchase price for the Products immediately upon such termination, less any direct costs and fees saved by Seller as a result of such termination.