

Bradken Standard

Tender, Quotation and Sale Terms and Conditions (Indonesia)

1. TERMS AND CONDITIONS TO APPLY

PT. Bradken Indonesia (TAX NUMBER 03.036.096.0-063.000) ("Bradken") a wholly owned subsidiary of Bradken Limited and the addressee named herein ("Buyer") agree that these terms and conditions ("Sale Conditions") shall apply to the supply of all goods sold and services provided ("Goods") by Bradken to the Buyer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Buyer to Bradken. These Sales Conditions may only be varied or added to by written agreement signed by an authorised representative of both the Buyer and Bradken.

2. QUOTATIONS/TENDERS

If Bradken has provided any quotation or tender specifically for the Goods ("Quotation")

- these Sales Conditions shall apply to the Quotation
- the price in the Quotation shall be Bradken's current price as at the date of Quotation and the price actually payable for the Goods shall be Bradken's current price as at the date of the Buyer's acceptance of the Quotation, and for the Goods shall be Bradken's current price as at the date of the Buyer's acceptance of the Quotation and
- subject to paragraph (b) the Quotation shall remain valid for acceptance by the Buyer for thirty (30) days after the date of the Quotation.

3. ORDERS

If the Buyer has made an order for the Goods without there being a Quotation provided by Bradken ("Order")

- The Order is subject to acceptance in writing by Bradken and
- The price actually payable for the Goods is Bradken's current price as at the date of Bradken's acceptance of the Order.

4. VARIATION OR CANCELLATION

After the Buyer's acceptance of the Quotation or Bradken's acceptance of the Order as the case may be

- No change in the specification of the Goods shall bind Bradken unless Bradken expressly agrees to the change in writing and
- If the Buyer cancels the Order for the Goods the Buyer will pay to Bradken any loss damage or expenses incurred by Bradken in relation to the supply or proposed supply of the Goods.

5. CHARGES AND TAXES

Unless otherwise expressly stated, the price of the Goods excludes all freight, transportation, shipping, insurance, packing, crating, or casing, storage handling demurrage, delivery and similar charges, and all sales, goods and services excise or other taxes, and the Buyer shall pay and indemnify Bradken for those charges or taxes. If Bradken expressly agrees in writing that the price includes any of these charges or taxes the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.

6. PAYMENT

- The Buyer shall pay for the Goods within thirty (30) days after the date of the invoice issued by Bradken for the Goods. Time shall be of the essence in respect of payment for the Goods.
- If payment is not made by the due date for payment, the Buyer shall pay to Bradken on demand interest at the rate of one and a half (1.5%) per cent calculated on the outstanding balance of the invoice and capitalised monthly until paid. This will not affect the other rights of Bradken. Bradken is entitled to recover from the Buyer, in addition to the price, any VAT on the supply of the Goods except to the extent that the prices expressly include VAT.
- All losses, expenses and costs (including legal fees on an indemnity basis), consequent upon the Buyer's failure to pay on the due date, are payable by the Buyer upon demand and recoverable from the Buyer by Bradken as a liquidated debt.

7. VAT

- If Bradken makes a Taxable Supply under or in connection with the Sale Conditions or in connection with any matter or thing occurring under the Sale Conditions to the Buyer. Bradken will be entitled in addition to any other consideration recoverable in respect of the Taxable Supply to recover from the Buyer the amount of any VAT on the Taxable Supply.
- If the Buyer is entitled, under or in connection with the Sale Conditions or in connection with any matter or thing occurring under the Sale Conditions, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any VAT in respect of the Taxable Supply.
- In these Sale Conditions :

"Taxable Supply" means any supplies which are subject to :

- Law No. 8 Year 1983 on Value Added Tax on Goods and Services and Sales Tax on Luxurious Goods, as amended several times, lastly by Law No. 42 Year 2009.
- Its implementing regulation and its amendment from time to time ("VAT Legislation") and
"VAT" means the tax payable on Taxable Supplies.

8. DELIVERY

- Bradken will use all reasonable endeavours to deliver the Goods on or before the agreed date for delivery ("**Delivery Date**"), but:
 - The Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of Bradken; and
 - Bradken 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 Goods not being delivered by the Delivery Date for any reason.
- Bradken may, with the agreement of the Buyer, deliver any of the Goods to the Buyer in instalments in which case Bradken may separately invoice the Buyer for payment for each delivery instalment (which shall be taken to be the subject of a separate and distinct contract between the Bradken and the Buyer, each of which will incorporate these Sale Conditions).
- Any of the Goods returned are only accepted with the prior written approval of Bradken and will be subject to a 50% handling/restocking fee. Goods specifically manufactured by Bradken's affiliated entities ("Bradken Affiliate") to the Order are non-refundable.

9. SHIPMENT

All Goods are sold CIF Port of Destination. The method and route of shipment shall be as mutually agreed in each accepted Order. Bradken shall tender delivery of all Goods to a carrier for transportation to the port of destination designated in the Order. All costs of transportation including without limitation, taxes and standard insurance, shall be assessed by Bradken and borne by Bradken unless otherwise agreed to in writing by Bradken. Bradken shall invoice Buyer for all shipping related costs. All risks of loss shall pass to Buyer when the Goods are delivered to the port of destination. Delivery and acceptance shall not be affected by a delay on the part of the Buyer in accepting delivery. Shipment of Goods held by reason of Buyer's request or inability to receive Goods will be at the risk and expense of Buyer. Claims for shortages in shipment shall be deemed waived by Buyer unless made in writing to Bradken within thirty (30) days from date of invoice.

10. TITLE AND RISK OF LOSS OR DAMAGE

Title, risk of loss and/or damage shall pass to Buyer when the Goods are made available to the carrier at Bradken's facility.

11. BRADKEN'S LIEN

Until the unpaid contract price and any other amounts payable by Buyer to Bradken under the Order acknowledgement are paid in full, Bradken shall have a lien on the Goods for the unpaid amounts. Buyer hereby grants to Bradken a security interest in the Goods to secure payment of such amounts.

12. RISK AND PROPERTY IN GOODS

- The Goods shall be entirely at the risk (including loss or damage) of the Buyer from the time of delivery of the Goods ex Bradken works (the carrier of the Goods shall be taken to be the agent of the Buyer even if engaged or paid by Bradken).
- Bradken retains full title to the Goods until Bradken receives payment in full for those Goods and all other amounts owed by the Buyer to Bradken).
- Until the Buyer pays Bradken in full for the Goods, the Buyer shall:
 - Keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to Bradken.
 - Not resell, encumber or dispose of the Goods,
 - Not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to Bradken in their original state, and
 - Hold the proceeds of any resale, disposal or other dealing with the Goods in breach of this clause separate from its own funds and in trust for Bradken and account to Bradken for those proceeds on demand.

13. INTELLECTUAL PROPERTY

All patent, design rights, trade marks, copyright, original works and other intellectual property in any design, specification, process, method of working or other information relating to the Goods (other than that provided by the Buyer to Bradken) shall vest for all time in Bradken. Bradken only grants to the buyer an irrevocable licence to use the Goods.

14. WARRANTIES

Subject to clause 12 (a) Bradken warrants that the Goods will be subject to Bradken's general tolerance standards (available at the Buyer's request) conform to the specification for the Goods expressly agreed to in writing by Bradken and be free from defects in materials or workmanship.

15. LIABILITY

The Buyer agrees that:

- (a) Bradken shall not be liable for any error, omission, or inaccuracy in the drawings or the specifications provided or approved by the Buyer except to the extent set out in clause 4 or prohibited by law. Bradken makes no warranty or representation in relation to the Goods and any conditions or warranties otherwise implied by statute or any other law are expressly excluded.
- (b) The Buyer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon any technical or other advice or information provided by or on behalf of Bradken in connection with the Goods (including their capabilities, use or operation) on the Sale Conditions;
- (c) Except to the extent prohibited by law, the only remedy of the Buyer against Bradken for any loss, damage or liability (whether in contract, tort (including negligence) or otherwise) of the Buyer in connection with the Sale Conditions, the Goods. Bradken's supply of the Goods or Bradken's failure to supply the Goods to the Buyer in accordance with the Sale Conditions shall be limited to Bradken, at its option, arranging for the replacement or repair of the Goods at the point of manufacture of the Goods,
- (d) Bradken shall otherwise have no liability to the Buyer (whether in contract tort (including negligence) or otherwise).

16. DEFECTIVE GOODS

- (a) Within fourteen (14) days of the delivery of the Goods to the agreed delivery location, the Buyer shall both complete any inspection or testing required by it to confirm the Goods comply with the Sale Conditions and notify Bradken in writing of the extent to which the Goods do not comply with the Sale Conditions.
- (b) The Buyer shall not use the Goods (other than to the extent reasonably necessary for the inspection and testing) before the Buyer completes the inspection and testing and satisfies itself that the Goods comply with the Sale Conditions, or, if the Buyer notifies Bradken under the above provisions.
- (c) If the Buyer does not comply with this clause, the Buyer shall be taken to have unconditionally accepted that the Goods comply with the Sale Conditions

17. DELAYS IN OR SUSPENSION OF WORK OR SUPPLY

When Bradken incurs any extra costs in relation to the supply of the Goods, directly or indirectly, as a result of any delay, interruption, suspension or alteration of any work or the supply of the Goods caused by or as a consequence of any act or omission of the Buyer, Bradken shall be entitled to increase the price by the amount of the extra costs incurred.

18. BUYER'S INDEMNITY

The Buyer indemnifies Bradken, its agents and employees against all claims, demands actions, costs (including legal costs) charges, expenses, loss, damages or other liability arising from any;

- (a) Loss or damage to any property or the death of or injury to any person in connection with the supply or use of any of the goods; or
Bradken infringing any patent, design right other intellectual property supplied by the buyer

19. SUBCONTRACTING

Unless otherwise agreed in writing Bradken may, without the Buyer's consent, engage subcontractors to carry out the whole of or any part of supply or manufacturing of the Goods.

20. DEFAULT, INSOVENCY AND TERMINATION

If there is any default by the Buyer in making due payment to Bradken of any monies owing by the Buyer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is appointed in respect of the Buyer or the Buyer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Buyer of any of these Sale Conditions then all monies payable by the Buyer to Bradken shall at Bradken's election become immediately due and payable notwithstanding that the due date for payment of any of the monies shall not have expired and, Bradken may, without affecting Bradken's other rights:

- (a) refuse, suspend or withhold any further supply of the Goods;
- (b) enter upon (personally or by its employees or agents) any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any of the Goods (title to which has not passed to the Buyer), in which case the sale of those Goods shall be taken to be terminated and Bradken shall have no liability to the Buyer whether for trespass, negligence, payment of damages or compensation or otherwise;
- (c) terminate any credit arrangement with the Buyer, by notice in writing to the Buyer (in which case outstanding amounts will become immediately due and payable);
- (d) forfeit any deposit paid for the Goods; or
- (e) if payment in addition to a deposit has been made by the Buyer in respect of any of the Goods, the sale of which is terminated, appropriate that payment to any other debts of the Buyer to Bradken or damages incurred by Bradken as a result of the termination of the sale.

21. DUTIES, LEVIES, AND TAXES

The Buyer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods supplied and shall make any and all payroll deductions and withholdings required by law and hereby indemnifies and holds harmless Bradken from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

22. INTEGRATION

Bradken's Order acknowledgement, packing slip, and these Sale Conditions supersede all prior negotiations, representations, agreement, quotes and catalogues, whether written or oral. And shall not be modified, supplemental or interpreted by evidence of course of dealing, course of performance or usage of trade. To the extent the provisions hereof conflict with any prior or subsequent agreement of the parties, these Sales Conditions will control.

23. ASSIGNMENT

Buyer acknowledges that no terms and conditions under this Sales Conditions, nor the obligations represented thereby, may be assigned or delegated, in whole or in part by the Buyer, without the prior consent of Bradken. Buyer's unauthorized attempt to assign or delegate any rights or obligations shall serve as grounds for termination of the Order.

24. EXPORT CONTROL

- a) The 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 Indonesia and all other applicable countries if any.
- b) The Buyer represents and warrants that it shall not use any Products (including software and/or technology relating thereto) provided by Bradken to the 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) the other military activities, or (iii) any use supporting these activities.
- c) The 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. The 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).

25. ANTI-CORRUPTION COMPLIANCE

Neither the Buyer nor any of their affiliates shall take any actions in connection with this Agreement or otherwise, by way of (but not limited to):

- i. Payment of monies; or
- ii. A promise to pay monies; or
- iii. Authorisation of any payment; or
- iv. Giving of money; or
- v. Giving anything else of value; to
 - A. Any person who engages in services for national or local governments;
 - B. Any person who engages in services for an agency or organization affiliated with a government entity;
 - C. Any person who engages in services for a public enterprise or state-owned entity;
 - D. Any person who engages in public services for an international public organization;
 - E. Any political party, party official, or candidate for political office; or
 - F. 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.

- a) No part of the Goods or Supply received from Bradken will be used for any purpose which would cause a violation of laws, including without limitation, the anti-bribery laws of any country or jurisdiction, by the Buyer
- b) The Buyer agrees that they will conduct their business in compliance with laws, including without limitation, the anti-bribery laws of any country or jurisdiction.
- c) Furthermore, the Buyer shall not participate in other forms of misconduct, including but not limited to :
 - i. Fraud;
 - ii. Collusion; and
 - iii. Coercion in connection with any transaction or matter associated with its relationship to Bradken.
- d) 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, Bradken shall have the right to cancel this Agreement immediately, unconditionally and without penalty, upon serving the Buyer a written notice of cancellation.

- 1.1.1 (b) No part of the Supply received from Bradken will be used for any purpose which would cause a violation of laws, including, without limitation, the anti-bribery laws of any country or jurisdiction, by the Buyer
- 1.1.2 (c) The Buyer agrees that they will conduct their business in compliance with laws, including, without limitation, the anti-bribery laws of any country or jurisdiction.
- 1.1.3 (d) Furthermore, the Buyer shall not participate in other forms of misconduct, including, but not limited to:
 - (i) Fraud;
 - (ii) Collusion; and
 - (iii) Coercion in connection with any transaction or matter associated with its relationship to Bradken.
- (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, Bradken shall have the right to cancel this Agreement immediately, unconditionally and without penalty, upon serving the Buyer a written notice of cancellation.

26. GOVERNING LAW

The laws of the State or Territory in which the office of Bradken which issued the Quotation or accepted the Order shall apply to the Sale Conditions and the parties submit to the jurisdiction of the courts in that State.

27. NON-WAIVER

Bradken's failure to exercise any right under these Sale Conditions or failure to insist on strict performance of any part of these Sale Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

ADDITIONAL TERMS AND CONDITIONS FOR MANUFACTURE

28. MANUFACTURED GOODS

Where the Goods are to be manufactured by Bradken to a specification prepared by or on behalf of the Buyer ("Manufactured Goods") clauses 28 to 32 of these Sale Conditions shall also apply.

29. PRICE FOR MANUFACTURED GOODS

Unless otherwise agreed in writing by Bradken, the price for Manufactured Goods may be unilaterally adjusted by Bradken:

- (a) in accordance with the price variation formula notified by Bradken to the Buyer with the Quotation or Order; and
- (b) for increases in the cost of labour after the date of the Quotation or acceptance of the Order.

30. BUYER'S PATTERNS

Where any patterns or core boxes are provided by or on behalf of the Buyer for use by Bradken to produce Manufactured Goods ("Buyer's Patterns"):

- (a) despite clause 12, Bradken shall have no responsibility and will not be liable for any non-conformity of the Buyer's Patterns to any drawings or specifications for the Manufactured Goods and the Buyer irrevocably releases Bradken from any claims in relation to such non-conformity;
- (b) the Buyer must satisfy itself as to and ensure that the Buyer's Patterns meet the requirements of Bradken relating to the Buyer's Patterns;
- (c) the Buyer acknowledges that Bradken will not insure the Buyer's Patterns and despite clause 12 Bradken 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 or any other goods or materials in Bradken's possession in connection with the Manufactured Goods; and
- (d) the Buyer agrees to pay Bradken, in addition to the price payable for the Manufactured Goods any costs incurred by Bradken in storing the Buyer's Patterns or carrying out repairs or alterations to the Buyer's Patterns.

31. INSPECTION AND TESTING

Where Manufactured Goods are required to be tested or inspected by Bradken prior to supply to the Buyer, the Buyer shall pay the costs of that testing (including the cost of obtaining certificates) or inspection in addition to the price for the Manufactured Goods, and the results of tests (including as to weight, size, quantity or composition of Manufactured Goods) and inspections shall be final and binding on the Buyer.

32. BUYER'S INFORMATION

Where the Buyer has provided to Bradken any design, specification, process, method of working, or any other information in connection with the Manufactured Goods ("Buyer's Information"):

- (a) Bradken shall be under no obligation to check or confirm the conformity, accuracy or adequacy of the Buyer's Information;
- (b) the Buyer grants to Bradken an irrevocable licence to use all copyright, design right or other intellectual property in the Buyer's Information for any purpose connected with the Manufactured Goods;
- (c) the Buyer indemnifies Bradken, its officers, agents and employees against all claims, demands, actions, costs (including legal costs on a full indemnity basis), charges, expenses, loss, damages or other liability arising out of or in connection with any claim against Bradken in connection with the use of the Buyer's Information (including for infringement of any intellectual property rights); and
- (d) despite clause 12, Bradken shall have no liability to the Buyer (whether in contract, tort (including negligence) or otherwise) in connection with any error, omission or inaccuracy in the Buyer's Information.
 - A. Any political party, party official, or candidate for political office; or
 - B. 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.