



# Bradken Standard

## Tender, Quotation and Sale Terms and Conditions (USA)

### 1. WHOLE AGREEMENT

Acceptance of the offer represented by this quotation is expressly limited to the terms hereof (the "Terms and Conditions"). All purchases by Buyer are expressly limited and conditioned upon Buyer's acceptance of these Terms and Conditions and no contract shall result unless Buyer accepts these Terms and Conditions. Seller objects to and rejects any provision additional to or different from these Terms and Conditions that may appear in Buyer's purchase order, acknowledgement, confirmation, writing, or in any other prior or later communication from Buyer to Seller, unless such provision is expressly agreed to by Seller in a writing signed by Seller. All acceptances are subject to acknowledgment in writing by Seller. If an offer or purchase order limits acceptance to its terms, then that offer or purchase order is hereby rejected and Seller's acknowledgement (or any other written expression confirming performance under Buyer's offer or purchase order) shall be deemed a counteroffer subject to the terms and conditions below. The quotation, Buyer's written acceptance (which may or may not be in the form of a purchase order), and these Terms and Conditions 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. For the purposes of these Terms and Conditions, the term "Products" shall refer to the goods, material and equipment listed on this quotation.

### 2. WARRANTIES

All warranties offered by Seller with respect to the Products and otherwise are found in the Bradken, Inc. standard policy regarding responsibility for repair of defects found after castings have been received by the Customer, a copy of which is attached hereto and incorporated herein by this reference (the "Bradken Warranty Policy").

### 3. DISCLAIMER OF WARRANTIES

The foregoing warranties are expressly in lieu of all other Warranties, whether Expressed or Implied, Oral or Written, statutory, or arising from a course of dealing, usage of the trade or otherwise, including but not limited to The Warranties of Merchantability, Fitness for a particular purpose, title, and non-infringement, and all other warranties, Obligations and Liabilities on the part of Seller are hereby excluded and disclaimed. Seller makes no warranty whatsoever in respect to products, accessories or parts not supplied by Seller.

### 4. LIMITATION OF WARRANTIES

Buyer's remedy for breach of any of the Seller's warranties shall be limited to remedies stated in the Bradken Warranty Policy. The determination of which remedy shall be applicable shall be determined by Seller, in its sole discretion. The Remedies stated in the Bradken Warranty Policy are Seller's entire and exclusive liabilities and buyers exclusive remedies for any claim for breach of Warranty. By way of illustration and not limitation, in no event may Buyer revoke or reject acceptance of the Products or claim any equitable adjustment to the purchase price. 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.

### 5. PRICE

5.1 The prices set forth in Seller's quotation shall be valid for a period of thirty (30) days 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.

5.2 Buyer shall indemnify, defend, and hold Seller and its affiliates, officers, directors, owners' members, employees and agents harmless from any loss, claim or damage suffered by Seller as a result of Buyer's failure to pay sums due to Seller.

### 6. CHARGES AND TAXES

Unless otherwise expressly stated, the price of the Goods excludes (but is not limited to) all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, delivery, import tariffs, customs duties, export and similar charges, and all sales, goods and services, excise or other taxes, and the Buyer shall pay and indemnify Seller for those charges or taxes. If Seller expressly agrees in writing that the price includes any of these charges or taxes, the price will be subject to adjustment for increases in any of those charges or taxes arising after the date of the Quotation or acceptance of the order, and the Buyer shall pay and indemnify Seller for any such increase.

### 7. DELIVERY

7.1 Seller shall use reasonable efforts to meet Buyer's requested delivery date, but Seller does not guarantee a specific delivery date.

7.2 All Products shall be delivered FCA (Incoterms 2000) Seller's facility. All delivered Products shall be made freight collect. 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.

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

7.4 Delivery schedules acknowledged and agreed to by the Seller in writing 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.

### 8. LIMITATION OF LIABILITY

In no event shall Seller be liable for any indirect, special, incidental, or consequential damages or delay whatsoever (including without limitation loss of use or loss of profits, revenues or other economic losses), whether arising under Warranty/Guarantee, Contract, Negligence (including Negligent Misrepresentation), Strict Liability, Indemnification, or any other cause or combination of causes. Seller's total cumulative liability will in no circumstances, whether arising under Warranty/Guarantee, Contract, Negligence, Strict Liability, Indemnification, Defense or any other cause or combination of causes whatsoever, exceed the contract price for the Products for which liability is claimed.

### 9. PAYMENT

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. In the event no written credit approval has been granted by Seller, payment of all fees and costs described herein shall be due immediately upon delivery of Products. Payment shall not be conditioned on anything other than delivery of the Products. 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) 1.5% per month or (ii) the maximum interest rate allowable under law.

### 10. 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 use reasonable efforts to notify Buyer in writing within ten (10) days of the beginning of any such cause.

### 11. CANCELLATION OR CHANGES BY BUYER

After acknowledgment by Seller, Buyer's order or orders ("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 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.



**12. 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.

**13. DEFAULT**

It shall be deemed a default hereunder and Seller may terminate any previously accepted purchase order upon the occurrence of any of the following events: (a) if Buyer shall fail 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 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.

**14. RISK OF LOSS**

The Buyer shall bear all risk of loss to the Products from the time of shipment from Seller's facility, due to any cause whatsoever. The carrier of the Products shall be taken to be the agent of the Buyer even if engaged or paid by Seller. Buyer acknowledges that it shall be Buyer's responsibility if Buyer desires to insure against this risk.

**15. PATTERNS AND TOOLING**

**15.1** 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 15.

**15.2** 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.

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

**15.4** 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.

**15.5** 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.

**15.6** 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.

**16. INDEMNIFICATION FOR PRODUCT MISUSE**

Buyer shall indemnify, defend, and hold Seller and its affiliates, officers, directors, owners, members, employees and agents harmless from any loss, claim or damage suffered by Seller as a result of Buyer's negligence or intentional misconduct with respect to the Products, the Patterns and Tooling, or otherwise.

**17. TECHNOLOGY**

**17.1 INDEMNIFICATION** 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 the Seller and its affiliates, officers, directors, owners, members, employees and agents harmless from and against any loss, claim or damage suffered by Seller as a result of any claim that such products and/or the designs, plans, processes, or specifications furnished by Buyer or a third party at the direction of Buyer are defective, or infringe or misappropriate any patent, copyright, trade secret, or any other intellectual property or proprietary right of any third party.

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

**18. INFORMATION**

Any drawings, data, designs, or other technical information which Buyer may disclose to Seller with regard to the design, manufacture or sale of articles 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.

**19. EXPORT CONTROL**

**19.1** 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 The United States of America and all other applicable countries, if any.

**19.2** The Buyer represents and warrants that it shall not use any Products, (including software and/or technology relating thereto) provided by Seller 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.

**19.3** 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).

**20. ANTI-CORRUPTION COMPLIANCE**

(a) 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 federal, state 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.

(b) No part of the Supply received from Seller 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

(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.

(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, Seller shall have the right to cancel this Agreement immediately, unconditionally and without penalty, upon serving the Buyer a written notice of cancellation.

**21. 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).

**22. ATTORNEYS' FEES**

In the event an arbitration, suit or action is brought by any party under this Agreement to enforce or interpret any of these Terms and Conditions (or in any appeal there from) or in any bankruptcy action, it is agreed that the non-prevailing party shall pay the reasonable attorneys' fees and/or collection costs of the prevailing party.

**23. 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 State of Missouri, without regard to its conflicts of law rules. In the event of litigation or arbitration between the parties to enforce this Agreement, the Seller and Buyer

agree that the exclusive venue shall be the federal courts in Kansas City, Missouri, and Buyer submits itself unconditionally and irrevocably to the personal jurisdiction of such courts.

#### 24. SURVIVAL

These Terms and Conditions shall survive the cancellation, termination and satisfaction of this Agreement.

#### 25. 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 any other confidential information (including without limitation Seller's Intellectual Property) provided to Buyer by Seller (or that Buyer obtains from Seller, directly or indirectly) in connection with this Agreement and/or the manufacture, sale or delivery of the Products.

#### 26. MISCELLANEOUS

Except as otherwise provided herein, 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. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Seller and Buyer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under this Agreement or otherwise. This Agreement is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of its other provisions and the remaining provisions shall remain in full force and effect.