



# Bradken Standard

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

### 1. TERMS AND CONDITIONS TO APPLY

Bradken Resources Pty Limited (ABN 82 098 300 988) ("Bradken") a wholly owned subsidiary of Bradken Pty 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 Sale Conditions supersede those in any previous form of Bradken sale conditions and may only be varied or added to by written agreement signed by an authorised representative of both the Buyer and Bradken. When attached to a Bradken Credit Application these Sale Conditions supersede those in any previous form of Bradken Credit Application signed by the Buyer and do not affect the validity of any previous guarantee.

### 2. QUOTATIONS/TENDERS

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

- these Sale 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
- 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

The Buyer's acceptance of the Quotation or Bradken's acceptance of the Buyer's Order shall constitute an acceptance of these Sale Conditions absolutely and without amendment as the terms and conditions of the contract for the supply of the goods and 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 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 (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 Bradken for those charges or taxes. If Bradken 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 Bradken for any such increase.

### 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 GST on the supply of the Goods except to the extent that the prices expressly include GST.
- 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. GST

- Where a Taxable Supply is made under or in connection with these Sale Conditions or in connection with any matter or thing occurring under these 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 GST payable on the Taxable Supply.
- Where either Bradken or 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 Input Tax Credits available in respect of those costs.
- In these Sale Conditions:  
"GST" means the tax payable on Taxable Supplies under GST Legislation;  
"GST Legislation" means A New Tax System (Goods and Services Tax) Act 1999 ("Act") and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;  
"Input Tax Credit" has the meaning given in the Act; and  
"Taxable Supply" has the meaning given in the Act.

### 8. DELIVERY

- Bradken will use all reasonable endeavours to deliver the Goods on or before the agreed date of 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, which fee may be varied or waived in writing at Bradken's absolute discretion. Goods manufactured by Bradken pursuant to the specific requirements of the Buyer are non-refundable.

### 9. RISK AND PROPERTY IN GOODS

- For the purposes of the *Personal Property Securities Act 2009* (as amended from time to time) ("the PPSA") "Goods" means any and all present and after acquired goods and services supplied by Bradken to the Buyer;
- The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Buyer from the time the Goods are dispatched from Bradken's premises (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 to Bradken by the Buyer.
- Until all such monies have been paid:
  - Bradken has the right to call for or recover possession of the Goods (for which purpose Bradken's employees or agents may enter onto the Buyer's premises) and the Buyer must deliver up the Goods if so directed by Bradken;
  - the Buyer:
    - agrees that the relationship between the Buyer and Bradken shall be fiduciary and shall as bailee keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to Bradken;
    - shall not resell, encumber or dispose of the Goods;



- C. shall 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;
  - D. agrees that if, in breach of this clause, the Goods are incorporated with goods of the Buyer, other items or products such that the Goods are no longer separately identifiable, the resultant products or items shall become and be deemed to be the sole property of Bradken. If the Goods are incorporated in any way with the property of a party other than the Buyer, the resultant product shall
  - E. shall, as bailee for Bradken, hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Buyer in the ordinary course of the Buyer's business) in trust for Bradken and shall pay the proceeds into a separate fiduciary account to be held in trust for Bradken until accounted for to Bradken at the demand of Bradken; and
  - F. shall insure the Goods against theft and damage noting Bradken's interest on the policies of insurance and provide Bradken, on demand, with proof of the currency of such insurance.
- (e) To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 9 that there is created for the benefit of Bradken a Purchase Monies Security interest in the Goods;
  - (f) The Buyer agrees that Bradken may register any personal property security interest created by these Sales Conditions on the Personal Property Securities Register and the Buyer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by Bradken in respect of any personal property of the Buyer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Buyer or place an obligation on Bradken, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that Bradken otherwise agrees in writing.

#### 10. 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.

#### 11. WARRANTIES

Subject to clause 9(a), Bradken warrants that the Goods will, 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.

#### 12. LIABILITY

- (a) If under any law, any terms which apply to the supply of goods or services by Bradken under the Sale Conditions cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law;
- (b) All terms which would otherwise be implied are excluded except as stated in the Sale Conditions;
- (c) To the extent permitted by law Bradken's sole liability for any breach of any term is limited:-
  - (i) In the case of goods supplied by Bradken, to any one of the following as determined by Bradken-
    - The replacement of the goods or supply of equivalent goods;
    - The repair of the goods;
    - The payment of the cost of replacing the goods or acquiring equivalent goods;
    - The payment of the cost of having the goods repaired;
  - (ii) In the case of services supplied by Bradken, to any one of the following:
    - The supplying of the services again;
    - The payment of the cost of having the services supplied again;
- (d) The Buyer does not rely on any representation, warranty or other term made by or on behalf of Bradken which is not set out in the Sale Conditions; and
- (e) Bradken is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:
  - (i) Arising out of a breach of an implied or expressed term; or
  - (ii) Suffered as a result of the negligence of Bradken or its employees or agents, apart from liability as set out in clause 12(a).

#### 13. 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 paragraph 13(a) that the Goods do not comply with the Sale Conditions, Bradken has had a reasonable opportunity to inspect and test the Goods after Bradken receives that notice.
- (c) Goods must be returned at the cost of the Buyer. Goods returned for credit and accepted by Bradken will at Bradken's absolute discretion be subject to 50% of the credit claimed. If Goods are not returned within 30 days of notification of the claim to Bradken, the Buyer shall not be entitled to any credit.
- (d) 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.

#### 14. DELAYS IN OR SUSPENSION OF WORK OR SUPPLY

Where 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.

#### 15. BUYER'S INDEMNITY

- (a) The Buyer indemnifies and holds harmless Bradken, its successors, administrators and assigns, from and against all claims for loss or damage to persons or property or loss of property or for death or injury caused by or arising out of or in connection with any act matter or thing done, omitted or permitted to be done by Bradken, its servants or agents.
- (b) The Buyer indemnifies and holds harmless Bradken, its successors, administrators and assigns, from and against all claims for loss, (whether direct, indirect or consequential), loss of profit, loss of opportunity or loss of use and any and all other economic loss, including and without limitation, any loss by reason of a breach of a term or condition of the Sale Conditions, or the negligence or any other act, matter or thing done, admitted or omitted to be done by the Bradken.

#### 16. 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 manufacture of the Goods.

#### 17. DEFAULT, INSOLVENCY 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) immediately terminate any agreement for supply of any Goods, by notice in writing to the Buyer;
- (b) refuse, suspend or withhold any further supply of the Goods;
- (c) 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;
- (d) 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);
- (e) forfeit any deposit paid for the Goods; or
- (f) 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.

#### 18. 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.

#### 19. 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.

#### 20. 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****21. 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 22 to 25 of these Sale Conditions shall also apply.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. GENERAL****(a) EVIDENCE OF MONIES PAYABLE**

A statement in writing signed by any director, secretary, administration manager or credit manager of Bradken stating the balance of the monies due to Bradken by the Buyer shall be prima facie evidence of the amount of indebtedness of the Buyer to Bradken at the date of that statement.

**(b) BUYER AS TRUSTEE**

Where the Buyer is a trustee the Buyer warrants that it has full power and authority to agree to be bound by the Sale Conditions on behalf of the trust and that it shall be bound by the terms of the Sale Conditions both personally and as trustee.

**27. 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 governments of Australia 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).

**28. 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 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.

(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

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