

TERMS AND CONDITIONS

1. **INSURANCE COVERAGE:** By accepting this purchase order supplier agrees to maintain Public Liability Insurance inclusive of Product and Completed Operations Liability at a limit of at least \$2,000,000 and provide proof thereof prior to the beginning of the contract.
2. This order constitutes Buyer's offer to purchase the materials, services and articles, all of which are herein called "articles" described elsewhere in this order, in accordance with its provisions attached hereto and/or incorporated herein by reference (if any) provided that any reference in this order to Seller's quotation does not constitute acceptance of any terms and conditions thereof except to the extent specifically agreed to in this order.
3. **SHIPPING INSTRUCTIONS:** (a) On date of shipment, send original bill of lading, airbill or express receipt reflecting this order number, one copy of notice of shipment and original and a duplicate invoice to the attention of the departments specified on the face hereof. The supplier must provide all relevant MSDS sheets and certification with each and every shipment. Shipments must also include customs invoices and NAFTA forms for Certificate of Origin. (b) Do not deliver ahead of schedule unless authorized by Bradken, Inc (Atchison/St. Joseph, Inc., Amite, Inc. Atlas, LLC, London, Ltd, Global Services, Inc., Bradken Canada Ltd) Scheduling or Purchasing departments. Describe shipments in accordance with carrier's tariffs to obtain the lowest freight rate. Do not insure or declare value on shipments beyond F.O.B. point. When a shipment is subject to freight rates dependent upon value, annotate the bill of lading, airbill or express receipt to show that the shipment is released at the maximum value, which applies to the lowest rate provided in applicable tariffs. Consolidate all shipments to be forwarded on one day. (c) Articles furnished in excess of the quantity specified or in excess of any allowable overage will be retained by Buyer at no additional cost, unless Seller notifies Buyer within 45 days after shipment that it desires the return thereof at Seller's risk. Seller will inform Buyer within 45 days after shipment that it desires the return thereof at Seller's risk. Seller will reimburse Buyer for the full cost of returning such over shipment. (d) State Shipping Point on all Invoices. Each case, parcel, pallet and accompanying packing list of contents must show Buyer's order number. If no packing list accompanies the shipment, Buyer's count will be conclusive on Seller.
4. **PACKAGING AND SHIPMENT:** Unless otherwise specified, price is to cover net weight of articles purchased hereunder and no charges will be allowed for transportation, storage, packaging, packing or returnable containers if required. All shipments must be packaged and must conform with Buyer's packaging specifications referred to elsewhere in this order, if any, so as to permit efficient handling and to provide protection in shipment and if tendered to a common carrier for delivery, must also conform to the packaging requirements applicable to such carrier. Damage to any articles resulting from improper packaging is the Seller's responsibility, loading, will be charged to Seller.
5. **WARRANTY:** Seller expressly warrants that articles ordered to Government or Buyer's Specifications will unless otherwise specified by Buyer, conform with such Specifications as of the date of this order, and that all articles will conform strictly to any affirmation or promise relating thereto and to all applicable specification, design, drawings, data, samples or other descriptions furnished or adopted by Buyer (collectively "Specifications"), and if not ordered to specification, will be fit and sufficient for the particular purpose intended, and that all articles will be of highest commercial quality and free from defects in materials and workmanship, free from design defects, if of Seller's design, and will be manufactures and comply in all respects with all applicable standards of the American Standards Association or the Canadian Standards Association and with all applicable laws, by laws, orders and regulations of the federal government, each and every state or province government (and all agencies, boards, departments and commissions of each thereof) and of each and every municipality in the USA or Canada. Such warranties shall be in addition to any other warranties, express, implied or statutory, and, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance of any payment for articles and shall run to Buyer, its successors, assigns and customers and subsequent owners of the articles or the end products thereof. Except for latent defects, fraud or such gross mistakes of Seller as amount to fraud, notice of any defect or nonconformity must be given by Buyer to Seller within one (1) year after delivery or one (1) year after receipt of satisfactory qualification test reports, if required hereunder whichever is later. Buyer may, at its option, (a) without notice to Seller retain any defective or nonconforming article, make necessary repairs thereto and charge Seller Buyer's cost of repairs including plant overhead at Buyer's standard rate; or (b) return any such article to Seller for credit at the price charged or, at Buyer's option, for replacement within a reasonable time and at Buyer's option, cancel any unshipped portion of this order including or exclusive of the articles so returned. Return to the Seller of any defective or nonconforming article and delivery to Buyer of any replacement article shall be at Seller's risk and expense. Replacement articles shall be subject to the provisions of this order in the same manner and to the same extent as articles originally delivered hereunder. All warranties shall also be construed as conditions.
6. **INSPECTION:** All articles shall be subject to inspection and test at all times and places, including the period of manufacture, by Buyer and, if this order is placed under a government contract, the government, if any inspection or test is made on Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety convenience of Buyer and government inspectors. Such inspections and tests shall be performed in such a manner as not to delay unduly the work. All articles are also subject to final inspection and acceptance at Buyer's plant notwithstanding any payments or other prior inspections. Such final inspection shall be made within a reasonable time after delivery.
7. **RELEASE OF NEWS INFORMATION AND ADVERTISING:** Seller shall not, without the prior written consent of Buyer: (a) make any news release, public announcement, denial or confirmation of all or any part of the subject matter of this order, or any phase of the program hereunder; (b) in any manner advertise or publish the fact that Buyer has placed this order.
8. **TERMINATION:** Buyer shall have the right to terminate this order or any part thereof at any time: (a) Without Cause - In case of termination by Buyer of all or any part of this order without cause and for Buyer's convenience this order shall be subject to an equitable adjustment. Any termination claim must be submitted to Buyer within sixty (60) days, after the effective date of termination. The provisions of this subparagraph shall not limit or affect the right of the Buyer to terminate this order for cause and shall not apply to a termination for cause; (b) For Cause - If Seller fails to make any delivery in accordance with the agreed delivery date or schedule or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this order, or fails to make progress so as to endanger performance of this order, or in the event of any proceedings by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee or an assignment for the benefit of creditors, or if Buyer otherwise has reasonable grounds of insecurity with respect to Seller's performance and Seller fails to provide adequate assurance of due performance. Buyer may, in addition to any other right or remedy provided by this order or by law, terminate all or any part of this order by written notice to Seller without any liability by Buyer to Seller on account thereof. Buyer may require a financial statement from Seller at any time during the term of this order for the purpose of determining Seller's financial responsibility. In the event of termination for cause, Seller agrees upon demand by Buyer to deliver the raw materials and work in process acquired to perform under this order and buyer may then complete the work deducting the cost of such completion from the price or, in the alternative, pay to the Seller the cost of such raw materials and work in process, or Buyer may produce or purchase or otherwise acquire articles elsewhere on such terms or in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer.
9. **INDEMNITY:** Seller hereby indemnifies Buyer, its successors, assigns, agents, customers and users of the articles against loss, damage, or liability, including costs and expenses, which may be incurred on account of any suit, claim, judgment or demand, involving infringement, misuse, or alleged infringement or misuse of any patent, trademark, copyright, or data rights in the manufacture, use or disposition of any articles supplied hereunder, provided Buyer shall notify Seller of any suit instituted against it and, to the full extent of its ability to do so, shall permit Seller to defend the same or make settlement or terms acceptable to Buyer in respect thereof. Buyer does not grant indemnity to Seller for infringement of any patent, trademark, copyright or data rights.
10. **EXCUSABLE DELAYS:** Neither Buyer nor (unless the articles were obtainable from other sources in sufficient time to permit due performance) Seller shall be liable for damages for delay or failure in the performance of any of its obligations hereunder out of causes beyond its reasonable control and without its fault or negligence, including, without limitation, any actual or potential labor disputes, provided, however, that such party shall notify the other promptly of the cause and extent of any actual or potential delay, and provided that if any such delay by Seller extends beyond a reasonable time, in any event not to exceed thirty (30) days. Buyer may, at its option, either further extend the time for performance or cancel this order in whole or in part.
11. **SET-OFF AND ASSIGNMENT:** Neither this order nor any rights or obligations herein may be assigned by Seller nor may Seller subcontract the performance of its material duties hereunder without, in either case, Buyer's written consent. The terms and conditions of this order shall bind any permitted successors and associates, affiliates and subsidiaries to Buyer, its divisions, associates, affiliates and subsidiaries against any amounts due or owing to Seller with respect to this order, and any consent by Buyer to assignment shall not be deemed to waive Buyer's rights to recoupment and/or set-off claims arising out of this or any other transactions or to settle or adjust matters with Seller without notice to permitted successors and assigns.
12. **CHANGES:** Buyer may at any time, by written notice, make changes in the quantity of articles, specifications, delivery schedule, methods of shipment and packaging, or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, whether changed or not changed by any such notice, an equitable adjustment shall be made in the price or delivery schedule or both, and this order modified in writing within thirty (30) days of the receipt of any such notice, provided, however, that Buyer may, in its discretion, receive and act upon any such claim so made at any time prior to final payment under this order. Nothing in this clause shall excuse Seller from proceeding without delay to perform this order as changed.
13. **INFORMATION:** (a) Designs, drawings, data, inventions and other technical information supplied by buyer shall be and remains Buyer's property and shall be held in confidence by Seller. Such property shall not be reproduced, used or disclosed to others by Seller without Buyer's prior written consent, and shall be returned to Buyer upon completion by Seller of its obligations under this order or upon demand. (b) Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the articles covered by this order shall be deemed to have been disclosed as part of the consideration for this order and Seller shall not assert any claim against Buyer by reason of Buyer's use thereof.
14. **BUYER'S PROPERTY:** (a) All property used by Seller (if any) in connection with this order which is owned, furnished, charged to or paid for by Buyer including, but not limited to, materials, tools, dies, jigs, molds, patterns, fixtures, equipment, designs, drawings, data, samples and other technical information; and any replacement thereof, shall be and remain the property of Buyer subject to removal and inspection by Buyer at any time without cost or expense to Buyer and Buyer shall have free access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Buyer's property, used only for this order and adequately insured by Seller at its expense for Buyer's protection. Seller shall assume all liability for and maintain and repair such property and return the same to Buyer in its original condition, reasonable wear and tear excepted, and when such property is no longer required hereunder, Seller shall furnish Buyer with a list thereof and shall comply with any instructions of Buyer as to the disposition thereof. Buyer shall not be obligated to pay any invoices for tooling until the first article produced therefrom shall have been received and accepted. (b) Material furnished by Buyer on other than a charge basis in connection with this order shall be deemed to be held by Seller as bailee thereof. Seller agrees to pay Buyer's replacement cost for all such materials spoiled or otherwise not satisfactorily accounted for.
15. **GRATUITIES:** Seller warrants that any of its employees, agents or representatives has offered or given any gratuities to Bradken, Inc's Buyer's employees, agents or representatives with a view toward securing this order or securing favorable treatment with respect thereto on the amount of any such gratuity shall constitute an offset to any amounts payable by Buyer to Seller.
16. **EFFECT OF INVALIDITY:** The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.
17. **RIGHTS, REMEDIES, WAIVER AND LAW:** The rights and remedies provided Buyer herein shall be cumulative, to the extent permitted by law, and in addition to any other rights and remedies provided by law or equity, Buyer's failure to enforce any of its rights hereunder shall not constitute a waiver of such rights or any other rights hereunder. This order shall be governed by and construed in accordance with the laws of the state or province shown in Buyer's address printed on the face of this order.
18. **DISPUTES:** Any dispute arising under this order which is not settled by agreement of the parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgement in such proceedings or the settlement of any dispute arising under this order, Seller shall proceed diligently with the performance of this order in accordance with the decision of Buyer.
19. **BUYER APPROVALS AND REVIEWS:** The review or approval by Buyer of any Specifications, work hereunder, or other matter in connection herewith shall not relieve Seller of any of its obligations under this order nor excuse or constitute a waiver or acceptance of any defects or nonconformity's in any articles furnished under this order of change, modify or otherwise affect any of the provisions of this order.
20. **TAXES AND OTHER EXACTIONS:** Seller warrants that prices shall not include any amount in respect of any taxes for which Seller can obtain or Buyer can furnish exemption. Seller assumed liability for all applicable federal, state, provincial and local taxes except those Buyer expressly agrees or is expressly required by law to pay. All taxes shall be stated separately on domestic commercial invoices.
21. **TITLE AND RISK:** Title to and risk of loss of the articles shall pass to Buyer upon delivery of the articles to the F.O.B. point named, provided that in the event any payment is made by Buyer to Seller prior to delivery of the articles, title to buy not risk of loss of articles shall pass from Seller to Buyer upon such payment during such time the articles are in the possession or control of Seller, in the proportion that such payment of Buyer bears relation to the total price of the articles.
22. **INDEMNITY:** (a) Seller shall indemnify and hold Buyer harmless against all damages and expenses incurred by Buyer as a result of Buyer being required (i) to recall from Buyer's customers or others any articles or end product thereof and (ii) to repair, replace or refund the purchase price of such articles or end products, provided that such recall and such repair, replacement or refund is based upon a defect, whether of design or manufacture in the articles, or the failure of such articles to conform to any Specifications or standard applicable thereto. In the event that Seller's articles shall not be the sole cause for such action by Buyer, then Buyer shall apportion its costs, damages and expenses in such manner, as it shall determine in its sole judgement is reasonable. Buyer shall not be required to consult with, or seek Seller's concurrence in the reporting by Buyer to any administrative or regulatory body, of any information which Buyer obtains indicating that the articles either fail to conform to any standard required by law, or constitute or create of themselves or within the end product of which they are a part or component, a situation requiring or notice as defined by the applicable law. Seller hereby releases and discharges Buyer from any liability for any error or omission is attributable to the willful conduct of Buyer. Seller shall prepare, maintain and file with the appropriate authority such records and reports as pertain to the manufacture, sale, use and characteristics of the articles as may be required by any federal, state, provincial or municipal law or regulation concerning the manufacture, sale or use of the articles or the end products thereof and shall provide Buyer with copies of such records as Buyer may require and permit Buyer access to Seller's records to permit Buyer to ascertain Seller's compliance hereunder. (b) Seller shall indemnify and save harmless Buyer against all liabilities, claims, suits, damages (including special punitive, indirect or consequential damages, arising out of death or bodily injury to any person or damage to tangible personal property which is alleged to be caused by or be the result of any defect in any article) costs, losses and expenses in any manner resulting from any breach of warranty contained in this order, including, without limitation, the cost of repair of all articles or end products thereof should more than ten percent (10%) of the articles by number or quantity, as the case be, prove to be defective or nonconforming.
23. **PRICE:** Seller represents, warrants any covenants that the price charged for the articles is the lowest price charged by Seller to buyers in respect of a sale of articles of like quality and quantity, that the price of the articles shall be subject to reduction to any lower price made or offered by Seller from the date of this order to the date of payment to any other buyer in respect of any such sale of articles, and that the price will comply with all applicable laws and regulations in effect at the time of quotation, sale and delivery of the articles.
24. **GOVERNMENT CONTRACTS:** If it is indicated on the face hereof or if Seller is otherwise informed that this order is placed, directly or indirectly, under a contract with the federal government or any state, provincial or municipal government or any contracting authority thereof, as the case may be then all terms and conditions required by law, regulations or by such government contract are incorporated herein by reference. To the extent that the terms and conditions of this order are inconsistent with any such required terms and conditions, then the required terms and conditions shall prevail and be binding on both Buyer and Seller. Seller agrees upon request to furnish Buyer with certificate or certificates in such forms as Buyer may require, certifying that the Seller is in compliance with all such terms and conditions as well as any applicable law or regulation.
25. **WORK ON BUYER'S PREMISES:** In Seller's work under this order involves operations by Seller on the premises of Buyer, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and except to the extent that any such injury is due solely and directly to the negligence of Buyer shall indemnify Buyer against all loss which may result in any way from any act or omission of Seller, its agents, employees or subcontractors. Seller shall maintain such public liability, property damage and workmen's compensation and employers' liability insurance as will protect Buyer from any such risks and from any claim under any applicable workmen's compensation legislation. **Copies of workmen's compensation certificates and liability must be provided prior to arrival at the Buyer's facilities**
26. **BRADKEN** is an equal opportunity/affirmative action employer. If applicable, the contractor, in performing the work required by this contract, agrees to comply with the applicable provisions of Executive Order 11246 issued by the President of the United States, September 24, 1965, and the applicable provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and the Rehabilitation Act of 1974, all as amended, and to comply with the Rules and Regulations issued thereunder, as set forth at 41 CFR § 60-1.4(a), 41 CFR § 60-250, and 41 CFR § 60-741. Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin, veteran status or any other status protected by applicable law.