

**BRUNK INDUSTRIES, INC.**

**TERMS AND CONDITIONS**

**These Terms and Conditions shall govern all quotations for, orders placed by and sales to purchaser ("Purchaser") in connection with any Brunk Industries, Inc. ("Brunk") goods.**

1. **ACCEPTANCE; CONTRARY TERMS; ENTIRE AGREEMENT.** All orders for goods ("Goods") are subject to acceptance by Brunk at its offices in Lake Geneva, Wisconsin. PURCHASER'S ORDER IS ACCEPTED ONLY ON THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY PURCHASE ORDER, ACCEPTANCE, OR OTHER WRITING THAT CONTAINS PROVISIONS THAT ARE INCONSISTENT WITH THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL NOT CONSTITUTE PART OF THESE TERMS AND CONDITIONS AND SHALL BE DEEMED A MATERIAL ALTERATION HEREOF. BRUNK'S ACCEPTANCE OF PURCHASER'S ORDER IS SUBJECT TO AND CONDITIONED ON PURCHASER'S ASSENT TO THESE TERMS AND CONDITIONS. ANY CONDUCT OR ACTION BY PURCHASER RECOGNIZING OR EVIDENCING THE EXISTENCE OF AN AGREEMENT SHALL BE DEEMED TO BE AN ACCEPTANCE BY PURCHASER WITHOUT EXCEPTION OF THESE TERMS AND CONDITIONS. These Terms and Conditions, and Brunk's written proposal or price quotation to which these Terms and Conditions are attached, are intended by the parties to be the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersede all prior understandings, representations, warranties or agreements between the parties, whether written or oral. Without limiting the generality of the foregoing, no course of prior dealings, course of performance, course of conduct, community standards, industry standards, customary practices or interpretation, or usage of trade shall be relevant to supplement or explain any terms in these Terms and Conditions. No modification of these Terms and Conditions, whether in whole or in part, will be valid or binding upon Brunk unless expressly agreed to by Brunk in a signed writing. Brunk reserves the right to modify these Term and Conditions at any time and from time to time.
2. **QUOTATIONS.** Quotations of prices and other terms for production orders assume one delivery only and shall remain open for six (6) months from the time of quotation, unless otherwise specified in this quotation, provided adjustments in the quoted price prior to acceptance or at any time during production shall be made at Brunk's discretion for increases or decreases in the cost of such material, subcontract work and exchange rates applicable to the quotation.
3. **PRICES.** Prices for the Goods shall be set forth in Brunk's quotation. Except as otherwise provided, prices quoted include the cost of Brunk's standard domestic packing. Any increase in the cost of shipping as a result of any deviation from such standard packing, including U.S. Government sealed packing, will be added to Brunk's invoice and payable together with payment for the Goods purchased. The amount of any present or future sales, service, use, excise or other taxes applicable to the ordered Goods shall be added to Brunk's invoice and paid by Purchaser, unless Purchaser timely provides Brunk with acceptable proof of tax exemption.
4. **PAYMENT.** Quotations assume that the financial condition of Purchaser shall be and remain satisfactory at the time shipment of the Goods is ready or at any other time between the quotation date and such shipment. Brunk may, in its sole discretion, request advance payment, letters of credit, or any other form of acceptable security for payment. Payment shall be made net cash thirty (30) days from the date of invoice, unless otherwise agreed to by Brunk in writing, provided payment for tooling shall be net cash ten (10) days from date of invoice. In Brunk's sole discretion, if at any time hereafter the financial condition of Purchaser becomes impaired, inadequate or unsatisfactory to meet Purchaser's obligations hereunder, the terms of payment and credit may, at Brunk's option, be changed or withdrawn and Brunk may require cash prepayments or satisfactory security before making shipments or deliveries under these Terms and Conditions. Upon failure of Purchaser to pay any amount when due, for any reason, Brunk, at its option, without prejudice to any other lawful remedies, suspend further shipments, production and deliveries under these Terms and Conditions, and no forbearance, course of dealings or prior payment shall affect the rights of Brunk, nor shall Brunk be liable for any damages or cause of action whatsoever by reason thereof. Production shall not commence prior to Purchaser's payment for tooling.
5. **WARRANTY.** For a period of one (1) year from the date of delivery, Brunk warrants that all Goods sold will be free from defects in workmanship. BRUNK MAKES NO WARRANTY THAT THE GOODS SHALL BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE, NOR DOES BRUNK MAKE ANY OTHER WARRANTIES EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, EXCEPT SUCH AS ARE EXPRESSLY SET FORTH HEREIN. THE OBLIGATION OF BRUNK UNDER THIS WARRANTY IS LIMITED STRICTLY TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE GOODS, AS BRUNK MAY ELECT IN ITS SOLE DISCRETION. IN NO EVENT WILL BRUNK BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR THE PERFORMANCE OR BREACH HEREOF, INCLUDING, BUT NOT LIMITED TO, PENALTIES, LIQUIDATED DAMAGE CLAUSES, LABOR COSTS, LOSS OF USE, LOST REVENUES, LOST PROFITS, DAMAGE TO ASSOCIATED EQUIPMENT OR FACILITIES, COSTS OF REPLACEMENT POWER, COSTS ASSOCIATED WITH DOWNTIME, AND ANY SIMILAR LOSSES, COSTS OR DAMAGES, REGARDLESS OF HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY. THE ABOVE WARRANTY SHALL NOT APPLY IF THERE ARE DEFECTS IN ANY MATERIALS OR SPECIFICATIONS SUPPLIED BY PURCHASER. Purchaser understands and acknowledges that Brunk makes no representation as to the operability or fitness for any use, safety, efficacy, ability to obtain regulatory approval, and/or breadth of any Goods subject to these Terms and Conditions. Brunk also makes no representation as to whether there are any other patents now held, or which will be held, by others or by Brunk, nor does Brunk make any representation that any intellectual property rights embodied in the Goods do not infringe any other patents or rights now held or that will be held by others or by Brunk.
6. **PRODUCT ACCEPTANCE.** Purchaser shall inspect the Goods upon receipt by Purchaser. Claims for damages, shortages or failure to meet specifications must be made by Purchaser, in writing, within a period of thirty (30) days after delivery of the Goods per cash order. Failure to make such claim within the stated period shall constitute irrevocable acceptance and an admission that the Goods fully comply with all terms, conditions and specifications. All rejected Goods must be returned at Purchaser's expense to Brunk, which Goods shall be repaired or replaced in accordance with the Warranty set forth above at Brunk's expense if found not to be in conformity with the order.
7. **CHANGES.** Orders received by acceptance of quotation, purchase order or otherwise shall be subject to the terms of these Terms and Conditions and may not be canceled without the written approval of Brunk, which may require compensation for direct and/or indirect expenses incurred in connection with such order. Change orders requesting changes in specifications will be considered an engineering change. Engineering changes after acceptance representing work performed in addition to or resulting from changes in the original specifications and drawings submitted, or change orders requesting an additional quantity, will be billed as additional work and shall be paid for by Purchaser at current rates normally charged by Brunk. Change orders from Purchaser requesting a reduction in quantity shall be considered a cancellation and treated accordingly. All changes requested by Purchaser shall be subject to reconsideration and approval by Brunk within twenty (20) days of the requested change. In the event of cancellation of an order by Purchaser, Brunk reserves the right in its discretion to charge

Purchaser a cancellation charge equal to the losses incurred by Brunk, including, but not limited to, the cost of finished goods, work in process and raw material allocated to the canceled order. In the event Purchaser designates tooling to be removed from Brunk, Brunk reserves the right, in its discretion, to charge Purchaser a severance charge equal to 20% of the total tooling orders. Purchaser shall pay this charge, together with all other unpaid amounts, prior to Brunk's release of tooling to Purchaser.

8. **SHIPMENT AND RISK OF LOSS.** Unless otherwise specified in the quotation, all shipments of the Goods shall be F.O.B. Brunk's plant. Risk of loss shall pass to Purchaser at the time the Goods are delivered to a carrier at Brunk's plant and Purchaser shall be solely responsible for procuring commercially reasonable insurance coverage for the Goods after such delivery for the benefit of Brunk and Purchaser. Brunk assumes no responsibility for delay or damage after shipment from Brunk. Purchaser shall be responsible for filing any claims against such insurers or carriers.
9. **DELAYS.** Brunk shall not be liable for any delay or failure in performance or delivery under these Terms and Conditions where such delay or failure arises or results from or in connection with strikes, work stoppages or other labor difficulties of any kind; fire; any act of God or inclement weather; riots, sabotage or other disturbances of the peace; breakdown, destruction or failure of Brunk's equipment or facilities outside the control of Brunk; delays of suppliers; or any other cause beyond the reasonable control of Brunk, whether or not similar to the causes or occurrences herein enumerated.
10. **INTELLECTUAL PROPERTY; PROTOTYPES.** Purchaser hereby acknowledges and agrees that any and all intellectual property, including, without limitation, patents, copyrights and trade secrets, used or to be used by Brunk in the design, engineering and manufacture of goods (other than any intellectual property related to design specifications provided by Purchaser to Brunk) are proprietary to Brunk and title thereto, including all applicable patent, copyright and trade secret rights thereto, shall remain the property of Brunk. All tooling, designs, tool designs, samples, prototypes, models, preproduction samples and other specifications developed by Brunk related to the goods shall remain the exclusive property of Brunk and no use of the foregoing may be made, nor may any idea obtained therefrom be used, except upon compensation to be determined by Brunk or as otherwise set forth in Brunk's quotation.
11. **INDEMNIFICATION.** Purchaser shall indemnify and hold Brunk, and each of its officers, directors, employees, shareholders, affiliates, agents, representatives, successors and assigns, harmless from any and all claims, actions, demands, legal proceedings, judgments, settlements, sums, costs, liabilities, losses, obligations, damages, penalties, fines, costs and other expenses (including, but not limited to, reasonable attorneys' fees) relating to, arising out of or resulting from (i) Purchaser's importation, exportation, sale or use of any Good, including, without limitation, any third party claims for personal injury or property damage, and (ii) any violation of any patent or other proprietary right of any third party relating to Brunk's design, development, engineering, manufacture or sale of any Good in accordance with Purchaser's specifications. If any claim should be asserted or action commenced against Brunk for which Brunk is entitled to indemnification hereunder, Purchaser shall, upon Brunk's demand, promptly undertake the defense of such claim or action, employing counsel satisfactory to Brunk, or agrees that Brunk may elect to defend the same on its own behalf. In either case, Purchaser will, upon demand, pay all reasonable attorneys' fees and other costs or expenses incurred by Brunk in connection with such defense, including, but not limited to, any judgment or award resulting from any such claim or action and any settlement paid by Brunk with Purchaser's consent.
12. **SECURITY INTEREST.** Brunk shall have, and Purchaser hereby grants to Brunk, a security interest and lien right, including the right to retain possession, on all Purchaser's property in Brunk's possession, including tooling owned by Purchaser, work in process and finished work, until such time as Purchaser shall have fully performed its obligations under any agreement resulting from any quotation, purchase order or sale under these Terms and Conditions. The extension of credit, acceptance of notes, trade acceptances, letters of credit or guarantees of payment or any arrangement for payment, shipment, production or otherwise shall not constitute a waiver of such security interest and lien.
13. **GOVERNING LAW.** These Terms and Conditions, and the interpretation, construction and enforcement thereof, and all provisions, suits and special proceedings thereunder shall be governed by the internal laws of the State of Wisconsin, without regard to any choice or conflicts of law provisions and without regard to rules of construction concerning the drafter thereof. Purchaser irrevocably and unconditionally (i) consents to submit to the exclusive jurisdiction of the state and federal courts located in Walworth and Milwaukee Counties, Wisconsin, for the resolution of any dispute between the parties concerning any Goods or these Terms and Conditions; (ii) agrees not to commence any such proceeding except in such courts; and (iii) waives any objection to the laying of venue of any such proceeding in the state or federal courts located in Walworth and Milwaukee Counties, Wisconsin. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to any transaction between Brunk and Purchaser.
14. **SET OFF.** Brunk may set off any amount due from Purchaser, whether or not under these Terms and Conditions, against any amount due Purchaser hereunder.
15. **ASSIGNMENT.** Purchaser may not assign any of its rights, duties or obligations under these Terms and Conditions without Brunk's prior written consent. Any attempted assignment without Brunk's written consent, even if by operation of law, shall be null and void.
16. **CONFLICTS.** In the event of any ambiguity or conflict between or among these Terms and Conditions and any other agreement or writing signed by Brunk, these Terms and Conditions shall govern and control, unless expressly provided otherwise in such agreement.
17. **WAIVER.** The failure of Brunk or Purchaser, at any time, to require the performance of any obligation or to assert a right contained herein will not affect either party's right to require such performance or assert such right at anytime thereafter; nor shall the waiver of any right or obligation be construed in any way as a waiver of any succeeding breach.
18. **BINDING EFFECT.** These Terms and Conditions shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns. These Terms and Conditions may be performed, and all rights hereunder against Purchaser may be enforced, wholly or in part by Brunk or any one or more of Brunk's designated agent corporations now or hereafter a subsidiary of, affiliated with or a successor to Brunk.
19. **SEVERABILITY; SURVIVAL.** If any portion of these Terms and Conditions shall for any reason be invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable and carried into effect. Sections 6, 11, 12, 13, 14, 18 and 19 shall survive any termination of these Terms and Conditions.