



TERMS AND CONDITIONS OF SALE

These terms of sale and conditions apply to all quotations. No oral representations, prior practice, waiver, or modifications of the provisions herein shall be binding unless set forth in writing and signed by a duly authorized representative of Seller. Upon sales order acknowledgement from Brass Smith Innovations, LLC, these terms and conditions become part of the Contract Documents.

Buyer's addition to or variance of the terms contained herein shall be deemed a counteroffer and shall have no effect unless accepted by Seller. Buyer's objection to any terms contained herein shall be deemed to have been waived if written notice is not received by Seller within five (5) calendar days of contract acknowledgement date. The Buyer will, in any event, be deemed to have assented to all terms and conditions herein if any part of the described merchandise is accepted.

PRICE

Quoted prices are valid for 45 calendar days. After 45 calendar days, the price is subject to renegotiation.

Quoted prices are based upon anticipated delivery date(s), or 120 calendar days from quote if no such date is expressly stated. If Buyer does not take delivery at the agreed upon time or otherwise delays for any reason whatsoever, prices may be adjusted at the sole discretion of Seller.

Seller's quoted price is limited to materials offered in its Quotation, description of goods, scope of work, bill of material or other identification of materials and quantities to be supplied. Any material modifications, additional materials, changes in finishes, or quantities ultimately supplied, Buyer will pay Seller a mutually agreed upon price negotiated at the time of the requested change.

All shipments are FOB Seller's factory and invoiced on a pre-pay and add basis unless otherwise stated in writing by the Seller. Buyer will pay the invoiced freight, including any surcharges or demurrage.

If freight is included in the contract price, any increase in transport rates or surcharges put into effect between the date of the Seller's Quotation and shipment may be added to the contract price, at the sole discretion of Seller. In no instance will the contract price include special handling, special crating, congestion charges, express or priority carriers.

The contract price does not include any local, state, or federal sales, use, excise, or other tax or tariff on the material or from the sale. Any such tax is in addition to the price and will be paid by Buyer, unless expressly stated in writing by Seller.

FORMATION OF CONTRACT

Seller, in marketing its products, has an established network of dealers, consultants and commissioned sales representatives. The individuals and companies involved in this marketing network are independent businesses. They are not the agents or employees of Seller and have no authority, express or implied, to bind Seller in contract.

Buyer's Purchase Order is not binding upon Seller until Buyer approves final design submittals, contract pricing, and Seller acknowledges the order in writing. Unless Buyer makes reservations in writing within five (5) calendar days of receipt, the Seller's acknowledgement shall complete the Contract Documents between the parties.

In the event of any inconsistency between the written terms expressed in the Buyer and Seller Contract Documents, Seller's Terms & Conditions of Sale shall control Buyer's terms. In the event of inconsistency in Seller's terms, the more specific language shall take precedence over the more general.

Seller may refuse to quote to Buyer, withdraw its Quotation, refuse to issue its Order Acknowledgement, suspend performance of a contract once formed, or rescind a Contract after formation; if, in the opinion of Seller, Buyer is not credit-worthy under the standards of credit worthiness that Seller applies to all its customers in a non-discriminatory fashion. Seller will not be liable for any damages to Buyer occasioned by Seller's exercise of its right under this Section.

SUBMITTAL PROCEDURE

If required by the Contract Documents, and to the scope, manner, and extent specifically set forth in the Contract Documents, Seller shall prepare and furnish Buyer product information, submittal drawings, detail or shop drawings, or other materials, as are customary in the trade with respect to goods of the type supplied by Seller.

The submittal will be based upon and limited to the drawing numbers and specification sections set forth in the Contract Documents or other data and/or information received from Buyer no later than the time of contract formation and/or relied upon by Seller.

Approval of a submittal shall certify and accept that the submittal is in accordance with Contract Documents. If the work is performed in accordance with an approved submittal, Seller shall be deemed to have performed its contract.

Buyer's right to reject a submittal shall be limited to nonconformity to the Contract Documents. Approval of a submittal "as noted" shall be deemed a rejection. In the event of a rightful submittal rejection, Seller shall revise and resubmit for approval.

All approvals "as noted" shall be deemed significant unless expressly agreed to in writing by Seller (and can lead to a delay in the contract). As such, Seller shall follow the revise and resubmit procedure set out above. If Buyer indicates that approved "as noted" drawings are to be put into fabrication either expressly or implicitly, Buyer waives the opportunity to further review submittal drawings and accepts all responsibility for misinterpretation of "as noted" markups.

Seller shall not be entitled to damages caused by Buyer's rightful rejection of the submittal, and Buyer shall not be entitled to damages associated with delays in the submittal process.

CHANGES – EXTRAS

Any action or communication (written or verbal) from Buyer which results in changes, delays, additions, deletions, revisions, or the like, in the Contract Documents, description of the goods, scope of work, bill of material, or quantities or types of material to be supplied, will automatically give rise to an increase in the contract time and/or price.

CUSTOMER SUPPLIED EQUIPMENT

Buyer agrees to hold Seller harmless for damage or loss incurred to parts, materials, and/or third-party buyout assemblies or equipment shipped to Seller that is not an integral part of the equipment to be fabricated by Seller. In the event of visible damage to incoming freight, Seller will provide Buyer necessary documentation to file a valid freight claim. Any latent damage or defects are the sole responsibility of Buyer.

For any Buyer parts, materials, and/or third-party buyout assemblies or equipment which are not shipped to the Seller and are integral of the equipment to be fabricated by the Seller, Buyer agrees to hold Seller harmless for any and all costs associated with equipment modifications, installation or commissioning delays, end user backcharges, and/or consequential damages due to errors in information provided by the Buyer or its supplier(s) on the above referenced items.

CANCELLATIONS

For cancellation prior to production, Buyer agrees to pay a charge equal to the value of any specially purchased material, engineering costs and 10% of the contract price as liquidated damages.

For cancellation after production begins, Buyer agrees to pay engineering costs; the purchase price of the items actually produced (whether partially or fully complete); the value of any specially purchased materials not yet in production; plus 10% of the difference between the value of the purchase price of the items produced and the total contract price as liquidated damages. Unless Buyer specifically and in writing requests delivery of partially or fully completed materials, any such materials will be scrapped upon cancellation.

Due to the custom nature of Seller's products, returns are not accepted.

SHIPMENTS, TITLE, AND RISK OF LOSS

Seller makes good faith projections of shipping time and delivery dates(s); however, these projections are not guaranteed. Seller shall not be held liable for any damages or delays associated with late deliveries.

Title and ownership of goods shall pass to Buyer upon Seller's tender of the goods to freight carrier. At that time, risk of loss and duty to insure is assumed by the Buyer. This passage of title is subject to Seller's reserved right to stop shipment and repossess for non-payment, default, anticipatory breach, prospective inability to perform the Security Agreement, separate security agreement, or any other interest recognized by law or in equity.

Damage claims must be immediately noted on the carrier's copy of the bill of lading at time of receipt and filed with the carrier to be recognized.

Any demurrage, fees, or other claims for delay associated with shipment are for the account of and will be paid by Buyer.

Buyer must inspect all items for nonconformity defects and damage, whether latent or patent, before acceptance.

Buyer must file a written claim for shortage, defect, or other nonconforming goods within five (5) working days of shipment receipt. Otherwise, Buyer waives any claim, and the goods shall be deemed accepted. Acceptance is final. Buyer waives the right to revoke any acceptance.

Overshipment or shipment of incorrect material does not give rise to Buyer's ownership of said materials. Such shipments must be reported upon discovery. Buyer will cooperate with

Seller to return items with shipping costs to be borne by Seller. In the event Buyer does not notify Seller of such a shipment as required, then the shipment shall be deemed a change as described under "CHANGES – EXTRAS". Buyer shall be liable to pay Seller for goods, and ownership and risk of loss shall vest in Buyer.

DELAYS

Both parties agree that delays are to be reasonably anticipated in the fabrication and delivery of goods due to the nature of the products supplied by Seller. Quoted ship dates on custom fabricated products are approximate and predicated upon conditions in the Contract Documents. It is Buyer's responsibility to place orders with adequate lead time to allow for unavoidable delays. Seller will not be liable for material shortages, transit delays, or other delays beyond its direct control.

PAYMENT TERMS

Seller will issue invoices upon shipment. Full payment of the net amount invoiced is due 30 calendar days from the invoice date. Buyer agrees to pay Seller interest of 1.5% per month, or the maximum rate allowed by law, on any overdue and unpaid balance (including accrued and unpaid interest). If buyer elects to delay shipment after commencement of production, buyer will be invoiced immediately for full contract price and storage charges with Net 30 payment terms applied as described above.

Notwithstanding other Contract Document provisions, Seller reserves the right to withhold shipment of any further materials once an invoiced amount is more than 30 calendar days overdue from Buyer. Seller will not be liable for any incidental or consequential damages, including cost of cover or cure, lost production, and profit for its good faith withholding of shipments.

Buyer hereby grants Seller a security interest in the goods supplied under and described in these Contract Documents. Buyer shall execute any necessary documents, including a separate Security Agreement, Financing Statement, and otherwise cooperate in Seller's perfection of its security interest. In the event Buyer defaults on payment or other provision of this contract, title to goods shall revert to Seller, and Seller may, with or without notice, enter the premises of Buyer to repossess goods. (The Buyer's customer is also bound by Seller's right to repossess goods.) Buyer retains risk of loss until Seller takes possession.

BACKCHARGES – RETAINAGE

Buyer waives the right to set off or backcharges against any invoiced amount.

Seller may, at its discretion, agree to set off or backcharge a claim against the amounts invoiced by Seller. Such an agreement is valid only if an authorized representative of the Seller signs a written agreement to the specific and itemized set off or backcharges. Seller must be notified in writing by the Buyer at the time of an occurrence. This may lead to a claim against Seller, and Seller will be given a reasonable opportunity to inspect and cure.

Buyer will separately invoice Seller for any value it claims is owed from Seller. Unless otherwise agreed to in writing by Seller, Buyer's claim does not affect its obligation to pay the full invoiced amount by Seller.

In the event Seller agrees to a setoff or backcharges, the amounts agreed upon may include materials, labor, and reasonable overhead, but shall in no instance include profit.

WARRANTY

Seller warrants materials and workmanship from date of delivery for defects other than shipping, handling, and installation damage. Warranty varies by product line and can be found on the Seller's web site at www.bsidesigns.com. Warranties do not apply to said equipment or any part thereof, which has been subject to accident, alteration, abuse, or misuse. Parts furnished by suppliers to Seller are guaranteed only to the extent of their manufacturers' expressed warranty to Seller, and under no circumstances will it include labor or freight charges to replace a defective part. Upon receipt of a defective item or otherwise proof of a defect, Seller will repair the item or provide a replacement. A repair work order shall be obtained from Seller prior to shipping defective part or unit back to Seller.

Stated warranties shall not be construed to create any liability in Seller for monetary damages, Buyer's cost of cover or cure, field costs, labor, delay, product spoilage, or any other incidental or consequential damages. There are no other warranties expressed or implied, including the implied warranty of merchantability, which extends beyond stated warranties.

Should any portion of this agreement be held to be invalid, it shall have no impact on the validity of the balance of the agreement.
