

# Brax Company

## TERMS AND CONDITIONS

1. Quotations are valid from thirty (30) days from the quotation date unless agreed upon by Brax Company (“Brax” or “Seller”).
2. All invoices are due upon receipt unless extended terms are approved by Brax. The Buyer’s payment to Brax will not be dependent or contingent upon receipt of payment to the Buyer or any other parties. Any balance remaining beyond the negotiated terms will be subject to a finance charge of 18% per annum of the remaining balance until receipt of payment in full. Returned checks are subject to a \$35.00 late fee. If buyer fails to pay an invoice, Brax reserves the right to engage an attorney or collection agency to collect the balance due and to include collections and attorney’s fees where applicable.
3. Until all amounts due have been paid in full, Brax retains a security interest in the equipment and has all rights of a secured party under the Uniform Commercial Code, including, without limitation, the right to take possession of the equipment without legal process and the right to require Buyer to assemble equipment and make it available to Brax at a place reasonably convenient to both parties. At Brax’s request, Buyer shall execute any financing statement or statements submitted by Seller in order that Seller’s security interest in the equipment may be perfected.
4. If Buyer makes a change or delays or interrupts the progress of delivery of pumps, parts or service, Buyer will reimburse Brax for any additional expense incurred resulting therefrom. Brax reserves the right to ship and bill for good/material when ready for shipment in accordance with agreed-upon shipment or delivery terms as indicated within the quotation.
5. Buyer shall immediately inspect the equipment upon receipt. Brax is not obligated to consider any claim for shortages or non-conformance unless notified by Buyer within 24 hours after Buyer’s receipt of equipment. Modifications to the equipment furnished by Brax to meet OSHA or local safety codes will not be the responsibility of Brax unless specifically requested and agreed upon. Brax will only supply the safety devices, if any, described in the order. Brax assumes no responsibility for any costs, direct or indirect, resulting from disapproval of our tender by owner.
6. Unless otherwise noted, all FREIGHT will be prepaid and added at final invoicing “PPA” FOB Factory.
7. It is expressly understood that Brax’s liability for products is limited to the furnishing of replacement parts. Brax will not be liable for incidental, special or consequential damages of any kind (including, but not limited to interests, costs or expenses downtime, transportation and installations costs, loss of use, lost profits, production or wages, increased cost of operation, whether or not Seller knew such damages might be incurred), spoilage of material, relating to the resale or use of the equipment or products for any purpose except as provided, items damaged by standard wear, neglect or abuse, items

that have been altered or tampered with, and items which have not been operated or maintained in accordance with manufacturer specifications.

8. Cancellation or suspension of a contract will be accepted only upon terms that will indemnify Brax against loss arising therefrom. Brax deems the right to cancel any order prior or at the time of receiving the final approved drawings. In this event the Buyer will be refunded any deposits.

9. Buyer agrees that this contract contains the complete and final agreement between Brax and the Buyer with respect to the subject matter hereof, and may not be modified, supplemented, explained, or waived by oral evidence, your purchase order, course of dealing, or any other way, except where made in writing and signed by the Buyer and a Brax authorized officer.

10. Any dispute or claim arising out of or relating to this transaction shall be settled by binding arbitration in accordance with Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitration may be entered in any court having jurisdiction hereof.

11. All information and data herein furnished to Buyer hereunder, relating to price, size, type and design is submitted with the understanding that it is for the Buyer's own confidential use and is not to be shown or otherwise made known or available to or relied upon by any third party at any time without Brax's written consent.

12. Any litigation arising out of, or related to credit extended by Brax or to products purchased by Buyer shall take place in San Diego County, California.

13. Buyer agrees that it will not divert, use, export or re-export the products contrary to the United States Law. Buyer expressly acknowledges and agrees that it will not export, re-export, or provide the products to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargos may change from time to time but currently includes: Cuba, Iran, Sudan and Syria. Buyer also expressly acknowledges and agrees that it will not export, re-export or provide the products to entities and persons that are not eligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List or Unverified List.

14. Purchases which are requested to be held at will-call are stored for a maximum of 14 days. Any purchases that exceed 14 days will be shipped to Buyer. All freight costs associated with the shipment of will-call purchases will be the responsibility of the Buyer.

15. All Shipping dates given are approximate and while effort is made to maintain schedules, Seller will not be liable for damages due to delay.

16. No returns will be accepted without prior written approval and a valid credit memo. All returns will be accompanied by the original invoice and are subject to a 25% restocking fee of the invoice price.

Special- order items are non-returnable. All freight on returns will be prepaid by the buyer unless prior written arrangements have been approved by the Vice President.

17. **(a) Manufacturers' Warranty:** All new part and equipment supplied by Brax carry specific manufacturer's warranty and will be covered by their respective terms. In the event there is a warranty claim, Brax will assist in working with the manufacturer or supplier to handle any warranty concerns. Buyer shall pay all shipping costs for returns under manufacturer's warranty.

**(b) Service Warranty:** Brax warrants all repairs and installation services (workmanship only) for a period not to exceed one (1) year from the date of repair/installation. Exclusions: Brax will not be liable for incidental, special or consequential damages of any kind, (including, but not limited to interests, costs or expenses downtime, transportation and installations costs, loss of use, lost profits, production or wages, increased cost of operation, whether or not Seller knew such damages might be incurred), , spoilage of material, relating to the resale or use of the equipment or products for any purpose except as provided, items damaged by standard wear, neglect or abuse, items that have been altered or tampered with, and items which have not been operated or maintained in accordance with manufacturer specifications. All claims are subject to evaluation and approval by Brax. Seller will not refund amounts paid for services actually rendered.

18. All credit card transactions are subject to a 3% processing fee.

19. The failure of Seller to enforce or exercise any right, condition, term, or provision herein shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.

20. **Notice to Owner**

Under California Mechanics Lien Law any contractor, subcontractor, laborer, supplier or other person who helps to improve your property, but is not paid for his/her work or supplies, has a right to enforce claim against your property. This means that after a court hearing, your property could be sold by a court officer and the proceeds of the sale used to satisfy the indebtedness. This can happen even if you have paid your contractor in full if the subcontractors, laborers or suppliers remain unpaid. To preserve their right to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are required to provide you with a document entitled "Preliminary Notice." Original (or prime) contractors and laborers for wages do not have to provide this notice. A Preliminary Notice is not a lien against your property. Its purpose is to notify you of persons who may have a right to file a lien against your property if they are not paid. Generally, the maximum time allowed for filing a claim or lien against your property is ninety (90) days after completion of your project.

**TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:**

- a) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay

damages up to the amount of the bond. This payment and performance bond as well as a copy of the constrictor contract should be filed with the county recorder for your further protection.

- b) Require that payments be made directly to subcontractors and material suppliers through a joint control. Any joint control agreement should include the addendum approved by the Registrars of Contractor.
- c) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. This will help to insure that all persons due payment are actually paid.
- d) After making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional lien releases signed by each material supplier, subcontractor and laborer involved in that portion of the work for which payment was made. On projects involving improvements to a single family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a lien against your property. In other types of construction this protection may still be important, but may not be as complete. **TO PROTECT YOURSELF UNDER THIS OPTION YOU MUST BE CERTAIN THAT ALL MATERIAL SUPPLIERS, SUBCONTRACTORS OR LABORERS HAVE SIGNED.**

## 21. **Force Majeure**

Any delay or failure of Seller to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond Seller's control, without Seller's fault or negligence and that by its nature could not have been foreseen by Seller or, if it could have been foreseen, was unavoidable (which events may include, but are not limited to, natural disasters, epidemics, pandemics, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities).