

Brinkmann Pumps Inc.

Terms and Conditions



The following terms and conditions govern all quotations made by Brinkmann Pumps Inc. („Brinkmann“) and any orders based upon these quotations. No contract term or condition shall be amended, deleted or added without the express written consent of Brinkmann, and Brinkmann hereby rejects any terms set forth in any other writing which are in addition to or different from the terms in this quotation.

These items and conditions and any other terms and conditions delivered in writing by an authorized agent of Brinkmann contemporaneously herewith constitute the complete agreement between Brinkmann and the buyer and supersede all prior oral, written or printed statements of any kind (including any terms and conditions submitted by the buyer and performance or production data from any source whatsoever, including references to accuracy, capacity, and capability of products, all of which are estimates only) made by Brinkmann or the buyer or their respective representatives. No statement, recommendation or assistance given by Brinkmann or its representatives to buyer or its representatives, in connection with the use of any products by buyer, shall constitute a waiver by Brinkmann of any of the provisions hereof or affect Brinkmann's liability, as defined herein. All transactions covered hereby and all terms and conditions of sale shall be governed by the laws of the state of Michigan.

Prices

The products offered in this proposal and the prices quoted are based on our understanding of buyer's requirements; any change in requirements will necessitate a revision in prices quoted. Prices are F.O.B. our dock, Wixom, Michigan, or other location as specified on proposal. Brinkmann's prices do not include sales, use, excise, or similar tax, applicable to the sale or use of the equipment proposed. These taxes shall be paid by the buyer, or in lieu thereof, the buyer shall provide Brinkmann with a tax exemption certificate acceptable to the taxing authorities.

Delays or failure to deliver

Brinkmann shall not be responsible for delay or failure to fulfill any aspect of the parties' agreements if the delay or failure is in any way related to force majeure or acts of God, including but not limited to any local, state, or government order, regulation, or action (civil or military), orders or actions by US or foreign Customs, fire, delays caused by Covid or other pandemic or epidemic, embargo, strike or other labor interruptions, wrecks, delays in transportation, severe weather, inability to obtain necessary labor or materials from the usual source of supply, or

any other circumstances beyond Brinkmann's control.

Brinkmann shall have the right, but not the obligation, to furnish suitable substitutes for materials that cannot be obtained because of such force majeure.

Installation

Buyer shall install at its own expense and liability, all products covered hereby in accordance with the operating instructions to be furnished to buyer upon request. Unless otherwise stated, no installation services are included in the price indicated. Buyer assumes all responsibility and liability for alternations or modifications made to the products and goods buyer purchases from Brinkmann.

Limited warranty

Brinkmann warrants to the buyer (but not to any other person or entity, including the ultimate end user of Brinkmann's products) for a period of one year from date of shipment that all new parts are free from defects in material and workmanship. Brinkmann's said warranty shall exist only if buyer gives written notice to Brinkmann within ten days after the first determination that the part is defective and within the aforesaid one year period from the date of shipment and includes in said notice consent to Brinkmann to inspect, at any reasonable time, said part and the machine in which it may be embodied, and if, and only if, Brinkmann determines to its reasonable satisfaction upon said inspection that said part and the machine in which it may be embodied are, and have been, used in accordance with all instructions as to maintenance and operation set forth in the operating instructions relating to the machine. Brinkmann's warranty is limited to shipping to buyer replacement of any part which is so proven to be defective and in any event Brinkmann is **not liable whatsoever for incidental or consequential damage or loss of profit**, including damages resulting from personal injury or death, or damage to, or loss of use of, any property. Brinkmann is not responsible for shipping costs or labor. Brinkmann extends no warranty of any kind, whether express or implied, for the wear and tear of any materials or components, including but not limited to any gaskets, seals, or similar materials. Notwithstanding any provisions of these terms and conditions, **this warranty is the only warranty extended by Brinkmann in connection with any sales of its products and is in lieu of all other warranties, express or implied, including warranties of merchantability or fitness for purpose.** No agent, employee or representative of Brinkmann has any authority to bind Brinkmann to any affirmation, representa-

tion, or warranty concerning the products that are the subject of this quotation beyond that specifically included in the written quotation. Brinkmann shall have no obligation to install or provide improvements or changes in design adapted by Brinkmann for similar equipment subsequent to acceptance of buyer's order.

Warranties have been discussed and understood by both parties.

Buyer's use and O.S.H.A.

Buyer shall use and require all persons operating the equipment to use all proper and safe operating procedures set forth in operating instructions relating to the equipment and observe all occupational safety health and standards act (O.S.H.A.), American National Standard Institute (ANSI), and state regulations as required and all available, feasible and practical point of operation safety devices consistent with buyer's use of the equipment. Buyer shall not remove or modify, any device, warning sign, operating instructions or work handling tools installed on or attached to the equipment. Buyer shall notify Brinkmann promptly, in writing, and in all events within ten (10) days after its occurrence, of any accident or malfunction involving any equipment which results in injury to or death of persons or damage to property, or the loss of use thereof and buyer shall cooperate fully with Brinkmann in investigation and determining the cause of any such occurrence of malfunction. At Brinkmann's request made at any time, buyer will either at its or Brinkmann's place of business, permit to redesign, remodel or revise the equipment and buyer waives any claims against Brinkmann for buyer's inability to use the equipment during the time that same is out of service for such revision, modification or redesign.

Brinkmann shall not be responsible for any failure to comply which results from the location, operation, design, use or maintenance of the equipment from alternation of the equipment by persons or firms other than Brinkmann, or from an option or accessory to the equipment by persons or firms other than Brinkmann, which was available to the buyer but omitted at the buyer's direction, or from design or instructions furnished by the buyer or its agents. In view of the above, Brinkmann does not make any warranties with respect to O.S.H.A. requirements, including noise; and will not be responsible for fines, penalties, or consequential damages.

Payment terms

Net payment in full of all invoices is due thirty (30) days net, unless stated otherwise in quotation. Any unpaid balance thereafter shall be subject to a service charge of 1.75 % per month or, if

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illegal, at the highest rate allowed by law. There shall be no extension or change in the time for payment due to delay in installation and/or delays in operation of the equipment caused by damage, warranty service or warranty replacement of parts. If after Brinkmann's acceptance of buyer's purchase order, buyer requests Brinkmann to delay shipment of the equipment, the purchase price shall become due and owing thirty (30) days after the equipment is ready for shipment. If buyer fails to pay the purchase price as provided herein and Brinkmann must undertake any collection efforts of any monies due and owing, then buyer will pay Brinkmann's actual expenses and attorneys' fees incurred in connection with any such collection efforts.

Acceptance of orders

Quotations are offered for written acceptance within thirty (30) days from date (unless otherwise stated) but are subject to change without notice at any time before acceptance. If any order contains printed, stamped or other provisions inconsistent or in conflict with the terms and conditions hereof, the terms and conditions hereof shall control, unless otherwise specifically stated by Brinkmann in writing. All clerical errors are subject to correction in favor of either party upon notice of either party. All orders are subject to the credit approval of Brinkmann. An order containing subject matter not within the contemplation of the proposal shall be subject to a further quotation as to price or delivery or both. Modifications, changes, deferred shipments, cancellations or additions are never allowed, unless approved by Brinkmann, in its sole discretion, in writing. In the event of a Brinkmann-approved cancellation, buyer will be charged a restocking fee in the amount of 40% of the total sales price that was cancelled. Buyer is obligated to pay the restocking fee to Brinkmann immediately. Buyer will indemnify Brinkmann against all costs and losses associated with cancellation.

Title and security agreement

Delivery to carrier shall constitute transfer to the buyer, and all risk of loss or damage in transit shall be borne by the buyer.

By execution of a purchase order, buyer hereby grants to Brinkmann a security interest in the equipment covered by the proposal, and its products and/or proceeds in order to secure the payment of the purchase price thereof and buyer authorizes to file financing statements reflecting this security interest without buyer's signature. Buyer will cooperate with Brinkmann in preparing documents necessary to perfect this security interest.

Proprietary and other materials

This quotation and all drawings, specifications, materials, patterns, and special purpose manufacturing aids which are supplied to buyer by Brinkmann shall be kept in confidence and shall be listed and maintained in suitable condition at the expense of buyer and are to be considered the property of Brinkmann held on consignment by buyer and to be insured while in buyer's possession. Such articles and all copies thereof from any source shall be returned to Brinkmann at any time upon request and shall not be used for or by any third parties without the express written permission of Brinkmann.

Performance in event of default

In addition to the rights and remedies conferred upon Brinkmann by law, Brinkmann will not be required to proceed with the performance of any order or contract if buyer is in default in the performance of any order or contract with Brinkmann and in case of doubt as to buyer's financial condition, shipments under an order may be suspended or sent sight draft with bill of lading attached and Brinkmann may decline further shipments except for cash before shipment.

Hold harmless/indemnity

Except to the extent of Brinkmann's own gross negligence or willful misconduct, buyer agrees to indemnify, defend, and hold Brinkmann, its employees, agents, and subcontractors, harmless from and against any and all third party claims, suits, liabilities, damages, expenses (including, without limitation, reasonable attorneys' fees, expert fees, and other costs of investigation and defense) or other losses relating in any way to buyer's acts or omissions relating to the parties' agreements, relating in any way to buyer's use of the equipment and products purchased from Brinkmann, relating in any way to any alleged improper design or manufacture of the equipment or products sold hereunder, or of any claimed inadequate or insufficient safeguards or safety devices. Further, buyer waives, releases and discharges any and all claims of any and every kind (including but not limited to injury or death of any person or damage to property), which it may have at any time against Brinkmann, its agents or employees, relating in any way to an alleged improper design, specification or manufacture of the equipment or products sold hereunder, or of any claimed inadequate or insufficient safeguards or safety devices.

Electrical equipment

Motors, electrical equipment and wiring on the equipment quoted will be supplied in accor-

dance with the manufacturer's standards. Unless specifically quoted they are not guaranteed to meet ordinances of any local governing body and the responsibility of conforming to any local ordinance is assumed by the buyer.

Inspection and testing, production estimates and performance

All working drawings or other materials provided by Brinkmann are for general information purposes only and may or may not relate to buyer's order or other equipment. Any specifications contained therein are not binding on Brinkmann except as expressly so stated. Brinkmann reserves the right to make, at any time, such changes in detail of design or construction as shall in the sole judgment of Brinkmann constitute an improvement over former practice. Production data, where given, are based on Brinkmann's careful analysis and understanding of the limits of accuracy, machinability of materials, amount of material to be removed, handling facilities provided, and location points but are nonetheless an estimate only and not guaranteed or warranted. In no event shall Brinkmann be responsible for performance figures supplied by other parties. If by written agreement the equipment is to be subject to acceptance tests before shipment, rejection under this clause must take place prior to shipment.

Returned equipment

After delivery of the equipment and products, buyer cannot return any equipment and products to Brinkmann without the express, written approval of Brinkmann. Within 10 days of delivery, Brinkmann retains the option, in its sole discretion, to allow a return of the equipment and products requested by buyer. All Brinkmann-approved returns, regardless of the reason for return, are subject to a 40% restocking charge payable by buyer immediately. If Brinkmann does approve of a return, buyer is only entitled to a credit in the amount of the sales price for the returned items less 40% restocking charge. That remaining 60% of the sale price will be treated as a credit against future purchases from Brinkmann. In the event buyer does not purchase any other goods from Brinkmann within 12 months, then the credit will be extinguished. Notwithstanding the foregoing, returns are never allowed under any circumstances after 10 days from the date of delivery. Buyer returning equipment and products must pay transportation charges and bear risks of loss or damage to goods while in transit. Acceptance of returned products by Brinkmann is not an admission of liability, nor will it obligate Brinkmann to accept any other returns.