



**BRIGHTON  
TRU-EDGE HEADS**

# TERMS OF SALE

## **ENERFAB, INC. , DOING BUSINESS AS BRIGHTON TRUE EDGE HEADS - GENERAL CONDITIONS APPLYING TO PROPOSALS - CONDITIONS OF SALE**

1. **OFFER AND ACCEPTANCE.** This proposal is made to Purchaser for immediate acceptance. It shall constitute a contract of sale only after Brighton shall have received Purchaser's acceptance and issued Brighton's Head Order Acknowledgement. Upon issuance of a Head Order Acknowledgement, the terms and conditions herein contained shall be the terms and conditions of sale.
2. **DUTY AND TAXES.** The price quoted in the foregoing proposal shall be increased without notice by the amount of any tax or duty of any kind levied or proposed under present or future laws by any federal, state, municipal or other government authority upon the goods or upon the sale, use, receipt, manufacture, delivery, import or transportation thereof, or upon Brighton by reason of the performance of the foregoing proposal, excluding only income taxes associated with the performance of the foregoing proposal.
3. **WARRANTY.**
  - (A) Brighton agrees that the materials and work will be furnished in accordance with the specifications contained in the foregoing proposal. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE EXCLUDED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS, AND FITNESS FOR A PARTICULAR PURPOSE.
  - (B) Brighton shall not be held responsible for work done, material furnished, repairs or designs made by others unless Brighton so agrees in writing. Further, any such work done without Brighton's consent or supervision immediately voids any warranties specified in the foregoing proposal.
  - (C) Brighton's liability for warranties provided hereunder shall be further limited as set forth in the "Liability" section and "Inspection" section below.
  - (D) In the event Purchaser believes it is entitled to make a claim hereunder for rework or replacement, Purchaser shall notify Brighton, and Purchaser and Brighton shall mutually determine the nature and extent of the claim, and the location at which rework or replacement, if any, shall be performed; provided, however, that Brighton shall have no responsibility for costs incurred by Purchaser in making preparations for rework or replacement.
4. **INSPECTION.** All products are inspected in Brighton's plant prior to shipment. However, Purchaser agrees that upon receipt of any products from Brighton, it will perform an adequate inspection of same BEFORE any product is attached to any vessel. Attachment without such inspection shall constitute a complete release of Brighton from any and all liability claimed by Purchaser thereafter.
5. **LIABILITY.** Brighton shall not be responsible for any losses, damages or delays due to transportation difficulties, or for any losses, damages, detentions or delays caused by fire, labor shortage, strike or other difference with employees, civil or military authority, insurrection, riot, war, accident, shortage of care, fuel, labor or material, flood, storm, or any other cause or circumstances, whether like or unlike the foregoing, or for any delays due to failure of Purchaser to furnish and/or approve technical data, drawings, etc. Acceptance of materials by Purchaser on delivery shall constitute a waiver of any claims or damages due to delay whether or not excused by the foregoing. FURTHER, UNDER NO CIRCUMSTANCES SHALL BRIGHTON BE LIABLE FOR ANY LIQUIDATED, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR ANY PENALTIES. IN ADDITION, UNDER NO CIRCUMSTANCES SHALL BRIGHTON BE LIABLE FOR ANY DAMAGES ARISING FROM LEAKS OR RUPTURES IN GOODS BUILT TO CUSTOMER SUPPLIED SPECIFICATIONS OR TO INDUSTRY ACCEPTED DESIGN CODES. Purchaser shall indemnify and hold Brighton harmless from and against any and all losses, liabilities, costs and expenses, including without limitation, attorney's fees, arising out of or connected with (I) Purchaser's use of goods and other equipment and work furnished to Purchaser by Brighton; and (II) any claim or allegation that the goods or any other equipment or work furnished to Purchaser by Brighton infringes any patent, trademark, copyright or other proprietary right of any third party.
6. **CHANGES OR DELAYS.**
  - (A) If Purchaser delays or interrupts the progress of work, or causes changes to be made, or if there is a lack of facilities or apparatus to be shipped to Brighton by Purchaser, then Purchaser shall reimburse Brighton for any additional expense, whether direct or indirect, resulting from such causes.
  - (B) Purchaser agrees to pay Brighton for any extras in the form of labor and/or material in an amount to cover any extra work which may be required over and above the work necessary to normally execute the foregoing proposal.
  - (C) In the event Purchaser fails to make any payment to Brighton in the amount and at the time such payment is due, Brighton shall have the right to suspend performance until such time as payment is made. Such right shall be in addition to any other equitable or legal remedies which Brighton may have.
7. **TITLE.** Until the materials and work Brighton proposes to furnish in the foregoing proposal have been fully paid for, and accepted by Purchaser, all property incorporated in the work shall remain personal property, no matter how affixed or attached to real estate, and the title thereto shall remain in Brighton's name, and in the event of any default by Purchaser, Brighton may at once, and without process of law, take possession of the materials and work performed and remove the same from the premises of Purchaser or repossess the materials and work wherever they may be, as and for the property of Brighton. Purchaser agrees to execute and deliver to Brighton, if Brighton so requests, a financing statement conforming to applicable commercial law.
8. **MODIFICATION.** No condition, representation or agreement altering, detracting from or adding to the terms of the foregoing proposal shall be valid unless such condition, representation or agreement is in writing and approved by Purchaser and by an officer of Brighton.
9. **GENERAL.**
  - (A) In the event of a conflict between the terms and conditions of the foregoing proposal and the terms and conditions stated in the plans and specifications submitted either with it or hereafter prepared by the parties, the foregoing proposal shall govern.
  - (B) In the event of a conflict between the terms and conditions of any foregoing proposal and these general conditions, these general conditions shall govern.
  - (C) IN THE EVENT OF A CONFLICT BETWEEN THESE GENERAL CONDITIONS AND THE TERMS AND PROVISIONS OF ANY DOCUMENTS ISSUED BY PURCHASER CONCERNING THE FOREGOING PROPOSAL, THESE GENERAL CONDITIONS SHALL GOVERN. PURCHASER'S PURCHASE ORDER OR ANY OTHER EXPRESSION OF ACCEPTANCE SHALL BE DEEMED TO BE A WRITTEN CONFIRMATION OF THE FOREGOING PROPOSAL AND THESE GENERAL CONDITIONS. Further, acceptance of the foregoing proposal is expressly limited to its terms and these general conditions. Conduct or performance by Brighton recognizing the existence of a contract shall not constitute an acceptance of or assent to any additional or different terms proposed by Purchaser.
  - (D) The validity, construction and effect of the foregoing proposal and these general conditions shall be governed by the laws of the State of Ohio.
  - (E) As used herein, the term "Brighton" means "Brighton, INC.", and the term "Purchaser" means the person or entity for whom the work in the foregoing proposal will be done.
  - (F) If any material furnished by Purchaser in connection with the work to be completed under the proposal is defective or will not conform to Brighton's requirements because of chemical composition, dimensions or physical properties, Brighton may cancel this proposal or the contract of sale into which it may mature without liability, and in such event, Purchaser shall pay Brighton's costs incurred through time of cancellation.

The foregoing Proposal and the above General Conditions Applying to Proposals and Conditions of Sale are delivered to Purchaser in anticipation of purchase. Upon Brighton's issuance of a Head Order Acknowledgement, this document, together with information contained in Brighton's Proposal and Head Order Acknowledgement shall be considered to specify the terms and conditions of sale.