

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES – SERVICE CONTRACTS

1. Applicability.
 - (a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the services and/or goods ("**Goods and Services**") by Brock, LLC ("**Seller**") to the buyer named in the quote (the "**Quote**") on the reverse side of this document ("**Buyer**") with respect to the items being quoted in the Quote. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
 - (b) The Quote and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties respect to the sale of the Goods and Services, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
2. Delivery.
 - (a) The Goods and Services will be delivered and completed as specified in the Quote or, if not specified in the Quote, within a reasonable time after the receipt of Buyer's signed Quote .
 - (b) Seller may, in its sole discretion, without liability or penalty, make partial completion of the Goods and Services. Each partial completion will constitute a separate sale, and Buyer shall pay for the portion completed whether such completion is in whole or partial fulfillment of Buyer's purchase order.
3. Non-completion
 - (a) The Seller shall not be liable for any non-completion of Goods and Services (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-completion within 5 days of the date when the Goods and Services would in the ordinary course of events have been completed.
 - (b) Any liability of Seller for non-completion of the Goods and Services shall be limited to completing the Goods and Services within a reasonable time or adjusting the invoice respecting such Goods and Services to reflect the actual quantity delivered.
4. Delivery or Completion Dates. Delivery or completion dates quoted by the Seller will not be construed as creating a situation where "time is of the essence" unless the parties specifically agree to the contrary in writing.
5. Collateral. As collateral security for the payment of the purchase price of the Goods and Services, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods and Services, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under applicable law. Seller is authorized by Buyer to file UCC financing statements and any other documents or filings necessary or desirable to perfect such security interest or reflect such security interest in public records.
6. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.
7. Inspection and Rejection of Nonconforming Goods and Services.
 - (a) Buyer shall inspect the Goods and Services within 5 days of completion by the Seller of the Goods and Services ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods and Services unless it notifies Seller in writing of any Nonconforming Goods and Services during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods and Services**" means only the following: Goods and Services delivered are different than identified in Seller's Quote;
 - (b) If Buyer timely notifies Seller of any Nonconforming Goods and Services, Seller shall, in its sole discretion, (i) repair or replace the Nonconforming Goods and Services, or (ii) credit or refund the Price for such Nonconforming Goods and Services.
 - (c) Buyer acknowledges and agrees that the remedies set forth in **Section 7(b)** are Buyer's exclusive remedies for the delivery of Nonconforming Goods and Services.
8. Price.
 - (a) Buyer shall purchase the Goods and Services from Seller at the price[s] (the "**Price[s]**") specified in this Agreement.
 - (b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
9. Payment Terms.
 - (a) Buyer shall pay all invoiced amounts due to Seller as specified in the Quote or if no defined terms are specified in the Quote, invoiced amounts will be paid within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder in US dollars.
 - (b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods and Services if Buyer fails to pay any amounts when due hereunder or under any other order or contract between Buyer and Seller.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. Limited Warranty.

(a) Seller warrants to Buyer that for a period of ninety (90) days from the date of completion of the Goods and Services ("**Warranty Period**"), that such Goods and Services will materially be free from material defects in workmanship caused by the negligence of Seller. Such warranty shall expire at the end of the Warranty Period except with respect to material defects identified by Buyer in a written notice to Seller received by Seller prior to the expiration of the Warranty Period.

(b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with the Goods and Services. Third Party Products are not covered by the warranty in **Section 10(a)**. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the warranty set forth in **Section 10(a)** unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Services; and (iii) Seller reasonably verifies Buyer's claim that the Goods and Services are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in **Section 10(a)** if: (i) Buyer makes any further use of such Goods and Services after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods and Services; or (iii) Buyer alters or repairs such Goods and Services without the prior written consent of Seller.

(f) Subject to Section 10(d) and Section 10(e) above, with respect to any such Goods and Services covered during the Warranty Period by the warranty contained in Section 10(a) above, Seller shall, in its sole discretion, either: (i) repair or replace such Goods and Services (or the defective part) or (ii) credit or refund the price of such Goods and Services at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods and Services to Seller.

(g) **THE REMEDIES SET FORTH IN SECTION 10(f) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(a).**

11. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

12. Insurance. During the term of this Agreement and for a period of three years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$3,000,000 with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

13. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

14. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; or (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent or is reasonably likely to become insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors or is not generally paying its bills as they come due or (iv) defaults on any other agreement between Buyer and Seller.

15. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Confidential Information. All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or

media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; or (b) rightfully obtained by Seller on a non-confidential basis from a third party.

17. **Force Majeure.** The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

18. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

19. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Tennessee.

22. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Tennessee in each case located in the City of Chattanooga and County of Hamilton, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

23. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the this Agreement or the Quote or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

24. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

25. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Quote including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.

26. **Indemnification.** Except for claims relating to Goods and Services that are expressly covered by the limited warranty contained in Paragraph 10(a) herein, Buyer shall indemnify, defend and hold harmless Seller, its affiliates, parent and its and their officers, directors, agents and employees (each, an "Indemnified Party") from and against any and all liabilities, claims, demands, judgments, losses, recalls, fines, costs, damages or expenses whatsoever (including reasonable attorney's, consultants' and other professionals' fees incurred by such Indemnified Party in connection therewith), including, without limitation, with respect to personal injury including death, property damage, and any consequential and punitive damages ("Losses") which Indemnified Party may sustain, suffer, or incur and that result from, arise out of or relate to, or that are alleged to result from, arise out of or relate to, the use, sale, or installation of the Goods and Services, regardless of whom shall be making such claim.

27. **Changes or Cancellation.** After the Seller's quote is accepted by Buyer, changes or cancellation cannot be made by the Buyer without the prior written consent of the Seller. As a condition of written consent for a change or cancellation the Buyer agrees to pay all reasonable losses, costs and/or damages the seller may incur as a result of such changes or cancellation.