

## Terms and Conditions of Sale

- 1. ACCEPTANCE GOVERNING PROVISIONS AND CANCELLATION.** This writing constitutes an offer by BROCK WHITE COMPANY, LLC, its divisions and subsidiaries (the "SELLER") to sell the products described herein in accordance with these terms and conditions, and is expressly conditioned upon assent to these terms and conditions. No additional or contrary terms and conditions, or product or service specifications, contained in any purchase order or other communication from the purchaser hereunder (the "BUYER"), or any third party, shall be construed as, or constitute a waiver of these terms and conditions, or acceptance of any such additional terms, conditions or specifications and SELLER hereby objects to such additional or contrary terms, conditions or specifications unless otherwise expressly stated on the reverse side hereof.
- 2. DELIVERY.** All deliveries of products hereunder shall be FOB SELLER's warehouse or other facility, SELLER shall have no further responsibility for the products, and all risk of damage to or loss or delay of the products shall pass to BUYER upon their delivery at the FOB point to the common carrier designated by BUYER, or if BUYER fails to designate a common carrier, selected by SELLER. BUYER shall bear all costs of shipping the products ordered. SELLER reserves all rights permitted by law with respect to delivered products including, without limitations, the rights of rescission, reclamation, repossession, resale, replevin and stoppage in transit until the full amount due from BUYER in respect of all delivered products has been paid. Unless otherwise expressly specified on the reverse side hereof, SELLER may make delivery of products hereunder in installments. BUYER shall be invoiced separately for each such installment.
- 3. DELAY.** SELLER shall not be liable for any loss or damage caused by delay in furnishing any products or services hereunder, or delay in any other performance provided for under these terms and conditions. Delay in the delivery of any products or the furnishing of any services hereunder shall not relieve BUYER from the obligation to accept and pay for the balance of any such products or services ordered hereunder.
- 4. ACCEPTANCE.** In the event of any shortage, damage or discrepancy in or to a shipment of products, BUYER shall promptly report the same to SELLER and

furnish written evidence or other documentation, as SELLER may deem appropriate. SELLER shall not be liable for any such shortage, damage, or discrepancy unless SELLER has received notice and substantiating evidence thereof from BUYER within five (5) days of arrival of the products at BUYER's shipping address. If the substantiating evidence delivered by BUYER demonstrates to SELLER's satisfaction that SELLER is responsible for such shortage, damage, or discrepancy, SELLER shall deliver additional or substitute products to BUYER in accordance with the delivery procedures set forth herein, provided that any damage or non-conforming products are returned to the FOB point, in good and merchantable condition, within thirty (30) days of the arrival of the products at BUYER's shipping address. No product returns will be accepted without prior written authorization from the SELLER. BUYER will be assessed a fifteen (15%) restocking and rehandling charge on all returns. In no event shall SELLER be liable for any additional costs, expenses or damages (including, but not limited to consequential damages) incurred by BUYER directly or indirectly as a result of any shortage, damage or discrepancy in or to a shipment.

**5. PRICE AND PAYMENT.** Unless otherwise expressly stated on the face hereof, all prices hereunder are subject to change without notice. The price of products on order but not shipped will be adjusted to SELLER's price in effect at the date of shipment. All product prices hereunder are FOB SELLER's warehouse or other facility, unless otherwise expressly stated on the reverse side hereof. All payments hereunder shall be due the tenth (10th) day of the month following the month in which SELLER's invoice is issued. If, and for as long as, any payment from BUYER to SELLER hereunder shall be overdue, interest at the lesser of (a) one and one-half percent (1-1/2%) per month, or (b) the highest rate of interest allowable under applicable law, shall automatically become due and payable on all balances outstanding as of the date such payment is overdue. In addition, SELLER shall not be obligated to ship any products ordered hereunder in the event any amount due and payable by BUYER to SELLER hereunder should be more than thirty (30) days overdue. The foregoing shall be in addition to, and not exclusive of, any other remedy

SELLER may have, at law or in equity, in the event of any overdue payment hereunder.

**6. TAXES AND OTHER CHARGES.** BUYER shall be responsible for and shall pay, or reimburse SELLER for, all taxes (other than net income taxes), duties, import deposits, assessment and other governmental charges, however designated, which are now or hereafter imposed under or by any governmental authority or agency (a) by reason of the performance by SELLER of its obligation hereunder, (b) as a result of the payment of any amounts by BUYER to SELLER hereunder, or (c) based on the use of any product or service ordered hereunder. All payments to be made by BUYER to SELLER hereunder represent net amounts SELLER is entitled to receive and shall not be subject to any deductions for any reason whatsoever. In the event any such payments become subject to taxes, duties, assessments or fees of whatever kind or nature, such payments from BUYER shall be increased to such an extent to allow SELLER to receive the net amounts due hereunder.

**7. CUSTOMER RETURNS.** Brock White will not accept a customer return unless it is authorized in accordance with our policy. Special Order and Non-stock items may not be returned with out prior authorization. Return authorization can be obtained through original selling location or sales representative. Brock White Truck Drivers or Sales People are not allowed to pick-up return products at customer locations or jobsites unless they have been given prior authorization. Items must not be returned via third party carrier without prior authorization. Items returned without prior authorization may be refused.

For *non-hazardous* materials no bill of lading is required for returns. For *hazardous* materials proper shipping information must be available to the driver and proper Point Of Purchase shipping packaging must also be with the material.

Products being returned must also be in unopened containers, undamaged, not leaking or defective, have complete original manufacturer labeling; must not be expired at the time of the return, and must be in saleable condition.

All returns are subject to a restocking charge based on the original sales price.

**8. WARRANTY.** All products sold to BUYER hereunder are sold on an "As Is" basis, provided that BUYER may benefit from warranties extended by the manufacturer or producer of the products sold hereunder. **ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, MAINTENANCE OR PERFORMANCE OF ANY PRODUCTS ORDERED HEREUNDER.**

**9. LIMITATIONS OF LIABILITY.** THE SOLE AND EXCLUSIVE REMEDIES FOR SELLER'S LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE), OTHER THAN LIABILITY FOR WILLFUL MISCONDUCT, WITH RESPECT TO THE PRODUCTS AND SERVICES COVERED BY THESE TERMS AND CONDITIONS AND ALL OTHER PERFORMANCE BY SELLER UNDER OR PURSUANT TO THESE TERMS AND CONDITIONS SHALL BE LIMITED TO THE REMEDIES PROVIDED IN SECTION 7 HEREOF. IN NO EVENT SHALL SELLER'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

**10. CONFIDENTIAL INFORMATION.** BUYER acknowledges and agrees that all information, other than information in published form or expressly designated by SELLER is non-confidential, which is directly or indirectly disclosed to BUYER by SELLER or embodied in the products provided hereunder, regardless of the form in which it is disclosed, relating in any way to SELLER's markets, customer's products, patents, inventions, procedures methods, designs, strategies, plans, assets, liabilities, costs, revenues, profits, organization, employees, agents, distributors or business in general (the "SELLER Information") is confidential and proprietary to SELLER. BUYER agrees not to use any of such SELLER information for any purpose other than as permitted or required for performance by BUYER

hereunder. BUYER further agrees not to disclose or provide any of such SELLER information to any third party, and to take all necessary measures to prevent any such disclosure by its employees, agents, contractors or consultants. Nothing herein shall prevent BUYER from using, disclosing, or authorizing the disclosure of any information provided by SELLER to BUYER hereunder which is, or hereunder becomes, part of the public domain. At SELLER's request, BUYER shall cooperate fully with SELLER in any and all legal actions taken by SELLER to protect its rights in the SELLER information. SELLER shall bear all costs and expenses reasonably incurred by BUYER in the course of cooperating with SELLER in such legal action.

**11. IMPORT AND EXPORT.** BUYER shall be responsible for obtaining all licenses and permits and for satisfying all formalities as may be required to import and deliver the products ordered hereunder to the shipping address requested by BUYER. BUYER shall supply SELLER on a timely basis with all information and documentation requested by SELLER in order to permit SELLER to export the products for use by BUYER hereunder. BUYER shall not dispose of any U.S. origin products, know-how, technical data, documentation or other products or materials furnished to it pursuant to this Agreement, to any party or in any manner which would constitute a violation of the export control regulations of the United States now or hereafter in effect if that disposition was made by a U.S. corporation, or a non-U.S. corporation subject to those regulations. SELLER will use its best efforts to assist BUYER in obtaining such approvals.

**12. TERMINATION.** Any and all orders for products and services made hereunder may be terminated in accordance with the following provisions:

(a) Either party hereto may terminate such order(s) at any time by giving notice in writing to the other party, which notice shall be effective upon dispatch, should the other party file a petition of any type as to its bankruptcy, be declared bankrupt, become insolvent, make an assignment for the benefit of creditors, go into liquidation or receivership, or otherwise lose legal control of its business, or should the other party or a substantial part of its business come under the control of a third party.

(b) Either party may terminate such order(s) by giving notice in writing to the other party should an event of Force Majeure, which extends the performance of one of

the parties hereto of all, or substantially all of such party's obligations hereunder, continue for more than three (3) months as provided in Section 12 hereof, and

(c) Either party may terminate such order(s) by giving notice in writing to the other party in the event the other party is in breach of this Agreement and shall have failed to cure such breach within thirty (30) days of receipt of written notice thereof from the first party.

In the event of the termination of the order(s) for products or services hereunder, for any reason, the parties shall have the following rights and obligations:

(a) Termination of such order(s) shall not release BUYER from the obligation to make payment of all amounts then or thereafter due and payable;

(b) SELLER shall have the right, at its option, to cancel any or all accepted orders from BUYER, which provide for delivery after the effective date of termination.

(c) BUYER's obligations pursuant to Section 9 hereof shall survive termination of such order(s), and

(d) Without prejudice to any other remedies which either party may have in respect of any breach of these terms and conditions, neither party shall be entitled to any compensation or like payment from the other as a result of such termination.

**13. FORCE MAJEURE.** Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without liability on its part from the performance of its obligations hereunder, except for the obligation to pay any amounts then due and owing, but only to the extent, and only for the period, that its performance of such obligations is prevented by the event of Force Majeure. Force Majeure shall mean any event or conditions, not existing as of the date of signature hereof, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part, the performance by one of the parties of its obligations hereunder or which renders the performance commercially unreasonable, including, without limitation, acts of State or governmental action, riots, disturbance, war, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning, and explosion. It is in particular expressly agreed that the occurrence of any condition or circumstance that would prevent the legal fulfillment by SELLER of its obligations hereunder under any applicable law or regulation, including any refusal or failure of any

governmental authority to grant any permit or license required for the sale or export by SELLER of the products ordered hereunder, shall constitute an event of Force Majeure. During the period that the performance by one of the parties of its obligations hereunder has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable. To the extent such event of Force Majeure should extend for more than three (3) consecutive months, either party may terminate this Agreement without liability to the other party, except for payments due to such date, upon giving written notice to the other party.

**14. DISPUTES AND GOVERNING LAW.** These terms and conditions shall be governed by, and interpreted and construed in accordance with, the laws of the State of Minnesota, U.S.A., excluding the United Nations Convention of the International Sale of Goods. Any dispute, claim or controversy arising out of or relating to these terms and conditions shall be resolved in the competent courts of the State of Minnesota, to which exclusive jurisdiction the parties hereby submit themselves.

**15. RELATIONSHIP.** Performance under these terms and conditions does not make either party the employee, agent or legal representative of the other for any purpose whatsoever, each party shall be acting as an independent contractor. Neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other party.

**16. ASSIGNMENT.** BUYER shall not have the right to assign or otherwise transfer its rights and obligations under these terms and conditions without the prior consent of SELLER. Any prohibited assignment shall be null and void.

**17. NOTICES.** Notices permitted or required to be given hereunder shall be deemed sufficient if given by registered or certified mail postage prepaid, return receipt requested, addressed to the respective addresses of the parties as set forth herein. Notice shall be effective upon the earlier of (a) receipt by the party to which notice is given, or (b) on the seventh (7th) business day following the date such notice was posted.

**18. MODIFICATION.** These terms and conditions shall not be deemed or construed to be modified,

amended, rescinded, canceled or waived, in whole or in part, except by written amendment signed by the parties hereto.

**19. DOCUMENTATION.** All documentation supplied by SELLER to BUYER pursuant to this Agreement shall be in the English language and in the standards of measurement then being used by SELLER.

**20. SEVERABILITY.** In the event that any of the provisions of these terms and conditions are in conflict with any rule of law or statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such provisions shall be deemed stricken from these terms and conditions, but such invalidity or unenforceability shall not invalidate any of the other terms of hereof, and these terms and conditions shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of these terms and conditions.

**21. WAIVER.** No failure by either party to take action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

**22. RENTALS.** In addition to the terms and conditions stated above, if BUYER rents or leases equipment or products from SELLER ("Rental Equipment") BUYER shall be subject to the following terms and conditions:

(a) At the time of pick-up or delivery of the Rental Equipment, BUYER acknowledges that the Rental Equipment is in good and safe working condition. BUYER further agrees to maintain the Rental Equipment in good and safe operating condition at its own expense.

(b) BUYER shall use the Rental Equipment solely for the purpose for which the Rental Equipment was produced and within its performance and capacity limits. BUYER agrees to use the Rental Equipment in conformance with all applicable laws, rules, regulations, and manufacturer's operating instructions and only by persons who are trained in the safe operation of such Rental Equipment. If the Rental Equipment is operated for more than 8 hours per day, 40 hours per week, or 160 hours in any 4 week period, BUYER agrees to pay additional rent prorated at the applicable daily, weekly or monthly rates on the excess usage.

(c) BUYER shall return the Rental Equipment to SELLER immediately upon expiration of the rental period in as good condition as when received, less ordinary wear and tear, and free from all contamination and hazardous substances. If the returned Rental Equipment requires maintenance or cleaning beyond normal wear and tear, the SELLER will repair and/or clean the Rental Equipment and BUYER will pay for such repair and cleaning at SELLER'S regular repair parts prices and shop labor rates upon receipt of the invoice for such services. If the Rental Equipment is lost or destroyed, BUYER shall pay SELLER the full replacement value of such Rental Equipment, together with any rental charges due.

(d) In the event that the Rental Equipment should become or be found to be defective in any way during the rental period, BUYER shall notify SELLER and shall cease all use of such equipment immediately. SELLER shall then replace any defective Rental Equipment with comparable Rental Equipment. BUYER shall continue to make, and be liable for, all rental charges.

(e) BUYER assumes all risk and liability for Rental Equipment and shall indemnify, defend and hold SELLER harmless against any claim arising out of or relating to the use of Rental Equipment.

(f) BUYER shall not remove or alter safety instructions, warning notices, numbering, lettering or the like or affix anything to the Rental Equipment without the approval of the SELLER.

(g) BUYER agrees that no option to purchase or other agreement shall be construed as a conditional sales contract and BUYER will give SELLER immediate notice if the Rental Equipment becomes subject to seizure or any other event which might adversely affect SELLER.

**23. ENTIRE AGREEMENT.** THESE TERMS AND CONDITIONS CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDE ALL PREVIOUS AGREEMENTS BY AND BETWEEN SELLER AND BUYER RELATED TO THE PURPOSE OF PRODUCTS OR SERVICES HEREUNDER, AS WELL AS ALL PROPOSALS, ORAL OR WRITTEN, AND ALL NEGOTIATIONS, CONVERSATIONS OR DISCUSSIONS HERETOFORE HAD BETWEEN THE PARTIES RELATED THERETO. BUYER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER THIS AGREEMENT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED HEREIN.