

## TERMS AND CONDITIONS FOR SALES, SERVICES AND RENTALS

ALL SALES, SERVICES, AND RENTALS ARE GOVERNED SOLELY BY THE TERMS AND CONDITIONS HEREIN, NO TERMS PROVIDED BY CUSTOMER, INCLUDING ANY TERMS THAT MAY BE ATTACHED TO A PO OR REQUEST FOR BID, WILL ALTER IN ANY WAY THE TERMS AND CONDITIONS FROM BROCK

THIS AGREEMENT CONTAINS PROVISIONS RELATING TO INDEMNITY, RELEASE, LIMITATION OF LIABILITY AND ALLOCATION OF RISK FOR WORK PERFORMED BY ANY BROCK COMPANY ("BROCK")

1. **PRICE:** Customer agrees to pay Brock for any services, goods or rentals (sometimes collectively referred to as the "Work") ordered in accordance with prices quoted to Customer and as such scope is agreed between the Parties (defined herein as Brock and Customer). Prices are exclusive of all taxes - federal, state or local, unless otherwise noted. Any sales or other tax or duty which Brock may be required to collect or pay will be added to the price; if such amounts are not included in any invoice, they may be invoiced separately.
2. **INVOICING AND PAYMENT:** Brock shall submit invoices to Customer on a routine basis for Work provided on a Cost Plus, Time and Materials, and Unit Rate basis, which shall include charges for Services for which time charges and/or unit costs shall apply and any charges for reimbursable costs. For work provided on a Lump Sum basis, the amount of each invoice shall be determined on the "percentage of completion method" whereby Brock will estimate the percentage of the total work accomplished, including the value of Goods delivered to the site, during the invoicing period. Sales shall be billed upon delivery and rentals shall be billed as agreed by the Parties. Terms of payment are net thirty (30) days following invoice date. Customer agrees that any past due amounts shall bear interest from the date due until paid at the rate of 1.5% per month. In the event of non-payment, Brock may file and foreclose any and all applicable liens and may suspend all Work on Customer's project as provided herein. Invoices are not subject to discounting or set-offs by Customer, and payment for Work performed is due regardless of suspension or termination of the Work by either party.
3. **JOB SITE SAFETY:** Neither the activities of Brock nor the presence of Brock or its employees and sub-contractors at a project or construction site, shall relieve Customer or any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Brock and its personnel have no authority to exercise any control over any construction contractor, entity, or their employees in connection with their work or any health or safety precautions.
4. **LIMITED WARRANTY:** With regard to the services furnished by Brock (the "Services"), Brock warrants that such Services shall be performed in a good and workmanlike manner and in accordance with Customer's written specifications, drawings and instructions provided to and accepted by Brock; such warranty shall extend for a period of twelve (12) months from the date of completion of the given Services, and Brock shall reperform or correct Services to remedy any breach of such warranty provided Customer gives Brock written notice of the issue within the twelve month warranty period. For any Services so corrected, the warranty shall be reinstated for the longer of (a) the remainder of the original warranty period or (b) six (6) months from the date on which the Services are corrected. Customer shall have no other remedies whatsoever in connection with said Services. With regard to materials, equipment, supplies or manufactured articles (collectively, the "Goods") purchased or rented by Customer, Brock for its part makes no independent representations about the standard, grade or quality of any Goods manufactured and/or assembled by others and sold or rented by Brock and extends no warranties whatsoever, but only assigns to Customer all transferable warranties (and remedies extended thereunder) provided by the manufacturers of such Goods to which Brock is entitled and agrees to reasonably assist and intervene on Customer's behalf in the enforcement of such warranties and remedies. Customer agrees to look solely to such manufacturers with regard to claims and remedies relating to such Goods. Brock warrants to Customer that all Products of its own manufacture ("Brock Products") supplied shall conform in all respects to Brock's published Product specifications and shall be and remain free of defects in materials and workmanship for a period of twelve (12) months following manufacture; in the event of Brock receiving notice within the warranty period of such defect Brock will, at its sole discretion, replace or repair the defective Product. The cost to repair or replace said products shall not exceed the price of the Products or extend to any ancillary or related costs not included in the original Order with respect to such products. **The foregoing remedies of repair or replacement shall be the sole and exclusive obligations and responsibilities of Brock (and the sole and exclusive remedies of Customer) with respect to nonconformance of Products and/or Services. Except as expressly set forth herein and subject to the foregoing, Brock has not made, does not make, nor extend, and hereby disclaims for all purposes, any and all other remedies, representations, warranties or covenants, express or implied, including without limitation all warranties of merchantability, suitability, fitness for any particular purposes, performance, condition, design, application, use and/or durability or any warranties otherwise provided by applicable law.**
5. **SCAFFOLD RENTALS:** Rentals shall begin on the day of the first shipment of the scaffold materials and/or equipment (hereinafter collectively referred to as "Equipment" which includes scaffold equipment, shoring equipment, or forming equipment) and shall terminate upon the return of the Equipment in fully working, clean condition to Brock, at Customer's cost, at Brock's designated location. If the Equipment is missing, lost or stolen, the Equipment will continue to be rented until the replacement has been purchased and received by Brock. Any freight, insurance or customs charges related to the Equipment will be billed to Customer's account. Customer shall at all times and at its own expense, including labor, material, parts and similar items, keep the Equipment in good repair, safe and efficient working order and shall assume all risks of damage, loss, theft, destruction or mysterious disappearance of the Equipment from any cause, with the exception of

ordinary wear and tear, as determined by Brock. Customer shall, at its own expense, insure the Equipment for not less than full replacement value against all risks of loss or damage and maintain commercial general liability insurance with limits of not less than \$2,000,000 for bodily injury, death or property damage, in each case naming Brock as an additional insured. The Equipment shall be assessed upon return to Brock, including inspection for damage and cleanliness and physical count for loss. All determinations made by Brock shall be final. At Brock's sole and complete discretion, Brock shall repair, clean or replace any damaged Equipment and shall replace any lost or stolen Equipment, and in each case, all expenses will be billed to Customer's account. Customer shall not permit any liens or encumbrances to attach to the Equipment, and Customer shall promptly take all action necessary, at its own expense, to discharge any claims, liens, charges, encumbrances or legal process. Customer agrees to erect, maintain and use the Equipment in a safe and proper manner, in conformity with all laws, regulations and ordinances pertaining thereto, and in accordance with all OSHA standards. Brock shall have no responsibility, direction or control over the manner of the erection, maintenance, use or operation of the Equipment by Customer unless agreed to in writing by Brock. The Equipment is and shall remain personal property and is the sole and exclusive property of Brock. Customer may not remove tags or labels identifying Brock as the owner of the Equipment. The Equipment shall be kept by Customer at the location where it is delivered and Brock shall at all times have the right to enter the premises where the Equipment may be located for the purpose of inspecting the Equipment. Customer shall not make any alterations, additions or improvements to the Equipment without the prior written consent of Brock. Customer shall be responsible for the cost to return the Equipment to its original condition as it is with any damage caused to the Equipment. If any such alterations, additions or improvements cause the Equipment to be damaged beyond repair, then Customer shall reimburse Brock the current purchase price as shown in Brock's current price book for such damaged Equipment.

6. ADDITIONAL TERMS GOVERNING RENTALS AND PURCHASE OF RENTAL GOODS:

A. Damaged, Lost, Stolen or Unclean Equipment: Customer shall, at all times and at its own expense, keep the Equipment in good and operable condition, and Customer shall assume all risks of damage, loss, theft, destruction or disappearance of the Equipment from any cause, with the exception of ordinary wear and tear. The Customer shall immediately inform Brock of all losses or damage to the Equipment and shall provide Brock with the name of the Customer's insurer, the name and contact information of the Customer's insurance agent, a copy of any police report, all necessary proofs and complete information concerning any insurance coverage for the loss or damage. Brock, or its appointed agent, shall, in its sole judgment, determine if the damage is caused by ordinary wear and tear. The condition of the Equipment shall be assessed upon return to Brock, including inspection for damage and cleanliness, and a physical count to determine the type and amount of any missing Equipment. All determinations made by Brock shall be final. At Brock's sole and complete discretion, Brock shall, each at Customer's expense, repair or clean or any damaged Equipment, or replace any damaged, lost or stolen Equipment at Brock's price list in effect at the time of return of the Equipment. Accrued rental charges or allowances for depreciation shall not offset the purchase price or cost of repairs of damaged, lost, or stolen Equipment. Customer shall not permit any claims, liens, charges, or encumbrances to attach to the Equipment, and Customer shall promptly take all action necessary, at its own expense, to discharge the same to Brock's satisfaction. In the event Brock has to take steps to remove any such liens, Customer shall be liable for any and all costs associated, including reasonable attorney fees.

B. Use of Equipment: Customer agrees to erect, maintain and use the Equipment in a safe and proper manner, in conformity with all laws, regulations and ordinances pertaining thereto, and in accordance with all OSHA standards. Brock shall have no responsibility, direction or control over the manner of the erection, maintenance, use or operation of the Equipment by Customer. It is the responsibility of Customer to fully and properly integrate the Equipment into Customer's drawings in a manner consistent with safe practice and the overall project objective, as determined by Customer, its architects and engineers.

C. Personal Property: The Equipment is and shall remain personal property and is the sole and exclusive property of Brock unless and until purchased and paid for by Customer. Customer may not remove tags or labels identifying Brock as the owner of the Equipment.

D. Removal and Inspection at Location: The Equipment shall be kept by Customer at the location where it is delivered and shall not be intermingled, connected to or used with any Equipment or goods of others. At all times, Brock shall have the right to enter the premises where the Equipment may be located for the purpose of inspecting the Equipment.

E. Alteration of Equipment: Customer shall not make any alterations, additions or improvements to the Equipment without the prior written consent of Brock. All alterations, additions and improvements of whatsoever kind or nature made to the Equipment shall belong to and become the property of Brock on the Term's expiration or any earlier termination of this Agreement. If any alterations, additions or improvements are made to the Equipment which cause the Equipment to be damaged beyond repair, then Customer shall be responsible for payment of the purchase price for the damaged Equipment in accordance with Section 6A.

F. Disclaimer of Warranties: BROCK MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE RENTAL EQUIPMENT, INCLUDING, BUT NOT LIMITED TO THE MERCHANTABILITY OF THE EQUIPMENT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN OR CONDITION OF THE EQUIPMENT, THE QUALITY OR CAPACITY OF THE EQUIPMENT, THE WORKMANSHIP OF THE EQUIPMENT, COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, RULE, REGULATION, SPECIFICATION OR CONTRACT PERTAINING TO THE EQUIPMENT, PATENT INFRINGEMENT, OR LATENT DEFECTS. CUSTOMER TAKES THE EQUIPMENT "AS IS."

G. "As Is Where Is" Sale: In instances of sale of the Rental Equipment to Customer either as an initial transaction or following rental of the Equipment, all sales are made on an "as is where is" basis with no warranties or representations whatsoever regarding the Equipment.

7. INDEMNIFICATION:

- (A) Brock release and indemnities. Except as provided in sections 4 through 6 above, Brock agrees to indemnify customer group from and against any and all claims arising out of, resulting from, or relating to (i) personal injury, including death or disease, affecting any person who is a member of the Brock Group (herein defined as any Brock entity, its affiliates, directors, officers, parent companies, or owners), (ii) loss or damage to property of Brock Group excluding products and rental equipment after delivery to customer and (iii) pollution or contamination which originates from Brock's rental equipment above the surface of the earth or water while such Brock rental equipment is in Brock's sole possession or control, including costs of clean up or remediation associated therewith arising out of or in connection with the work performed by any member of Brock Group under any order. And to the extent caused by Brock's negligence, gross negligence, or willful misconduct.
- (B) Customer release and indemnities. Customer agrees to indemnify Brock Group from and against any and all claims arising out of, resulting from, or relating to (i) personal injury, including death or disease, affecting any person who is a member of the customer group; (ii) loss or damage to property of customer group including, without limitation, any loss or damage to any equipment or site being worked on by Brock and/or other contractors; (iii) loss or damage of rental equipment after delivery to customer; (iv) pollution or contamination which originates above or below the surface of the earth or water which may occur in conjunction with the work, including, but not limited to, that which may result from any fire, explosion; and/or (v) other catastrophic event at the work site, damage to any surface location and any subsurface and subsea loss or damage, and/or the cost of clean-up and remediation (vi) any loss, damage, injury and/ or death suffered or sustained by any person, party or entity in iii-v to the extent of customer group's negligence, gross negligence, or willful misconduct.
- (C) Third Party Claims. Subject only to the provisions of Section (B) III-V above, each Party shall, to the full extent of its liability therefore under applicable law, be and remain responsible for, and shall Indemnify the other Party and all members of its Group from and against, any and all Claims resulting from or with respect to (i) bodily injury, disease, or death suffered by any Third Party, or (ii) damage to or loss of property suffered or sustained by any Third Party.

8. CONSEQUENTIAL DAMAGES WAIVER:

(A) Notwithstanding any provision of these Terms and Conditions to the contrary, neither Party shall be liable to the other Party (or any member of the other Party's Group) for, and each Party hereby waives and releases the other Party from and against, any and all Claims for Consequential Damages (as hereinafter defined). For purposes of the foregoing, the term "Consequential Damages" shall mean and include (i) all indirect, incidental, special, punitive, exemplary, or consequential damages or consequential losses of any nature whatsoever (whether or not foreseeable), and (ii) damages or losses, whether direct or indirect, for lost product or production, lost profit or revenue, loss of data, lost business, loss of or inability to use property and equipment, losses from business interruptions, losses resulting from failure to meet other contractual commitments or deadlines, or losses from downtime of rigs, vessels or facilities.

(B) Without negating the preceding general exclusion of Consequential Damages, the Parties expressly agree that Claims with respect to the following shall NOT be considered Consequential Damages and are recoverable between the Parties: (i) Brock claims with respect to amounts due it for Work or Customer's cancellation of an Order(s); (ii) damages for breaches of a Party's obligations with respect to the Confidential Information (as hereinafter defined) or Intellectual Property of the other Party, or (iii) Third Party Claims with respect to which a Party is entitled to indemnification under these Terms and Conditions.

9. LIMITATION OF LIABILITY: Any liability of Brock, save for its insurance and indemnity requirements herein, shall be strictly limited to the price of the Order giving rise to a Claim or Claims.

10. DELAYS/FORCE MAJEURE: The consequences, direct or indirect, of labor troubles, Acts of God (including hurricanes, tornadoes, earthquakes, tsunamis, landslides, fires, or floods), accidents, hostilities, shortage of transportation, failure or suspension or curtailment of production due to shortage of labor or supply of raw materials, or other economic factors, pandemics, government acts or requirements and any and all like or different causes beyond the control of the Parties hereto shall excuse performance, except payment by either party to the extent by which performance is prevented thereby. With respect to any delays caused by failure of Customer to furnish timely information or approve or disapprove of Brock's Work promptly, delays caused by faulty performance by Customer or by contractors of any level, and any and all like or different causes beyond the control of Brock, Brock shall not responsible for any damages and shall not be deemed to be in default of this Agreement. A Party claiming Force Majeure must provide written notice to the other Party as soon as reasonably possible. If the Work is delayed for a period of more than six (6) months, all prices for future Work shall be subject to renegotiation.

11. SUSPENSION/TERMINATION OF SERVICES: In the event Customer fails to make payments when due in accordance with the payment terms herein, Brock may suspend performance of and/or terminate Work upon seven (7) calendar days' prior written notice and may remove any and all materials and/or equipment from the job site. Brock shall have no liability whatsoever to Customer for any costs or damages as a result of such suspension or termination. Any suspension shall remain in effect until all unpaid invoices are paid in full. In the event Customer terminates or cancels the Work, Brock shall be given seven (7) calendar days' prior written notice and shall be compensated for Work provided, including any Goods ordered by Brock for Customer, up to the date of the termination or cancellation. In the event this Agreement is suspended or terminated for any reason, Brock shall be compensated for all Work performed or in progress, demobilization costs, including without limitation, all costs associated with the disassembly and removal of materials and/or scaffolding at Brock's standard time and materials rates then currently in effect.

12. CHANGE ORDERS: Any Customer request for changes in the scope and/or scheduling of the Work to be provided under an Order(s) must be given in the form of a written change order ("Change Order(s)"). Upon Brock's receipt of a Change Order(s), the Parties shall negotiate in good faith the terms to be included therein. Each Change Order(s) shall reference the original Order(s) and shall specify (i) the changes in the scope or timing of the Work to be provided under the affected Order(s), and (ii) the adjustment (if any) to be made to the fees and other amounts due Brock in connection therewith, and shall be executed on behalf of each Party by an authorized person. If the Parties are unable to agree upon or fail to timely execute a Change Order(s) with respect to orally requested changes to the Work, Brock shall be entitled to permanently suspend the Work and cancel the affected Order(s), and Customer shall pay Brock for all Work performed prior to the date of cancellation, as well as any applicable mobilization or demobilization charges or other costs incurred by Brock.

13. ENFORCEMENT: The Parties agree that the exclusive forum for the adjudication of any controversy or dispute relating to these conditions, this Agreement, and/or the Work furnished by Brock shall be the state or federal courts located in Harris County, State of Texas, and both Parties hereby consent to the personal jurisdiction of such courts for all such purposes. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to the choice of law rules, statutes, or laws thereof. Should any provision hereof be held invalid or illegal, such holding shall not affect the validity of the remaining provisions. Acceptance of the Work or Brock's offer to provide the Work is expressly limited to the terms and conditions contained herein and any additional or different terms of Customer are hereby rejected. These terms and conditions constitute the final, complete and exclusive agreement between Brock and Customer, and no agreement or understanding, oral or written, in any way purporting to modify or negate these terms and conditions, whether contained in Customer's purchase order, acknowledgment, or in any other of Customer's forms or elsewhere, shall be binding, unless agreed to in writing and executed by both Parties.

14. REMEDIES: The rights and remedies reserved to Brock shall be cumulative and additional to all other remedies provided by law or in equity. Brock shall be entitled to recover all costs, expenses and attorneys' fees in the enforcement or defense of any rights (including any collection actions) hereunder.

15. INDEPENDENT CONTRACTOR. Each party is, and shall perform this Agreement as, in independent contractor, and as such, shall have and maintain complete control over all of its employees, agents and operations. Neither Brock nor anyone employed by it or its subcontractors shall be deemed to be, or act or purport to act as, the agent, representative, employee or servant of Customer.

16. WORK IN LOUISIANA. Only and strictly with regard to claims, demands, suits and other liabilities by employees of Brock against Customer or Owner, in connection with Work performed in the State of Louisiana, the Parties acknowledge that performance of any Work by Brock constitutes their recognition and agreement that a statutory employer relationship as envisioned by La. R.S. § 23:1061(A), as amended by Act 315 of 1997, exists between Brock and Customer. Such statutory employer relationship applies to Brock's direct, borrowed, special or statutory employees. Further, the Parties acknowledge that the Work to be performed under this Agreement is an integral part of, or essential to, the ability of Customer to generate its own goods, products or services.

17. MISCELLANEOUS: Time is of the essence as to all time periods stated herein, except delivery or completion dates which are estimated. All captions are for convenience only and do not constitute a part of these conditions. Customer represents and warrants to Brock that Customer has not ceased to pay its debts in the ordinary course of business, that it can pay its debts as they become due, and that it is and continues to be solvent within the meaning of the Federal Bankruptcy Act. Brock and Customer shall perform hereunder strictly in conformance with and subject to (in their present form or as hereafter amended) all applicable laws and governmental orders, rules and regulations of the United States of America and of any State or municipality thereof. The Brock companies are separate legal entities and are not entering into this Agreement as joint venturers, partners or otherwise in any capacity that would render them jointly or jointly and severally liable hereunder. Further, no Brock entity is a guarantor or surety for any other Brock entity. Rather, each Brock entity shall be liable hereunder only for Work performed by it hereunder.

18. INSURANCE: The insurance required will be in accordance with terms and conditions set forth in Insurance Requirements Exhibit "A", and all insurance shall be provided by carriers with ratings with minimum AM Best rating of "A-".

19. WAIVER OF TERMS: No waiver by Brock of any of the terms, provisions, or conditions of these Terms and Conditions shall be effective unless expressly stated in a writing signed by an authorized officer of Brock. Brock's failure to enforce any term, provision or condition of these Terms and Conditions shall in no manner affect its right to enforce the same at a later time, and the waiver by Brock of any breach of any term, provision or condition of these Terms and Conditions shall not be construed to be a waiver by Brock of any subsequent or succeeding breach of such term, provision or condition or of any other term, provision or condition hereof.

**EXHIBIT "A"**

**Insurance Requirements for Brock and Customer**

**Workers Compensation:**

- I) State: Statutory
- II) Applicable Federal (e.g. Longshoreman's): Statutory
- II) Employer's Liability: \$1,000,000 per Occurrence

**Comprehensive General Liability** (including coverage for Products, Completed Operation, Independent Contractors/Contractors Protective, Contractual Liability):

\$2,000,000 per Occurrence, \$4,000,000 aggregate

**Comprehensive Automobile Liability:**

Combined single limit of \$2,000,000

If the contract involves work with hazardous material:

**Pollution Liability Insurance** \$5,000,000 per Occurrence

A Certificate of Insurance shall be issued to the other Party upon request.