



February, 2007

## **KRACK CORPORATION TERMS AND CONDITIONS OF SALE**

**1. General.** The terms and conditions set forth herein apply to the sale of products by Krack Corporation (“Krack”) including all bids and quotations made by Krack and purchase orders accepted by Krack. All orders submitted by purchaser (“Buyer”) must be in writing. Any additional or different terms or conditions of any purchase order, acknowledgement or other business form used by Buyer are expressly rejected and will not be binding upon Krack, unless specifically agreed to in writing by Krack. Krack’s failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of these terms and conditions. All orders, contracts and agreements are subject to written acceptance by Krack’s General Sales Office, Addison, Illinois 60101.

**2. Compliance with Laws.** Krack manufactures its products in accordance with national standards established by Underwriters Laboratories (safety) and NSF International (sanitation). Compliance with any local building codes or other laws or regulations relating to product specifications or the location, use or operation of products is the sole responsibility of Buyer.

**3. Prices.** All prices are the confidential and proprietary information of Krack, and Buyer agrees not to disclose such prices to any third party. Prices are FCA factory (Incoterms 2000), are subject to change without notice and will be those in effect on the date of shipment. Federal, state and local taxes, duties or other levies are extra and are the responsibility of Buyer. Buyer shall be invoiced for and shall pay applicable sales and/or use taxes unless Krack receives a valid tax exemption certificate from Buyer before such invoice is generated. If Krack is required to remit any tax or duty on Buyer’s behalf or for Buyer’s account, Buyer agrees to reimburse Krack within 30 days after Krack notifies Buyer of such remittance.

**4. Payment Terms.** Except as otherwise specified by Krack, payment terms are net cash within 30 days of the date of invoice. Buyer shall have no right of setoff. Buyer shall pay interest at 1% per month (12% per annum) on any past due balance or the highest rate allowed by applicable law, whichever is less, from the date of delinquency until paid. In addition, Krack may withhold further delivery of products and impose cancellation fees or require payment prior to shipment, if any payment is not paid when due or if, in Krack’s opinion, Buyer’s financial condition or other circumstances make it prudent to do so. Buyer agrees that, unless Buyer makes payment in advance, Krack will have a purchase money security interest in all products purchased from Krack to secure payment in full of all amounts due Krack and its order for the products, together with these terms and conditions, form a security agreement. Buyer shall keep the products free of all taxes and encumbrances, shall not remove the products from its premises and shall not assign or transfer any interest in the products until all payments due Krack have been made.

**5. Cancellation/Changes>Returns.** Krack specially manufactures its products in response to customer orders. If Buyer changes any order as to specifications, quantity or delivery time, Krack reserves the right to charge Buyer for any additional handling, storage or other costs. In

addition, Krack reserves the right to extend the time for performance as a result of such changes. Krack shall not be obligated to proceed with the change until the price of such change and its effect on the scheduled shipment date have been agreed upon in a written change order. If Buyer cancels an order, Buyer shall be responsible for any costs to modify the product for resale and any handling and restocking charges. No goods may be returned for credit except upon Krack's written consent. Krack reserves the right to apply handling and restocking charges on all returned goods equal to 25% of the invoice price. Additional charges will be levied if re-work is necessary to restore returned products to saleable condition. Products that are obsolete or made to special order may not be returned. Buyer will pay all transportation charges on returned goods. Krack assumes no responsibility for products ordered in error by Buyer. Buyer shall pay the cost of correcting such errors.

**6. Shipping.** All shipments are FCA factory (Incoterms 2000). Risk of loss will pass to Buyer upon delivery to the carrier at Krack's manufacturing facility, which delivery shall constitute delivery to Buyer for all purposes. Krack will arrange shipment unless otherwise advised by customer and add transportation costs plus handling fees to the price of the products, but Buyer shall bear the risk of any loss or damage from the time the products are delivered to the carrier. All claims for loss or damage to products while in the care, custody, and/or control of the carrier will be the responsibility of Buyer, which will submit any claims to the carrier. Krack will render reasonable assistance in securing adjustment of such claims. Krack will pack, mark, and ship products according to its standard procedures for shipment, unless the parties agree in writing that Krack will comply with any special instructions provided by Buyer, the costs of which shall be borne by Buyer. Krack will use all reasonable efforts to meet shipment dates but no shipment dates shall fall within the meaning of "time is of the essence."

**7. Claims.** Krack will consider claims for concealed shortages in shipments or rejections due to failure to conform to a purchase order only if such claims or rejections are made within 15 days of delivery and are accompanied by the packing list and, if applicable, the reasons in detail why the product does not conform to the purchase order. Upon receiving authorization and shipping instructions from authorized personnel of Krack, Buyer may return rejected products, transportation charges prepaid, for replacement. Krack may charge Buyer any costs resulting from the testing, handling, and disposition of any products returned by Buyer, which are not found by Krack to be nonconforming.

**8. Product Changes.** Krack may change product specifications and assumes no obligation to change products previously purchased or to continue to supply discontinued products.

**9. Limited Warranty.** Krack's standard printed limited warranty relating to its products is applicable to these terms and conditions and forms a part hereof. **NO OTHER WARRANTIES EXPRESS OR IMPLIED ARE MADE, AND IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.**

**10. Patents.** Krack warrants that the products sold hereunder do not infringe the claims of any existing United States patent, but Krack makes no warranty against infringement by reason of the use thereof either in combination with other products or in the operation of any process or use of products other than for their intended purpose. This warranty is subject to Buyer promptly notifying Krack in the event of any action for such infringement brought against Buyer and permitting Krack to assume the defense of such action. Krack reserves the right to modify or replace any equipment alleged to constitute an infringement, or to remove such equipment and

refund the amount paid by Buyer therefor. This warranty is not transferable. The foregoing patent warranty shall not apply to any equipment or part thereof made to Buyer's design and, as to such equipment or part, Krack assumes no liability for patent infringement. The foregoing states the entire liability of Krack with regard to patent infringement.

**11. Limitation of Liability.** Buyer's remedies set forth herein are exclusive, and the total liability of Krack with respect to any purchase of Krack products, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of product upon which such liability is based. Krack, its parents and affiliates shall in no event be liable to Buyer, its successor or assigns for any consequential, incidental, indirect, special, or punitive damages (including but not limited to food or refrigerant loss) arising out of any product purchase agreement or any breach thereof, or any defect in, or failure of, or malfunction of the product, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

**12. Force Majeure.** Krack shall not be liable for any losses or damages due to acts of God, war, riots, lockouts, strikes, fires, acts of government authority, delay in transportation, inability to obtain power or other causes beyond the reasonable control of Krack.

**13. Assignment.** No right or obligation hereunder may be transferred or assigned by either party without prior written approval of the other party, except Krack may transfer or assign any product order or any right or obligation to its parent companies or affiliates.

**14. Severability.** The various provisions herein shall be deemed to be separate and severable and the invalidity or unenforceability of any of them shall in no manner affect or impair the validity or enforceability of the remainder hereof. If any provision herein shall be unenforceable in any jurisdiction, it shall be deemed modified to conform to the minimum requirements of such jurisdiction without affecting the effectiveness of the provision in any other jurisdiction.

**15. Export Laws.** To the extent any sale of products pursuant to these terms and conditions may require approval of any governmental authority, Krack's obligations under these terms and conditions are conditioned upon the grant of such approval and upon compliance by Buyer with any restrictions imposed by such authority.

**16. Governing Law.** The terms and conditions herein and any disputes or controversies arising hereunder will be governed by and construed according to the internal laws of the state of Illinois without regard to its conflict of law principles, and not including the United Nations Convention on Contracts for the International Sale of Goods.