

BROTHER AUTHORIZED PARTNER PROGRAM
Puerto Rico and U.S. Virgin Islands

TERMS AND CONDITIONS

These Terms and Conditions (“Terms”) shall govern the relationship of Brother International Corporation (herein after referred to as “Vendor” or “Brother”) and company indicated below (referred to as “Reseller” or “Company”) (collectively referred to as the “Parties”). By doing business with Brother, either directly, or through a Brother Authorized Distributor, Reseller agrees to the Terms and Conditions set forth herein:

1. **APPOINTMENT.** Vendor appoints Reseller, and Reseller agrees to serve as a non-exclusive reseller of selected Vendor’s products (“Products”) as part of the Brother Authorized Partner Program (“BAPP”) in, U.S. Virgin Islands, and Puerto Rico. The BAPP Program is set forth in Appendix A. Reseller agrees to comply with these Terms and acknowledges Vendor may update the terms from time to time located at <https://www.brother-usa.com/partners-terms>. In serving as a reseller of Vendor’s product, Reseller agrees to use its best efforts to promote, market and sell the Products in accordance with the Terms, including without limitation, the following:
 - (a) Advertising and promoting the Products in appropriate media as mutually agreed to by the parties;
 - (b) Company will market and sell “new” Products only, except for demo equipment, sales samples, field trial equipment or otherwise at Brother’s discretion;
 - (c) Advising Vendor promptly of any disputes between Company and any other Customers, any complaints from anyone concerning Company’s performance, service or other behavior specifically related to Brother Products, and any legal notices or actions relating to the Products;
 - (d) Truthfully and accurately report information to Vendor as required under these Terms and/or the BAPP, including but not limited to sell through information and source of Brother goods.

2. **PRICE AND TERMS OF SALE.** Reseller agrees that it shall only purchase Brother Products from Vendor or a Brother Authorized Distributor and will provide Vendor with proof of origin for all Brother Product upon request by Vendor. Reseller will unilaterally establish its own prices and terms for the resale of the Products to the public and Vendor will not advise, instruct or in any way interfere with Reseller’s independent establishment of its prices. Vendor may, however, maintain policies regarding advertising Vendor product, such as a Minimum Advertised Pricing policy, which Reseller shall adhere to. Vendor further agrees that it will only issue Letters of Supply to the United States Government including the GSA that are countersigned by Brother.

3. **WARRANTIES; INSURANCE; INDEMNIFICATION; LIMITATION OF LIABILITY.**
 - (a) Vendor warrants good and marketable title to the Products free of any lien or encumbrance. Without limiting the foregoing, Vendor represents and warrants that (i) it is the owner or valid licensee of any and all intellectual property or other proprietary rights pertaining to the Products, Product images and Vendor’s and Product trademarks and/or trade names and (ii) it has the full and sufficient right, power and authority to sell the Products to Reseller and grant the rights and licenses granted under the Terms. Both Reseller and Vendor shall comply with all applicable federal, state and local laws and regulations in performing its obligations under the Terms.

 - (b) During the period when Reseller is reselling Vendor Products in accordance with these Terms, Vendor shall maintain Comprehensive General Liability Insurance, including products liability coverage with minimum limits of no less than \$1,000,000.00 per occurrence/\$2,000,000 aggregate.

(c) During the term of the Terms, Reseller shall maintain a policy of commercial general liability insurance with an insurance carrier authorized to do business in the United States with limits of no less than \$1,000,000.00 per occurrence. Such policies will name Brother International Corporation as an additional insured. Upon request, a Certificate of Insurance meeting the above-mentioned requirements must be delivered to Vendor

(d) Vendor agrees to defend, indemnify and hold harmless Reseller from and against any and all judgments or actual losses which arise out of the resale of the Products which have directly and solely caused the death or injury to any person or damage to property.

(e) Reseller agrees that it will only post truthful and accurate information regarding Brother product on public and private websites, including but not limited to GSA Advantage. This shall include but not be limited to all Country of Origin listings.

(f) Reseller agrees to defend, indemnify and hold Vendor harmless from and against any and all judgments or losses which arise out of any misrepresentations that Reseller or its employees make about the Product.

(g) In no event will either party be liable to the other party for any loss of profits or revenue or for any incidental, special, consequential or punitive damages resulting from any performance, non-performance, breach or termination of the Terms.

(h) Each of the Parties represents and warrants that:

- It was and currently is and shall remain in compliance with all applicable U.S. environmental laws and regulations. All Products shall be properly labeled and packaged which are deemed hazardous materials. Each party shall be permitted to request audits by the other or its respective contractor for purposes of ascertaining compliance with all applicable laws and regulations;
- It will inform the other party in writing, within ten (10) working days of any non-compliance with environmental laws or regulations and any pending or final environmental agency enforcement action against it.

4. **INTELLECTUAL PROPERTY.**

(a) Reseller acknowledges that it has no ownership right in or to Vendor's trademarks and/or trade names. Reseller is hereby licensed to use Vendor's Product images, trademarks and/or trade names in conjunction with the marketing and sale of the Products only, and in accordance with the instructions, if any, provided by Vendor to Reseller. Each use of the Vendor trademarks shall be submitted to Vendor for pre-approval.

(b) Vendor acknowledges that it has no right in or to Reseller's trademarks and/or trade names. Vendor will not use Reseller's trademarks and/or trade names either in connection with the Products or for any reason, other than what is set forth in Section 4(a) above, without obtaining Reseller's prior written consent, and in the event such consent is obtained, such use will be subject to such restrictions or limitations as Reseller may impose and in accordance with such instructions as Reseller may provide.

(c) Reseller shall not use any of Vendor's trademarks, including the term "Brother", "PTouch", "Inkvestment", etc. or any term confusingly similar in its corporate, business or trade name, as a designation for any product or services, in an internet domain name or an email address, or in any other manner indicating a claim of proprietary rights or in conflict with Brother's rights or those rights of any affiliate or licensor of Brother.

(d) Reseller shall not at any time copy, reverse engineer, change or otherwise modify Products, nor shall Reseller direct any third party to copy, reverse engineer, change or otherwise modify any Products.

5. **PRODUCT WARRANTY.**

(a) Brother, at its sole discretion, may provide limited warranties for its products (“Brother’s Customer Warranties”). Company acknowledges and agrees that Products are not eligible for Brother’s limited warranties, if such Products:

(i) had been previously sold, leased, traded-in, surrendered or otherwise transferred to Company from a supplier other than Vendor or one of Vendor’s authorized distributors (including but not limited to an end-user);

(ii) had been previously sold, leased, borrowed, or otherwise transferred by Company to another (including but not limited to an end-user); OR

(iii) had been denied or are otherwise ineligible for Brother’s Customer Warranties coverage as provided by Vendor from time to time at its sole discretion.

(b) A Customer that is the first end-use transferee of a Product from Company in accordance with the Terms and subject to the specific terms of the limited warranty provided by Vendor for such Product is the only eligible claimant under Brother’s limited warranty for that Product. Company has no authority to and agrees not to modify or otherwise communicate a modification to, orally or in writing, any provision of Brother’s Customer Warranties.

6. **TERM AND TERMINATION.**

(a) Unless sooner terminated by either party in accordance with the provisions of this Agreement, the term of this Agreement shall be for a period of one (1) year commencing on the date when the Reseller application to join the BAPP program is approved. Should Reseller wish to extend the term of this Agreement, Reseller shall notify Vendor in writing of such desire not later than thirty (30) days before the Term’s expiration whereupon the parties shall commence, within a reasonable time thereafter, good faith negotiations regarding the extension of the Agreement. If the parties fail to reach agreement by the termination date, there shall be no further obligation to negotiate and this Agreement shall expire in its normal termination date.

(b) Notwithstanding the foregoing, these Terms may be terminated with or without cause by either party without liability or obligation upon not less than 60 days’ notice to the other party.

(c) Either party may terminate these Terms immediately, without liability or further obligation, upon notice to the other party if the other party (i) breaches any part of these Terms and fails to cure the breach within ten (10) business days following receipt of notice of such breach, (ii) becomes insolvent, , makes an assignment for the benefit of creditors or ceases normal business operations, or (iii) assigns or attempts to assign these Terms or any of the rights and obligations under the Terms without first obtaining consent as required herein.

7. **CONFIDENTIALITY and PERMISSION.**

(a) In the performance of or otherwise in connection with the Terms, one Party (“Discloser”) may disclose to the other party (“Recipient”) certain confidential information (“Confidential Information”). The Recipient will treat such Confidential Information as confidential and proprietary during and after the term and shall: (a) use the Confidential Information of the Discloser solely for the purposes set forth in the Terms; (b) take suitable precautions and measures to maintain the confidentiality of the Confidential Information of the Discloser; and (c) not disclose or otherwise furnish the Confidential Information of the Discloser to any third party other than employees or independent contractors of the Recipient who have a need to know the Confidential Information to perform its obligations under the Terms, provided such employees or independent contractors are obligated to maintain the confidentiality of the Confidential Information. The terms of this Section will survive the termination of the Terms.

(b) Reseller hereby consents and agrees to provide Vendor, or a third party hired by Vendor with sell through information in the form of a Point of Sale report. Complete end-user and shipping information must be supplied to include: End-user Company Name, Street Address, City, State, Zip, Brother Model number and quantity sold and the source of all of Vendor's goods. Reseller shall obtain all necessary permission and consent from the end use customers it sells to comply with this provision. This information will be treated as Confidential as set forth in this section. Vendor does currently use a third-party vendor to assist with the collection and processing of sales data. Reseller further consents and authorizes Vendor to obtain some or all of this information directly from Brother Authorized Distributors in cases where the distributor is drop-shipping to an end-user or performing 'wrap and label' services on behalf of the Reseller.

(c) Reseller hereby agrees and consents that Vendor, or a third party hired by Vendor shall be permitted to search through all offerings of Brother product by Vendor to confirm compliance with Brother policies. This shall include any and all websites, whether they are protected with username and password requirement or not.

8. **INDEPENDENT CONTRACTORS.** Vendor and Reseller's relationship to one another is that of independent contractors for purposes of the Terms. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partners or joint ventures.

9. **FORCE MAJEURE.** Neither party shall be responsible for any inability to comply with the provisions of the Terms due to causes beyond its control. These causes shall include, but not be restricted to, fire, flood, earthquake, explosion, accident, acts of public enemy, war, transportation embargoes, or failures or delays in transportation, acts of nature, acts of the federal government, or any agency or department thereof or judicial action.

10. **NOTICE.** Any official legal notice or approval required to be given under the Terms shall be in writing and shall be transmitted to the party in question at their respective addresses, as set forth below. Unless otherwise specified herein, each such notice or approval shall be sent by overnight delivery service with delivery confirmation to the person indicated below. Such notices shall be directed as follows:

Vendor

Brother International Corp.
200 Crossing Blvd.
Bridgewater, NJ 08807
Attn: General Counsel

Reseller

To the address you have registered with
Vendor.

11. **SEVERABILITY.** In the event that any part of the Terms are or become illegal or unenforceable, such clause shall be null and void and shall be deemed deleted from the Terms, and all the remaining parts of the Terms shall remain in full force and effect.

12. **ARBITRATION, JURISDICTION AND VENUE** Any dispute arising under or related to this Agreement, including the arbitrability of any such dispute (except for Disputes related to trademarks, trade secrets, or other intellectual property of Vendor), shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association [(AAA)]. This Agreement shall be governed by, and any dispute shall be construed in accordance with the laws of the State of New Jersey regardless of any conflict or choice of law provision. The place of arbitration shall be in Bridgewater, New Jersey. Any action to enforce or challenge the terms of decision of the arbitrator's panel the Terms shall be instituted in courts sitting in New Jersey.

13. **ACKNOWLEDGMENT.** If you do business with Vendor as part of the BAPP, you have expressly agreed to the Terms set forth herein. If you do not agree with all of the Terms, do not participate in the BAPP Program. You also acknowledge that the BAPP Program is not exclusive and Vendor reserves the right to sell Products in its sole discretion.

14. **WAIVER**. In the event that one Party fails to insist on performance of any of the terms and conditions or fails to exercise any of its rights or privileges hereunder, such failure shall not constitute a waiver of such terms, conditions, rights or privileges.

15. **ENTIRE TERMS**. The Terms contains the entire agreement between the parties, and there are no verbal understandings or terms different from those stated in the Terms. The Terms shall supersede any of the prior Terms and understandings between the parties as of the Effective Date. By the Terms, both parties specifically do not agree to any terms and conditions contained in any other invoices or purchase order or sale forms.

Appendix A

[BAPP Program Guidelines](#)