



Terms and Conditions of Equipment Sale

1. Agreement

a. These Terms and Conditions (the "Terms and Conditions"), together with the provisions of the Sales Quotation (the "Quote") and the Order Acknowledgment (the "Acknowledgement") collectively constitute the entire Agreement (the "Agreement") of Empire Cooler Service, LLC ("ECS") and Buyer (as defined on the Acknowledgement, and collectively the "Buyer") with respect to Equipment (the "Equipment") purchased from ECS (collectively the "Transaction") by the Buyer and supersedes any other agreement or understanding of the parties with respect to such Transaction.

b. Buyer will be deemed to have assented to the Terms and Conditions of this Agreement unless ECS receives written notice of any objection by Buyer within 72 hours after Buyer's submission of a signed Acknowledgement.

c. This Agreement represents the complete and final expression of the Agreement of the parties, and no terms or conditions in any way adding to, modifying, or otherwise changing the provisions stated herein, including by custom, usage of trade or course of dealing or performance, shall be binding upon ECS unless expressly agreed in writing and signed by an authorized officer of ECS. Notwithstanding the foregoing, if ECS and Buyer have a written agreement in effect that covers the Transaction hereunder that has been signed by an authorized officer of ECS, that agreement will govern the Terms and Conditions of sale solely to the extent that its terms are in addition to and do not conflict with the Terms and Conditions of this Agreement.

2. Terms and Conditions of Sale

a. **Pricing, Taxes, and Other Charges:** All prices in effect at the time of execution of the Agreement are subject to adjustment without notice. If ECS is contracted for delivery or installation of Equipment that requires specialized transport or use of special equipment, ECS reserves the right to increase purchase price or bill Buyer for reasonable additional installation charges and Buyer expressly agrees to pay for such charges when invoiced.

b. **Terms of Payment:** Unless specified to the contrary in the Acknowledgement, Payment is due 10 days from the invoice date. Lessee shall be responsible to pay all applicable sales, use, personal property, or other taxes when due. ECS reserves the right to require payment for any shipment hereunder in advance, or satisfactory security if the financial performance or creditworthiness of Buyer is unsatisfactory to ECS. NO CASH PAYMENTS ACCEPTED. TECHNICIANS DO NOT HANDLE PAYMENT. Accepted manners of payment are by major credit card, check made payable to ECS, or electronic funds transfer

c. **Remedies and Collection:** Accounts that are past due are subject to a monthly late fee assessed at 1.5% of the total amount due plus any reasonable costs associated with collections and equipment recovery. If Buyer fails to fulfill the terms of payment of any Transaction placed with ECS, ECS may defer further shipment or delivery of Equipment, delay any services rendered in connection with the Transaction until such payment is made, or ECS may at its option cancel the Transaction; in such event, Buyer will remain liable for all unpaid accounts

d. **Title and Delivery:** Liability for loss or damage of Equipment referenced in the Agreement shall pass to Buyer upon shipment FOB unless ECS delivers to Buyer's location. Title to Equipment provided through the Agreement shall remain with ECS until payment for Equipment is received in full. The title shall pass to Buyer upon receipt of payment of invoice. ECS reserves the right to make delivery in installments unless expressly stipulated in the Acknowledgement. All such installments shall be separately invoiced and paid for when due without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. All claims for loss or damage to goods in transit are the responsibility of the Buyer and should be made to the carrier and not to ECS. Any claim for shortage of Equipment occurring prior to delivery by ECS to the carrier must be made in writing to ECS within 10 days after receipt of

shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. The sale of any Equipment to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property license whatsoever.

e. **No Product Warranty:** Any equipment purchased by Buyer as a part of the Transaction is sold AS-IS with no representations or warranty made by ECS with regard to operational capability, or warranty of fitness or merchantability. If a manufacturer's warranty remains in effect, ECS will work with the Buyer to transfer such warranty at Buyer's cost.

f. **Initial Installation:** If ECS is contracted for installation, physical installation, removal of packing material and initial setup of Equipment will be performed by ECS (or ECS designated subcontractors) at the location designated by Buyer. The Buyer is responsible to ensure the designated location meets the manufacturer's requirements. Buyer acknowledges the absence of a proper site environment may materially delay installation. Should ECS attempt initial installation and find the site unsuitable, the Buyer recognizes and agrees to pay for subsequent additional installation labor.

3. General Legal

a. **Notices:** All notices required to be given under this Agreement shall be in writing and sent either electronically to the email of an officer of ECS, or by U.S. first-class mail to the parties as follows: Buyer at the address listed in the Lease and to ECS at 805 N. Milwaukee Ave Second Floor Chicago, IL 60642.

b. **WARRANTY:** ECS warrants that any services contracted between Buyer and ECS shall be performed in accordance with the manufacturer's recommendations and specifications for the equipment. ECS makes no other warranties whatsoever express or implied with regard to the service, installation, repair, or maintenance, and expressly disclaims and Buyer waives all implied warranties of merchantability and fitness for a particular purpose.

c. **LIMITATIONS ON LIABILITY:** In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort, or otherwise), shall ECS's liability to Buyer for any claim arising under this Agreement exceed the price paid by Buyer to ECS for Equipment subject to this Agreement. Buyer agrees that in no event does ECS's liability to Buyer and/or its customers extend to include incidental, indirect, exemplary, consequential, contingent, or punitive damages. Without limiting the generality of the foregoing, ECS specifically disclaims any liability for property or personal injury damages, delay in performance, penalties, special or punitive damages, damages for lost profits, or revenues, loss of use of products or any associated equipment, cost of capital, cost of substitute products, facilities or services, downtime, shut-down or slow-down costs, or for any other types of economic loss, and for claims of Buyer's customers or any third party for any such damages.

d. **Applicable Law:** This Agreement between ECS and Buyer shall be governed solely by the laws of the State of Illinois, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to its choice of law provisions. No statutes, regulations, rules, or orders shall be incorporated herein unless specifically referred to herein. Any dispute arising under or in connection with this Agreement shall be brought in federal or state courts in Cook County, Illinois, and Buyer irrevocably submits to the jurisdiction of such courts and waives any objection it may have to the jurisdiction or venue of such courts. Any and all claims arising out of or relating to this Agreement shall be barred unless a judicial proceeding is commenced within 2 years from the date the complaining party knew or should have known of the facts giving rise to such claim.

e. **Force Majeure:** Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by

BUYER'S INITIALS: _____



Terms and Conditions of Equipment Sale

any act of God, labor dispute, or any other occurrence beyond its reasonable control.

f. **Waiver & Severability:** Waiver by ECS of any breach of these Terms and Conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time. In the event that any one or more of these terms or conditions is held invalid, illegal, or unenforceable, such provision or provisions shall be severed, and the remaining Terms and Conditions shall remain binding and effective.

g. **Jury Waiver:** ECS AND BUYERS IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY.

h. **Binding Authority:** Buyer is advised that no employee, representative or agent of ECS has authority to bind ECS to commitments not specifically set forth in this Agreement.

i. **Indemnification:** Buyer agrees to indemnify, defend, and hold harmless ECS, its officers, directors, employees, and agents from all loss, liability, claims, or expenses (including reasonable attorney's fees) arising out of Buyer's purchase of Equipment or use of ECS for Equipment transport or installation. This includes but is not limited to liabilities arising from bodily injury, including death, or property damage to any person, unless said injuries, death, or property damage was caused solely as the result of ECS's gross negligence or willful misconduct.

j. **Original Document:** This Agreement may be executed in any number of counterparts, and each fully executed counterpart shall be deemed an original. The parties agree (a) that facsimile or electronic signature shall be accepted as original signatures; and (b) that this Agreement or any document created pursuant to this Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered original. ECS may accept orders electronically from Buyer pursuant to this Agreement. In any legal proceeding relating to this Agreement. In any legal proceeding relating to this Agreement, the parties waive their right to raise any defense based on the execution of this Agreement in counterparts; or the delivery of such executed counterparts by copy, facsimile, or electronic delivery; or ECS's acceptance of orders electronically.

BUYER'S INITIALS: _____