



Standard Terms and Conditions of Service, Installation/Relocation and Preventative Maintenance for One-Time or Annual Contracts

1. Agreement

a. These terms and conditions (the “Terms and Conditions”), together with the provisions of the Sales Quotation (the “Quote”) and Work Order, or Repair Agreement or Preventative Maintenance Agreement, (the “Acknowledgment” and collectively with the Terms and Conditions and the Quote, the “Agreement”) constitutes the entire agreement of Empire Cooler Service, LLC (“ESC”) and Buyer (as defined on the Repair Agreement or Preventative Maintenance Agreement) with respect to the services (“Services”) described on the Quote and/or Acknowledgment and supersedes any other agreement or understanding of the parties with respect to such sale.

b. Acceptance of Buyer’s order is expressly conditioned on Buyer’s acceptance of all of the terms and conditions contained herein in lieu of those in Buyer’s purchase order, if any. 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 the earlier of (i) acceptance by Buyer of the delivery of the Services or (ii) 10 days after Buyer’s receipt of this form. 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 sale of the Services sold 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

a. **Service Coverage Hours:** Standard Services under this Agreement are provided during normal business hours 8am-5pm, Monday through Friday, exclusive of core National holidays observed by ECS.

b. **Extended Coverage Hours:** Extended coverage services outside of standard coverage hours may be available on a per-event charge or fixed monthly premium as referenced in the Acknowledgement, or agreed upon in advance by the parties.

c. **Equipment Repair Services:** Repair (“Repair”) services provided under this Agreement, if chosen, include labor and parts required to maintain covered equipment (the “Equipment”) as determined in the Acknowledgement. Repairs to Equipment will conform to manufacturers’ specifications as outlined in each manufacturer’s service manual.

d. **Repair Warranty:** Subject to the limitations of paragraph 5d and 5e, ECS will warranty labor and repairs for 30 days unless the manufacturer’s warranty on specific parts is longer. In each case such extended warranty periods will be passed to the Buyer.

e. **Preventative Maintenance Services:** Preventative Maintenance (“Preventative Maintenance”) is determined to include equipment cleaning, adjustments and/or replacement of filters or internal equipment hoses. Preventative Maintenance shall be

performed and with a frequency as recommended in manufacturer’s guidelines, however removal of pathogens, insects or other debris and fauna outside of the manufacturer’s recommendations, or recommended time-frames, is not the responsibility of ESC. Furthermore, the cleaning of drain(s) below an air-break is not the responsibility of ESC.

f. **Services Disclaimer:** Equipment damage due to abuse/misuse, alteration or modification, 3rd party interference, use of non-standard parts, improper installation, usage beyond recommended operating parameters, theft, neglect, fire, water, casualty, or other natural force are not covered under this Agreement. Component replacement or equipment Repair is not a part of the scope of Preventative Maintenance. Repairs or Preventative Maintenance requests which fall outside the scope of this Agreement may be billed at prevailing hourly rates with prior Buyer authorization. Failure to authorize repair and/or services may result in suspension or termination of this or any other Agreement between ESC and the Buyer.

g. **Site Environment:** Buyer shall be responsible to ensure that Equipment is placed in a location that meets manufacturer’s requirements including space, electrical, and plumbing, and temperature requirements. Buyer specifically acknowledges ECS is not responsible for, and Buyer will provide code compliant backflow preventers, water shutoff(s), electrical disconnects and drains within six feet or less of the Equipment location.

h. **Pre-Assessment Before Performance of Service:** For Equipment not previously under a continuous ESC maintenance agreement, ECS may need to confirm the Equipment is in good working condition before the start of this Agreement. Remedial service may be required to bring the Equipment to proper operating standards and the labor and parts associated will be billed at prevailing rates. A quote will be provided or Buyer approval before work begins.

i. **Relocation and Move Preparation:** When requested, relocation services will be performed *and billed at prevailing rates*. Coverage at the new location is subject to service availability and acceptance by ECS.

j. **Initial Installation:** If ESC is contracted for installation, physical installation, removal of packing material and initial setup of Equipment will be performed by ECS at the location designated by Buyer. ESC will only provide electrical whip termination, water connection to ice makers from a Buyer supplied shut-off, and a drain line to an air-break. The Buyer is responsible to ensure designated location meets manufacturer’s requirements and the provisions of Section 2g. Buyer will bear all cost and expense for any additional necessities required for installation location to meet manufacturer’s requirements, such as plumbing and electrical. Buyer also acknowledges the absence of such may materially delay any installation.

k. **Additional Buyer Requested Services:** Buyer may request services be performed that are outside the scope of this Agreement. Such services will be quoted and performed at mutually agreed rates.



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l. **Access:** Buyer shall provide ECS personnel with access to the location where the Equipment is installed and ensure walkways to the Equipment location are clear of clutter to allow Services to be performed, or Buyer may be assessed a call-out fee if Services cannot be timely performed due to impeded access. Buyer shall arrange and ensure that one of its employees or designated agents is present at all times when ECS is performing maintenance and support services.

m. **Timing of Services:** ECS will make every effort to provide timely delivery of Service. The Buyer acknowledges Service times can be impacted by many factors, and not all requests for Service can be delivered the same day. If emergency requests are made, or if requests are made outside of Standard Service hours, additional charges may apply pursuant to Section 2b.

n. **Readiness for Service:** Pursuant to Sections 2c and 2e, the Buyer is responsible for readying the equipment for Repair or Preventative Maintenance before arrival of ESC personnel. Specifically, this includes clearing the area around the Equipment of any paraphernalia to allow for proper access and removing food or ice from storage/bins. The Buyer acknowledges failure to do so in advance may result in additional charges added to this Agreement associated with the delay in providing Services until the Equipment is ready for service and the failure of which to pay such charges will result in breach of the Agreement.

o. **Ice Delivery:** As a part of the Preventative Maintenance Service Section 2e, if requested, ESC will provide ice, or at ECS's sole option reimburse the Buyer for ice purchased on ECS behalf up to fifty percent (50%) of ice bin capacity. Additional ice may be available for delivery from ECS for an additional fee.

3. Agreement Renewal

a. **Automatic Renewal:** As specified in the Acknowledgement, if the Agreement is an annual agreement for Services, the initial term will be extended for an additional one-year term at then prevailing rates, unless either party has provided notice pursuant to the termination clause of paragraph 4a.

b. **Buyer Price Protection:** Unless specified to the contrary in the Acknowledgement, at the end of the initial term of this Extended Service or Maintenance Agreement, and for each successive term, ECS may increase the price of the Services without notification. The annual increase in the Service price will not exceed 10%.

c. **Additions of Equipment to the Agreement:** If the Buyer desires to add Equipment to the Agreement, the Buyer agrees to execute a rider (the "Rider") to the Acknowledgement. This Rider's price, Equipment list and initial term will supersede the original Acknowledgement. Both parties agree that the Rider is inclusive of the Agreement and all other Terms and Conditions of this Agreement will remain in full force and effect.

4. Payment and Termination

a. **Termination:** During the term of this Agreement or any renewal thereof, the Buyer or ECS may provide the other party 30-day written notice of cancellation or intention not to renew with or

without cause. If the Buyer terminates within the initial term, the Buyer will be subject to termination charges per paragraph 4b.

b. **Early Termination:** In the event Buyer terminates this Agreement during the initial term or ECS terminates due to material breach by the Buyer, the Buyer will be responsible to pay liquidated damages equal to 6 months billing based on the prior actual billing over the last 12 months.

c. **Terms of Payments:** Unless specified to the contrary in the Acknowledgment, payments are due 30 days from the invoice date. Buyer shall be responsible to pay all applicable sales, use, personal property or other taxes when due. NO CASH PAYMENTS ACCEPTED. TECHNICIANS DO NOT HANDLE PAYMENT. Accepted manners of payment are by major credit card, check made payable to ECS, or ACH transfer.

d. **Remedies and Collection:** Accounts that are past due are subject to a suspension of Services and may be subject to a monthly late fee based on 1.5% of the total amount due and reasonable recovery of costs associated with collections.

e. **Default:** Should Buyer violate any aspect of this Agreement including payment obligations, or in the event Buyer is insolvent and/or declares bankruptcy, ECS may suspend or terminate any or all portions of this Agreement and may enter the Buyer's premises to recover property or equipment owned by ECS.

5. General Legal

a. **Business Purpose:** Buyer warrants and represents that the Products under this Agreement will be used for business purposes and not for personal, household or family purposes or other uses deemed illegal or infringing on the copyrights of others.

b. **Assignment:** Buyer may not assign this Agreement without ECS's express written consent. ECS may assign, without notice to Buyer, any of its rights under this Agreement.

c. **Notices:** All notices required to be given under this Agreement shall be in writing and shall be sent by U.S. first class mail to the parties as follows: Buyer at the address listed in the Acknowledgment and to ECS at 805 N. Milwaukee Ave Second Floor Chicago, IL 60642.

d. **WARRANTY: ECS WARRANTS THAT THE SERVICES 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.**

e. **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 FOR THE SERVICE PROVIDED BY ESC GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT ESC'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, INDIRECT,**



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EXEMPLARY, CONSEQUENTIAL, CONTINGENT OR PUNITIVE DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ESC SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY OR PERSONAL INJURY DAMAGES, DAMAGES CAUSED BY WATER LEAKAGE, IMPROPER OR CLOGGED DRAINS, PRODUCT SPOILAGE, 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.

f. **BUYER'S REMEDY: BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE REPAIR OF THE EQUIPMENT OR REPLACEMENT OF A NONCONFORMING PART, AT THE OPTION OF ECS. IN NO EVENT SHALL ECS'S LIABILITY UNDER THE AGREEMENT EXCEED THE VALUE OF THIS AGREEMENT. THE PARTIES AGREE ANY CLAIM MUST BE BROUGHT WITHIN ONE YEAR AFTER THE ALLEGED DAMAGES ARE INCURRED.**

g. **Applicable Law:** This Agreement between ESC 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.

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

i. **Waiver & Severability:** Waiver by Seller 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.

j. **Jury Waiver:** ESC AND BUYER IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OF COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY.

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

l. **Indemnification:** Excluding the Warranty of 5d, Buyer shall bear all risk of theft, loss, or damage not caused by ECS employees or agents to any Equipment covered under this Agreement. 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 use of the Services, including but not limited to liabilities arising from illegal use of ECS Services as well as 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.

m. **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.