



NATIONAL HEAT EXCHANGE SERVICES
8397 Southern Blvd. Youngstown, OH 44512
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TERMS AND CONDITIONS (NHE SERVICES)

- 1) **Entire Agreement; Amendment:** These Terms and Conditions (these “Terms”) apply to the performance of services (the “Services”) by National Heat Exchange Cleaning Corporation (“Seller”) for the purchaser (the “Purchaser”) identified in the accompanying work order, statement of work, purchase order, or proposal, as the case may be (the “Sales Confirmation”). The Sales Confirmation, will include, among other things, a description of the services, fees and expenses, and a timeline of performance. Seller and Purchaser may each be referred to herein as a “Party” and jointly, as the “Parties”. The use of the Services is governed by the Sales Confirmation and these Terms (the “Agreement”). No change or modification to the Agreement shall be effective unless it is in writing and manually signed by both the Seller and Purchaser.
- 2) **Price; Taxes; Expenses:** Purchaser shall purchase the Services from Seller at the prices set forth in the Sales Confirmation. Seller’s prices are quoted in US\$ and do not include sales, use, or other taxes. Purchaser shall be responsible for all such taxes and any and all other fees and charges related to the Services, including import and export customs fees; provided, however, that Purchaser shall not be responsible for any taxes imposed on, or with respect to, Seller’s income. Purchaser shall take no action that would or might confer “permanent establishment” or any equivalent status (as defined in any applicable law or tax treaty) on Seller in any country or otherwise subject Seller to taxation in any country. Purchaser agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.
- 3) **Payment:** Unless otherwise set forth in the Sales Confirmation, payment terms are NET 30 days from date of invoice. Purchaser agrees to pay interest on all past due invoices at a rate of the greater of 18 percent (18%) per annum or the highest allowable rate by law. Further, Seller may suspend the performance of Services if Purchaser fails to pay any amounts when due and the failure continues for five (5) days following Purchaser’s receipt of notice thereof. Purchaser may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller.
- 4) **Changes:** If either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other Party in writing. Seller shall, within a reasonable time after such request, provide a written estimate to Purchaser of: (i) the likely time required to implement the change; (ii) any necessary variations to the fees and other charges for the Services arising from the change; (iii) the likely effect of the change on the Services; and (iv) any other impact the change might have on the performance of the Sales Confirmation. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a “Change Order”). Neither Party shall be bound by any Change Order unless mutually agreed upon in a writing signed by both Parties. Notwithstanding the foregoing, Seller may, from time to time, change the Services without the consent of Purchaser provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.
- 5) **Purchaser’s Obligations:** Purchaser shall: (i) cooperate with Seller in all matters relating to the Services and provide such access to Purchaser’s premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services or otherwise performing Seller’s obligations under the Sales Confirmation; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of the Agreement; and (iii) provide such Purchaser materials or information as Seller may reasonably request in a timely manner to carry out the Services and ensure that such Purchaser materials or information are complete and accurate in all material respects.
- 6) **Delivery:** Seller shall use commercially reasonable efforts to meet any performance or delivery dates specified in the Sales Confirmation, it being understood that any such dates shall be estimates only. Seller shall not be liable for any delays, loss or damage in transit. For Services to be performed upon goods to be shipped to Seller by Purchaser, Purchaser is responsible for arranging delivery on the schedule agreed to by Seller and pick-up immediately following completion of the Services, and Purchaser is responsible for all associated costs and risk of loss.
- 7) **Force Majeure; Purchaser’s Acts or Omissions:** Seller shall not be liable for any failure to perform, or delay in the performance of, its obligations under the Agreement if prevented from doing so by a cause beyond Seller’s reasonable control and without the fault or negligence of Seller. Without limiting the generality of the foregoing, such causes include acts of God, the public enemy, fires, floods, storms, epidemics, earthquakes, riots, civil disobedience, war or war operations, or restraint of government. Further, if Seller’s performance of its obligations under the Agreement is prevented or delayed by any act or omission of Purchaser or its agents, subcontractors, consultants or employees, Seller shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Purchaser, in each case, to the extent arising directly or indirectly from such prevention or delay.
- 8) **Inspection; Rejection of Services:** “Non-Conforming Services”, as used in these Terms, means only that the Services performed differ from the specifications set forth in the Sales Confirmation. Purchaser will evaluate the Services within five (5) days following delivery thereof (the “Inspection Period”). Purchaser will be deemed to have accepted the Services unless it notifies Seller in writing of any Non-Conforming Services during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. If Purchaser timely and properly notifies Seller of Non-Conforming Services, Seller will (i) reperform the Non-Conforming Services with conforming Services within a reasonable period of time, or (ii) credit or refund the purchase price for the Non-Conforming Services. PURCHASER ACKNOWLEDGES AND AGREES THAT THE REMEDY SET FORTH IN THIS SECTION 8 IS PURCHASER’S SOLE AND EXCLUSIVE REMEDY, AND SELLER’S SOLE AND EXCLUSIVE LIABILITY, FOR THE DELIVERY OF NON-CONFORMING SERVICES. Except as provided in this Section 8 and Section 9, all sales of Services are final.
- 9) **Limited Warranty:**
 - a) *Warranty as to Services.* Seller represents and warrants to Purchaser that it shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.
 - b) *Disclaimer of Warranties.* EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 9(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; AND (v) ANY WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
 - c) *Exclusion from Warranty Remedies.* Seller shall not be liable for a breach of the warranties set forth in Section 9(a) unless: (i) Purchaser gives written notice of the defective Services, reasonably described, to Seller within ten (10) days after the date on which Purchaser discovers or ought to have discovered the defect; and (ii) Seller reasonably and in good faith verifies Purchaser’s claim that the Services are defective. Seller shall not be liable for a breach of the warranty set forth in Section 9(a) where Services (1) have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by Seller; (2) have been reconstructed, repaired, or altered by persons other than Seller or its authorized representative; or (3) have been used with any third party product or hardware that has not been previously approved in writing by Seller.

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Purchaser will be responsible for the cost of any labor required by Purchaser or third parties to assist Seller in performing the first diagnosis, unless it is determined that the defect is directly resulting from Seller's breach of the warranties set forth in Section 9(a). Any claim for breach of the warranties set forth in Section 9(a) must be made within one (1) year of the completion of the Services.

- d) **Sole and Exclusive Remedy.** Subject to Section 9(c), with respect to Services determined to be defective, Seller shall (1) re-perform the applicable Services within a reasonable period of time, or (2) credit or refund the price of such Services at the pro rata contract rate, whichever remedy Seller elects to provide in its sole discretion. **THE REMEDIES SET FORTH IN THIS SECTION 9(d) SHALL BE THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY OR OTHER DEFECT OR DEFICIENCY IN THE SERVICES.**
- 10) **Limitation on Liability:**
- a) **Limitation on Damages.** **IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ITS REPRESENTATIVES, EMPLOYEES, OFFICERS, DIRECTORS FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, THE PERFORMANCE OF ANY SERVICES ON PURCHASER'S PREMISES, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE.**
- b) **Aggregate Liability.** **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, SERVICES, INCLUDING THE PERFORMANCE OF ANY SERVICES ON PURCHASER'S PREMISES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER BY PURCHASER FOR THE SERVICES SOLD HEREUNDER DURING THE TWELVE-MONTH PERIOD PRECEDING THE DATE ON WHICH THE LIABILITY AROSE.** The limitation of liability set forth in this Section 10(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from a defect in the Services.
- 11) **Indemnification:** Except to the extent caused by Seller's negligence or willful misconduct, Purchaser shall indemnify, defend and hold harmless Seller and its parent company, their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, personal injury, death, damage to or loss of property, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees, or expenses (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers) arising out of or occurring in connection with: (i) Purchaser's use of the Services, (ii) Purchaser's breach of the Agreement, or (iii) any negligence or willful misconduct of Purchaser.
- 12) **Insurance:** Purchaser shall obtain, pay for, and maintain in full force and effect during the period in which Seller is performing Services and for a period of 2 years thereafter, insurance as follows: (a) Workers' compensation and employers' liability insurance with limits to conform with the greater of the amount required by applicable law or one million dollars (\$1,000,000) each accident, including occupational disease coverage; (b) Commercial general liability insurance with limits not less than five million dollars (\$5,000,000) combined single limit for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and products and completed operations coverage; and (c) Commercial automobile liability insurance with limits not less than one million dollars (\$1,000,000) each occurrence combined single limit of liability for bodily injury, death, and property damage, including owned and non-owned and hired automobile coverages, as applicable. Certificates of Insurance evidencing all coverages described in this Section shall be furnished to Seller upon Seller's written request. Purchaser shall give thirty (30) business days' prior written notice to Seller of cancellation, non-renewal, or any material change in coverage, scope, or amount of any policy.
- 13) **Cancellation:** Any order made hereunder may not be cancelled in whole or in part by Purchaser without the Seller's written consent and payment of reasonable cancellation charges designated by Seller.
- 14) **Termination:** In addition to any other remedies Seller may have, Seller may terminate the Agreement with immediate effect and without liability, upon written notice to Purchaser, if Purchaser: (i) fails to pay any amount when due under the Agreement and the failure continues for five (5) days after Purchaser's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with the terms of the Agreement, in whole or in part, including without limitation Section 15 below; or (iii) becomes insolvent, files a petition for bankruptcy, or commences (or has commenced against it) proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
- 15) **Compliance with Law:** Purchaser shall comply with all applicable laws, regulations and ordinances, including anticorruption, bribery and similar laws or regulatory or legal compliance requirements. Purchaser shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that are necessary for the performance of the Services under the Agreement. Purchaser shall ensure that its facilities and premises are reasonably safe and compliant with all applicable (i) federal, state, regional and local laws, ordinances, statutes, rules and regulations, including all applicable safety laws, ordinances, statutes, rules and regulations, (ii) safety standards and (iii) industry standards. Purchaser shall comply with all export and import laws of all countries that are involved in the performance of Services under the Agreement. Seller may terminate the Agreement without liability if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Services. Without limiting the foregoing, Purchaser agrees and warrants that in the performance of its obligations under the Agreement or its use of the Services, Purchaser shall not take any action which will render Seller liable for a violation of the U.S. Foreign Corrupt Practices Act including any similar anti-corruption law or legislation, codes, rules, policies and regulation which prohibit a party from paying, offering, promising or giving anything of value to any employee or official to influence any act or decision by such person or by any government body for the purpose of obtaining, retaining or directing business or securing an improper advantage thereto in any way related to this Agreement. Violation of this Section by Purchaser shall give Seller the immediate right to suspend or terminate the Agreement with no liability.
- 16) **Governing Law:** All matters arising out of or relating to the Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.
- 17) **Waiver:** No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure by Seller to exercise, or delay by Seller in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. Except as expressly provided herein, no single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 18) **Confidential Information:** All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Purchaser, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the Agreement is the confidential information of Seller ("**Confidential Information**"). Purchaser shall not use the Confidential Information except and only to the extent necessary to perform its obligation under the Agreement. Purchaser shall not disclose or copy the Confidential Information unless authorized in advance by Seller in writing. Upon Seller's request, Purchaser

shall promptly return all Confidential Information to Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Purchaser at the time of disclosure as evidenced by contemporaneous written records; or (c) rightfully obtained by Purchaser on a non-confidential basis from a third party.

- 19) **Assignment:** Purchaser shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Purchaser of any of its obligations under the Agreement.
- 20) **Relationship of the Parties:** The relationship between the Parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- 21) **No Third-Party Beneficiaries:** The Agreement is for the sole benefit of Seller and Purchaser and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement.
- 22) **Notices:** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the Parties at the addresses set forth in the Sales Confirmation or to such other address that may be designated by the receiving Party in writing. All notices shall be delivered by personal delivery (in such case, notice shall be deemed given upon delivery), nationally recognized overnight courier, with all fees pre-paid (in such case, notice shall be deemed given two days after deposit with the courier), or facsimile with confirmation of transmission (in such case, notice shall be deemed given upon receipt by the notifying Party of confirmation of transmission). Except as otherwise provided in the Agreement, a notice is effective only if the Party giving the notice has complied with the requirements of this Section.
- 23) **Severability:** If any term or provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 24) **Books and Records:** Purchaser shall maintain books, records and accounts of all transactions and activities covered by or relating to the Agreement, the Services and permit full examination and audit of such books, records and accounts by Seller and its representatives upon Seller's request from time to time.
- 25) **No Solicitation:** Each Party shall not directly or indirectly solicit, offer employment to, or employ, the other Party's employees, during the term of this Agreement and for a period of one (1) year after the later of (i) the date any provision of Services has ceased or (ii) the termination of this Agreement.
- 26) **Survival:** Provisions of these Terms which by their nature should survive beyond the term of the Agreement will remain in force after any termination or expiration of the Agreement, including, but not limited to, the following provisions: "Limited Warranty", "Limitation on Liability", "Indemnification", "Insurance", "Compliance with Law", "Governing Law; Disputes", "Confidential Information", "Books and Records", "No Solicitation", and "Survival."