

**PERFECTEMP REFRIGERATION SERVICE, INC.**  
**TERMS AND CONDITIONS**

The following terms and conditions (these "Terms") shall apply to all sales authorized by "Customer" and work or materials requests to Perfectemp Refrigeration Service, Inc. ("Company"). For purposes of these Terms, all sales orders (in whatever form, and whether verbal or written), shall be referred to as the "PO".

**1. Definitions.** "Equipment" means all equipment and other personal property ordered by Customer from Company under the PO. "Services" means all installation and/or maintenance services ordered by Customer from Company under the PO.

**2. Conflict in Terms.** The PO consists of the following documents, listed in their order of priority in the event of a conflict in the language thereof: change orders to the PO; the PO; these Terms; and any exhibits or schedules incorporated into the PO.

**3. Payment.** Customer agrees to pay in full all amounts due under the PO as set forth in the applicable PO, or if not specifically set forth in the PO, within thirty (30) days of the invoice date. Late payment charges will be billed at 1.5% per month of the overdue amount or the maximum lawful rate allowable, whichever is less. Customer agrees to pay all reasonable costs and expenses, including but not limited to, reasonable attorney fees, expenses, court costs and service charges, incurred by Company in collecting any late payment. Customer also agrees to pay all applicable shipping charges, insurance charges, or any applicable sales, use, value added or privilege tax imposed on the sale or use of the Equipment ordered from Company, all of which may be additionally invoiced to Customer. If Customer has provided Company with a valid exemption certificate, Company shall not invoice Customer for any applicable federal or state sales, use, value added or privilege tax. Exemption certificates not supplied in advance of the PO will result in Company invoicing Customer for the applicable taxes and transferring payment to the appropriate taxing authority.

**4. Title and Purchase Money Security Interest.** Title to Equipment shall pass to Customer upon payment in full. Further, as security for the payment in full of all amounts due from Customer under any PO, Customer grants to Company a first priority lien and continuing purchase money security interest in the applicable Equipment (including, without limitation, equipment, machinery, fixture and refrigeration systems and other tangible personal property that is delivered to the Customer in connection with the applicable PO), and all cash, non-cash, insurance proceeds and replacements thereof. Customer shall execute such additional documentation or filings deemed necessary by Company in order for Company to perfect such security interest as provided under the Uniform Commercial Code (as enacted and in effect from time to time in the Commonwealth of Pennsylvania or other appropriate jurisdictions). Customer further agrees that Company may file a financing statement or other appropriate documentation in the applicable jurisdiction in order to perfect such security interest.

**5. Risk of Loss.** Risk of loss or damage to the Equipment ordered by Customer shall pass from Company to Customer upon initial delivery by Company to the delivery carrier (i.e., FOB origin). Customer agrees to pay all transportation, handling, insurance and associated charges, including but not limited to, additional charges

for non-standard shipment. Company shall use commercially reasonable efforts to meet Customer's requested delivery dates, but Company does not guarantee delivery dates and standard delivery time is 6-8 weeks.

**6. Inspection and Acceptance.** Upon delivery of the Equipment to Customer's site, Customer shall promptly inspect the Equipment for conformance to the PO. Customer shall notify Company if it has any complaints relating to the quality or condition of the Equipment within seven (7) days after the date of receipt of such Equipment, after which date acceptance of the Equipment by Customer shall have occurred. In the event Customer rejects any of the Equipment, which is permitted as a result of a manufacturing, material or workmanship defect, Company may, at its election, either (a) repair or replace, at its expense, including transportation cost, any defective or non-conforming Equipment, or (b) remove the Equipment from Customer's facility at Company's expense and return any funds paid by Customer in respect thereof to Customer, at which point the PO shall be terminated. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS OR THE APPLICABLE PO, COMPANY PROVIDES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE EQUIPMENT OR SERVICES PROVIDED TO CUSTOMER.

**7. Force Majeure.** Neither party shall be in breach of the PO to the extent that any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting party.

**8. Indemnification.** Customer shall indemnify, defend and hold harmless Company against any and all losses, claims, damages and expenses (including attorneys' fees) arising out of or related to Customer's (including its employees' and independent contractors'), misuse and/or modification of the Equipment, or Customer's use of any of the Equipment in combination with any other items, whether or not furnished by Company, unless such use is the necessary, inherent and/or intended use of the Equipment.

**9. Limitation of Liability.** Except as expressly provided herein, neither party shall be liable to the other for any incidental, indirect, special, punitive, liquidated or consequential damages of whatever nature or any lost profits (whether direct or indirect), loss of income, delay damages, loss of business or contract, loss of anticipated savings, or loss of goodwill, howsoever caused. Except for indemnification obligations to third parties, in no event shall the total and cumulative liability of either party to the other for any claims under these Terms or a PO exceed the aggregate amounts paid by Customer to Company under these Terms or under the applicable PO (and costs of collection, if applicable).

**10. Miscellaneous.** Company is an independent contractor of Customer in the performance of a PO. No waiver by either party of any default shall be deemed a waiver of any subsequent default. These Terms and the PO shall be governed by the laws of the Commonwealth of Pennsylvania, and any claims arising under these Terms or the PO shall be brought exclusively in the state courts located in Berks County, Pennsylvania.