

**1. ACCEPTANCE.**

These terms and conditions ("Terms") and any Service Product Quotation, Equipment Installation Quotation, Hobart Product Guidelines, or any agreement signed by an authorized representative of each party (each, a "Service Contract") to which these Terms are attached, any Hobart acknowledgment or invoice and all documents incorporated by specific reference herein or therein ("Hobart Documents" and together with these Terms and the relevant Service Contract, the "Agreement"), constitute the complete terms governing the sale of services ("Services") and replacement parts ("Parts") by Hobart Service, a division of ITW Food Equipment Group LLC ("Hobart") to customer purchasing from Hobart ("Customer"). HOBART HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY CUSTOMER, WHETHER OR NOT CONTAINED IN ANY OF CUSTOMER'S BUSINESS FORMS OR ON CUSTOMER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement required to access a website or on a website will have any binding effect whether or not Hobart clicks on an "ok," "I accept," or similar acknowledgment. Terms contained or referenced in Customer facility sign-in logs, safety waivers or other similar documentation are hereby rejected and shall not have any binding effect on Hobart or its employees. Customer's order of any Services or acceptance of delivery of any Parts manifests Customer's assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of a Hobart Document or agreed to in writing by the parties in a Service Contract. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized senior officer of Hobart in a Service Contract; (b) Hobart Document terms; (c) these Terms.

**2. QUOTATIONS.**

Quotations must be in writing and are only valid for 30 days from the date of the quotation for Service Product Quotations and 90 days from the date of quotation for Equipment Installation Quotations. All quotations are subject to change or withdrawal without prior notice to Customer. Quotations are made subject to approval of Customer's credit. Hobart may refuse orders and has no obligation to supply Products or Services unless Hobart issues an order acknowledgment or upon the shipment of Products or commencement of Services.

**3. PRICING.**

Prices and rates are in U.S. dollars and are subject to change without notice, unless otherwise set forth in a Service Contract. Unless otherwise stated on a Service Contract, all payments are due within 30 days of the invoice date. Hobart may withhold Services and Parts for past-due invoices. If an invoice is past due for 60 days or more, Hobart may terminate the applicable Service Contract or this Agreement and Customer will owe, in addition to the past due invoice amounts, for any Service that is performed during the non-payment period at Hobart Rates, as defined herein, and standard Parts rates.

**4. SITE SURVEY.**

Hobart may conduct a Site (as defined below) survey at Customer's facility, such Site surveys are intended to identify problems which can be readily identified through reasonable visual inspection however Customer is solely responsible for the state of its facility and Site (including electrical and plumbing lines). During a Site survey, Hobart is under no obligation to excavate, move equipment, or otherwise disassemble or remove covers, fascia, sconces, or the like. Should problems or defects be identified during the Site survey or during performance of Services, Customer shall remedy such problems at its own cost before Hobart is required to continue performing or complete Services.

**5. SERVICE.**

Hobart will perform Services and provide Parts as set forth in the applicable Service Contract through its branch office ("Branch Office") local to the applicable Customer location. Hobart will perform the Services during the days and hours listed on the Service Contract ("Business Hours") at no additional cost to Customer. Unless otherwise set forth in the Service Contract, additional charges apply to (i) Services provided to Customer locations further than 100 miles from the closest Branch Office, (ii) Services and travel time performed at Customer's request outside of Business Hours, (iii) installation, inspections and proactive maintenance Services, (iv) taxes, tolls, and business licenses and permits applicable to Hobart's operation as a business, and (v) any other Services not included in the Service Contract which Hobart performs for Customer. For such instances, Customer shall pay Branch Office for travel time and mileage at Hobart's current national rates for labor and travel ("Hobart Rates"). For Services that require use of specialized forms of transportation other than by conventional motor vehicles, Customer shall reimburse the Branch Office for all transportation, food, and lodging expenses incurred by such Branch Office. Permits required for performance of the Services are the responsibility of the Customer or the applicable third-party contractor. The Services set forth in the applicable Service Contract are subject to the following definitions:

- a. A call ("Call") is defined as a Service on a single piece of equipment that includes labor, travel, return trip charges, parts and standard shipping costs associated with the Service. Hobart may complete a Call in one trip or multiple trips. Should Services be performed on multiple pieces of equipment within the same visit, each piece covered by the Service Contract will be considered separate Calls.
- b. Site ("Site") is defined as the physical location at which any the equipment is serviced.
- c. A fixed call ("Fixed Call") is a Call within an allotted total number of Calls purchased by Customer in the applicable Service Contract.
- d. An excess call ("Excess Call") is a Call in excess of the amount of Fixed Calls purchased by a Customer in the applicable Service Contract. Excess Calls shall be subject to different rates.

e. A call back ("Call Back") is defined as a Call on a single piece of equipment for a problem or issue within seven days of completion of the previous Call due to the same problem. Call Backs are not counted as separate Calls towards the total number of Calls allotted for a Fixed Call Service Contract unless the same problem has been caused by abuse, neglect, accident, or any other issue not caused by Hobart. A Call on the same piece of equipment due to a different problem is not a Call Back.

f. An emergency Call ("Emergency Call") is defined as a Call on a single piece of equipment that (i) cannot be reasonably used for its intended function or (ii) poses an unreasonable health related risk due to the equipment's failure to function properly. Whether a Call qualifies as an Emergency Call shall be determined by Hobart, in its sole discretion.

g. A non-emergency Call ("Non-Emergency Call") is defined as a Call on a single piece of equipment that is operational and in need of repair but does not meet the criteria of an Emergency Call.

**6. TERM; CANCELLATION.**

Unless otherwise specified in a Service Contract, the term of this Agreement shall begin on the date of Customer's acceptance and shall continue for a period of one year. The Agreement shall automatically renew for additional one year terms unless (i) Customer opts out of the automatic renewal option on the date it enters into a Service Contract with Customer or (ii) Customer provides written notice of termination at least 90 days' in advance of renewal. Hobart or Customer may terminate this Agreement at any time with thirty (30) days prior written notice to the other party; provided that if the Customer terminates under this sentence, Customer shall remain obligated to pay the full value of the Agreement. If a Fixed Call Service Contract is terminated or upgraded by Customer prior to the usage of all Fixed Calls, Customer shall be invoiced and shall pay for the remaining unused Calls. In the event this Agreement automatically renews, Hobart may increase prices and Hobart Rates in its sole discretion.

**7. PARTS.**

Hobart will provide Parts for equipment covered in an applicable Service Contract, subject to the availability of such Parts. Hobart may provide new or reconditioned Parts. Replaced parts and assemblies shall become the property of Hobart upon removal. For Parts installed by Hobart, title and risk of loss transfers to Customer upon installation. For Parts ordered by and shipped to Customer, title and risk of loss passes to Customer upon shipment. Should Customer request expedited freight, Hobart will expedite the Parts at Customer's cost. If the Parts are damaged in transit, Customer must file a claim with the carrier and Hobart shall not be liable for such damage. Concealed damage and shorted shipments must be reported to Hobart's Parts Department within 5 days of delivery.

**8. RETURNS.**

Customer may only return Parts with Hobart's written authorization. Return requests must include the item and invoice number and reason for return unless otherwise required by Hobart. Customer will be responsible for any applicable restocking fees. No return requests will be accepted after 90 days from the date of invoice. Custom orders may not be cancelled or returned. All returned Parts must be unused, in saleable condition, and in the original packaging. Except to the extent prohibited by law, Customer is responsible for shipping return Parts to Hobart's designated location. Hobart will issue a credit or a refund at its election after the returned Part has been received and inspected for conformity to this section. Failure to comply with this section will result in any credit being withheld or reduced accordingly in Hobart's discretion. The following items are not eligible for return: non-stock parts, hazardous materials with a shelf life, electronic boards or electronic components that have been opened, commercial standard items (e.g., nuts, bolts, screws), and multiple quantity items if less than the original quantity is returned.

**9. INDEMNITY.**

Hobart agrees to indemnify Customer, its directors, officers, and employees from third-party claims, damages and expenses (including reasonable attorneys' fees) to the extent those losses were directly caused by (i) the negligence or willful misconduct of Hobart or its employees, (ii) Hobart's failure to comply with applicable laws, or (iii) any claim of infringement or misappropriation of any third-party intellectual or proprietary right directly based on the Services provided, however, Hobart shall have no duties under this paragraph where the Services have been modified by any party other than Hobart. The above obligations are contingent upon (i) Customer supplying Hobart written notice of such claim immediately after the Customer has notice of such claim, (ii) Customer diligently cooperating with Hobart in the defense and settlement of such claim; and (iii) Customer allowing Hobart the right to defend and settle such claim.

**10. INSURANCE.**

Hobart carries the following insurance: i) worker's compensation meeting statutory requirements, ii) employer's liability with limits of \$1,000,000 per accident/ per disease, per employee/ per disease, policy limits, iii) commercial general liability including products and completed operations of \$2,000,000 per occurrence, \$4,000,000 aggregate, \$4,000,000 products and completed operations aggregate with Customer as an additional insured per form U GL 11 75 D CW or replacement thereof, iv) commercial auto liability with combined single limits of \$1,000,000 per accident for owned, hired and non-owned vehicles. Hobart will provide evidence of insurance upon request of Customer. Hobart may self-insure any coverage.

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