

SPECIALIZED EQUIPMENT LEASE & SERVICE AGREEMENT
TERMS AND CONDITIONS

MPW Industrial Water Services, Inc. ("MPW") provides the following Specialized Equipment Lease & Service Agreement Terms and Conditions ("Agreement"), which applies to the Work as defined and described herein. All purchases of Work and related goods and services by customer, owner, any subsidiary or affiliate, or their agents (all referred to as "Customer") are expressly governed by the following Terms and Conditions, and no provision, printed or otherwise, contained in any purchase order, acceptance, confirmation, or acknowledgement which is inconsistent with, different from, or in addition to these Terms and Conditions is a part of this Agreement. The MPW name that appears on any Customer purchase order or other documentation shall be deemed modified to the name of the MPW legal entity that actually provides the equipment and/or performs the services and/or sells the goods described in such purchase order or documentation regardless of the MPW legal entity name stated on the purchase order or documentation.

WITNESSETH, that for and in consideration of the covenants, contract terms, provisions and conditions hereinafter set forth, the parties do hereby mutually agree, each with the other as follows:

1. SCOPE OF WORK

The Work shall consist of MPW's design, fabrication, installation and operation of an industrial air system and any related services as described in Exhibit A. The "Delivery Date" is agreed to be X weeks after the Agreement is signed by both parties.

2. MINIMUM LEASE TERM/ START-UP DATE

- i. X years
- ii. The X-year Minimum Lease Term shall commence as of the Start-Up Date. For clarity, it is understood and agreed by the parties that the intent of the Minimum Lease Term is for MPW to receive X (X) years of monthly payments at the agreed rates set forth in Exhibit A.
- iii. The Start-Up Date is the date on which the industrial air system is operational or capable of producing compressed air as set forth in Exhibit A (or on which the industrial air system would have been operational or capable of producing compressed air as set forth in Exhibit A but for Customer's failure to timely provide the Customer Supplies or authorization for MPW to install the industrial air system) shall be the Start-Up Date.

3. RATES/RATE ADJUSTMENTS

The rates for the Work are set forth in Exhibit A and should be reflected in the same manner on Customer's purchase order or other purchasing document. The rates set forth in Exhibit A shall automatically be adjusted annually commencing on the first anniversary of the Start-Up Date and on each anniversary thereafter by an amount which reflects any increase in the U.S. Department of Labor and Statistics - Consumer Price Index (CPI) for the prior year. Such modifications shall be

retroactively applied if calculated after the anniversary dates. The rates set forth in Exhibit A will be considered the base minimum rates for the entire Agreement.

4. TAXES

Federal, state, or local indirect taxes, including but not limited to sales and/or use taxes, VATA taxes, GST taxes, transfer taxes or any similar tax are not included in the rates set forth herein. Customer assumes full responsibility for the payment of these taxes but is not responsible for payment of any payroll, workers' compensation or other taxes paid regarding MPW's internal operations.

5. ACCESS TO FACILITIES; PERMITS

Customer will provide and arrange for MPW, its employees, agents and subcontractors, to have reasonable access to Customer facilities as necessary for MPW to provide the Work. Customer will obtain, at its expense, all governmental licenses, permits and approvals that may be necessary for MPW to perform the Work.

6. PAYMENT

MPW shall have the right to invoice Customer on at least a monthly basis for Work performed. Customer shall make payment to MPW in net thirty (30) days after Customer's receipt of MPW's invoices. Entire invoices shall not be withheld due to a dispute over a portion of the invoice. In the event Customer disputes any portion of any invoice, Customer shall give MPW written notice of such disputed portion within ten (10) days after Customer's receipt of such invoice and shall pay to MPW the undisputed portion of the invoice without delay. Once any disputed portion is settled, Customer shall pay the settled amount, if any, within the original payment timeframe, or if such original timeframe has already elapsed then payment shall be due immediately. If Customer fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of 10% per annum, or the maximum amount allowed by law if less, from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item that is finally resolved in Customer's favor.

7. COMPLIANCE WITH LAW

MPW and Customer agree to comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules or regulations of any constituted authority, relative to this Agreement; provided, however, that if any such law, ordinance, order, rule or regulation specific to the Work or specific to Customer's site where the Work will take place requires the expenditure of funds for compliance, Customer shall be responsible for the payment of such funds.

8. FORCE MAJEURE

Except for the payment obligations under this Agreement including, but not limited to, payments to be made pursuant to Section 16 that may occur prior to delivery of the industrial air system, neither party shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including but not limited to strikes, riots, war, fire, acts of God, and compliance with any law, regulation or order of a governmental body.

9. ASSIGNMENT AND SUBCONTRACTING

MPW shall not subcontract any portion of the Work covered hereby, in whole or in part, without Customer's prior written consent. Further, MPW shall not assign any of its duties or obligations related to the Work without Customer's prior written consent. However, MPW may freely assign its rights to receive payment under the Agreement and its other various rights and remedies under the Agreement. If MPW chooses to assign such rights to payment and/or such other rights and remedies, then Customer shall assist in such assignment by executing any necessary Collateral Assignment Agreement or other agreement to effectuate the assignment.

10. SEVERABILITY

The provisions of this Agreement are severable, and if any clause or provisions hereof shall be held invalid in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Agreement in any jurisdiction. Any such clause or provision held invalid or unenforceable, in whole or in part, to the extent permitted by law, shall be restricted in applicability or reformed to the minimum extent required for such clause or provision to be enforceable.

11. WAIVER

The failure of either party to exercise its rights on one occasion shall only be applicable as to that specific instance and shall not be deemed to be a waiver of the right to exercise those rights in the future.

12. INDEPENDENT CONTRACTOR

MPW's relationship with Customer is that of independent contractor. MPW's employees, subcontractors, methods, equipment, and facilities shall be at all times under MPW's exclusive direction and control. Nothing in this Agreement shall be construed to designate MPW or any of its employees, subcontractors, or agents as employees, agents, joint venturers or partners of Customer.

13. INDEMNIFICATION/LIMITATION OF LIABILITY

Except as expressly provided otherwise in this Agreement, the parties (each an "Indemnifying Party" or "Indemnified Party" according to the context) shall defend and indemnify each other from and against any claims asserted by, or any liability to (including related, reasonable attorneys' fees), any person, including, without limitation, any agency, branch or representative of federal, state, or local government, on account of any personal injury or death, or damage, destruction or loss of property arising out of the Work to the extent such loss was caused by the negligence of the Indemnifying Party, or breach of any obligation or responsibility imposed on the Indemnifying Party by the provisions of this Agreement or by law. For purposes of the preceding sentence, "negligence" shall be deemed to include, without limitation, both acts and omissions, or willful misconduct, and the negligence of a party shall include the respective negligence of its officers, employees, agents (including subcontractors) or representatives. The provisions of this Section 13 shall survive the termination of the Agreement.

In no event shall MPW be liable to Customer for any exemplary, special, incidental, indirect, punitive or consequential damages in connection with MPW's performance of the Work. MPW shall not be liable under this Agreement or in tort (including negligence) to Customer for incidental or

consequential damages, including, but not limited to, damages to or loss of use of Customer's property or equipment, loss of profits, loss of production, costs of purchased or replacement equipment, cost of capital or overhead, loss of revenue, loss of anticipated profits, claims of Customer's for interruptions, or cost of replacing Customer's product resulting from MPW's performance or nonperformance of its obligations under this Agreement. In addition to the foregoing, in the case that MPW is liable to Customer for any damages of any nature, including but not limited to consequential, punitive, special, exemplary or incidental damages, MPW's liability for the same shall be limited to the amount paid to MPW by Customer for the Work.

14. INTELLECTUAL PROPERTY

There shall be no transfer of rights to, or interest in, any intellectual property under this Agreement. Each party shall retain all right, title and interest in any documents, processes, know-how, trade secrets or other intangibles as the same were owned before this Agreement went into effect. Further, each party shall retain all right, title and interest in any documents, processes, know-how, trade secrets or other intangibles developed by such party during the course of this Agreement. Customer shall be allowed to keep copies of any reports or other documentation submitted to Customer by MPW that contains recommendations or other intellectual property created by MPW as part of the Work, but the same shall not be considered "work product" or "work made for hire" for purposes of determining ownership of, or any other rights to, the contents of such reports or documentation.

MPW shall indemnify, defend and hold Customer harmless from any and all losses, liabilities, damages, costs and expenses, including attorney's fees, resulting from any claims, actions and proceedings alleging infringement or violation of any patent, copyright, trademark, trade name, trade secret or other intellectual property right of a third party and arising out of or resulting from the Work. The provisions of this paragraph shall not apply to the extent such claims or actions result from MPW following specific written instructions or using written information given to MPW by Customer in accordance with this Agreement.

15. INSURANCE

MPW and Customer agree to furnish to the other, upon request, certificates attesting to the current coverage held by that party, which shall include at a minimum workers' compensation statutory benefits, comprehensive automobile, general liability and contractual liability insurance with policy limits of no less than \$1,000,000 each occurrence. Customer's insurance shall include coverage for replacement costs of any damaged MPW equipment for which Customer may be liable under Section 23. To the extent permitted by law, MPW may provide for all or part of the required insurance coverage under a plan of self-insurance.

16. TERMINATION, SUSPENSION AND DELAY

- a) **Termination:** In the event this Agreement is cancelled or terminated prior to the expiration of the Minimum Lease Term by Customer for any reason, except for a material uncured non-conformance by MPW (as described in Section 18 below), Customer shall pay MPW a Cancellation Fee equivalent to X% of all fixed monthly charges for the remaining months of the Minimum Lease Term. For example, if Customer were to terminate the Agreement after the ___ year of the Minimum Lease Term, then the Cancellation Fee would be X% of the fixed monthly charges for the remaining ____ (___) years of the Minimum Lease

Term. The Cancellation Fee shall be invoiced by MPW to Customer upon receipt of the notice of termination and be due and payable immediately upon Customer's receipt of the invoice. The Cancellation Fee is agreed by the parties to not be subject to any limitations on types or amounts of damages set forth in this Agreement.

- b) Suspension or Delay: Customer may suspend or delay any or all of the Work at its discretion. However, during any such suspension or delay, Customer shall continue to pay to MPW at the rates set forth in Exhibit A if the suspension or delay takes place after the Start-Up Date. If the suspension or delay takes place prior to the Start-Up Date, then Customer shall pay MPW for any costs of equipment storage, equipment idling, and the standard T&M Rates for any time worked by MPW employees on the Agreement during such suspension or delay. In the event that the suspension or delay continues for more than ninety (90) calendar days beyond the Delivery Date, then MPW shall have the right to begin charging Customer the fixed monthly rates set forth in Exhibit A and the Start-Up Date shall be considered equal to such 90th day beyond the Delivery Date, unless otherwise agreed to by the parties in a written amendment signed by both parties.

MPW shall have the right to suspend the Work, or part(s) thereof, when continuation of the Work is or will become unreasonably hazardous to life or property, or if a suspension is necessary for health or environmental reasons. MPW may also, in its sole discretion, suspend Work in the event of repeated or egregious non-payment by Customer of invoiced amounts payable to MPW.

In the event of any termination of this Agreement, MPW shall have access to and the right to remove MPW's equipment from Customer's site. MPW shall not be charged any amount for such access. No expiration, termination or cancellation of this Agreement shall relieve either party of its obligations or remedies under this Agreement, with respect to (i) any incidents which occurred prior to the date of such expiration, termination or cancellation, (ii) the confidentiality obligations contained herein and, or (iii) the indemnification provisions contained herein, each of which shall survive the expiration, termination, or cancellation hereof.

17. INFORMATION ON EXISTING CONDITIONS; PROJECT ASSESSMENT

In addition to the information required pursuant to Section 23, Customer shall provide to MPW all other data and information which may be necessary or relevant to permit MPW to properly, safely and economically perform the Work, or which reasonably may be requested by MPW. MPW shall make good faith judgments and estimates in submitting oral or written recommendations as to procedures, and the type, quantity and cost of Work to be furnished to Customer based upon the information and data furnished by Customer. MPW relies on the accuracy of such information and data furnished by Customer. MPW reserves the right to adjust estimates based on currently existing conditions that are different from those represented by the Customer, or based upon a change in conditions after performance of the Work has commenced. Without limiting the foregoing, Customer shall supply all of the Customer Supplies.

18. WARRANTIES, REMEDIES, LIMITATIONS OF WARRANTIES AND DISCLAIMERS

- a) For services: MPW warrants that all services shall be performed in a good and workmanlike manner and in accordance with industry practice, and in conformance with the agreed specifications in Exhibit A. In the event that Customer claims that MPW is not meeting its obligations under the Agreement in any instance, then Customer shall so notify MPW and the parties shall mutually investigate the cause of the claimed non-conformance. To the extent that it is determined that MPW is responsible for the non-conformance, then MPW shall be given a reasonable time to cure such non-conformance. To the extent that it is determined that Customer is responsible for causing the non-conformance, then Customer shall cure such non-conformance or allow MPW to adjust the applicable rates to account for the impact of such non-conformance. The parties agree that a cure by MPW is achieved once MPW is delivering the required compressed air under the Agreement regardless of the equipment used by MPW to meet such requirements in the event of an operational non-conformance, or upon compliance with applicable law, regulation, or rule in the event of a claimed violation of the same. Where the MPW fails to cure within the time agreed between MPW and Customer, then Customer may:
- i. instruct MPW to suspend performance of the services immediately;
 - ii. negotiate modifications to the Agreement to account for MPW's failure; and/or
 - iii. terminate the Agreement, and upon termination:
 1. instruct the MPW to leave the Customer facility immediately;
 2. MPW will remove all of its equipment and any other materials or supplies owned by MPW from the Customer facility immediately;
 3. for services, claim damages from MPW in an amount equal to the direct, actual cost to replace the services that is in excess of what Customer would have paid to MPW for the equivalent services; for goods, return the goods to MPW, or allow MPW to remove the goods from Customer's facility, and receive an invoice credit for the agreed cost of the goods.
- b) For goods: If MPW sells goods to Customer for ownership by Customer, then the following warranties solely apply: **(1) IN THE CASE THAT CUSTOMER IS PURCHASING SPECIALLY DESIGNED EQUIPMENT FROM MPW UNDER A CAPITAL SALE SCENARIO, MPW WARRANTS THAT SUCH EQUIPMENT WILL CONFORM TO THE SPECIFICATIONS SET FORTH IN MPW'S QUOTE FOR SUCH EQUIPMENT, AND THE WARRANTY SHALL BE FOR A TERM OF 1 YEAR FROM THE DATE OF DELIVERY OF THE EQUIPMENT TO THE CUSTOMER FACILITY. ANY CLAIMS UNDER THIS WARRANTY WILL FOLLOW THE PROCEDURES AND REMEDIES SET FORTH IN THE SERVICES WARRANTY. (2) FOR THE RESALE BY MPW OF GOODS NOT MANUFACTURED BY MPW, THERE IS NO WARRANTY ON SUCH GOODS OTHER THAN TO THE EXTENT MPW CAN ASSIGN THE MANUFACTURER WARRANTY TO CUSTOMER.**
- c) THESE WARRANTIES DO NOT APPLY TO ANY OF SUCH PRODUCTS, SUPPLIES AND MATERIALS WHERE DAMAGE HAS DEVELOPED FROM IMPROPER HANDLING OR USE BY CUSTOMER OR THIRD PARTIES. THE COMBINATION OF SUCH PRODUCTS, SUPPLIES AND MATERIALS WITH ANY OTHER PRODUCT OR CHEMICAL, NOT EXPRESSLY APPROVED BY MPW SHALL AUTOMATICALLY CANCEL ANY WARRANTIES. FURTHER, MPW IS RELEASED FROM ANY AND ALL

SERVICE PERFORMANCE WARRANTIES IN THE EVENT THAT CUSTOMER DOES NOT SUPPLY MPW WITH THE CUSTOMER SUPPLIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE IN CONNECTION WITH PERFORMANCE OF THE WORK, OR THE PRODUCTS, SUPPLIES AND MATERIALS USED IN CONNECTION WITH SUCH PERFORMANCE. THE WARRANTIES OFFERED HEREIN BY MPW FOR SERVICES SHALL LAST FOR THE DURATION OF THE SERVICES.

19. ATTORNEYS' FEES

In the event Customer defaults in the payment of sums due and owing under this Agreement, and MPW places collection of such sums in the hands of an attorney, or files suit for the recovery of such sums, Customer agrees to pay MPW's reasonable attorneys' fees and costs, whether or not suit is instituted.

20. NOTICES

No notice required or permitted hereunder shall be valid unless given in writing and shall be deemed to have been validly given only if delivered in person or sent by certified mail, postage prepaid, return receipt requested, or other traceable mail carrier, facsimile, electronic mail, or commercial courier to:

MPW

Legal Department
MPW Industrial Water Services, Inc.
9711 Lancaster Road SE
Hebron, OH 43025

CUSTOMER

21. GOVERNING LAW

The laws of the State of Ohio shall govern any suits or proceedings arising out of or in connection with this Agreement. Any dispute arising hereunder shall be the exclusive jurisdiction of the Franklin County, Ohio courts and the parties hereby submit to the personal jurisdiction of such courts and waive any argument of forum non-conveniens.

22. PRECEDENCE

In the event of a conflict between the terms and conditions in this Agreement and those contained on the face of the Purchase Order as described in the preamble to this Agreement, the terms and conditions of the Agreement shall prevail. In the event of a conflict within the Agreement, MPW shall determine which provision shall prevail.

23. CUSTOMER'S REPRESENTATIONS

Customer shall submit to MPW all information necessary for the performance of the Work prior to commencing such Work. Without limiting the foregoing, Customer shall supply all of the items identified as being supplied by Customer in Exhibit A (the "Customer Supplies"). Any and all loss or damage to Customer arising out of the performance of the Work shall be sustained and borne by Customer at its own cost and expense except to the extent such loss or damage directly results from

the negligence or willful misconduct of MPW. Further, Customer shall be liable for any and all damage, including replacement costs, to MPW equipment that occurs while such MPW equipment is on Customer's site except to the extent that the damage is caused by MPW. If the damage is extensive enough to require replacement of the equipment, then Customer shall be liable for the cost of replacement as well. Customer's liability under this section applies regardless of any insurance coverage that MPW may, or is required to, carry on such equipment. For clarity, MPW is not required to make or submit any claim for insurance coverage as a condition to Customer's obligation to reimburse or compensate MPW for such damage. Customer acknowledges and agrees that replacement costs are necessary since damaged equipment may no longer function properly and will need to be replaced in order to adequately compensate MPW. The intent of this paragraph is a recognition that Customer has control over the area where MPW's equipment will be located and over who has access to such area and, as such, Customer is responsible for keeping the equipment in generally the same condition the equipment was in when delivered to Customer less normal wear and tear.

24. ENVIRONMENTAL AND SAFETY COMPLIANCE

MPW will comply with all Customer site environmental and safety rules, regulations and procedures and shall comply in all material respects with applicable federal, state and local laws in effect during the term of this Agreement.

25. CONFIDENTIALITY

All parties hereto shall treat as confidential, during and subsequent to the terms of the Agreement, any information, data, or knowledge acquired during the course of this Agreement, whether verbal or written or of any description whatsoever regarding either party's plans, techniques, programs, processes, products, costs, pricing, equipment, operations or customers. Nothing herein however shall preclude or prevent either party from conveying such information or knowledge regarding the work provided for herein, to any governmental or emergency personnel as may be required to deal with any emergency situation or as required by any statute, law or ordinance. Confidential information does not include information which (i) was or becomes generally available to the public other than as a result of disclosure by a party hereto, (ii) was available to a party hereto on a non-confidential basis prior to its disclosure pursuant to the Work, or (iii) becomes available on a non-confidential basis from a source other than a party hereto or its representatives or agents.

26. CHANGES

Customer may request changes to the Work at any time. Such requests shall be submitted in writing to MPW. As soon as reasonably possible after receipt of Customer's request for a change in the Work, MPW shall submit to Customer a proposal setting forth MPW's plan for implementation of the change(s) and the related cost of such change(s). Customer shall then approve or disapprove the change(s) in writing to MPW based upon MPW's proposal. If the change(s) is approved, then Customer shall document the same by issuing a revised purchase order or other purchasing document that reflects the change(s). Any additional compensation payable to MPW as a result of the change(s) shall be invoiced to Customer in the same form, and be payable under the same terms, as Section 6 "Payments."

27. AGREEMENT DOCUMENTS

This Agreement consists of multiple documents, all of which are hereby incorporated by reference as if they were written herein. The "Agreement Documents" shall be as follows, in order of precedence:

- a) This Specialized Equipment Lease & Service Agreement Terms and Conditions document;
- b) Exhibit A - IA Quote Number [INSERT FINAL QUOTE NUMBER];
- c) [Specifications?]; and
- d) [Schedule Document?].

28. SIGNATORY AUTHORITY

The parties acknowledge and agree that each signatory to this Agreement is possessed of all rights and authority to execute this Agreement and that it will not challenge the legitimacy, terms or enforceability of this Agreement based on the identity or authority of any such signatory.

29. COUNTERPARTS AND EXECUTION

This Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile or electronic mail shall be considered original signatures.

Customer:	MPW Industrial Water Services, Inc.
Accepted By: _____	Accepted By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____