

STANDARD TERMS AND CONDITIONS

The following Standard Terms and Conditions (“Terms and Conditions”) are specifically incorporated by reference and become a part of the Proposal, Quotation or Service Contract (collectively referred to herein as the “Proposal”). By acceptance and approval of the Proposal, Client agrees to be bound by and adhere to these Terms and Conditions.

1. **Acceptance.** No terms or conditions other than those set forth in this Proposal and any documents attached to or incorporated by reference in this Proposal, shall be binding upon InterCool USA, LLC (“InterCool”) unless accepted by it in writing by a duly authorized representative of InterCool. All plans and specifications, drawings, notes, instructions, engineering notices or technical data referred to in this Proposal or prepared in connection with the work outlined and described to be performed by InterCool in this Proposal (the “Work”) are incorporated by reference herein. Any acceptance of any of the Work by Client shall be conclusively deemed acceptance of the Work performed by InterCool. This Proposal constitutes the mutually acceptable Terms and Conditions agreed to by Client and InterCool and forms a binding contract under the terms set forth herein when accepted by Client, either by written or oral acceptance. by allowing InterCool to deliver any of the goods for the work or by the commencement of any work by InterCool. These Terms and Conditions, together with the terms on the Proposal, contain the full agreement and understanding between the parties hereto and may not be modified except by the written agreement by both parties hereto. No terms or conditions of Client or InterCool in any prior proposal, purchase order, quotation, or service agreement shall be binding upon InterCool if such terms or conditions conflict with or inconsistent with these Terms and Conditions. If InterCool is issuing this Proposal to a contractor for InterCool to perform as a subcontractor, this bid, and InterCool’s agreement to perform this work referenced herein, is contingent upon the negotiation of mutually-acceptable subcontract terms and conditions.
2. **Confidentiality.** The information and data provided to Client in the attached Proposal and these Terms and Conditions, including any and all pricing, drawings, sketches, and/or instructions, are provided to Client for the sole purpose of Client’s consideration of the Proposal and retaining InterCool to perform the Work . Such information is proprietary and is considered to be a trade secret of InterCool. As such, Client agrees that by receiving the information Client further agrees to keep the information confidential and Client shall not, for any reason, reproduce, copy, or furnish to any third party, in whole or in part, any of the information without InterCool’s prior written consent.
3. **Pricing.** InterCool offers to Client to perform the Work for the price outlined in the Proposal. Said offer remains good for thirty (30) days and said Proposal shall automatically terminate upon expiration of the thirtieth (30th) day. By executing and accepting the Proposal, Client agrees to pay InterCool the price outlined in the Proposal plus the gross amount of any present or future sales, use, excise, value-added, or other similar tax, however designated, applicable to the price, sale or delivery or any products, services or the work furnished here under or for their use by InterCool on behalf of Client whether such tax shall be local, state or federal in nature, even if not outlined in the Proposal.
4. **Payment.** Unless otherwise agreed in writing, Client shall pay all invoices issued by InterCool net thirty (30) days. Large projects will be invoiced in three installments. The first installment of 35% of the total value of the Work or project shall be paid upon execution of this Proposal as down payment for the ordering of equipment and materials (the first installment is to be received prior

to the ordering of any equipment). The second installment invoice of 35% of the total value of the Work or project shall be payable when equipment arrives on site and for field mobilization. The final invoice for the remaining balance of 30% of the total value of the Work or project shall be due and payable upon substantial completion. A one and one-half percent (1.5%) per month finance charge shall apply to all invoices not paid when due. InterCool reserves the right to cease performance of the Work in the event any invoice becomes sixty (60) days past due. Further, Client understands that any invoice unpaid after thirty five (35) days shall be subject to the Texas Prompt Payment Act.

5. **Use of Documents.** All plans, drawings, surveys, prints, software, programs, data, specifications, photographs (including aerial) and other related items and documents prepared or furnished by InterCool pursuant to the Proposal and/or the furtherance of the Work outlined in the Proposal are instruments of service in respect to this project and InterCool shall retain all ownership and property interests therein. By submitting this Proposal or any documentation associated therewith, InterCool is not conveying permission, authorization, or license to distribute, share, copy, reproduce, or reprint any such documentation. Such documents are not intended or represented to be suitable for use by Client or others on extensions of the Work, on any other project, or for the completion of the Work should this agreement be terminated, nor may such documents be so reused without the express written consent of InterCool. Further, Client and any other person or entity who may obtain such documentation must obtain written consent from InterCool prior to any distribution, sharing, copying, or reproducing of any such document. Any reuse or modification of such documents without the consent of InterCool will be a Client's sole risk and without liability to InterCool and Client shall further indemnify and hold InterCool harmless from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom.
6. **Limited Liability.** InterCool shall have the first and primary right to remedy any errors, omissions, or defective workmanship. InterCool shall not be liable for any incidental, consequential, indirect or special damages, or for any loss of profits or business interruptions caused or alleged to have been caused, by the performance or non-performance of the Work. Client agrees that the maximum liability of InterCool is the amount of payments made to InterCool by Client, less expenses paid by InterCool to any subcontractors or third parties. InterCool is further not liable for any errors resulting from faulty or incomplete information supplied by Client. Client agrees not to seek damages in excess of the contractually agreed upon limitations directly or indirectly through suits by or against other parties. Client further agrees that Client shall bring no claim against InterCool or its subcontractors later than one (1) year after completion of Work.
7. **Performance of Work.** InterCool agrees to perform the Work on the timeline articulated in the Proposal subject to these Terms and Conditions. InterCool shall perform the Work and supply the goods as specified in this Proposal in accordance with the prices and estimated completion schedule stated therein. Commencement and completion dates of the Work are based upon prompt receipt by InterCool of all necessary information from Client as well as prompt receipt of all materials and supplies. All Work will be provided during regular work hours and Client agrees to compensate InterCool for any additional overtime necessary to complete the Work within Client's desired timeframe. Client shall pay InterCool's prevailing wage rate and prices upon the same terms and conditions as otherwise provided herein. InterCool shall only be obligated to furnish equipment and services as described in the Proposal. Any adjustment or changes to the scope of Work after acceptance of the Proposal by Client shall only be effective if made in writing and

agreed to, including the appropriate increase in total price owed by Client. If Client shall direct any change in the Work, work hours changes in work due to codes or standards enforced by any authority which may have jurisdiction over the construction site, or other delays in the performance of the Work for which InterCool may not have been aware of at the time of this Proposal, Client agrees to pay any and all additional costs, including profit, reasonable attorneys' fees and expenses of InterCool associated with the same, resulting from such change(s) plus overhead and profit in addition to the contract price. In addition, InterCool shall be entitled to reasonably extend the completion time for the Work. Upon completion of the Work by InterCool, any additional work required, but not included in the Work, whether required by any organization or entity inspecting such work or otherwise, shall be treated as additions to and not within the scope of this Proposal and Client shall be responsible for all costs and expenses associated with completion of the same. All equipment orders and shipments shall be F.O.B. with Client acquiring title and assuming all risk of loss upon loading of the same with carrier. In the event Client, for whatever reason, interrupts or causes a cessation in InterCool's progress of performance, Client shall be liable to InterCool for the cost of remobilization plus a reasonable profit. InterCool's scope of Work specifically does not include any identification, detection, abatement, encapsulation, or removal of asbestos or similar hazardous substances. Should asbestos or similar hazardous substances be discovered during the Work, Client agrees to remedy said situation by employing and compensating appropriate abatement contractors. The issuance of an acceptance or approval inspection report as to the Work shall be conclusive evidence of full performance by InterCool of its obligations hereunder. Any notices of deficiencies or defaults hereunder by InterCool shall be promptly submitted to InterCool by Client.

8. **Excusable Delays.** InterCool shall not be liable for delays in delivery or performance of the Work due to (i) a cause beyond its reasonable control, or (ii) an act of God, act of Client, act of civil or military authority, governmental priority, governmental closure or shutdown order, strike or other labor disturbance, flood, epidemic, pandemic, virus, quarantine, war, riot, delay in transportation or car shortage, or (iii) inability on account of cause beyond the reasonable control of InterCool to obtain necessary materials, components, services, labor or facilities. InterCool will notify Client promptly of any material delay caused by this paragraph and will specify the completion date as soon as practicable. In the event of any such delay, there will be no termination of this Proposal and the period for completion of the Work shall be extended for a period equal to the time lost by reason of such delay.
9. **Warranty.** InterCool agrees to assign to Client any and all material warranties provided by any material manufacturer for items used to complete the Work. InterCool further warrants all materials, equipment, piping, accessories, and installation to be free of defects for a period of twelve (12) months from the date of Work completion. InterCool's liability, if any, upon any warranty, either express or implied, shall be limited to replacement of defective materials and correction of faulty workmanship which is in violation of local, State, or Federal building codes at the time of performance of the Work by InterCool. No other expressed warranty is given, and no other affirmation of InterCool, by word or action, shall constitute a warranty. This warranty is expressly in lieu of any other express or implied warranty of merchantability of fitness, and of any other obligation on the part of the InterCool. This warranty explicitly does not cover any issues, problems, or malfunctions caused by the interaction between existing structures, equipment, materials, and/or the installation of any item necessary to complete the Work if said problem arose due to the previously existing item.

10. **Indemnification.** To the fullest extent permitted by law, Client and InterCool hereby agree to indemnify, defend, and hold the other party, and its employees, agents, or suppliers, harmless from and against any and all actions, claims, demands, damages, losses, costs and expenses (including reasonable attorneys' fees), liabilities, and judgments, for any special, consequential, incidental, or punitive damage including, but not limited to, loss of profit or revenues, loss of use of any products, machinery, equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, lost profits, or claims of Client's customers for such damages, and obligations of any kind and description, that may arise out of or result from the performance of the Work, but only to the extent caused by the negligent act, error or omission of the offending party, its employees, agents, or suppliers. This indemnification provision shall survive the termination of this Proposal and the completion of the Work.

11. **Special Indemnification Provision.** To the fullest extent permitted by law, Client agrees to indemnify, defend, and hold harmless InterCool, its employees, agents, and suppliers, from and against any and all actions, claims, demands, damages, losses, costs and expenses (including reasonable attorneys' fees), liabilities or judgments, of any type or nature, arising out of or relating to any structural failure of the premises or any negligence or other action or activity of Client and/or its agents, representatives or employees. If the premises on which the Work is to be performed is owned by anyone other than Client, Client warrants to InterCool that adequate permission of the owner(s) has been obtained to complete the Work. Client shall indemnify, defend, and hold harmless InterCool, its employees, agents, and supplier, against any and all actions, claims, demands, damages, losses, costs and expenses (including reasonable attorneys' fees), liabilities or judgments, arising out of or relating to the failure of Client to obtain such permission. Client shall inform InterCool of any safety or health hazard inherent in the premises, its contents, and its operation and shall pay InterCool the additional cost resulting from the precautions necessitated by the safety or health hazards plus overhead and profit in addition to the contract price set forth herein above.

12. **Material Escalation Clause.** Due to the extremely volatile price of steel, copper, and other commodity metals, InterCool has NOT included or anticipated any escalation of costs or monies associated with this issue in the Proposal. Thus, InterCool requires, and Client agrees to enter into, a separate, mutually agreeable material escalation agreement whereby Client agrees to reimburse InterCool for all cost increases in materials on a true invoiced cost basis. This issue is due to extraordinary economic events far beyond the control of InterCool. InterCool does not intend to include additional fees, overhead, profits, or other charges to these material increases.

13. **Client's Required Provisions.** Client hereby agrees to provide, at no cost to InterCool, on-site parking for all InterCool employees necessary to perform the Work; access to the appropriate construction area; connection to and use of water, sewer services, electrical and any other necessary utility; all required dumpsters as determined by InterCool; and appropriate restroom facilities for all InterCool employees.

14. **Cancellation or Termination.** Once Client accepts the Proposal and these Terms and Conditions, either party may terminate by providing thirty (30) days written notice to the other party. In any event, Client shall be responsible for all outstanding balances and invoices, including accounts receivable and work in progress, including equipment on order, up to and including the date of termination. In the event of default or termination hereof by Client, Client shall be liable for the

payment of InterCool's actual costs, reasonable profit to be derived from completion of the entire Work, plus all reasonable costs for collection of the same, including, but not limited to, attorneys' fees and court costs.

15. **Governing Law and Choice of Forum.** The laws of the State of Texas shall govern as to all questions arising out of these Terms and Conditions, the Service Contract, or the Proposal. The parties agree that the court with appropriate jurisdiction over the site of the Work shall be the proper venue and shall have jurisdiction over any suit brought under this agreement. The parties further agree that in the event a lawsuit is necessary to enforce any term of these Terms and Conditions, the Service Contract or the Proposal, the prevailing party shall be entitled to recoup all costs, including appropriate attorneys' fees, from the non-prevailing party.
16. **Expiration.** Unless otherwise stated in the attached proposal, this proposal shall remain open and available for acceptance by Client for a period of thirty (30) days from the date hereof or until terminated by InterCool, whichever is first. After such time, InterCool shall not be bound hereunder.