

SUBSCRIPTION TERMS

Subject to these Subscription Terms (these “**Terms**”), ICE will lease to Customer the Products identified in the Order executed by the Parties that references these Terms (the “**Order**”). Customer’s use of the Products, and certain other products and services made available in connection with the Products, is subject to the Additional Terms. These Terms, together with the Order referencing these Terms and all Additional Terms, are integrated into and comprise the “**Agreement**.”

1. Definitions

All capitalized terms not defined herein shall have the meaning assigned to them in the Order or applicable Additional Terms.

1.1. “**Additional Terms**” means (a) all addenda referenced by the Order and (b) any additional terms provided by ICE to Customer from time to time in connection with this Agreement.

1.2. “**Agreement**” has the meaning set forth in the preamble.

1.3. “**Customer**” means the entity identified in the Order as “Customer.”

1.4. “**Customer Facilities**” means the location(s) identified in the Order as “Customer Facilities”.

1.5. “**Documentation**” means all documentation, materials, or information, technical or otherwise, relating or used with respect to a Product, including specifications, operating manuals, user instructions, and technical literature, in any form, in each case provided or made available to Customer by ICE from time to time.

1.6. “**Effective Date**” means the effective date stated in the Order.

1.7. “**Equipment**” means equipment, accessories, consumables, parts and the like used in connection with the Machines and purchased by Customer pursuant to the Order.

1.8. “**ICE**” means the entity identified in the Order as “ICE.”

1.9. “**Machines**” means the ICE cleaning machines and related equipment leased by Customer pursuant to the Order.

1.10. “**Party**” means ICE or Customer.

1.11. “**Product(s)**” means, collectively, the Equipment, Machines and Services.

1.12. “**Services**” means the ICE services to which the Customer subscribes pursuant to the Order.

2. Delivery. ICE shall deliver the Machines and Equipment DAP (Incoterms 1990) Customer's Facilities or (if applicable) the alternative delivery location specified in the Order, at which time risk of loss will pass to Customer. ICE will use commercially reasonable efforts to provide Customer with an estimated delivery date for each Machine and unit of Equipment. However, such delivery date is a good-faith estimate only and is not binding on ICE. For clarity, the Machines are leased and not sold to Customer and nothing in these Terms will be deemed to give Customer a right or option to purchase such machines. ICE or its third-party suppliers will retain title to the Machines at all times.

3. Customer Obligations

3.1. Use Requirements. Customer agrees to use the Products in compliance with this Agreement and the Documentation. Additionally, Customer agrees to:

3.1.1. implement all reasonable safety precautions during its use and operation of the Products;

3.1.2. upon discovering any actual or potential defects, damage, or malfunctions in the Products, promptly inform ICE and cease using the affected Products;

3.1.3. solely use the Machines (i) indoors and (ii) at the Customer Facilities;

3.1.4. ensure that the Products are used solely by persons having (i) the necessary skills and training required to safely operate and use the Products in accordance with the Documentation and (ii) familiarity with the risks posed by the Products;

3.1.5. store the Machines in a secure, climate- and access-controlled location within the Customer Facilities using appropriate safety precautions to protect the Machines against damage and theft;

3.1.6. perform all routine maintenance on the Machines described in the Documentation, including replacing the bag and exhaust filter, and cleaning the brushes and debris tray;

3.1.7 conform the Customer Facilities to all specifications, including with respect to physical characteristics, obstructions, technical infrastructure, and the availability of power, in each case as set forth in the Documentation or otherwise specified by ICE; and

3.1.8. ensure that Customer's use of the Products complies with all applicable legal and regulatory obligations.

3.2. Use Restrictions. Customer shall not, and shall not allow any third party to, directly or indirectly: (i) duplicate, reproduce, or otherwise copy any Product or Documentation (in whole or in part); (ii) modify, alter, improve, upgrade, downgrade, translate, reverse engineer, decrypt, decompile, disassemble, or create derivative works based on any Product or the Documentation (or their underlying components, software, ideas, or algorithms); (iii) license, sell, export, assign, transfer, lease, time-share, loan, or distribute any Product to a third party, or use any Product for the benefit of a third party (including by using a

Product to perform services on a third party's behalf); (iv) remove, modify, deface, or replace any of ICE's or any third party's proprietary notices or marks which appear on, are affixed to, or are used in connection with a Product; (v) apply any polishing or protective coating, permanent marking, or treatment; (vi) perform any form of physical or chemical analysis, examination, or cleaning that may destroy, damage, or alter a Product; (vi) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any security or protection mechanisms in a Product; or (vii) subject a Product to any mechanic's lien or other security interest.

3.3. **Third-Party Use.** Customer may allow its affiliates or a third-party contractor to operate, use or access the Products on Customer's behalf at the Customer Facilities, solely for Customer's direct beneficial business purposes. If Customer allows any person or entity to operate, use or access the Products, Customer shall be solely responsible for ensuring that such person or entity complies with the terms of this Agreement and with all applicable laws and any breach by such third party of the terms of this Agreement will be deemed a breach by Customer.

3.4. **Insurance.** During the Term, Customer shall obtain and maintain the following minimum insurance coverage against liability arising in any way under this Agreement: (i) a commercial general liability insurance policy, including bodily injury, property damage, personal injury liability, and contractual liability with limits of not less than \$1,000,000 (USD) for each occurrence and \$2,000,000 (USD) annual aggregate endorsed to name ICE as additional insured; and (ii) an all-risk property insurance policy in an amount not less than the full replacement value of the Machines. Each such policy shall include ICE as loss payee with regard to any damage to the Machines. Each policy will contain a waiver of subrogation in favor of ICE. Customer's insurance shall be primary and without contribution of other insurance which may be in force. The policy coverage shall begin no later than the date on which the first Machine is delivered to Customer and end no earlier than the date on which the last Machine is returned to ICE in accordance with this Agreement. Customer shall provide a certificate of insurance to ICE within five (5) business days after the Effective Date, and annually within five (5) business days of policy renewal, demonstrating all required coverages are in force. Any insurance policy limits under this Section, or any failure by Customer to secure the required insurance coverage, shall not limit Customer's liabilities and obligations pursuant to this Agreement.

4. Fees. Unless otherwise expressly provided in an applicable Order, Customer shall pay the rental fee and any additional fees set forth in the Order (the "**Fees**") within thirty (30) days of the invoice date. Unless otherwise stated in the applicable Order, all Fees are set forth in, and payments must be made in, U.S. dollars. The Fees do not include, and Customer is responsible for paying, any foreign or domestic governmental taxes or charges of any kind that may be applicable to this Agreement (including without limitation excise, sales, use, or value-added taxes; customs or other import duties; or other taxes, tariffs or duties), other than taxes based on ICE's net income. Late payments will accrue interest at the lesser of 1.5% per month and the highest rate allowed by applicable law. If Customer fails to pay any amount due under this Agreement according to the payment terms of the Order, ICE may, in its sole discretion, repossess the Machines and terminate this Agreement (in whole or in part), in addition to all other rights and remedies that may be available to ICE.

5. Term and Termination.

5.1. Term. This Agreement shall commence on the earlier of (i) the Effective Date or (ii) the initial activation date of a Product, and shall remain in effect for the term stated in the Order, unless terminated earlier in accordance with this Agreement or renewed by mutual agreement of the Parties (the “**Term**”).

5.2. Termination

5.2.1. Unless otherwise set forth in an applicable Order, Customer may terminate this Agreement for convenience by giving ICE at least sixty (60) days’ written notice.

5.2.2. Customer may terminate this Agreement upon written notice if ICE materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach from Customer.

5.2.3. ICE may terminate this Agreement, in whole or in part, (a) upon written notice if Customer materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach from ICE or (b) effective immediately and without notice for any material breach incapable of cure (including, without limitation, breach of provisions related to confidentiality).

5.3. Effect of Termination or Expiration. Upon expiration or termination of this Agreement Customer shall return the Machines to ICE promptly in accordance with this Section 5.3, and (except as set forth in Section 8.2) Customer shall not be entitled to any refund of prepaid amounts. Upon termination other than in accordance with Section 5.2.2, all Fees that would have been payable by Customer during the remainder of the Term had the Agreement not been terminated will become immediately due and payable. Customer will ensure that the condition of all Machines returned to ICE in accordance with this Section 5.3 is substantially similar to the condition of such Machines when received by Customer, excluding ordinary wear and tear. All Machines will be returned accordance with the packaging instructions provided by ICE and accompanied by all related Documentation. During any period of time that a Machine is within Customer’s possession, control, or care (which will be deemed to include the period of time during which a Machine is in transit after being returned to ICE by Customer), Customer will be solely responsible for any loss of, or damage to, such Machine, and will compensate ICE for the same. Customer is responsible for packaging returned Machines in a manner that protects them against loss and damage during transit.

5.4. Survival. Sections 1, 3, 4, 5.3, 5.4, 7, 8, 9, 10, and 11, will survive any termination or expiration of this Agreement.

6. Warranty, Disclaimer of Warranty

6.1. ICE Machine Warranty. ICE warrants to Customer that each Machine will, during the Term (the “**Machine Warranty Period**”), conform in all material respects to the applicable

specifications set forth in the Documentation for such Machine. If Customer notifies ICE in writing during the Machine Warranty Period that a Machine does not satisfy the warranty set forth in the immediately foregoing sentence, then ICE's sole and exclusive obligation, and Customer's sole and exclusive remedy, will be for ICE to repair or replace (including with a refurbished unit) the defective Machine, at ICE's sole discretion. Customer agrees to provide any additional details concerning the potential defect requested by ICE, including a description of the malfunctions and circumstances under which they occurred. The warranty set forth in this Section 6.1 will not apply to the extent the warranty failure is caused by any of the following (each, a "**Warranty Exclusion**"):

6.1.1. modifications or alterations made to a Product other than as authorized by ICE;

6.1.2. the combination, operation or use of a Product with software, hardware, or other technology not provided by ICE and approved for use in connection with the Product;

6.1.3. failure by Customer to use or implement corrections, enhancements, modifications, or upgrades provided to Customer by ICE;

6.1.4. failure by Customer to use a Product in accordance with the applicable Documentation; or

6.1.5. breach by Customer of this Agreement.

6.2 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 6.1, THE PRODUCTS ARE PROVIDED "AS IS", ICE MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ICE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AND TITLE. ICE DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCTS OR AGAINST INFRINGEMENT. ICE DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR THAT OPERATION OF THE PRODUCTS WILL BE SECURE OR UNINTERRUPTED.

7. Indemnification

7.1 Indemnification by ICE. ICE shall indemnify, defend and hold Customer and its officers, directors, employees, agents, and stockholders harmless from and against any and all third-party claims alleging that the use of the Products by Customer in accordance with the terms of this Agreement infringes a third party's intellectual property rights, in each case to the extent that the alleged infringement is not attributable to (a) an act or omission by Customer that would constitute a Warranty Exclusion or breach of this Agreement by Customer or (b) materials or information provided by Customer.

7.2. Infringement Remedies. If any Product is, or in ICE's opinion is likely to be, held to infringe the intellectual property rights of a third party, then ICE may at its expense and option either: (i) procure the right for Customer to continue using such Product, (ii) modify or replace

the Products with a non-infringing equivalent, or (iii) if neither (i) nor (ii) is commercially practicable, terminate this Agreement in whole or in part and refund to Customer a prorated amount of the pre-paid Fees for the affected Product calculated as of the effective date of such termination.

7.3. Sole and Exclusive Remedy. The foregoing remedies in this Section 7.1 constitute the sole and exclusive remedies of Customer, and the entire liability and obligation of ICE, with respect to claims of infringement related to any Product.

7.4. Indemnification by Customer. Customer shall indemnify, defend and hold ICE and its officers, directors, employees, agents and stockholders, harmless from and against any and all third-party claims arising out of, relating to or caused by (a) an act or omission by Customer that would constitute a Warranty Exclusion or breach of this Agreement by Customer; or (b) materials or information provided by Customer; or (c) any negligence or willful misconduct of Customer or Customer's personnel.

7.5. Indemnification Procedure. A Party seeking indemnification pursuant to this Section 7 (the "**Indemnified Party**") shall: (a) promptly notify the Party from which indemnification is sought (the "**Indemnifying Party**") in writing of the claim for which indemnification is sought ("**Claim**") (provided that failure to provide such notice promptly shall not relieve the Indemnifying Party of its obligations under this Section 7 to the extent such failure does not materially prejudice the Indemnified Party); (b) make all reasonable efforts to provide the Indemnifying Party with all information and material in the Indemnified Party's possession regarding the Claim; (c) furnish to the Indemnifying Party such assistance as the Indemnifying Party may reasonably request in connection with the investigation, settlement and defense of the Claim (at the Indemnifying Party's expense); and (d) grant the Indemnifying Party sole control over the defense and settlement of the Claim, provided, however, that the Indemnifying Party shall not dispose of or settle any such Claim in any manner requiring more than the payment by Indemnifying Party of an amount fully indemnified hereunder.

8. Limitation of Liability

8.1. Disclaimer of Damages. SUBJECT TO SECTION 8.3, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, ICE SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF ICE IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

8.2. Cap on Liability. SUBJECT TO SECTION 8.3, UNDER NO CIRCUMSTANCES WILL ICE'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON

CONTRACT, TORT, OR OTHERWISE, EXCEED THE GREATER OF (I) THE TOTAL AMOUNT PAID BY CUSTOMER TO ICE UNDER THE ORDER AND (II) \$100.

8.3. Exceptions. The liability caps set forth in Sections 8.1 and 8.2 shall not apply to liability resulting from ICE's fraud, gross negligence or willful misconduct.

9. Proprietary Rights

9.1. Retention of Rights. Nothing in this Agreement shall be deemed to cause the transfer or assignment of any right, title, or interest, including any intellectual property rights, in or to a Product. Customer hereby agrees and acknowledges that Customer does not own the Products or any intellectual property rights therein, and all rights not expressly granted to Customer herein are retained by ICE or its third-party licensors or suppliers. Customer shall not, either directly or indirectly, take any action to challenge such rights.

9.2. Feedback. ICE will own all right, title and interest, including all intellectual property rights, in and to any suggestions, comments, or feedback provided by Customer that relates to a Product (including bug reports and enhancement requests), and Customer hereby assigns such rights, title, and interest to ICE. Customer acknowledges that suggestions, comments and feedback may be used without restriction by, and are the Confidential Information of, ICE.

10. Confidentiality

10.1. Definition. As used herein, "**Confidential Information**" means all information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally, visually, in writing, or by inspection of tangible objects, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of its disclosure. ICE's Confidential Information includes all Products, Documentation, and related technology and technical information made available to Customer by ICE pursuant to this Agreement. However, Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of or reference to the Confidential Information.

10.2. Protection of Confidential Information. The Receiving Party will (a) not disclose or use any of the Disclosing Party's Confidential Information for any purpose outside the scope of this Agreement; (b) protect the confidentiality of the Disclosing Party's Confidential Information using the same degree of care that the Receiving Party uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); and (c) limit access to Disclosing Party's Confidential Information to those of its employees, contractors, and agents who need such access to enable such Party to exercise its rights and perform its obligations under this Agreement and who have signed confidentiality agreements with the Receiving Party at least as protective of Disclosing Party's Confidential Information as the terms

of this Agreement. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of any such compelled disclosure (to the extent legally permitted).

11. Miscellaneous

11.1. Publicity. ICE may use Customer's name and logo on its website and in its promotional materials to identify Customer as an ICE customer only if Customer provides its prior written consent to such use.

11.2. Notices. All notices hereunder shall be in writing and given by registered or certified mail, postage and registration fees prepaid, return receipt requested, or by overnight mail by a nationally recognized courier service, and shall be deemed given when mailed to a Party at the address set forth in the Order.

11.3. Compliance. Each Party will perform its obligations under this Agreement in compliance with all applicable laws, including international, national, state, and local laws and regulations. Customer represents and warrants that, prior to entering into the Order, it has notified ICE of any technical or legal requirements that may affect ICE and that result from Customer's legal or regulatory obligations.

11.4. Force Majeure. In no event shall ICE be liable for any failure or delay in performance due to causes or circumstances beyond its reasonable control.

11.5. Governing Law. This Agreement shall be governed by the laws of the State of California without regard to principles of conflicts of law.

11.6. Arbitration. Any controversy or claim arising out of or related to this Agreement, or the breach thereof, shall be settled by final, binding and confidential arbitration administered by the American Arbitration Association ("AAA") pursuant to its Commercial Arbitration Rules and Mediation Procedures to be conducted in San Francisco, California. Judgment on the award rendered by the arbitrator may be entered in any federal or state court located in San Francisco, California.

11.7. Relationship of the Parties. The Parties are independent contractors and this Agreement does not create a partnership, joint venture or agency relationship.

11.8. Assignment. Customer may not assign its rights without the prior written consent of ICE. ICE may assign its rights and obligations under this Agreement without notice.

11.9. Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the Parties will amend that provision in good faith to reflect as nearly as possible the original intentions of the Parties in accordance with applicable laws. The remaining provisions of this Agreement will remain valid and enforceable to the full extent permitted by law.

11.10. Waiver. Neither Party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

11.11. Entire Agreement. This Agreement contains the Parties' entire understanding relating to the subject matter thereof, supersede all prior or contemporaneous agreements between the Parties relating to such subject matter. Any conflicting or additional terms contained in any Customer purchase orders or other documents not executed by the Parties are hereby specifically objected to and will be of no effect. If there are any conflicts or inconsistencies between the Order, these Terms, and any Additional Terms, the terms of the Order shall control, followed by the Additional Terms, followed by these Rental Terms.

11.12. U.S. Federal Government Use. If Customer uses the Products in the performance of a U.S. government prime contract or subcontract, Customer agrees and will cause the applicable customer to agree, that such software is delivered as a "commercial item" as defined in FAR 2.101(a) or any equivalent agency regulation or contract clause, whichever is applicable.