



**GENERAL TERMS AND CONDITIONS
(SERVICE CENTER)**

1. Service Orders:

- 1.1. Any quote, proposal, offer, or order (each, a "Service Order") for washing, cleaning, reconditioning, inspection, testing and/or certification of intermodal containers, intermediate bulk containers, and other types of commercial and industrial portable liquid and dry bulk containers (collectively "Tanks"), as well as related services, by Hoover Materials Handling Group, Inc. dba Hoover CS ("Hoover") to an entity to which Hoover provides the service ("Customer") is subject to acceptance by Hoover.
- 1.2. Any Service Orders accepted will be governed by these terms and conditions ("Terms and Conditions") and any additional terms agreed to in writing in the Service Order. These Terms and Conditions and any such additional terms collectively referred to herein as the "Agreement" and Hoover and Customer are each referred to herein as "Party" and collectively as the "Parties".

2. Services and Pricing:

2.1. **Scope:** The services to be provided by Hoover hereunder (collectively, the "Services") may include:

- 2.1.1. Emptying Tanks of the last non-hazardous or hazardous materials, wastes or products hauled in each Tank (hereinafter referred to as "Heel");
- 2.1.2. Cleaning Tanks, valves and fittings;
- 2.1.3. Reconditioning Tanks;
- 2.1.4. Inspecting Tanks after cleaning to ensure they are clean, dry and odor-free;
- 2.1.5. Providing interim storage for cleaned Tanks prior to shipment;
- 2.1.6. U.N. recertification; and
- 2.1.7. Delivering cleaned Tanks as directed by Customer.

2.2. **Pricing:**

- 2.2.1. The pricing for the Services contemplated by this Agreement are set forth on Hoover's then current price list, which may be updated by Hoover from time to time and is available upon request (the "Price List").
- 2.2.2. If repairs to a Tank are needed, Hoover will provide Customer with an estimate of the repair cost in advance of beginning the repairs.

2.3. **Provider:** Hoover may use a third party to perform Hoover's obligations under this Agreement; provided, that Hoover's use of a third party shall not release Hoover from any duty or liability to fulfill Hoover's obligations under this Agreement.

2.4. **Disclaimer of Reliance:** Customer represents and warrants that it has made such investigations as it deems necessary to satisfy it that the Services are adequate and sufficient for Customer's intended use, that it has not relied upon any statements of Hoover, express or implied, in selecting the Services hereunder.

3. Procedures for Delivery, Storage and Shipment Of Tanks:

3.1. **Documentation:**

- 3.1.1. Customer (or its approved customers, but only to the extent authorized by Hoover in advance and at Customer's sole cost) shall deliver to the facility designated by Hoover (each, a "Service Center") either directly or through a third-party carrier, any Tanks for which Services are to be performed, together with the following documentation:
 - 3.1.1.1. a Bill of Lading specifying the serial number and condition of each Tank;
 - 3.1.1.2. a Safety Data Sheet ("SDS") for the last chemical transported in each Tank; and
 - 3.1.1.3. a complete and accurate description of any Heel as well as any hazards or risks known, learned or suspected by Customer to be incident to the performance of the Services.



- 3.1.2. **Missing Documentation:** If any of the above items are missing from a delivery, Hoover is entitled to refuse delivery and return the Tanks to Customer, at the sole expense of Customer.
- 3.1.3. **Labeling:** Customer warrants and represents that any Tanks delivered to Hoover will be marked, labeled, and otherwise in conformance with all applicable federal, state, and local laws and regulations.
- 3.1.4. **Services Requested:** Customer must indicate to Hoover at or prior to the time of delivery the specific Services requested. If no specific protocol is communicated, Hoover will perform the same Services as it provided for Customer's previous delivery of Tanks.
- 3.2. **Acknowledgment:** Within five (5) business days of receipt, Hoover shall return a signed Bill of Lading to Customer.
- 3.3. **Heel and Nonconforming Heel:**
 - 3.3.1. In the event that Hoover determines, in its sole discretion, that a Tank has been delivered to Hoover which was (i) not "RCRA Empty" at the time of delivery, or (ii) contains Heel that cannot be handled, stored, processed, treated, loaded, transported, recycled or disposed of safely and in compliance with applicable law (each, "Nonconforming Heel"), Hoover shall arrange for the Tank to be returned to Customer at Customer's sole expense.
 - 3.3.2. Title to and liability for Heel shall transfer from Customer to Hoover upon acceptance of the Heel by Hoover; provided, however, that title to and liability for Nonconforming Heel shall at all times remain with Customer.
 - 3.3.3. Customer is responsible for all disposal costs of Heel, on a cost-plus basis, as well as any costs incurred by Hoover in analyzing a SDS to evaluate the cleaning and/or disposal of Heel.
- 3.4. **Return:** After completion of the Services for delivered Tanks, Hoover shall either place the cleaned and reconditioned Tanks into storage or prepare them for shipment to Customer and/or one of Customer's customers, in each case at Customer's cost, in accordance with instructions of Customer.
 - 3.4.1. If the cleaned Tanks are to be placed into storage, Hoover shall store them in clean, dry, odor-free facilities in accordance with all applicable industry standards. Hoover's fees for storage will begin to accrue five (5) days after Customer is notified that the Tanks are available for collection.
 - 3.4.2. If Tanks are to be shipped by Hoover or held for pick-up, Customer will email Hoover a Bill of Lading and a delivery ticket that specifies the quantity and type of Tanks to be shipped and the delivery or pick-up instructions. Unless otherwise agreed by the Parties, all shipments of Tanks will be made on an EXW (Incoterms 2020) basis.
 - 3.4.3. Hoover will not be liable for claims arising from Hoover's reliance on Customer's verbal shipping instructions.
- 4. **Responsibilities Of Cleaner.**
 - 4.1. **Limited Warranty:** Hoover will perform the Services in a good and workmanlike manner in compliance with the terms and conditions of this Agreement and in conformance with applicable industry standards. Hoover shall take all necessary and advisable safety precautions with respect to the Services to be performed under this Agreement. WITHOUT LIMITING THE FOREGOING, HOOVER DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE TANKS MEETS ANY SPECIFIC GOVERNMENTAL REQUIREMENTS, AND CUSTOMER WAIVES THE SAME.
 - 4.2. **Performance Standards:** Hoover shall use commercially reasonable efforts (consistent with its existing personnel, equipment, materials and typical services and subject to the regular hours of operation of the Service Center) to provide the Services within a reasonable time following delivery of the Tanks. After cleaning, Hoover will inspect each Tank and related accessories to ensure the approved Services were performed in a manner consistent with the terms of this Agreement and that each cleaned Tank is clean, dry and odor-free. In the event Customer requests, and Hoover agrees to perform, additional cleaning services, the performance standards for such additional services shall be agreed by the Parties in writing.
 - 4.3. **Service Failure:** Customer shall notify Hoover in writing within twenty four (24) hours of Customer's first knowledge of a potential failure by Hoover to satisfy the performance standards set forth above (a "Service Failure"). If the relevant Tank is in Customer's possession at the time of notice, Customer will give Hoover reasonable access to the



Tank for purposes of inspection and verification of the Service Failure. Should a Service performed by Hoover fail to conform to Hoover's performance standards set forth herein, Hoover shall, at its sole discretion and as Customer's exclusive remedy hereunder, either re-perform the Service or refund any amount paid by Customer for the Service.

5. Billing and Payment:

- 5.1. **Billing:** Hoover will regularly bill Customer for charges payable under this Agreement, including, but not limited to, charges for the Services, as well as delivery charges, handling and/or other charges associated with the transportation or storage of Tanks pursuant to the Agreement, as well as all applicable taxes as described below.
- 5.2. **Payment:** Customer must notify Hoover in writing of any dispute with an invoiced amount within fifteen (15) days of Customer's receipt of Hoover's invoice. Customer shall pay all amounts due within thirty (30) days of receipt of each invoice, in each case without any withholding, deduction or set off by Customer.
- 5.3. **Late Payment:** Hoover's invoices which are not timely paid hereunder shall accrue interest at the lesser of: (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under applicable law.
- 5.4. **Taxes:** Customer is responsible for, and, where applicable, shall reimburse Hoover for any sales and use taxes, value added taxes, withholding taxes, personal property taxes, or other direct or indirect taxes levied against or based upon the charges payable under this Agreement.

6. Lost or Damaged Tanks; Indemnification:

- 6.1. **Lost Tanks:** As used herein, (i) a "Third Party Tank" is an Tank owned by Customer or a third party that is the subject of Services under this Agreement, and (ii) a "First Party Tank" is an Tank leased to Customer by Hoover that is the subject of the Services under this Agreement. If Customer fails to receive a cleaned and returned Tank duly delivered to Hoover according to the signed Bill of Lading, Customer shall notify Hoover in writing within twenty-four (24) hours of discovery of the loss. If Hoover is unable to produce a Bill of Lading which shows that said Tank was delivered to an approved shipper/carrier for return to the Customer, or otherwise locate the Tank in question within seventy-two (72) hours of receipt of such notice from Customer, then, as Customer's exclusive remedy hereunder: (a) if such Tank is a Third Party Tank, Customer shall be entitled to invoice Hoover for the depreciated replacement value of such Third Party Tank, and Hoover shall pay such invoice within thirty (30) days of receipt thereof, or (b) if the Tank is a First Party Tank, Hoover shall replace such Tank with an Tank of like kind and condition as soon as reasonably possible.
- 6.2. **Damaged Tanks:** If a Tank is returned to Customer in damaged condition as a result of the Services performed by Hoover, then, as Customer's exclusive remedy hereunder: (i) if such Tank is a Third Party Tank, Customer shall be entitled to invoice Hoover for the reasonable cost to repair such Third Party Tank, and Hoover shall pay such invoice within thirty (30) days of receipt thereof, or (ii) if the Tank is a First Party Tank, Hoover shall replace such Tank with an Tank of like kind and condition as soon as reasonably possible. Hoover may dispute any claims made for such reimbursement and shall be entitled to provide supportive proof through Bills of Lading, receiving reports, delivery tickets or other documentation as to the condition of the Tanks when tendered for delivery by Hoover.
- 6.3. **Indemnification:**
 - 6.3.1. **By Customer:** Customer for itself, its successors and assigns, agrees to indemnify, hold harmless, protect, and defend Hoover and its shareholders, directors, officers, employees, representatives, agents, affiliates, successors and assigns (the "Hoover Indemnified Parties") from and against any and all liabilities, claims, forfeitures, suits, penalties, fines, losses, causes of action, or voluntary settlement payments, of whatever kind and nature, and the costs and expenses incident thereto (including the reasonable costs of defense and settlement and reasonable attorney's fees) ("Claims") which Hoover Indemnified Parties may incur, become responsible for, or pay out as a result of the death or bodily injury to any person or persons, destruction or damage to any property, contamination or adverse effects on the environment, or any violation of federal, state, or local laws, regulations, or orders to the extent caused by: (a) Customer's use of the Tanks in its operations, (b) Customer's material breach of any term or provision of the Agreement; (c) the negligence or willful misconduct of Customer; or (d) any Nonconforming Heel.



6.3.2. **By Hoover:** Hoover for itself, its successors and assigns, agrees to indemnify, hold harmless, protect, and defend Customer and its shareholders, directors, officers, employees, representatives, agents, affiliates, successors and assigns (the "Customer Indemnified Parties") from and against any and all Claims which Customer Indemnified Parties may incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violations of federal, state, or local laws, regulations, or orders, to the extent caused by (a) Hoover's material breach of any term or provision of the Agreement; (b) the negligence or the willful misconduct of Hoover in providing Services; or (c) the disposal of Heels (excluding Nonconforming Heel).

6.3.3. Indemnification Procedure.

6.3.3.1. A party seeking indemnification under Sections 6.3.1 or 6.3.2 hereof will promptly notify the other party in writing of any claim for indemnification hereunder. The party seeking indemnification shall not settle any claim, suit, or other demand for payment with respect to which the other party has, or is alleged to have, an indemnity obligation hereunder without first obtaining such other party's prior written consent, which consent shall not be withheld unreasonably.

6.3.3.2. The indemnifying party shall have the right to select defense counsel, subject to the consent of the indemnified party, provided that the indemnified party will not withhold such consent unreasonably. The indemnifying party shall have the right to control the defense, provided that the indemnifying party shall seek and obtain the consent of the indemnified party before settling any claim, and indemnified party shall not unreasonably withhold such consent.

6.3.3.3. The provisions of this Section 6.3.3 shall survive expiration or termination of this Agreement as to any matter arising during the term of this Agreement or any extensions or renewal thereof.

6.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF REPUTATION, LOSS OF DATA, LOSS OF GOODWILL, INCREASE IN OPERATING COSTS, FACILITIES OR OPERATIONS DOWNTIME OR INTERRUPTIONS, LOST PROFITS, FINANCIAL OR ECONOMIC LOSS, OR ANY OTHER INCIDENTAL DAMAGE. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, IN NO EVENT SHALL HOOVER'S AGGREGATE LIABILITY TO CUSTOMER EXCEED THE FEES ACTUALLY PAID TO HOOVER FOR THE SPECIFIC SERVICES GIVING RISE TO A CLAIM HEREUNDER, AND CUSTOMER RELEASES HOOVER FROM ANY CLAIMS OR LIABILITIES IN EXCESS OF SUCH AMOUNT.

7. **Insurance:** Hoover shall carry commercial general liability, automobile liability, pollution legal liability, and property coverages in amounts sufficient to satisfy Hoover's obligations under this Agreement, but in no event with limits less than \$1,000,000 per occurrence for each such policies.

8. **Independent Contractor:** Hoover is and shall perform this Agreement as an independent contractor, and as such, shall exercise exclusive control over all of its employees, agents, subcontractors, and operations. Neither Hoover nor anyone employed by it shall be, represent, purport to act as, or be deemed to be the agent, representative, employee, or servant of Customer.

9. **Termination:** Either party may terminate this Agreement for any reason by giving the other party written notice of termination. Upon termination, all outstanding invoices or amounts due for Services performed through the termination date shall be due and payable as of the termination date. All obligations hereunder arising prior to termination shall survive any termination of this Agreement.

10. Governing Law and Dispute Resolution:

10.1. **Governing Law:** The validity, interpretation, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Texas.

10.2. **Arbitration:** Any controversy or claim arising out of or relating to the Agreement, the relationship of the parties to the Agreement, and/or the breach, termination, or validity of the Agreement, directly or indirectly, including whether any such claim is properly arbitrable, shall be settled by arbitration administered by Judicial Workplace Arbitrations, Inc. ("JWA"). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. The arbitration shall be heard by a single arbitrator, the place of arbitration shall be Houston, Texas, and the arbitration



will be conducted in the English language. The arbitration, including the arbitration hearing, shall be governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence. The arbitrator shall issue a written and reasoned award and opinion within 30 days of the arbitration hearing, the decision and award of the arbitrator shall be final, binding, and enforceable, and the arbitration award may be confirmed in any court of competent jurisdiction. The prevailing party shall be entitled to an award of reasonable attorneys' fees, and the arbitrator shall have the power to award the prevailing party any administrative or arbitration fees paid to JWA or the arbitrator. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witnesses. In such event, the other party shall be required to present evidence and legal argument as the arbitrator may require for the making of an award.

11. **Other:**

- 11.1. **Force Majeure:** Neither party shall be deemed to be in material breach of this Agreement to the extent that any delay or failure in the performance of its obligations, other than the payment of money for services already rendered, results from any of the following: acts of God, acts of civil or military authority, riots, insurrections, fire, explosion, accident, or epidemic; lack of regulations, requirements, orders or actions; negligent or willful act of the other party; national defense requirements; injunctions or restraining orders; labor trouble, strike, lockout, or injunction, provided that neither party shall be required to settle a labor dispute against its own best judgment; and changes in laws, statutes, regulations, or ordinances.
- 11.2. **Notice:** Any notice required under this Agreement shall be given in writing, by overnight courier, or by certified U.S. mail, return receipt requested, to the address stated in the Service Order, or such other place as a party may designate in writing to the other party.
- 11.3. **Headings:** The headings or captions used in this Agreement are for the convenience of the parties and shall not be construed or interpreted as part of this Agreement.
- 11.4. **Entire Agreement:** This Agreement represents the entire understanding and agreement between the parties relating to the Services and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding same. In the event that Hoover or Customer hereafter issues any purchase order, service order, work order, tank cleaning report, tank cleaning slip, receipt, and/or other document relating to the Services, the terms of this Agreement shall control over any conflicting provisions of any such purchase order, service order, work order, tank cleaning report, tank cleaning slip, receipt, or other document relating to the Services, unless both Hoover and Customer have agreed otherwise in a document signed by both parties.