

Terms and Conditions

- 4) the furnishing of materials and supplies for painting or refinishing equipment;
- 5) electrical work to the Customer's facility necessary because of equipment;
- 6) service calls resulting from attachments made to Covered Equipment or other equipment not covered by this Agreement;
- 7) the repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slots/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
- 8) service calls resulting from the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather that is beyond what is prevented by JCI's normal maintenance;
- 9) work caused by any operation of, adjustments to, or repair to, Covered Equipment by others not authorized in advance by JCI;
- 10) work caused by the negligence of others, including but not limited to equipment operators and water treatment companies;
- 11) service calls due to failures caused by improper environmental conditions affecting equipment or electrical power fluctuations, if due to conditions beyond JCI's control, and service calls required because JCI had previously been denied access to the equipment; and
- 12) disposal of hazardous wastes. Hazardous wastes remain the property and the responsibility of the Customer even when removed from equipment or replaced by JCI as provided by the terms of this Agreement. The Customer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.

H. JCI's EQUIPMENT

JCI may provide tools, documentation, panels, or other control equipment in the Customer's building for JCI's convenience in performing JCI's services. That equipment shall remain JCI's property. JCI retains the right to remove such items at any time during the term, or upon the termination of, this Agreement.

I. INDEMNITY

JCI and the Customer agree that JCI shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of JCI. JCI and the Customer agree to indemnify and to hold each other, including officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their employees or any negligent act or omission by their employees or agents. The obligations of JCI and of the Customer under this paragraph are further subject to paragraphs J and K below.

J. LIMITATION OF LIABILITY

- 1) Neither JCI nor the Customer will be responsible to the other for any special, indirect, or consequential damages. Neither party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) thefts; (h) vandalism; (i) riots or war; or (j) unavailability of parts, materials or supplies.
- 2) If this Agreement covers fire safety or security equipment, the Customer understands that JCI is not an insurer regarding those services. JCI shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to perform properly or fails to prevent a casualty loss.
- 3) JCI is not responsible for any injury, loss, or damage caused by equipment that is not Covered Equipment.
- 4)

K. ASBESTOS AND HAZARDOUS MATERIALS

JCI's work and services under this Agreement exclude anything connected or associated with asbestos or hazardous materials. JCI shall not be required to perform any identifications, abatement, cleanup, control, or removal of asbestos or hazardous materials. The Customer represents that, to the best of the Customer's knowledge, there is no asbestos or hazardous material in the

Customer's building that will in any way affect JCI's work. Should JCI become aware of or suspect the presence of asbestos or hazardous materials, JCI shall have the right to stop work in the affected area immediately and notify the Customer. The Customer will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Customer agrees to assume responsibility for any claims arising out of or relating to the presence of asbestos or hazardous materials in the Customer's building.

L. JCI's EMPLOYEES

The Customer acknowledges that JCI's employees are a valuable asset to JCI. The Customer agrees to pay JCI an amount equal to 12 months of salary for each JCI employee who worked at the Customer's facility that is then hired by the Customer at any time during the term of this Agreement and for 60 days thereafter. In addition, the Customer agrees to reimburse JCI for all costs associated with any training JCI provided to such employees during the three years before the date the Customer hires such employees.

M. ASSESSMENT

It is the Customer's responsibility to pay all taxes or other government charges relating to the transfer, use, ownership, servicing, or possession of any equipment relating to this Agreement.

N. RENEWAL PRICE ADJUSTMENT

JCI will provide Customer with notice of any adjustments in the Agreement price applicable to a renewal period no later than forty-five (45) days prior to the commencement of that renewal period. Unless the Customer terminates the Agreement as provided in the Term/Automatic Renewal provision of this Agreement, the adjusted price shall be the price for the renewal period.

O. RESOLUTION OF DISPUTES

If a dispute arises, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at that time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the parties. Judgment may be entered upon the award in the highest state of federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of the dispute.

P. MISCELLANEOUS PROVISIONS

- 1) Any notice that is required to be given under this Agreement must be in writing and sent to the party at the address noted on the first page of this Agreement.
- 2) This Agreement cannot be transferred or assigned by either party without the prior written consent of the other party.
- 3) This Agreement is the entire Agreement between JCI and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the Customer.
- 4) Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modifications to this Agreement.
- 5) The Customer acknowledges and agrees that any purchase order issued by Customer, in accordance with this Agreement, is intended only to establish payment authority for the Customer's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the Customer's purchase order will have any force or effect.

Should any changes to relevant regulations, laws, or codes substantially affect JCI's Services or obligations, the Customer agrees to negotiate with JCI for appropriate changes to the scope or price of the Agreement or both.

**JOHNSON
CONTROLS**