



## Maintenance and Repair Service Terms

These Maintenance and Repair Services Terms (the "**Repair Service Terms**") govern all transactions by and between TriMark USA, LLC or its affiliates (each, for purposes hereof, "**TriMark**") and its Customers ("**Customer**") for preventative maintenance, dispatch services, inspections, startup support break-fix or other repair services. Any purchase or transaction between Customer and any affiliate of TriMark will be subject to these Repair Service Terms, which, along with any other documentation executed between the parties governing this subject matter, such as a quote, proposal or purchase order and the Terms of Sale (available at: <https://www.trimarkusa.com/sitemedia/siteresources/terms/trimark-terms-and-conditions-of-sale.pdf>), shall be deemed a two-party agreement between such entities (the "**Agreement**"), and Customer shall look solely to that affiliate for any claims, demands, and fulfillment of obligations hereunder. In the event of any conflict between documents, the following order of precedence shall apply: (a) any written agreement executed by TriMark and Customer governing this subject matter; (b) the Repair Services Terms; and (c) the Terms of Sale. Any Customer-provided terms are rejected unless expressly agreed in writing by an authorized representative of TriMark. The parties agree that no course of dealing, course of performance, or usage of trade shall be used to interpret, supplement, or modify the Agreement. These Repair Service Terms may only be modified as expressly set forth herein.

### 1. Defined Terms.

1.1. "**Repair Services**" means any preventative maintenance services, dispatch services, break-fix services, inspections, repair services, startup support, and related field services provided by TriMark. The services description of preventative maintenance services is detailed in Exhibit A, unless otherwise modified by the Repair Proposal.

1.2. "**Repair Proposal**" means a quote, proposal, purchase order, a request submitted online or through a service portal, or other document specifying the design services to be provided to Customer.

2. **Acceptance.** All Repair Services are subject to, and shall be conditioned upon, Customer's assent to these Repair Services Terms, which shall be presumed from Customer's acknowledgment of a Repair Proposal, performance of the Repair Services, and/or issuance of payment.

3. **Fees & Payment.** Customer agrees to pay for the Repair Services and any additional charges as invoiced in full within thirty (30) days after completion. Emergency dispatches, overtime labor, after-hours work, return trips, premium labor, replacement parts, subcontractor work, consumables, additional diagnostics, waiting time, and customer-caused delays are billable unless expressly included in the applicable proposal. A finance charge of either one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law will be applied to any unpaid balance after the due date. Additionally, TriMark reserves the right to: (i) withhold or stop further shipment of goods or services to the Customer, and (ii) cancel or reject any pending orders or proposals with the Customer. TriMark may also require advance payment or change credit terms at any time.

4. **Customer Obligations.** Customer shall provide safe access, adequate utilities, lockout/tagout coordination, sufficient workspace, and a safe work environment compliant with applicable law. TriMark may suspend or refuse Services where unsafe conditions exist. Customer shall maintain routine cleaning, daily operational maintenance, filter cleaning, proper shutdown procedures, and ordinary care of equipment in accordance with manufacturer recommendations. TriMark shall not be responsible for failures resulting from inadequate customer maintenance or improper operation. Customer shall comply with all applicable federal, state, and local laws, rules, and regulations.

5. **Confidentiality.** TriMark and Customer agree that any non-public information relating to TriMark's business, products, intellectual property, or operations, whether disclosed orally, in writing, electronically, or otherwise, and whether or not marked as confidential, ("**Confidential Information**") exchanged shall be kept confidential and not used or disclosed, except (i) as expressly permitted in the Agreement, (ii) as necessary to fulfill its obligations or exercise its rights under the Agreement, (iii) as reasonably necessary to complete the Project, or (iv) upon the prior written consent of the other party. In the event of a disclosure under section (iv), each party will ensure a confidentiality obligation is in place with the intended recipient of Confidential Information.

6. **Standard of Care.** TriMark shall perform the Repair Services in a commercially reasonable and professional manner. TriMark shall not be responsible for failures arising from age, corrosion, latent defects, prior repairs, manufacturer defects, utility conditions, airflow restrictions, misuse, improper cleaning, inadequate maintenance, or pre-existing conditions. TriMark shall not be responsible for failures or reduced performance caused by voltage fluctuations, insufficient electrical supply, inadequate ventilation, gas supply issues, water pressure, water quality, drainage conditions, ambient temperatures, humidity, or customer loading practices. Unless expressly included in the applicable proposal, Services do not include sealed-system refrigeration repairs, refrigerant recovery or charging, compressor replacement, plumbing infrastructure work, electrical infrastructure work, utility modifications, structural repairs, code upgrades, or equipment relocation. TriMark does not certify or guarantee that Customer's equipment, premises, ventilation systems, utilities, fire suppression systems, or operations comply with applicable building codes, fire codes, health regulations, OSHA standards, manufacturer requirements, or other legal requirements. Preventative maintenance and repair services are intended to reduce downtime and identify visible operational concerns but do not eliminate failures or guarantee uninterrupted operation, continued equipment performance, or extended equipment life. TriMark shall have no obligation to service equipment where replacement parts are unavailable, manufacturer support is discontinued, servicing would create unsafe conditions, or servicing is commercially impracticable.

7. **Limitation of Liability.** To the fullest extent permitted by law: (i) in no event shall TriMark be liable for any indirect, incidental, special, consequential, or punitive damages, including food spoilage, contamination, inventory loss, downtime, loss of profits, loss of use, delay damages, or business interruption, arising out of or relating to the design services, design documents, or the project, regardless of the theory of liability and even if advised of the possibility of such damages; and (ii) TriMark's total cumulative liability for any and all claims arising out of or relating to the Repair Services or the agreement shall not exceed the total fees paid or payable by Customer to TriMark for the applicable services. The limitations set forth in this section shall apply notwithstanding any failure of the essential purpose of any limited remedy and regardless of whether such claims arise in contract, tort (including negligence), strict liability, or otherwise. The foregoing limitations shall not apply to damages resulting from TriMark's gross negligence or willful misconduct.

8. **Termination.** Unless otherwise expressly stated in the applicable Repair Proposal, service programs shall remain in effect for one (1) year from the effective date. TriMark may terminate this Agreement or any Repair Proposal for any or no reason upon fifteen (15) days' written notice to the Customer. Upon expiration or termination, Customer shall promptly pay TriMark for all Repair Services performed through the effective date of termination, including all incurred and committed costs, plus a reasonable profit on unperformed work.

9. **Force Majeure.** TriMark shall not be liable for any delays or failures in performance resulting from events beyond its reasonable control, including acts of God, governmental actions, labor disputes, supply chain disruptions, material shortages, and transportation delays. TriMark's obligations shall be suspended for the duration of such event, and TriMark shall be entitled to an equitable adjustment in schedule and pricing.

10. **Disputes.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The arbitrator shall be selected in accordance with the AAA Commercial Arbitration Rules. TriMark, in its sole discretion, may elect to proceed under AAA's Commercial Expedited Procedures. The place of arbitration shall be Boston, Massachusetts. These Terms of Design and arbitration shall be governed by the laws of the State of Delaware. The arbitrator shall award attorney fees and costs to the prevailing

party. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all parties. The parties agree to arbitrate solely on an individual basis, and this agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. Without the consent of all parties, the arbitral tribunal may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding. At any time during the resolution of a dispute between the parties, either party has the right to apply to any court of competent jurisdiction for interim relief, including pre-arbitration attachments or injunctions, necessary to preserve the parties' rights or to maintain the parties' relative positions until such time as the arbitration award is rendered or the dispute is otherwise resolved.

#### **11. General.**

- 11.1.** Any modification, amendment, or waiver of these Repair Terms or any Agreement must be in writing and signed by an authorized representative of TriMark. Customer acknowledges that any agent of Customer executing or performing under an Agreement is authorized to bind Customer. No failure or delay in exercising any right or remedy shall constitute a waiver, and no waiver shall apply except to the specific instance for which it is given.
- 11.2.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings relating to the subject matter hereof.
- 11.3.** Neither party shall assign this Agreement without the prior written consent of the other, except that TriMark may assign this Agreement to an affiliate.
- 11.4.** TriMark may update these Repair Terms from time to time, and such updates shall apply to Repair Proposals and Agreements issued thereafter.
- 11.5.** Any notice or consent under this Agreement will be in writing to such address that may be designated in writing by the receiving party from time to time.
- 11.6.** The parties are independent contractors and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture, or agency.
- 11.7.** If any provision of these Repair Terms or an Agreement is found to be illegal, invalid, or unenforceable in a jurisdiction, such provision (or portion thereof) will be ineffective only to the extent of its illegality, invalidity, or unenforceability and only in such jurisdiction, and such finding will not affect any other provision of these Repair Terms or an Agreement, with a valid provision that most closely approximates the economic effect and intent of the illegal, invalid, or unenforceable provision substituted therefor.
- 11.8.** The termination or expiration of this Agreement shall not release either party from any liability or obligation (including any payment obligations) which has already accrued as of the effective date of termination or expiration, and the provisions of this Agreement which by their nature are intended to survive termination or expiration shall so survive and continue in full force and effect, including but not limited to: Sections 3-11.