

Racks Depot LLC

General Terms and Conditions for Services

1. Services.

(a) Racks Depot LLC ("Service Provider") shall provide the services (the "Services") to Client as described in the Statement of Work ("SOW") which, upon execution, will be incorporated and made part of these General Terms and Conditions for Services. The [SOW], together with these terms, shall collectively be referred to herein as the "Agreement."

(b) Client acknowledges and agrees that Service Provider may use subcontractors and consultants to perform the Services to be provided under this Agreement.

(c) Service Provider may represent, perform services for, and contract with other additional clients, persons, or companies as Service Provider, in its discretion, deems fit.

2. Fees and Expenses.

(a) **Fees.** As consideration for Service Provider's rendition of the Services, Client agrees to pay Service Provider the fees set forth in the [SOW] (the "Fees"). The Fees are exclusive of taxes, levies, duties, governmental charges and expenses, which amounts will be billed to and paid by Client.

Payment of Service Provider's invoice shall mean Client acknowledges satisfactory completion of the described work described in the SOW.

3. Billing and Payment. Service Provider shall issue invoices to Client pursuant to the timetable set forth in the [SOW]. Client will pay invoices in U.S. dollars within thirty (30) days of the date of Service Provider's invoice. Payments must be made by wire transfer, certified check, bank check or such other method as may be agreed upon by Service Provider. Client shall have no right of offset or withholding under this Agreement. Any amounts not paid by Client when due shall be subject to interest charges, from the date due until paid, at the rate of [applicable rate, e.g., one and one-half percent (1.5%) per month], or the highest interest rate allowable by law (whichever is less), payable monthly. If any amounts due to Service Provider from Client becomes past due for any reason, Service Provider may at its option and without further notice withhold further Services until all invoices have been paid in full, and such withholding of Services shall not be considered a breach or default of any of Service Provider's obligations hereunder or under any [SOW].

4. Warranty. Provider warrants that that the Services will be performed by qualified personnel in a professional and workmanlike manner in accordance with generally accepted industry standards and practices. Service Provider shall comply with all statutes, ordinances, regulations and laws of all international, federal, state, county, municipal or local governments applicable to performing the Services hereunder. All materials and installation services are covered under a ten year limited warranty or until Client no longer resides/operates from the location where SOW was completed. This warranty covers defects in materials and workmanship under normal use. It does not cover damage caused by misuse, abuse, improper maintenance, or unauthorized modifications.

LIMITATION OF WARRANTY. THE WARRANTY SET FORTH IN THIS SECTION 4. IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES, WORK PRODUCT OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM. SERVICE PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT. CLIENT'S EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS REPERFORMANCE OF THE NON-CONFORMING SERVICES, OR IF REPERFORMANCE IS NOT POSSIBLE OR CONFORMING, REFUND OF ANY AMOUNTS PAID UNDER THIS AGREEMENT FOR SUCH NON-CONFORMING SERVICES.

5. Ownership of Work Product. This is not a work-for-hire agreement. The copyright in all deliverables created under the Agreement for Client shall belong to the Service Provider. All intellectual property rights in all pre-existing works and derivative works of such pre-existing works and other deliverables and developments made, conceived, created, discovered, invented or reduced to practice in the performance of the Services hereunder are and shall remain the sole and absolute property of Service Provider, subject to a worldwide, non-exclusive license to Client for its internal use as intended under this Agreement. This Agreement does not grant Client any license to any of the Service Provider's products, which products must be licensed separately.

6. Confidentiality. The parties acknowledge that to perform the Services one party may disclose to the other confidential and/or sensitive information ("Confidential Information"). The party disclosing information is referred to as the "Disclosing Party" and the party receiving information as the "Receiving Party." Confidential Information shall mean all information disclosed by the Disclosing Party to the Receiving Party which is non-public and either proprietary or confidential in nature and related to the Disclosing Party's business or activities including, but not limited to, financial, legal, technical, marketing, sales and business information, which is (a) marked as confidential at the time of disclosure; or (b) is unmarked (e.g., disclosed orally or visually) but is identified as confidential at the time of disclosure; or (c) due to the nature of the information or the circumstances of disclosure, would be understood by a reasonable person to be confidential.

The Receiving Party shall maintain the Confidential Information in strict confidence and limit disclosure to its employees, subcontractors, consultants and representatives who have a need to know such information to perform the Agreement. The Receiving Party shall only use Confidential Information in furtherance of its performance of the Agreement, and not for any other purpose or for the benefit of any third party. Receiving Party's obligations to protect the Confidential Information will survive for two years after the termination of this Agreement. These confidentiality obligations shall not apply to any information which: (i) was lawfully in Receiving Party's possession before receipt from Disclosing Party; (ii) at or after the time of disclosure, becomes generally available to the public other than through any act or omission of the Receiving Party; (iii) is developed by Receiving Party independently of any Confidential Information it receives from Disclosing Party; or (iv) Receiving Party receives from a third party free to make such disclosure without, to the best of Receiving Party's knowledge, breach of any legal or contractual obligation. In no event shall Service Provider's use or disclosure of information relating to the development, improvement or use of any of Service Provider's products be subject to any limitation or restriction.

If the Receiving Party is confronted with legal action to disclose Confidential Information it shall, unless prohibited by applicable law, provide prompt written notice to the Disclosing Party to allow the Disclosing Party an opportunity to seek a protective order or other relief it deems appropriate. If disclosure is nonetheless required, the Receiving Party shall limit its disclosure to only that portion of the Confidential Information which it is advised by its legal counsel must be disclosed. All Confidential Information shall remain the property of the Disclosing Party. All copies of Confidential Information shall be returned to the Disclosing Party promptly upon the Disclosing Party's request or within ten (10) days of the expiration or termination of this Agreement.

7. Indemnification. Each party (the "Indemnifying Party") agrees to indemnify, defend and hold the other party and its affiliates and their respective officers, directors, employees and agents harmless from and against all third-party claims, losses, liabilities, damages, expenses and costs, including attorney's fees and court costs, arising out of the Indemnifying Party's (i) gross negligence or willful misconduct or (ii) material breach of any terms of this Agreement. The Indemnifying Party's liability under this section shall be reduced proportionally to the extent any act or omission of the other party, or its employees or agents, contributed to such liability. The party seeking indemnification shall provide the Indemnifying Party with prompt written notice of any claim and give complete control of the defense and settlement to the Indemnifying Party, and shall cooperate with the Indemnifying Party, its insurance company and its legal counsel in its defense of such claim(s). This indemnity shall not cover any claim in which there is a failure to give the Indemnifying Party prompt notice to the extent such lack of notice prejudices the defense of the claim.

SECTION 7. STATES THE ENTIRE OBLIGATION AND THE EXCLUSIVE REMEDIES WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS AGREEMENT.

8. Limitation of Liability; Actions. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE UNDER THIS AGREEMENT TO CLIENT FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. SERVICE PROVIDER'S ENTIRE AGGREGATE LIABILITY FOR ANY CLAIMS RELATING TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY CLIENT TO SERVICE PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT.

NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

9. Cooperation of Client. Client agrees to comply with all reasonable requests of Service Provider and shall provide Service Provider's personnel with access to all documents and facilities as may be reasonably necessary for the performance of the Services. Client agrees to furnish without charge adequate space at Client's premises for use by Service Provider's personnel while performing the Services. Customer agrees to furnish without charge adequate space at Customer's premises for use by Service Provider's personnel while performing the Services. Client shall ensure that the garage area is accessible and free of obstructions at the time of installation. Service Provider will provide the "In, Out, & Organized" add on for a fee.

10. Term and Termination.

(a) **Term.** The term of this Agreement shall be [time period, e.g., one (1)] years, commencing upon full execution hereof by the parties, unless sooner terminated as set forth herein.

(b) **Termination for Breach.** Either party may terminate this Agreement at any time in the event of a breach by the other party of a material covenant, commitment or obligation under this Agreement that remains uncured: (i) in the event of a monetary breach, ten (10) calendar days following written notice thereof; and (ii) in the event of a non-monetary breach after thirty (30) days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either party. Termination shall be in addition to any other remedies that may be available to the non-breaching party.

(c) **Termination Without Cause.** This Agreement be terminated by Service Provider, for any reason with or without cause, upon thirty (30) days' prior written notice to the Client.

(d) **Obligations Upon Termination.** Termination of this Agreement for any reason shall not discharge either party's liability for obligations incurred hereunder and amounts unpaid at the time of such termination. Client shall pay Service Provider for all Services rendered prior to the effective date of termination. Upon termination each party shall return the other's Confidential Information in its possession at the time of termination. Upon the termination, Client shall promptly return to Service Provider any equipment, materials or other property of the Service Provider which are in Client's possession or control.

11. Non-Solicitation. During the term of this Agreement and for six (6) months following the expiration or termination date of the Agreement, Client agrees not directly solicit or induce any person who performs Services hereunder on behalf of Service Provider to leave the employ of Service Provider. Client is not prohibited from responding to or hiring the Service Provider's employees who inquire about employment on their own accord or in response to a public advertisement or employment solicitation in general.

12. Relationship of the Parties. The relationship of the parties hereto is that of independent contractors. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the parties or between

one party and the other party's employees or agents. Neither party has the authority to bind or contract any obligation in the name of or on account of the other party or to incur any liability or make any statements, representations, warranties or commitments on behalf of the other party, or otherwise act on behalf of the other. Each party shall be solely responsible for payment of the salaries of its employees and personnel (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

13. **Force Majeure.** Neither party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, except for the payment of money, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, pandemics, epidemics, local disease outbreaks, public health emergencies, communicable diseases, quarantines, terrorism, acts of God, or other similar or different occurrences beyond the reasonable control of the party so defaulting or delaying in the performance of this Agreement, for so long as such force majeure event is in effect. Each party shall use reasonable efforts to notify the other party of the occurrence of such an event within [number, e.g., five (5)] business days of its occurrence, which notice shall include a description of the force majeure event and an estimate of the length of time such event will delay or prevent performance hereunder.

14. **Partial Invalidity.** In the event that any part or portion of this Agreement is deemed to be invalid, illegal, or otherwise unenforceable: (1) the parties shall use all reasonable efforts to negotiate in good faith to amend the term to eliminate any such invalidity, illegality, or unenforceability to the extent practically possible, taking into full account their original intent when entering into this Agreement; and (2) the remaining provisions of the Agreement shall continue in full force and effect.

15. **Publicity.** Subject to the confidentiality provisions set forth herein, Service Provider shall be free to disclose to the public that Client is a client of Service Provider, and may use Client's name to make such statement.

16. **Assignment.** Client may not assign, delegate or otherwise transfer this Agreement or its obligations hereunder, in whole or in part, without the prior written consent of Service Provider, with such consent not to be unreasonably withheld or delayed. Any purported assignment or delegation in violation of this section shall be null and void. No permitted assignment or delegation will relieve Client of its obligations under this Agreement, and as such, Client shall remain primarily liable in connection therewith. Service Provider shall be entitled to assign or otherwise transfer this Agreement, in whole or in part, without the prior consent of Client.

17. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at the address set forth in the applicable [SOW] or as otherwise designated by a party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (1) upon receipt by the receiving party; and (2) if the party giving the notice has complied with the requirements of this section.

18. **Survival.** Following the termination of this Agreement, any provision set forth herein which, by its very nature, is intended to survive any expiration or termination hereof, shall so survive, including without limitation, the provisions respecting ownership of work product, confidentiality, indemnification, limitation of liability, non-solicitation, accrued payment obligations, and governing law and venue.

19. **Waiver.** No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving party. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this Agreement thereafter.

20. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of North Carolina without regard to its conflict of laws principles. The parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in [county], North Carolina. Both parties hereby submit to the exclusive jurisdiction and venue of any such court.

21. **Attorneys' Fees.** If either party incurs any legal fees associated with the enforcement of this Agreement or any rights hereunder, the prevailing party shall be entitled to recover its reasonable outside attorney's fees and any court, arbitration, mediation, or other reasonable litigation expenses from the other party.

22. **Collection Expenses.** If Service Provider incurs any costs, expenses, or fees, including reasonable attorney's fees and professional collection services fees, in connection with the collection or payment of any amounts due it under this Agreement, Client agrees to reimburse Service Provider for all such costs, expenses and fees.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

24. **Headings; Construction.** The headings/captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference, and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain. This Agreement is the result of negotiations between the parties and their counsel. Accordingly, this Agreement shall not be construed more strongly against either party regardless of which party is more responsible for its preparation, and any ambiguity that might exist herein shall not be construed against the drafting party.

25. **Entire Agreement; Modification.** The Agreement (along with any attachments incorporated herein) sets forth the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement or communications between the parties, whether written, oral, electronic, or otherwise, relating hereto. No change, modification, amendment, or addition of or to this Agreement shall be valid unless in writing and signed by authorized representatives of the parties. Each party hereto has received independent legal advice regarding this Agreement and their respective rights and obligations set forth herein. The parties acknowledge and agree that they are not relying upon any representations or statements made by the other party or the other party's employees, agents, representatives or attorneys regarding this Agreement, except to the extent such representations are expressly set forth in this Agreement.

In witness whereof, the parties hereto have executed these General Terms and Conditions for Services on the date set forth below.

CLIENT

By: _____

Name:

Title: [If Client is a Business]:

Date:

SERVICE PROVIDER

By: _____

Name:

Title:

Date: