

## **General Terms and Conditions For Surface Treatment, October 2020**

### **1. Scope**

(1) These terms and conditions govern the conclusion, content, performance and termination of contracts for the performance of services (the "Services"), which may include the surface treatment of certain provided goods (the "Goods") by Heiche US Surface Technology, Inc. or one of its affiliates (collectively, "Heiche").

(2) These terms and conditions are deemed to be accepted if the customer ("Customer") of the Services orders from Heiche and reference is made to them in an Offer, as defined herein, order confirmation ("Order Confirmation"), upon performance of the Services, or any other separate contractual agreement, whichever occurs first.

(3) Delivery of Goods or performance of Services by Heiche shall in no way constitute an acknowledgement or acceptance of a Customer's terms and conditions or similar instrument. Any terms and conditions or similar instruments of the Customer are explicitly excluded.

(4) These terms and conditions herein shall apply to all future business, even if they have not been attached to the correspondence referring to such future Orders, as defined herein, unless otherwise set forth in writing by Heiche.

(5) These terms and conditions together with all relevant documentation such as proposals, offers, estimates or quotations (including referenced documents) (collectively an "Offer") from Heiche, and all accepted orders placed by a Customer for Services (an "Order") along with any other order specific Heiche terms and conditions and other relevant documents, constitute the contract ("Contract") between Heiche and the Customer (collectively, the "Parties" and each individually a "Party"). The application of these terms and conditions may only be varied by agreement in writing between the Parties.

### **2. Offers and Orders, Scope of Contract**

(1) An Offer, as a non-binding invitation for the Customer to place an Order, is subject to alteration by Heiche at any time unless otherwise set forth in writing.

(2) An Offer and/or the Order Confirmation, including any accompanying documentation such as images, descriptions and drawings, specified measurements and weights, are estimates not constituting binding terms, unless otherwise set forth in writing, and remain the sole property of Heiche.

(3) Orders shall be considered binding, only when confirmed in writing by Heiche. An Order Confirmation can also be made in the form of an invoice delivered with the Goods. Customer must promptly provide notice of any objections to any Order Confirmation. Failure to object within a reasonable time, as determined by Heiche, shall constitute an acceptance of an Offer or Order Confirmation.

(4) Heiche reserves the right to correct any errors or omissions in its Offers, Order Confirmations or invoices.

(5) Customer shall bear all costs associated with the cancellation or modification of an Order.

(6) Additional terms, instruments or regulations of any kind (for instance the Automotive Industry Association series of publications, QS 9000, DIN standards, any other contractual texts) which are not part of the Contract shall require an additional express written consent by Heiche. Furthermore, deliveries of Orders to the aviation industry must be agreed separately, in order to allow Heiche to obtain relevant insurance coverage.

(7) Audits and the provision of information and documentation is subject to Heiche's prior written approval, which may be rendered at its sole discretion.

### **3. Prices and Conditions of Payment**

(1) Prices specified in an Offer and/or Order Confirmation are estimates only and non-binding. Invoicing shall occur according to Heiche's prices valid on the day of delivery of relevant Goods.

(2) Heiche's prices shall apply exclusively to

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correctly constructed, manufactured and delivered Goods and related parts. Any additionally required Services, such as removing paint, oil, grease, tar, old metal coatings, and the subsequent addition of openings and cavities, production of test reports, shall be invoiced by Heiche on a time-and-material basis, unless otherwise agreed to in writing.

(3) Heiche reserves the right between conclusion of Contract and delivery of Goods or conclusion of Services to raise prices, due to cost factors (actual costs) affecting the end price such as raw materials, material costs or energy costs increase by more than two percent (2%). The foregoing shall also apply to any Orders placed without express prior price agreement.

(4) The Customer shall be responsible for payment of all taxes, including inventory tax, duties, fees or other taxes of any nature assessed by governmental authorities applicable to the Goods and performance of Services hereunder.

(5) Unless otherwise agreed between the Parties, all payments are due in full, payable to Heiche immediately upon receipt of an invoice, but in no event later than thirty (30) days from the invoice date or the date when the Customer receives the invoices, whichever is earlier ("Due Date"). Notwithstanding the foregoing, Heiche reserves the right to implement other payment methods, including but not limited to upfront or partial pre-payments.

(6) All payments must be received by the Due Date or at a specific date for alternative payment methods as set forth in Section 3(5), in each instance a form acceptable to Heiche, even if the delivery of Goods or performance of Services is delayed for reasons for which Heiche is not responsible or slight corrections are necessary. Payment shall only be deemed received if the outstanding funds are disposable by Heiche.

(7) Should the Customer fail to pay within the time frame specified in Section 3(5), Heiche may: (a) impose a service charge on the unpaid balance at one point five percent (1.5%) per month (i.e. eighteen percent (18%)

per annum), or the maximum rate permitted by law, from the Due Date until the invoice and all service charges thereon have been paid in full, as well as any costs incurred by Heiche (including reasonable attorneys' fees and legal expenses) in connection with the collection of any amounts due from Customer to Heiche which are not paid as agreed herein; (b) request prepayment of the entire amount due for all future Orders; (c) demand any assurances or securities concerning Customer's ability to make all payments for the Contract; (d) refuse to make any further deliveries under the Contract until the amount due has been fully paid; and/or (e) treat the failure of the Customer to make payments as a repudiation of the Contract by the Customer if the amount due remains unpaid after providing seven (7) days' notice to the Customer of such breach and an opportunity to rectify the breach, which shall entitle Heiche to elect, without prejudice to any other rights of Heiche, to terminate the Contract in whole or in part (including any Order or part thereof) and, in either case, to recover damages for the breach of the Contract.

(8) Without limiting any other rights, Heiche may utilize the remedies set forth under Section 3(6), in case the Customer's financial viability or credit worthiness is; (a) less stable than expected at the time of an Order Confirmation, (b) has substantially deteriorated, or (c) will likely deteriorate substantially in the near future.

#### **4. Security Interest**

(1) Heiche shall be entitled right of lien on the Goods and parts upon which Services are performed. In furtherance of the foregoing, Customer grants to Heiche a security interest until all amounts due have been paid in full, in each case in good, collected and indefeasible funds (the "Release Date") in (a) all Goods or parts thereof delivered in accordance with these terms and conditions; (b) without in any way limiting any restrictions herein, any and all leases, chattel paper, instruments, accounts and security deposits relating in any way to such Goods; and (c) in all proceeds

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thereof (the "Collateral"). Customer acknowledges that the security interest granted under these terms and conditions is a security interest under the Uniform Commercial Code as enacted in the State of Delaware ("UCC").

(2) Customer expressly authorizes, ratifies and confirms past or future filings of one or more UCC financing statements or other documents by Heiche or its designees to the extent deemed necessary or desirable by Heiche. Such financing statements or documents may describe the Collateral in the manner in which Heiche determines best protects Heiche's interests in the Collateral.

(3) Upon integration or otherwise utilization of the Goods in connection with the creation or modification of other products (the "New Products"), Heiche shall retain all available rights in the Goods. Customer shall at its sole cost ensure that the New Products are jointly owned by Heiche and Customer until the Release Date.

(4) Until the Release Date and without limiting any other rights, in case Customer's financial viability deteriorates or will likely deteriorate as determined by Heiche, Heiche shall be entitled to directly receive payment for any sale or utilization of the Goods or New Products from Customer's customers. In order to implement the foregoing, Heiche may take any action it deems necessary, including but not limited to demand payment from Customer's customers from such sale on a pro rata basis to Heiche.

(5) Subject to the exceptions set forth herein, Customer shall not sell, pledge, transfer or assign the Goods or New Products (for security or otherwise) or any receivables related thereto until the Release Date without Heiche's written consent.

(6) Until the Release Date, Customer shall (a) carefully maintain, and insure the Goods and New Products; (b) protect such Goods and New Products against any risks; and (c) take all reasonable measures in order that Heiche's rights and interests in such Goods and New Products are neither compromised nor cancelled.

(7) In the event of a breach, Heiche may

utilize any remedies available to it at law or in equity. In all cases, Customer will be responsible for Heiche's costs and expenses in exercising its rights.

(8) Heiche may release the security rights set forth hereunder at any time at its sole discretion.

## 5. Delivery

(1) In furtherance of Section 3(1) and unless otherwise agreed to in writing and subject to Customer's full compliance with all obligations under the Contract, including but not limited to required releases and pre-payments, where applicable, Heiche will make available the Goods Ex Works (Incoterms) at the sole cost and risk to the Customer, or at Heiche's then current standard shipping rates, which are subject to change at any time for each accepted Order.

(2) Transport insurance shall be procured upon request by the Customer only and the costs of same shall be borne by the Customer.

(3) The delivery period begins on the day of an Order Confirmation, nevertheless not before all details of an Order fulfillment have been clarified, and in particular not until all documentation has been received from the Customer and other relevant third parties.

(4) Heiche shall not be held liable for any delays of delivery or rendering of Services which are outside of its control, including a force majeure or any other events, which substantially complicate the delivery or performance of the Services— such as strike, lockout, governmental orders, pandemic, epidemic, and failure of Heiche's suppliers to deliver punctually. Such occurrences shall give Heiche the right to extend the delivery time to a reasonable extent including an appropriate starting time or the right to terminate without liability or acknowledgement of breach the Contract with respect to the non- fulfilled part as a whole or in part.

(5) If the event of force majeure event persist for more than three (3) months, the Customer shall be entitled to withdraw from the Contract as to the non-fulfilled part, subject to at least thirty (30) days written

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notice to cure, and if no cure occurs payment of all outstanding and incurred amounts to. If the delivery time is prolonged or if Heiche should be released from our obligation, the Customer has no right to derive compensation claims from same.

(6) Heiche shall have the right of early delivery.

(7) Heiche shall be entitled to undertake partial deliveries and performances.

## **6. Dispatch and Passing of Risk**

(1) Unless agreed otherwise the Customer shall deliver the products, goods and parts for the Services to Heiche at its sole cost and risk. Unless otherwise agreed to in writing, Customer shall be solely liable for any damages to the property described in the foregoing sentence.

(2) Following completion of the Services, risk of loss or damage for all Goods will pass to Customer upon Heiche making such Goods available to a carrier regardless of the shipping method. Furthermore, the passing of risk shall apply when the supplied parts are transported by Heiche's transportation personnel.

(3) Should the delivery be delayed as a result of circumstances beyond Heiche's control, the risk shall pass to the Customer on the date of readiness for shipping.

(4) In the event that Heiche complies with shipment instructions issued by the Customer, Heiche does not assume any responsibility and the shipment shall be for the account and at the risk of the Customer.

(5) Goods which are announced ready for dispatch have to be collected at the latest after ten (10) days by the Customer. If the Goods are not collected, Heiche is entitled to store the Goods at Heiche's sole discretion at the cost and risk of the Customer with a third party or claim reasonable storage costs for Heiche's own storage.

## **7. Scope of Obligation of Performance, Defects**

(1) Heiche's contractual obligations shall be limited as specified in an Offer or Order Confirmation. Any other services, including those outside of standard procedure (for instance, the development of special processes, the attainment of particular properties, the guarantee of suitability for particular uses, the guarantee of suitability in relation to particular mechanical and chemical stresses) shall only be carried out by Heiche upon express written agreement and individual pricing. Customer shall provide prompt written notice of any alterations and new standards in surface norms or other changes concerning the Goods or parts related thereto to Heiche.

(2) Send-in goods and parts from the Customer shall be made available to Heiche Ex-Works (Incoterms) in a timely manner and with a free-of-charge volume of at least five percent (5%) above the needed quantities. For send-in goods and parts, the number of rejects and shortfalls will be assessed based on an acceptable range of up to of three percent (3%) of the delivered goods and parts. As long as the number of rejects and shortfalls remains within this range, Heiche's will be in compliance with the requirements for the Services. Customer claims made on quantities of under three percent (3%) threshold of the sum of delivered goods and parts shall not be included in 8-D-Reports or other quality control reporting instruments or processes.

(3) The send-in goods and parts are to be delivered to Heiche free of any faults or defects. Fault-free parts are specified as follows, which may be subject to change at Heiche's discretion: fault-free basic material without cracks or pores; a dense, unbroken surface after mechanical working, free of blowholes and grinding marks, drawing defects or laminations; a surface free of casting film, scale, oil carbons, paint, graphite, film, molding sand, oil, grease, silicone, welding residues and other residues; threads must be accurately undercut.

(4) Should the goods or parts fail to meet the requirements set forth under Section 6(3), Heiche shall have the right to refuse them or to withdraw from the Contract. If the

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Customer insists on proceeding with the process nevertheless, or in the event that the goods or parts delivered to Heiche for surface treatment is deemed technically unsuitable for the given surface treatment for reasons that are not apparent, Heiche shall not be made liable for specific dimensional accuracy, adhesiveness, color retention and corrosion-prevention characteristics of the layer applied, as far as the fault lies in the unsuitability of the materials and is not due to Heiche's intent or gross negligence. If the faulty nature of the parts is not detected prior to processing, Heiche shall not be liable to produce successfully-processed parts, as long as Heiche has not acted intentionally or with gross negligence.

(5) As a result of the electroplating the surface, pores, scratches, crack, grooves, impact points, signs of expansion, structural faults and serious impurities in the metal surface cannot be removed or rectified. The Customer is responsible for ensuring the preconditions are met so that electroplating can be carried out effectively during surface treatment. Heiche shall be obligated to an inspection of the incoming materials only if such inspection is expressly agreed in writing.

(6) Without affecting any limitations set forth herein or expanding the scope of the limited warranty under Section 8(1), Heiche will seek to perform the Services in a professional manner, in terms of material and workmanship according to state-of-the-art technology and the valid or generally accepted drafts of applicable regulations, as determined by Heiche. During electroplating and chemical processing as well as due to quality fluctuations in the raw material, deviations from the agreed production sample are sometimes unavoidable. The work shall be carried out without tempering.

(7) Hollow parts shall be electroplated on the outer surface only, except in special cases where express agreement to electroplate the hollow interior has been made. Corrosion which occurs immediately on the untreated surfaces shall not constitute a liability for defects. Surface-treated material is vulnerable to condensate and frictional corrosion. It

must be properly packaged, stored and transported.

(8) For the surface thickness, the agreed measurement points shall apply. At a Contract value of at least One Thousand Two Hundred US Dollars (USD 1,200.00), the Customer shall receive a surface thickness measurement log or an SSN-Test free of charge. For a contract value of less than One Thousand Two Hundred US Dollars (USD 1,200.00), Heiche shall invoice the Customer Sixty US Dollars (USD 60.00) or the then current price for the provision of documentation. Offers with a contract value of more than One Thousand Two Hundred US Dollars (USD 1.200,00) shall include an initial sample test report on request. Approval of parts according to PPAP procedure and other requirements according to automotive standards shall be invoiced on a time and materials basis.

(9) Heiche shall only be liable for faults of a technical functional nature, not for optical faults on surfaces, unless otherwise agreed to in writing.

(10) Customer specifications shall be tested by Heiche according to the industrially-proven Heiche testing standard. Additional testing with a higher standard must be agreed upon separately in writing.

(11) For Offers pertaining to anodizing, the following applies: copper, lead and siliceous alloys affect the anodizing layer. Such alloys shall be processed in accordance with the standard process, unless Heiche receives precise specifications on the composition of the alloy. For aluminum casting at a layer thickness of  $>8 \mu\text{m}$ , burning (damage) of the part may occur.

(12) Packaging must provide adequate passive ventilation. If the Customer insists on packaging which does not allow air circulation, Heiche shall not be liable for corrosion. The customer is at liberty to provide evidence that the corrosion would have occurred regardless of the lack of air circulation in the packaging.

(13) In the event that Heiche prepare the surface of parts solely for further processing (such as cleaning, applying an adhesive primer), the parts must be further processed

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immediately, otherwise the required characteristics may be lost.

### **8. Limited Warranty**

(1) ABSENT A SEPARATE WARRANTY ISSUED TO CUSTOMER, HEICHE WARRANTS ONLY TO THE CUSTOMER THAT THE SERVICES SHALL BE PERFORMED IN A COMPETENT AND DILIGENT MANNER IN ACCORDANCE WITH ANY MUTUALLY AGREED SPECIFICATIONS.

(2) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ANY SAMPLES, DRAWINGS OR OTHER MATERIALS MADE AVAILABLE TO CUSTOMER ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY.

(3) THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS OF HEICHE SET FORTH IN THESE TERMS AND CONDITIONS ARE IN LIEU OF, AND HEICHE DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE GOODS AND SERVICES HEREUNDER, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, INCLUDING FOR INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE. HEICHE HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER.

(4) Unless otherwise agreed to in writing, and whether or not samples, test products or illustration materials have been provided, the Customer must carefully inspect the Goods and any other delivered property or performed Services within five (5) business days after delivery or completion of the Service, and is obliged to notify Heiche of detectable faults within one week of detecting them. Unnoticeable defects are to be reported to Heiche without undue delay after detection. Any further processing performed by the Customer on the delivered Goods shall release Heiche of all warranty obligation for such defects that are detectable during a

reasonable incoming goods inspection and testing, no matter whether Heiche delivers to the Customer itself or to a third party upon request of the Customer.

(5) The Customer is obliged to supply adequate, as determined by Heiche, proof of faults and to give Heiche the opportunity to check same. Should the Customer not fulfil this obligation, the delivery shall be deemed approved and accepted.

(6) Minor deviations from the agreed character, or minor impairment to usability shall not be deemed faults or defects. During electroplating and chemical processing as well as due to quality fluctuations in the raw material, deviations from the agreed production sample are sometimes unavoidable, and shall not result in any liability to Heiche.

(7) The sent-in parts, goods or other property which are to be processed by Heiche must be accompanied by a delivery note containing the exact address, number of pieces and total weight. The stated gross weight shall not be binding for Heiche even if it is significant for the Customer. Unless otherwise documented and authorized by Heiche, Heiche shall not be liable for any missing parts or property.

(8) Heiche shall not be liable for faults which occur during the processing of sent-in parts which arise from the behavior of the material due to its inherent characteristics.

(9) Heiche provides no guarantee for the light resistance of the colors. Slight color differences of the Goods due to alloy deposit are permissible. Heiche shall also not be liable for color changes which arise due to painting, heat treatment or thermal effects. Due to natural conditions, the anti-corrosive nature of electroplating for a given period of time can not be foreseen and therefore not guaranteed.

(10) Heiche provides no guarantee concerning adhesion in the event that any material, parts, goods or property is deformed after surface treatment, equally not when probation electroplated parts have been deformed without the occurrence of flaking of the electroplated layer and the Customer, despite being advised of the risk of flaking, ordered this process nevertheless.

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(11) In the event that particular quality standards are required (e.g. thermal resistance and bending applications), the Parties shall agree to such terms in writing. If such specifications are not communicated in writing or agreed upon by Heiche in writing, all guarantees associated with such quality requirements shall not apply. In particular, the dimensional accuracy of threads or similar constructions shall then only be guaranteed whereby exact written specifications have been supplied.

(12) Without limiting any other terms set forth herein, Heiche disclaims any liability concerning sent-in parts, goods or other property of the Customer.

(13) The warranty set forth herein shall not apply to any (a) unauthorized changes, (b) mishandling, (c) negligent acts, (d) normal wear and tear, and (e) any actions that conflict with Heiche's instructions or other communication.

(14) Heiche shall have the right to inspect and remediate any defects. Upon inspection or waiver thereof, Heiche may at its sole discretion take such action to remediate the defects, including re-performing Services or reimbursement of already paid or yet to be invoiced amounts. In the event of a re-performance, Customer shall provide relevant goods, parts or other property to Heiche at its sole cost and risk.

(15) Heiche is not obliged to bear costs incurred for the purpose of supplementary performance, including but not limited to transportation costs, travel costs, work and material costs, in so far as such expenses increase due to the delivery of parts to an address other than set forth in the Contract. This shall not apply if such delivery is in accordance with the intended use of the item.

(16) The Customer may not withdraw from or terminate the Contract due to any defects, unless such defects are acknowledged by Heiche and remain uncured for a unreasonable period, as determined by Heiche.

## **9. Liability for Defects on Sent-in Parts and**

### **Faults in Parts-Processing**

(1) The Customer is obliged to insure all provided goods, parts and other property in accordance with their value in particular against theft, fire, water and other relevant damages or risks.

(2) Unless otherwise agreed to in writing, Heiche shall use commercially reasonable efforts to perform the Services on all replacement goods, parts or property due a reject rate of more than three percent (3%), which arises due to a material uncured fault of Heiche. The basis for calculating the reject rate is the sum of delivered parts within a calendar year.

(3) If parts sent in become unusable during the processing as a result of material defects or other defects, Customer shall promptly reimburse Heiche for all processing costs.

### **10. Consulting**

(1) Heiche may provide consulting or other services to the Customer. Such services are provided without any warranties or other representations, unless separately agreed to in writing.

(2) Unless separately agreed to in writing, Heiche shall not be liable for any costs or damages arising from the services performed pursuant to Section 10(1), and Customer shall have no expectation for accuracy or otherwise rely on such services.

### **11. Limitation of Liability**

(1) NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THE CONTRACT TO THE CONTRARY, HEICHE SHALL NOT BE LIABLE (TO THE FULLEST EXTENT PERMITTED AT LAW) WHETHER BY WAY OF INDEMNITY, GUARANTEE, OR BY REASON OF ANY BREACH OF CONTRACT, OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR ANY OTHER LEGAL PRINCIPLE OR DOCTRINE FOR: (a) ANY CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES; (b) ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE OR LOSS OF ANTICIPATED SAVINGS OR FOR ANY FINANCIAL

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OR ECONOMIC LOSS (WHETHER DIRECT OR INDIRECT); OR (c) ANY OTHER AMOUNT IN AGGREGATE WITH ANY OTHER LIABILITY (BEING ANY PAST, PRESENT OR FUTURE LIABILITY) TO WHICH THIS SECTION APPLIES, THAT EXCEEDS THE AGGREGATE VALUE OF ALL PAYMENTS OF THE AMOUNTS PAID TO HEICHE FOR A RELEVANT ORDER OR IN A TWELVE (12) MONTH PERIOD PRECEDING THE DISPUTE, WHICHEVER IS LOWER.

(2) THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### **12. Offsets and Retentions**

(1) The Customer is not entitled to withhold any payment as set off, counterclaim or retention unless the terms and conditions of such set off or retention are agreed to in writing by Heiche prior to the performance of the Services or delivery of the Goods, or upon written acceptance of the relevant amounts by Heiche.

### **13. Indemnity**

(1) The Customer shall indemnify, defend and keep Heiche, its shareholder, directors, officers, employees and other agents harmless against all costs, claims, demands, expenses and liabilities of any nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property, claims of infringement to third party intellectual property due to specifications or other requests by Customer, and consequential loss (including loss of profit), which may be made against Heiche or which Heiche may sustain, pay or incur as a result of or in connection with the performance of the Services unless such costs, claims, demands, expenses or liabilities are directly and solely attributable to any

willful misconduct or gross negligence of Heiche or its duly authorized employee or agent.

### **14. Insurance**

(1) Without limiting any other obligations set forth herein, Customer shall, at its sole expense, maintain and carry all customary insurance in full force and effect with insurance companies rated A- or better by a rating service. Upon Heiche's request, Customer shall provide Heiche with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this Section 14. Customer shall provide Heiche with thirty (30) days' advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Purchaser shall require its insurer to waive all rights of subrogation against Heiche's insurers and Heiche.

### **15. Intellectual Property**

(1) Intellectual property rights in the Services or related thereto, including but not limited to quotations, drawings, samples, plans, proposals or any other property remain with Heiche or third parties.

(2) Customer shall not reverse-engineer, decompile, disassemble or any other way alter the Goods regarding the Services without Heiche's prior written consent.

### **16. Confidentiality**

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(1) Both Parties shall treat in strict confidence all information which is neither generally known nor generally accessible, including but not limited to illustrations, drawings, calculations and other documents, and shall use it only for the purpose of fulfilling the Contract. The Parties shall ensure the confidential treatment of all information relating to the Contract by their personnel and consulted specialists. In case of doubt, all information is to be treated confidentially.

(2) Confidential information of a Party does not include information which: (a) was already known to the other Party, before it was made accessible by the disclosing Party; (b) is or becomes generally known without the other Party's responsibility; (c) was disclosed to the other Party by a third party without any transfer restriction; (d) was developed by the other Party itself without using or referring to the confidential information of the protected Party; and/or (e) has to be disclosed based on a legally binding decision of a court, administrative or other authority. In this case the Party under the obligation to disclose shall inform the other Party immediately about the decision and consider protective measures the other Party may want to implement.

(3) A Party must not disclose any confidential information to a third party without the prior written approval of the other Party to the Contract. If the approval is given, the obligations of confidentiality are to be transferred to the receiving third party.

(4) Notwithstanding Section 16(3), Heiche may disclose confidential

information to its affiliates and advisors (attorneys, auditors, experts).

## **17. Compliance**

(1) The Customer agrees to comply with any and all applicable laws, regulations, ordinances, legal standards, and industry practices, as well as any terms and conditions or similar instruments of a Heiche customer, where applicable and communicated.

## **18. Miscellaneous**

(1) Customer shall not assign any of its rights under the Contract, except with the prior written consent of Heiche. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section 18(1) is null and void.

(2) With the exceptions for communication provided by Heiche in its regular course of business, which may be transmitted with email or other electronic transmissions, all notices required or permitted by the Contract shall be in writing and shall be deemed to have been given (a) on the date of personal delivery to an officer of or personally to the other Party, or (b) the day following deposit when properly deposited for overnight delivery with a nationally recognized commercial overnight delivery service, prepaid, and addressed as provided in the Contract, unless and until either of such Parties notifies the other in accordance with this Section 18(2) of a change of address.

(3) No waiver by Heiche of any of the provisions of the Contract is effective unless explicitly set forth in writing and signed by Heiche. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Contract operates or may be construed as a waiver thereof. No

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single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(4) The Contract is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the terms and conditions and/or Contract.

(5) Any claims, disputes or controversies arising between the Parties hereunder shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to conflicts of laws that would require the application of the laws of another jurisdiction.

(6) The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to the Contract, or to a material breach, including its interpretation, performance, or termination. If the Parties do not reach settlement within a period of twenty (20) days, the Parties shall submit the dispute to mediation on the terms and at a location determined by the Parties. If the Parties are unable to resolve a dispute through the methods outlined herein, either Party may refer the dispute to arbitration. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association, which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the decision and/or award, shall take place in a location determined by the Parties, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based and shall be final and binding upon the Parties. The prevailing party shall be entitled to compensation for the expense of the arbitration, including, but not limited to,

the award of reasonable attorneys' fees, at the discretion of the arbitrator. Both Parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The arbitrator shall have no authority to award any of the types of damages excluded by hereunder and shall be so instructed by the Parties.

(7) Notwithstanding anything to the contrary herein, any Party may seek injunctive relief against the other Party with any court of proper jurisdiction with respect to any and all preliminary injunctive or restraining procedures pertaining to this Agreement or the breach of any relevant obligations, including but not limited to Section 16.

(8) The Contract contains the entire agreement between the Parties with respect to the delivery of Goods and performance of Services and supersedes all prior agreements and understandings between the Parties.

(9) For the purpose of the Contract, Heiche is an independent contractor and nothing in herein shall be deemed to make Heiche an agent, employee, partner, or joint venturer of Customer. Neither Party shall have any authority to bind, commit, or otherwise obligate the other Party in any manner whatsoever.

(10) Should any provision of the terms and conditions and/or Contract be deemed incomplete, legally invalid or unenforceable, such provision may be severed from the terms and conditions and/or Contract and be replaced by as closely an equivalent effective provision as possible. The remaining terms of the terms and conditions and/or Contract shall remain in full force and effect.

(11) These terms and conditions may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of Heiche.