

# TERMS AND CONDITIONS

*These terms and conditions govern the ZEVAC Service Contractor Network program. For clarity, these terms and conditions do not govern sales or rentals of ZEVAC products and services. All such sales or rentals, along with any maintenance plans, are governed by the terms and conditions in any purchase agreements, rental agreements, or purchase orders between ZEVAC and the ZEVAC Service Contractor Network provider.*

## 1. Appointment as ZSN Member (“Member”):

Contingent upon the Member completing and maintaining ZSN requirements, ZEVAC hereby appoints the Member, and the Member hereby accepts the appointment, as ZEVAC’s non-exclusive provider of services employing ZEVAC technologies and equipment (“ZEVAC Services”), subject to these terms and conditions (“Agreement”).

## 2. Qualification and Training:

Prior to providing any ZEVAC Services to end customers, the Member must complete, maintain, and provide documentation to meet the following minimum ZEVAC safety and training requirements:

- ▶ TRIR (Total Recordable Incident Rate) = 1.0 average last 3 years or letter with explanation of score for review and possible waiver.
- ▶ 0 fatalities last 3 years or letter with explanation of score for review and possible waiver.
- ▶ EMR (Experience Modification Rate) = 1.0 for current year or letter with explanation of score for review and possible waiver.
- ▶ DART (Days Away, Restricted or Transferred) = 0.33 average last 3 years or letter with explanation of score for review and possible waiver.
- ▶ Must qualify and maintain qualification of the minimum Member technicians ZSN level status defined in ZSN Program (Technicians must be full-time, active, employees. Member will keep all records of training. Member will demonstrate proof of training and active employment at the request of ZEVAC).
- ▶ Member must complete an impact report for each job performed using ZEVAC equipment, and gives ZEVAC permission to unconditional use of any data (absent of any company names)

In the event that the Member fails to maintain the minimum ZEVAC training requirements (e.g. departure of trained employees), then the Member shall immediately notify ZEVAC, in writing. In such instance, ZEVAC may, in its sole discretion, (a) terminate this Agreement immediately, or (b) define a “re-qualification” plan for the Member.

## 3. ZSN Level Status:

The Member’s ZSN level status is based on ZEVAC Equipment Investment (“ZEI”) thresholds that are defined in the ZSN Program. ZEI accumulates from the date of their initial purchase. A purchase must be directly through ZEVAC or a ZEVAC authorized Distributor to qualify (ZEVAC Distributor cannot receive commission and ZSN discount for their own purchases). Annual spend is tracked based on the date of initial purchase and each one-year increment going

forward, culminating on the anniversary date of the Member’s initial purchase each year. The ZEI are based solely on the purchase/rental of ZEVAC equipment. To maintain the level status, the Member must satisfy all the ZSN requirements on an annual basis. In the event that the Member does not satisfy all of the ZSN requirements in a given year, ZEVAC may, at its sole discretion, either (a) reclassify the Member, or (b) terminate this Agreement. The requirements will be evaluated by ZEVAC on an annual basis and adjusted as required with a thirty (30) day notice to Member(s).

## 4. Member Benefits:

Based on Member ZSN level status, the Member will receive the benefits/discounts as defined in the ZSN Program.

## 5. Brown Iron Discounts:

Eligibility for discounted Brown Iron applies only to equipment owned by ZEVAC; and Member accounts which are within compliance of specified payment terms at the time of order placement. Those orders placed on an account with any balance outside of payment terms will not be subject to a discount, regardless of ZSN level status. Freight and taxes are excluded from the discount

## 6. ZEVAC Equipment Discounts:

Eligibility for discounted ZEVAC equipment purchases applies to only those purchases where (a) the Member spend for direct-use equipment is in excess of qualified lifetime and annual commitment thresholds as defined by the Member’s ZSN level status; and (b) Member accounts which are within compliance of specified payment terms at the time of order placement. Those orders placed on an account with any balance outside of payment terms will not be subject to a discount, regardless of ZSN level status.

## 7. On-site Consulting, Application Engineers & Technical Support:

Personnel day rate is free when available; room, meal and travel expenses are responsibility of the Member.

## 8. Term:

Unless otherwise terminated earlier under the terms of this Agreement, the initial term of this Agreement shall commence as of the date of acceptance into the ZSN and shall automatically renew as long as Member meets ZSN Program requirements. Either party may terminate this Agreement with sixty (60) days’ prior written notice.

## **9. Representation:**

During this Agreement, the Member shall not represent, promote or otherwise try to sell services or products that, in ZEVAC's reasonable judgment, compete with ZEVAC service and products. Members may offer alternative products if (a) end customer requests, or (b) ZEVAC products are not suitable for the project. Member will provide written notice of such opportunities to ZEVAC.

## **10. Liability and Indemnity Obligations:**

The Member has the absolute and entire responsibility and liability for all the damage, loss or injury of any kind, direct or indirect, to any person (including death) or property arising out of or in any manner based on the performance of this Agreement, or caused by or resulting from the Member's performance of its duties or any other activities under this Agreement or breach of this Agreement or from failure of the Member to abide by government laws and regulations or to secure and maintain proper permits, licenses or authorization under this Agreement. The Member shall, to the fullest extent permitted by law, INDEMNIFY and HOLD ZEVAC HARMLESS against all losses, claims, damage, expenses (including attorneys' fees and costs and related expenses) and liabilities sustained or incurred by ZEVAC by reason of any act, omission, conduct, negligence or default by the Member or its subcontractors or their respective employees and agents, including, but not limited to, any violation of or misrepresentation under this Agreement. Except as may be otherwise provided by applicable law of any governmental authority, ZEVAC's right to indemnification shall not be impaired or diminished by any act, omission, misconduct, negligence or default (other than gross negligence or willful misconduct) of ZEVAC or any employee of ZEVAC who contributed or may be alleged to have contributed thereto.

## **11. Trademarks, Trade Names, and Intellectual Property:**

During the term of this Agreement, Member, shall have the right to indicate to the public that it is an authorized Member and to advertise such services under the trademarks, marks and trade names ZEVAC may adopt from time to time (the "ZEVAC's Trademarks"). Nothing herein shall grant Member any right, title or interest in ZEVAC's Trademarks. At no time during or after the term of this Agreement shall Member challenge or assist others to challenge ZEVAC's Trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of ZEVAC. ZEVAC indemnifies the Member for all use of ZEVAC's Trademarks. All presentations of ZEVAC Trademarks that the Member intends to use shall first be submitted to ZEVAC for approval (which shall not be unreasonably withheld) of design, color and other details or shall be exact copies of those used by ZEVAC. Any developments and/or applications related to ZEVAC services and products shall be solely owned by ZEVAC. ZEVAC shall maintain the sole right to pursue patent or trademark protection.

## **12. Relationship of Parties:**

Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **13. Governing Law:**

The parties agree that this Agreement shall be governed by the laws of the State of Oklahoma (without reference to rules regarding the conflict of laws that would give effect to the laws of any other jurisdiction), and that the proper jurisdiction and venue for any judicial proceeding arising out of this Agreement is in the appropriate state or federal court with jurisdiction in Tulsa, Oklahoma.

## **14. Entire Contract:**

EXCEPT WHERE EXPRESSLY STATED OTHERWISE HEREIN, THIS AGREEMENT CONTAINS THE ENTIRE UNDERSTANDING OF THE PARTIES WITH REGARD TO ZSN REPRESENTATION OF ZEVAC AND MERGES AND SUPERSEDES ALL PREVIOUS AND CONTEMPORANEOUS VERBAL AND WRITTEN AGREEMENTS, REPRESENTATIONS, UNDERTAKINGS, COVENANTS, CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATED TO ZSN'S REPRESENTATION OF ZEVAC, INCLUDING ANY AGREEMENTS WITH COMPANIES SUBSEQUENTLY MERGED, CONSOLIDATED OR OTHERWISE COMBINED WITH OR INTO ZEVAC.

## **15. Dispute Resolution by Arbitration:**

Any controversy which touches or concerns, to any degree, however slight, this Agreement shall be resolved exclusively by binding arbitration administered by the American Arbitration Association under its then extant rules for commercial disputes. Any arbitration shall take place in Tulsa, Oklahoma, or as otherwise agreed to by the parties.

## **16. Limitation of Liability:**

In the event of termination of this Agreement by either party in accordance with any of the provisions of this Agreement, such party shall not be liable to the other party or any other party, because of the termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of other party.

## **17. Assignment:**

Rights under this Agreement shall not be transferable or assignable by either party, either voluntarily or involuntarily or by operation of law, without the prior and express written consent of the other party.