

Endurance Water & HVAC LLC

ONLINE TERMS AND CONDITIONS

Updated June 17, 2022

Welcome and thank you for your interest in Endurance Water & HVAC LLC (“**Endurance**”), we look forward to serving you.

These Terms and Conditions reflect your agreement with us and apply to any communication or conduct between us, including by way of example only and not limitation:

- your proper and authorized use of our Site and any of our Affiliates’ websites, including all pages related to <https://endurancewh.com>
- your use or purchase of any of our services,
- your use or purchase of any of our products,
- your participation in any contest or survey,
- your interaction with us through social media or other third-party websites, and
- your **User Content** provided to us or our Affiliates, including by way of example only, your feedback, comments, photos, social media posts referencing us, emails, communications, or reviews submitted.

THESE TERMS AND CONDITIONS, INCLUDING OUR PRIVACY POLICY (COLLECTIVELY “TERMS”) ARE A BINDING LEGAL AGREEMENT. PLEASE READ THE FOLLOWING CAREFULLY. BY ACCESSING OUR SITE, EXECUTING AN AGREEMENT WITH US, OR PURCHASING OUR PRODUCTS AND/OR SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY OUR TERMS.

Please contact legal@endurancewh.com with any questions, comments, or concerns related to these Terms.

1. **Changes to Terms.**

We reserve the right to change our Terms and/or our other policies and agreements at any time in our discretion. The most current version of our Terms is available on this page of the Site and shall replace all previous versions. Any revision will have a new “Updated on” date at the beginning of these Terms. If you disagree with our Terms, your only recourse is to discontinue your access, use, or purchase of our Products/Services. Where appropriate, you will be notified of changes to these Terms by e-mail or when you next access our Site or purchase our Products/Services. The new Terms may be displayed on your computer screen or device, and you may be required to read and accept the updated Terms.

2. **Services.**

The team at Endurance Water & HVAC LLC are highly skilled, trained, & qualified in the Services we offer. Our goal is to make your life easier and provide you with options you can rely on. All work will be completed up to proper state code.

Current **Services** include, but are not limited to:

- Air Conditioning
- Furnace Services
- Water Heaters
- Air Purification
- Whole House Humidifiers
- Water Treatment and Conditioning

Please consult our website for an updated list of Services we offer <https://endurancewh.com/services/>.

Current **Products**:

- Endurance does not currently manufacture any Products. Endurance instead relies on trusted Industry Partners to provide Products to Customers necessary for the Services Endurance offers to Customers. Please refer to Section 6 below for more information on trusted Industry Partners.

Current **Maintenance Packages** include, but are not limited to:

- Endurance Silver
- Endurance Gold
- Endurance Platinum

Each maintenance package requires a one (1) year commitment. Please consult our website for an updated list of maintenance packages we offer <https://endurancewh.com/maintenance-page/>.

We make no promise to continue to provide our Services and may cease to offer some or all our Services in our sole and exclusive discretion, which shall not be a breach of this or any other agreement we may have with you.

3. Site.

You may purchase Products and/or Services through our Site as well as schedule Services. Information on the Site may be out of date, inaccurate, incomplete, or contain errors or omissions. We make no commitment to update the Site for any reason. Any changes or failure to make updates shall not be considered evidence of improper action, a breach of these Terms, or grounds for an actionable Claim against us. Further, except for these Terms, our Site shall not form the basis of, or be relied upon in connection with, any contract or commitment whatsoever. Information published on the Site may refer to Products and/or Services that are not available in your location or may be out of stock.

User Content may be uploaded or provided to us by visitors or Customers. We are not responsible for any User Content displayed on our Site or elsewhere, whatsoever.

The Site is displayed (or performed) by us for visitors and Customers. You may not download or scrape Site content without our prior written permission. Failure to abide by this restriction may violate U.S. Copyright or other Laws.

4. Accounts and Registration.

Access to our Site does not require an account or require you to provide us with any Personal Data. For more information on our use of Personal Data, please consult our Privacy Policy.

You may be required, however, to register for an account to access or purchase some of our Products and/or Services or to register a limited warranty. If we allow you to register for an account, you may be required to provide us with some Personal Data (such as your name, e-mail address, credit card information, billing address, and shipping address). In that event, you agree that the Personal Data you provide to us is accurate. When you register, you may be asked to create a username and/or password. If so, you are solely responsible for maintaining the confidentiality of your login information. You agree to accept responsibility for all activities that occur under your account. You may not use anyone else's username, password, or account at any time. We cannot and shall not be liable for any loss, damage, or personal injury arising from your failure to comply with these obligations. We may need to change your chosen username in certain circumstances, e.g., if another user has already selected your chosen username. For more information on our use of Personal Data, please consult our Privacy Policy.

5. Limitations on Services and Warranties.

Any warranties for our Products and/or Services are detailed below:

- Warranties offered by Endurance are valid under the stipulation that the new units installed are serviced/inspected on a yearly basis by a professional HVAC company. Invoice/documentation of inspection is required each year for warranty to remain valid. Warranties can be voided if inspections are not completed on a yearly basis.
- Manufacturing warranties on all American Standard Heating and Cooling equipment must be registered by the Customer within 60 days of initial install. Visit www.americanstandardair.com to register, If assistance is needed reach out to an Endurance team member here <https://endurancewh.com/contact/>.

Limitations on Warranties include, but are not limited to:

- Labor costs for replacing defective components are not covered.
- Estimates are valid for 15 days from the date of an Estimate.
- All American Standard Equipment has a manufacturer's warranty of 10 years, if registered (if not registered within 60 days manufacture warranty is 5 years).
- Endurance provides a labor warranty of 1 year from the install date (on new installs only).
- Endurance is not responsible for any damage to carpentry, drywall patching, painting, etc. Discussions will take place with Customer(s) prior to any install of equipment if its deemed openings in walls or ceilings are needed. This includes any type of Electrical work necessary for any install.

Other than as specifically stated herein, we make no other warranties, express or implied.

6. Trusted Partners and Linked Sites.

An updated list of Endurance's current trusted industry partners is located at <https://endurancewh.com/our-partners/>.

Any reference or link to another company, website, product, or service does not explicitly constitute any ownership, sponsorship, endorsement arrangement, or any other relationship with us, although such arrangements and endorsements may exist. We make no representation regarding these third parties and have no control over how third parties use information, their use of "Cookies," or the safety of content on their websites. Please consult our Privacy Policy and the information regarding Linked Sites in that policy. Should you be directed to a third-party website, we disclaim any and all liability whatsoever (as more specifically detailed by our Disclaimers). Should you have any questions regarding these third parties, or the information shared, please contact legal@endurancewh.com.

Any businesses not displayed at the link above are not endorsed by Endurance.

7. Linked Accounts.

We may, now or in the future, permit you to register for an account, provide User Content, or purchase our Products and/or Services through certain Linked Accounts. By using a Linked Account, you agree that we may access and use any account information from the Linked Account that you have configured to be made available to third parties in this manner, and you agree to the Linked Account's terms of use regarding your use of our Site through that Linked Account. If you have reason to believe that your account is no longer secure, you shall immediately notify us at legal@endurancewh.com. You may alter our access permissions by changing the settings on your Linked Account.

8. User Content.

For clarification, User Content includes, without limitation, photographic stills, text, audio, video, and audio-video media uploaded or provided to us or our Affiliates which relates to or refers to us or our Affiliates in any manner. It may be commentary, feedback, photographs of Product and/or Service installations, or a testimonial. It may include images, names, or audio of Persons. You are solely responsible for any User Content and hold us harmless, and indemnify us, for any liability, including attorneys' fees and costs, arising from such User Content, including our use of such content, whatsoever. By way of example only and not by

way of limitation, if you post a video of a Person, make sure you have that Person's consent to post and have others re-post that video bearing the person's image or likeness.

Any views or opinions expressed in any User Content and displayed on our Site (with your permission) or elsewhere do not necessarily state or reflect our views or opinions.

Your sole and exclusive remedy for your or any third Person's loss, damage, or injury that is caused by User Content will be for us to identify the User Content and its owner, if known. We have no obligation to review, inspect, maintain, backup, or otherwise retain User Content.

9. Limited License to Endurance: User Content.

By providing us with any User Content or posting such content on any social media pages related to us (e.g., such as posting on Instagram with a hashtag #EnduranceWater&HVAC you hereby grant us a royalty-free, nonterminable, , repost, and use for commercial purposes your User Content (a) to provide Products world-wide license to view, copy, report on, commingle, and otherwise access and/or Services requested by you, and (b) to re-post such User Content in whole or in part on our Site or any social media pages for any purpose(s), and (c) for any commercial, analytical, or statistical purposes, alone or in combination with other content, whatsoever, and in any form and format. This license shall continue unless terminated by notice to us from you, whereupon we shall delete or anonymize your User Content on our Site or in our possession or control and on any social media within ninety (90) days of your notice of termination. We shall not be required to remove, alter, or collect User Content published or distributed and not under our control prior to your notice of termination (e.g., posted on third-party social media sites).

Please contact legal@endurancewh.com for removal requests.

Except as permitted herein, we will not aggregate, monetize, or otherwise use your Personal Data that may be included in any User Content for commercial, analytical, or statistical purposes in any manner that would allow third parties to associate such Personal Data with you. Further, we will not sell your Personal Data that may be included in such User Content to third parties. For more information, please consult our Privacy Policy.

10. Release: User Content.

You hereby release, discharge, and agree to save Endurance, as well as our Affiliates and Business Partners, harmless from any liability whatsoever for any Claims, including third-party Claims and attorneys' fees and costs, by virtue of any blurring, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in our use of your User Content, as well as any publication thereof, including, without

limitation, any Claims for libel, false light, or invasion of privacy.

11. Payments and Fees.

Fees for our Products and/or Services are to be paid as required by any separate agreement such as an invoice or purchase order. If no separate agreement is provided, then full payment is due upon completion. If payment is not made within 24 hours of job completion, a \$100.00 a day late fee will be added to total job and will be due immediately and continue to accrue until full payment is made.

You agree that we may bill charges through the payment method specified in your account or as otherwise specified by you, for example, a credit card. You authorize such credit card account to pay any amounts so paid or contributed by you and authorize us and our authorized payment processor (a Business Partner) to charge all sums described and authorized to such credit card account. You agree to provide us, or our Business Partners who process your Payment, with updated information regarding your credit card account upon our request and any time the information earlier provided is no longer valid. We enter into agreements with third-party processors requiring Personal Data to be maintained as confidential. To the extent we have knowledge of any request for disclosure of your Personal Data relating to Payments to a governmental authority or legal process, we will notify you at your last-known address and/or email address, if one is provided.

All payments paid by Visa, Discover, Amex, Master Card will have an additional fee of 2.5%. Please be advised, equipment for installs are ordered within 24 hours of acceptance of an Estimate. If canceled after 24 hours a fee of 25% of the total will be due as a restocking fee.

The Customer agrees to pay a finance charge on the total amount at the rate of 1.5 percent per month (18 percent per annum) if payment is not made within 15 days from date of sale.

In the event it becomes necessary to collect amounts owed to Endurance by legal action or otherwise, the Customer agrees to pay all costs of collection, including any and all reasonable attorney fees.

12. Eligibility.

Our Site may be accessed by anyone, but we do not market to children or knowingly allow children to purchase Products and/or Services, schedule Services, or to provide User Content. You must be the age of majority in the jurisdiction in which you reside to purchase our Products and/or Services and provide User Content.

13. Your Representations and Warranties.

13.1 You affirm, represent, and warrant that:

- 13.1.1 You are the age of majority in your jurisdiction or are not under eighteen (18) if you reside in the U.S. and are competent to agree to these Terms.
- 13.1.2 Your purchase and use of our Products and/or Services is, and will be, in compliance with any and all applicable Laws.

- 13.1.3 If you are purchasing our Products and/or Services on behalf of a company or organization, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by these Terms on behalf of such organization as well as others acting on behalf of all that organization.
- 13.1.4 You will comply with all Terms herein.
- 13.2 In addition to all other warranties and indemnifications in these Terms, you hereby indemnify and hold us harmless from all Claims and liability, including attorneys' fees and costs, related to your breach of the representations and warranties in this Section 8, including subsections.

14. Assignment of Improvements.

In the event you think of or create any Derivative Works, modifications, improvements, or revisions based upon or derived from our Products and/or Services (collective "Derivative Works"), you agree: (a) to promptly notify us of any such Derivative Works, providing all appropriate information for us to develop and utilize such Derivative Works by contacting legal@endurancewh.com, and (b) without the necessity of further agreement, to assign to us all rights, title, and interest in any such Derivative Works. You agree to promptly execute all documents, prepared at our expense, that are reasonably necessary to reflect this assignment without any further consideration.

15. Refusal to Provide Products and/or Services.

You understand and agree that we have the right to refuse to sell Products and/or Services to you or any other individual for any reason in our sole discretion except as otherwise disallowed by applicable Laws. We also have the right to remove or delete any User Content you provide to us (directly or through our social media or through any link to our social media (e.g., using "@" or "#" with our Marks) without notice to you. Such refusal shall not be a breach of these Terms or any other agreement with you and shall not subject us to any liability for Claims, including attorneys' fees and costs, without limitation, even if you suffer damages.

16. Patent and Copyright.

Some portions of our Products and/or Services, including Information on our Site, may be patented or copyrighted and owned solely by us or are used by us under license from a third party. Your unauthorized use of such patented or copyrighted Products and/or Services, in whole or in part, may violate applicable Laws. You may not use our patented or copyrighted materials, excluding your User Content, without our written permission. By way of example, and not limitation, you may not scrape any content from our Site and reuse or publish it in any manner.

17. Trademarks.

We own the following trademark(s) and trade name(s) (“**Marks**”), whether registered in the U.S., elsewhere in the world, or utilized at common law:

- Endurance Water & HVAC™

This list may not be complete and we may own additional Marks that are not listed herein. If you have questions about our Marks, please contact legal@endurancewh.com. Except as authorized herein, you may not use any of our Marks without our written permission. Notwithstanding, if you wish to post User Content resulting from the purchase or use of our Products and/or Services on your own social media or website, you may, but are not required, to use #EnduranceWater&HVAC or @BLANK in that post.

18. Intellectual Property Violations

In the event you believe your Intellectual Property rights have been violated, please contact legal@endurancewh.com and provide us with all of the following information:

- 18.1 Your, or your authorized agent's, physical or electronic signature as the Intellectual Property owner,
- 18.2 Identification of the Intellectual Property claimed to have been infringed or, if multiple materials are infringed, identification of a representative list of such works, including a link to the original work and any registration certificates if available,
- 18.3 Identification and location of the infringing material within our Site, our social media, or other specific locations within our possession and control,
- 18.4 Your contact information, including name, physical and email addresses and telephone number(s),
- 18.5 A statement that you have a good faith belief that the use of the material in the manner asserted is not authorized by you, as the Intellectual Property owner, your agent, or the Law, and
- 18.6 A statement that the information in the notification is accurate, and, under penalty of perjury, that you are authorized to act on behalf of the Intellectual Property owner (if filed by an agent).

Note, we require all the above information. If you send us incomplete information, we will not be able to process your request. We will return your request, indicating what information is missing.

19. Relief for Breach.

We reserve all rights and remedies at law and equity in the event you breach any of these Terms or violate our rights in any manner. You agree that we may proceed with such injunctive or other equitable relief without the necessity of posting a bond as may be available to prevent your breach and, in addition, may pursue an action to recover damages. You agree that if you have cloned, copied or are using a clone or copy of our Products and/or Services (including, without limitation, our Site), in whole or in part, or have intentionally or recklessly utilized our Products and/or Services for yourself or a third-party in violation of any Laws, for any reason, you shall be liable for all our damages or injuries, any profits you have earned through such use (without duplication), and you may be subject to an injunction to prevent further breach of these Terms. We may also stop you from using our Products and/or Services, without reimbursement for Payments made to us, for any breach of these Terms.

20. Business Partners.

We may have agreements with other Persons (“Business Partners”), which Business Partners may change without notice. We do not grant you any rights to further use our Business Partners’ names or trademarks without their prior written permission. For information regarding Personal Data that may be shared with our Business Partners, please consult our Privacy Policy.

21. Electronic Communications.

21.1 For Site visitors or Product/Services customers located outside of the EU/EEA, by accessing our Site and/or downloading, licensing, accessing, or using our Products and/or Services or contacting us for further information, you consent to receiving our electronic communications.

For visitors located within the EU/EEA, we will not contact you except as detailed in our Privacy Policy.

21.2 If you receive a communication from us, you will be provided with an opportunity to “opt out” or “unsubscribe” from all future communications. The link to unsubscribe in any email we send will remain effective for sixty (60) days from the date sent. If, however, you have registered for a limited warranty, opting out or unsubscribing from all communications may change our ability to communicate with you regarding that warranty.

21.3 You agree that any notice, agreements, disclosure, or other communications that we send to you electronically shall satisfy all legal communication requirements, including that such communications be in writing. Should you wish to opt out of e-mail communications, except for legal notices, please let us know by contacting BLANK.

We will remove your e-mail from our database for such e-mails within a reasonable time. Notwithstanding, our reasonable delay in complying with your opt-out request shall not be considered a breach of these Terms.

22. Indemnity.

In addition to all other indemnification detailed in these Terms, you agree to hold harmless and indemnify us from and against any third-party Claims, including attorneys' fees and costs, arising in any way from your acts or omissions that cause damage, loss, or injury to such third party.

23. Disclaimers and Limitations on Liability.

- 23.1 Except as specifically detailed in these Terms or a purchase order, or an invoice, or an Estimate, our Products and/or Services shall not form the basis of, or be relied upon in connection with, any additional contract or commitment whatsoever.
- 23.2 Except as provided in any warranties, our Products and/or Services are provided "AS IS" and "AS AVAILABLE" without any other warranties, express or implied.
- 23.3 You understand and agree that use of our Products and/or Services involves some risk. Accordingly, you hereby assume all risks of use, whatsoever, and waive any rights of action against Endurance, as a result of any injury or condition that may result from such use, and hold Endurance harmless and release us from any and all Claims, including attorneys' fees and costs, arising out of any damage, loss, or injury to you, your family members, customers, heirs, and successors, whether such loss, damage, or injury results from our negligence or from any other cause.
- 23.4 **TO THE EXTENT PERMITTED BY LAW AND EXCEPT AS SPECIFIED HEREIN, ENDURANCE EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, (EXPECTED OR INTENDED RESULTS, ACCURACY, AND NON-INFRINGEMENT). WE DISCLAIM ANY AND ALL LIABILITY FOR YOUR INABILITY TO USE OUR PRODUCTS AND/OR SERVICES FOR ANY REASON.**
- 23.5 **EXCEPT AS SPECIFIED HEREIN, IN NO EVENT SHALL ENDURANCE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHATSOEVER, WITH RESPECT TO, OR RESULTING FROM, OUR PRODUCTS AND/OR SERVICES.**
- 23.6 **IN THE EVENT OUR PRODUCTS AND/OR SERVICES ARE PURCHASED OR USED IN A JURISDICTION THAT DOES NOT PERMIT ALL OR A PART OF THESE DISCLAIMERS, THE MAXIMUM AMOUNT RECOVERABLE FOR ALL CLAIMS RESULTING IN A FINAL JUDGMENT, INCLUDING ATTORNEYS' FEES AND COSTS AND AMOUNTS PAID IN SETTLEMENT, WHETHER SUCH CLAIMS ARE BROUGHT AT ONCE OR SEPARATELY OVER TIME, SHALL BE RESTRICTED TO THE PURCHASE PRICE PAID FOR THE PRODUCT(S) AND/OR SERVICE(S) AT ISSUE (WHICH HAS GIVEN RISE TO THE CLAIM) AND SHALL ONLY BE AVAILABLE TO THE PERSON WHO CAN DEMONSTRATE HAVING BEEN THE PURCHASER OF SUCH PRODUCT(S) AND/OR SERVICE(S).**

24. Miscellaneous.

- 24.1 **Independent Contractors.** IN THE EVENT YOU HAVE A CLAIM REGARDING PRODUCTS INSTALLED AND/OR SERVICES RENDERED OR FOR THE ACTS OR OMISSIONS OF A INDEPENDENT CONTRACTOR INSTALLING OUR PRODUCTS AND/OR SERVICES, YOU AGREE THAT ANY SUCH CLAIM IS BETWEEN YOU AND SUCH PERSON WITHOUT ANY LIABILITY OR CONTRIBUTION FROM ENDURANCE unless we have breached a material obligation within these Terms. Otherwise, Endurance's only obligation will be the identification of these Terms and any other agreement between us and such Independent Contractor.
- 24.2 **Choice of Law and Venue.** Unless otherwise agreed upon or specified herein, you agree that any legal problems or issues arising as a result of our Products, Services, or these Terms are subject to the Laws of the State of Colorado, U.S.A., unless U.S. Federal laws apply, without giving effect to any principles of conflict of laws. Jurisdiction shall only be appropriate in the Colorado state courts in the county in which Endurance has its principal place of business or the U.S. District Court of Colorado closest to our principal place of business. Further, you and Endurance expressly and irrevocably consent to the personal and subject matter jurisdiction and venue in these courts for any Claim made relating to these Terms and/or our Products/Services.
- 24.3 **Dispute Resolution.** With the exception of any type of Claim wherein either you or Endurance is entitled to seek the immediate remedy of a temporary restraining order, preliminary injunction, or such other form of injunctive or equitable relief as may be used by any court of competent jurisdiction to restrain or enjoin the Person breaching our Agreement, or to specifically enforce the provisions of our Agreement, we both agree to resolve any Claims as detailed herein.
- 24.2.1 Principals from Endurance and you shall first attempt to resolve any dispute between ourselves through good faith informal business negotiations. If we (both you and Endurance) are unable to resolve the dispute within sixty (60) days of receipt of an initial Notice of Claim by one of us to the other, you and we may then agree to submit the dispute to mediation or, if both or either of us do not wish to mediate the Claim or cannot agree to mediation rules, either of us may file an action with a court within the Jurisdiction described above in 10.2 for relief.
- 24.2.2 The terms of this Section entitled "Dispute Resolution", including subparagraphs, shall survive after your purchase of any Products and/or Services for three (3) years.
- 24.4 **Cost and Attorneys' Fees.** In the event it becomes necessary to enforce any provision of these Terms, by legal action or otherwise, Endurance shall be entitled to an award of all costs, including any and all reasonable attorneys' fees.
- 24.5 **Reservation of Rights.** All Intellectual Property contained within or related to our Products and/or Services remains our exclusive property. We reserve all rights not expressly granted to you. You shall own all Intellectual Property rights associated with any User Content provided.
- 24.6 **Assignability.** We may assign all or part of our rights under these Terms in connection with a merger, acquisition, asset sale, operation of Law, or otherwise without notice to you. You may not assign any of your rights or obligations under these Terms whatsoever.
- 24.7 **Entire Agreement.** These Terms constitute the entire understanding and agreement between you and Endurance with respect to the subject matter covered herein and supersede all other prior agreements, understandings, or statements, written or oral, by or between us, if any, with respect to such subject matter. Notwithstanding, these Terms may be amended by us in our sole and exclusive discretion on notice by posting the most recent version of these Terms on our Site and notification to you if you have an account/registration with us; and these Terms may be amended by an invoice

or purchase order signed by us if such agreement specifically references these Terms and the modifications we accept.

- 24.8 **Claims.** In the event you have knowledge of any Claim made by a third party against you, or referencing you, and relating in any manner to our Products and/or Services, you will promptly notify us of such Claim. You will further assist us with all reasonable assistance in the defense of such claims. No settlement shall be agreed upon without our involvement and approval.
- 24.9 **Severability.** If any provision of these Terms is held to be invalid, illegal, unenforceable, or in conflict with applicable Laws or public policy, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired and shall remain in full force and effect. A court of competent Jurisdiction (in Colorado) will endeavor to modify that clause in a manner that gives effect to the intent of these Terms.
- 24.10 **Language.** These Terms are to be construed in the English language. Any translated copy provided is for convenience only. The English language shall control in the event of any contradiction between the English language version and a translated version. Further, any Claim must be made and determined in the English language.
- 24.11 **Force Majeure.** Endurance will not be liable for any damages to you or to third parties for any delay or default in performance if such delay or default is caused by conditions beyond our control, including, but not limited to, acts of God, Government restrictions, regulations, Laws, or sequester, continuing domestic or international problems such as wars, threats of terrorism, or insurrections, strikes, fires, floods, work stoppages, pandemics, epidemics, public health closures, border closures or delays, raw material unavailability, or embargoes.
- 24.12 **Construction.** Any reference to “herein” shall refer to these Terms generally and not to a specific Section. Headings and fonts are for convenience only. Anything that cannot be done “directly” under these Terms may also not be accomplished, and shall be a breach of these Terms, if done “indirectly.” Any limitation on the use of our Products and/or Services or our Intellectual Property automatically includes a limitation on the use of such property “in whole or in part.” These Terms are not to be construed against the drafter. Any reference to “it” or “he” or “she” or “they” shall include the party so referenced, regardless of gender and whether a human individual or entity.
- 24.13 **Waiver.** Waiver of any provision of these Terms must be in writing to be effective. Waiver of any breach of any provision of these Terms will not constitute or operate as a waiver of breach of such provision on any other occasion nor a waiver of any breach of other provisions, nor will failure to enforce any provision operate as a waiver of such provision.
- 24.14 **Contests.** In the event we sponsor a contest, only Endurance customers will be qualified to enter that contest. In this event, complete contest rules will be available on our Site. All Terms herein apply to any contest. These Terms shall control in the event of any conflict between contest terms and these Terms.
- 24.15 **Other Laws.** Nothing in this Agreement shall be construed to limit or negate any common or statutory law, including, without limitation, any such law of torts, fiduciary duties, or trade secrets, where such law provides a party with broader protection than that provided herein. Each of us hereby reserves all rights and remedies not specifically mentioned herein, whether in equity or law.
- 24.16 **Survival.** All our Terms shall survive your purchase, license, lease, of or access to our Products and/or Services or any termination of your use of our Products and/or Services whatsoever.

25. Notices.

Any notice, request, demand, or other communication required under these Terms must be in writing and will be deemed sufficiently given upon delivery if mailed by U.S. mail, postage pre-paid, or if delivered by hand. All such notices will become effective on the date of receipt.

Any notice to Endurance should be provided to:

ADDRESS

Telephone

26. Questions and Comments.

Questions or comments regarding the Product/Services outlined in these Terms should be submitted at the following link:

- <https://endurancewh.com/contact/>

27. Definitions.

- 27.1 “**Affiliate**” means, for so long as one of the following relationships are maintained, a business entity owned by, controlled by, or under common ownership or control with another Person to the extent of more than fifty percent (50%) of the equity or such lesser percentage that is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) is held by such other Person, having the power to vote on or direct the affairs of another Person, or any Person controlled by, controlling, or under common control with another Person.
- 27.2 “**Business Partners**” are Persons with whom we enter into agreements to assist with distributing and reselling our Products and/or Services, processing payments, analyzing traffic, and communicating with you.
- 27.3 “**CCPA**” means the California Consumer Privacy Act.
- 27.4 “**Claim**” means any disagreement whatsoever, including, without limitation, any controversy, dispute, demand, cause of action, litigation, or other legal or equitable proceeding whatsoever. Any indemnity provided herein for Claims includes an indemnity for the indemnified party’s reasonable attorneys’ fees and costs and any amounts paid in settlement to a third party.
- 27.5 “**Cookie**” means data generated by a website and saved by your web browser.
- 27.6 “**Customer**” means the Person receiving Products and/or Services from Endurance or its authorized Affiliates, distributors, or retailers.
- 27.7 “**End User**” means any entity that accesses our Website(s) or Mobile Application by any means.
- 27.8 “**End User Content**” means any information uploaded to our Website(s) or Mobile Application by an End User.

- 27.9 “**Estimate**” means the minimum amount a Customer agrees to pay for Products and/ or Services offered by Endurance.
- 27.10 “**GDPR**” means the European Union’s General Data Protection Regulation.
- 27.11 “**Improvement**” means any alteration, modification, change, or product or service derived from a pre-existing work, product, or service.
- 27.12 “**Information,**” means any of our materials on our Site or included in our Products and/or Services, whether text, audio, visual, or audio-visual.
- 27.13 “**Intellectual Property**” has the meaning most commonly and broadly understood and includes, by way of example and not limitation, (a) all designs, specifications, processes, techniques, technology, drawings, strategies, methodologies, presentations, prototypes, computer programs, models, marketing plans, and inventions, any of which may or may not be represented by patent applications, patents, trademarks, copyrights, moral rights, and trade dress, whether or not registered or registrable, and including all rights to related applications, registrations, continuations, and renewals; (b) confidential and/or proprietary information, Trade Secrets, ideas, concepts, and know-how; and (c) publicity rights and privacy rights, all of the above (a), (b) and (c) in any form or format.
- 27.14 “**Jurisdiction**” for any Claims related to these Terms or the subject matter herein means the Colorado, U.S.A. County in which Endurance has its principal place of business.
- 27.15 “**Law**” means all applicable federal, state, and local statutes, rules, regulations, ordinances, and related case law.
- 27.16 “**Linked Account**” means an account that you may have with a third-party website or social networking service from which account you are able to link to our Products and/or Services, including our Site.
- 27.17 “**Endurance**” means Endurance Water & HVAC LLC.
- 27.18 “**Mobile Application**” means a computer program or software application designed to run on a mobile device such as a phone, tablet, or watch.
- 27.19 “**Person**” means a human individual and/or a business entity as is applicable.
- 27.20 “**Personal Data**” is defined differently depending on where you reside. If you reside in the United States, to the extent appropriate under applicable Laws, Colorado Law controls in these Terms. In the event you are located in the European Union/European Economic Area (“EU/EEA”), Personal Data will be defined by the applicable Laws where you reside, however, these Laws shall not over-ride the subject-matter and

personal Jurisdiction of Colorado as defined herein.

- 27.21 “**Products**” means any and all offerings from us to you, excluding Services, including without limitation, our Site, Information on such Site, merchandise, and other products or we may offer or provide at any time, regardless of whether we manufacture those Products or resell third-party products.
- 27.22 “**Services**” means any and all services offered by us to you, or future services we may offer or provide at any time.
- 27.23 “**Site**” or “**Website**” means <https://endurancewh.com> and all pages associated with this or other of our domain names, and any other Endurance Internet websites and our Affiliates’ Internet websites, excluding User Content.
- 27.24 “**Tax**” means any charge, levy, impost, duty (including without limitation goods and services tax, value added tax, sales tax, withholding tax, stamp duty or transaction duty), fee, deduction, and any interest, fine, or penalty charge that is assessed, levied, imposed, or collected by any government body.
- 27.25 “**Trade Secret**” has the broadest meaning provided by U.S. Federal law as amended from time to time.
- 27.26 “**Transfer**” means any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise or descent, or other disposition of any kind, including, without limitation, transfers to receivers, levying creditors, trustees, or receivers in bankruptcy proceedings, or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly.
- 27.27 “**User Content**” means any information or material provided by you to us directly or through third parties (such as social media) in any form or format and through any media or medium and may include feedback, surveys, comments, endorsements, photographs, and multi-media content. Such User Content may include Personal Data.
- 27.28 Plural and singular terms shall have the same meaning except for the grammatical difference of being singular or plural.