



Bulletin

Contract Terms and Conditions

This is a Bulletin on General Conditions which you can use regardless of the type of contract. The provisions set forth below are only suggestions as to format and content. You should independently of other contractors develop your own terms that you want to offer in the marketplace by way of **YOUR CONTRACT FORM. Be sure that your attorney and accountant tailor these general conditions to your particular needs and jurisdiction.**

The following **Terms and Conditions** may be appropriate for inclusion in contracts.

1. Seller guarantees the equipment and workmanship of the apparatus furnished under this contract, and will replace or repair any defects, not due to ordinary wear and tear, or to improper use or maintenance, which may develop within one year from date of completion. Seller further agrees to replace any refrigerant lost during that period, caused by defects in the installation, and not due to improper use or maintenance.
2. Seller shall have no liability for any defect in the design or manufacturer of any material or equipment, whether in connection with warranty or otherwise. Seller's liability with respect to the failure or malfunction of any material or equipment shall be limited to the cost of correcting any defects in installation, as further provided herein. At the option of Seller, in lieu of correcting any defects in installation, Seller may remove equipment installed and refund to Buyer all money paid for

said equipment and installation thereof, in which event the contract shall be deemed terminated and neither party shall have any liability whatsoever to the other. In no event shall Seller be liable for any consequential damages.

3. Unless otherwise agreed, it is understood that work will be performed during regular working hours. If overtime work is mutually agreed upon and performed, the additional price, at Seller's usual rates for such work, shall be added to the contract price.

4. Buyer shall provide Seller's workmen a safe place in which to work, and Seller shall have the right to discontinue work when, in Seller's opinion, Buyer has failed to comply with this requirement. Seller shall not be liable for any delay, loss, or damage caused by delay resulting from discontinuance of work under this provision. Buyer shall hold the Seller harmless for any loss, injury or other claim resulting from the Buyer's sole or partial negligence.

5. On delivery of equipment by Seller, or any part thereof, to the premises of Buyer, Buyer shall assume risk of loss or damage to such equipment and shall cause same to be insured in all respects against loss or damage in an amount to protect interest of Seller. Cost of insurance is to be paid by Buyer.

6. In the event that the material incorporated in this contract is ready for delivery and installation, and Buyer is unable to receive same, Seller shall have the right to bill Buyer for the amount of the material in accordance with the terms of the contract and also to provide suitable storage and insurance at the Buyer's risk and expense.

7. Seller shall not be held responsible or liable for any loss, damage, detention, or delay caused by accidents, strikes, lockouts, or by any other cause which is unavoidable or beyond Seller's control.

8. Title to the equipment remains in Seller until payment of the entire purchase price and all sums due Seller under this contract are fully made. All equipment, whether affixed to the realty or not, shall remain personal property and be deemed severable without injury to the freehold. Buyer shall do whatever may be required to maintain Seller's title.

9. In the event of default of payment of any installment or failure to perform any terms or conditions of this contract, or in the event that a proceeding in bankruptcy or insolvency be instituted by or against Buyer, or if equipment is misused, illegally used, or imperiled, then at Seller's option the entire unpaid balance due Seller shall become immediately due and payable without notice or demand and in such case Seller may enter the premises and retake, remove and hold or resell the equipment or any part thereof at either

private or public sale. If the unpaid balance plus interest is not satisfied by the proceeds of such sale after deducting the expenses of retaking, repairs necessary to place the equipment in saleable condition, storing, taxes, liens, attorneys' and collection agency's fees and other expenses in connection therewith, Buyer shall pay any deficiency as liquidated damages for breach of this contract. Seller shall retain all lien rights upon premises on which the installation is made, to the extent of the unpaid balance, until final payment is made.

10. Should Seller be delayed in performance by reason of any default on the part of Buyer of the terms and conditions of this contract, the entire contract price, less payments theretofore made, shall become due, and shall bear interest at the full legal rate from the date of billing.

11. Buyer shall be responsible for structural capability of the premises to accommodate the equipment in the manner and location specified in the contract or shown on drawings, and Seller shall not be liable for any failure, or damage resulting from such failure, of premises, due to such structural deficiency.

12. Buyer shall keep equipment free of tax liens and other encumbrances, shall not remove said equipment from the premises without written permission of Seller, and shall not transfer any interest in said equipment or in this contract without written consent of Seller until all payments due hereunder have been made.

13. Any price or prices herein set forth shall be increased in an amount or amounts equal to the tax or taxes which may be assessed on the equipment supplied hereunder, or which may be

due or become due from Seller, or which Seller may be required to pay with respect to this contract as a result of any excise, sales, use, occupation, or similar tax not now in effect but hereafter imposed or made effective by the United States Government or any state or local government.

14. Buyer acknowledges the potential for unforeseen material cost escalations that are beyond the control of the Seller. Seller shall provide Buyer with notice of material escalation greater than ___% within ___ days of occurrence. Seller shall provide Buyer a baseline of the published costs as of the proposal date (or contract date). Buyer shall reimburse Seller for the increased material costs over and above the baseline published costs.

15. Upon completion of the installation, Seller shall fully instruct Buyer as to the operation and maintenance of equipment installed. If within a period of one year after the equipment supplied hereunder was installed, Seller has not received from Buyer in writing a claim that said equipment as supplied and installed does not fulfill the terms and conditions of this contract, specifying in what particulars it fails to do so, Buyer shall be deemed as having acknowledged that said equipment as supplied and installed does fulfill said terms and conditions.

NOTE: This provision must be consistent with any more-detailed warranty provisions as referenced in paragraph 2 above.

16. Buyer shall not assign this contract or any rights thereunder without Seller's written consent.

17. This proposal, when signed and accepted by the Buyer, and approved by an authorized representative of _____, shall constitute exclusively the entire contract between the parties, and all prior representations or agreements, whether written or oral, not incorporated herein, are not part of this contract and are expressly superseded.

18. This contract is not valid unless approved by a duly authorized representative of _____.