

NOTICE: Sale of any products and/or services identified herein is expressly conditioned on the Buyer's assent to the terms contained or referred to herein. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding on Seller unless specifically assented to in writing by Seller's authorized representative. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work and Seller's performance of work shall constitute assent to Seller's terms and conditions. Unless otherwise specified in writing by Seller, any quotation by Seller shall expire thirty (30) days from its date and may be modified or withdrawn by Seller prior to receipt of Buyer's acceptance.

1. DEFINITIONS

Unless otherwise defined in the Proposal or the Contract, the following terms shall have the following meanings: "Buyer" means the entity to which Seller's proposal is directed. "Buyer's Equipment" means Buyer's equipment on which the Services will be performed. "Contract" means the contract between Seller and Buyer resulting from Seller's Proposal. "Contract Price" means the price to be paid by Buyer to Seller under this Proposal or any resulting Contract for the Services. "Payment Schedule" means the schedule of when payments are due from Buyer to Seller set forth in the Contract and the milestones that must be achieved before such payments are due. "Proposal" means any quotation for products or services made by Seller to Buyer in writing. "Seller" means Air Handlers, Inc. and its successors and permitted assigns. "Services" means all the services to be performed or provided by Seller under the Proposal, which may include the following as defined below:

- Technical Advisory Services means technical advice and counsel from Technical Advisors provided by Seller based on Seller's current system design, installation and operation practices as applicable to the Buyer's Equipment. To the extent specified in the Proposal, such services may also include testing, adjustment, programming and other similar services. Unless otherwise specified in the Seller's proposal or the Contract, Technical Advisory Services do not include supervision or management of Buyer's employees, agents, or other contractors.
- Site Work Services meaning any combination of planning, management, Technical Advisory Services, labor, tools and incidental goods necessary to move, install, assemble, modify, repair, modernize, start-up and/or maintain the Buyer's Equipment at the Site.
- Repair Services, meaning service shop work performed at the Site, such as, but not limited to: machining; welding; grinding; polishing; cleaning; inspection; disassembly or reassembly and machine tool work.
- Inspection/Test Services, meaning analysis of equipment or systems by competent, experienced personnel using special techniques, instruments or devices with the objective of reporting opinions or recommendations related to the current condition and future serviceability of the equipment or system.
- Such other services as the parties agree in writing will be performed as Buyer and Seller may mutually agree in the Contract.
- "Site" means the premises where the Buyer's Equipment is located or where Seller will install equipment on behalf of Buyer.

2. PAYMENT TERMS

2.1 **Payment.** Unless otherwise provided in the Proposal or the Contract, pro rata payment shall become due as set forth in the Payment Schedule without any setoff whatsoever (including, without limitation, setoff under other contracts with Seller.)

2.2 **Nonfulfillment.** If Buyer fails to fulfill any of the conditions set forth above, Seller may suspend commencement or performance or work under the Contract and any cost incurred by Seller in accordance with such suspension shall be added to the Contract price. If Buyer does not correct such failure in the manner and time satisfactory to Seller, then Seller may, at its option, terminate the Contract with respect to the portion of Services not yet performed. Seller's termination charges shall be paid by Buyer to Seller on presentation by Seller of its invoices. Performance of Seller's obligations shall be extended for a period equaling the period of Buyer's nonfulfillment of any portion of the payment terms, whether or not Seller suspends performance and such additional time as may be reasonably necessary in the circumstances. In addition to the foregoing, Buyer shall pay interest to Seller, at the rate of one and one-half percent (1-1/2%) per month (or any fraction thereof), not to exceed the lesser of eighteen percent (18%) per annum or the maximum amount permitted by applicable law, on all amounts not timely paid in accordance with the Contract.

2.3 **Buyer's Financial Condition.** If Buyer's financial condition at any time does not justify continuation of the work to be performed by Seller under the Contract on the agreed terms of payment, Seller may require full or partial payment in advance or shall be entitled to terminate the Contract. If Buyer becomes bankrupt or insolvent, or if any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy laws or any insolvency laws, Seller shall be entitled to terminate the Contract. In either such termination event, Buyer shall pay Seller its reasonable and proper cancellation charges.

3. TAXES

Unless otherwise specified in the Proposal or the Contract, Seller shall be responsible for, and shall pay directly, any and all taxes that are measured by net income or profit imposed by any governmental authority on Seller, its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder (the "Buyer Taxes"). If Buyer deducts or withholds Seller taxes, Buyer shall furnish within one month to Seller accurate official receipts from the appropriate governmental authority for each deducted or withheld Seller taxes. Buyer shall be responsible for, and shall pay directly when due and payable, any and other Taxes ("Buyer Taxes"), and all payments due and payable by Buyer to Seller hereunder shall be made in the full amount of the Contract Price, free and clear of all deductions and withholding, for Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts to Seller to cause the amounts actually received by Seller, net of deducted or withheld Buyer Taxes, to equal the full amount of the Contract Price, and shall provide to Seller within one month, along with such payments, accurate official receipts from the appropriate governmental authority for deducted or withheld Buyer Taxes. If Seller is required to pay Buyer Taxes, Buyer shall, promptly on presentation of Seller's invoice for such Buyer Taxes, pay to Seller an amount equal to such Buyer Taxes.

4. EXCUSABLE DELAYS

4.1 Seller shall not have any liability or be considered to be in breach or default of its obligations under the Contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to: (i) causes beyond its reasonable control; or (ii) acts of God, act (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, delays in transportation, or car shortages; or (iii) acts (or omissions) of Buyer including failure to promptly: (a) provide Seller with information and approvals necessary to permit Seller to proceed with work immediately and without interruption or (b) comply with the terms of payment, or (iv) inability on account of causes beyond the reasonable control of Seller to obtain necessary materials, necessary components or services. Seller shall notify Buyer of any such delay. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. Seller shall notify Buyer, as soon as practicable, of the Service resumption date. If Seller is delayed by acts or omissions of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall also be entitled to an equitable price adjustment.

4.2 If delay excused by this Article extends for more than sixty (60) days and the parties have not agreed on a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Seller), on ten (10) days written notice, may terminate the Contract with respect to any uncompleted Services, whereupon Buyer shall promptly pay Seller's termination charges determined in accordance with Seller's standard accounting practices on submission of Seller's invoices therefor.

5. COMPLIANCE WITH LAWS, CODES AND STANDARDS

5.1 The Contract Price is based on Seller's performance of the Services pursuant to (i) its design criteria, (ii) Buyer's stated needs, (iii) those portions of industry specifications, codes and standards in effect as of the date of Seller's proposal to Buyer, which Seller has deemed applicable to the Services, (iv) the Federal, State and local laws and rules in effect on the date of Seller's proposal to Buyer and (v) the specifications incorporated into the Contract.

5.2 The Contract Price will be equitably adjusted to reflect additional costs incurred by Seller resulting from (i) a change in standards and regulations described in 5.1(iii) or 5.1(iv) after the date of Seller's proposal to Buyer which affect the Services and (ii) changes required to comply with regulatory or industrial requirements in the location where the Services will be performed. Buyer shall advise Seller of requirements affecting the Services resulting from the applicability of any laws, rules or regulations in the location where the Services will be performed. Reasonable adjustments will be made to the delivery date, performance evaluation criteria and Service performance dates as may be appropriate to comply with the foregoing.

5.3 Notwithstanding, any other provisions herein, Buyer shall be responsible for the timely obtaining of any required authorization, such as a construction permit, work permit or any other governmental authorization, even though any such authorization may be applied for by Seller. Buyer and Seller shall provide each other reasonable assistance in obtaining required authorizations. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved thereby of its obligations to pay Seller for the work.

6. CHANGES; SUSPENSION

6.1 Buyer may, by written change order, make mutually agreed to changes in the Services. If any such change results in an increase or decrease in the cost or time required for the performance of the work under the Contract, there shall be an equitable adjustment in the Contract price and/or schedule. Seller shall not be obligated to proceed with the changed or extra work until the price of such change and its effect on the schedule has been agreed on in a written change order.

6.2 If Buyer elects to suspend all, or part of, the work at the Site, Buyer shall notify Seller in writing reasonably in advance of the first day of suspension (but in no event less than 10 days unless emergency conditions justify a shorter time), indicating the scope of the suspension. Seller shall advise Buyer of the price adjustment resulting from the planned suspension of the work, which shall be based on the actual period of suspension and Seller's ability to reasonably reallocate manpower, material and equipment during the suspension period. If any suspension or combination of suspensions exceeds a total of 60 days, Seller may request authorization to resume work. If written authorization is not granted within 10 days, Seller may treat the suspended work as abandoned by Buyer, in which case Buyer will pay Seller's termination charges determined in accordance with Seller's standard accounting practices on submission of Seller's invoices therefor.

7. WARRANTY

7.1 Seller warrants to Buyer that the Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Seller provides no warranty for incidental materials and consumables utilized in the performance of the Services and only the warranty given by the manufacturer, if any, shall apply. In the case of Inspection/Test Services, Seller does not warrant the accuracy of, performance results of, any conclusions or recommendations provided, nor that any desired objective will result from the service performed. Except for compliance with the foregoing warranties, risk of loss of, or damage to, the Buyer's Equipment or other equipment being worked on shall remain with the Buyer, regardless of where the Services take place.

7.2 Seller warrants the Services for one year following completion of such Services for repair parts and on parts and labor for new equipment. Seller warrants the Services for thirty (30) days on repair labor. If the foregoing Services do not meet the above warranties during the warranty period, Buyer shall promptly notify Seller in writing and Seller shall thereupon reperform the defective Service. If reperformance is not practical, Seller will furnish without charge services in an amount essentially equal to those which in Seller's sole judgment, would have been required for reperformance.

7.3 The warranties and remedies set forth herein are conditioned on (i) the proper storage, installation, operation, and maintenance of the equipment and conformance with the operation instruction manuals (including revisions thereto) provided by the original manufacturer, Seller and/or its subcontractors, as applicable and (ii) repair or modification pursuant to Seller's instructions or approval. Buyer shall keep proper records of operation and maintenance during the applicable warranty period.

7.4 The preceding paragraphs of this Article 7 set forth the exclusive remedies for all claims based on failure of or defect in the Services provided under the Contract or performance, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

8. LIMITATION OF LIABILITY

8.1 The total liability of Seller, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of the performance or breach of the Contract or use of any equipment shall not exceed the greater of \$10,000 or the Contract Price. All liability under the Contract shall terminate on the expiration of the applicable warranty period.

8.2 In no event, whether as a result of breach of contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise, shall Seller or its subcontractors or suppliers be liable for costs or claims of Buyer's customers for damages, or for any special, consequential, incidental, indirect or exemplary damages and Buyer shall indemnify Seller against such claims of Buyer's customers.

8.3 If Seller furnishes Buyer with advice or assistance concerning any products, systems or work which is not required pursuant to the Specification, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

8.4 In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under the Contract) or caused by the use of goods by the Buyer against the advice of Seller.

9. GOVERNING LAW

9.1 The Contract shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia. For the purpose of resolving any dispute that may arise between Seller and Buyer under this Contract, the parties agree to submit to jurisdiction to bring such action in the Circuit Court for the City of Virginia Beach.

9.2 If it should become necessary for Seller to engage an attorney for collection of any amount due hereunder or to enforce any provision of this Contract and provided that Seller prevails in such action, Buyer agrees to pay all costs of collection or enforcement, including reasonable attorney's fees.

10. DIFFERING SITE CONDITIONS; HAZARDOUS MATERIALS

10.1 Seller shall promptly and, if feasible, before such conditions are disturbed, notify Buyer in writing of: (i) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract, or (ii) unknown physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in the work of the character provided for in the Contract. Buyer shall promptly investigate the conditions. If it is determined that such conditions do materially differ and cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and time of performance shall be made and the Contract modified in writing accordingly.

10.2 If, at the Site, Seller encounters toxic substances, hazardous substances or hazardous wastes (as such terms may be defined in any statute or ordinance or regulations promulgated by any federal, state or local governmental authority of the United States or the country of the Site) (collectively, the "Hazardous Materials") which require special handling and/or disposal, Buyer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the work under the Contract may safely proceed. If any such Hazardous Materials cause an increase in Seller's cost of or the time required for performance of any part of the work, an equitable adjustment shall be made in the price and schedule. Buyer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Seller's work at the Site. Buyer shall indemnify Seller for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to (i) the presence of any Hazardous Materials which are present on the Site prior to the commencement of Seller's work or (ii) improperly handled or disposed of by Buyer or (iii) brought on to the Site or produced thereon by parties other than Seller.

11. GENERAL CLAUSES

11.1 Subject to the terms of Seller's proposal or the Contract, Buyer may terminate the Contract only on paying Seller its termination charges determined in accordance with Seller's standard accounting practices on submission of Seller's invoices therefor. Termination of an order shall not relieve either Party of any obligation arising out of work performed prior to termination.

11.2 The Contract represents the entire agreement between the parties and no modification, amendment, rescission, waiver or other change shall be binding on either party unless assented to in writing by the parties' authorized representatives. Any oral or written representation, warranty, course of dealing or trade usage not contained or reference herein shall not be binding on either party. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in the Contract.

11.4 The following Articles shall survive termination of the Contract: Article 3 (Taxes); Articles 5.2, and 5.4 (Compliance With Laws); Article 7 (Warranty), Article 8 (Limitation of Liability), Article 9 (Governing Law), and Article 10.2 (Hazardous Materials) and Article 11 (General Clauses).

11.5 Any notice required to be given hereunder by either party shall be in writing and shall be affected by postage prepaid certified mail and return receipt requested or by prepaid overnight delivery by a nationally recognized express overnight delivery service, addressed as set forth on page 1 of the Contract. Either party may notify the other party of a change in its address by written notice according to the requirements of this Section.

NEW TERMS AND CONDITIONS