

Industrial Refrigeration Pros & Affiliated Companies

Refrigeration Parts & Services - Standard Terms & Conditions

1. **Contract Terms** – The terms and conditions of sale applicable to this Agreement are as set forth herein. Terms and conditions proposed by the Customer do not become part of this Agreement unless accepted by Contractor (IR Pros or Affiliate Company) in writing. Contractor shall not be bound until Customer's order has been accepted in writing by an authorized representative of Contractor.
2. **Acceptance** – No terms or conditions other than those set forth in this Proposal and any supporting documents attached to or incorporated by reference in this Proposal, shall be binding upon Contractor unless accepted by it in writing by a duly authorized representative of IR Pros or Affiliate Company. All Plans, Specifications, Drawings, Notes, Instructions, Engineering Notices or Technical Data referred to in this Proposal or prepared in connection with the work described in this Proposal are incorporated by reference herein. Any acceptance of all work by the Customer shall be conclusively deemed acceptance of the work performed by Contractor. This Proposal constitutes the mutually acceptable terms and conditions agreed to by the Customer and Contractor and forms a binding contract under the terms set forth herein when accepted by Customer, either by written or oral acceptance, by allowing Contractor to deliver any of the goods for the work or by commencement of any work by Contractor. These terms and conditions, together with the terms on the face hereof, contain the full agreement and understanding between the parties hereto and may not be modified except by the written agreement by both parties hereto. No terms and conditions of Customer or Contractor in any prior proposal, purchase order or acceptance of the Proposal shall be binding upon Contractor if such terms or conditions conflict with or are inconsistent with the terms and conditions herein. If Contractor is issuing this proposal to a contractor for Contractor to perform as a subcontractor, this bid and Contractor's agreement to perform this work referenced herein, is contingent upon negotiation of mutually acceptable subcontract terms and conditions.
3. **Confidentiality**- The information and data provided to Customer in the attached and these Terms and Conditions, including any and all pricing, drawings, sketches, and/or instructions, are provided to the Customer for the sole purpose of Customer's consideration of the Proposal and retaining Contractor to perform the work outlined in this Proposal ("Work"). Such information is proprietary and is considered to be a trade secret of Contractor. As such, Customer agrees that by receiving the information Customer further agrees to keep the information confidential and Customer shall not, for any reason, reproduce, copy or furnish to any third party, in whole or in part, any of the information without Contractor prior written consent.
4. **Pricing** – Contractor offers Customer to perform the Work for the price outlined in the Proposal. Said offer remains good for a period of thirty (30) days and said Proposal shall automatically terminate upon expiration of the thirtieth (30th) day. By executing and accepting the Proposal, Customer agrees to pay Contractor the price outlined in the Proposal plus the gross amount of any present and or future sales, use, excise, value-added, or other similar tax, however designated, applicable to the price, sale or delivery or any products, services or the work furnished here under or for their use by Contractor on behalf of Customer whether such tax shall be local, state or federal in nature even if not outlined in the Proposal.
5. **Payment** – Unless otherwise stated on the face of this Proposal, 1) Project Invoice will include a 35% down payment and monthly progress payments thereafter for the duration of the project. 2) All materials and equipment will be invoiced 100% upon delivery. 3) Customer shall pay all invoices issued by Contractor Net Thirty (30) Days. 4) Final payment shall be made within thirty (30) days after substantial completion of the Work. 5) A one and half percent (1.5%) per month finance charge shall apply to all invoices not paid when due. 6) If Customer does not make payment within 90 days from the date of invoice, Contractor reserves the right to cease performance of work and shall be entitled to recover from Customer all cost of collection including attorney's fees and litigation expenses.
6. **Use of Documents** – All plans, drawings, surveys, prints, software, programs, data, specifications, photographs and other related items and documents prepared or furnished by Contractor pursuant to the Proposal and/or furtherance of the Work outlined in the Proposal are instruments of service in respect to this project and Contractor shall retain all ownership and property interests therein. By submitting this Proposal or any documentation associated therewith, Contractor is not conveying permission, authorization, or license to distribute, share, copy. Reproduce, or reprint any such documentation. Such documents are not intended or represented to be suitable for use by Customer or others on extension of this project, on any other project or for the completion of this project should this agreement be terminated, nor may such documents be so reused without the express written consent of Contractor. Further, Customer and any other person or entity who may obtain such documentation must obtain written consent from Contractor prior to any distribution, sharing, copying, or reproducing of any such document. Any reuse or modification of such documents without the consent of Contractor will be at Customer's sole risk and without liability to Contractor and Customer shall further indemnify and hold Contractor harmless from all claims, damages, losses and expenses, including attorney's fees arising out of resulting there from.
7. **Limitation of Liability** – Contractor shall have the first and primary right to remedy any errors, omissions, or defective workmanship. Contractor shall not be liable for any incidental, consequential, indirect or special damages, loss of use of equipment or facilities, economic damages based on strict liability or negligence, or any loss of profits or business revenue due to interruptions caused or alleged to have been caused, by the performance or non-performance of the Work. Contractor shall be liable for damage to property, other than the equipment provided under this Agreement, and to persons, only to the proportionate extent that Contractors' negligent acts or omissions directly contributed to such injury or

property damage, Contractor's maximum liability for any reason shall be limited to the coverage available under Contractors insurance. Customer further agrees that Customer shall bring no claim against Contractor or its subcontractors later than one year after completion of work.

8. **Performance of Work** – Contractor agrees to perform the Work on the timeline articulated in the Proposal subject to these terms and conditions. Contractor shall perform the Work and supply the goods and services in this Proposal in accordance with the process and estimated completion schedule stated on the face hereof. Commencement and completion dates of the work are based upon prompt receipt by the Contractor of all necessary information from Customer as well as prompt receipt of all materials and supplies. All Work will be provided during Contractors' regular working hours (unless otherwise agreed) and Customer agrees to compensate Contractor for any additional overtime necessary to complete the Work within Customer's desired time frame. Customer shall pay Contractor prevailing wage rate and prices upon the same terms and conditions as otherwise provided herein. Contractor shall only be obligated to furnish equipment and services as described in the Proposal. Any adjustment or changes to the scope of Work after acceptance of the Proposal by Customer shall only be effective if made in writing and agreed to, including the appropriate increase in the total price owed by Customer. If Customer shall direct any change in work, work hours, changes in work due to codes or standards enforced by any authority which may have jurisdiction over the construction site, or other delays in the performance of the work for which Contractor may not have been aware of at the time of this Proposal, Customer agrees to pay any and all additional costs, including profit, reasonable attorney fees and expenses of Contractor associated with the same, resulting from such change(s) plus overhead and profit in addition to contract price. In addition, Contractor shall be entitled to reasonably extended completion time for the work. Upon completion of the work by Contractor, any additional required, but not included in the work described herein above, whether required by any organization or entity inspecting such work or otherwise, shall be treated as additional to and not within the scope of this proposal and Customer shall be responsible for all costs and expenses associated with the completion of the same. All equipment orders and shipments shall be FOB with Customer acquiring title and assuming all risk of loss upon loading of the same with carrier. In the event Customer, for whatever reason, interrupts or causes a cessation in Contractor progress of performance, Customer shall be liable to Contractor for the cost of remobilization plus a reasonable profit. Contractor scope of work specifically does not include any identification, detection, abatement, encapsulation, or removal of asbestos or similar hazardous substances. Should asbestos or similar hazardous substances be discovered during the Work, the Customer agrees to remedy said situation by employing and compensating appropriate asbestos abatement contractors. The issuance of an acceptance or approval inspection report as to the work shall be conclusive evidence of full performance by the Contractor of its obligations under. Any notices of deficiencies or defaults hereunder by Contractor shall be promptly submitted to Contractor to Customer.
9. **Excusable Delay** – Contractor shall not be liable for delays in delivery or performance of the work due to (i) a cause beyond its control, or (ii) an act of God, act of Customer, act of civil or military authority, Governmental priority, strike or other labor disturbance, flood, epidemic, war, riot, delay in transportation or car shortage, or (iii) inability on account of cause beyond the reasonable control of Contractor to obtain necessary materials, components, services, labor or facilities. Contractor will notify the Customer promptly of any material delay caused by this paragraph and will specify the completion date as soon as practicable. In the event of any such delay, there will be no termination of this Proposal and the period for completion of the Work shall be extended for a period of time lost by the reason of such delay.
10. **Warranty** – Contractor agrees to assign to Customer any and all material warranties provided by any material manufacturer for items used to complete the Work. Contractor further warrants all materials, equipment, piping, accessories, and installation to be free of defects for a period of thirty (30) days from the date of Work completion. Contractor liability, if any, upon any warranty, either express or implied, shall be limited to the replacement of defective materials and correction of faulty workmanship which is in violation of Local, State, or Federal building codes at the time of performance of the Work by Contractor. No other expressed warranty is given, and no other affirmation of Contractor by word or action, shall constitute a warranty. This warranty is expressly in lieu of any other express or implied warranty or merchantability of fitness, and of any other obligation on the part of Contractor. This warranty explicitly does not cover any issues, problems, or malfunctions caused by the interaction between existing structures, equipment, materials, and/or the installation of any item necessary to complete the Work if said problem arose due to the previously existing item.
11. **Indemnity** – To the extent permitted by law, Customer does hereby agree to indemnify and hold Contractor or its suppliers, employees or agents harmless, and in turn Contractor does hereby agree to hold Customer harmless from and against any and all losses, claims, expenses, damages, or liabilities for any special, consequential, incidental, or punitive damage including, but not limited to, loss of profit or revenues, loss of use of any products, machinery, equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time cost, lost profits, or claims of Customer's customers for such damages, and obligations of any kind and description, including reasonable attorney fees incurred by the non-offending party in investigating, defending, or settling such losses, damages, liabilities and obligations, arising out of negligence or misconduct of the offending party and matters directly related hereto. This indemnity provision shall survive the termination of this agreement and the completion of the Work.
12. **Special Indemnification Provision** – Customer agrees to indemnify and save harmless Contractor from and against any and all actions, claims, damages, expenses, fees, judgments or liabilities, of any type or nature, arising out of or relating to any structural failure of the premises or any negligence or other action or activity of Customer and/or its agents, representatives or employees. If the premises on which the work is to be performed is owned by anyone other than Customer, Customer warrants to Contractor that adequate permission of the owner(s) has been obtained to complete the work. Customer shall indemnify and save harmless Contractor against any and all claims, actions, judgments, liabilities, disputes, damages or costs arising out of or relating to the failure of Customer to obtain such permission. Customer shall inform Contractor of any safety or health hazard inherent in the premises. Its contents, and its operation and shall pay Contractor the additional cost resulting from the precautions necessitated by the safety or health hazards plus overhead and profit in addition to the contract price set forth herein above. To the fullest extent permitted by law, the owner of the property shall indemnify and hold harmless Contractor, and its agents and employees, from and against all

claims, damages, losses and expenses including but not limited to, reasonable attorney fees, arising out of or relating from any and all actions or occurrences which are not directly relating to the performance of Contractor work under this Contract to include bodily injury, sickness, decease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom, regardless whether or not such claim, damage, loss or expense is caused in part by the party indemnified hereunder.

13. **Material Escalation Clause** – Due to the ongoing volatility of raw materials Contractor has NOT included or anticipated any escalation of costs or monies associated with this issue in this Proposal. Thus, Contractor requires, and Customer agrees to enter into a separate, mutually agreeable, material escalation agreement whereby Customer agrees to reimburse Contractor for all cost increases in materials on a true invoiced cost basis. Contractor will not include additional fees, overheads, profits, or other charges to these material increases.

14. **Customer's Required Provisions** – Customer hereby agrees to provide, at no cost to Contractor, onsite parking for all Contractor employees necessary to perform the Work; access to the appropriate construction area, connection to and use of water, sewer services, electrical and any other necessary utility; all required dumpsters as determined by Contractor, and appropriate restroom facilities for all Contractor employees.

15. **Cancellation or Termination**

a. Termination By Customer For Cause

The Customer may terminate the Contract if the Contractor:

- i. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials.
- ii. Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and Subcontractors
- iii. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations of lawful orders of a public authority
- iv. Otherwise, is guilty of substantial breach of a provision of the Contract Documents

b. Termination By Customer For Convenience

The Customer may, at any time, terminate the Contract for the Customer's convenience without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit or Work not executed.

Contractor reserves the right to discontinue its service any time payments have not been made as agreed, or if alterations, additions or repairs are made to equipment during the term of this Agreement by others without prior agreement between Customer and Contractor.

16. **Governing Law and Choice of Forum** – The laws of the State of Texas shall govern as to all questions arising out this agreement and Proposal. The parties agree that the court with appropriate jurisdiction over the site of the Work shall be the proper venue and shall have jurisdiction over any suit brought under the agreement. The parties further agree that in the event a lawsuit is necessary to enforce any term of this agreement, the prevailing party shall be entitled to recoup all costs, including appropriate attorney's fees, from the non-prevailing party.

17. **Expiration** – Unless otherwise stated in the attached proposal, this proposal shall remain open and available for acceptance by the Customer for a period of thirty (30) days from the date hereof or until terminated by Contractor, whichever is first. After such time, Contractor shall not be honor bound hereunder.