

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

J.M. MECHANICAL LLC

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) and services (“**Services**”) by J.M. Mechanical LLC, an Ohio limited liability company (“**JMM**”) to the customer identified on the accompanying estimate (“**Customer**”).

(b) Customer’s signature on the accompanying estimate (the “**Sales Confirmation**”) creates a valid, binding and enforceable agreement between JMM and Customer, which cannot be terminated without JMM’s written consent. The Sales Confirmation and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer’s general terms and conditions of purchase regardless whether or when Customer has submitted a purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

(c) Notwithstanding anything to the contrary contained in this Agreement, JMM may, from time to time change the Services without the consent of Customer; *provided* that such changes do not materially affect the nature, performance date or scope of the Services.

2. Delivery of Goods and Performance of Services.

(a) The Goods will be delivered within a reasonable time after the execution of the Sales Confirmation. JMM may, in its sole discretion, without liability or penalty, make partial delivery of Goods to Customer.

(b) JMM shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only. The Sales Confirmation shall state the address to which Goods shall be delivered and the Services shall be rendered (the “**Service Location**”).

(c) Without limiting the foregoing, JMM may, in accordance with the terms of a Sales Confirmation or pursuant to any other written communication

delivered by JMM to Customer following the issuance of a Sales Confirmation, on or prior to any date on which JMM agreed to perform Services at the Service Location, designate a 30-minute time period (the “**Guaranteed Arrival Window**”) during which a JMM technician will arrive at the Service Location to render the Services. Subject to the provisos set forth below, to the extent that (i) a Guaranteed Arrival Window has been designated by JMM; and (ii) a JMM technician does not arrive at the Service Location within the Guaranteed Arrival Window, the applicable Price (as defined below) of the Services (but not any Goods) shall be reduced by 50%; *provided, however*, that (1) JMM may, in its sole discretion but no later than four hours before the start of any Guaranteed Arrival Window, change the Guaranteed Arrival Window or otherwise modify the date on which such Services will be performed; (2) there shall be no reduction in Price for Services to be rendered at any other performance date or at any location other than the Service Location; and (3) no reduction in Price shall occur if a technician’s failure to arrive at the Service Location during the Guaranteed Arrival Window is due to reasons addressed in **Section Error! Reference source not found.**

(d) With respect to the Services, Customer shall (i) cooperate with JMM in all matters relating to the Services and provide such access to Customer’s premises, and such accommodations as may reasonably be requested by JMM, for the purposes of performing the Services; (ii) respond promptly to any JMM request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for JMM to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer information as JMM may request to carry out the Services in a timely manner and ensure that such customer information is complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses, permits and/or consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. **Title and Risk of Loss.** Title and risk of loss passes to Customer upon delivery of the Goods. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to JMM a lien on and security interest in and to all of the right, title and interest of Customer in, to and under

the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under Ohio's Uniform Commercial Code. Customer further acknowledges that, after the Inspection Period (defined below), all right and title to any materials or equipment removed from the Service Location by JMM during the course of performing the Services shall pass to JMM.

4. Customer's Acts or Omissions. If JMM's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, JMM shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. Inspection and Rejection of Nonconforming Goods and/or Nonconforming Services.

(a) Customer shall inspect the Goods and results of the Services within 30 days of installation/provision (the "**Inspection Period**"). Customer will be deemed to have accepted the Goods and/or Services (i) unless it (1) notifies JMM in writing of any Nonconforming Goods or Nonconforming Services during the Inspection Period (a "**Defect Notice**"), and (2) furnishes such evidence or other documentation as required by JMM; and (ii) JMM determines, in its sole discretion, that such Defect Notice contains a valid complaint. "**Nonconforming Goods**" means only the following: (i) product delivered is different than identified in the Sales Confirmation; or (ii) product's label or packaging incorrectly identifies its contents. "**Nonconforming Services**" means only Services rendered that are not in compliance with the limited warranties set forth herein.

(b) Within 15 business days of receiving the design of JMM's Heating, Ventilation, and Air Conditioning System (HVAC), Customer may, at its own expense, have an independent third party inspect the design, measurement, and any other calculations of HVAC delivered to Customer. If Customer waives such third-party inspection right, Customer shall (i) be deemed to have completely accepted the HVAC designs as-is, where is, and with all faults with respect to all facts, circumstances, conditions, and defects; (ii) assume the risks of any and all errors of such designs; and (iii) fully, finally, and forever

release all claims that now exist, may exist or previously existed with respect to any and all errors of such design, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected.

(c) If Customer timely delivers a valid Defect Notice, JMM shall, during the 30-day period following delivery of the Defect Notice, repair or replace the Nonconforming Good or re-perform any Nonconforming Service. If JMM cannot remedy the issues identified in the Defect Notice, JMM will re-install Customer's prior equipment and issue a full refund of the Price to Customer. For the avoidance of doubt, the remedies available to Customer pursuant to the foregoing shall be determined in the sole discretion of JMM in accordance with industry standards.

(d) Customer acknowledges and agrees that the remedies set forth in the foregoing subsection are Customer's exclusive remedies for the installation of Nonconforming Goods or provision of Nonconforming Services. Except as provided in the foregoing subsections, all sales of Goods/Services to Customer are final, and Customer has no right to return Goods purchased under this Agreement to JMM.

6. Price.

(a) Customer shall purchase the Goods and Services from JMM at the prices (the "**Prices**") set forth in the Sales Confirmation. If the Prices should be increased by JMM before installation of the Goods (either due to the cost of Goods or an increase in the scope of Services required for installation), then these Terms shall be construed as if the increased prices were originally inserted herein, and Customer shall be billed by JMM on the basis of such increased prices; *provided* that, if the aggregate amount of the Prices is exceeded by more than 10%, Customer's consent shall be required.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes; *provided* that Customer shall not be responsible for any taxes imposed on, or with respect to, JMM's income, revenues, gross receipts, property, or other assets.

7. Payment Terms.

(a) Customer shall pay all invoiced amounts due to JMM on receipt of JMM's invoice. Customer shall make all payments hereunder by check or credit card and in US dollars.

(b) Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse JMM for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

(c) If Customer is approved by, and enters into a financing arrangement with, Wells Fargo Bank, N.A. with respect to all or any portion of invoiced amounts due or expected to become due, Customer shall execute all documents and take all actions as are necessary to ensure that Wells Fargo Bank, N.A. makes payment to JMM of any invoiced amounts due or expected to become due in consideration of Goods delivered or Services rendered.

8. Limited Warranty.

(a) Any part, accessory or other Good furnished and installed by JMM in connection with the rendering of repair Services (a "**Repair Part**") are warranted against material defects in workmanship or materials for five years from the date of performance of such Services for Repair Parts and labor or until voided pursuant to the terms hereof; *provided, however,* that the foregoing limited warranty shall (i) apply exclusively to each Repair Part purchased by Customer and installed by JMM in connection with the rendering of repair Services; (ii) not apply to the Good, unit or system into which any Repair Part is installed as a part or component thereof; (iii) only apply to Repair Parts for which JMM has been engaged to perform standard maintenance Services at least once during each year of the warranty period. With respect to Goods and/or Services to which the limited warranty in this subsection applies, JMM may, in its sole discretion, either (1) repair or replace the defective Repair Part or (2) re-perform the Services; (iv) only apply to any part, accessory, or other Goods furnished and installed by JMM to Customer for which the Service Location is a single family, owner-occupied residence; and (v) apply only when Customer retains an active JMM Comfort Club Membership.

(b) Any heating and/or cooling system furnished by JMM to Customer for which the Service Location is a single family, owner-occupied residence is warranted against major component failures for a period of 10 years from the date of installation of such system; *provided, however,* that such warranty shall only apply to such systems for which (i) JMM has been engaged to perform standard maintenance Services at least once during each year of the warranty period; and (ii) Customer has followed each of JMM's recommendations regarding

maintenance. JMM shall have sole discretion in determining what constitutes a "major component" and whether Customer has complied with the foregoing proviso. With respect to Goods to which the limited warranty in this subsection applies, JMM may, in its sole discretion, either replace or repair the system or the defective major component.

(c) JMM warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

(d) EXCEPT FOR THE WARRANTIES SET FORTH IN IN THE FOREGOING SUBSECTIONS, JMM MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(e) Customer acknowledges that the Goods are manufactured by a third party and the warranties contained in this Section do not cover the Goods. Customer further acknowledges that, in certain circumstances, Customer's timely registration with, and/or notification of, the third-party manufacturer may be required to bind warranty coverage offered by such third-party manufacturer. For the avoidance of doubt, **JMM MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(f) JMM shall not be liable for a breach of the warranties set forth in this Section unless: (i) Customer gives written notice of the defective Services reasonably described, to JMM at the earlier to occur of one year from the date the Services were provided or within 90 days of the time when Customer discovers or ought to have discovered the defect; (ii) JMM is given a reasonable opportunity

after receiving the notice of breach of the warranty set forth in this Section to examine the Goods for which the applicable Services were provided; and (iii) JMM reasonably verifies Customer's claim that the Services are defective. In the event that JMM has opted to purchase an extended five-year warranty covering Services, the terms and conditions of such warranty will be contained in a separate agreement.

(g) JMM shall not be liable for a breach of the warranty set forth in this Section if the defect arises because Customer failed to follow JMM's oral or written instructions as to the use or maintenance of the Goods for which the applicable Services were provided. Further, Customer acknowledges that any third-party warranties covering the Goods may be voided if Customer fails to adhere to the maintenance and use provisions contained therein.

(h) Subject to the foregoing provisions, with respect to any Services subject to a claim under the warranty set forth in this Section, JMM shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

(i) THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND JMM'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN THIS SECTION.

9. Limitation of Liability.

(a) IN NO EVENT SHALL JMM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT JMM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL JMM'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE LESSER OF THE

TOTAL OF THE AMOUNTS PAID TO JMM FOR THE GOODS AND SERVICES SOLD HEREUNDER AND \$5,000.

(c) The limitation of liability set forth in this Section shall not apply to (i) liability resulting from JMM's gross negligence or willful misconduct and (ii) death or bodily injury resulting from JMM's acts or omissions.

10. Force Majeure.

(a) "Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the JMM (including, but not limited to, acts of God, accident, riots, war, terrorist act, epidemic, pandemic including the Covid-19 Pandemic, quarantine, civil commotion, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, supply chain disruption, and delay of third party services).

(b) Where a Force Majeure Event gives rise to a failure or delay in JMM meeting its performance quota or otherwise performing its obligations under this Agreement, those obligations will be suspended for the duration of the Force Majeure Event, and any performance quota shall be amended on a pro rata basis for the days affected by the Force Majeure Event. JMM shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from Force Majeure Event.

(c) When JMM becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, it will: (a) forthwith notify Customer; (b) inform Customer of the period for which it is estimated that such failure or delay will continue; and (c) inform the Customer of the end date.

11. Compliance with Law. Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

12. Termination. In addition to any remedies that may be provided under these Terms, JMM may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement; or (b) has not otherwise performed or complied with any of these Terms, in whole or in part.

13. **Waiver.** No waiver by JMM of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by JMM. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. **Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of JMM. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

15. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

17. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.

18. **Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or, if such federal courts do not have jurisdiction, the courts of the State of Ohio, in each case located in the City of Cincinnati and County of Hamilton, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

19. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) shall be in writing and

addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

20. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

21. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Governing Law, Submission to Jurisdiction, and Survival.

22. **Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.