

## HVAC DISTRIBUTORS, INCORPORATED

### TERMS AND CONDITIONS OF SALE

- 1) Controlling Provisions: This offer and its acceptance by any customer ("Buyer") shall be governed by all of the following Terms and Conditions. Buyer's order for any such good, when communicated to Seller verbally or in writing, or Buyer's acceptance of products, shall constitute acceptance of this Offer and all of the following provisions. All descriptions, quotations, proposals, offers, acknowledgements, acceptances and sales of Seller's products are subject to and shall be governed exclusively by the terms and conditions stated herein. Buyer's acceptance of any offer to sell is limited to and expressly conditioned upon these terms and conditions.
  - 2) Prices: Unless otherwise noted in writing by the Seller, all prices quoted by the Seller are those in effect as of the date quoted. In the event that the Seller's quotation or Offer of Sale and/or Buyer's order provides for deliveries later than 30 days from the date of this Offer of Sale, all prices quoted are subject to escalation to Manufacturers' prices in effect at the time shipment is made, except in cases where the Seller has agreed in writing to waive such escalation.
  - 3) Payment: Buyer agrees to pay for the products according to the Seller's payment terms. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. With the granting of the extension of credit, Buyer agrees to pay all invoices within the terms of sale printed upon each invoice. Seller reserves complete discretion concerning all extensions of credit and shall have the right at any time to refuse to extend credit to Buyer. Any portion of the invoice which is not paid in accordance with the terms of payment herein stated shall accrue carrying charges at the rate of 1.5% per month, until paid. In the event Buyer's account is referred to any attorney or collection agency for collection, Buyer agrees that Seller shall be entitled to recover any and all collection costs including reasonable attorney's fees and costs.
  - 4) Delivery: Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back-charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense, whether or not based on Seller's negligence, arising directly or indirectly from delays or failure to give notice of delay. Seller reserves the right, at its sole discretion, to; (1) impose minimum order value thresholds for delivery via Seller's trucks and to, (2) divert shipment from Seller's trucks to common carrier or small package delivery service and impose charges for such shipments when Buyer's order does not meet the designated minimum order threshold, and/or (3) impose charges for delivery. Regardless
- of the method of delivery, however, risk of loss shall pass to Buyer upon Seller's or manufacturer's delivery to a third party carrier or delivery to Buyer. Goods which are shipped directly from a manufacturer to the Buyer are F.O.B Origin with all freight and delivery charges paid by the Buyer. Any and all incurred freight, insurance and handling costs, charges and fees will be added to the Buyer's invoice. Any delivery dates communicated by the Seller to the Buyer are approximate only and Seller shall have no liability for any delays in delivery.
- 5) Inspection and Acceptance: Any material shortage or damage to products delivered on Seller's trucks must be reported in writing to Seller within 24 hours of receipt. All claims for material delivered via common carrier or small package delivery service must be filed by Buyer directly with the freight company. Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service previously ordered by Buyer or its representatives, or cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller.
  - 6) Returns: Buyer may return goods which Seller carries as "stock", if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged and (iii) meets all Local, State and Federal laws governing the type of product that can be sold or put into transit in the State in which the product is being returned. Seller reserves the right, at its sole discretion, to impose fees related to: (a) inspection, (b) processing and (c) restocking of returned stock goods. Special orders or non-stock goods will only be accepted for return if the original manufacturer will in turn accept the return and are subject to the following deductions: (a) cost of putting goods in salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges. Custom or specially fabricated or ordered goods may not be canceled or returned, and no refund will be made.
  - 7) Warranty: AS SELLER IS NOT THE MANUFACTURER OF THE GOODS, SELLER PROVIDES NO EXPRESS, IMPLIED OR LIMITED WARRANTY OF ANY KIND AND THUS BUYER AGREES THAT BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT

PROVIDED BY THE MANUFACTURER AND BUYER SHALL LOOK ONLY TO THE MANUFACTURER REGARDING SUCH WARRANTY CLAIMS. THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD BY SELLER. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS." FURTHER, SELLER MAKES NO WARRANTY WHATSOEVER, EXCEPT AS TO TITLE, WITH RESPECT TO PRODUCTS MANUFACTURED AND/OR DESIGNED TO BUYER'S OWN SPECIFICATIONS AND THE BUYER SHALL, AT ITS OWN EXPENSE, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY CLAIM, SUIT, EXPENSE OR OTHERWISE WHICH SHALL BE ASSERTED OR BROUGHT AGAINST THE SELLER BY REASON OF ITS MANUFACTURE OR SALE OF SUCH PRODUCTS.

- 8) Liability Limitation: In no event shall Seller be liable for consequential, incidental or special damages resulting from or in any manner related to the products, their design, use, or any inability to use the same, including, without limitation, damages arising out of or in any manner relating to the delivery of the products or any delay with respect to their delivery, it being understood that the sole and exclusive remedy with respect to defective products manufactured by Seller shall be the repair, correction or replacement thereof pursuant to the "Warranty" provisions hereinabove contained. Should the products prove so defective, however, as to preclude the remedying of warranted defects by repair or replacement, the Buyer's sole and exclusive remedy shall be the refund of the purchase price of the defective products involved upon the return of the products to Seller.
- 9) Changes, Reschedules and Cancellations: Buyer may request to modify the designs or specifications for the goods sold hereunder as well as the quantities and delivery dates

thereof, or may request to cancel all or part of this order, however, no such requested modification or cancellation shall become part of the contract between Buyer and Seller unless accepted by Seller in a written amendment to this Agreement. Acceptance of any such requested modification or cancellation shall be at Seller's discretion, and shall be upon such terms and conditions as Seller may require. Any additional costs or delay with result from Buyer's change order shall be borne solely by the Buyer.

- 10) Taxes: Unless otherwise indicated on the face hereof, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sales or delivery of the goods sold hereunder. If any such taxes must be paid by Seller or if Seller is liable for the collection of such tax, the amount thereof shall be in addition to the amounts for the goods sold, Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of its invoice. If Buyer claims exemption from any sales, use or other tax imposed by any taxing authority, Buyer shall save Seller harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the goods are held to be taxable.
- 11) Indemnification: The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller makes no promise or representation that the products or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller. Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to goods delivered hereunder for which the designs are specified in whole or in part by Buyer, or infringements resulting from the modification, combination or use in a system of any good sold hereunder. If a claim is based on information provided by Buyer or if the design for a good delivered hereunder is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such good infringes any patent, trademark, copyright, trade dress, trade secret or any similar right. Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the products. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work

- supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.
- 12) Set-off: Buyer is specifically prohibited from setting off any amounts due Seller in connection with this transaction.
- 13) Force Majeure: Seller shall not be responsible or liable for any delays or failures in performance or delivery due to any cause or condition beyond the control of Seller, including but not limited to; acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller.
- 14) Law, Ordinances and Regulations: Seller shall not be responsible for compliance with local interpretation of federal safety regulations or insurance codes, nor with any local laws, ordinances, codes and/or regulations which may at any time be in effect (collectively, "Laws, Ordinances and Resolutions") with respect to the products, unless such responsibility shall be expressly assumed by Seller in writing. Further, Seller shall have no responsibility whatever for compliance with such Laws, Ordinances and Resolutions by products manufactured or designed by others.
- 15) Incorporation by reference: All terms and conditions herein are hereby incorporated by reference into all Seller's quotes, acknowledgements, sales orders, shipping documents receipts and invoices, and remain in full force and effect.
- 16) Non-waiver: Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by Seller.
- 17) Severability: These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance here from.
- 18) Governing Law: This Agreement shall be governed in all respects by the law of the State of Pennsylvania. No actions arising out of the sale of the goods sold hereunder or this agreement may be brought by either party more than one (1) year after the cause of action accrues and the parties agree to submit to the exclusive jurisdiction of the appropriate court in the State of Pennsylvania for purposes of resolving any dispute or claim arising in connection with said transactions.
- 19) Entire Agreement: The terms and conditions set forth herein, together with any amendments, modifications and any different terms or conditions expressly accepted by Seller in writing, shall constitute the entire Agreement concerning the goods sold, and there are no oral or other representations or agreements which pertain thereto. Any terms or conditions in addition to, conflicts with or inconsistent with those stated herein, proposed by Buyer in any acceptance of an offer by Seller, are hereby objected to and shall not be deemed accepted by Seller. No such additional, different or inconsistent terms and conditions shall become part of the contract between Buyer and Seller unless expressly accepted in writing by Seller. Seller's acceptance of any offer to purchase by Buyer is expressly conditional upon Buyer's assent to all the terms and conditions stated herein.
- 20) Title/Security Interest: Title to materials shall pass immediately upon delivery to a carrier at the point of shipment. Buyer hereby grants to Seller a security interest (which shall be deemed a purchase money security interest) in all Product provided to Buyer by Seller, to secure payment by Seller for such Product. In the event of nonpayment by Buyer of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have all rights of, and all of the remedies available to, an unpaid secured creditor under the applicable state Uniform Commercial Code (UCC), and all other rights and remedies available at law or in equity. Buyer agrees, and, to the extent permitted by law, Seller is authorized to, execute and file whatever documents are necessary, including security agreements or financing statements, to evidence and perfect the security interest granted by this paragraph.

The following are standard fees charged for services associated with HVAC Distributors.

**DELIVERY & LOGISTICS SERVICE**

**Standard Next Day Delivery**

- For orders of \$500 or more..... No charge
- For orders under \$500 shipped UPS\* ..... \$10.95/order
- For orders under \$500 shipped via HVAC Distributors truck..... \$35.00/order
- *Back-ordered stock items on an order do not incur additional shipping charges.*

**Same Day Delivery\*\***

- For orders of \$1,000 or more..... No charge
- For orders under \$1,000..... \$100.00/order

**Approved Time-Specific Special Delivery\*\*** ..... \$35.00/order + Applicable HVAC Distributors delivery fees  
*Requested delivery time outside of normal, scheduled delivery.*

**Approved Rooftop Unit (RTU) Delivery<sup>α</sup>** ..... No charge

**WARRANTY & RETURN SERVICE**

**Stock Returns, Non-Serialized Parts & Materials Re-Stock Fee**..... 15% of item price/item

**Stock Serialized Equipment Return Inspection**..... \$35.00/item

**Non-Stock Item Returns**

- *Per vendor policy, non-stock items are non-returnable unless HVAC Distributors receives pre-approval of the return from the vendor.*
- If vendor pre-approval is received for return..... Minimum 35% restock charge/item + Applicable vendor charges

**Standard Warranty Processing**

- Primary/secondary heat exchangers & compressors purchased from HVAC Distributors
  - 1<sup>st</sup> year..... No charge
  - After 1<sup>st</sup> year..... \$25.00/claim
- All other items/parts purchased from HVAC Distributors
  - 1<sup>st</sup> year..... No charge
  - After 1<sup>st</sup> year..... \$10.00/claim
- Primary/secondary heat exchangers & compressors not purchased from HVAC Distributors
  - 1<sup>st</sup> year..... No charge
  - After 1<sup>st</sup> year..... \$50.00/claim
- All other items/parts not purchased from HVAC Distributors
  - 1<sup>st</sup> year..... No charge
  - After 1<sup>st</sup> year..... \$20.00/claim

**Unboxed/Unsealed Compressor Processing**..... \$25.00/item + Applicable HVAC Distributors warranty fees

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\* Due to size and weight restrictions with UPS shipping, this option is not available for oversized or overweight orders.

\*\* Requires approval of HVAC Distributors' CDC Management. No guaranteed availability. Fee will not be charged unless service can be provided on the day/time specified.

<sup>α</sup> Must be pre-scheduled with CDC Management. No guaranteed availability.

**APPLICATIONS DESIGN/BUILD SERVICE**

*Applications Design/Build fees listed below are returned to the customer as a credit if the equipment for the project is purchased from HVAC Distributors.*

**Residential Load Calculation**

- Under 7,000 square feet..... \$75.00
- Over 7,000 square feet..... \$45.00/30 minutes  
*Billed in 30 minute increments. Minimum 30 minutes.*

**Commercial Load Calculation**..... \$45.00/30 minutes  
*Billed in 30 minute increments. Minimum 30 minutes.*

**Manual “S”-System Analysis**..... \$45.00/30 minutes  
*Billed in 30 minute increments. Minimum 30 minutes.*

**Geothermal Field Loop Design/Calculations**

- Less than 20 ton system..... \$95.00
- *Service not available on systems greater than 20 tons*

**Applications Field Site Assistance/Design**..... \$45.00/30 minutes + \$0.55/mile  
*Time billed in 30 minute increments. Minimum 30 minutes.  
Mileage billed in mile increments. Minimum 1 mile.*

**TECHNICAL & TRAINING SERVICE**

**Phone Support**..... No charge

**On-Site Technical Assistance<sup>±</sup>**..... \$110.00/hour  
*Travel time to/from job site billed in 1 hour increments. Minimum 2 hours.  
Time at job site billed in 30 minute increments. Minimum 30 minutes.*

**Standard Technical Training**..... Fees vary by course  
*See HVAC Distributors’ current training catalog for current course fees*

**Custom Technical Training**..... Fees vary by course  
*Complete details for this service available from your Account Manager*

**HVAC MobileTech**..... \$240.00/year

**AFTER HOURS SALES SERVICE**

**Web Order Entry (24/7 ordering)**..... No charge

**After-Hours Pick-Up at Branch**..... \$50.00 per pick-up

**CREDIT CARD PROCESSING**

**Payment Made at Point of Sale with Purchase**..... No charge

**Payment Made on Invoices/Balances for Current Calendar Month**..... 1% of total

**Payment Made on Invoices/Balances for Prior Calendar Month**..... 2% of total

*“Prior calendar month” is the month the immediately precedes the current month*

**Payment Made on Past Due Invoices/Balances**..... 3% of total

<sup>±</sup> Site visit intended for consultative purposes only. Service only available for equipment purchased through HVAC Distributors from customers with accounts in good standing. A contractor representative must be present on-site to receive technical assistance. See HVAC Distributors’ On-Site Technical Assistance Policy for complete details of this service.