

STANDARD TERMS AND CONDITIONS FOR SHANKLIN HEATING & AIR CONDITIONING, LLC

1. **Parties.** The terms and conditions set forth herein ("Terms and Conditions") will govern the purchase of equipment and services from Shanklin Heating & Air Conditioning, LLC ("Shanklin") by the customer ("Customer") (collectively referred to as the "Parties") as provided in any quotations, offers to sell, proposals, payment authorization forms, purchase orders or other orders ("Orders") (Orders and Terms and Conditions are collectively defined as the "Agreement") agreed to and entered into by Shanklin and Customer.
2. **Definitions.** As used in this Agreement, the following terms are defined as such:
 "Services": the entirety of the equipment and services that Shanklin, its agents, employees or subcontractors provides or installs to Customer for any purpose.
 "Service Cost": the agreed-upon price between Shanklin and Customer for the total cost of the Services that Shanklin provides to Customer.
 "Due Date": Thirty (30) days after the date of completion of the Services.
3. **Work.** Customer agrees to pay the full Service Cost for all Services purchased from Shanklin pursuant to the terms of this Agreement as described in the order confirmation and the invoice. Payment for any and all Services purchased will be made by check, cash, credit card, or wire transfer by the Due Date. Financing charges may apply. If Customer uses a credit card as its payment method, 2.5% of the Service Cost will be added to the payment. In the event Customer fails to pay in full by the Due Date, the outstanding balance will be subject to a late fee equal to 1.5% for each month the outstanding balance remains unpaid (calculated as 18% per annum). All payments received will be applied first to any late fees and/or interest and thereafter to the cost of the Services.
 Customer is approved to receive Services on account, subject to the account terms in Paragraph 6 below.
4. **Acceptance of Orders.** Shanklin reserves the right to sell or install its Services to Customer. Orders are subject to acceptance by Shanklin. Signing the Orders, purchase order, or invoice and/or accepting the Services shall constitute acceptance of the Agreement and this Terms and Conditions by Customer.
5. **Prices.** All prices for Services will be determined by Shanklin and are subject to change or withdrawal by Shanklin without notice. All prices for Services will be set forth on Shanklin's invoice, order, or purchase orders and will be binding upon Customer. . Price quotations do not include any federal, state, local or other taxes, and Buyer agrees to pay any and all such taxes which Shanklin may be required by law to pay or collect on account of the manufacture or sale of goods and performance of any services under the Agreement.
6. **Account Terms.** If the account box is checked in Paragraph 3 and in the event the Customer's credit application provided to Shanklin is approved by Shanklin, then Shanklin will grant Customer a right to purchase Services on account. Shanklin retains the sole discretion as to establishing a credit limit for Customer's account. Shanklin reserves the right to increase or decrease the credit limit or to revoke Customer's credit at any time without notice to Customer. All purchases of Services on account will be paid in full by the Due Date by corporate check, cash, credit card, or wire transfer. All sales are subject at all times to credit approval by Shanklin.
7. **Taxes.** Customer will promptly pay Shanklin any taxes which Shanklin may be required to pay or collect upon the sale, delivery, storage, processing, use, and/or consumption of any of the Services.
8. **Performance.** Shanklin will complete Services ordered by Customer at the location(s) specified by Customer, and Customer's order is subject to this Agreement. Delivery dates of Services are not guaranteed and Shanklin will not be held responsible for any delay in performance or delivery, regardless of cause. Customer further agrees that Shanklin's invoice will be conclusive of Shanklin's actual delivery and Customer's receipt and acceptance of all Services indicated on the invoice unless Customer objects in writing within ten (10) days of the date of the invoice. Notwithstanding the foregoing, however, Shanklin's failure to reflect any sale, transaction, provision of service or credit to Customer will not limit or otherwise affect Shanklin's ability to adjust Customer's account balance to correct any mistakes.
9. **Default.** Upon Customer's default under any term or condition of these Terms and Conditions or Agreement, including, without limitation, Customer's payment obligations or insolvency as determined in the sole discretion of Shanklin, and then Shanklin may, at its option, stop completion of the Services until paid in cash, in full. Customer consents to Shanklin filing a mechanic's lien to protect its rights under this Agreement.
10. **Recovery of Legal Fees and Costs.** In the event it becomes necessary for Shanklin to file a lawsuit to enforce the terms of this Agreement, or to collect any unpaid balance due to Shanklin by Customer, and Shanklin is granted a judgment wholly or partly in its favor, Shanklin will be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees, paralegal fees, expert fees, and court costs incurred in such lawsuit and for all proceedings brought and actions taken to collect on said judgment, to the fullest extent permitted by law, if at all.
11. **Excess Costs.** If at any time the Services require extra costs above the cost specified or estimated in the Orders that were reasonably unforeseen, but necessary, and the total of all extra costs to date exceeds five thousand dollars (\$5,000) over the course of the entire completion of the Services, the Customer shall have a right to an estimate of those excess costs before the Shanklin or assignee begins Services related to those costs. Prior to the Customer's acceptance of any Services related to an excess cost, Shanklin will disclose to the Customer that if the Customer fails to approve an excess cost, completion of the work may not be possible and a charge may be imposed for any disassembly, reassembly, or partially completed work, which shall be directly related to the actual labor or parts involved.
12. **Cancellation.** Except as otherwise stated in the Orders or in this Agreement, the Agreement is not subject to cancellation or holdup upon completion of Services except with Shanklin's written consent, and only upon such terms agreed to by Shanklin that will compensate Shanklin for its loss from such cancellation or holdup upon completion of Services..
13. **Disclaimer.** Shanklin will not be responsible for any damage or injury resulting from or caused by its sale or completion of Services hereunder, including, without limitation, any delays or losses, unless such damage or injury is caused by the willful misconduct of Shanklin or unless otherwise provided in this Agreement. Furthermore, Shanklin will not be responsible for any damage or injury resulting to or caused by the completion, installation, storage, or use of the Services by Customer, including without limitation, that Shanklin will not be liable for any damages that Shanklin, its agents, or subcontractors cause to Customer's driveways, walkways, patios, and other similar areas, whether concrete or otherwise, even if the party causing the damage was negligent.
14. **Non-Assignment.** Customer may not assign or delegate its obligations under this Agreement without Shanklin's prior written consent; however, Shanklin may assign or subcontract its obligations under this Agreement without Customer's consent.
15. **Force Majeure.** Shanklin will not be responsible for any acts or omissions of the Customer. Neither party will be responsible for any acts or omissions of the other party, nor for events beyond its reasonable control (hereinafter referred to as "Force Majeure"), including, but not limited to, Acts of

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God, changes of laws or regulations or other acts of government, labor disputes, strikes, riots, mobs, fires, floods, wars, embargoes, impossibility to obtain necessary material, labor, machinery, or transportation.

16. **Governing Law.** This Agreement will be interpreted under the laws of Ohio and the parties stipulate that this Agreement came into existence, and was entered into, in Stark County, Ohio. The parties agree that any lawsuits relating to or arising out of this Agreement, the Collateral, or the Services, including but not limited to, claims for personal injury, negligence, intentional torts, or breach of contract will be brought only in Stark County, Ohio.

17. **Limitation of Damages.** **IN NO EVENT WILL SHANKLIN BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT OR THE SERVICES PROVIDED BY SHANKLIN EVEN IF SHANKLIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM. IN NO EVENT WILL THE AGGREGATE LIABILITY OF SHANKLIN FOR ANY DAMAGES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, OR THE COLLATERAL, WHETHER IN CONTRACT, TORT, NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS, OR OTHERWISE, EXCEED THE TOTAL AMOUNT CUSTOMER HAS PAID SHANKLIN FOR THE SERVICES. Customer's sole remedy will be repair or replacement as determined in the sole discretion of Shanklin.**

18. **Indemnification by Customer.** Customer covenants and agrees at all times to defend, hold harmless, and indemnify Shanklin, its directors, shareholders, officers, employees, representatives, agents, successors, and assigns from and against any and all claims, actions, lawsuits, judgments, losses, damages, liabilities, costs, and expenses, including attorney's fees, related expenses and any amounts paid in the defense or settlement, arising out of or in connection with any act or omission of Customer or any of its agents, employees, representatives, successors and assigns, the use of the equipment, products, and Services by Customer, or any other party, or as a result of Customer's breach of this Agreement. Customer further agrees to take upon itself the settlement of such claims in the defense of any suit, suits, or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments entered in such suit, suits, or legal proceedings, and all costs of attorney's fees or other expenses. Customer agrees that in any instance where such claims in any way affect Shanklin's interest hereunder or otherwise, Customer shall not consummate any settlement without Shanklin's prior written consent. Customer covenants of indemnity herein shall continue in full force and effect notwithstanding any termination or expiration.

19. **Warranty.** Except as otherwise stated in the Orders and the Agreement, Shanklin warrants that it will repair or replace, at its election, any Services manufactured, sold, installed, or completed by it that proves to be caused by defective workmanship within a period of three hundred and sixty (360) days from the date of original purchase or completion. This warranty covers normal use and does not cover damage or defect resulting from alteration, accident, neglect, improper installation, improper design, settlement or structural movement and/or movement of materials to which installed products are attached, incidents under Paragraph 15 of this Terms and Conditions, lack of protection during application, operation, or maintenance, and any cause other than workmanship defects attributable to Shanklin or assignee. The obligation of Shanklin in this Paragraph 19 is limited to the repair or replacement of the defective Services. Any components not manufactured by Shanklin, but used as part of any Services sold by it will be warranted under the terms of the original manufacturer of the subject component, and not by Shanklin.

EXCEPT AS SET FORTH HEREIN, SHANKLIN MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF WORKMANSHIP, OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THE SALE OF SERVICES HEREUNDER AND HEREBY DISCLAIMS THE SAME.

20. **Arbitration.** The Parties agree that any claim, dispute or cause of action, of any nature, including but not limited to, those arising in tort, contract, statute, equity, law, fraud, intentional tort, breach of statute, ordinance, regulation, code, or other law, or by gross or reckless negligence, arising out of or related to, the negotiations of the Agreement, the Services provided, the performance or non-performance of the Agreement or any interaction of Customer and Shanklin, its agents, or subcontractors, shall be subject to final and binding arbitration by an arbitrator appointed by the American Arbitration Association in accordance with the Construction Industry Rules of the American Arbitration Association and judgment may be entered on the award in a court of appropriate venue. Further, the Emergency Measures of Protection Rules shall be applicable. Each party shall be responsible for one-half of the arbitrator's fees. The arbitration proceeding will include all parties to the construction process who have signed any document incorporating or referring to this Agreement. The arbitrator(s) shall determine all issues regarding the arbitrability of the dispute. The powers of the arbitrator(s) shall include all legal and equitable remedies, including but not limited to, money damages, declaratory relief, and injunctive relief. Should any party refuse or neglect to appear at and participate in arbitration proceedings after due notice, the arbitrator will make an award based on evidence introduced by the parties who do appear and participate. The parties understand that by agreeing to binding arbitration they are agreeing to arbitrate and not litigate their disputes and are giving up their right to a trial by jury, and to have a trial before a judge, or to seek remedies from a court.

21. **Miscellaneous.** The terms and conditions as set forth herein, as amended from time to time, will be binding upon and inure to the benefit of the parties, their successors, heirs, executors, representatives, and assigns. This Agreement states the entire agreement between the parties and neither party will be bound by any stipulations, representations, agreement, or promises, oral or otherwise, not contained in this Agreement. This Agreement supersedes all previous agreements between the parties, either oral or in writing, and may be amended only in a writing signed by both parties. If any term or provision of this Agreement is held to be invalid, void, or unenforceable, the remainder of the Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated, and this Agreement will be construed as if the invalid, void, or unenforceable provisions were omitted. In no event will Customer's purchase order or other documents modify the terms and conditions of this Agreement, whether any such terms conflict, supplement, do not conflict, or add to this Agreement, and any such terms will be considered material deviations from this Agreement. Any waiver or failure of Shanklin to require strict compliance with the provisions of this Agreement in any respect will not be deemed a waiver of Shanklin's right to insist upon strict compliance in other respects or thereafter in the same respect. All remedies provided to Shanklin are in addition to its rights at law. No action or suit to enforce Customer's rights or remedies arising from any purchase of Services by Customer will be commenced more than one year from the date of completion of the applicable Services.

Customer acknowledges that all Services to be provided by Shanklin and obligations of the Customer are subject to the terms and conditions provided in this Terms and Conditions and Agreement.