



Standard Terms and Conditions

This document sets forth the standard terms and conditions in contracts for sale and installation between ACC CORPORATION ("ACC") and its Customers. Article 1 of this document contains terms and conditions that apply in all transactions entered into by ACC and its Customers. Article 2 contains terms and conditions that apply when ACC sells equipment that is not installed by it. Article 3 contains terms and conditions that apply when ACC installs equipment at the Customer's site. Article 4 contains terms and conditions that apply when ACC sells or licenses application software developed by ACC. All of these terms and conditions are incorporated by reference into each sales order and job quotation issued by ACC and become a part of the contract between ACC and its Customer upon acceptance of such sales order or job quotation.

ARTICLE 1

PROVISIONS APPLICABLE TO ALL ACC TRANSACTIONS

- 1.1 **ACCEPTANCE.** Except as otherwise provided in ACC's job quotation or sales order, ACC generally keeps its quotations in effect for thirty (30) days. The Customer should recognize, however, that a job quotation or sales order by ACC does not constitute a firm offer and may be revised or revoked by ACC at any time prior to acceptance. All quoted prices are conditioned expressly upon acceptance by the Customer of each and all of the terms and conditions contained in these Standard Terms and Conditions. If ACC's job quotation or sales order is accepted and the Customer's order form is used for this purpose, then the Customer expressly agrees that these Standard Terms and Conditions shall override and prevail over any inconsistent terms and conditions contained in such order form, and the issuance of such order form by the Customer shall be deemed to evidence the Customer's assent and agreement to the foregoing.
- 1.2 **ACC STANDARD WARRANTIES.** ACC's standard warranties are set forth in a separate document entitled "AC Corporation Standard Warranties". Those warranties are incorporated by reference into this document and constitute part of ACC's agreement with the Customer.
- 1.3 **PLANS AND SPECIFICATIONS.** ACC shall not be liable for damages of any kind resulting from errors, omissions, or inconsistencies in the Customer's drawings, plans, or specifications, nor shall ACC have any responsibility to ascertain whether such drawings, plans, or specifications are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations.
- 1.4 **PATENTS.** ACC shall not be responsible for, and the Customer shall indemnify and defend ACC against, any claim or suit alleging infringement of any patent, copyright, trademark, or other proprietary right resulting from the manufacture or installation by ACC or the possession or operation by the Customer of any product which is (a) specially designed by ACC for the Customer or (b) specifically requested by the Customer or required by the Customer's drawings, plans, or specifications.
- 1.5 **PAYMENTS DUE.** All payments shall be due from the Customer within thirty (30) days after the invoice date unless ACC otherwise agrees in writing. Payments received after the due date will bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less.
- 1.6 **CREDIT CONFIRMATION.** At the request of ACC, the Customer shall from time to time furnish ACC with reasonable evidence that financial arrangements have been made to fulfill the Customer's obligations to ACC.
- 1.7 **TITLE AND POSSESSION.** Title to all equipment and materials sold or provided by ACC to the Customer shall remain vested in ACC until the contract price is paid in full. If the Customer defaults in the payment or performance of its obligations to ACC or if the Customer's credit, in ACC's sole judgment, is impaired at any time, then ACC shall have the right to suspend work, to reclaim equipment, to withhold or delay shipments, and to recall and repossess goods which are in transit or which are stored with ACC for the Customer's account, until all outstanding defaults are cured and the Customer's credit is restored.
- 1.8 **INDEMNITY.** The Customer shall indemnify, defend, and hold harmless ACC from and against all claims, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) incurred by ACC which arise out of or result from the negligent act or omission or intentional misconduct of the Customer or its employees, agents, or independent contractors or subcontractors, the Customer's breach of any agreement between Customer and ACC, or the failure of the Customer to otherwise perform its obligations to ACC.
- 1.9 **DELIVERY.** An estimated shipping date will be established by ACC upon receipt of an order from the Customer. ACC assumes no liability for loss or damage, including consequential damage, due to delays in the shipment or delivery of goods. ACC will notify Customer of any anticipated delays. ACC reserves the right to deliver the Customer's order in installments. Each installment may be invoiced separately, and Customer will pay each invoice when due. Delay in delivery of any installments shall not relieve Customer of its obligations to accept remaining installments.
- 1.10 **FORCE MAJEURE.** ACC shall not be liable for any damages suffered by the Customer resulting from delay in the performance of orders or contracts if such delay is directly or indirectly caused by the act or neglect of the Customer or its



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employees, agents, or independent contractors, (b) changes ordered in the work to be performed by ACC for the Customer, or (c) labor disputes, fire, casualty, unusual delays in deliveries, civil unrest, acts of God, governmental interference or embargoes, shortage of labor, fuel, power, materials, or supplies, pandemics, or any other causes beyond ACC's control. In the event of any such delay, ACC shall not be deemed to be in default in its obligations to the Customer and the time for performance by ACC shall be reasonably extended.

- 1.11 **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL UNDER ANY CIRCUMSTANCE BE LIABLE FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFIT DAMAGES, REGARDLESS OF THE CAUSE. EACH PARTY'S AGGREGATE LIABILITY HEREUNDER AND ALL CAUSES OF ACTION RELATING TO THIS AGREEMENT SHALL IN NO EVENT EXCEED AMOUNTS PAID BY CUSTOMER TO ACC PURSUANT TO THE CUSTOMER'S AGREEMENT WITH ACC IN THE TWELVE (12) MONTHS PRECEDING THE ACCRUAL OF THE CLAIM; PROVIDED, HOWEVER, THAT ACC SHALL BE ENTITLED TO RECOVER IN FULL FOR ALL UNPAID INVOICES.
- 1.12 **ATTORNEYS' FEES.** In the event either party takes legal action in order to recover any amount payable under this Agreement, the prevailing party shall be entitled to all court costs and reasonable attorneys' fees incurred. For purposes of this section, "prevailing party" is a party plaintiff or third party plaintiff who obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a claim or is a party defendant or third party defendant against whom a claim is asserted which results in a judgment of less than fifty percent (50%) of the amount sought in the claim defended. Notwithstanding the foregoing, in the event an offer of judgment is served in accordance with G.S. 1A-1, Rule 68, a "prevailing party" is an offeree who obtains judgment in an amount more favorable than the last offer or is an offeror against whom judgment is rendered in an amount less favorable than the last offer.
- 1.13 **CONFIDENTIAL INFORMATION.** The Customer shall not, without the prior written consent of ACC, at any time directly or indirectly use for its own benefit or disclose or make available to any third party (a) any trade secrets of ACC or other business, financial, technical, or confidential information of or relating to ACC, or (b) any information, methods, ideas, drawings, notes, records, or other work product arising out of ACC's work for the Customer. All such trade secrets, information, methods, ideas, drawings, notes, records, and other work product shall be and remain the sole and exclusive property of ACC. The Customer agrees that, in addition to any other legal or equitable remedies available to ACC upon a breach of this paragraph by the Customer, this paragraph shall be enforceable by injunctive relief.
- 1.14 **SOLICITATION OF ACC EMPLOYEES.** The Customer acknowledges that ACC has expended substantial resources to recruit, train, and maintain its employees. The Customer therefore agrees that during the term of the agreement between ACC and the Customer and for a period of one (1) year thereafter, it will not (without the prior written consent of ACC) hire or attempt to hire, on behalf of itself or any other person or organization, any employee of ACC who performed installation or maintenance services at Customer's site during the immediately preceding one (1) year period. In the event of a breach of this covenant by the Customer, the Customer shall, as ACC's sole remedy, pay a fee to ACC in the amount of \$25,000.00 to compensate ACC for the cost of hiring a replacement.
- 1.15 **SUCCESSORS AND ASSIGNS.** All agreements between ACC and the Customer shall be binding upon and inure to the benefit of their respective successors and assigns. Notwithstanding the foregoing, the Customer's agreement with ACC may not be assigned by Customer without the express written consent of ACC.
- 1.16 **SEVERABILITY.** In the event that any of the terms in this document shall be held invalid, illegal, or unenforceable in any respect, the validity of the remaining terms contained herein shall not be affected, prejudiced, or disturbed in any way and this document shall be construed and enforced as if such invalid term had not been inserted herein.
- 1.17 **GOVERNING LAW.** All dealings, contracts, and agreements entered into between ACC and the Customer of which these Standard Terms and Conditions form a part shall be construed and enforced in accordance with North Carolina law, without regard to conflict of law rules, and the Customer hereby stipulates and agrees to exclusive jurisdiction in the state and federal courts of Guilford County, North Carolina. The parties each expressly consent to suit in such forum and waive any objections as to personal jurisdiction, venue, or inconvenient forum.
- 1.18 **SECTION HEADINGS.** The section headings contained in this document are for reference purposes only and shall not affect the meaning or interpretation of the terms and conditions hereof.
- 1.19 **JOINTLY DRAFTED.** This Agreement, and all the provisions of this Agreement, shall be deemed to be jointly drafted by ACC and the Customer and shall not be construed against either party on the basis of that party's role in drafting this Agreement.
- 1.20 **NOTICES.** Any notice or other communication given pursuant to this Agreement shall be in writing and shall be effective either when delivered personally or by email to the party for whom intended, or five (5) days following deposit of the same into the United States mail (certified mail, return receipt requested, or first class postage prepaid), or overnight delivery service (with confirmation of delivery), addressed to such party at the address set forth in this Agreement. Either party may designate a different address by notice to the other given in accordance herewith.



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ARTICLE 2

UNINSTALLED EQUIPMENT

- 2.1 PRICE AND SHIPPING TERMS.
- 2.1.1 Except as otherwise provided in ACC's job quotation or sales order, all shipping of uninstalled equipment is F.O.B. Point of Manufacture.
- 2.1.2 Except as otherwise provided in ACC's job quotation or sales order, prices on uninstalled equipment are exclusive of any and all city, state, and federal taxes, including, without limitation, taxes on manufacture, sales, receipts, occupation, and use, and any applicable tax will be added to the invoice as a separate charge to be paid by the Customer.
- 2.1.3 The Customer shall pay any and all fitting-up charges for the manufacture and operation of necessary tools, dies, and fixtures required to fill a particular order for the Customer. Such tools, dies, and fixtures shall remain in the possession and control of ACC and shall only be used by ACC to fill the Customer's orders; provided, however, that if a period of one (1) year shall elapse since the receipt of any order from the Customer, then ACC may thereafter make such use or disposition of such tools, dies, or fixtures as it shall deem appropriate, without accounting to the Customer for such use or disposition (or the proceeds thereof) and without rebate or proration.
- 2.2 CONDITIONS ON ORDERS. All sales orders are issued with the understanding that they are conditioned upon ACC's ability to obtain the necessary materials, and all such sales orders, together with shipments applicable thereto, are subject to ACC's current manufacturing schedules and to governmental regulations, orders, and restrictions that may be in effect from time to time.
- 2.3 RISK OF LOSS. If ACC itself delivers goods to the Customer, then the risk of loss passes to the Customer upon tender of possession. If a carrier other than ACC delivers goods to the Customer, then the risk of loss passes to the Customer when ACC places the goods in the hands of the carrier.
- 2.4 SHORTAGES. Claims for shortages in shipment shall be deemed waived and released by the Customer unless they are received by ACC in writing within ten (10) days after delivery to the Customer.

ARTICLE 3

INSTALLED EQUIPMENT

- 3.1 PRICE TERMS.
- 3.1.1 Except as otherwise provided in ACC's job quotation or sales order, all prices include shipping F.O.B. Point of Manufacture with Full Freight Allowed to the job site.
- 3.1.2 Unless specifically agreed by ACC to the contrary, no premium or overtime work is included in any sales order or job quotation issued by ACC. Any premium or overtime work requested by the Customer will be passed through to the Customer, together with the cost of all FICA, FUTA, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance attributable thereto.
- 3.1.3 All prices are subject to adjustment on a "time and material" basis (in accordance with the latest dated ACC publication entitled "Pricing Formula for Cost-Plus Contracts") in the event (i) there are delays in installation resulting from requests for approval, detection of asbestos or other hazardous substances, or any other reason not within the direct control of ACC, or (ii) concealed or unknown conditions are encountered at the site which differ materially from those indicated by the Customer or those ordinarily found to exist and generally recognized as inherent in construction activities of the type being performed by ACC.
- 3.2 PAYMENT TERMS. Unless otherwise agreed by ACC in writing, ACC will render invoices for its products and work as follows:
- 3.2.1 A down payment equal to ten percent (10%) of the quoted price shall be invoiced upon acceptance by the Customer of ACC's quotation, unless ACC specifically agrees to the contrary. The balance shall be due as and when the project is invoiced by ACC.
- 3.2.2 With regard to projects taking longer than a month to complete, ACC will render monthly invoices for its "costs" in connection with the project during the preceding period during the course of installation. For this purpose, "costs" shall be as defined in the latest dated ACC publication entitled "Pricing Formula for Cost-Plus Contracts" and shall include, without limitation, the cost of actual equipment purchased or fabricated (whether or not located at the job site), materials used, and labor expended together with all expenses associated therewith. A final payment



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constituting the unpaid balance of ACC's costs and ACC's contractor fee shall be due and payable upon substantial completion, partial occupancy, or first beneficial use, whichever occurs first; provided, however, that the Customer may retain a sum equal to the estimated cost of completing any unfinished items so long as such unfinished items are agreed to by the parties and the estimated costs of completing them are commercially reasonable and listed separately. Thereafter, the Customer shall pay to ACC, on a monthly basis, the amount retained for incomplete items as such items are completed.

- 3.3 **CHANGES, ADDITIONS, AND DELETIONS.** Any changes, additions, or deletions in the work contemplated in ACC's job quotation or in the plans and specifications on which such quotation is based shall be set forth in a Change Order which shall be executed by ACC and the Customer and which shall set forth the adjustment (if any) in the contract price. Any such adjustments shall be made on a "time and material" basis in accordance with the latest dated ACC publication entitled "Pricing Formula for Cost-Plus Contracts".
- 3.4 **QUALITY OF AND CONTROL OVER WORK.** ACC shall have sole responsibility for and sole control over construction and installation means, methods, techniques, sequences, and procedures and for coordinating all portions of its work.
- 3.5 **INFORMATION AND SERVICES REQUIRED OF CUSTOMER.**
- 3.5.1 The Customer shall provide ACC with all information, drawings, plans, and specifications in its possession which ACC shall deem necessary or appropriate in connection with the performance of its work for the Customer.
- 3.5.2 The Customer shall secure and pay for all necessary approvals, permits, easements, assessments, lien agent filings, and changes required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.5.3 Upon request, the Customer shall furnish ACC with information necessary for ACC to evaluate, give notice of, or enforce a mechanic's or materialman's lien. Such information shall include a correct statement of the record legal title to the site on which ACC's work is performed and a correct property description for such site.
- 3.6 **HAZARDOUS SUBSTANCES.** In the event that, during the course of its work, ACC encounters material reasonably believed to be asbestos, PCB, or any other hazardous or toxic substance which has not been rendered harmless, ACC shall immediately stop work in the affected area and report the condition to the Customer. ACC shall not be required to perform, nor does ACC's job quotation include, any work relating to asbestos, PCB, or any other hazardous or toxic substance. To the fullest extent permitted by law, the Customer shall indemnify, defend, and hold harmless ACC and its employees, agents, and subcontractors from and against any and all claims, damages, losses, and expenses (including reasonable attorneys' fees) arising out of or resulting from any asbestos, PCB, or other hazardous or toxic substance located at the site, including without limitation any such damages, losses, and expenses resulting from the removal thereof by ACC at the Customer's request.
- 3.7 **INSURANCE AND BONDS.**
- 3.7.1 Unless otherwise agreed by ACC in writing, ACC is not required to purchase or maintain any performance or payment bond, builders risk insurance, or product liability insurance covering ACC's work for the Customer. ACC shall purchase and maintain such comprehensive liability insurance as it shall deem appropriate from time to time.
- 3.7.2 The Customer shall purchase and maintain (i) comprehensive liability insurance in an amount deemed appropriate by the Customer from time to time, but not less than \$1,000,000, (ii) such boiler and machinery insurance as may be required by ACC or by law, (iii) loss of use insurance in amounts deemed necessary by the Customer, and (iv) all-risk fire and extended coverage insurance in a form acceptable to ACC covering the site at which ACC's work is to be performed for the full cost of replacement as of the time of any loss, insuring against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, transit, flood, earthquake, testing, and damage resulting from defective design, workmanship, or material. The said boiler and machinery insurance and the said fire and extended coverage insurance shall name ACC as an additional insured, and the Customer shall provide ACC with certificates of such insurance upon request.
- 3.7.3 Each of the Customer and ACC, on behalf of it and its insurers, waives and agrees not to assert any and all rights or claims against the other party and their respective employees, agents, and independent contractors for damages covered by its insurance policies, regardless of whether such damages are due to the fault of the other party. All insurance policies maintained by the Customer providing liability or casualty insurance coverage with respect to ACC's work or equipment installed by ACC shall provide for waivers of subrogation in favor of ACC by endorsement or otherwise.
- 3.8 **TERMINATION BY ACC.** ACC shall have the right to suspend its work for the Customer if the Customer defaults in payment or otherwise fails to perform its obligations under the agreement between ACC and the Customer. If ACC's work for the Customer is suspended for more than thirty (30) days through no fault of ACC as a result of the Customer's failure to make payment or performance or pursuant to any court order or any labor dispute, fire, casualty, unusual delays in deliveries, civil unrest, acts of God, governmental interference or embargoes, shortage of labor, fuel, power, materials, or supplies,



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pandemics, or any other causes beyond ACC's control, then ACC may, upon seven (7) days prior written notice to the Customer, terminate its agreement with the Customer and recover from the Customer payment for all work executed, ACC's fee earned to date, and any loss sustained upon any materials, equipment, tools, and machinery. In the event that ACC recommences its work after a suspension, then the contract price shall be increased by the amount of ACC's reasonable costs of shut-down, delay, and start-up.

- 3.9 INDEPENDENT CONTRACTOR. The employees, methods, equipment, and facilities used by ACC shall at all times be under its exclusive supervision and control. ACC's relationship to the Customer shall be that of an independent contractor, and nothing herein shall be construed to constitute ACC or any of its employees as an agent, associate, employee, joint venturer, or partner of the Customer.
- 3.10 PRICING FORMULA. Upon request, ACC shall make available to the Customer the latest dated ACC publication entitled "Pricing Formula for Cost-Plus Contracts".
- 3.11 ACC uses commercially reasonable efforts to follow guidance promulgated by the Occupational Safety and Health Administration ("OSHA") and Centers for Disease Control and Prevention ("CDC"), and any applicable state guidance, regarding COVID-19 safety protocols in the workplace and in performing work at the customer's site. OSHA's and the CDC's recommendations in this regard are based on information available to them at the time and may change as the science develops. Given the novelty of COVID-19, ACC cannot guarantee that following OSHA's and the CDC's recommended protocols or other safety practices adopted by ACC will reduce or eliminate the risk of COVID-19 in connection with its performance of installation and/or maintenance services for the customer. ACC makes no representations or warranties, express or implied, that systems or services provided by ACC will render contaminants harmless or otherwise reduce or eliminate exposure to COVID-19, including, without limitation, the IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, and ACC hereby disclaims all liability associated therewith. However, if a supplier of ACC makes an express warranty for a product installed by ACC in this regard, ACC will assign such warranty to the customer, without recourse to ACC.

ARTICLE 4

APPLICATION SOFTWARE

- 4.1 PROPRIETARY INFORMATION. The application software written by ACC ("Software"), the ideas and expressions contained therein, and all physical forms (including authorized and unauthorized copies), operating instructions, and copyrights relating thereto are acknowledged by the Customer to be confidential proprietary information belonging solely to ACC. The Customer shall not at any time, without the prior written consent of ACC, permit or cause any person or organization to: (a) copy or duplicate any physical form of the Software from or to any medium except for archival, security, or other regular business purposes, (b) create or recreate, or to attempt to create or recreate, the source programs, object programs, or any other aspect of the Software in whole or in part, or (c) place any such information unrestricted into the public domain. The Customer will limit access to all media containing the Software and documentation thereof to those of its employees and agents necessary to permit the Customer to use the Software, will store such media and documentation in a secure place except when being used, and will exercise all reasonable precautions to prevent unauthorized access.
- 4.2 NOTIFICATION OF UNAUTHORIZED USE. The Customer agrees to notify ACC promptly upon discovery of any unauthorized possession, use, or knowledge of any part or physical form of the Software, or of any other confidential information made available to the Customer, by anyone not authorized by ACC to have such possession, use, or knowledge, and will cooperate with ACC in every reasonable way to help ACC regain possession, prevent further unauthorized use, and/or recover damages caused by such use.

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