

### **Terms and Conditions**

1. **The Parties:** Air Blue Heating & Cooling, Inc. (the “Company”) and the customer (the “Customer”) identified on the front of the Invoice shall be collectively referred to herein as the “Parties.”

2. **The Agreement:** The Agreement includes the Terms and Conditions set forth herein and incorporates the Invoices to which the Terms and Conditions are expressly referenced therein. The Invoice and Terms and Conditions are collectively referred herein as the “Agreement.”

3. **Consideration:** In consideration of the mutual covenants and promises as set forth in the Agreement and other and good and valuable consideration received, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree to be bound by the terms of the Agreement.

4. **The Services:** All Services identified and itemized in the Invoice will be completed in a professional, workman-like manner in accordance with the custom and practice within the HVAC industry. Any alterations or deviations to the Services identified in the Invoice will be performed only upon prior written authorization of Customer (“Change Order”) and any increase in cost above the estimate in the Invoice will be paid by Customer. The Customer may provide a “Change Order” verbally at which time the Company will memorial the Change Order in a subsequent Invoice (the “Change Order Invoice”). The issuance of a Change Order Invoice obligates the Customer to pay for the work performed associated with the Change Order Invoice. The Services do not include, and Company is not responsible for, any carpentry services, painting, plastering, patching, or repairs, or any electrical, plumbing, or gas line work unless specifically itemized in the Invoice.

Company does not have control over equipment availability and delivery and all proposed completion dates are estimates. Customer acknowledges that Company is relying on Customer’s current existing HVAC system, insulation system, hydronic piping systems, valves, refrigeration piping, electrical and/or gas systems, or leaking refrigerant (“Existing System”) and as a result Company assumes no responsibility the Existing System. Likewise, the Company also relies on the Customer’s current existing WI-FI or wireless internet system and as a result Company assumes no responsibility for interruptions to WI-FI or the wireless internet system

Company shall not be liable for, nor does the Services include any identification, detection, abatement, and encapsulation, storage, removal, or transportation of any regulated or hazardous substances which may include, but is not limited to asbestos, certain refrigerants or refrigerant oils, or lead paint. If any such products or materials are encountered during the course of the Services, Company can, in its sole discretion, discontinue the Services until the regulated or hazardous materials have been removed or the hazard or liability is eliminated. Such discontinuation of the Services does not constitute a breach of the Agreement.

If the Services cannot be performed due to the Existing System, Customer agrees that it will pay an additional tune-up charge so that Services can be performed, in addition to any

diagnostic fees that may be incurred to make the Existing System operable.

If Customer directs Company not to perform any repairs or recommended repairs necessary to perform the Services, Customer will be responsible for Company's minimum service fee and the diagnostic fees. If there is any delay to complete the Services due to the Existing System, Company reserves the right to be compensated for any loss due to delay.

**Permits:** Company is not responsible for obtaining or closing permits with the appropriate City, Village, Municipality, County, or governing agency to perform the Services or any other work that may be performed by Company under this Agreement or warranty. If a permit is required, Company shall notify the Customer in writing, and Customer is responsible to obtain the appropriate permit from the City, Village, Municipality, County, or governing agency, as applicable. Company shall not be responsible in any delays caused by receiving a permit to perform the Services. Customer is responsible for all fees related to the permit. If street closure is needed, Customer is responsible for all fees and permits related thereto. Customer shall be liable for any fines or fees assessed to Company for failure to obtain any required permits or approvals.

**Sub-Contractor:** The Customer acknowledges and agrees that the Company may hire a sub-contractor or sub-contractors to complete some or all of the work identified in the Invoice. The Customer acknowledges and agrees that any liability, loss or damages caused directly or indirectly by the services performed by the sub-contractor or sub-contractors will solely be the responsibility of the sub-contractor or sub-contractors and that the Customer will only seek recovery for the Customer's loss or damages from the sub-contractor or sub-contractors and waives any right to seek recovery for the Customer's loss or damages as a result of the sub-contractor's or sub-contractors' conduct from the Company.

**Right of Termination:** The Customer acknowledges and agrees that the Company has the right to terminate the Agreement for any reason, for cause or without cause, and the Company shall not be liable to the customer for damages in any form, including consequential, punitive or exemplary damages, for the Company's termination of the Agreement.

5. **Payment:** Payment for performance of the Services is due on the same day the Services are completed or within seven (7) days of substantial completion of the Services. If payment of the Invoice is not timely received ("Event of Default"), Customer agrees that the unpaid balance of the Invoice shall bear interest equal to nine 9% per annum. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of three hundred sixty-five (365) days. Upon an Event of Default, Customer shall pay Customer its costs of collection and enforcement of this Agreement which shall include court costs, reasonable attorneys' fees and legal expenses

6. **Limitation of Liability and Waiver:** COMPANY SHALL HAVE NO RESPONSIBILITY FOR LIABILITY TO CUSTOMER, AND CUSTOMER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST COMPANY, WITH RESPECT TO ANY OF THE FOLLOWING: (A) ANY LIABILITY, LOSS OR DAMAGE CAUSED DIRECTLY OR INDIRECTLY BY THE SERVICES PERFORMED BY COMPANY, (B) ANY RISKS RELATED TO THE SERVICES THERETO; (C) ANY INTERRUPTION OF

**SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS, REGARDLESS OF WHETHER CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; ANY LIABILITY, LOSS OR DAMAGE CAUSED DIRECTLY OR INDIRECTLY BY THE SERVICES PERFORMED BY A SUB-CONTRACTOR OR (E) INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES. IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF COMPANY EXCEED 50% OF THE AMOUNTS PAID TO COMPANY UNDER THIS AGREEMENT. THE FAILURE OF EITHER PARTY TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT BE CONSTRUED AS A WAIVER OR LIMITATION OF THAT PARTY'S RIGHT TO SUBSEQUENTLY ENFORCE AND COMPEL STRICT COMPLIANCE WITH EVERY PROVISION OF THIS AGREEMENT.**

7. **Indemnity:** Customer shall indemnify and defend Company against, and hold Company harmless from, any and all claims, losses, actions, damages, expenses which include reasonable attorney's fees and costs, obligations, liabilities or liens (collectively "Claims"), whether foreseeable or unforeseeable, arising out of this Agreement and the Services, regardless of the reason therefore and including, without limitation, any Claims arising under the doctrine of strict liability or by operation of law. It is the intent of the Parties that this provision be construed to provide indemnification to Company to the maximum extent permitted by law. If this provision is found in any way to be overbroad, it is the Parties' intent that this provision be enforced to allow indemnification to the maximum extent permissible. "Losses" means any and all losses, liabilities, obligations, personal injury, bodily injury (including death), property damage, loss or theft of property, damages, penalties, fines, actions, causes of action, claims, suits, demands, costs and expenses of any nature whatsoever, including reasonable attorneys' and paralegals' fees and other costs of defense, investigation and settlement, costs of containment, cleanup and remediation of spills, releases or other environmental contamination and costs of enforcement of indemnity obligations.

Customer shall indemnify and defend Company against, and hold Company harmless from, any and all Claims and Losses, whether foreseeable or unforeseeable arising out of the Services, including, without limitation, indemnifying and defending Company against, and holding the harmless Company from Claims that arise out of Company's own negligence.

8. **Warranties: Express Warranties:** The only express warranty provided by Company is a for the labor for the equipment installed by Air Blue and identified in the Invoice (the "All-Labor Warranty"). Customer must service the equipment twice a year by Company to maintain Company's All-Labor Warranty. Maintenance service must be done once in the fall or winter and a second time in the spring or summer. If Customer is seeking to request services under Company's All-Labor Warranty, Customer must show that the equipment has been serviced according to this Agreement. The only work that is under Company's All-Labor Warranty is for those Services in the Invoice related to the equipment identified in the Invoice and shall not include any electrical, gas, supports, structural modifications and supports, crane, test and balancing, even if included in the Invoice. Any additional work that must be performed that is not covered by the All-Labor Warranty will be billed to Customer and itemized showing the specific work that was performed.

The Company's All-Labor Warranty is void and disclaimed if the Customer has failed to pay a previously issued Invoice or the Customer has failed to service the equipment twice a year

**DISCLAIMER OF EXPRESS WARRANTIES: OTHER THAN THE EXPRESS WARRANTY IDENTIFIED ABOVE (THE ALL-LABOR WARRANTY), COMPANY HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS WARRANTIES. THE ALL-LABOR WARRANTY IS VOID AND DISCLAIMED IF THE CUSTOMER HAS FAILED TO PAY A PREVIOUSLY ISSUED INVOICE OR FAILS TO BE ABIDE BY THE TERMS OF THE ALL-LABOR WARRANTY.**

**DISCLAIMER OF IMPLIED WARRANTIES: FOR ANY EQUIPMENT PURCHASED BY CUSTOMER OR PROVIDED BY COMPANY, COMPANY HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, WHETHER WRITTEN OR ORAL, WITH RESPECT TO THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR REPRESENTATIONS CONCERNING THE MERCHANTABILITY OF THE EQUIPMENT; THE FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE ABSENCE OF ANY LATENT DEFECTS IN THE EQUIPMENT; AND ANY OTHER IMPLIED WARRANTY NOT SPECIFICALLY IDENTIFIED. CUSTOMER ACCEPTS RESPONSIBILITY WITH RESPECT TO ALL SUCH RISKS, AND COMPANY SHALL HAVE NO RESPONSIBILITY THEREFOR FOR ANY EQUIPMENT EITHER PURCHASED BY CUSTOMER OR PROVIDED BY COMPANY.**

9. **Choice of Law, Jurisdiction, Venue, and Waiver of Trial By Jury:** The Agreement shall be deemed to have been negotiated and entered into within the State of Illinois. Accordingly, except to the extent, if any, that they are preempted by Federal Law, the laws of the State of Illinois shall govern the construction and interpretation of the Agreement.

10. **Consent to Jurisdiction and Venue:** Any and all actions or proceedings in any way arising out of, or relating to, the Services or the Agreement, must be brought and litigated in the Circuit Court of Cook County, State of Illinois. The Parties hereby consent and submit to the jurisdiction and venue of any court located within Cook County, Illinois, and waives any argument that the Circuit Court of Cook County, State of Illinois lacks personal or subject matter jurisdiction or is an improper venue. The above venue provision will be inapplicable to actions in which Company chooses to proceed with a claim to foreclose a Mechanics Lien under the Illinois Mechanics Lien Act. The Mechanics Lien claim will be brought in the venue appropriate under Illinois law.

11. **Waiver of Jury Trial:** The Parties, having been represented by counsel, or having had the opportunity to seek the advice of counsel, each knowingly and voluntarily waive any right to a trial by a jury in any action or proceeding relating to the Agreement and the Services.

12. **Attorney's Fees and Costs:** If Company is the prevailing party in any court action against Customer, arbitration proceeding, or other alternative dispute resolution procedure with respect to any claim or dispute relating to, or arising out of, the Agreement or related to Company's Services, Company shall be entitled to recover from Customer Company's attorney's fees, costs, and

**Commented [WRL1]:** Is there an arbitration provision?

expenses in connection with the dispute.

13. **Severability**: It is the Parties' intent that the Agreement be enforced to the fullest extent as allowed by law and that if any provision of the Agreement is found to be unenforceable by any court or agency of competent jurisdiction, the remaining provisions remain in full force and effect.

14. **Force Majeure**: The Parties shall not be liable under the Agreement for their failure or delay in performing their obligations herein where such failure or delay in performing is by reason of natural disaster, pandemic, endemic, closing of the public highways, government interference, or any similar event or occurrence beyond the reasonable control of the affected Party, and the Parties shall not have any liability to each other for any resulting delay in performance or failure to perform provided that the Parties shall use their best efforts to minimize such force majeure period.

15. **Entire Agreement**: Unless otherwise agreed to in writing, the Terms and Conditions, the Invoice, and any Change Order contains the entire understanding of the Parties and supersedes all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. To the extent there is any conflict between any document, these Terms and Conditions shall control. The Parties further intend that the Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving the Agreement.

16. **Time is of the Essence**: Time is of the essence with respect to each and every covenant, agreement, and obligation of Customer under the Agreement.

17. **Remedies**: Nothing in this Agreement will prohibit Company from pursuing any other remedies at law or in equity, including, but not limited to claims for a Mechanics Lien.

18. **Execution of this Agreement**: Customer acknowledges and represents that the individual who executes the Invoice has agreed to the Terms and Conditions set forth in the Agreement and that individual has the authority to do so, and that Customer acknowledges, represents, and warrants that Customer has read and fully understands each and every provision of the Agreement and has had sufficient time and opportunity to consult with Customer's own legal counsel prior to executing this Agreement.

19. **Counterparts**: The Agreement is considered executed as of the execution of the Invoice and that the Invoice may be executed in any number of counterparts, including, but not limited to facsimile or by attachment to electronic mail, each of which shall be deemed to be a duplicate of the original hereof.

20. **Notices**. Notices and all other communications provided for in this Agreement must be in writing and will be deemed to have been duly given (i) on the date of delivery, if delivered by hand; or (ii) on the date of transmission, if delivered by electronic mail.

21. **Construction**. The headings and titles of the Sections of this Agreement are not a part of this Agreement but are for convenience only and are not intended to define, limit or construe the

contents of the various Sections. The term “including” means “including, but not limited to,” unless the context clearly indicates otherwise. Each and every exhibit to this Agreement shall be deemed incorporated it to and be a part of this Agreement by reference thereto

22. **No Creation of Partnership or Joint Venture:** None of the terms in the Agreement are intended to create or imply the creation of a Partnership or Joint Venture between Company and Customer and any other entity. Company and Customer have elected to contract with each other as separate and distinct entities which do not have any shared control or interest in each other’s operations, ownership, property, profits, and losses.