



STANDARD TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (“Terms”) shall govern all proposals, quotations, orders and contracts for the sale of goods and services of MTS to Purchaser. These Terms supersede any prior written or oral agreement, understanding, representation or promise, and any pre-printed or standard terms and conditions contained in Purchaser’s request for proposal/quote, purchase order, invoice, order acknowledgement, contract or other similar document. These Terms may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement, signed by an authorized representative of MTS and Purchaser. MTS’s acknowledgement of Purchaser’s order shall not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described.

1. DEFINITIONS:

“MTS” means My Three Sons Heating & Air, LLC or the affiliated MTS entity named in the proposal or order which is providing the goods and/or services. “Purchaser” means the company who accepted MTS’s offer or is named in the order. The goods and/or services provided by MTS to Purchaser shall collectively be referred to as “Work”.

2. PRICES & TAXES: Unless otherwise mutually agreed to in writing, prices do not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by MTS or, alternatively, shall provide MTS with acceptable tax exemption certificates. MTS shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the Work. Stenographic, clerical and mathematical errors are subject to correction. Prices are exclusive of expenses related to special packaging or procedures to cover unique circumstances of shipment or storage unless specifically noted. Until acceptance of order on these Terms, quoted prices are subject to change.

3. DELIVERY & PERFORMANCE: Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change, and MTS shall use commercially reasonable efforts to meet such dates; provided, however, that MTS shall not be liable in damages or otherwise, nor shall Purchaser be relieved of its performance hereunder, because of MTS’s failure to meet them. Additionally, MTS shall not be liable, directly or indirectly, for any delay in or failure to perform caused by carriers or suppliers; labor difficulties, shortages, strikes or stoppages of any sort; difficulty in obtaining materials; customer requested order changes; fires, floods, storms, accidents, or acts of God; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee and/or governmental restrictions; any statute, sanction, injunction or other governmental restraint or prohibition; or other causes beyond MTS’s reasonable control. In the event of any such delay, the date of delivery/performance shall be extended for a length of time at least equal to the period of the delay. All Work for which MTS does not receive notice of rejection for within seven (7) days after receipt, will be deemed accepted. If Purchaser fails to perform any of its obligations under this agreement, MTS shall be entitled to suspend its performance under the agreement until such time as Purchaser performs such obligations, and any dates for the delivery of goods or performance of services shall be extended for an amount time determined in MTS’s discretion.

4. SHORTAGE; DAMAGE: If the materials or equipment included in this order/proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of MTS, then in the case of such temporary unavailability, the time for performance of the Work

shall be extended to the extent thereof, and in the case of permanent unavailability MTS shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefor. Title passes to Purchaser upon Purchaser’s payment in full for the Work. Risk of loss in all goods sold hereunder shall pass to Purchaser upon delivery to the carrier.

5. SCOPE OF WORK: Any MTS proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. MTS agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge MTS for any costs or expenses without MTS’s written consent

6. PAYMENT: MTS may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Unless otherwise agreed in writing by MTS, payment for Work shall be net thirty (30) days. Waivers of lien will be furnished upon request, as the work progresses, to the extent payments are received. MTS retains all remedies for Purchaser’s insolvency including, but not limited to, the right to stop work and/or delivery, reclaim any goods delivered, or withhold delivery except for cash. Failure to pay invoices at maturity date, at MTS’s election, makes all subsequent invoices immediately due and payable and MTS may stop work and/or withhold all subsequent deliveries until the full account is settled and MTS shall not, in such event, be liable for non-performance of contract in whole or in part. Purchaser agrees to pay, without formal notice, one and one-half percent (1.5%) per month of the amount not paid when due, or, if such rate is in excess of applicable governing law, Purchaser agrees to pay the maximum permitted rate. No deduction, whether by way of set-off, counterclaim or otherwise, shall be made by Purchaser. If prerequisites for any payment (such as delivery, completion or formal acceptance) cannot be satisfied due to Purchaser’s breach, such payment shall nevertheless become due and payable at the time agreed to and MTS’s further right to seek damages shall remain unaffected.

7. CANCELLATIONS & CHANGES: In the event of Purchaser’s cancellation, Purchaser shall be liable for a cancellation charge equal to the greater of (i) twenty-five percent (25%) of the purchase price and (ii) any loss or cost incurred by MTS, including, but not limited to, cost of materials, labor, engineering, reconditioning and a reasonable profit margin. Purchaser is responsible for all reasonable storage, insurance, and all other expenses incurred by MTS as a result of Purchaser’s cancellations and/or changes. No changes to the specification or the order are accepted without the prior written consent of both parties. In the event Purchaser requests a change, MTS will provide a quotation to Purchaser within ten (10) days detailing the corresponding change in delivery, price, materials, and similar. MTS shall not be obligated to implement the requested change until the quotation is agreed by the parties.

8. LIMITED WARRANTY: Unless otherwise mutually agreed to in writing, (a) MTS warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by MTS, for a period of one (1) year from installation, and (b) MTS services are warranted to Purchaser to have been performed in a workmanlike manner for a period of ninety (90) days from the date of performance. If the Work does not conform to the warranty stated above, if Purchaser provides written notice to MTS of any such defect within thirty (30) days after the appearance or discovery of such defect then as Purchaser’s sole remedy, MTS shall, at MTS’s option, either repair or replace the defective goods or re-perform defective services. Third party goods furnished and/or installed by MTS will be repaired or replaced as Purchaser’s sole remedy, but only to the extent provided in and honored



STANDARD TERMS AND CONDITIONS OF SALE

by the original manufacturer's warranty. Unless otherwise agreed to in writing, MTS shall not be liable for breach of warranty or otherwise in any manner whatsoever for: (i) any goods or services which, following delivery or performance by MTS, has been subjected to accident, abuse, misapplication, improper repair, alteration, improper installation or maintenance, neglect, or excessive operating conditions; (ii) defects resulting from Purchaser's specifications or designs or those of Purchaser's contractors or subcontractors other than MTS; (iii) damage resulting from the combination, operation or use with equipment, products, hardware, software, firmware, systems or data not provided by MTS, if such damage or harm would have been avoided in the absence of such combination, operation or use; or, (iv) Purchaser's use of the Work in any manner inconsistent with MTS's written materials regarding the use of such Work. In addition, the foregoing warranty shall not include any labor, dismantling, re-installation, transportation or access costs, or other expense associated with the repair or replacement of the Work. THE WARRANTIES CONTAINED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES AVAILABLE TO PURCHASER AND MTS HEREBY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. COMPLIANCE WITH LAWS: MTS shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the Work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.

10. LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN: (A) IN NO EVENT SHALL MTS BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION, THIRD PARTY CHARGES AND COSTS, LOST PROFITS, PRODUCT, PRODUCTION, BUSINESS OR BUSINESS OPPORTUNITY, REGARDLESS OF THE CAUSE, INCLUDING WITHOUT LIMITATION, THE NEGLIGENT ACTS OR OMISSIONS, BREACH OF CONTRACT, WARRANTY (EXPRESS OR IMPLIED) OR DUTY (STATUTORY OR OTHERWISE) OR STRICT LIABILITY OF MTS OR ANY OTHER THEORY OF LEGAL LIABILITY; AND (B) MTS'S AGGREGATE LIABILITY ARISING FROM OR IN CONNECTION WITH ALL ORDERS AND CONTRACTS FOR GOODS AND SERVICES UNDER THESE TERMS SHALL NOT EXCEED THE CONTRACT PRICE FOR THE GOODS AND/OR SERVICES FOR WHICH LIABILITY IS CLAIMED.

11. HAZARDOUS MATERIALS: Unless specifically noted in the scope of work or services undertaken by MTS under this agreement, MTS's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment hazards or dangerous substances, to include but not be limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by MTS shall not operate to compel MTS to perform any work relating to the aforementioned hazards without MTS's express written consent.

12. OCCUPATIONAL SAFETY AND HEALTH: The parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and

Health Act relating in any way to the project or project site.

13. APPLICABLE LAW; VENUE; ARBITRATION: The rights and duties of the parties hereunder shall be governed by the laws of the State where the applicable project is located, excluding its conflicts law and choice of laws principles. The prosecution of any action or the arbitration of any dispute shall be instituted or heard in the State where the applicable project is located. The prevailing party (as determined by the Arbitrator) shall be entitled to recover the cost and expense of the litigation, including reimbursement of all reasonable attorneys' fees, expert witness fees, costs of appeal and costs to enforce the arbitration provision contained herein. Nothing herein shall limit any rights under construction lien laws.

14. INDEMNITY: MTS shall indemnify Purchaser from and against third party claims only to the extent directly caused by the negligence or willful misconduct of MTS, its employees, contractors, or agents.

15. INSURANCE: MTS shall maintain insurance coverage consistent with its existing programs but shall not name Purchaser as an additional insured nor waive any rights of subrogation MTS or such insurers may have against Purchaser or its affiliates. MTS will provide Purchaser with written notice of cancellation of any applicable policy thirty (30) days prior to the effective cancellation date of such policy, and will provide Purchaser with its standard certificate of insurance upon request.

16. NO OTHER CONTRACT PROVISIONS; OTHER: There are no representations, agreements, obligations, or conditions, expressed or implied, statutory or otherwise, relating to the subject matter hereof, other than contained herein. These Terms constitute a completely integrated agreement and cannot be modified unless modifications are accompanied by signed writing approved by MTS. For the avoidance of doubt and not in limitation of the foregoing, MTS shall not be bound by the terms of any contract between Purchaser and any third party or other flow down provisions, regardless of whether Purchaser notifies MTS of such terms unless MTS expressly agrees to be bound by such terms in writing by an authorized representative of MTS. If any provision hereof is invalid or not enforceable under applicable law, the remaining provisions shall remain in full force and effect. MTS reserves the right to transfer or assign its obligations, rights and responsibilities hereunder, so long as such successor or assign agrees to these Terms. Any assignment of Purchaser's rights hereunder without MTS's consent (which shall not be unreasonably withheld) shall be void. MTS's failure to require Purchaser's performance of any of these Terms shall not serve as a waiver of or diminish MTS's rights to require strict performance of these Terms.

17. EO CONTRACT CLAUSE: MTS and Purchaser agree to abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, Sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, national origin, protected veteran status or disability.