

## **CLIMATEC TERMS AND CONDITIONS OF SALE – TIME & MATERIAL (T&M)**

1. **SCOPE OF WORK.** This proposal is valid for 60 days from date of proposal. Beyond that time Climatec reserves the right to revise any or all portions of it. This proposal is based upon the use of straight time labor only unless stated otherwise in this proposal. Plastering, patching and painting are excluded unless stated otherwise in this proposal. “In-line” duct and piping devices, including but not limited to valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Climatec, shall be distributed to and installed by others under Climatec’s supervision but at no additional cost to Climatec. Purchaser agrees to provide Climatec with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. Climatec agrees to keep the jobsite clean of debris arising out of its own operations. Purchaser shall not back charge Climatec for any cost or expenses without Climatec’s written consent.

This proposal shall become a binding agreement (“Agreement”) between the parties upon the Purchaser’s written acceptance, whether by signature, issuance of a purchase order referencing this proposal, or other written authorization to proceed. Upon such acceptance, the terms and conditions set forth herein shall govern the scope of work and all obligations between the parties. Notwithstanding the foregoing, if Climatec commences performance of the work or delivers any materials in response to the Purchaser’s request, such performance shall also constitute acceptance of and agreement to these terms and conditions. The commencement of work shall create a binding obligation between the parties in accordance with this Agreement, regardless of whether a formal signature or purchase order has been issued.

Unless specifically noted in the statement of the scope of the work or services undertaken by Climatec under this agreement, Climatec’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 to be limited to asbestos, PCBs, or mold 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 Climatec shall not operate to compel Climatec to perform any work relating to Hazards without Climatec’s express written consent.

2. **INVOICING & PAYMENTS.** Climatec may invoice Purchaser for all materials delivered to the job site or to an off-site storage facility and for the work performed on-site and off-site. Purchaser agrees to pay Climatec amounts invoiced upon receipt of invoice. Waivers of lien will be furnished upon request, as the work progresses; to the extent payments are received. If Climatec’s invoice is not paid within 30 days of its issuance, it is delinquent and Climatec shall add 1% per month interest onto delinquent amounts.

3. **MATERIALS.** If the materials or equipment included in this Agreement become temporarily or permanently unavailable, the time for performance of the work shall be extended to the extent thereof, and in case of permanent unavailability, Climatec 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 reasonable substitute therefore.

4. **WARRANTY.** Climatec 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 Climatec, for a period of one (1) year from the installation date. Climatec warrants that for equipment furnished and/or installed but NOT manufactured by Climatec, Climatec will extend the same warranty and terms and conditions, which Climatec receives from the manufacturer of said equipment. For equipment installed by Climatec, if Purchaser provides written notice to Climatec of any such defects within thirty (30) days after the appearance or discovery of such defect, Climatec shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by Climatec shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

5. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT AND EXCEPT FOR CLIMATEC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: CLIMATEC AND ITS AFFILIATES, AND THEIR RESPECTIVE SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, CONTRACTORS, SUCCESSORS AND ASSIGNS SHALL: (A) NOT BE LIABLE FOR ANY OF THE FOLLOWING LOSSES OR DAMAGES: EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST SALES, LOSS OR CORRUPTION OF DATA (INCLUDING LOSS OF DATA DUE TO A CYBERSECURITY BREACH), LOSS OF PRODUCT USE, LOSS OF BUSINESS, LOSS OF GOODWILL, DOWNTIME COSTS, DAMAGE TO ASSOCIATED EQUIPMENT, LOSS OF REPUTATION, LOSS OF DATA, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICES, OR CLAIMS OF PURCHASER'S END USER PURCHASERS, FOR SUCH DAMAGES OR LOSSES), EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES OR LOSSES WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND (B) IN NO EVENT SHALL CLIMATEC'S TOTAL AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER UNDER TORT, CONTRACT, WARRANTY OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID BY PURCHASER TO CLIMATEC FOR THE SERVICES GIVING RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING NOTICE OF THE CLAIM, AND AS TO (A) AND (B) WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

6. **TAXES.** The price of this Agreement does not include duties, sale, use, excise or other similar taxes unless required by federal, state or local laws unless stated otherwise in this proposal. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by Climatec or, alternatively, shall provide Climatec with acceptable tax exemption certificates. Climatec shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work.

7. **THIRD PARTY SOFTWARE.** Equipment or systems may incorporate third party firmware or software. As a result, manufacturer's end user license agreement (EULA) will govern the terms of firmware or software contained in that equipment or systems and restrictions may apply. Climatec is hereby authorized to accept any EULA on behalf of Purchaser in the course of providing the Services. Climatec shall not be responsible or liable for the terms of any such EULA and any applicable updates to the terms of such EULA. Purchaser shall be solely liable for all such terms related to such firmware or software in your equipment and systems, and all applicable updates. To the extent the firmware or software of the equipment or systems or any updates contains free or open-source software (collectively, "OSS"), such OSS may be subject to separate third-party OSS licensing terms and conditions ("OSS-Terms and Conditions"). Under such OSS-Terms and Conditions, Climatec may be required to provide the OSS-Terms and Conditions to Purchaser and Purchaser must comply with all of the applicable OSS-Terms and Conditions and fulfill all corresponding obligations of the applicable OSS-Terms and Conditions, especially if Purchaser further distributes, publishes or provides the software through sales or other transfer to third parties (including an end user or Purchaser). Such obligations may include, for example, documentation obligations or obligations to provide the source code of any firmware or software in which the OSS has also been integrated. An overview of all OSS-components contained in the firmware or software of the equipment or system, as well as corresponding license text of the OSS Terms and Conditions (of all originating OSS authors), are part of or are included with the firmware/software and/or documentation. New or updated firmware or software component versions may contain other and/or additional OSS. For such other and/or additional OSS, the same terms and conditions as applicable apply. Purchaser shall use commercially reasonable efforts to not combine or request Climatec to combine the other any software, goods and/or services with any OSS or other data in any manner, which would result in the other party's software, goods and/or services becoming subject to the terms of an OSS license.

8. **FORCE MAJEURE/DELAYS.** Climatec shall be excused from performance and shall not be liable for any delay or failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control resulting from or attributed to acts or circumstances beyond Climatec's reasonable control, including but not limited to war, acts of terrorism, state or municipal emergencies, epidemics, pandemics, acts of God, man-made or natural disasters (such as earthquakes, fire, severe weather conditions or floods), medical crisis, criminal acts, transportation delays, Government required shut-downs, labor disputes or strikes, conditions of the premises, acts or omissions of the Purchaser, owner or other contractors or delays caused by an inability to obtain labor (direct or subcontracted) or materials, products, equipment or software.

All prices for goods are subject to change in response to tariffs, duties, surcharges, or other taxes imposed on Climatec by any governmental authority. Climatec will provide the Purchaser with written notice of any such changes as soon as reasonably practicable. Any such tariffs, taxes, or regulatory fees that directly increase the Climatec's cost of goods will be passed through to the Purchaser. If a tariff or tax is imposed retroactively or after an order is placed, Climatec reserves the right to adjust pricing accordingly. In the event of a dispute regarding such adjustments, both Parties agree to engage in good-faith negotiations to resolve the issue.

9. **COMPLIANCE WITH LAWS.** Climatec and Purchaser shall comply with all applicable federal, state, and local laws and regulations. Purchaser acknowledges that both Purchaser and

Climatec are required to comply with applicable export/import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the products, Climatec's Services and software updates, including any export/import license requirements. Purchaser agrees that products will not at any time directly or indirectly be used in a manner which will result in non-compliance with any export/import laws and regulations. Permits required for the execution of the Services shall be obtained and paid for by the Purchaser, unless provided otherwise in the Proposal.

10. **APPLICABLE LAW & JURISDICTION.** This Agreement and all disputes between the parties arising out of or related thereto shall be governed by the laws of the State of Arizona except for its choice of law rules; the United Nations Convention on the International Sale of Goods shall not apply. Any and all disputes, controversies, differences, or claims arising out of or relating to this Agreement shall be resolved exclusively through binding arbitration, except that either party shall have the right to seek interim injunctive relief at any time, under seal to maintain confidentiality to the extent permitted by law, solely in either the Arizona state or federal courts, with venue in Phoenix, to which the parties consent to jurisdiction. A request by a party to a court of competent jurisdiction for such interim measures shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate. The arbitration proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") as amended from time to time, except as modified by this clause or by mutual agreement of the parties and shall be governed by the United States Federal Arbitration Act. Within 14 days after the commencement of arbitration, the parties shall endeavor to mutually select one person to act as arbitrator; if the parties are unable to agree, the arbitrator shall be selected by the AAA pursuant to the Commercial Arbitration Rules. The arbitration shall be conducted in Phoenix, Arizona. The arbitrator's award shall be final and binding. Each party shall bear its own attorney fees and costs, and each party shall bear one half the cost of the AAA and the arbitrator, unless the arbitrator finds a claim(s) or defense(s) to have been frivolous or harassing, in which case fees and costs for such claim(s)/defense(s) may be assessed in the arbitrator's discretion. The parties agree that a primary purpose of this arbitration agreement is to increase efficiency and reduce expense in resolving disputes. Accordingly, in setting the discovery permitted and timeframe for the arbitration, the arbitrator shall give significant weight to the foregoing purpose. Discovery shall not be permitted that is disproportionate to the reasonable value of the dispute. The arbitrator shall have no authority to award punitive damages, or any other damages excluded herein, to the maximum extent permitted by law. Except as may be required by law, neither a party, its counsel, nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Nothing herein shall limit any rights under construction lien laws.

11. **INSURANCE.** Insurance coverage in excess of Climatec's standard limits will be furnished when requested and required and at Climatec's discretion the costs of this additional insurance may be passed on to the Purchaser. No credit will be given or premium paid by Climatec for insurance afforded by others.

12. **INDEMNITY.** Purchaser shall indemnify, defend and hold Climatec, its affiliates, and their respective employees, representatives, agents, assigns or successors for all claims, liabilities,

damages, costs and expenses (including reasonable attorney fees) (collectively, "Losses") incurred by Climatec in connection with such Losses (including lawsuits, administrative claims, regulatory actions, and other proceedings) caused or arising out: of (i) Purchaser's infringement or misappropriation of any intellectual property rights of any third party, or; (ii) bodily injury or property damage caused by Purchaser, or its employee, representative or agent; (iii) negligent act or omission or willful misconduct by Purchaser or its employee, representative or agent; (iv) Purchaser's breach of this Agreement, (v) Climatec's compliance with any design, hardware, software, data, instructions provided by Purchaser; (v) Purchaser's misuse or improper installation, storage, maintenance or use of Purchaser's equipment or systems, including failure to implement software updates made available to Purchaser; (vi) Purchaser's incorporation of the equipment and systems or its software into another product or service; (vii) Purchaser's changes, alterations or additions to equipment and systems, including software, or (viii) Purchaser's relationship with any end user Purchaser, including any dispute with an end user. Purchaser will be entitled to control the defense of such claim for which it is providing indemnity to Climatec under this Section. Purchaser shall not admit liability or settle or resolve any claim without the advance written approval by Climatec, such approval not to be unreasonably delayed or withheld, unless such settlement or resolution includes a full and unconditional release of Climatec with no admission of Climatec or its affiliates.

**13. 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 (OSHA) relating in any way to the project or project site.

**14. WAIVER & SEVERABILITY.** Upon a party's breach or default hereunder, the other party's failure to exercise a right hereunder will not be deemed to be a waiver to that right as to any future claim for breach or default. If any provision or portion of this Agreement shall be judged as invalid or unenforceable, that provision or portion of this Agreement shall be deemed omitted and the remaining provisions and portions shall remain in effect. The parties agree to negotiate in good faith, in order to replace the invalid provisions with valid provisions that conform as closely as possible to the economic and commercial intent of the invalid provisions.

**15. ENTIRE AGREEMENT & MODIFICATION OF TERMS.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, writings, memoranda and agreements, either oral or written, with respect thereto. This Agreement may only be modified by a written instrument signed by authorized representatives of both parties. No additional documents, purchase orders, or contracts can alter the terms of this Agreement.

**15. INDEPENDENT CONTRACTOR.** It is understood and acknowledged that in providing the Services under this Agreement, Climatec acts in the capacity of an independent contractor and not as an employee or agent of the Purchaser. Neither party has any authority to commit, act for or on behalf of the other party, or to bind the other party to any obligation or liability. Neither party shall be eligible for and shall not receive any employee benefits from the other party and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by it hereunder.

16. **CONFIDENTIALITY.** Both parties acknowledge that, in connection with this Agreement, they may have access to or receive confidential information of the other party, including but not limited to proprietary business information, technical data, and other sensitive or proprietary information ("Confidential Information"). Such Information will be marked "Confidential", "Proprietary" or otherwise designated orally as confidential when provided to the other party, or otherwise by its nature should reasonably be considered confidential. Each party agrees to maintain the confidentiality of the other party's Confidential Information and to use it solely for the purpose of performing under this Agreement. Confidential Information shall not be disclosed to any third party without the prior written consent of the disclosing party, except as required by law or valid court order. If a Party is required to by law or valid court order to disclose Confidential Information, that party shall promptly notify the other party prior to such disclosure, unless prohibited by law. These obligations will not apply to any Information that was in the public domain at the time it was communicated by the disclosing party; was in the receiving party's possession free of any obligation of confidence at the time it was provided by the disclosing party; or was independently developed by the receiving party before it was communicated by the disclosing party to the receiving party. This confidentiality obligation shall survive the termination of this Agreement.

17. **NOTICES.** All notices made under this Agreement shall be in writing and shall be deemed to have delivered (a) on the date personally delivered, (b) three days after the date mailed, postage prepaid by certified mail with return receipt requested, or (c) on the date sent via facsimile or email, provided confirmation of receipt is obtained.

18. **HEADINGS.** Headings in this Agreement are for reference only and shall not affect the meaning of the provisions.

20. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Execution and delivery of this Agreement by electronic means, including facsimile, PDF, or electronic signature (e.g., DocuSign), shall have the same legal effect as an original signature.