

BURKHOLDER'S HEATING AND AIR CONDITIONING

GENERAL TERMS AND CONDITIONS

1. BURKHOLDER'S HEATING & AIR CONDITIONING INC. 383 MINOR STREET EMMAUS PA 18049, is referred to as Contractor or Burkholder. These Terms and Conditions, and any attachments hereto, constitute a binding contract between Customer and Contractor and are referred to herein as either "Terms and Conditions" or this "Agreement."
2. Contractor shall furnish the labor, equipment and materials necessary to perform the agreed upon Proposal, Order, Contract and / or Agreement (the "Contract") signed by Contractor and Customer which is attached hereto as Exhibit "A". Any deviation from or addition to the Contract must be in writing and signed by both Contractor and Customer. In the event of unforeseen circumstances, including but not limited to, compliance with code requirements, and labor and/or materials that were not contemplated in the proposal or description of work, the Contract price may be increased in Contractor's sole discretion and the Customer shall be provided with written notice of any such change.
3. Customer agrees to provide Contractor with a safe and readily accessible work site. When applicable, Customer acknowledges that Burkholder fabricated goods and construction services are produced as per the provided plans and specifications that the Customer has supplied to Burkholder. Burkholder has no responsibility for design, engineering or other advice, regarding any product specification or plan provided by the Customer.
4. Completion and start dates are not guaranteed by Contractor. Delays in completion or start dates shall not be grounds for cancellation of the Contract by Customer. Contractor shall not be liable for any delay in the performance of the Contract or for any damages suffered by Customer by reason of such delay, if such delay is, directly or indirectly, caused by, or in any manner arises from a reason beyond Contractor's control.
5. Customer shall pay the Contract Price as defined in the Contract. Contractor reserves the right to periodically invoice for portions of work completed to date. Special-order items cannot be returned or cancelled unless agreed to in writing by Contractor.
6. Unless otherwise specified in the Contract, all payments are due from Customer to Contractor upon receipt of the invoice provided by Contractor. Customer agrees to pay late charges on any unpaid balances after thirty (30) days from the due date at the rate of 1.5% per month or the maximum legal rate, whichever is higher. Customer shall be charged a \$30.00 fee for any returned or canceled checks.
7. Customer acknowledges that Contractor is not a party to any financing agreements entered into by Customer and Contractor shall not be responsible or liable, directly or indirectly, for any dispute or claim that may arise or exist between the finance company and the Customer. It shall be the Customer's sole responsibility to secure or pay funds necessary to pay all amounts owed to Contractor, and pay all related finance or other fees associated with any financing arrangement.
8. GENERAL WARRANTY: Equipment is covered by the individual manufacturer's parts coverage warranty, if applicable. Multiple manufacturers have different parts replacement coverage. Contractor warrants that all Contractor labor and materials shall be free of defects for one (1) year from the date of installation. All warranty work must be done by Contractor. Customer will not be reimbursed or provided with compensation for any work done by other companies. All warranty work shall be performed between 8:00 a.m. and 4:00 p.m., Monday to Friday, at Contractor's discretion. The foregoing warranty is exclusive of all other warranties, whether written, oral or implied. The warranty provided in this paragraph and the obligations and liabilities of contractor hereunder are exclusive, and customer hereby waives all other remedies, warranties, guarantees or liabilities, expressed or implied, arising by law or otherwise (including without limitation any obligations of Contractor with respect to fitness, merchantability and consequential damages) or including negligence or breach of warranty on the part of the manufacturer of any equipment installed by the Contractor. This warranty shall not be extended, altered or varied except by a written instrument signed by the parties hereto. The foregoing warranty shall be null and void if Customer has not paid all accounts in accordance with applicable terms. Contractor shall not be liable for Customer's expenses outside of the Agreement including, Customer's time missed from work. Contractor hereby assigns to Customer all warranties given to Contractor by any manufacturer subject to the limitations set forth herein. Contractor shall have no liability concerning any manufacturer's warranty. Customer shall pay for all service calls if it has been determined the service call was not related to Contractor's warranty.
9. BURKHOLDER'S SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, CONSEQUENTIAL DAMAGES, NEGLIGENCE, BREACH OF CONTRACT OR ANY OTHER DAMAGES OF ANY NATURE BASED UPON EXPRESS OR IMPLIED WARRANTY OR OTHER LEGAL THEORY DUE TO THE NON-OPERATION OR MALFUNCTION OF THE EQUIPMENT, LABOR DISPUTES, COMMERCIAL DELAYS, SPOILAGE, LOSS OF BUSINESS, ACTS OF GOD OR OTHER CIRCUMSTANCES BEYOND BURKHOLDERS CONTROL, INCLUDING DAMAGE TO PROPERTY OR PERSONAL INJURY CAUSED BY THE EQUIPMENT, ANY WRITTEN OR EXPRESS WARRANTIES GIVEN BY BURKHOLDER'S ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANT AVAILABILITY OR FITNESS FOR A PARTICULAR USE, WITHOUT LIMITATION. BURKHOLDER'S SHALL NOT BE LIABLE UPON ANY WARRANTY THEORY, EXPRESS OR IMPLIED, REGARDING THE MANUFACTURE OR OPERATION OF ANY EQUIPMENT INSTALLED, REPAIRED OR MAINTAINED BY IT WITH THE EXCEPTION THAT BURKHOLDER'S SHALL CAUSE SAME TO BE REPAIRED OR REPLACED IN THE EVENT OF FAULTY OPERATION OR MALFUNCTION OF SAID EQUIPMENT AND SHALL BE LIABLE FOR NO OTHER DAMAGES EXCEPT AS SPECIFIED HEREIN. BURKHOLDER'S DISCLAIMS ANY IMPLIED WARRANTY OF ANY NATURE WHATSOEVER.
10. This Agreement shall commence as of the Effective Date as set forth in Exhibit A and shall continue for the period set forth in Exhibit A unless sooner terminated. Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach. In the event of termination of this Agreement, for any reason, Customer agrees that it is required to provide payment to Contractor for all services rendered as of the date of termination.

11. Contractor recommends annual preventative maintenance and periodic inspections. Failure to follow manufacture's instructions will void all warranties. Any service performed on Contractor installed equipment by someone other than Contractor shall void warranty.
12. Unless specifically included in the parties' agreement, the Contractor will not conceal pipes, ducts and wires or perform drywall patching and framing. All work will be done in accordance with local industry customs and practices.
13. Customer acknowledges that temperatures may vary from room to room and in different levels of the house and that Contractor shall have no liability for such variance. Customer understands that new equipment will make different sounds and provide a different type of heat than older equipment.
14. Contractor shall not be liable for existing duct systems and/or any problems caused by the same. Contractor shall not be responsible for any claims, damages, actions, costs, or other liabilities, whether direct or indirect, that may be caused by, resulting from, or relating to, hazardous materials, including, but not limited to, the presence of mold. The discovery and/or removal of any mold or any hazardous materials is excluded from the scope of Contractor's work, and Contractor reserves the right to stop work until such mold or hazardous materials are removed.
15. Customer acknowledges that from time to time, Contractor may offer discounts as a promotional device. Promotions of any kind will not affect the Contract in any manner.
16. Contractor shall not be responsible for covenants, zoning or other like laws, ordinances or agreements that may affect Customer property. Customer agrees to hold Contractor harmless from all liability in connection with the same.
17. Customer shall indemnify, defend, and hold harmless Contractor and its respective directors, officers, employees, agents, sureties, subcontractors, and suppliers from and against any and all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of action, including without limitation administrative and legal costs and reasonable attorney's fees, involving the following: (a) injury or death to any person, or damage to or destruction of any property (including loss of use thereof), except to the extent caused by the sole negligence or intentional misconduct of Contractor; and (b) any failure of the Customer to comply with the requirements of the Agreement.
18. Customer shall maintain property insurance upon the entire structure including all work to be performed pursuant to this Agreement to the full insurable value thereof. This insurance shall inure against the perils of fire, theft, extended coverage, vandalism, and malicious mischief. Customer and Contractor waive all rights against each other for damages caused by insured perils whether or not such damage is caused by the fault or negligence of any party hereto.
19. Permit acquisition and all applicable fees and financing charges are the Customer's responsibility. In the event the Contractor pays for all or part of a permit fee or finance charge, Customer acknowledges and agrees that such payment may be added to this Contract. Contractor may invoice Customer separately for said fee or charge, and Customer agrees to pay in accordance with the terms of the Contract.
20. This Agreement contains the entire understanding and agreement between the parties. Unless otherwise set forth herein, no amendment or modification hereof shall be binding upon either party unless in writing and signed by both parties. Notwithstanding the foregoing, or any provision of this Agreement, Burkholder's shall have the right to subcontract with other persons, firms or corporation for any of maintenance services provided to Customer pursuant to the terms of this Agreement.
21. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without application of any conflict of laws provisions. The parties recognize and accept that either the Court of Common Pleas of Lehigh County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania shall have jurisdiction and venue for any disputes under this Agreement. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.
22. Customer may not transfer or assign any of its rights or delegate any of its obligations hereunder without the express prior written consent of Contractor. This Agreement shall be binding upon, and inure to the benefit of, Contractor and its respective successors and assigns, including any corporation with which, or into which, Contractor may be merged or which may succeed to its assets or business. Notwithstanding the foregoing, or any provision of this Agreement, Burkholder's shall have the right to subcontract with other persons, firms or corporation for any of maintenance services provided to Customer pursuant to the terms of this Agreement.
23. If any provision of this Agreement is held invalid or unenforceable, then the remainder of the Agreement shall remain in full force and effect.

BURKHOLDER'S HEATING & AIR CONDITIONING INC.

By_____

Name:

Title:

DATE:

[CUSTOMER NAME]

By_____

Name:

DATE: