

TERMS AND CONDITIONS FOR QUOTED SERVICE

"Company" or "ServiceXCEL" shall mean Canadian HVAC Service Experts Inc. doing business as 'ServiceXCEL'

Only authorized personnel from ServiceXCEL may perform service under this Agreement. For service covered under this Agreement, the Company will be responsible for the cost of transporting a part requiring service.

1. **Agreement.** These terms and conditions are an integral part of the Company's offer and form the basis of any agreement (the "Agreement") resulting from the Company's proposal (the "Proposal") for the services (the "Services") on equipment listed in the Proposal (the "Covered Equipment"). THE COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.
2. **Acceptance.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or their authorized agent (the "Customer") delivered to the Company within thirty (30) days of the date of the Proposal. If the Customer accepts the Proposal, without the addition of any other terms, conditions or modifications, the Customer shall be deemed to have accepted the Proposal subject to these terms and conditions and those set out in the Proposal.
3. **Cancellation by Company.** This Agreement may be cancelled by the Company, at its discretion, upon written notice from the Company to the Customer no later than 30 days prior to the performance of any Services and the Company will refund to the Customer, or credit the Customer's account, any part of the Service Fee attributable to the Services not performed by the Company but paid for by the Customer. The Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid, including but not limited to any pro-rated amounts for services rendered under the agreement. After the first year of the Agreement, the Customer may cancel with 30-days notice without pro-rated costs. Within the first year, costs will be charged out according to the work that was done.
4. **Taxes and Service Fees.** Fees for the Services (the "Service Fee(s)") shall be as set forth in the Proposal and are based on performance of the Services during regular business hours. Additional fees for work performed outside Company's regular business hours at the Customer's request will be billed separately in accordance with the Company's overtime and/or emergency labour rates.
5. **Payment.** Payment is due upon receipt of all invoices issued by the Company to the Customer. The Company reserves the right to add to any account outstanding for more than 30 days interest on those outstanding amounts at the rate of 2% per month. The Customer shall pay all costs (including, but not limited to, legal expense on a solicitor and client basis) incurred by the Company in connection with collecting any amounts due from the Customer or otherwise enforcing these terms and conditions.
6. **Customer Breach.** Each of the following events or conditions shall constitute a breach by the Customer and shall give the Company the right, without an election of remedies, to terminate the agreement between the parties in connection with the Proposal or suspend performance by delivery of written notice:
 - a. Any failure by the Customer to pay amounts when due;

- b. Any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of the Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of the Customer;
 - c. Any representation or warranty made by the Customer in connection with this Agreement is false or misleading; or
 - d. Any failure by the Customer to perform or comply with any material provision of this Agreement. The Customer shall be liable to the Company for all Services provided up to and including the date of termination along with any and all damage or loss sustained by the Company (including lost profit and overhead) as a result of the Customer's breach and the Company's subsequent termination.
7. **Performance.** The Company shall perform the Services in accordance with industry standards generally applicable in the province where the Services are performed under similar circumstances as at the time the Company performs the Services. The Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or otherwise engaged by the Company. System checks provided under this Agreement are optional but valuable. The Company is not in breach of this Agreement if these checks cannot be performed. The Company may refuse to perform any Services or other work where working conditions could, in the sole discretion of the Company, endanger property or put at risk the safety of persons. Parts used for any repairs will be those selected by the Company as suitable for said repairs. The Customer shall pay the Company for all services, repairs, and/or replacements performed by the Company at the Customer's request beyond the scope of Services or otherwise excluded under this Agreement (collectively, the "Additional Services") and such payment shall be at the then prevailing applicable regular, overtime, or holiday rates for labour and prices for materials. Prior to the Company performing the Additional Services, the Customer may request a separate written quote stating the work to be performed and the price to be paid by the Customer for the performance of the Additional Services by the Company.
8. **Customer Obligations.** The Customer shall:
 - a. Provide the Company reasonable and safe access to the equipment and areas where the Company is to perform its work; and
 - b. Unless otherwise agreed by the Customer and the Company, at the Customer's expense and before the Services begin, the Customer will provide any necessary access platforms, catwalks to reasonably allow the Company to safely perform the Services in compliance with WorkSafeBC and all other provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.
9. **Exclusions.** Unless expressly included in the Proposal, the Services do not include, and the Company shall not be responsible or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:
 - (a) Any guarantee of room conditions or system performance;
 - (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;

- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any event of force majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement ("Pre-Existing Conditions") including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and
- (e) Diagnostic charges and replacement of refrigerant costs are excluded, unless expressly stated as included with the Proposal. Diagnostic charges may be waived if it is determined that the fault is related to workmanship.

10. Limited Workmanship Warranty. The Company warrants that the workmanship portion of the Services is warranted to have been properly performed for a period of one (1) calendar year from the date of project completion (the "Limited Warranty"). The Company's obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to the Company within the Limited Warranty period. The Company's obligation under the Limited Warranty are limited to correcting any improperly performed labour. No liability whatsoever shall attach to the Company until the Services have been paid for in full. Exclusions from the Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment or parts due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; the Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; improper use of equipment; unauthorized or improper parts or material; refrigerant not supplied by the Company; and modifications made by others to the Company's equipment. If the Customer does not perform the required maintenance identified from the system check visits (or if they skip more than one system check), and the equipment breaks in a related way, they are not covered by extended warranty. The Company shall not be obligated to pay for the cost of lost refrigerant or lost product unless stated in the Proposal. Some components of the Company's equipment may be warranted directly from the component supplier, in which case the Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement.

Equipment, material and/or parts are not warranted by the Company and have such warranties as may be extended by the relevant manufacturer. THE CUSTOMER UNDERSTANDS THAT THE COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, MATERIALS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, AND THE CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCTS THAT MAY BE PROVIDED BY THE COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN. THE REMEDIES SET FORTH IN THE LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY THE COMPANY TO THE CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES, LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. THE COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS

OR CONDITIONS OF ANY KIND. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.

11. **Indemnity.** To the maximum extent permitted by law, the Customer shall indemnify and hold harmless the Company from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable legal fees, resulting from death or bodily injury or damage to real or personal property, in connection with their activities within the scope of this Agreement. The Customer shall indemnify the Company against claims, damages, expenses, or liabilities attributable to the acts or omissions of the Customer or third parties. The Customer's duty to indemnify and hold harmless the Company will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.
12. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE COMPANY SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), INCLUDING CONTAMINANTS LIABILITIES, OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.
13. **Asbestos and Hazardous Materials.** The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should the Company become aware of

or suspect the presence of Hazardous Materials, the Company may immediately stop work in the affected area and shall notify the Customer. The Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. The Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises. The Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

14. **Insurance.** The Company agrees to maintain reasonably policies of commercial general liability insurance during the term of the contract. In no event does Company or its insurer waive its right of subrogation.
15. **General.** Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by a court of competent jurisdiction located in the province in which the Services are performed. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. No documents shall be incorporated herein by reference except to the extent the Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. The Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of the Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. No modifications, additions or changes may be made to this Agreement except in a writing signed by the Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.
16. **Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an event of force majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.
17. **Limited Waiver of Sovereign Immunity.** If the Customer is a Band Council (in Canada), the Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against the Customer by the Company and arising or alleged to arise out of the furnishing by the Company of any product or service under this Agreement, whether

such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid if the Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that the Company is not subject to the jurisdiction of the Customer's tribal court or any similar tribal forum, that the Customer will not bring any action against the Company in tribal court, and that the Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of the Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of the Customer, enforceable in accordance with its terms.

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