

TERMS and CONDITIONS

THESE TERMS AND CONDITIONS SHALL PREVAIL OVER ALL INCONSISTENT PROVISIONS IN ANY OTHER CONTRACT DOCUMENTS, INCLUDING ANY BID OR PROPOSAL. Customer shall be conclusively deemed to have accepted the terms and conditions herein, and to have entered into this agreement with ELCO. This agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

EXCLUSIONS—It is understood and agreed by the parties that the following are not the responsibility of ELCO under this Agreement:

1. Normal starting and stopping of the subject equipment or the raising or lowering of thermostat set points, damper adjustments, opening or closing of valves and regulators installed to protect the equipment.
2. Repairs or replacement to equipment damaged due to corrosion, freezing, lack of proper water treatment, electrolytic action, lightning, electrical distribution faults, phase loss or reversal and other causes beyond ELCO's control.
3. Inspections, alterations or replacements required by insurance companies, municipal or governmental authorities.
4. Replacement of major components that cannot be repaired due to age or unavailability of replacement parts. Major components include, but are not limited to: complete condensing units, compressors, condensers, rooftop units, package units, cooling towers, chillers, or air handling.
5. Replacement or servicing of equipment or components such as compressors, pneumatic piping, fuses, starters, circuit breakers, disconnect switches, electrical and control wiring, plumbing, non-moving parts such as heat exchangers, pressure vessels, tubes, panels, duct work, structural supports, hardware and decorative casings unless specifically included in this Agreement.
6. Since refrigerant-impregnated oil, some refrigerants and lithium bromide are treated in some states as hazardous waste, any charges incurred for the proper disposal of same will be charged as an extra, and not part of the contract price. The labor, equipment and materials required to provide, recover and recycle the refrigerants from the system are not included in this Agreement. Frozen coils and piping are excluded.
7. Inspection for and detection, remediation or removal of any hazardous substances encountered at Customer's property, including, but not limited to, asbestos, PCBs or mold. In the event that any hazardous substance is encountered at Customer's property, ELCO will notify the Customer and cease all Work until all hazardous materials are satisfactorily eliminated.
8. Subcontractors of any type, unless specifically defined in this Agreement.
9. Rigging and cranes.

ASBESTOS/PCBs/Hazardous Materials: The Provider's Work shall not include the identification, detection, abatement, encapsulation or removal of asbestos or materials containing asbestos or polychlorinated biphenyls ("PCBs") or other hazardous materials or substances. In the event that the Provider encounters any such substances or materials or what appear to be such materials in the course of performing the Work, Provider shall notify the Customer, and Provider shall have the right to discontinue the Work and remove its employees from the project until such materials, and any hazards connected therewith, are abated, encapsulated or removed, or it is determined that no hazard exists (as the case may require), and Provider shall receive an extension of time to complete its Work hereunder and compensation for any additional out-of-pocket expenses incurred as a result of such situation and correction of same.

MOLD: Inspection for and detection or identification of the presence of any type or form of fungus, including mold, mildew, mycotoxins, spores, scents or byproducts produced or released by fungi (collectively, "Mold") anywhere, including on or around the jobsite, and the abatement, remediation, encapsulation and/or removal of Mold, is expressly excluded from the Work. In the event that Provider encounters Mold or materials that appear to be Mold in the course of performing the Work, Provider shall immediately notify the Customer and Provider shall have the right to discontinue the Work and remove its employees from the project until such materials, and any hazards connected therewith, are abated, encapsulated or removed, or it is otherwise determined in Provider's sole discretion that no hazard to its employees exists.

INITIAL INSPECTION—During the first 30 days of this Agreement or upon initial seasonal start-up, if ELCO should find any equipment covered under this Agreement to be in need of repair or replacement, ELCO will inform the Customer in writing of the equipment condition and the proposed corrective action. When ELCO so notifies the Customer, it is understood that ELCO will not be responsible for the present or future repair, replacement, or operability of the equipment until such time as the equipment is restored to a condition acceptable to ELCO.

RESPONSIBILITIES—In order to permit ELCO to properly perform the services included in this Agreement, the Customer agrees:

1. To provide reasonable and timely access to all covered equipment.
2. To allow ELCO to start and stop equipment, with proper notice and coordination.
3. To provide water treatment for the proper functioning of the equipment unless included in this Agreement.
4. To be charged a minimum of one hour labor charge if a service request is not cancelled before a technician is dispatched.
5. To be charged for a technician's labor spent if the Customer cancels or is unavailable for the technician to complete a scheduled inspection upon arrival.
6. To pay our standard overtime rates.

CERTIFICATE(S) OF INSURANCE—Upon Customer's request, ELCO will furnish a certificate of insurance with the following coverages naming the Customer as an Additional Insured:

COMMERCIAL GENERAL LIABILITY—Minimum Limits:

General Aggregate	\$2,000,000
Per Occurrence	\$1,000,000
Products/Completed Operations Aggregate Per Project	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Fire Property Damage Legal Liability	\$100,000
Medical Payment Per Person	\$10,000

COMMERCIAL AUTOMOBILE including Contractual Liability and Employer's Non-Owned & Hired Auto Liability.

Minimum Limit:

Bodily Injury and Property Damage (Combined Single Limit) \$1,000,000

UMBRELLA LIABILITY—Minimum Limits:

Per Occurrence	\$10,000,000
Aggregate	\$10,000,000

WORKERS' COMPENSATION WITH EMPLOYER'S LIABILITY COVERAGE—Minimum Limits:

Bodily Injury by Accident	\$500,000/Accident
Bodily Injury by Disease	\$500,000/Employee
Bodily Injury by Disease	\$500,000/Policy Limit

Proprietary Document

INDEMNIFICATION--ELCO shall not be liable for injuries to persons or damage to property except to the extent caused by the negligent, reckless, or willful acts or omissions of ELCO and persons or entities under ELCO's control. In the event a claim is asserted against ELCO by a person not a party to this Agreement seeking damages that are directly or indirectly attributable to the negligent, reckless or willful acts or omissions of Customer or persons or entities under Customer's control, then to the extent bodily injury, sickness, disease or death, or injury to or destruction of tangible property, arises directly or indirectly from such negligence, reckless or willful misconduct, the Customer, to the fullest extent permitted by law, shall indemnify and hold harmless ELCO and its agents and employees from and against any such claim. ELCO shall, in the event that such a claim is asserted against it, be entitled to defend itself with counsel selected by Provider and the payment of the attorneys' fees required to defend against such claim is included within this indemnity obligation.

FORCE MAJEURE--It shall be deemed a "Force Majeure Event" if in the course of performing the Work pursuant to the Contract Documents, any delay occurs due to any cause or circumstance beyond the reasonable control of ELCO and/or of suppliers or subcontractors of ELCO, including any delay beyond ELCO's reasonable control as to furnishing and delivering any labor, material, equipment, supervision or providing any services in accordance with the Contract Documents or otherwise. Force Majeure Events shall include, but are not limited to: hurricanes and high-wind storms, earthquakes, acts of God, declared or undeclared war, blockades, hostilities, riots or rebellions, unanticipated legal or illegal acts, rules, regulations, orders, restrictions or requirements of government and governmental authorities, epidemics or quarantines, strikes, slow-downs, job actions or lockouts, inability to obtain material or transportation facilities from usual sources, or any conditions of similar nature beyond the reasonable control of ELCO or its suppliers and subcontractors. Upon the occurrence of a Force Majeure Event, ELCO shall notify Customer of the nature and extent of any expected interference with the Work, and all time periods set forth in the Contract Documents will be extended to the extent such Force Majeure Event caused actual delay. In no event will ELCO be liable for any delay, consequential, incidental, special, indirect or other damages suffered by Customer as a result of such Force Majeure Event.

WARRANTY--ELCO warrants that the work performed hereunder shall be done in a workmanlike manner and that all parts and components shall be free from defects in workmanship and materials. This warranty shall be effective for a period of ninety (90) days from the date the work is done or the part or component is installed or until the date on which this Agreement terminates, whichever first occurs. The Customer remedy, should any breach of the guarantee occur, shall be for ELCO to re-perform defective work or to repair or replace, at ELCO's option, any parts or components which are shown, to ELCO's satisfaction, to be defective, provided that notice is given by Customer to ELCO promptly upon discovery of the defect.

TERMINATION--ELCO may terminate this Agreement upon written notice to the Customer in the event that (1) any sums or monies due and payable under this Agreement are not paid when due; or (2) alterations, additions, or repairs are made to covered equipment by others. Either party may terminate this Agreement upon the anniversary date of this Agreement provided that written notice of such termination is received by the other party at least thirty (30) days prior to the anniversary date. ELCO reserves the right to deny service in the event of a past-due balance.

LIMITATION ON DAMAGES--ELCO's liability and Customer's recovery, for any injuries, losses, damages, expenses, costs or other liabilities arising out of any breach of this Contract by ELCO, or ELCO's other acts or omissions (including its negligence) shall be limited to the lesser of (i) the actual and direct costs incurred by Customer as a result of such breach, or other acts or omissions, or (ii) the yearly contract price set forth in this Agreement for the year in which such claim, loss or damage shall have been incurred. In no event shall either party be liable to the other for lost profits, punitive, special, consequential, indirect, exemplary or incidental damages.

DEFAULT AND REMEDIES--(a) If: (i) Customer fails to make payment, as and when required under this Agreement; (ii) Customer breaches or fails to perform at the time and in the manner herein specified any term, covenant or condition contained in this agreement; (iii) Customer files or has filed against it a petition in bankruptcy, or a custodian, receiver or trustee is appointed for Customer or for a substantial part of its assets, or Customer becomes insolvent or unable to pay its debts as they become due, or any substantial part of Customer's property becomes subject to levy, seizure, assignment, application or sale for or by any creditor or governmental agency; or (iv) Customer is acquired by or merges with any other entity, unless the assignment is assumed in writing by the new entity and such assumption is agreed upon by ELCO. (b) In the case of any of the foregoing events, each an "Event of Default," then ELCO shall without notice, demand or action terminate Customer's rights hereunder. (c) No right or remedy conferred upon or reserved to ELCO by these terms and conditions is exclusive of any other right or remedy granted herein or provided by law; all rights and remedies of ELCO conferred upon ELCO by these terms and conditions or by law are cumulative and in addition to every other right and remedy available to ELCO. (d) In the event of any default of failure specified above, Customer shall be liable for all costs and expenses incurred by ELCO in the enforcement of its rights hereunder (including reasonable attorney fees). (e) A waiver of one default by ELCO does not apply to any future or other default.

DISPUTES, CHOICE OF LAW AND COSTS--This contract shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania. All claims, disputes and controversies arising out of or relating to this contract, or the breach thereof, shall be submitted for resolution to the United States District Court for the Eastern District of Pennsylvania, or if jurisdiction cannot be had in that court, to the Commerce Program, Court of Common Pleas, Philadelphia County, Pennsylvania. In any such proceeding, the parties, and each of them, expressly waive their right to have any issue or dispute tried to a jury and expressly agree to have the matter tried to the Court alone sitting without a jury. ELCO and Customer hereby agree that such courts have jurisdiction over them and that venue in Philadelphia, Pennsylvania is proper. In the event it becomes necessary for ELCO to incur any costs or expenses in the collection of monies due, or to enforce any rights or privileges hereunder, the Customer shall, upon demand, reimburse ELCO for all such costs and expenses (including, but not limited to, reasonable attorney's fees). Actions by ELCO to collect monies due under this contract may be brought in any court of competent jurisdiction in lieu of arbitration.

EXPIRATION OF PROPOSAL--This proposal will be held firm for a period of 30 days. If it is accepted beyond such 30-day period, the proposal may be reviewed and adjusted as necessary to reflect changes in labor and material costs. All applicable sales taxes will be included in the invoice unless a current tax-exempt certificate is on file with ELCO.

ENTIRE AGREEMENT--When executed by the parties and approved by ELCO's authorized representative, this Agreement contains the entire agreement between the parties with respect to the services covered herein. No other representations, warranties, or statements (whether expressed in the Customer purchase order or otherwise), shall be binding on ELCO unless expressly agreed to in writing by ELCO's authorized representative.

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