



SERVICE GENERAL TERMS & CONDITIONS

All Service work performed by Brandt is subject to these Service General Terms & Conditions (available for review at www.brandt.us). Because you have submitted a credit application or have moved forward with a Service agreement, you expressly agreed to be bound by these terms and conditions. The terms and conditions below are in addition to and not in lieu of any specific terms of Brandt's proposal/Service agreement.

All Brandt Service work is conditioned upon the following terms and conditions, which are incorporated by reference and, together with a Proposal or Service Agreement, from the Contract between the parties:

1. **Rejection of Contradictory Terms.** Brandt expressly rejects any and all alterations, amendments, or changes to any of Brandt's Terms and Conditions. Except as expressly provided herein, no changes or modifications to, or waiver of, any of these terms and conditions shall be valid or binding.

(a) Any Service work orders or other Service agreements submitted to Brandt on Customer's own purchase order forms, which may contain statements, clauses, or conditions modifying, adding to, repugnant to, or inconsistent with the terms and conditions of Brandt herein contained are hereby expressly rejected;

(b) Such orders will only be accepted by Brandt upon the condition and with the express understanding that notwithstanding any such statements, clauses, or conditions contained in any order forms of the customer are void and have no effect and that the obligations and liabilities of Brandt and the Customer shall be determined solely by the terms and conditions of Service contained in these Terms and Conditions and the applicable Brandt Proposal. To the extent that the terms set forth in the Brandt Proposal directly conflict with these Terms and Conditions, the specifically conflicting terms of these Terms and Conditions shall prevail.

2. **Cancellation.** This Contract may be cancelled by either party upon thirty (30) day written notice. In the event of cancellation by the Customer, Brandt reserves the right to invoice and be paid for work performed thru cancellation date.

3. **Insurance.** So long as any of the Work remains to be completed, Brandt shall, at Brandt's sole cost and expense, carry and maintain in full force and effect, the following insurance coverages:

(a) Workers' compensation insurance coverage on all individuals employed upon or about the Property according to the requirements of the laws of the State of Texas;

(b) General liability insurance coverage with the limits maintained by Brandt at the time of this Proposal (which are: \$1M each occurrence; \$1M personal/advertising injury; \$10M general aggregate; \$2M products/completed operations aggregate; \$10,000 medical expense (any one person)).

The policies will be issued by companies reasonably acceptable to Customer. In the event of any covered loss, or upon Customer's reasonable request, Brandt shall deliver to Customer copies of the insurance policies. Brandt and Customer mutually agree to a waiver by their respective insurer(s) of any and all rights to subrogation.

4. **Warranty.** Brandt shall furnish to Customer all manufacturers' parts and equipment warranties received by Brandt. For a period of one (1) year from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in parts or materials supplied by Brandt that are not covered under a manufacturer's warranty and that are adversely affecting the performance of the equipment installed by Brandt, if any. Brandt warrants to Customer that all labor performed or provided shall be performed by licensed personnel, if required by applicable law, and will be performed in a good workman like manner. For a period of ninety (90) days from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the

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M 41312

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817.626.0033
TACLA 64706R
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M 40211

HOUSTON

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TACLA 15221C
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SAN ANTONIO

6023 Corridor Parkway, Ste. 100
Schertz, TX 78154
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WACO

205 Schroeder Dr.
Waco, TX 76710
254.772.1693
TACLA 26979C
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satisfaction of Customer, any defects in workmanship that is adversely affecting the performance of the equipment installed by Brandt, if any.

5. General Limitations on Scope of Work. Notwithstanding any other provision to the contrary in this Contract, including the incorporated Proposal, the Mechanical Service scope excludes:

- (a.) Maintenance or repair of Equipment cabinets;
- (b.) Ductwork and air distribution devices;
- (c.) Water supply or drain beyond the Equipment;
- (d.) Repair or replacement of heat exchangers in gas fired furnaces and duct heaters;
- (e.) Repair or replacement of metal tubes in condensers, chiller, boilers or any other heat exchanger;
- (f.) Moving or relocation of the subject equipment;
- (g.) Repairs due to freezing;
- (h.) Work made necessary by the enforcement of government codes, building and union regulations or as recommended by insurance companies;
- (i.) Damage of any kind due to corrosion, erosion, electrolytic actions, acts of God, power failure, vandalism, or any other cause whatsoever beyond the control of Brandt;
- (j.) Electrical components associated with the Equipment including: disconnect switches, fuses, circuit breakers, and electrical wiring not specifically identified within the scope of work;
- (k.) Water treatment; and
- (l.) Piping systems of any nature.

6. Hoisting/Rigging Operations. Prior to the use of heavy commercial hoisting or rigging equipment that could potentially cause damage to the Property or injury, Brandt will notify Customer in writing and shall not proceed without Customer's prior written consent. While all precautions will be exercised to protect Customer's Property, Brandt will not accept any responsibility for damage to parking lots, driveways, or landscaping that may occur as a result of normal hoisting and rigging operations, except to the extent that the damage is caused by Brandt's gross negligence or willful misconduct.

7. Work Hours. Unless indicated otherwise, all pricing is based upon work being performed during regular working hours of 8:00 am to 5:00 pm, Monday through Friday, except holidays. If work is required at times other than normal working hours, Customer agrees to pay the Brandt's standard overtime charge rates.

8. Payments. Customer agrees to pay Brandt all sums due with respect to this Proposal in accordance with the terms specified. Payments are due upon receipt of invoice. In the event payment is not received by Brandt within thirty (30) days following billing, such payment shall be considered past due. Beginning with the thirty-first (31st) day following billing, such payment shall bear interest at the maximum rate allowable by law until payment is received. If default is made in the payment of any sums due hereunder and it becomes necessary that this Contract be placed in the hands of an attorney for collection, Customer agrees to pay to Brandt all costs of collection, including reasonable attorney's fee. Brandt shall have the right to cancel this Contract at any time, upon five (5) business days' written notice, if payments as called for herein are not made.

9. No Liability from System Design or Existing Equipment Installation. Unless Brandt was the engineer of record for the existing system design under a prior and separate construction/design-build contract or system design is expressly included within the scope of the Proposal (and, in either case, to the extent of that design), Customer acknowledges and stipulates that Brandt did not select, advise Customer regarding, engineer, design or install the system, equipment or any component part thereof to be maintained under this Contract. Accordingly, Brandt shall not be liable in any capacity, under any theory of recovery for any claims or damages related to or originating from prior or existing defects, deficiencies, injuries, or damage (whether to the system, equipment or Property) associated therewith or as a result of prior ineffective maintenance. Brandt agrees, however, to advise the Customer about the existence of such conditions upon discovery in accordance with the terms of the Contract.

10. No Liability for Incidental Microbiological Growth/Mold. Customer acknowledges that the Heating, Ventilation, and Air-Conditioning equipment and systems repaired or serviced as a part of this Contract may, under certain conditions, become conducive to or incidentally support microbiological growth. Brandt assumes no liability for nor warrants its work to protect against, eliminate or inhibit any type of incidental microbiological growth including, but not limited to, molds, fungi and other related matter, in or around duct systems, HVAC and



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related equipment or areas. Brandt agrees, however, to advise the Customer about the existence of such conditions upon discovery and to take measures to discourage such growth as required and in accordance with the terms of the Contract.

11. Limitation of Damages for Breach of Contract. The full extent of Brandt's liability and Customer's exclusive remedy for damages from any breach of this Contract, including, but not limited to, nonperformance or misrepresentation, and regardless of the form of action, shall be limited to the annual Contract fee of the current year.

12. Mutual Waiver of Consequential and Punitive Damages. Notwithstanding any other provision to the contrary, Brandt and Customer mutually waive all claims against each other for any and all consequential/special/indirect/incidental and, to the extent allowable by law, all punitive/exemplary damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to, damages incurred for rental expenses, loss of use, lost revenue or profit, lost opportunity, loss of goodwill, loss of management or employee productivity, cost of capital, and cost of substitute facilities, services or goods regardless of the foreseeability of such damages.

13. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, TO THE PROPORTIONATE EXTENT OF CUSTOMER'S AND BRANDT'S RESPECTIVE NEGLIGENCE AND EXCEPT AS OTHERWISE LIMITED HEREIN, CUSTOMER AND BRANDT AGREE TO INDEMNIFY, DEFEND, AND HOLD ONE ANOTHER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, ASSIGNS, SUCCESSORS AND EMPLOYEES HARMLESS AGAINST ALL CLAIMS AND DAMAGES, LOSSES AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES) ARISING OUT OF OR RELATED TO THE PERFORMANCE OF THIS CONTRACT. NOTWITHSTANDING THE FOREGOING PROVISION, THIS INDEMNITY IS SUBJECT TO THE LIMITATIONS OF LIABILITY IN SECTIONS 10-13 ABOVE.**

14. Hazardous Materials. If Brandt encounters asbestos, polychlorinated biphenyl (PCB) or other hazardous materials on the Property, Brandt will immediately stop work and report in writing the evidence of such to Customer. Brandt will not resume work in the affected area until the hazardous material has been removed or determined harmless by a qualified laboratory at Customer's expense.

15. Dispute Resolution and Governing Law. This Contract shall be interpreted and construed according to the laws of the State of Texas. Any disputes arising out of or related to this Contract will be resolved by agreement through a meeting of executive representatives of each party. If no resolution can be reached, the dispute will be resolved through binding arbitration before an arbitrator experienced in construction law and according to the rules promulgated by the American Arbitration Association. The parties agree that the arbitration will be commenced within sixty (60) days of occurrence of the meeting of executive representatives. This Contract shall be governed by the laws of the State of Texas without regard to conflicts of laws principles.

16. Property Manager. If Customer is a property manager or other legal agent or representative of the property owner, Customer represents and warrants that it has the express requisite authority to enter into all of the terms of this Contract including, without limitation, the authority to waive claims for and recovery of consequential (special/indirect/incidental) and punitive damages on behalf of the property owner as well as for itself.

17. Entire Agreement. This Contract constitutes the entire agreement and is not assignable by either party without the express written consent of the other party.

ECOA - The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of Applicant's income derives from any public assistance program; or because Applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning the creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580