

## PROPOSAL TERMS AND CONDITIONS

These terms and conditions (“Terms”) govern proposals submitted by an authorized representative of a subsidiary of CoolSys, Inc. (“CoolSys”) for the shipment and/or sale of products or provision of work or services described in the proposal (collectively, “Work”) to the recipient identified on page one of the proposal (“Customer”). These Terms and the proposal shall be collectively referred to as the “Proposal”.

1. Acceptance. This Proposal represents an offer by CoolSys which may only be accepted on these Terms. By accepting any Work or permitting CoolSys to begin any Work without a written agreement duly executed by both CoolSys and Customer, Customer will be deemed to have accepted the Proposal and have agreed to these Terms. Any different or additional terms or any attempt by Customer to vary in any way or degree any of the terms of this Proposal is hereby rejected by CoolSys, and this Proposal will be deemed accepted by the Customer without said additional or different terms. In the event the Customer issues a written agreement to CoolSys for the Work, this Proposal, including these Terms, is hereby incorporated into such written agreement. Any purchase order issued by Customer for the Work shall be subject to this Proposal and shall not be binding on CoolSys until received and approved at CoolSys’ corporate office.
2. Work Obligations.
  - 2.1. Customer shall pay for the general building permit for the Project and for all other permits, governmental fees and licenses necessary for or incidental to the Work, except that CoolSys shall secure and pay for all licenses necessary for it to operate in the state, county, and city where the Project is located. In the event CoolSys must obtain any permits specific to the Project, Customer shall bear the cost of such permits. Customer shall pay for all tests and inspections as required by any public authority having jurisdiction over the Project.
  - 2.2. CoolSys shall not be liable for damages of any kind resulting from errors, omissions, or inconsistencies in the drawings, plans, or specifications provided to CoolSys by Customer or its agent, nor shall CoolSys have any responsibility to ascertain whether such drawings, plans, or specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules, and regulations.
  - 2.3. Should the Work be subject to acceptance or approval of a third party (such as an architect, engineer, owner, etc.), CoolSys is not liable in any way should that party’s acceptance or approval not be granted.
3. Payment.
  - 3.1. Customer agrees to pay CoolSys for the performance of the Work the total price described in the Proposal (the “Contract Sum”). Where the quantities originally shown on the drawings and specifications and/or the plans and specifications are so changed that the Contract Sum may create a hardship to the CoolSys, there shall be an equitable adjustment of this Proposal to prevent such hardship.
  - 3.2. Sales tax is not included in the Contract Sum unless specified otherwise. Customer is responsible for any taxes that CoolSys may be required to collect or pay upon the sale of the Work. CoolSys will invoice for said tax with the original invoice or at any date subsequent to such original invoice.
  - 3.3. If required by CoolSys, Customer shall pay CoolSys a mobilization fee of 50% of the Contract Sum, which shall be due and payable at least 30 days prior to commencing Work or upon the execution of this Proposal by Customer, whichever is later, to cover expenses for preparatory work and operations, including but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the Project site and for all other work and operations which must be performed or cost incurred prior to beginning Work on the Project site.
  - 3.4. After the Work commences, CoolSys shall submit an invoice for payment to Customer for the value of the Work which has been completed and/or the cost of materials and equipment delivered to the Project site. Customer shall pay CoolSys within thirty (30) days of the date of CoolSys’s invoice, less the aggregate of previous payments made to CoolSys. Any payments not made within 30 days of the date of invoice shall be subject to a late payment charge of 1½% per month (compounded) on the unpaid balance of any amount then past due.
  - 3.5. If Customer defaults in its payment to CoolSys for a period of thirty (30) days or more, CoolSys shall no longer be obligated to perform its Work until such time as CoolSys is paid all amounts due. Should collection proceedings be instituted, Customer agrees to pay all costs including reasonable attorneys’ fees.
  - 3.6. If required by Customer, CoolSys shall execute conditional or unconditional, as the case may be, lien waivers from CoolSys with each invoice for payment. Such lien waivers shall be in a form reasonably determined by CoolSys.

3.7. By making payment to CoolSys, Customer shall be deemed to represent that it has inspected the quality and quantity of the Work and that the Work is in compliance with the Proposal.

4. Schedule and Changes.

- 4.1. Customer shall provide CoolSys with the project schedule at least thirty (30) days prior to the commencement of Work. CoolSys shall commence and perform its Work as required by the project schedule. Unless otherwise specified, the durations set forth on the project schedule are in working days, not calendar days. Fair adjustments shall be made in the Contract Sum for any project schedule changes to compensate CoolSys for actions required by it to meet and maintain job progress, including but not limited to working overtime, working multiple shifts, and increasing its jobsite workforce.
- 4.2. CoolSys shall be granted a reasonable time extension if CoolSys is delayed for reasons beyond its control including but not limited to substantial changes ordered in the Work, labor disputes, pandemics, epidemics, fire or other casualty, extremely unusual weather conditions, and acts of God or public enemy. Fair adjustments shall be made in the Contract Sum for such extensions.
- 4.3. CoolSys shall give written notice to Customer of all claims for additional costs, extensions of time, and damage for delays.
- 4.4. If the Work is damaged by others, Customer shall reimburse CoolSys for the reasonable cost of any replacements or repairs.
- 4.5. Customer shall have the right to request in writing changes in the Work within the general scope of this Proposal. No change shall be made by CoolSys unless and until accepted by CoolSys. Fair adjustments shall be made to the Contract Sum and project schedule for such changes. In the event that CoolSys and Customer cannot agree on the cost or schedule impact of a change, CoolSys shall have the option to continue to perform its Work (including any additional Work requested by Customer) in accordance with the project schedule and provisions of this Proposal. In such event, CoolSys will invoice Customer on a time and materials basis and Customer agrees to pay such invoices within thirty (30) days of the date of the invoice.
- 4.6. 5.4. In the event a cancellation notice or stop work notice is issued by Customer, Customer agrees to pay for all expenses in connection with the canceled order, including but not limited to (i) all engineering work performed, (ii) all raw materials ordered, (iii) all work in progress, (iv) all supplies and commitments made by CoolSys in connection with said canceled order, (v) a 20% cancellation charge on the purchase price of unshipped orders, and (vi) any other expenses attributable to said canceled order. CoolSys may, in its sole discretion, give Customer an allowance for standard components and salvage value of materials.

5. Insurance. Prior to commencing any of its Work, CoolSys shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, which may arise out of operations by CoolSys or by any of its subcontractors or suppliers, or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, the minimum coverage and limits of liability specified below. Such insurance may be arranged under single policies for the full minimum limits required, or by a combination of underlying policies and an excess or umbrella liability policy. Certificates of insurance shall be provided to Customer upon request. CoolSys shall be named as an “additional insured” under any Builder’s Risk insurance policy provided with respect to the Project.

Workers’ Compensation	Statutory limits
Employer’s Liability	\$500,000 each accident \$500,000 disease-policy limit \$500,000 disease-each employee
Commercial General Liability	\$2,000,000 each occurrence \$2,000,000 products/completed operations aggregate \$2,000,000 general aggregate (per project)
Commercial Automobile Liability	\$1,000,000 any one accident or loss

6. Indemnification. CoolSys and Customer each hereby agrees to indemnify and hold the other party harmless for all damages or injury to all persons, whether employees or otherwise, and to all property, arising out of this Proposal to the extent caused by the acts or omissions of such indemnifying party, its agents, or employees. This indemnification obligation shall survive completion of the Work.

7. Warranty.

- 7.1. A warranty on workmanship provided by CoolSys is included in the Proposal. CoolSys shall correct all defects in the workmanship provided by CoolSys pursuant to the Work of which it is notified within the warranty time period specified in the Proposal ("Warranty Period"). The Warranty Period commences on the date of Substantial Completion of the Work, based upon completion of specific phases, if any. Accordingly, the warranty for each specific phase will commence upon Substantial Completion of the portion of Work by CoolSys for that specific phase. "Substantial Completion" is the stage in the progress of Work when the Work or designated portion thereof is sufficiently complete so the Customer can occupy or utilize the Work for its intended use, including utilizing the Work to continue other work performed by Customer or third parties. In the event a Substantial Completion date is not memorialized in a writing acknowledged in writing by CoolSys, the date of the invoice submitted by CoolSys for payment for the Work or portion thereof shall constitute the date of Substantial Completion.
- 7.2. CoolSys is not a manufacturer and therefore makes no warranties, either explicit or implied. All sales are "AS IS." Customer assumes all risk and liability with respect to use of all products whether used alone or in combination with other products. COOLSYS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE PRODUCTS, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. COOLSYS SHALL NOT BE LIABLE FOR ANY DAMAGES BY REASON OF FAILURE OF THE PRODUCTS TO OPERATE OR OF FAULTY OPERATION OF THE PRODUCTS.
- 7.3. To the extent not prohibited by any applicable law or contract, CoolSys assigns to Customer any warranty provided by the manufacturer of any materials and equipment used in the Work. CoolSys will assist Customer in making any warranty claim with respect to such materials and equipment in accordance with the manufacturer's warranty policy and based solely upon such manufacturer's determinations and findings. If equipment is used during construction for temporary heat or cooling, the manufacturer's warranty will commence at the time of startup (i.e., it will not commence at the date of Substantial Completion) and will extend for the duration of the Warranty Period. CoolSys is not responsible for any claims for loss, liability, or damage to the products, to other property, or for any personal injury arising out of the delivery, installation, demonstration or use of the products.
- 7.4. In no event shall a repair or replacement made during the Warranty Period extend the Warranty Period or alter the commencement of the Warranty Period. CoolSys is not responsible for defects or the repair, replacement, labor, or rental of, or any other cost associated with equipment furnished by the Customer or any other third party. If the Customer or a third-party misuses, alters, or repairs equipment furnished by CoolSys, the warranty is void. Failure to properly maintain equipment furnished by CoolSys voids the warranty and related service calls may be at the Customer's expense.

8. Termination.

- 8.1. The failure of the Customer to make payments as and when herein provided shall, in addition to all other rights, entitle CoolSys to, at its option, (a) suspend all of its Work and shipments during the continuance of such default on the part of Customer, (b) an extension of time for the performance of the Work and fair adjustment of the Contract Sum for such extension, and (c) terminate this Proposal. Additionally, CoolSys reserves the right to terminate this Proposal due to unsafe jobsite conditions.
- 8.2. Customer and CoolSys, by written notice of at least five (5) days, shall have the right to terminate and cancel this Proposal, at its convenience. In such event, CoolSys shall immediately stop its Work and Customer shall pay CoolSys for all the Work executed and, in the case of cancellation by Customer, for any costs incurred by CoolSys for the procurement of any materials, equipment, tools, construction equipment or machinery (including commitments made by CoolSys to third parties) and the properly allocable portion of overhead with respect thereto. Neither party shall be liable for any anticipated profit on the Work not performed, or any consequential or other damages.

9. Dispute Resolution. Customer and CoolSys agree to resolve by arbitration any dispute between Customer and CoolSys. Such arbitration shall be done in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. This provision shall be specifically enforceable in any court of competent jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10. Miscellaneous.

- 10.1. To the fullest extent permitted by law, this Proposal shall be governed by the laws of the state where the Project is located. Any action by Customer for breach of this Proposal must be commenced and CoolSys must be served within one year of the date of breach. Any suit or proceeding by Customer against CoolSys or any of its agents will be brought only in a court of competent jurisdiction located in Orange County, California.
- 10.2. CoolSys shall not be held liable for any failure or delay in performing the Work where such failure arises as a result of Force Majeure. "Force Majeure" means any event which is beyond the reasonable control of CoolSys whereby it is prevented from or delayed in the performance of Work including, without limitation, acts of God, governmental actions, war or national emergency, pandemic, acts of terrorism, protests, riot, civil commotion, fire, explosion, extreme weather conditions, flood, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to CoolSys workforce or that of any subcontractor), or restraints or delays affecting carriers or inability or delay in obtaining supplies and materials. CoolSys reserves the right to cancel this Proposal in whole or in part with no liability whatsoever as a result of Force Majeure.
- 10.3. IN NO EVENT WILL COOLSYS BE LIABLE FOR ANTICIPATED PROFITS OR FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL (WHETHER DIRECT OR INDIRECT) DAMAGES. COOLSYS' LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS PROPOSAL OR FROM THE PERFORMANCE OR BREACH THEREOF SHALL IN NO CASE EXCEED THE CONTRACT SUM.
- 10.4. None of these Terms may be added to, modified, superseded, or otherwise altered except by a written instrument, expressly identified as a modification of the Proposal, signed by an authorized representative of CoolSys and delivered by CoolSys to Customer.
- 10.5. Customer shall not disclose any confidential information of CoolSys or the existence or terms of any Proposal, except as necessary for performance of this Proposal, without the prior written approval of CoolSys.
- 10.6. The failure of either party to insist upon strict performance of any of the terms hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of the current or any subsequent default in any of such terms. No waiver by either party of any default hereunder shall be binding on such party unless made in writing. The captions preceding the text of each paragraph hereof are included only for convenience of reference and shall be disregarded in the interpretation hereof. The validity of any provision contained herein will not affect the validity of any other provision.