

**Board of Education Regular Meeting**

Chippewa Jr/Sr High School Cafeteria

Monday, January 23, 2023

6:00 PM

**MEETING MINUTES**

**I. OPENING**

A. Call to Order :: Moment of Silence :: Pledge of Allegiance

B. Present: Mr. DeAngelis, Mrs. Fenn, Mr. Golub Absent: Mr. Hershberger, Mr. Schafrath

**RESOLUTION 020-23**

C. Upon consideration to approve the minutes from the January 9, 2023 Organizational and Regular Meetings.

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**RESOLUTION 021-23**

**II. CONSIDER APPROVAL OF DONATIONS**

<u>Donor</u>	<u>Item</u>	<u>Value</u>	<u>Donated For:</u>
Lions Club	Medical Cot	\$417.60	Hazel Harvey
Cavanaugh Photography	Block "C" stickers	\$150.00	District
3-Point Club	Screen/Hardware for the gym	\$654.00	JR/SR HS

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**III. TREASURER'S UPDATE & AGENDA ITEMS**

A. Treasurer's comments

Rea & Associates Auditors are on site doing Field work.

**RESOLUTION 022-23**

B. Action Items

1. Upon consideration to approve the December, 2022 unaudited financial report (copy on file at the Doylestown Public Library)
2. Upon consideration to approve the requisition to Liberty Mutual Insurance through the Brooker Insurance Company in an amount not to exceed \$87,500.00 for property and casualty insurance covering the period of February 1, 2023 through January 31, 2024.

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**IV. SUPERINTENDENT'S UPDATES**

A. Brad Bertsch will update regarding the lawn mower purchase.

EXMARK LAZER Diesel, 144" cut, \$67,264.98, 5 year/1500 hour warranty

**V. SUPERINTENDENT'S AGENDA**

**RESOLUTION 023-23**

- A. Upon consideration to approve to hire Alexis Davidson, Paraprofessional – Teacher Aide, one (1) year, at Step 0 (\$14.17), 4 hrs a day per OAPSE contract, retroactive 1/11/2023.

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**RESOLUTION 024-23**

- B. Upon consideration to approve Kasey Starr, School Psychologist, to work up to 8 extended days, determined as needed by the Superintendent.

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**RESOLUTION 025-23**

- C. Upon consideration to approve to hire Sarah Mueller, Bus Driver, one (1) year, at Step 0 (\$19.05), 4 hrs a day per OAPSE contract, retroactive January 17, 2023.

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**RESOLUTION 026-23**

- D. Upon consideration to approve the attached quote from Martin Public Seating to purchase 105 new student desks for Hazel Harvey in the amount of \$45,911.25. See Exhibit A

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**RESOLUTION 027-23**

- E. Upon consideration to approve the attached Proposal #7176721 from Trane for additional furnace motors at CIS in the amount of \$44,500.00. See Exhibit B

This is in addition to the previous Proposal #7156980 for \$206,200.00 (Resolution 121-22)  
Both proposals fall under ESSER guidelines and will be paid with ESSER Funds.

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent **CARRIED**

**VI. SUPERINTENDENT'S CONSENT AGENDA**

**RESOLUTION 028-23**

- A. Upon consideration to approve the Summer Reading Program to be held at CIS on June 6, 7, 8, 13, 14, 15, 20, 21, 22 (9:00 – 11:00 each day).

- B. Upon consideration to approve the retirement of Beth Pavkov, effective May 31, 2023.

- C. Upon consideration to approve the 2023 Graduation Date – May 31, at Chippewa JR/SR High School.

- D. Upon consideration to approve the resignation of Mike Bohley as Varsity Head Football Coach.
- E. Upon consideration to approve the following Supplemental contract for the 2022-2023 school year:  
JV Baseball Coach                      5%                      Nate Samples

Motion to approve by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn, yes Golub yes, Hershberger absent, Schafrath absent                      **CARRIED**

**VII.** Motion to adjourn by Fenn and 2<sup>nd</sup> by DeAngelis

Roll Call: DeAngelis yes, Fenn yes, Golub yes, Hershberger absent, Schafrath absent                      **CARRIED**

Time: 6:21 pm

*NOTE: The next Regular Meeting will be held February 13, 2023 beginning at 6:00 PM.*

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**APPROVED:**

  
\_\_\_\_\_  
**President**

**Date:**

02/13/2023

  
\_\_\_\_\_  
**Treasurer**



# Quotation

5085 Park Avenue West, Ste. 150  
 Seville, Ohio 44273  
 1-800-362-8994  
 Fax - (330)769-4761


January 13, 2023...  
 Prepared by: Kirt Virgin  
[k.virgin@martinpublicseating.com](mailto:k.virgin@martinpublicseating.com)

**Bill To:**

Chippewa Local School District  
 Attn: Todd Osborn, (Supt.)  
 56 North Portage Street  
 Doylestown, Ohio 44230

**Ship To:**

Hazel Harvey Elementary  
 Attn: Todd Osborn  
 165 Brooklyn Ave.  
 Doylestown, Ohio 44230

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL
Discounts based on Ohio STS Contract...47% off list..				
 RUZ20E	105	Ruckus Single Post, Cantilever Desk by KI - 20" x 30" x 3/4" thick laminate top with PVC edge, mounted to pneumatic powered base that adjusts. Standard laminate, PVC Edge and painted finish:TBD, wheelbarrow base, rolling front, glides in back. Ships in 3-5 weeks from Bonduel, WI...Ships assembled...	\$ 437.25	\$ 45,911.25
	0	Freight included in unit prices...	\$ -	\$ -
	0		\$ -	\$ -
	0		\$ -	\$ -
		<b>Subtotal:</b>		\$ 45,911.25
		<b>Sales Tax:</b>		N/A
		<b>Grand Total:</b>		\$ 45,911.25

Thank you for the opportunity to provide you quote for this product. We appreciate the opportunity to work with you.

Pricing valid for 30 days.

(NOTE: LEAD TIMES ARE DEPENDENT ON STOCK AVAILABILITY AND SEASONAL SALES TRENDS)

SPECIAL ORDERED OR COM PRODUCT ARE NON-CANCELLABLE AND NON-RETURNABLE

Quote is F.O.B. your receiving location; subject to final actual shipping charges.

If you have any questions or would like to place an order please contact:

Kirt Virgin, Business Development

EMAIL: [k.virgin@martinpublicseating.com](mailto:k.virgin@martinpublicseating.com)

Exhibit B



# Trane Turnkey Proposal



CHIPPEWA LOCAL  
SCHOOL DISTRICT

Proposal ID: 7176721

Date: 1/5/23



**Turnkey Proposal For:**  
Todd Osborn  
Superintendent  
Chippewa Local School District  
219 Collier Dr  
Doylestown, OH 44230

**Local Trane Office:**  
Trane U.S. Inc.  
9555 Rockside Road, Suite 350  
Valley View, OH

**Local Trane Representative:**  
Megan Phillips  
Account Manager  
Cell: (216) 346-3865  
Office: (216) 654-1000



**Prepared For:**  
Todd Osborn

**Date:**  
1/5/2023

**Job Name:**  
Chippewa Motor Failure Solution

**Proposal Number:**  
7176721

**Delivery Terms:**  
Freight Allowed and Prepaid – F.O.B Factory

**Payment Terms:**  
Net 30

**State Contractor License Number:**  
47248

**Proposal Expiration Date:**  
14 Days

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## Scope of Work

“Scope of Work” and notations within are based on the following negotiated scope of work and based on the discovery of additional motors that have failed on units receiving new controls to solve the cause of the consistent failure of these units.

### Current State:

The district has experienced premature motor failures across the building that is interfering with the ability to control proper ventilation and humidity to adhere to ASHRAE recommendation for increased ventilation and humidity monitoring measures for proper indoor air quality. The premature failures have been caused by a non-OEM controller and programming that was installed post manufacturing resulting in dysfunction within the equipment sequence of operation.

*These additional motors were discovered once the scope of the controls installation was commenced and the below scope must be completed to continue with the resolution of the failure issue.*

### Turnkey Installation Solution:

- Supply and install (18) eighteen new fan motors, controlling engines for the fan motors, and perform the programming of the engines.
- Factory start up and commissioning of the operation of each motor after their replacement for the proper operation of the fan coils.
- This work must be completed prior Trane being able to execute current project scope to re-control the existing fan coil units with new Trane controls.

### Proposal Notes/ Clarifications

- Integrating the new fan coil controllers into the building automation system front end can be completed in the future
- If additional failed fan coil unit motors, controllers, other mechanical repairs are discovered this will be quoted separately
- All work to be performed during normal business hours (8am to 5pm, M-F, non-holidays)
- Proposal does not include "Premium Time" or Price Contingency therefor
- Equipment Order Release and Services rendered are dependent on receipt of PO/Subcontract and credit approval
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors
- Asbestos or hazardous material abatement removal shall be performed by customer



ESSER Funding Project Execution

Proposal ID: 7176721

Dated: 1/5/23

- This project includes project execution and required documentation per state prevailing wage requirements under Chapter 4115 of the Ohio Revised Code and the Federal Davis Bacon Act.
- The equipment upgrade will directly affect building indoor air quality by providing reliability of the HVAC system to properly ventilate the building and reducing COVID 19 risk per recommended ASHRAE standards.

## Pricing and Acceptance

Todd Osborn  
 Superintendent  
 Chippewa Local School District  
 219 Collier Dr  
 Doylestown, OH 44230

Site Address:  
 Chippewa Intermediate School  
 100 Valley View Rd,  
 Doylestown, OH 44230

### Price

**Total Net Price.....\$44,500.00**

### Financial items not included

- Bid Bond
- Payment and Performance Bond
- Guarantee of any energy, operational, or other savings

Respectfully submitted,

*Megan Phillips*

*Josh Bennett*

Megan Phillips  
 Josh Bennett  
 Account Managers  
 Trane U.S. Inc.  
 (216) 654-1000



**ACCEPTANCE**

**This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).**

**We value the confidence you have placed in Trane and look forward to working with you.**

**COVID-19 NATIONAL EMERGENCY CLAUSE**

The parties agree that they are entering into this Agreement while the nation is in the midst of a national emergency due to the Covid-19 pandemic ("Covid-19 Pandemic"). With the continued existence of Covid-19 Pandemic and the evolving guidelines and executive orders, it is difficult to determine the impact of the Covid-19 Pandemic on Trane's performance under this Agreement. Consequently, the parties agree as follows:

1. Each party shall use commercially reasonable efforts to perform its obligations under the Agreement and to meet the schedule and completion dates, subject to provisions below;
2. Each party will abide by any federal, state (US), provincial (Canada) or local orders, directives, or advisories regarding the Covid-19 Pandemic with respect to its performance of its obligations under this Agreement and each shall have the sole discretion in determining the appropriate and responsible actions such party shall undertake to so abide or to safeguard its employees, subcontractors, agents and suppliers;
3. Each party shall use commercially reasonable efforts to keep the other party informed of pertinent updates or developments regarding its obligations as the Covid-19 Pandemic situation evolves; and
4. If Trane's performance is delayed or suspended as a result of the Covid-19 Pandemic, Trane shall be entitled to an equitable adjustment to the project schedule and/or the contract price.

Submitted By: Megan Phillips	Cell: (216) 346-3865 Office: (216) 654-1000 Proposal Date: January 5, 2023
<b>CUSTOMER ACCEPTANCE</b> Chippewa Local School District	<b>TRANE ACCEPTANCE</b> Trane U.S. Inc.
Authorized Representative	Authorized Representative
Printed Name	Printed Name
Title	Title
Purchase Order	Signature Date
Acceptance Date	License Number: 47248





#### TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

"Company" shall mean Trane U.S. Inc..

1. **Acceptance; Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the commercial goods and/or services described (the "Work"). COMPANY'S TERMS AND CONDITIONS AND EQUIPMENT PRICES ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT. The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. Prices in the Proposal are subject to change at any time upon notice to Customer. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to provide Work in accordance with the Proposal and the Company terms and conditions. If Customer does not reject or object in writing to Company within 10 days, Company's counteroffer will be deemed accepted. Notwithstanding anything to the contrary herein, Customer's acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability other than Customer's obligation to pay for Work rendered by Company to the date of cancellation.

2. **Connected Services.** In addition to these terms and conditions, the Connected Services Terms of Service ("Connected Services Terms"), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

3. **Title and Risk of Loss.** All Equipment sales with destinations to Canada or the U.S. shall be made as follows: FOB Company's U.S. manufacturing facility or warehouse (full freight allowed). Title and risk of loss or damage to Equipment will pass to Customer upon tender of delivery of such to carrier at Company's U.S. manufacturing facility or warehouse.

4. **Pricing and Taxes.** Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer's tax-exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Within thirty (30) days following Customer acceptance of the Proposal without addition of any other terms and conditions of sale or any modification, Customer shall provide notification of release for immediate production at Company's factory. Prices for Work are subject to change at any time prior to shipment to reflect any cost increases related to the manufacture, supply, and shipping of goods. This includes, but is not limited to, cost increases in raw materials, supplier components, labor, utilities, freight, logistics, wages and benefits, regulatory compliance, or any other event beyond Company's control. If such release is not received within 6 months after date of order receipt, Company reserves the right to cancel any order. If shipment is delayed due to Customer's actions, Company may also charge Customer storage fees. Company shall be entitled to equitable adjustments in the contract price to reflect any cost increases as set forth above and will provide notice to Customer prior to the date for which the increased price is to be in effect for the applicable customer contract. In no event will prices be decreased.

5. **Exclusions from Work.** Company's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.

6. **Performance.** Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer's expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.

7. **Payment.** Customer shall pay Company's invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.

8. **Time for Completion.** Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so. Delivery dates are approximate and not guaranteed. Company will use commercially reasonable efforts to deliver the Equipment on or before the estimated delivery date, will notify Customer if the estimated delivery dates cannot be honored, and will deliver the Equipment and services as soon as practicable thereafter. In no event will Company be liable for any damages or expenses caused by delays in delivery.

9. **Access.** Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site' owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company's access to correct any emergency condition shall not be restricted. Customer grants to Company the right to remotely connect (via phone, modem, internet or other agreed upon means) to Customer's building automation system (BAS) and/or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer's request.

10. **Completion.** Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company's representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer's failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.

11. **Permits and Governmental Fees.** Company shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.



12. **Utilities During Construction** Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.
13. **Concealed or Unknown Conditions** In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.
14. **Pre-Existing Conditions.** Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also 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 hired by Company.
15. **Asbestos and Hazardous Materials.** Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.
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 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work 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, tornado; storm; fire, civil disobedience, pandemic insurrections, riots, labor/labour disputes, labor/labour 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. **Customer's Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due, or (2) 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 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 Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead).
18. **Indemnity.** To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.
19. **Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, INCLUDING CONTAMINANTS LIABILITIES, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement.**
20. **CONTAMINANTS LIABILITY**  
The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGE TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION, MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANT LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANTS LIABILITIES.**
21. **Patent Indemnity.** Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.
22. **Limited Warranty.** Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the



Warranty Period Exclusions from this Limited Warranty include damage or failure arising from wear and tear; corrosion, erosion, deterioration, Customer's failure to follow the Company-provided maintenance plan, refrigerant not supplied by Company and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company ("Third-Party Product(s)") are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN. THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. 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.**

23. **Insurance.** Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

24. **Commencement of Statutory Limitation Period.** Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

25. **General.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed, without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. 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 subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent 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. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

26. **Equal Employment Opportunity/Affirmative Action Clause.** Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

27. **U.S. Government Work.**

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions in effect as of the date of this subcontract: 52.203-19, 52.204-21, 52.204-23, 52.219-8, 52.222-21, 52.222-26, 52.222-35, 52.222-36, 52.222-50, 52.225-26, 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

28. **Limited Waiver of Sovereign Immunity.** If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), 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 Customer by Company and arising or alleged to arise out of the furnishing by 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 (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if 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 Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that



Customer will not bring any action against Company in tribal court, and that 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 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 Customer, enforceable in accordance with its terms

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