

6850 W. 47th Terr.  
Mission, KS 66203

LBAcommercial.com



(913) 262-1822  
Fax (913) 262-5520



At your request, LBA Air Conditioning, Heating & Plumbing, Inc. (“LBA”) agrees to provide the labor, materials, equipment, supplies and services to Owner(s) (“You”) in accordance with the attached Proposal (“the Work”).

To the extent that You accept this Commercial Agreement pursuant to a purchase order, notice to proceed or other type of document, the terms of this Commercial Agreement shall govern in the event of a conflict.

LBA will provide the Work in a good and workmanlike manner, in accordance with accepted trade standards, in compliance with applicable codes, ordinances and laws, and manufacturer’s warranty(ies).

Extra Work (if any) will be added to Contract Price.

You agree not to disrupt or delay LBA’s normal processes and procedures in their execution of the Work

You agree that LBA is being asked to work on existing pipes, HVAC, systems, walls, floors, structures, appliances, workmanship and plumbing installed by others, sometimes years ago. You agree that pipes rust, corrode, wear, prior installations may not be to code, *etc.*

You agree that LBA is not liable for any damages, loss or injury, whether existing, caused by LBA’s performance of the Work or otherwise, unless the damage, loss or injury is a direct result of LBA’s gross negligence or willful misconduct.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, LBA DISCLAIMS AND YOU WAIVE ANY AND ALL WARRANTIES WITH RESPECT TO THE WORK AND/OR FROM FAULTY WORKMANSHIP OR MATERIALS. THIS WAIVER DOES NOT APPLY TO CLAIMS AGAINST A MANUFACTURER UNDER ANY MANUFACTURER’S WARRANTY.

You will pay for the Work in full within 30 days following the completion of the Work. You will pay interest at the rate of 1.5% per month from date due until paid and will pay all costs, fees, expert and consultant fees, reasonable attorneys’ fees and other reasonable expenses incurred in collecting.

Within 60 days of completion of the Work, You will report in writing to LBA any deficiency in or arising out of LBA’s Work. You waive(s) the right to claim a deficiency if no written notice is given within 60 days of completion of the Work.

LBA is not liable for any delays in delivery of its materials, labor and/or services. LBA is not liable for any loss, damage, detention, or delay caused by strikes, fire, flood, Acts of God, civil disobedience, acts of terrorism, riots, storms, floods, fire, power outages, surges or interruptions, delays or any other cause beyond LBA’s reasonable control.

**MISSOURI NOTICE TO OWNER: FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIALS OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC’S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR “LIEN WAIVERS” FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIALS TWICE.**

**KANSAS NOTICE TO OWNER: KANSAS LAW WILL ALLOW THIS SUPPLIER OR SUBCONTRACTOR TO FILE A LIEN AGAINST YOUR PROPERTY FOR MATERIALS OR LABOR NOT PAID FOR BY YOUR CONTRACTOR UNLESS YOU HAVE A WAIVER OF LIEN SIGNED BY THIS SUPPLIER OR SUBCONTRACTOR. IF YOU RECEIVE A NOTICE OF FILING OF A LIEN STATEMENT BY THIS SUPPLIER OR SUBCONTRACTOR, YOU MAY WITHHOLD FROM YOUR CONTRACTOR THE AMOUNT CLAIMED UNTIL THE DISPUTE IS SETTLED.**

You are responsible for all fire, tornado or other necessary insurance. If prior to acceptance and payment in full by You any or all of the Work is damaged or destroyed by casualty, You agree to pay LBA for the Work damaged or destroyed.

LBA's workers are covered by workmen's compensation insurance.

Unless expressly agreed otherwise, all work shall be done during regular working hours on regular working days.

LBA is not liable for any direct or indirect incidental or consequential damages or expenses arising from and/or on account of the materials, labor, equipment, supplies and/or services provided.

This Commercial Agreement contains the parties' entire agreement. There are no agreements between You and LBA except as expressly stated herein. No change will be binding upon LBA, unless the change is in writing and signed by LBA's President.

You agree to and shall indemnify, save, defend and hold harmless LBA for and against all claims brought by parties other than the parties to this Agreement. This provision shall apply to all claims regardless of cause, including LBA's performance or failure to perform, including, but not limited to, defects in products, design, installation, repair, service, monitoring, operation or non-operation of the System, whether based upon negligence active or passive, express or implied contract or warranty, contribution or indemnification or strict or product liability, on the part of LBA.

You agree to indemnify LBA against, defend and hold LBA harmless from any action for subrogation which may be brought against LBA by any insurer or insurance company or its agents or assigns including the payment of all damages, expenses, costs and attorney's fees.

The Work does not include any costs or contingencies for unknown conditions, including by example and not limitation, asbestos, abnormal soils, rock excavation of a more competent classification than "highly weathered", or other latent conditions. You shall be responsible for the costs of correcting any such conditions. Should such unknown conditions be encountered, LBA shall promptly inform You and the estimated costs of the extra work. Such costs may include, by example and not limitation, hand trenching, removal, jack hammer and drill operations. The contract price will be increased to cover LBA's actual costs, plus 15% for overhead.

Neither this Commercial Agreement, nor any rights, benefits, nor obligations under it may be assigned by You without the prior express written consent of LBA.

In the event any of the provisions of this Agreement are found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected.

This Commercial Agreement shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against either party, and as a whole, giving effect to all of the terms, conditions, and provisions of this Agreement.

This Commercial Agreement will be construed in accordance with the laws of the State of Kansas, without regard to any choice of law provisions. Venue and jurisdiction of any action (subject to the arbitration provisions below) involving the validity, interpretation and/or enforcement of this Agreement shall be in the Tenth District Court of Kansas located in Johnson County, Kansas.

Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

All disputes and controversies of every kind and nature between the parties to this Commercial Agreement arising out of or in connection with this Commercial Agreement as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination thereof shall be submitted to arbitration pursuant to the procedure set forth in this Agreement. Either party may demand such arbitration in writing not less than ten (10) days after the controversy arises, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy. Within ten (10) days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named forthwith by the Arbitration Committee of the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within ten (10) days or, if no such agreement is made on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Arbitration Committee of the American Arbitration Association. The arbitration costs and expenses of each party shall be borne by that party. The arbitration hearing shall be held at a location in the Kansas City, Missouri metropolitan area to

be agreed upon by the arbitrators on twenty (20) days notice to the parties, or at such other place and location as the parties may agree. If the parties fail to reach an agreement to the contrary, the arbitration rules and procedures of the American Arbitration Association shall be utilized in the arbitration hearing. The arbitration hearing shall be concluded within ten (10) days unless otherwise ordered by the arbitrators and the award on the hearing shall be made within fifteen (15) days after the close of the submission of evidence. An award rendered by a majority of the arbitrators appointed under and pursuant to this Agreement shall be final and binding on all parties to the proceeding during the period of this Agreement, and judgment on such award may be entered by either party in a court, state or federal, having jurisdiction. The parties stipulate that the provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement. The arbitration provisions of this Agreement shall, with respect to such controversy or dispute, survive the termination or expiration of this Agreement. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

TO THE EXTENT THAT LBA MAY BE FOUND LIABLE FOR ANY BREACH OF THIS AGREEMENT, LBA'S LIABILITY SHALL BE LIMITED TO THE LESSER OF THE ACTUAL DAMAGES OR THE AMOUNT PAID BY YOU TO LBA FOR THE WORK, WHETHER SUCH CLAIMS ARE FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, GROSS NEGLIGENCE AND/OR OTHERWISE.

*LBA reserves the right to modify these conditions of contract from time to time in their sole discretion. Such modifications conditions however shall apply only to those Agreements executed subsequent to the date of the modification.*

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION  
THAT MAY BE ENFORCED BY THE PARTIES**

Last Revised as of: March 31, 2016