



TECH PLAN, INC.

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COMPANY:	Anixter	PROPOSAL #:	Q02648625-H
ATTN:	Perry Clark	PAGES:	7
E-mail:	Perry.Clark@anixter.com	DATE:	Feb. 8th, 2018
FROM:	Philip Bonds		
PROJECT:	CITY OF FARMERS BRANCH – LIEBERT REPLACEMENT PROPOSAL		
	Anixter Quote # Q000NG4V		
	Shawn.Lippert@anixter.com Perry.Clark@anixter.com		
	DIR-TSO-2651 Pricing ... 32.5% off of List Price		
	Grand Total = \$53,944.00 (Material + Pass-Through Install Price)		

Liebert Corporation through Tech Plan, Inc. is pleased to provide our quotation for the following Liebert DS system budget for your consideration on this project.

ITEM ONE: One (1) Liebert Model DS035ADA1E1129E, 460 Volts, 60Hz, 3 Phase, 65,000 amps rms Short Circuit Current Rating, Liebert DS Precision Cooling Systems:

Nominal 035 kW (10 Ton) Air Cooled Downflow System.

- 14 gauge, welded frame, with Autophoretic coating. Frame can be field separated into three sections for transport through small areas.
- Front Service Access
- Supply air exits from the bottom of the unit.
- Return air enters the top of the unit.
- Exterior panels insulated & powder coated.
- 4" filters, MERV 8 rating.
- EC Motor with Fans Operating Inside the Unit
- Infrared Humidifier with automatic flush cycle. Capacity of 11 lbs/hr (kg/hr).
- Three-stage, Finned tubular, 304/304 stainless steel electric reheat with a capacity of 15 KW (BTUH).
- Dual refrigeration circuits with liquid line filter driers, refrigerant sight glasses, expansion valves, and liquid line solenoid valves.
- Two (2) independent Digital Scroll Compressors provide variable capacity, increased part-load energy efficiency, and reduced compressor cycling.
- A-frame Evaporator coil with stainless steel drain pan.
- R-407C refrigerant. Field supplied and field charged on air-cooled units.
- iCOM control with Display
- Locking Disconnect switch.
- High Temperature Sensor, shuts down unit at 125F.
- Smoke Sensor with unit alarm and shutdown. Includes supervision contacts
- Factory installed dual float condensate pump with unit alarm indication and unit shutdown upon high water level. Rated for 100GPH at 20 ft head.
- The Liebert IntelliSlot Unity Card (IS-UNITY-DP) provides ground fault isolated RS-485 Modbus, BACnet IP and Modbus IP network connectivity to Building Management Systems for unit monitoring and management. Also, provides ground fault isolated 10/100 baseT Ethernet connectivity for unit monitoring and management. The supported management interfaces include: SNMP for Network Management Systems, HTTP for web page viewing, SMTP for email, and

SMS for mobile messaging. This card can support dual IP and 485 protocols simultaneous. IS-UNITY-DP card is factory-installed in an IntelliSlot. This card can support dual IP and 485 protocols simultaneous. IS-UNITY-DP card is factory-installed in an IntelliSlot.

- Zone Leak Sensor Qty 1 per unit
- Return air plenum 24" high. Top return with filter door on front of plenum.

Services Include:

- 2nd Through 5th Year Compressor Extended Warranty
- Warranty Start Up

One (1) Liebert MC Air-Cooled Microchannel Condenser(s), Model MCM080E8ADH979, using input supply voltage of 460 Volt, 3 Phase, 60 Hz

The Liebert MC is an air-cooled condenser featuring an all aluminum microchannel coil and a variable speed fan motors on every fan. Constructed with an aluminum cabinet, the Liebert MC is a low-profile, direct-drive propeller fan-type air-cooled unit suitable for mounting outdoors. It provides for the heat rejection of either one or two separate refrigeration circuits, matching heat rejection capacity varying with the outdoor ambient temperatures, compressor or pump (if applicable) system mode and with each corresponding compressor/pumps heat rejection requirements. The unit is quiet and corrosion resistant. All electrical connections and controls are enclosed in a factory mounted NEMA 3R electrical panel. Copper pipe connections are provided for brazing of field piping and connections are located next to the electrical panel.

Liebert MC Condenser Details:

- Microchannel aluminum coil
- Variable Speed EC Fans
- Premium electronic control board providing communication with iCOM using CANbus
- Short Circuit Current Rating of 65,000 Amps, rms
- Aluminum exterior panels and 18" aluminum legs
- Dual refrigerant circuit condenser
- R-407C factory set points
- Domestic packaging
- CSA Listed

PRCING FOR ITEM ONE ABOVE, NOT INCLUDING TAX

Quantity	Part Number Description	List Price	Ext List
1	DS035ADA1EI540E Liebert DS	\$29,455.00	\$29,455.00
1	183720G24Z 24" Downflow Plenum	\$845.00	\$845.00
1	MCM080E8ADI999 Liebert MC Condenser	\$8,700.00	\$8,700.00
1	5WCDS35DSL 2nd Thru 5th Year Compressor Extended Warranty	\$820.00	\$820.00
1	S10186A LiebertDS Warranty Inspection for Liebert DS	\$800.00	\$800.00
1	308324G1 12" Floorstand for Liebert DS	\$975.00	\$975.00
TOTAL			\$41,595.00

Anixter → DIR-TSO-2651 (32.5% off of List) DIR Price = \$28,076.00

ITEM TWO: Electrical and Mechanical Installation Services

Furnish the following Scope of Work (SOW) labor and materials for mechanical and electrical to change out the current Liebert 20 ton model to a new more efficient 10 ton Liebert DS35.

Scope of Work (SOW) includes the following:

- Recover R22 Freon from existing unit.
- Disconnect electrical feed to indoor unit and condenser.
- Removal of both indoor unit and floorstand and set rooftop condenser with crane.
- Hoisting of new condenser to the roof.
- Flush and clean existing piping for new R407C green Freon to match new system requirements and meet government standards for green house gas.
- Modify flooring and furnish and install new 12" floorstand.
- Deliver and set new indoor unit in place.
- Install new electrical breaker to match the new system electrical requirements and connect existing wiring and control wires to new condenser.
- Run new conduit and CANbus cable for communications between indoor unit and condenser.

PRICING FOR INSTALLATION SERVICES, NOT INCLUDING TAX:

• Delivery and transport costs:	\$2,165.00
• Mechanical Labor:	\$4,259.00
• Mechanical Materials:	\$9,346.00
• Electrical Labor:	\$2,789.00
• Electrical Materials:	\$1,014.00
• Raised Floor Work Labor:	\$1,352.00
• Raised Floor Work Materials:	\$3,338.00
• Crane Costs for Condenser Placement:	\$1,605.00
<u>INSTALLATION TOTAL:</u>	<u>\$25,868.00</u>

NOTE: All work based on normal working hours.

Terms & Conditions:

- Quotation Valid for 45 days
- Price does not include tax
- Terms are Net 30 Days, subject to manufacturer's approval
- INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at <http://termsconditions.vertivco.com/> unless a formal agreement governing this Purchase Order/transaction has been executed by the parties, in which case the Terms and Conditions of the signed agreement shall govern. Seller hereby objects to all Buyer's terms and conditions received by Seller and/or issued by Buyer.

- Please address Purchase Orders to:

Liebert Corporation
C/O Tech Plan Incorporated
717 Taylor Drive
Plano, TX 75074
Attn: Philip Bonds
pbonds@tplan.com

Thank you for allowing us to provide this for you. Please let me know if you have any questions or need additional information.

Sincerely,

Philip Bonds

Liebert Corporation
TERMS AND CONDITIONS OF SALE

Liebert Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods and licensing of Software by Seller or its affiliate Avocent Corporation, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods and/or license of Software by Seller to Buyer. Seller's acceptance of Buyer's purchase order or is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Goods and/or Software will manifest Buyer's assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods and/or Software shall remain in effect for thirty (30) days after the date of Seller's quotation provided an unconditional authorization from Buyer for the shipment of the Goods and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods and/or Software to Seller's price for the Goods and/or Software at the time of shipment. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Unless otherwise specified by Seller, parts ("Parts") that are required for the performance of services will be furnished at Seller's then prevailing prices. Seller assigns to Buyer any warranties which are made by manufacturers and suppliers of Parts and which are assignable. Except as specified above, Parts furnished hereunder are furnished AS IS, WHERE IS, WITH NO WARRANTY WHATSOEVER.

2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, Parts, and/or Software, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election..

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries of Goods and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries. Buyer hereby grants Seller a security interest in all Goods and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest. All purchases paid by credit card shall be charged a 2.0% usage surcharge of the invoice total, for fees paid by Seller to accept credit card transactions.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein. **THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the

extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods and/or Software, either alone or in combination with other products/components.

6. **LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.**

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and aggregate. CGL includes Contractual Liability. CGL does not include Products and Completed Operations coverage, which is self-insured. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.**

8. **PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability.

9. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

11. **CHANGES:** Buyer may request changes or additions to the Goods and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods and/or Software manufactured prior to the date of such change.

12. **NUCLEAR/MEDICAL:** GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

13. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

14. **SOFTWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

15. **TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. **DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. **INSPECTION/TESTING:** Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from (i) the date of delivery of goods and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods and/or Software, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

18. **RETURNED GOODS:** Advance written permission to return Goods and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods and/or Software must be (i) current, unused Goods and/or Software, (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods and/or Software prior to authorizing return.

19. **BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if reasonable site and/or equipment access is denied the Seller service representative; and d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer.

20. **DRAWINGS:** Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.

21. **BUYER SUPPLIED DATA:** To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods and/or Software, and/or the provision of Services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and Services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

23. **NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

24. **GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

25. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

OPTIONAL LIMITED WARRANTY FOR THERMAL MANAGEMENT PRODUCTS

Warrantor: Liebert Corporation (referred to herein as "Liebert") offers the following **Optional Limited Warranty Against Defects in Material and Workmanship ("Warranty")** for applicable Product.

Products Covered:

- Compressors contained in Liebert™ Thermal Management Products

Terms of Limited Warranty:

As provided herein, Liebert warrants that during the Warranty Period (as defined below) the Product:

- is free of defects in material and workmanship; and
- conforms to the descriptions contained in any applicable certified drawings for such Product, to Liebert's final invoices, and to applicable Liebert Product brochures and manuals current as of the date of Product shipment ("Descriptions")

Warranty Period: a period of () one () two () three () four years after the expiration of the One Year Limited Warranty Against Defects in Material and Workmanship.

If any part or portion of the Liebert Product fails to conform to the Warranty within the Warranty Period, Liebert, at its option, will furnish new or factory remanufactured Products for repair or replacement of that failed portion or part. REPAIR OR REPLACEMENT OF A DEFECTIVE PRODUCT OR PART THEREOF DOES NOT EXTEND OR RESTART THE ORIGINAL WARRANTY PERIOD. Liebert does not control the use of any Product and, accordingly, materials classified as "Descriptions" are NOT WARRANTIES OF PERFORMANCE and NOT WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

Who is Covered:

This Warranty extends to the **original end-user** (the "User") and only within the fifty states of the USA and Canada. This Warranty is not transferable or assignable without the prior written permission of Liebert. This Warranty is given ONLY to purchasers who buy for commercial or industrial use in the ordinary course of business. Liebert assigns to User any warranties which are made by manufacturers and suppliers of components of, or accessories to, the Liebert Product and which are assignable, but Liebert makes NO REPRESENTATIONS as to the effectiveness or extent of such warranties, assumes NO RESPONSIBILITY for any matters which may be warranted by such manufacturers or suppliers and extends no coverage under this Warranty to such components or accessories.

Warranty Claims Procedure and Services:

Within thirty (30) days after User's discovery of a defect, User must contact their local Liebert representative and provide all material information relating to such alleged defect. User may contact Liebert at (800) 543-2378 for local Liebert representative information.

Liebert, in its sole discretion, shall either repair or replace defective Products. User shall bear all labor or shipping charges associated with de-installation, shipment and transportation of the returned Product and the transportation and installation of the Product replaced under warranty. Warranty coverage will be extended only after Liebert or its representative's inspection discloses the claimed defect and shows no signs of treatment or use that would void the coverage of this Warranty. All defective Products and parts thereof replaced under this Warranty become the property of Liebert.

Items Not Covered:

THIS WARRANTY DOES NOT COVER DAMAGE OR DEFECT CAUSED BY misuse, improper application, wrong or inadequate electrical current or connection, inadequate water or drain services, negligence, inappropriate on site operating conditions, repair by non-Liebert designated personnel, accident in transit, tampering, alterations, a change in location or operating use, exposure to the elements, Acts of God, theft or installation contrary to Liebert's recommendations or specifications, or in any event if the Liebert serial number has been altered, defaced, or removed.

THIS WARRANTY DOES NOT COVER shipping costs, Product installation/removal costs, travel costs, external circuit breaker resetting, loss of refrigerant, maintenance or service items and further, except as may be provided herein, does NOT include labor costs or transportation, arising from the replacement of the Liebert Product or any part thereof or charges to remove or reinstall same at any premises of User, nor for site inspections that determine no corrective action was required nor any other services not expressly provided for by the terms of the Warranty. Consumables, including but not limited to air filters, are not covered by this Warranty. Non-compressor related parts are warranted separately.

THIS WARRANTY IS VOID UPON THE FOLLOWING: (1) the Product having been stored in an unsuitable environment after Product shipment and/or (2) if applicable, Product warranty inspection performed by a third party other than Liebert and/or its authorized representatives. No salesperson, employee or agent of Liebert is authorized to add to or vary the terms of this Warranty. Liebert retains the right to cancel the Warranty, subject to reinstatement at Liebert's sole discretion, for late- or non-payment of the Product purchase price and any other amounts due. Warranty terms may only be modified, if at all, in writing and signed by a Liebert officer.

Other Limitations:

THIS LIMITED WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. USER'S SOLE AND EXCLUSIVE REMEDY IS REPAIR OR REPLACEMENT OF THE LIEBERT PRODUCT AS SET FORTH HEREIN. IF USER'S REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE BY A COURT OF COMPETENT JURISDICTION, LIEBERT'S RESPONSIBILITY FOR PROPERTY LOSS OR DAMAGE SHALL NOT EXCEED THE NET PRODUCT PURCHASE PRICE. IN NO EVENT SHALL LIEBERT ASSUME ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA, WHETHER ANY CLAIM IS BASED UPON THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHERWISE. THE PRODUCTS LISTED IN THIS WARRANTY ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS.

LIMITED WARRANTY FOR THERMAL MANAGEMENT PRODUCTS

Warrantor: Liebert Corporation (referred to herein as "Liebert") offers the following **One-Year Limited Warranty Against Defects in Material and Workmanship ("Warranty")** for applicable Product.

Products Covered:

- Liebert™ Thermal Management Products

Terms of Limited Warranty:

As provided herein, Liebert warrants that during the Warranty Period (as defined below) the Product:

- is free of defects in material and workmanship; and
- conforms to the descriptions contained in any applicable certified drawings for such Product, to Liebert's final invoices, and to applicable Liebert Product brochures and manuals current as of the date of Product shipment ("Descriptions")

Warranty Period: a period of one (1) year from a valid, documented Product warranty inspection performed by Liebert personnel, which period shall expire no later than eighteen (18) months from the Product shipment date. Product shipment date is determined only from the bill of lading. If Product warranty inspection is not performed, the Warranty Period is thirteen (13) months from the date of purchase by the original end-user.

If any part or portion of the Liebert Product fails to conform to the Warranty within the Warranty Period, Liebert, at its option, will furnish new or factory remanufactured Products for repair or replacement of that failed portion or part. REPAIR OR REPLACEMENT OF A DEFECTIVE PRODUCT OR PART THEREOF DOES NOT EXTEND OR RESTART THE ORIGINAL WARRANTY PERIOD. Liebert does not control the use of any Product and, accordingly, materials classified as "Descriptions" are NOT WARRANTIES OF PERFORMANCE and NOT WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

Who is Covered:

This Warranty extends to the **original end-user** (the "User") and only within the fifty states of the USA and Canada. This Warranty is not transferable or assignable without the prior written permission of Liebert. This Warranty is given ONLY to purchasers who buy for commercial or industrial use in the ordinary course of business. Liebert assigns to User any warranties which are made by manufacturers and suppliers of components of, or accessories to, the Liebert Product and which are assignable, but Liebert makes NO REPRESENTATIONS as to the effectiveness or extent of such warranties, assumes NO RESPONSIBILITY for any matters which may be warranted by such manufacturers or suppliers and extends no coverage under this Warranty to such components or accessories.

Warranty Claims Procedure and Services:

Within thirty (30) days after User's discovery of a defect, User must contact their local Liebert representative and provide all material information relating to such alleged defect. User may contact Liebert at (800) 543-2378 for local Liebert representative information.

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Items Not Covered:

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THIS WARRANTY IS VOID UPON THE FOLLOWING: (1) the Product having been stored in an unsuitable environment after Product shipment and/or (2) if applicable, Product warranty inspection performed by a third party other than Liebert and/or its authorized representatives. No salesperson, employee or agent of Liebert is authorized to add to or vary the terms of this Warranty. Liebert retains the right to cancel the Warranty, subject to reinstatement at Liebert's sole discretion, for late- or non-payment of the Product purchase price and any other amounts due. Warranty terms may only be modified, if at all, in writing and signed by a Liebert officer.

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