



NEW CUSTOMER APPLICATION

BUSINESS INFORMATION (VERIFICATION OF BUSINESS INFORMATION FROM STATE OF FORMATION REQUIRED)

Legal Name of Entity:			
Type of Entity:	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Corporation	<input type="checkbox"/> Sole Proprietorship
		<input type="checkbox"/> Other: _____	
State of Formation of Entity:	Trade Name/DBA (if any)		
Business Physical Address:			
City:		State:	Zip Code:
Business Mailing Address (if different from above):			
Business Phone #:	Business Fax #:	Company Website:	
Type of Business/Industry:		Company Tax ID/FEIN #:	
Year Company Established:		Dunn & Bradstreet Number (if any):	
Annual Revenue (based on last fiscal year):		Percentage of Annual Revenue from Top 5 Customers:	
Key Products/Services Offered:			
Main Business Challenges:			

AUTHORIZED BUSINESS CONTACT INFORMATION

Name:		Title:
Phone #:	Fax #:	E-mail:
Address (if different from above):		

OWNER(S)/SHAREHOLDER(S)/MEMBER(S) OF ENTITY (PLEASE LIST ALL—USE OTHER SHEET IF NECESSARY)

Name	Address & Phone Number

BANK REFERENCES (PLEASE LIST TWO (2) BANK REFERENCES)

Bank Name	Type of Account: Checking or Saving	Account #	Name, Address & Phone Number of Bank Contact

BUSINESS/TRADE REFERENCES (PLEASE LIST TWO (2) BUSINESS/TRADE REFERENCES)

Company Name	Description of Collaboration with Vendor	Name, Address & Phone Number of Company Contact

RELEASE, DISCLAIMER AND AUTHORIZED SIGNATURE

By signing below, I expressly represent and affirm that on behalf of above-referenced entity/individual: (i) I am authorized to execute this new customer application; (ii) all the information provided above is true and complete; (iii) I have fully read, understand and agree to be bound by and comply with the terms of this new customer application, including the terms and conditions below, which are incorporated by this reference; and (iv) I authorize the references listed above to share any and all information concerning the credit history of the above-referenced entity/individual with Fisher Refrigeration, Inc. ("Fisher"), and release all parties from all liabilities for any damage that may result from furnishing this information.

Authorized Signature:	Date:
Authorized Printed Name:	

TERMS AND CONDITIONS
last updated as of May 30, 2023

In consideration of Fisher Refrigeration, Inc. (referred to herein as "Fisher", "we," "us," or "our") extending credit to the entity/individual listed on the New Customer Application (referred to herein as "Customer", "you," or "your"), you hereby agree to be bound by and comply with the following terms and conditions (the "Terms and Conditions"), which are incorporated in and made a part of every quote, proposal, and statement of work (collectively, the "Proposal") submitted to you by Fisher. These Terms and Conditions are subject to change by Fisher without further notice to you. Unless expressly agreed in writing by Fisher, no term or condition contained in any quotation, sales order, acknowledgment form, purchase order or other communication from you which is inconsistent with or in addition to the Proposal (including these Terms and Conditions) shall be binding upon Fisher and are specifically objected to and rejected by Fisher.

1. **Proposal.** Acceptance of the Proposal includes all Terms and Conditions herein or incorporated by reference and directing us to prepare for or commence the Work (as defined herein), by means such as signing the Proposal and returning it to us, issuing a Purchase Order number, or sending an email to proceed, constitutes acceptance by you ("Acceptance"). Our Proposal is valid for a period of thirty (30) days and is subject to adjustments to the total price for the Work ("Total Price"), Scope of Work (as defined herein), and other adjustments upon expiration. If this Proposal is requested based upon preliminary or concept drawings, specifications, or design information, then we shall be entitled to adjust the Total Price and issue a Change Order (as defined in Section 3 herein) based upon final specifications or actual Work site conditions. The term Proposal shall mean and include any subsequent Change Order entered into by and between you and us.
2. **Scope of Work.** The scope of work for the product(s) (each, a "Product" and collectively, the "Products") and/or services to be provided is specifically set forth in either the Description of Work or the Scope of Work section of the Proposal submitted to the Customer by Fisher (referred to herein as the "Scope of Work" or "Work"), and such Scope of Work specifically excludes any other products and/or services not expressly mentioned in the Proposal, including replacement of bad piping, temporary utilities, general construction, replacement of refrigerant charge, disposal of hazardous materials and any other items not expressly included in the Proposal.
3. **Change Order.** In the event that we perform any changed, additional, or extra work ("Extra Work") or experience Delays (as defined in Section 4.4 herein), the Total Price and Work Time (as defined herein) shall be adjusted in accordance with the terms herein. We shall not be obligated to perform Extra Work unless we receive a signed written directive, email indicating acceptance, or issuance of an additional Purchase Order by you ("Change Order"). Pricing for each Change Order shall be on a time and material basis at our current rates and shall include, but not be limited to, increased labor, project coordination, equipment, and demobilization/remobilization charges.
4. **Efficient Performance of Work.** This Proposal, Total Price, and Scope of Work have been created assuming the efficient performance of our Work with minimal interruptions, disruptions, and interferences. As such, the following include, but are not limited to, situations that impede efficient Work and may result in Delays and Extra Work, which will be remedied exclusively with Change Orders.
 - 4.1. **Access.** You are to prepare the Work site to allow for continuous, unimpeded access to all Work areas, so we are able to perform the Work in a safe and efficient manner ("Access"). Access to the Work areas will be maintained by you at all times so as to ensure continuous progress until our Work is complete. Lack of Access is a cause of Delays and Extra Work and may require a Change Order. We will not start the Work until all Customer Work (as defined in Section 4.2 herein) is complete and Access is ensured (collectively, the "Work Conditions"). Prior to starting the Work, Fisher will either call you, email you, or communicate with you in any other manner to ensure the Work Conditions are satisfied and that we can commence the Work (the "Notice of Completion"). In the event that the Work Conditions are not satisfied by Customer despite receiving the Notice of Completion, Fisher reserves the right to charge you its standard labor charge for each trip made by Fisher to the Work site and Work cannot commence, continue, or be completed as a result of your failure to satisfy the Work Conditions.
 - 4.2. **Customer Work.** This Proposal may contain items as specified by us that are necessary to complete our Work that you agree to perform by you or some other third-party for which you are responsible ("Customer Work"). Such examples of Customer Work may include, but are not limited to, preparing openings and clearances to our specifications; providing proper electrical power and/or data connections to the Work site; and correcting issues with Concealed Conditions and Access to the Work site. A Change Order is necessary for us to correct problems with Customer Work in our sole determination and may include ordering additional Product.
 - 4.3. **Concealed Conditions.** Should concealed or unknown conditions be at variance with the conditions indicated in the Proposal or should there be concealed or unknown conditions of an unusual nature, which differs materially from those ordinarily encountered and generally recognized as inherent in our Work (each, a "Concealed Condition" and collectively, the "Concealed Conditions"), a Change Order will be required to complete the Work. Also included as Concealed Conditions are additional problems that are discovered upon the performance of our Work, such as when the Products or other ancillary equipment or components thereof (collectively, the "Customer's Equipment") that are being repaired or replaced are revealed to be a symptom of, a result of, or a masking of a root cause of a another problem that must also then be repaired or replaced to ensure the successful completion of the Work.
 - 4.4. **Work Time and Delays.** We shall have a reasonable, mutually agreed amount of time in which to commence and complete the Work ("Work Time"), provided, however, we shall not be responsible for delays or defaults where occasioned by any causes of any kind beyond our control, including but not limited to: delays caused by you, the Customer Work not being completed, architect and/or engineers, other subcontractors, suppliers or third parties; armed conflict or economic dislocation resulting therefrom; shortages of labor or strikes, supply chain issues (including shortages and delays caused by production, labor or transportation of Products necessary to commence and complete the Work), civil disorders of any kind; action of civil or military authorities; vendor priorities and allocations; fires; floods; accidents; pandemics; unusual, unanticipated, or adverse weather conditions or precipitation; force majeure; and acts of God (each, a "Delay" and collectively, the "Delays"). In the event that a Delay hinders or disrupts our Work (including the Work Time) due to any cause, act, omission, neglect or fault on the part of you or any third party, we shall be entitled to a Change Order and the Work Time within in which to perform and complete the Work shall be extended for such additional time as may be reasonably necessary under the circumstances as determined in our sole discretion.
5. **Inspection.** The Customer shall inspect the Work immediately following the completion of the Work and shall within ninety (90) days following the date the Work was completed give written notice to Fisher of any claim that the Work does not conform with the terms of the Proposal, including any warranty. If the Customer fails to give such notice, the Work shall be deemed to conform to the terms of the Proposal and the Customer shall be bound to accept and pay for Total Price (including any Change Orders) in accordance with the terms of the Proposal. The Customer expressly waives any right the Customer may have to revoke acceptance after such ninety (90) day inspection period.
6. **Labor Warranty.** All labor performed by Fisher shall be free from defects in workmanship for a period of: (a) ninety (90) days following the date the Work was completed for service work (the "90 Day Labor Warranty"), and (b) one year (1) year following the date the Work was completed for new construction projects (the "1 Year Labor Warranty"). Should the labor performed by Fisher not conform to the 90 Day Labor Warranty or the 1 Year Labor Warranty, as the case may be, Fisher's only liability will be to replace or repair, at Fisher's sole discretion, such Work if (a) the Customer properly notifies us in writing within the applicable warranty period of the alleged non-compliance (b) Fisher's inspector determines that our labor does not conform to the specifications set forth in the Proposal; and (c) the terms of

- payment for the Work have been fully met. The 90 Day Labor Warranty and the 1 Year Labor Warranty does not apply, and Fisher shall have no liability to the Customer, for any damage or defect to the Work to the extent caused by: (i) any change, addition, repair, alteration, modification made to the Work, except to the extent performed by Fisher or specifically authorized in writing by Fisher; (ii) any misuse, neglect or accident by the Customer or any other third parties; (iii) any other equipment, materials, products, or components thereof that were not installed by Fisher that are incorporated or connected to the Work; (iv) any pre-existing conditions to the Customer's property that affects the customary operation of the Work; (v) the operation, maintenance or use of the Work or any component thereof in a manner not in compliance with any written instructions, manuals, and protocols delivered to the Customer; or (vi) normal wear and tear.
7. **Warranties on Products.** All Products that are part of the Proposal are only warranted by the manufacturers' warranty (if any). Your sole remedy for failure or defects in material or design related to Products is directly against such manufacturers and you waive all rights against us for such failure or defects of such Products.
 8. **Disclaimer of Warranties and Limitation of Liability:** EXCEPT AS EXPRESSLY STATED HEREIN, NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE OR PROVIDED, AND ANY AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. IN ADDITION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, CUSTOMER AGREES THAT UNDER NO CIRCUMSTANCES SHALL FISHER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES WHATSOEVER WITH RESPECT TO ANY CLAIMS ARISING FROM OR RELATED TO THIS PROPOSAL.
 9. **Payment Terms.** Unless otherwise noted in the Proposal, thirty percent (30%) of the Total Price is due prior to the commencement of the Work. The remaining 70% of the Total Price will be invoiced and will be due in full net 20, unless explicitly noted otherwise in this Proposal. We reserve the right to invoice for Products that are either custom, special orders, or if there are more than 30 days between Acceptance and the start of our Work. Your duty to make payments to us, or to pay claims arising under this Proposal, shall not be conditioned upon your prior receipt of payment from a third party or be withheld for any reason. All sums not paid when due (i) shall bear interest at the rate of one and one-half percent (1½%) per month from the due date until paid, and (ii) may, at Fisher's discretion, be subject to any finance charges incurred by Fisher as a result of such non-payment as permitted by applicable law. Unless shown separately, we have satisfied tax requirements for all taxable customers.
 10. **Suspension of Work.** If, in Fisher's sole discretion, reasonable doubt exists as to your financial condition, or if you fail to make payment to us as herein provided, Fisher reserves the right, without liability and without prejudice to any other remedies, to suspend performance of the Work until all payments have been paid in full and is received by us. A Change Order will be required for us to re-start the Work which reflects Extra Work and Delays.
 11. **Governing Law, Dispute Resolution, and Exclusive Venue.** This Proposal (including the Terms and Conditions) shall be governed by the laws of the State of Indiana, without regard to conflict of laws principles. The parties are fully committed to working with each other throughout the Work and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. The parties will first attempt to resolve disputes or disagreements at the field level through discussions between your representatives and our representatives, and if unsuccessful, then through discussions among your and our senior executives. If, after the meeting between senior executives, the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the dispute or disagreement shall be decided by litigation. Exclusive venue, personal jurisdiction and subject matter jurisdiction for any litigation involving all such disputes or claims will be in the Circuit or Superior Court of St. Joseph County, Indiana, or if a federal matter, in the United States District Court for the Northern District of Indiana, South Bend Division. The Customer hereby waives the right to trial by jury and further waives any right to assert the doctrine of forum non conveniens or to otherwise object to such venue, and unconditionally submits to the jurisdiction of such courts.
 12. **Indemnification.** The Customer agrees to indemnify, defend, and hold Fisher and its officers, directors, shareholders, employees, representatives, and agents harmless from and against any and all claims, demands, suits, actions, causes of action, losses, damages, liabilities, reasonable attorney's fees, and other costs and expenses arising out of, relating to, or resulting in whole or in part, directly or indirectly, from (a) the Customer's modification, alteration, or use of the Products and/or services provided for hereunder by Fisher; (b) any personal injury, death, property damage or other damages, injuries or claims caused by, arising out of or in any way relating to (i) the Products; or (ii) the Work performed hereunder by Fisher; or (c) any violation of these Terms and Conditions by the Customer.
 13. **Product Price Increases by Manufacturer.** In the event of supply chain issues beyond Fisher's control, the Customer acknowledges that the manufacturers of the Products may increase the price of the Products after the Products have been ordered. In the event that the manufacturer(s) of the Product(s) increases the price of the Product(s) after the Product(s) have been ordered (the "Product Price Increase"), the parties agree to handle a Product Price Increase in the following manner:
 - 14.1 **Less than 10%:** If the Product Price Increase is less than ten percent (10%), then in such event, the Customer pre-approves such Product Price Increase and agrees to be responsible to pay for such Product Price Increase upon receiving documentation to substantiate the Product Price Increase. The price of the affected Product(s) shall be adjusted accordingly in the Total Price, and such adjustment shall supersede and replace the price of the affected Product(s). Payment for such Product Price Increase shall be in accordance with Section 9 herein unless otherwise required by Fisher.
 - 14.2 **10% or More:** If the Product Price Increase is ten percent (10%) or more, then in such event, Fisher will advise the Customer of the Product Price Increase and provide the Customer with any applicable documentation to substantiate the Product Price Increase (the "Product Price Increase Notice"). Within five (5) business days of receiving the Product Price Increase Notice, the Customer shall notify Fisher whether it agrees to such Product Price Increase for the affected Product(s). If the Customer agrees to the Product Price Increase, then in such an event, the price of the affected Product(s) shall be adjusted accordingly in the Total Price, and such adjustment shall supersede and replace the price of the affected Product(s). Payment for such a Product Price Increase will be in accordance with Section 9 herein unless otherwise required by Fisher. If the Customer does not agree to the Product Price Increase, then in such an event, the Customer may terminate this Proposal in accordance with Section 14.1 herein. Should the Customer fail to notify Fisher of its decision within the 5-day period, then the Product Price Increase for the affected Product(s) shall be final, conclusive, and binding on the Customer.
 14. **Termination.**
 - 14.1. **Termination by You.** Subject to Section 14.3, you may terminate this Proposal and/or any subsequent Change Order at any time with written notice to Fisher.
 - 14.2. **Termination by Fisher.** Subject to Section 14.3, Fisher may terminate this Proposal and/or any subsequent Change Order: (a) if the Customer fails to pay any amount when due under this Proposal and such failure continues for 60 days after the invoice date; (b) if the Customer has not otherwise performed or complied with the terms of this Proposal (including satisfaction of the Work Conditions); or (c) if Delays in the Work Time are caused by the Customer or any other third party in our sole discretion exceed 60 days since the start of the Work without any reasonable efforts by the Customer to ensure the completion of our Work.
 - 14.3. **Rights Upon Termination.** In the event either party terminates this Proposal and/or any subsequent Change Order pursuant to Section 14.1 or 14.2 herein, the Customer agrees that Fisher shall have the option to pursue any and all rights and remedies available under this Proposal, at law and in equity, including without limitation, to one or more of the following rights and remedies: (a) Fisher shall be entitled to recover lost profits and any indirect, incidental, consequential damages, including by way of example any incurred expenses (such as services charges, administrative charges, and labor charges); (b) Fisher shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed; and (c) any attorney fees and court costs incurred by Fisher in enforcing the terms herein.

15. **Miscellaneous.** If any of these Terms and Conditions are held by a court to be invalid, void, or unenforceable, the remainder of the provisions of the Terms and Conditions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby, and the Terms and Conditions shall be construed as if such invalid, void, or unenforceable provisions were omitted. The Terms and Conditions (including the Proposal) set forth the entire agreement between the Customer and Fisher. No other terms, conditions, or understandings, whether oral or written, shall be binding upon us, unless hereafter made in writing and signed by an authorized management representative of Fisher. No waiver of any provision of these Terms and Conditions shall be valid unless in writing and signed by us, and no course of dealing between the Customer and Fisher shall have the effect of modifying or altering these Terms and Conditions. These Terms and Conditions shall be binding upon the Customer and the Customer's heirs, agents, representatives, successors, and assigns, and shall inure to the benefit of the Fisher and its successors and assigns. To the extent that there is any conflicts, errors, discrepancies, and disputes concerning the Work, this Proposal shall control over all other documents, including any other communications between the parties. In the event of a violation of the terms of this Proposal, including the Terms and Conditions, Customer agrees to pay Fishers' reasonable attorneys' fees, courts costs, interest, and other expenses incurred by us in enforcing the terms of this Proposal.