

# CLIMATE CONDITIONING CO.

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DEAN FLANARY MOBILE: 859-983-3022



<b>COMPANY:</b>	LFUGC	<b>PROPOSAL #:</b>	Q01752039
<b>ATTN:</b>	LOUIS WECKERLING	<b>PAGES:</b>	9
<b>FAX:</b>	859 339-7888	<b>DATE:</b>	May 21, 2013
<b>FROM:</b>	DEAN FLANARY		
<b>PROJECT:</b>	DATA CENTER		

We are pleased to provide our quotation for the following Liebert system(s) for your consideration on this project.

**One (1) Liebert Model BF071WDADEI Challenger 3000 Environmental Control System:** Nominal 5 ton Downflow System, MBH at 72°F, 50% RH, 460 Voltage, 3 Phase, 60 Hz

#### Water Cooled Unit

- 3Way Water Regulating Valve - 400 psi (2758 kPa)

#### System Accessories:

- Liebert iCOM microprocessor with Large Graphic Display
- Display Language is English
- Factory Balanced Evaporator Motor & Blower Package
- Intellislot Web Card (IS-WEBL) - Delivers Web, SNMP, Email, Text Messaging, and Telnet communication and control capabilities. - Qty 1 per Unit
- Electric Reheat
- Infrared W/ Autoflush Humidifier
- Locking Disconnect Switch
- Qty-1 LT460-Z30, Zone Leak Detection Kit w/30 Foot Cable
- Condensate Pump - Dual Float
- 4" (10cm) Merv 8 Filter Package
- 1.5 HP Motor
- Smoke Sensor
- 9" High Floorstand
- Unit Color: Z-0420

#### Services Include:

- One year Parts only warranty
- 5 Year Compressor Only: Liebert 1st year standard parts only warranty + 2nd through 5th year compressor only extended warranty

**Terms & Conditions:**

- Quotation Valid for 45 days
- Price does not include tax
- Terms are Net 30 Days, subject to manufacturer's approval
- Liebert standard Terms & Conditions apply (see attached, T&C's available at <http://www.liebert.com/purchaseagreement.htm>)
- Please address Purchase Orders to:

Liebert Corporation c/o Climate Conditioning  
10704 Electron Drive  
Louisville, KY 40299

**Total Price Including Freight but NOT TAX**

**USD 16,197.78**

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DEAN FLANARY  
Account Representative

**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 of work, or invoice from Seller relevant to the sale of the Goods and licensing of Software and all 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 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 license 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.

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. Additional information related to the insurance coverage provided by Seller can be found at [www.marsh.com/moi?client=0900](http://www.marsh.com/moi?client=0900). 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.

Liebert Corp Terms & Conditions 050611

## LIMITED WARRANTY FOR PRECISION COOLING SYSTEM PRODUCTS

This Warranty is given **ONLY** to purchasers who buy for commercial or industrial use in the ordinary course of each purchaser's business.

### General:

Liebert Corporation products and systems are in our opinion the finest available. We take pride in our products and are pleased that you have chosen them. Under certain circumstances we offer with our products the following One Year Warranty Against Defects in Material and Workmanship.

Please read your Warranty carefully. This Warranty sets forth our responsibilities in the unlikely event of defect and tells you how to obtain performance under this Warranty.

### ONE YEAR LIMITED WARRANTY AGAINST DEFECTS IN MATERIAL AND WORKMANSHIP

#### LIEBERT PRODUCTS COVERED:

Liebert Mini-Mate2™, Liebert DataMate™, Liebert Challenger™ 3000, Liebert Challenger™ ITR, Liebert Industrial Cooling Series, Liebert Condenser, Liebert MC, Liebert Drycooler., Liebert DS™, Liebert DSE, Liebert CW™, Liebert CRV™, Liebert InteleCool2®, Liebert XD™, Liebert DCW

#### Terms of Warranty:

As provided herein, the Liebert product is warranted to be free of defects in material and workmanship for a period of one year from the start-up date provided the product Warranty Inspection sheet is returned to Liebert, start-up occurs within six (6) months of the Liebert shipping date, and the product has been stored in a suitable environment prior to start-up. The start-up date will be determined only from the completed inspection and start-up sheet received with the product. If the product start-up sheet is not returned to Liebert, the Liebert product is warranted to be free of defects in material and workmanship for a period of thirteen (13) months from date of product shipment by Liebert. The shipment date will be determined only from the Liebert bill of lading.

In addition, for products installed in the United States or Canada, the drive package contained in the Liebert DS product and Liebert InteleCool2® Compressor is warranted to be free of defects in material and workmanship for a period of five (5) years from the above referenced dates, as applicable. The drive package contained in the Liebert DS product consists of blower belts, a blower shaft, blower bearings, a blower pulley, and motor sheave.

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 components for repair or replacement of that portion or part, or Liebert may furnish User with a replacement product. Liebert will not assume any labor or shipping charges associated with repair or replacement of the Liebert product or part thereof. This is a Parts Warranty ONLY that does not include Services; all Services shall be provided by a qualified Service provider. Upon Liebert's request this warranty may require recorded proof of Quarterly product maintenance completed by a qualified service provider. If it is determined that failure occurred due to lack of maintenance, Liebert maintains the right to deny the warranty claim.

#### Warranty Extends to First Purchaser for Use, Non-transferable:

This Warranty is extended to the first person, firm, association or corporation for whom the Liebert product specified herein is originally installed for use (the "User") in the fifty United States or Canada. This Warranty is not transferable or assignable without the prior written permission of Liebert.

#### Assignment of Warranties:

Liebert assigns to User any warranties which are made by manufacturers and suppliers of components of, or accessories for, 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.

#### Drawings, Descriptions:

Liebert warrants for the period and on the terms of the Warranty set forth herein that the Liebert product will conform to the descriptions contained in the certified drawings, if any, applicable thereto, Liebert's final invoices, and to applicable Liebert

product brochures and manuals current as of the date of product shipment ("Descriptions"). Liebert does not control the use of any Liebert product. Accordingly, it is understood that the Descriptions are NOT WARRANTIES OF PERFORMANCE and NOT WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

**Warranty Claims Procedure:**

Within a reasonable time, but in no case to exceed thirty (30) days, after User's discovery of a defect, User shall contact the local Liebert sales representative from whom the product was purchased. User may contact Liebert at 1-800 LIEBERT (543-2378) for local Liebert sales representative information. Subject to the limitations specified herein, the Liebert sales representative will arrange for a Liebert service representative to repair or replace the non-conforming Liebert product warranted hereunder, without charge for materials. User shall bear all labor or shipping charges associated with repair or replacement of the product herein. Warranty coverage will be extended only after the Liebert service 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 component parts replaced under this warranty become the property of Liebert.

**Warranty Performance of Component Manufacturers:**

It is Liebert's practice, consistent with its desire to remedy Warranty defects in the most prompt and effective manner possible, to cooperate with and utilize the services of component manufacturers and their authorized representatives in the performance of work to correct defects in the product components. Accordingly, Liebert may utilize third parties in the performance of Warranty work, including repair or replacement hereunder, where, in Liebert's opinion, such work can be performed in less time, with less expense, or in closer proximity to the Liebert product.

**Items Not Covered By Warranty:**

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, corrosive atmosphere, failure to adequately maintain the Product using a qualified Service provider, 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, installation costs, circuit breaker resetting, loss of refrigerant, or maintenance or service items and further, except as may be provided herein, does NOT include labor costs or transportation charges arising from the repair or replacement of the Liebert product or any part thereof or charges to remove or reinstall same at any premises of User.

THE PRODUCTS LISTED IN THIS WARRANTY ARE NOT FOR USE IN ANY SAFETY APPLICATIONS OR WITHIN THE CONTAINMENT AREA OF A NUCLEAR FACILITY OR WHERE THE PRODUCTS HAVE POTENTIAL FOR DIRECT PATIENT CONTACT OR WHERE A SIX (6) FOOT CLEARANCE FROM A PATIENT CANNOT BE MAINTAINED AT ALL TIMES. THE PRODUCTS LISTED IN THIS WARRANTY MAY BE PLACED DIRECTLY OVER PATIENTS OR DIAGNOSTIC AND SURGICAL EQUIPMENT ONLY WHERE THE END-USE CUSTOMER HAS SIGNED LIEBERT'S HEALTHCARE APPLICATION SALES AGREEMENT, OTHERWISE THE WARRANTY IS VOID.

REPAIR OR REPLACEMENT OF A DEFECTIVE PRODUCT OR PART THEREOF DOES NOT EXTEND THE ORIGINAL WARRANTY PERIOD.

**Limitations:**

THIS 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, EXEMPLARY OR CONSEQUENTIAL 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.

**Miscellaneous:**

NO SALESPERSON, EMPLOYEE OR AGENT OF LIEBERT IS AUTHORIZED TO ADD TO OR VARY THE TERMS OF THIS WARRANTY. Warranty terms may be modified, if at all, only by a writing signed by a Liebert officer.

Liebert obligations under this warranty are conditioned upon Liebert timely receipt of full payment of the product purchase price and any other amounts due. Liebert reserves the right to supplement or change the terms of this Warranty in any subsequent warranty offering to User or others.

In the event that any provision of this Warranty should be or becomes invalid and/or unenforceable during the warranty period, the remaining terms and provisions shall continue in full force and effect.

User shall complete the attached User Information Card and forward it to Liebert within thirty (30) days of receipt of the Liebert product.

This Warranty shall be governed by, and construed under, the laws of the State of Ohio, without reference to the conflict of laws provisions thereof.

This Warranty represents the entire agreement between Liebert and User with respect to the subject matter herein and supersedes all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject.

## OPTIONAL LIMITED WARRANTY FOR PRECISION COOLING SYSTEM PRODUCTS

This Warranty is given **ONLY** to purchasers who buy for commercial or industrial use in the ordinary course of each purchaser's business.

### General:

Liebert Corporation products and systems are in our opinion the finest available. We take pride in our products and are pleased that you have chosen them. Under certain circumstances we offer with our products the following Optional Extended Four Year Compressor Warranty.

Please read your Warranty carefully. This Warranty sets forth our responsibilities in the unlikely event of defect and tells you how to obtain performance under this Warranty.

## OPTIONAL EXTENDED COMPRESSOR WARRANTY

### LIEBERT® PRODUCTS COVERED:

Compressors for: Liebert Mini-Mate2™, Liebert DataMate™, Liebert Challenger™ 3000, Liebert Challenger™ ITR, Liebert Industrial Cooling Series, Liebert Condenser, Liebert MC, Liebert Drycooler, Liebert XD™, Liebert DS™, Liebert DSE, Liebert CRV™

### Terms of Warranty

As provided herein, all Liebert product parts are warranted to be free of defects in material and workmanship for a period of ( ) one ( ) two ( ) three ( ) four years after the expiration of the Liebert One Year Limited Warranty Against Defects in Material and Workmanship. If the compressor fails to conform to the Warranty within the Warranty period, Liebert, at its option, will furnish a new or factory remanufactured replacement compressor. This is a Parts Warranty **ONLY** and does not include Services, which must be provided by a qualified Service Provider. Liebert will not assume any labor or shipping charges associated with replacement of the compressor.

### Warranty Extends to First Purchaser for Use, Non-transferable:

This Warranty is extended to the first person, firm, association or corporation for whom the Liebert product containing the compressor is originally installed for use (the "User") in the fifty United States or Canada. This Warranty is not transferable or assignable without the prior written permission of Liebert.

### Assignment of Warranties:

Liebert assigns to User any warranties which are made by manufacturers and suppliers of the compressor, or any accessories thereto, contained in 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.

### Drawings, Descriptions:

Liebert warrants for the period and on the terms of the Warranty set forth herein that the Liebert product will conform to the descriptions contained in applicable certified drawings, if any, Liebert's final invoices, and to applicable Liebert product brochures and manuals current as of the date of product shipment ("Descriptions"). Liebert does not control the installation and use of any Liebert product. Accordingly, it is understood that the Descriptions are **NOT WARRANTIES OF PERFORMANCE** and **NOT WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE**.

### Warranty Claims Procedure:

Within a reasonable time, but in no case to exceed thirty (30) days, after User's discovery of a defect, User shall contact the local Liebert sales representative from whom the product containing the compressor was purchased and request a return authorization number. User may contact Liebert at 1-800 LIEBERT (543-2378) for local Liebert sales representative information. User shall ship the compressor to the Liebert sales representative freight prepaid. User shall bear any other labor and shipping charges associated with replacement of compressors herein. Compressors shipped by User to the Liebert sales representative which have incurred freight damage due to User's improper packaging of the compressor will not be covered by this Warranty and any replacement compressor needed will be invoiced in the full current price amount and shipped freight collect to User.

Subject to the limitations specified herein, the Liebert sales representative will arrange for replacement of the non-conforming compressor warranted hereunder, without charge for materials. Warranty coverage will be extended only after the Liebert sales representative's inspection of the returned compressor discloses the claimed defect and shows no signs of treatment or use that would void the coverage of this Warranty. Replacement compressors shipped by the Liebert representative prior to inspection of the compressor claimed to be defective will be invoiced to User at the full current price amount and shipped freight collect F.O.B. the Liebert representative's facility. If the Liebert representative determines that the returned compressor is covered by this Warranty, User will be issued credit in an amount equal to the price of the replacement compressor previously billed to User, provided the returned defective compressor was shipped to Liebert within thirty (30) days of receipt of the replacement compressor. All defective products and component parts replaced under this warranty become the property of Liebert.

### Warranty Performance of Component Manufacturers:



It is Liebert's practice, consistent with its desire to remedy Warranty defects in the most prompt and effective manner possible, to cooperate with and utilize the services of component manufacturers and their authorized representatives in the performance of work to correct defects in the product components. Accordingly, Liebert may utilize third parties in the performance of Warranty work, including repair or replacement hereunder, where, in Liebert's opinion, such work can be performed in less time, with less expense, or in closer proximity to the Liebert product.

**Items Not Covered By Warranty:**

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, corrosive atmosphere, failure to adequately maintain the Product using a qualified Service Provider, 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, 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, installation costs, circuit breaker resetting, loss of refrigerant or maintenance or service items and further, except as may be provided herein, does NOT include labor costs or transportation charges arising from the replacement of the Liebert compressor or any part thereof or charges to remove or reinstall the same at any premises of User.

THE PRODUCTS LISTED IN THIS WARRANTY ARE NOT FOR USE IN ANY SAFETY APPLICATIONS OR WITHIN THE CONTAINMENT AREA OF A NUCLEAR FACILITY OR WHERE THE PRODUCTS HAVE POTENTIAL FOR DIRECT PATIENT CONTACT OR WHERE A SIX (6) FOOT CLEARANCE FROM A PATIENT CANNOT BE MAINTAINED AT ALL TIMES. THE PRODUCTS LISTED IN THIS WARRANTY MAY BE PLACED DIRECTLY OVER PATIENTS OR DIAGNOSTIC AND SURGICAL EQUIPMENT ONLY WHERE THE END-USE CUSTOMER HAS SIGNED LIEBERT'S HEALTHCARE APPLICATION SALES AGREEMENT, OTHERWISE THE WARRANTY IS VOID.

REPAIR OR REPLACEMENT OF A DEFECTIVE COMPRESSOR OR PART THEREOF DOES NOT EXTEND THE ORIGINAL WARRANTY PERIOD.

**Limitations:**

THIS 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 REPLACEMENT OF THE LIEBERT COMPRESSOR 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, EXEMPLARY OR CONSEQUENTIAL 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.

**Miscellaneous:**

NO SALESPERSON, EMPLOYEE OR AGENT OF LIEBERT IS AUTHORIZED TO ADD TO OR VARY THE TERMS OF THIS WARRANTY. Warranty terms may be modified, if at all, only in a writing signed by a Liebert officer.

Liebert obligations under this warranty are conditioned upon Liebert timely receipt of full payment of the product purchase price and any other amounts due. Liebert reserves the right to supplement or change the terms of this Warranty in any subsequent warranty offering to User or others.

In the event that any provision of this Warranty should be or becomes invalid and/or unenforceable during the warranty period, the remaining terms and provisions shall continue in full force and effect.

This Warranty shall be governed by, and construed under, the laws of the State of Ohio, without reference to the conflict of laws principles thereof.

This Warranty represents the entire agreement between Liebert and User with respect to the subject matter herein and supersedes all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject.

# CLIMATE CONDITIONING CO.

PO BOX 33185 LOUISVILLE, KY. 40232

LOUISVILLE 502-267-4696 LEX.859-254-5259

FAX 502-267-5677 WATTS 800-775-8423

DEAN FLANARY MOBILE: 859-983-3022



<b>COMPANY:</b>	LEXINGTON FAYETTE URBAN COUNTY	<b>PROPOSAL #:</b>	Q01923067
<b>ATTN:</b>	LOUIS WECKERLING	<b>PAGES:</b>	6
<b>FAX:</b>		<b>DATE:</b>	May 31, 2013
<b>FROM:</b>	DEAN FLANARY		
<b>PROJECT:</b>	LFUGC DATA CENTER		

### One (1) Non-STANDARD° Ambient Drycooler Model DDO225A16 460 Volts 3 Phase 60 Hertz

The standard drycooler arrangement includes a direct drive drycooler (Standard or Quiet-Line), with fan cycling and controls for single pump operation. Direct drive, single fan drycoolers are standard with fan speed control and pump control.

### One (1) Drycooler Pump Model D2A

The single staged, end suction, close coupled, high efficiency pump includes an eight gallon expansion tank to control surges in the system. The pump is mounted on a galvanized steel base and enclosed with a louvered aluminum enclosure.

### Terms & Conditions:

- Quotation Valid for 45 days
- Price does not include tax
- Terms are Net 30 Days, subject to manufacturer's approval
- Liebert standard Terms & Conditions apply (see attached, T&C's available at <http://www.liebert.com/purchaseagreement.htm>)
- Please address Purchase Orders to:

Liebert Corporation c/o Climate Conditioning  
10704 Electron Drive  
Louisville, KY 40299

Total Price Including Freight but NOT TAX

USD7,956.00

DEAN FLANARY  
Account Representative

**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 of work, or invoice from Seller relevant to the sale of the Goods and licensing of Software and all 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 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.

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. Additional information related to the insurance coverage provided by Seller can be found at [www.marsh.com/moi?client=0900](http://www.marsh.com/moi?client=0900). 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.

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## LIMITED WARRANTY FOR PRECISION COOLING SYSTEM PRODUCTS

This Warranty is given **ONLY** to purchasers who buy for commercial or industrial use in the ordinary course of each purchaser's business.

### General:

Liebert Corporation products and systems are in our opinion the finest available. We take pride in our products and are pleased that you have chosen them. Under certain circumstances we offer with our products the following One Year Warranty Against Defects in Material and Workmanship.

Please read your Warranty carefully. This Warranty sets forth our responsibilities in the unlikely event of defect and tells you how to obtain performance under this Warranty.

### ONE YEAR LIMITED WARRANTY AGAINST DEFECTS IN MATERIAL AND WORKMANSHIP

#### LIEBERT PRODUCTS COVERED:

Liebert Mini-Mate2™, Liebert DataMate™, Liebert Challenger™ 3000, Liebert Challenger™ ITR, Liebert Industrial Cooling Series, Liebert Condenser, Liebert MC, Liebert Drycooler, Liebert DST™, Liebert DSE, Liebert CW™, Liebert CRV™, Liebert InteleCool2®, Liebert XD™, Liebert DCW

#### Terms of Warranty:

As provided herein, the Liebert product is warranted to be free of defects in material and workmanship for a period of one year from the start-up date provided the product Warranty Inspection sheet is returned to Liebert, start-up occurs within six (6) months of the Liebert shipping date, and the product has been stored in a suitable environment prior to start-up. The start-up date will be determined only from the completed inspection and start-up sheet received with the product. If the product start-up sheet is not returned to Liebert, the Liebert product is warranted to be free of defects in material and workmanship for a period of thirteen (13) months from date of product shipment by Liebert. The shipment date will be determined only from the Liebert bill of lading.

In addition, for products installed in the United States or Canada, the drive package contained in the Liebert DS product and Liebert InteleCool2® Compressor is warranted to be free of defects in material and workmanship for a period of five (5) years from the above referenced dates, as applicable. The drive package contained in the Liebert DS product consists of blower belts, a blower shaft, blower bearings, a blower pulley, and motor sheave.

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 components for repair or replacement of that portion or part, or Liebert may furnish User with a replacement product. Liebert will not assume any labor or shipping charges associated with repair or replacement of the Liebert product or part thereof. This is a Parts Warranty ONLY that does not include Services; all Services shall be provided by a qualified Service provider. Upon Liebert's request this warranty may require recorded proof of Quarterly product maintenance completed by a qualified service provider. If it is determined that failure occurred due to lack of maintenance, Liebert maintains the right to deny the warranty claim.

#### Warranty Extends to First Purchaser for Use, Non-transferable:

This Warranty is extended to the first person, firm, association or corporation for whom the Liebert product specified herein is originally installed for use (the "User") in the fifty United States or Canada. This Warranty is not transferable or assignable without the prior written permission of Liebert.

#### Assignment of Warranties:

Liebert assigns to User any warranties which are made by manufacturers and suppliers of components of, or accessories for, 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.

#### Drawings, Descriptions:

Liebert warrants for the period and on the terms of the Warranty set forth herein that the Liebert product will conform to the descriptions contained in the certified drawings, if any, applicable thereto, Liebert's final invoices, and to applicable Liebert

product brochures and manuals current as of the date of product shipment ("Descriptions"). Liebert does not control the use of any Liebert product. Accordingly, it is understood that the Descriptions are NOT WARRANTIES OF PERFORMANCE and NOT WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

**Warranty Claims Procedure:**

Within a reasonable time, but in no case to exceed thirty (30) days, after User's discovery of a defect, User shall contact the local Liebert sales representative from whom the product was purchased. User may contact Liebert at 1-800 LIEBERT (543-2378) for local Liebert sales representative information. Subject to the limitations specified herein, the Liebert sales representative will arrange for a Liebert service representative to repair or replace the non-conforming Liebert product warranted hereunder, without charge for materials. User shall bear all labor or shipping charges associated with repair or replacement of the product herein. Warranty coverage will be extended only after the Liebert service 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 component parts replaced under this warranty become the property of Liebert.

**Warranty Performance of Component Manufacturers:**

It is Liebert's practice, consistent with its desire to remedy Warranty defects in the most prompt and effective manner possible, to cooperate with and utilize the services of component manufacturers and their authorized representatives in the performance of work to correct defects in the product components. Accordingly, Liebert may utilize third parties in the performance of Warranty work, including repair or replacement hereunder, where, in Liebert's opinion, such work can be performed in less time, with less expense, or in closer proximity to the Liebert product.

**Items Not Covered By Warranty:**

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, corrosive atmosphere, failure to adequately maintain the Product using a qualified Service provider, 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, installation costs, circuit breaker resetting, loss of refrigerant, or maintenance or service items and further, except as may be provided herein, does NOT include labor costs or transportation charges arising from the repair or replacement of the Liebert product or any part thereof or charges to remove or reinstall same at any premises of User.

THE PRODUCTS LISTED IN THIS WARRANTY ARE NOT FOR USE IN ANY SAFETY APPLICATIONS OR WITHIN THE CONTAINMENT AREA OF A NUCLEAR FACILITY OR WHERE THE PRODUCTS HAVE POTENTIAL FOR DIRECT PATIENT CONTACT OR WHERE A SIX (6) FOOT CLEARANCE FROM A PATIENT CANNOT BE MAINTAINED AT ALL TIMES. THE PRODUCTS LISTED IN THIS WARRANTY MAY BE PLACED DIRECTLY OVER PATIENTS OR DIAGNOSTIC AND SURGICAL EQUIPMENT ONLY WHERE THE END-USE CUSTOMER HAS SIGNED LIEBERT'S HEALTHCARE APPLICATION SALES AGREEMENT, OTHERWISE THE WARRANTY IS VOID.

REPAIR OR REPLACEMENT OF A DEFECTIVE PRODUCT OR PART THEREOF DOES NOT EXTEND THE ORIGINAL WARRANTY PERIOD.

**Limitations:**

THIS 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, EXEMPLARY OR CONSEQUENTIAL 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.

**Miscellaneous:**

NO SALESPERSON, EMPLOYEE OR AGENT OF LIEBERT IS AUTHORIZED TO ADD TO OR VARY THE TERMS OF THIS WARRANTY. Warranty terms may be modified, if at all, only by a writing signed by a Liebert officer.

Liebert obligations under this warranty are conditioned upon Liebert timely receipt of full payment of the product purchase price and any other amounts due. Liebert reserves the right to supplement or change the terms of this Warranty in any subsequent warranty offering to User or others.

In the event that any provision of this Warranty should be or becomes invalid and/or unenforceable during the warranty period, the remaining terms and provisions shall continue in full force and effect.

User shall complete the attached User Information Card and forward it to Liebert within thirty (30) days of receipt of the Liebert product.

This Warranty shall be governed by, and construed under, the laws of the State of Ohio, without reference to the conflict of laws provisions thereof.

This Warranty represents the entire agreement between Liebert and User with respect to the subject matter herein and supersedes all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject.