



Software as a Service (SaaS) Agreement

This Software as a Service Agreement governs the access of a product configurator software service (the "Service") offered by Bitzer US, Inc. ("Bitzer") to the entity which you represent and/or which employs you and which you have identified at the time of registration to use the Service ("Customer"). Bitzer and Customer are referred to herein collectively as the Parties and each individually as a Party.

1. General. The Service, consisting of online access to certain product configurator application software and associated content and other information, is provided by Bitzer and located through a link on the Bitzer website (the "Site"). As part of the Service, Bitzer will provide Customer with use of the Service through a standard browser interface, along with data encryption for sensitive data, transmission, access and storage. The Service may be upgraded and enhanced by Bitzer from time to time, and Customer shall be required to access and use the latest version of the Service made available by Bitzer. Customer's use of the Service constitutes acceptance of the terms of this Agreement.

2. Restricted License. Subject to the terms and conditions of this Agreement, Bitzer hereby grants to Customer (and Customer accepts) a personal, non-exclusive, non-transferable license to access and use the Service solely for the purpose of creating one or more product configurations to serve as the basis for Customer ordering products from Bitzer. Rights not expressly granted to Customer are hereby reserved by Bitzer. Customer agrees (a) to abide by this Agreement and any and all attached or referenced policies; and (b) to keep Customer's authorized Bitzer account ("Account") information confidential, including Customer password, username and any other information related to the Service ("Account Information"), and to inform Bitzer promptly upon the unauthorized disclosure of or access to any portion of such Account Information.

3. Intellectual Property Rights. Bitzer is the owner of all rights, title and interest, including all Intellectual Property Rights (as defined below) to the Service, the Site, and all "Feedback", meaning any comments, suggestions, ideas, graphics, questions or other information (excluding Customer Data as defined in Section 6) submitted by Customer through the Site or the Service. Customer hereby assigns all right, title and interest in the Feedback to Bitzer. Bitzer shall be entitled to use such Feedback for any commercial or other purpose whatsoever without compensation to Customer or anyone else. Customer hereby warrants that no Feedback shall violate any Intellectual Property Right of any third party. For the purposes of this Agreement, "Intellectual Property Rights" shall mean any and all of the following: (a) rights associated with works of authorship, including but not limited to copyrights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) invention rights, patents, designs, algorithms and other industrial property rights; (e) all other intellectual and industrial property rights (of every kind and nature however designated), whether arising by operation of law, contract, license, or otherwise; and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

4. Rights to Service. Except as expressly provided herein, Customer does not acquire any rights to the Service through the purchase of Bitzer products or use of the Site. Customer may not reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code (i.e., the human-readable form of any computer programming code) ("Source Code") of the Service, or create derivative works based thereon. Customer also may not download, republish, reproduce, copy, post, transmit, or in any way

distribute any material from the Site unless such activities are in direct furtherance of Customer's permitted use of the Service and do not in any way violate this Agreement.

Customer is not permitted to: (a) rent, lease, assign or transfer all or any part of the Service and/or Customer Account Information to any person or entity without the prior written consent of Bitzer; (b) remove any proprietary notices, labels, or marks on any component of the Service (or the Service or Site generally), whether in machine language or Source Code; (c) use the Service to provide a service bureau by which the Service can be accessed by third parties or by which information produced pursuant to the Service is sold or given to third parties; or (d) sublicense, assign, delegate or otherwise transfer this license or any of the related rights or obligations for any reason without the prior written consent of Bitzer (any attempt to sublicense, assign, delegate or transfer this license, either by contract, statute, corporate merger of any sort, regulation or court order, without the prior written consent of Bitzer shall be voidable at Bitzer's sole and absolute discretion). Failure to comply with these restrictions will result in automatic termination of this Agreement.

5. Privacy. See the [BITZER US Product Configurator Privacy Policy](#).

6. Account Information and Data. Customer is the owner of all data it submits to the Service ("Customer Data"), and Bitzer will, as set forth herein, provide the Customer Data to Customer at the termination of this Agreement. Bitzer will keep confidential any Customer Data entered into the Service by Customer and will not, except as required by law, disclose any of the Customer Data entered into the system to a third party without explicit written permission by Customer. Notwithstanding the foregoing, Bitzer may use the Customer Data in deidentified, aggregate form for its own business purposes during and after the term of this Agreement.

Upon termination of the Service, and upon the written request of Customer, Bitzer will make available to Customer an electronic file of Customer Data within 30 days of termination. After such 30 day period, Bitzer has the right to delete Customer Data. Bitzer reserves the right to withhold, remove and/or discard Customer Data without notice for any breach of this Agreement that remains uncured for 10 days after Customer's receipt of notice.

7. Charges and Payment of Fees. Bitzer may offer the Service at no charge to Customer. If Bitzer does charge for the Service, Customer shall pay all applicable fees or charges in accordance with the terms in effect at the time a fee or charge is due and payable. Payments may be made annually, monthly, or quarterly, consistent with the Initial Term, or as otherwise mutually agreed upon. All payment obligations are noncancelable and all amounts paid are nonrefundable. Customer must provide Bitzer with a valid credit card or approved purchase order information as a condition to signing up for the Service. Bitzer reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to Customer, which notice may be provided by e-mail. All pricing terms are confidential, and Customer agrees not to disclose them to any third party.

8. Billing and Renewal. Bitzer charges and collects in advance for use of the Service. Bitzer will automatically renew and bill Customer's credit card or issue an invoice to Customer for applicable fees. Fees for other services will be charged on an as-quoted basis. Bitzer's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Bitzer's income.

Customer agrees to provide Bitzer with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, e-mail address, and name and

telephone number of an authorized billing contact. Customer agrees to update this information within 30 days of any change to it. If the contact information Customer has provided is false or fraudulent, Bitzer reserves the right to terminate Customer's access to the Service in addition to any other legal remedies.

Unless Bitzer in its discretion determines otherwise, all Customers will be billed in US dollars and subject to U.S. payment terms and pricing schemes.

If Customer believes billing is incorrect, Customer must contact Bitzer in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension. In addition to any other rights granted to Bitzer herein, Bitzer reserves the right to suspend or terminate this Agreement and Customer access to the Service if the Customer's account becomes delinquent.

10. Term. This Agreement shall continue until terminated pursuant to Article 11 below.

11. Termination. Either Party may terminate this Agreement with written notice to the other Party. Upon termination, Customer agrees to cease all use of the Service. Bitzer also has the right to deactivate user accounts that have been inactive for an extended period of time as determined by Bitzer.

12. Equipment Operation. Customer is solely responsible for acquiring and maintaining all computer hardware, software, and other equipment, and all communications and other services needed for access to and use of the Service.

13. Trademarks. The terms Bitzer and the Bitzer logo are trademarks or service marks of Bitzer. Nothing contained in the Site should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademark displayed on the Site without prior written permission of Bitzer.

14. Hyperlinked Material. The Site may contain hyperlinks to other sites on the Internet which are not owned or controlled by Bitzer. Bitzer cannot assume any responsibility for any material on such sites, or any other material outside of the Site, which is accessed directly or indirectly by any such hyperlink.

15. Security and Data Storage. Customer shall not permit or allow other persons to have access to or to use Customer Account Information other than Customer employees, consultants or agents who have been notified of the restrictions set forth in this Agreement, absent Bitzer's prior express written consent. Customer agrees to maintain the confidentiality of all of Customer Account Information and agree to be primarily responsible for all activity pursuant to Customer Account.

16. Limitation of Liability; Disclaimer. Customer specifically agrees that Bitzer shall not be responsible for the unauthorized access to, deletion, or alteration of customer transmission(s) or data, any material or data sent or received or not sent or received, any transmission(s) entered through the Service, any expenses, damages or injury caused by any failure of performance, error, omissions, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction or use of record, whether for breach of contract, strict liability, tortious behavior, negligence, or for any other cause of action. Customer also agrees that Bitzer is not responsible for any threatening, defamatory, obscene, offensive or illegal content or conduct of any third party or any infringement by Customer of another's rights, including Intellectual Property Rights. Customer shall indemnify, defend and hold Bitzer harmless against any claims that may arise as a result of the foregoing matters.

Customer acknowledges that the operation and availability of the communications systems, including, without limitation, computer networks and the Internet, used for accessing and interacting with the Service can be unpredictable and may, from time to time, interfere with or prevent access to or operation of the Service. Customer acknowledges that Bitzer is not responsible for any such interference with or prevention of Customer use of or access to the Service.

The aggregate liability of Bitzer and anyone else who has been involved in the creation, production, or delivery of the Service and the output therefrom shall be limited to the amount paid by Customer to Bitzer for the Service during the one month period preceding the event giving rise to liability. If no such amounts were paid to Bitzer during such period, then Bitzer's liability shall be capped at one hundred dollars (\$100).

THE SERVICE IS MERELY TO BE CONSIDERED AN AUXILIARY AND IS NOT A SUBSTITUTE FOR THE NECESSARY EXPERTISE AND EXPERIENCE IN THE DESIGN OF REFRIGERATION AND AIR CONDITIONING SYSTEMS. IN NO EVENT WILL BITZER BE LIABLE TO CUSTOMER FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, BUSINESS INTERRUPTION, LOST SAVINGS, LOSS OF BUSINESS INFORMATION OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE EVEN IF BITZER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR SHALL BITZER BE RESPONSIBLE FOR ANY CLAIM BY ANY OTHER PARTY ARISING FROM OR RELATED TO THE SERVICE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR UNAVAILABILITY OF THE SERVICE SHALL BE LIMITED TO ACTUAL DAMAGES SUBJECT TO THE LIABILITY CAP SET FORTH IN THE PRECEDING PARAGRAPH.

THE SERVICE IS PROVIDED ON AN "AS IS" BASIS. BITZER DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CORRECTNESS, QUALITY, ACCURACY, SECURITY, COMPLETENESS, RELIABILITY, PERFORMANCE, TIMELINESS, PRICING OR CONTINUED AVAILABILITY OF THE SERVICE OR ANY OUTPUT FROM THE SERVICE. BITZER SPECIFICALLY DISCLAIMS AND YOU HEREBY WAIVE ALL EXPRESS OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OPERATION OF THE SERVICE AND ANY PARTICULAR APPLICATION OR USE OF THE SERVICE.

If any provision of this Agreement shall be determined to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. The failure of Bitzer to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

17. Indemnification by Customer. Customer agrees to defend, indemnify and hold harmless Bitzer, and its respective affiliates, officers, directors, employees, consultants, agents, licensees and licensors from any claim, demand, or damages, including reasonable attorneys' fees, asserted by any third party due to, arising out of, or in any way related to, the improper or negligent use of the Service. As used in this Agreement, "affiliate" means any entity which controls, is controlled by, or is under common control with the named entity.

18. Equitable Relief. Customer acknowledges that, at the time this Agreement is entered, it would be impossible or inadequate to measure and calculate all of Bitzer's damages for the breach of certain provisions of this Agreement and that it would require a court of competent jurisdiction to ascertain Bitzer's damages. Accordingly, if Customer breaches or threatens to breach any of Customer's obligations, Bitzer shall be entitled, without showing or proving any actual damage sustained, to a stipulated temporary restraining order, and shall thereafter be entitled to apply for a preliminary injunction, permanent injunction, and/or order compelling specific performance, to prevent the breach of Customer obligations under this Agreement. Nothing in this Agreement shall be interpreted as prohibiting Bitzer from pursuing or obtaining

any other remedies as otherwise available to it for such actual or threatened breach, including recovery of damages.

19. Governing Law/Jurisdiction; Dispute Resolution. This Agreement shall be governed by and construed under the laws of the State of Georgia, without reference to principles of conflict of laws, and any action brought by the Parties to enforce or interpret any provision of this Agreement shall be brought exclusively in an appropriate state court or federal court in Atlanta, Georgia. The Parties hereby consent to such jurisdiction and waive any objection to such venue. Before commencing any claim against the other Party, each Party shall use good faith, reasonable efforts to resolve the dispute amicably through discussions between senior level management. The preceding dispute resolution clause shall not apply to any claim for injunctive relief to protect either Party's Intellectual Property Rights or confidential information.

20. Modifications to Terms. Bitzer reserves the right to modify the terms and conditions of its policies relating to the Service and/or the terms of this Agreement at any time, effective upon posting of an updated version of such policies and/or Agreement on the Service. Continued use of the Service after any such changes are posted shall constitute consent to such changes.

21. Marketing/Customer Reference. Customer agrees to be a reference account for Bitzer, specifically, (a) Bitzer may use Customer's name and logo on its website and in its customer lists, marketing collateral and materials, and investor information, and (b) Bitzer may issue a press release announcing its relationship with Customer.

22. Precedence. If this Agreement is being accepted in conjunction with other documents, in the event of a conflict between the terms of this Agreement and other documents, this Agreement shall control.

23. Attorney's Fees. If Bitzer commences legal action to enforce any of the terms of this Agreement against Customer, Bitzer shall be entitled to recover its attorney's fees and costs incurred in connection with such action if Bitzer is the prevailing party.