

WATER TREATMENT CONTRACTS

PROTECT YOUR RIGHTS
REDUCE CLAIMS and PROTECT YOUR BUSINESS

INTRODUCTION BY HEIDI ZIMMERMAN, CDE

DON CLEVELAND, AN OWNER OF WATERCOLOR MANAGEMENT, AN AWT FOUNDING MEMBER AND A PAST RECIPIENT OF THE “AWT SUPPLIER OF THE YEAR” AWARD. THE AWT WAS FOUNDED ORIGINALLY IN 1986 BY WATERCOLOR AND A GROUP OF WATER TREATERS IN RESPONSE TO THE UNAVAILABILITY FOR THE INDUSTRY OF LIABILITY INSURANCE. WATERCOLOR AND THE MEMBERS CAPITALIZED THEIR OWN INSURER TO SOLVE THE PROBLEM. THE INSURER CEASED OPERATIONS IN 2010 AND HAS BEEN REPLACED BY THE PHILADELPHIA / TOKIO MARINE INSURANCE GROUP.

DON IS AN UNDERWRITER, CLAIMS MANAGER AND FORMER RISK MANAGER FOR THE DORMITORY AUTHORITY OF NEW YORK AND HAS MORE THAN 30 YEARS EXPERIENCE IN INSURANCE.

AFTER 30 YEARS, WATERCOLOR STILL WRITES INSURANCE ONLY FOR WATER BUSINESSES.

DONALD L. CLEVELAND, PRESIDENT
WATERCOLOR MANAGEMENT

BLAME THE WATER TREATER !!

WHAT I'VE SEEN IN CLAIMS

1. THERE IS AN ATTEMPT TO HOLD WATER TREATERS RESPONSIBLE FOR LATENT DEFECTS THAT WERE IN THE SYSTEM PRIOR TO THE TREATER UNDERTAKING SERVICE.
2. CUSTOMERS WHO ARE PARTICIPATING IN THE WATER TREATMENT PROGRAM DON'T FOLLOW THE PROGRAM, AND WANT TO BLAME THE WATER TREATER FOR THE PROGRAM'S FAILURE.
3. CUSTOMERS SOMETIMES BLAME THE WATER TREATER FOR FAILURE OF THE PROGRAM AFTER CHANGING OPERATIONS OR EQUIPMENT RELATED TO THE WATER BEING USED, BUT HAD NOT NOTIFIED THE WATER TREATER OF THE CHANGES.
4. CUSTOMERS OR LEGAL ADVISORS TRY TO SHIFT THE BLAME FOR FAILURES AFTER THE WATER TREATER HAS LOST THE ACCOUNT FOR OTHER REASONS THAN PERFORMANCE. (MAINLY BECAUSE OF PRICE). FAILURES OR ISSUES CAN RESULT AND BLAME IS PLACED ON THE PREVIOUS WATER TREATER FOR FAILURE OF THEIR PROGRAM -- IT IS AN EASY OUT.
5. WATER TREATERS OFTEN RELY ON INFORMATION PROVIDED BY THE CLIENT WHICH MANY TIMES THE CLIENTS ARE UNSURE OF i.e., METALLURGIES OR SPECIFICS ABOUT THEIR OWN EQUIPMENT. THIS INACCURATE INFORMATION CAN LEAD TO ISSUES AND FAILURES AND LIABILITY FOR THE WATER TREATER.
6. WATER TREATERS ALSO RELY ON CHEMICAL FEED EQUIPMENT SUPPLIERS AND INFORMATION PROVIDED ABOUT THE CAPABILITIES OF THE FEED EQUIPMENT BY THE SUPPLIER WHICH MAY OR MAY NOT BE CORRECT. IF INACCURATE, THIS INFORMATION CAN LEAD TO ISSUES AND POTENTIAL WATER LEAKS AND LIABILITY FOR THE WATER TREATER.

7. WATER TREATERS OFTEN RELY ON OUTSIDE LABS TO DETERMINE THE CHEMICAL, MINERAL AND BACTERIA LEVEL OF THE CUSTOMERS' WATER. THE LABS MAY SOMETIMES PROVIDE INACCURATE RESULTS OR CONCLUSIONS CAUSING THE WATER TREATER TO MAKE ADJUSTMENTS THAT LEAD TO FAILURES IN THE TREATMENT PROGRAM AND LIABILITY FOR THE WATER TREATER.

PLAINLY SPOKEN, "PUT IT IN WRITING." WHAT DO YOU NEED IN YOUR CONTRACT TO PROTECT YOU, YOUR BUSINESS AND TO REDUCE CLAIMS ?

THE SERVICES LISTED ABOVE WILL BE ACCOMPLISHED BY THE WATER TREATER THROUGH:

SOME SAMPLE WORDING:

1. (DAILY)(WEEKLY)(MONTHLY) SAMPLING AND TESTING OF THE WATER IN THE SYSTEMS SUBJECT TO THIS SERVICE AGREEMENT;
2. INFORMING THE CUSTOMER OF THE TEST RESULTS ON A TIMELY BASIS;
3. PROVIDING A TREATMENT PROGRAM DESIGNED TO CONTROL ANY HARMFUL BACTERIA OR ADVERSE CHEMICAL IMBALANCE IN THE WATER, AND THE PROGRAM IS HEREBY INCORPORATED AND MADE PART OF THIS AGREEMENT;
4. ADMINISTER THE BIOCIDES AND/OR CHEMICALS TO THE COOLING TOWERS IN ACCORDANCE WITH THE TREATMENT PROGRAM;
- 5 . DELIVERING OR HAVING DELIVERED THE QUANTITIES OF BIOCIDES AND OTHER CHEMICALS TO THE CUSTOMER'S PREMISES TO ADEQUATELY ADMINISTER THE WATER TREATMENT PROGRAM;

List the Customers Duties and Responsibilities

Reasonable Access

Change of Conditions

Compliance

THE CUSTOMER WILL:

1. ALLOW THE WATER TREATER ALL REASONABLE ACCESS TO THE EQUIPMENT TO SAMPLE THE WATER AND TO ADMINISTER THE WATER TREATMENT PROGRAM;
2. REPORT ANY CHANGE IN CONDITION OF CUSTOMER'S OPERATIONS OR EQUIPMENT THAT COULD AFFECT THE QUALITY OR QUANTITY OF WATER USED IN THE VARIOUS PIECES OF EQUIPMENT. THIS INCLUDES INCREASED WATER USAGE OR EQUIPMENT OR PROCESS LEAKS.
3. COMPLY WITH ALL PORTIONS OF THE WATER TREATMENT PROGRAM WHICH REQUIRES THE CUSTOMER'S PARTICIPATION; INCLUDING RECOMMENDATIONS PROVIDED BY SUPPLIER IN THEIR SITE VISIT OR SERVICE REPORTS.

DESCRIBE THE STANDARD OF PERFORMANCE FOR ALL PARTIES

THE CUSTOMER AND SUPPLIER AGREE THAT THE ULTIMATE SUCCESS OF ANY AGREEMENT AND TREATMENT PROGRAM PROVIDED BY THE SUPPLIER TO THE CUSTOMER IS DEPENDENT ON DILIGENT APPLICATION OF THE PROGRAM IN FULL ACCORDANCE WITH THE RECOMMENDATIONS MADE BY THE SUPPLIER . THE SUPPLIER SHALL NOT BEAR ANY LIABILITY OR RESPONSIBILITY FOR ANY FAILURE CAUSED IN WHOLE OR PART BY THE CUSTOMER'S LACK OF DILIGENCE OR FAILURE TO FOLLOW THE SUPPLIER'S RECOMMENDATIONS. NEITHER SHALL THE SUPPLIER BE LIABLE FOR ANY FAILURE OR DELAY IN PROVIDING ITS PROGRAM AS A RESULT OF ANY ACT OR CIRCUMSTANCE BEYOND ITS CONTROL. THE TREATMENT PROGRAM RECOMMENDED BY THE SUPPLIER IS BASED ON THE OPERATING CONDITIONS AT THE TIME THIS AGREEMENT WAS ENTERED INTO. THE CUSTOMER ACKNOWLEDGES THAT IT IS OBLIGATED TO PROVIDE ACCURATE INFORMATION TO THE SUPPLIER AND THIRD PARTIES USED BY THE SUPPLIER.

**LIST ANY SPECIFIC OBSERVATIONS OR ISSUES EVEN IF THEY
DON'T RELATE TO YOUR JOB**

1. THE SUPPLIER REALIZES THESE OBSERVATIONS, EQUIPMENT AND CONDITIONS ARE SUBJECT TO CHANGE IF THE CUSTOMER'S OPERATING OR EQUIPMENT CONDITIONS ARE ALTERED OR CHANGED IN ANY WAY. IT IS IMPERATIVE THAT THE CUSTOMER INFORMS THE SUPPLIER OF ANY CHANGES IN EQUIPMENT OR WATER USAGE. ANY CHANGE TO THE TREATMENT PROGRAM FOR SERVICING NEW EQUIPMENT OR ALTERNATIVE SOURCES OF WATER, MUST BE AGREED TO IN WRITING. FAILURE OF THE CUSTOMER TO FOLLOW THE WATER TREATMENT PROGRAM OR COOPERATE WITH THE SUPPLIER CONSTITUTES A WAIVER OF ANY WARRANTY PROVIDED BY THE SUPPLIER.
2. THE CUSTOMER AGREES NOT TO HOLD THE SUPPLIER RESPONSIBLE FOR ANY HIDDEN OR LATENT ON-GOING DAMAGE TO THE EQUIPMENT OR SYSTEMS CAUSED BY THE WORK OR TREATMENT OF UNRELATED WATER TREATERS WHO HAVE PROVIDE WATER TREATMENT OR SERVICES PRIOR TO THE COMMENCEMENT OF THIS AGREEMENT OR AFTER THIS AGREEMENT CONCLUDES.
3. THE SUPPLIER AGREES TO PROTECT THE PROPERTY OF THE CUSTOMER WHILE PERFORMING THE WATER TREATMENT SERVICES DESCRIBED HEREIN, AND AGREES TO MAINTAIN LIABILITY INSURANCE COVERAGE AND ANY OTHER TYPICAL AND REASONABLE INSURANCE COVERAGE REQUIRED BY THE CUSTOMER.

PROTECT YOURSELF IN DETAILS

FORCE MAJEURE

NEITHER PARTY WILL BE RESPONSIBLE TO THE OTHER IF UNCONTROLLABLE EVENTS WHICH MAKE IT IMPRACTICABLE OR COMMERCIALY UNREASONABLE FOR EITHER PARTY TO PERFORM UNDER THE TERMS OF THIS AGREEMENT, PROVIDED THAT NO FORCE MAJEURE SHALL APPLY TO CUSTOMER'S OBLIGATION TO PAY FOR GOODS AND SERVICES RENDERED HEREUNDER. NO EVENT OF DEFAULT SHALL BE DEEMED TO HAVE OCCURRED IN THE EVENT THAT A FORCE MAJEURE PREVENTED EITHER PARTY FROM FULFILLING ITS OBLIGATIONS UNDER THIS AGREEMENT.

CONFIDENTIALITY

BOTH PARTIES AGREE TO KEEP CONFIDENTIAL THE OTHER PARTY'S PROPRIETARY NON-PUBLIC INFORMATION, IF ANY, WHICH MAY BE ACQUIRED IN CONNECTION WITH THIS AGREEMENT. THE CUSTOMER ADDITIONALLY AGREES TO REFRAIN FROM TESTING, ANALYZING, OR OTHERWISE ATTEMPTING TO REVERSE ENGINEER ANY PRODUCTS DELIVERED UNDER THIS AGREEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF THE SUPPLIER.

INTELLECTUAL PROPERTY

THE SUPPLIER SHALL RETAIN ALL INTELLECTUAL PROPERTY RIGHTS, INCLUDING COPYRIGHTS AND PATENTS, WHICH IT HAS IN ALL DRAWINGS AND DATA OR OTHER DELIVERABLES SUPPLIED OR DEVELOPED UNDER THIS AGREEMENT, SUBJECT TO CUSTOMER'S RIGHT TO USE SUCH DRAWINGS AND DATA FOR ITS OWN USE WITHOUT ADDITIONAL COST.

NO MATERIALS, DOCUMENTS, PLANS, ARTICLES, INFORMATION, DATA, COMPILATIONS OF DATA, PROTOTYPES, REPORTS SPEECHES, SLIDES, VIDEOTAPES, PICTURES, AUDIO, ARTISTIC WORKS, COMPUTER PROGRAMS, ALL WORKS OF AUTHORSHIP, OR OTHER ITEMS PREPARED BY THE SUPPLIER ON BEHALF OF CUSTOMER SHALL BE CONSIDERED "WORKS MADE FOR HIRE" AS DEFINED BY THE COPYRIGHT ACT OF 1976 (17 U.S.C. 100 ET SEQ.).

RELIANCE ON OTHERS

DURING THE COURSE OF PERFORMING ITS DUTIES, THE SUPPLIER MAY RELY ON OUTSIDE LABORATORIES OTHER THAN ITS OWN TO TEST THE CUSTOMER'S SAMPLES. THE SUPPLIER WILL RECOMMEND THE LABORATORY FOR THIS TESTING AND WILL PROVIDE THE LABORATORY WITH ALL THE PERTINENT INFORMATION NECESSARY FOR THE LABORATORY TO DO IT'S JOB PROPERLY. THE CUSTOMER WILL BE PROVIDED ALL THE INFORMATION THAT THE SUPPLIER PROVIDES TO THE LABORATORY AND THE CUSTOMER WILL HAVE THE RIGHT OF REFUSAL TO SUPPLY THE LABORATORY THIS INFORMATION. HOWEVER, BE IT KNOWN THAT THE SUPPLIER AND THE CUSTOMER HAVE PLACED ABSOLUTE RELIANCE ON THE TESTS CONDUCTED BY THE OUTSIDE LABORATORIES FOR THEIR ACCURACY.

1. (ALTERNATE PHRASE #1) THE CUSTOMER ACKNOWLEDGES THIS CONDITION OF RELIANCE,
2. (ALTERNATE PHRASE #2) AND AGREES TO COOPERATE WITH THE SUPPLIER IN BRINGING ANY CLAIM WHICH MAY ARISE FROM INACCURATE TEST RESULTS FROM A LABORATORY UNLESS OWNED BY THE SUPPLIER.
3. (ALTERNATE PHRASE #3) AND AGREES TO COOPERATE WITH THE SUPPLIER AND NOT BRING ANY CLAIM FOR DAMAGES AGAINST THE SUPPLIER WHICH ARISES FROM INACCURATE TEST RESULTS.
4. (ALTERNATE PHRASE #4) AND AGREES TO BINDING ARBITRATION AS THE SOLE FORM OF REDRESS FOR ANY CLAIM FOR DAMAGES ARISING FROM INACCURATE TEST RESULTS.
5. (ALTERNATIVE PHRASE #5) AND AGREES NOT TO HOLD THE SUPPLIER RESPONSIBLE FOR INACCURATE TEST RESULTS FROM A THIRD PARTY.

LIMITATION OF LIABILITY-INDEMNITY

1. THE SUPPLIER SHALL HAVE NO LIABILITY FOR INCOMPATIBILITY OF GOODS WITH THE CUSTOMER'S ACTUAL SPACE OR DESIGN LIMITATIONS EXCEPT WHERE THE DETAILS OF SUCH SPACE OR DESIGN LIMITATIONS WERE EXPRESSLY COMMUNICATED TO THE SUPPLIER WITH SUFFICIENT WRITTEN ADVANCE NOTICE TO AVOID ANY SUCH INCOMPATIBILITY.
2. THE SUPPLIER SHALL NOT BE LIABLE FOR DAMAGES OR LOSSES ARISING FROM ANY SERVICES THAT ARE NOT REQUIRED UNDER THIS AGREEMENT OR ANY MODIFICATION OR AMENDMENT HERETO, OR FOR WHICH THE SUPPLIER DOES NOT CHARGE THE CUSTOMER .

OTHER GENERAL GUIDANCE

1. TAKE PICTURES OF THE SYSTEM(S) BEFORE YOU TAKE OVER AND AFTER YOU HAVE BEEN TOLD YOU LOST THE ACCOUNT.
2. MAKE SURE YOU CONDUCT AN AUDIT OF THE SYSTEM AND WRITE UP AN OBSERVATIONS PAGE OR DESCRIPTION OF ALL THE ITEMS YOU SAW AND REPORT IT BACK TO THE CUSTOMER.
3. MAKE SURE YOU PROVIDE IN THAT REPORT ALL THE BACKGROUND INFORMATION YOU WERE PROVIDED, ESPECIALLY METALLURGICAL INFORMATION, MODEL NUMBERS AND SERIAL NUMBERS OF ALL EQUIPMENT THAT YOU OBSERVED AND ANY OTHER INFORMATION THAT YOU WERE PROVIDED BY THE CUSTOMER.
4. KEEP ALL OF YOUR RECORDS FOR AT LEAST 10 YEARS, OR UNTIL STATUTES OF LIMITATIONS HAVE "TOLLED;" ESPECIALLY SERVICE REPORTS AND SPECIAL ANALYSIS REPORTS.
5. MAKE SURE IN YOUR SERVICE REPORTS YOU DEFINE EVERYTHING THAT YOU SAW AND OBSERVED EVEN IF IT IS OUTSIDE THE AREA OF WATER TREATMENT.
6. PUSH BACK – CUSTOMER'S STANDARD CONTRACTS CAN BE AMENDED. WRITE AN ADDENDUM, PUT IN YOUR WORDING, EVEN IF IT IS HAND WRITTEN, AND SEND IT BACK TO THEM.

CONCLUSIONS

1. JUST PUT IT IN WRITING
2. PROTECT YOUR INTERESTS AND YOUR BUSINESS
3. STOP BEING BLAMED FOR SOMEONE ELSE'S PROBLEMS

QUESTION AND ANSWER SESSION

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