



## WATER SOFTENING AND CONDITIONING CONTRACTS – WHAT YOU NEED TO KNOW

### **Don Cleveland, President WaterColor Insurance Management**

We always urge our insureds and others in the water conditioning and water filtration business to do business through a written agreement. We have been asked repeatedly to provide some model language for use in such agreements.

Model language for an agreement is part of this risk management article. It is not for everyone, because multiple exposures are included in water conditioning and filtration businesses. Over the years, we have identified several areas of liability exposure for these businesses. These areas are as follows:

1. There is an attempt to hold water conditioning and filtration businesses responsible for leaks after installation that come from latent defects in plumbing that were in the system prior to the water treater undertaking new installation or service.
2. Customers fail to undertake proper maintenance of systems once installed and blame the installer or service company for a bad result or failure of the system.
3. Customers sometimes blame the water conditioning or filtration company for failure of the system after changing usage or source of the water supply without conferring with the installer or servicing company.
4. Customers or legal advisors try to shift the blame for failures after the initial installer or service company has lost the account for reasons other than performance (mainly due to price). Failures or issues can result. Putting blame on the previous water conditioning or servicer for failure is an easy out.
5. Leaks can be a big problem. Many times leaks happen as a result of post installation work done by another contractor, but because it's water, the conditioner or the servicer gets blamed.
6. Water conditioning and filtration servicers at times rely on outside labs to water analysis for their customers' water. The labs might (rarely) provide inaccurate results or conclusions causing the water treater conditioning or servicing company to make adjustments that lead to failures in treatment or system installation. The customer and the lab will blame the conditioning or servicing company for any problem, because it's an easy way out.

Now, with increasing discovery of major water problems in U.S. water systems, conditioning and filtration companies need to be more on guard and review their promises about how effectively their processes alter or control point of use water. What chemicals and bacteria are removed from the water can be a broad promise, that leads to high demand negligence allegations. While the fundamentals of water conditioning and filtration may remain the same, the tendency for finger-pointing and attempts to pass on liabilities will continue to accelerate.

The Model Service Agreement that accompanies this article is directed at the water conditioner or servicer/customer relationship, but it is important to remember that the water conditioner or servicer may have other important relationships on which the conditioner or servicer relies (e.g. contracts with big box operations, drop ship contracts for salt and charcoal, and even supply chain and warranty issues if they manufacture some of their own products). So, it's crucial for the conditioning and service companies to have written agreements with those firms as well assuming the defense and liabilities that arise from inaccurate information, poor quality and performance of materials, and supplier product failures. Also, make sure you provide these suppliers with the proper information about the systems for which you are asking them to provide products or services. Withholding information or providing false information can be detrimental to both of you.

Some other items of guidance:

- Take pictures of the job site(s) before and after.
- Make sure you conduct an inspection of the plumbing and structures that you will use to support your installation or system and write up any observations of problem areas and inform the customer.
- Keep all your records for at least 10 years, or until the statute of limitations has tolled; especially service reports and special analysis reports. This is important in the event of any claim.
- Make sure in your service reports you define everything that you observed, even if it is outside the direct area of your conditioning or filtration service.

The following Draft Model Agreement is only a starting point and is a simple sample contract; it may well be the subject of negotiation between you and your customer. It is ultimately up to you and your legal advisors to determine the contractual relationship with your customers and what works best for you. Remember, however, that a written service agreement defining what you are providing, and the responsibilities of the client is always the best way to protect you from liability. Your conditioning or service contract should always be the first thing you offer when you are ready to take the first payment.



**Watercolor Management**

QUALITY. EXPERIENCE. DEDICATION.

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# Water Conditioning or Service Agreement

THIS WATER TREATMENT PROGRAM AGREEMENT, hereinafter referred to as the “Agreement,” is made and entered into as of the xx day of xxxxx, between (Your Company Name and address), from now on referred to as the “Servicer” and (Customer’s Name and address), from now on referred to as the “Customer.”

THE PURPOSE of this Agreement is to state the terms and conditions under which the Servicer will provide and Customer will receive Goods and Services related to water treatment programs for the Customer’s equipment located at (Address where equipment to be serviced is at), which shall be described specifically in relevant purchase orders and proposals made pursuant hereto.

## Goods and Services Provided by Servicer

Servicer agrees to provide the following goods and services to the Customer:

**List the specific Goods and Services you are going to provide. If there are limits, specify that as well.**

The supplies and services listed above will be accomplished by the Servicer through:

1. (daily) (weekly) (monthly) sampling and testing of the water in the systems where required subject to this service agreement;
2. Informing the Customer of the test results on a timely basis;
3. Providing a water conditioning program which reduces the hardness of the water and extends the life of the customer’s water pipes and fixtures.
4. Providing a filtration and treatment program designed to remove or control any harmful bacteria or adverse chemical in the water. Any instruction or operation manuals delivered with supplies or equipment to the Customer are hereby incorporated into this agreement.
5. Delivering the quantities of salt, charcoal, filters and other chemicals and supplies described below to the Customer’s premises in order to adequately administer the water conditioning or filtration program.

**Again, this should be expanded based on the service you are providing. Be specific and all-inclusive. If there is something the client says he does not want you to do, such as Legionella analyses, state that too.**

## Customer’s Duties or Responsibilities

1. Allow the Servicer all reasonable access to the equipment to sample the water and to administer the water treatment program;
2. Report to the Servicer any change in the Customer’s water usage or water supply that could affect the quality

or quantity of water used in the various pieces of equipment installed by the Servicer for the Customer’s use.

3. Comply with all instructions for operation and maintenance provided by the Servicer and Customer operation and maintenance manuals associated with equipment installed by the Servicer.

**Again, if there are other things you want the customer to do or that he has promised to do, state them specifically (i.e., any manual blowdown of the boilers or addition of dry biocides to a bromine feeder).**

The Customer and Servicer agree that the ultimate success of any conditioning or filtration program provided by the Servicer to the Customer is dependent on diligent maintenance and operation of equipment installed by the Servicer. The Servicer 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 or the Customer’s operation or maintenance manuals. Neither shall the Servicer be liable for any failure or delay in providing its program as a result of any act or circumstance beyond its control. The conditioning or filtration program recommended by the Supplier is based on the operating conditions at the time this agreement was entered into. The Customer acknowledges that (He, She, It, or They) is obligated to provide accurate information to the Servicer and to third parties used by the Servicer so a functional conditioning and/or filtration system can be installed and maintained.

**Hold Harmless, latent defects and protection of the Customer’s Property, Leak Detection**

The Customer agrees not to hold the Servicer responsible for any hidden or latent or ongoing damage to plumbing, piping or structural systems which interface with or connect to the Servicer’s equipment or work.

The Servicer agrees to protect the property of the Customer while performing the water treatment conditioning and/or filtration services described herein and agrees to maintain liability insurance coverage and any other typical and reasonable insurance coverage required by the Customer.

The Customer hereby accepts the installation of a leak detection system which will (will not) automatically shut off water supplies. The detector will sound an alarm in the event of any leak where the detector is located and will shut off the water supply. The price of the detector system is built into the project cost. Should the Customer refuse the installation of the detector system, then the Customer waives any and all claims against the Servicer for any leak associated with the Servicer’s work.

If there are other specifics for the agreement, list them in here. This could include disposal of containers or any other regulatory or compliance issues.

**Force Majeure**

Neither party will be responsible to the other if uncontrollable events make it impracticable or commercially unreasonable for either party to perform under the terms of this agreement, provided that no force majeure shall apply to the 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 Servicer 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 the 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 Servicer on behalf of the 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 Servicer may rely on outside laboratories other than its own to test the Customer’s samples. The Servicer will recommend the laboratory for this testing and will provide the laboratory with all the pertinent information necessary for the laboratory to do its 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 with this information. However, be it known that the Servicer and the Customer have placed absolute reliance on the tests conducted by the outside laboratories for their accuracy.

- (Alternate Phrase #1) The Customer acknowledges this condition of reliance,
- (Alternate Phrase #2) and agrees to cooperate with the Supplier in bringing any claim that may arise from inaccurate test results from a laboratory, unless owned by the Supplier.
- (Alternate Phrase #3) and agrees to cooperate with the Supplier and not bring any claim for damages against the Supplier that arises from inaccurate test results.

- (Alternate Phrase #4) and agrees to binding arbitration as the sole form of redress for any claim for damages arising from inaccurate test results.
- (Alternative Phrase #5) and agrees not to hold the Supplier responsible for inaccurate test results from a third party.

**Term of Agreement**

This agreement shall have the term of \_\_\_\_\_(months) (year-s) after the acceptance date by both parties. The agreement may be extended by execution of an addendum to this agreement setting forth the length of the additional services to be provided.

**Limitation of Liability and Indemnification**

The Servicer 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 Servicer with sufficient written advance notice to avoid any such incompatibility.

The Servicer 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 Servicer does not charge the Customer.

**Jurisdiction**

Unless otherwise stated herein, this agreement is subject to the jurisdiction of the laws and the courts of the state of

**Transfer**

This agreement shall not be transferable without the signed consent of both parties to the agreement.

**Acceptance and Approval**

This agreement is accepted and approved by the following persons on behalf of their companies on this the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Attach any special clauses, schedules of equipment and supplies and/or the original quotation and pre-project and post project report with pictures.