



Instructions

The Genuine Contractor program is only available to current 12th Man Plan Program Tier 2 participants.

1. Complete this form in its entirety, including all required signatures and copies of the required documents.
2. Return this completed form and copies of the required documents to your Nortek Global HVAC Distributor.
3. The Nortek Global HVAC Distributor must sign the completed form and submit it and copies of the required documents to be reviewed by Nortek Global HVAC to approve enrollment and provide access for training.

Contractor Business Information

Please complete in full! Incomplete applications cannot be processed.

Company Full Legal Name ("Contractor"): _____

Street Address (no PO boxes): _____

City/State/Zip: _____

Phone: () _____ Fax: () _____

Contractor Email: _____ *Website URL: _____

Company Federal Tax ID Number (9 digits): _____ Nortek Global HVAC Dealer ID: _____

Local License Number(s): _____

Nortek Global HVAC Distributor Branch Account Number: _____

For ALL contractor branch locations in total, please enter the total number of:

ALL Employees: _____

Breakdown: Lead Technicians: _____ Service Technicians: _____ Lead Installers: _____ Installers: _____ Trucks: _____

Please enter the qualified Nortek Global HVAC brand and amount of Residential HVAC equipment purchases (prior calendar year)

Nortek Global HVAC Brand of Equipment: _____ \$Amount Purchased _____

All Other Brands Combined _____ Entire Sales Volume _____

Residential HVAC equipment is defined as furnaces, air conditioners, heat pumps, fan coils, evaporator coils, packaged products, IAQ accessories, thermostats and zoning systems.

Primary Contact Information

The Nortek Global HVAC Genuine Contractor Program (hereinafter the "Program") requires one person per HVAC contracting business to be designated as the primary contact, who will receive all information about the Program. Preferably, this person should be the primary contact who updates company information, assigns additional access, manages the 12th Man Program, etc. at the Nortek Global HVAC contractor marketing site.

First Name: _____ Last Name: _____

*Title: _____ Email Address: _____

Courses / Training Requirements

During the certification process, one or more of the Contractor's employees will complete the required number credit classes through the EdgeTek training program. Required classes are based on contractor size and classes cannot be duplicated among employees to account towards the total annual credit required. (Example: The Split AC class is valued as 4 GC credit hours. Two employees from the same dealership cannot take the same class for credit during certification training. The company is still awarded 4 GC credit hours, not 8.)

# Trucks Per Dealership	Course/Training Requirements	
	Sales/Marketing/Business	Technical Training
1-9 Trucks	4	8
10+ Trucks	6	16



Technician Certification

Contractor warrants that at least 50% of Contractor’s HVAC service technicians are certified through and industry-recognized certification program (‘Certified Technician’). Please list Certified Technicians below. If Contractor has additional Certified Technicians, list on a separate page.

Name: <u>Bob Clark</u>	Certification: <u>HVAC Excellence</u>	Cert #: <u>435567</u>	Date: <u>4/2001</u>
Name: _____	Certification: _____	Cert #: _____	Date: _____
Name: _____	Certification: _____	Cert #: _____	Date: _____
Name: _____	Certification: _____	Cert #: _____	Date: _____
Name: _____	Certification: _____	Cert #: _____	Date: _____
Name: _____	Certification: _____	Cert #: _____	Date: _____
Name: _____	Certification: _____	Cert #: _____	Date: _____

DOCUMENTS REQUIRED: Please attach a copy of the certification certificate for each person listed above.

Insurance

Please attach a current copy of **Contractor’s Liability Insurance Policy** and/or Certificate of Insurance naming Nortek Global HVAC as additional insured for actions or inactions of Contractor while a Nortek Global HVAC Certified Genuine Contractor. Contractor must also provide proof of **Workers Compensation Insurance** in an amount and manner as required by the laws of the State or State in which Contractor operates its business. Contractor’s Liability Insurance Policy and Workers Compensation Insurance must comply with the insurance requirements contained in Section 7 below.

Terms

The terms of the Program are contained in the following pages of this Nortek Global HVAC Certified Genuine Contractor Application and Contractor Agreement (“Agreement”).

Contractor hereby applies to **Nortek Global HVAC**, with an office located at 8000 Phoenix Parkway, O’Fallon, MO 63368 (“Nortek Global HVAC”) for appointment as a Nortek Global HVAC Certified Genuine Contractor, and if approved by Nortek Global HVAC, Contractor agrees to comply with the following terms:

- 1 **Appointment of Contractor**
 - 1.1 Upon Nortek Global HVAC’s approval of this Agreement and written notification thereof to the Contractor, Contractor shall become a non-exclusive Nortek Global HVAC Certified Genuine Contractor for the Nortek Global HVAC licensed brand(s) [insert applicable premium brand(s) _____] (hereinafter “Brand” or “Branded” as appropriate per context).
 - 1.2 Contractor shall not appoint sub-contractors.

- 2 **Contractor Practices**
 - 2.1 During the term of the Agreement, Contractor agrees to stock, advertise and identify its business exclusively with the Brand(s) and that at least seventy-five percent (75%) of its total purchases of residential HVAC equipment will be of the Brand(s).
 - 2.2 During the training period of the Agreement, Contractor’s employees shall, in the aggregate, as specified, attend the required amount of Program-approved training classes. The amount of training required is based on the number of Contractor’s service trucks. Training must be completed within seventy-five (75) days after the commencement of this Agreement. Contractor shall complete and submit to Nortek Global



- HVAC proof of additional training that Contractor's technicians complete in compliance with Contractor's renewal training requirement within sixty (60) days of the expiration of the Genuine Contractor certification. Nortek Global HVAC shall send Contractor training renewal requirements within ninety (90) days prior to the expiration of the Genuine Contractor Certification.
- 2.3 At all times during the term of the Agreement, at least fifty percent (50%) of the technicians employed by Contractor shall hold industry-recognized certifications (as approved by Nortek Global HVAC). Contractor shall provide Nortek Global HVAC with proof that the requisite numbers of its technicians are Certified Technicians prior to Contractor receiving approval to participate in the Program.
 - 2.4 During the term of the Agreement, Branded residential equipment, parts or supplies (hereinafter "Nortek Global HVAC Products") installed by Contractor shall be installed, or the installation shall be inspected and approved by, a Certified Technician.
 - 2.5 Contractor shall conduct its business in a courteous and professional manner and make all best efforts to maintain or improve the satisfaction of customers served by Contractor through the Program. At all times during the term of the Agreement, Contractor shall maintain (i) a cumulative rating of "B" or better through one or more of the review options in the 12th Man Plan Program. If no rating is yet available, Contractor shall have ninety (90) days from the commencement of this Agreement to receive at least 5 reviews from one or more of the consumer review options available through the 12th Man Plan Program. Contractor shall acquire 15 new reviews each quarter for the two-year term of certification.
 - 2.6 If Contractor applies logos to its vehicles used for HVAC service or installations, Contractor may only apply the approved Nortek Global HVAC Certified Genuine Contractor logo to such vehicles.
 - 2.7 Contractor shall comply with all Nortek Global HVAC installation and service instructions and policies and shall perform all Nortek Global HVAC Product installations and service in accordance with generally accepted trade practices and all applicable federal, state and municipal laws and regulations.
 - 2.8 Contractor shall maintain all necessary licenses, permits and certifications and shall comply with all applicable federal, state and municipal laws and regulations. Contractor's failure to comply with the provisions of this Section 2.10 shall result in immediate termination of this Agreement.
 - 2.9 Nortek Global HVAC products may only be covered by optional labor warranties available through Nortek Global HVAC and not by warranties sold by an unaffiliated third party.
 - 2.10 For any replacement or supplemental parts Contractor uses on or in connection with Nortek Global HVAC products, Contractor shall use only parts authorized by Nortek Global HVAC when available in order to preserve the system performance, and Contractor shall maintain an adequate inventory of such parts as required to provide prompt and efficient service.
 - 2.11 Contractor shall keep its account with Participating Distributor current. Contractor shall maintain an adequate reserve or accrual fund to cover all of its warranty and guarantee obligations.
 - 2.12 Contractor shall attend new product training as Nortek Global HVAC may require from time to time. New product training counts toward the Program training requirement described in Section 2.2.
 - 2.13 Contractor at all times shall participate in the Nortek Global HVAC 12th Man Plan Tier II Program.
 - 2.14 Contractor consents to receive email communications from Nortek Global HVAC that are directly or indirectly related to the Program, Nortek Global HVAC Products, or service offerings, at the email address listed at the Contractor Primary Contact information above.

3 Intellectual Property

- 3.1 Nortek Global HVAC is the owner or licensee of all logos, trademarks, service marks, trade names, copyrights, software, proprietary information and other intellectual property used or associated with the Program and Nortek Global HVAC Products (collectively, the "Intellectual Property"). All rights in and to the Intellectual Property, including all of the goodwill of the business associated therewith, shall be the exclusive property of Nortek Global HVAC, and all use of the Intellectual Property by Contractor shall



inure only to the benefit of Nortek Global HVAC. Contractor shall not claim, acquire or assert any ownership rights in the Intellectual Property.

- 3.2 Upon receipt of written notification of appointment, Nortek Global HVAC hereby grants Contractor a limited, revocable, non-exclusive, and nontransferable license to use the Intellectual Property solely for the purposes of the Program and for advertising, marketing, promoting, and selling Nortek Global HVAC Products during the term of this Agreement. Contractor agrees to protect this Intellectual Property and will promptly discontinue all use of any such trade names or trademarks upon the expiration or termination of this Agreement. Contractor agrees to pay all costs, expenses, and attorney's fees incurred by Nortek Global HVAC to enforce the obligations assumed by Contractor pursuant to this clause.
- 3.3 Contractor is permitted to use Intellectual Property only in the form, style, and manner specified by Nortek Global HVAC and only consistent with this Agreement, or any written or printed material provided by Nortek Global HVAC to Contractor and only during the duration of this Agreement and for the Nortek Global HVAC Products. Contractor shall not alter the Intellectual Property in any manner, including proportions, colors, elements, type and so forth, or morph or otherwise distort its perspective or appearance.
- 3.4 Nortek Global HVAC shall have the right to review and approve or disapprove any and all Contractor use, display, distribution, or publication of the Intellectual Property.
- 3.5 Contractor agrees not to use or employ in its name, trade name, or domain name, or in combination therewith any of the words or symbols, or confusingly similar words or symbols, now or hereafter used by Nortek Global HVAC or the Brand(s) as trademarks, service marks or trade names and not to allow its customers to do so, without Nortek Global HVAC's written consent, which Nortek Global HVAC may withhold in its sole discretion. Contractor shall not register, own any registration of or attempt to register any logo, trademark, servicemark, trade name, or domain name which is either in whole or in part the same as or confusingly similar with Nortek Global HVAC's or the Brand(s)' trademarks, or any other trademark, servicemark or trade name of Nortek Global HVAC or the Brand(s) or any translation or transliteration thereof. Any such registration is hereby assigned to Nortek Global HVAC. Contractor agrees, on Nortek Global HVAC's request, to refrain from selling Nortek Global HVAC Products purchased under this Agreement to any customer that improperly employs Nortek Global HVAC's or the Brand(s)' trademarks or trade names.
- 3.6 Contractor shall promptly inform Nortek Global HVAC of any infringement or alleged or apparent infringement of any Intellectual Property which Contractor believes is having a materially adverse impact on the ability of Contractor to sell the Nortek Global HVAC Products or provide the service in accordance with the provisions of this Agreement, including but not limited to infringement of any Intellectual Property or any conduct which may be considered to be passing off the Nortek Global HVAC products by a third party of which Contractor is or may become aware.
- 3.7 Nortek Global HVAC may revoke Contractor's license and right to use the Intellectual Property at any time for Contractor's failure to follow Nortek Global HVAC's directions on how to use the Intellectual Property. Such revocation may be made separately from or in connection with a revocation of this Agreement and shall be provided in writing. If the license and right is revoked, Contractor shall discontinue use of the Intellectual Property immediately.

4 **Term and Termination**

- 4.1 The term of this Agreement shall end twenty-four (24) months from your certification date. Contractor acknowledges and agrees that there is no representation or promise, express or implied, made by Nortek Global HVAC or any other party to Contractor that Contractor shall have any right to have this Agreement renewed after the initial term hereof, nor has Contractor relied on any such representation or promise. Nortek Global HVAC shall have no liability whatsoever to Contractor for the expiration of this Agreement or the failure to enter into any subsequent agreement with Contractor. Notwithstanding anything to the



contrary, herein, Nortek Global HVAC may terminate the Program at any time, in its sole discretion, on 30-days advance written notice to Contractor.

- 4.2 Subject to Section 4.4, in the event that Contractor breaches any term of this Agreement, except for breaches of the terms of Sections 2.2, 2.3, or 2.7, and such breach is not cured within thirty (30) days of written notice thereof by Nortek Global HVAC or Participating Distributor, Nortek Global HVAC or Participating Distributor may terminate this Agreement effective immediately upon written notice to Contractor. Subject to Section 4.4, in the event that Contractor breaches the terms of Sections 2.2, 2.3 or 2.7, and such breach is not cured within sixty (60) days of written notice thereof by Nortek Global HVAC or Participating Distributor may terminate this Agreement effective immediately upon written notice to Contractor. Nortek Global HVAC or Participating Distributor may terminate this Agreement immediately upon the change of control of Contractor. Contractor may terminate this Agreement at any time by providing 30-days advance written notice to Nortek Global HVAC.
- 4.3 In the case of flagrant or chronic breaches by Contractor, including but not limited to customer complaint(s) or misleading or deceptive advertising or fraudulent practices by Contractor or otherwise, Nortek Global HVAC or Participating Distributor may terminate this Agreement effective immediately upon written notice to Contractor.
- 4.4 This Agreement will terminate immediately upon Nortek Global HVAC's or Participating Distributor's written notice to Contractor in the event that (i) Contractor ceases to function as a going concern, is adjudicated bankrupt, makes a general assignment for the benefit of creditors, takes the benefit of any insolvency, reorganization or other debtor's relief legislation, or if a receiver or trustee is appointed for its property; or (ii) Contractor transfers substantially all of its assets without Nortek Global HVAC's prior written consent or if there is a change in the ownership or control of Contractor.

5 Procedures Upon Termination

- 5.1 In the event that this Agreement is terminated for any reason whatsoever, the following procedures shall apply:
- (i) Contractor shall immediately, upon demand, return all originals and copies of any Program manuals and binders, advertising material and any other information, which NORTEK GLOBAL HVAC has provided to Contractor pursuant to this Agreement or in connection with the Program;
 - (ii) Contractor shall cease to hold itself out as a Nortek Global HVAC Certified Genuine Contractor; and
 - (iii) Contractor shall cease use of all Intellectual Property of Nortek Global HVAC, the Brand(s) and their affiliates.
- 5.2 In the event that Contractor carries on as a Nortek Global HVAC contractor (other than as a Nortek Global HVAC Certified Genuine Contractor), Contractor shall be permitted to use those portions of the Intellectual Property designated by Nortek Global HVAC and in a manner designated by Nortek Global HVAC.
- 5.3 Sections 5, 6, 7 and 10 shall survive termination of this Agreement.

6 Confidentiality

- 6.1 Contractor shall maintain the confidential nature of any trade secrets or proprietary information disclosed to contractor by Nortek Global HVAC.

7 Insurance

- 7.1 Contractor shall secure and carry as a minimum, the following insurance coverage:
- (i) General Liability Insurance in which:
 - a. the limit of liability for injuries, including accidental death, shall be \$1,000,000 for any one occurrence;



- b. the limit of liability for property damages shall be \$1,000,000 for any one occurrence;
 - c. the limit of liability for completed contracts shall be \$100,000.
- (ii) Workers Compensation Insurance in an amount and in a manner as required by the laws of the State or States in which a Contractor operates its business.

- 7.2 All such insurance shall be issued by companies authorized to do business under the laws of the State or States in which Contractor operates its business, shall be in a form satisfactory to Nortek Global HVAC, and shall contain a provision prohibiting cancellation except upon at least ten (10) days' prior notice to Nortek Global HVAC. All such insurance policies will be primary in the event of a loss caused by or arise out of in whole or in part by Contractor's negligent or intentional act or omission by Contractor or its officers, employees, or technicians.
- 7.3 All insurance policies shall be endorsed with Nortek Global HVAC as an additional insured for actions or inactions of Contractor while a Nortek Global HVAC Certified Genuine Contractor and with a waiver of subrogation rights in favor of Nortek Global HVAC.
- 7.4 The insurance requirements contained in this Section shall continue for a period of two (2) years after the termination or expiration of this Agreement or any renewal thereof.

8 Contractor Employees

- 8.1 Contractor shall be responsible for all taxes, insurance and other employer-related obligations with respect to its employees.
- 8.2 Contractor shall at all times pay, or cause to be paid, at Contractor's expense, any assessment required to be paid pursuant to any applicable workers' compensation legislation or regulation and shall comply with such legislation or regulation and all other prevailing labor laws and regulations applicable to Contractor.

9 Independent Contractor

- 9.1 The Contractor is an independent contractor. Contractor accepts, in connection with the work called for hereby, exclusive liability for the payment of any taxes or contributions measured by Contractor's income or levied on Contractor's property (real or personal). Contractor also assumes all liability for Social Security, unemployment insurance, pension payments, annuities or retirement benefits which are measured by wages, salaries or other remuneration paid by Contractor to any and all persons employed by it in connection with the performance of the work, and to comply with all applicable Federal and State administrative regulations respecting the assumption of liability for any of the aforesaid taxes or contributions. The Contractor, its employees, agents and representatives (i) are not, individually or collectively, franchisees of Nortek Global HVAC or the Brand(s), (ii) are not employees, agents or representatives of Nortek Global HVAC or the Brand(s), (iii) shall not hold themselves out as such, and (iv) have no authority or power to bind Nortek Global HVAC or the Brand(s), or contract in Nortek Global HVAC's or the Brand(s)' name.

10 Liability

- 10.1 While Nortek Global HVAC manufactures Nortek Global HVAC products, it is the Contractor that sizes, selects and installs the Nortek Global HVAC products. Also, the Contractor selects sizes and installs the ductwork and other system items that can affect the operation of the Nortek Global HVAC products, as well as the user's comfort and satisfaction with the Nortek Global HVAC products and installed system. Because of this, during the term of this Agreement and at all times after the expiration of this Agreement, Contractor agrees to indemnify, defend and hold Nortek Global HVAC harmless from and against all claims, complaints, causes of action, liabilities, and costs and expenses (including reasonable attorneys' fees) to the extent they are caused by or arise out of Contractor's acts or omissions. If Contractor fails to comply with Section 2.10 of this Agreement, Contractor shall be responsible, and shall indemnify Nortek Global HVAC, for any claims, fines or damages that may arise as a result of such failures.



10.2 Nothing in this Agreement relieves Nortek Global HVAC of or otherwise affects Nortek Global HVAC's liability (if any) for claims, complaints, causes of action, liabilities and costs and expenses (including reasonable attorney's fees) that are caused by or arise out of (i) a defect in any Nortek Global HVAC product sold or manufactured by Nortek Global HVAC that was not caused by Contractor or its agents, (ii) a Brand warranty, or (iii) a written instrument between Nortek Global HVAC and the claimant.

11 Set-Off

11.1 In the event that Contractor fails to honor any of its obligations to its customers or any of its obligations under this Agreement, Nortek Global HVAC may remedy any loss or damage resulting from such failure at Contractor's expense. Possible remedies include, but are not limited to, responding to customers' complaints directly or through a third party, remedying substandard or defective work of the Contractor or honoring dishonored customer satisfaction guarantee.

12 Amendments

12.1 Nortek Global HVAC may amend the Program requirements and benefits from time-to-time, as it deems appropriate in its sole discretion, on 30-days advance notice to Contractor.
12.2 Except as otherwise set out herein, no amendments may be made to this Agreement unless executed in writing by both parties.

13 Audit

13.1 Nortek Global HVAC reserves the right to audit Contractor to verify that Contractor is in compliance with the program requirements as outline in this agreement. Contractor agrees that Nortek Global HVAC shall have the right to audit Contractor's records to verify Contractor compliance.

14 Assignability and Transferability

14.1 This Agreement is not assignable by Contractor.
14.2 Certification of Contractor as a Nortek Global HVAC Certified Genuine Contractor is applicable solely to Contractor and not any of its owners, employees, agents or other personnel and therefore is not transferrable to any other contractor.

15 Third Party Beneficiary

15.1 Nortek Global HVAC is a third party beneficiary to this Agreement and Nortek Global HVAC shall have all rights as a third party beneficiary including, but not limited to, the right to enforce this Agreement.

16 Governing Law

16.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

17 Entire Agreement

17.1 This Agreement, as amended from time to time, and including all of the documents referenced herein, will constitute the entire agreement with respect to Contractor's participation in the Program, and supersedes all prior agreements, whether oral or written, with respect to the subject matter hereof, if and only if this application is approved by Nortek Global HVAC and written notification thereof is sent to Contractor.



IN WITNESS WHEREOF, Contractor has executed this Agreement.

Contractor Business Name _____

By (Signature): _____

Name: (Please Print) _____

Title: _____

Date: _____

I recommend Contractor for the Program.

Participating Distributor Business Name _____

Participating Distributor acknowledges that he has selected and sponsored the above **Contractor** for participation in the Program.

By (Signature): _____

Name: (Please Print) _____

Title: _____

Date: _____

Submission Instructions:

Contractor: Return this signed and completed form to your Participating Distributor with current copy of certificate of insurance with Nortek Global HVAC listed as additional insured. Do not leave any fields blank on agreement.

Distributor: Please have all signatures and make sure all information is completed and accurate, including current certification numbers and local license numbers. Submit a copy of Application/Agreement and Certificate of Insurance to:

Nortek Global HVAC
ATTN: GC Training Coordinator
8000 Phoenix Parkway
O'Fallon, MO 63368

OR

Scan and email documentation to: GCProgram@Nortek.com

NOTE: Only complete agreements with current information will be processed for enrollment