

IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

DENNIS SUPPLY COMPANY,)	
)	CASE NO. LACV174168
Plaintiff,)	
)	
Vs.)	
)	PLAINTIFF'S PROPOSED
)	JURY INSTRUCTIONS
LOUIS E. BENSCOTER, dba)	
BENSCOTER PLUMBING, and)	
BENSCOTER, INC., a Nebraska Corp.)	
)	
Defendants.)	

COMES NOW Plaintiff, Dennis Supply Company, and pursuant to Iowa Rules of Civil Procedure and the parties trial scheduling order, and hereby submits its proposed statement of the case, jury instructions and verdict forms.

HORNEBER LAW FIRM, P.C.

William Horneber

BY: _____
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon counsel for all parties defendant on October 27, 2017, by email addressed as follows:

Jason.bring@heidmanlaw.com.

William. Horneber

William Horneber

INSTRUCTION NO. _____

Members of the Jury: In this case, Plaintiff is in the business of a heating and air conditioning wholesale supplier with its principal place of business at 300 W. 7th Street, Sioux City, Woodbury County, Iowa 51103. Defendant, Louis E. Benscoter, dba Benscoter Plumbing is engaged in the plumbing, heating and air conditioning contractor business with its principal office located at 206 Logan St., Wayne, NE 68787. Defendant, Benscoter, Inc., a Nebraska corporation, is engaged in the plumbing, heating and air conditioning business with its principle place of business located at 2112 Centennial Road, Wayne, NE 68787. Defendants purchased on an open account heating and air conditioning and plumbing equipment from Plaintiff and/or obtained services from Plaintiff. Plaintiff has not received payment pursuant to the terms of Defendant's open account with Plaintiff, despite Plaintiff's demands, and Plaintiff is entitled to damages.

Defendants claim Plaintiff breached the contract by failing to provide the correct heating and air conditioning equipment and therefore is not entitled to damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

Plaintiff respectfully requests the Court to include the following stock civil jury instruction numbers: 100.2, 100.3, 100.4, 100.6, 100.7, 100.9, 100.13, 100.15, 100.18, 100.19, 100.20; 100.21, and 100.23.

Plaintiff respectfully requests the Court to include the following stock civil jury Return of Verdict and Verdict Forms: 300.1

Plaintiff respectfully requests the Court to include the following individual Civil Jury Instructions from Chapter 2400, which were updated in June, 2017.

INSTRUCTION NO. _____

Essentials for Recovery. Plaintiff must prove all of the following propositions:

1. The parties were capable of contracting
2. The existence of a contract.
3. The consideration.*
4. The term of the contract.
5. The plaintiff has done what the contract requires.
6. The defendant has breached the contract.
7. The amount of any damages defendant has caused

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the Plaintiff has proved all of these propositions, then you will consider the affirmative defense of plaintiff has failed to perform conditions precedent regarding the contract between the parties, as explained in Instruction No. _____.

*Consideration is presumed for a written agreement (Iowa Code section 537A.2) therefore want or failure of consideration is an affirmative defense where a written agreement is involved.

INSTRUCTION NO. _____

Competency. A person is capable of making a contract unless the person lacked sufficient mental capacity to understand it.

INSTRUCTION NO. _____

Existence of a Contract. The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

INSTRUCTION NO. _____

Consideration. “Consideration” is either a benefit given or to be given to the person who makes the promise or a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

INSTRUCTION NO. _____

Implied Contract. The law implies a promise to pay the reasonable value of services and materials a person knowingly accepts from another.

INSTRUCTION NO. _____

Breach – Definition. A breach of the contract occurs when a party failed to perform a term of the contract.

INSTRUCTION NO. _____

Affirmative Defenses – Essentials. Defendants claim performance was excused because of Plaintiff's own breach of contract.

If Defendants have proven that Plaintiff breached the contract, then you shall consider that breach in determining whether to award damages to Plaintiff.

If Defendants have failed to prove Plaintiff breached the contract, then you shall decide whether Plaintiff is entitled to recover damages.

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Defendants.)	

We, the Jury, find in favor of the Plaintiff and fix the amount of Plaintiff's recovery against the Defendants at _____ dollars.

FOREMAN OR FOREWOMEN

*To be signed only if verdict is unanimous.

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BENSCOTER, INC., a Nebraska Corp.)	
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Defendants.)	

We, the Jury, find in favor of the Defendants and against the Plaintiff.

FOREMAN OR FOREWOMEN

*To be signed only if verdict is unanimous.