



## **Project Master Terms and Conditions**

**Updated November 16, 2020**

These terms and conditions (this “Agreement” or these “Terms and Conditions”), are agreed upon between Owner and Contractor, as of the Effective Date, as described on the associated Contract Sheet.

THIS AGREEMENT GOVERNS OWNER’S USE OF CONTRACTOR’S SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN. IF NOT FOUND HEREIN, CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH IN THE ASSOCIATED CONTRACT SHEET.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING ANY FREE SERVICES, OWNER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “OWNER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT MAKE THE APPOINTMENT.

### ***Appointment***

- 1) Appointment. Owner is the owner of certain real property requiring improvements more particularly described on the associated Contract Sheet (the “Project”). Owner hereby appoints Contractor, as an independent contractor, as the sole and exclusive contractor for the Project, and Contractor hereby accepts the appointment, in each case upon the terms and subject to the conditions set forth below.

### ***Contract Documents***

- 2) The following documents make up the “Contract Documents”:
  - (a) This Agreement between Owner and Contractor, including any exhibits hereto.
  - (b) Any applicable Contract Sheet and any Exhibits or supplementals thereto
- 3) Contractor shall perform the work described in the Contract Sheet (the “Work”).

### ***Payment***

- 4) The Owner agrees to pay Contractor the Contract Sum identified in the Contract Sheet, as the same is subject to adjustment as provided for herein.



- 5) The Owner agrees to pay Contractor as progress is completed on the project according to the Charge Schedule in the Contract Sheet.
- 6) Retainage to be withheld, if any, will be identified in the Contract Sheet. Retainage shall be released upon final acceptance of work and close out of any permitting still outstanding. Contractor shall provide if needed any signed release to authorize final payment
- 7) All payments shall be made direct to contractor, prior to any payments, lien waivers shall be provided for any requested work to guarantee all parties have been properly reimbursed for work completed.
- 8) Contractor agrees to invoice the Owner and Owner agrees to make payments to the Contractor during the progress of the Work. With each invoice, Contractor shall deliver lien waivers in the form attached hereto as Exhibit "B". With Contractor's invoice for final payment, Contractor shall deliver a lien waiver in the form attached hereto as Exhibit "C".
- 9) Payment shall be due within 20 days after Owner's receipt of an invoice. Interest shall accrue on past due invoices at the rate of 1 ½ percent per month (18% per annum), or the maximum rate allowed by law, whichever is less, from the date that payment was first due. Owner agrees to pay Contractor's reasonable attorney's fees incurred in any efforts to enforce any provision of this Agreement, including efforts to compel payment of past due amounts.
- 10) No payment to Contractor under this Agreement, whether in full or in part, shall be deemed to operate as Owner's acceptance of any work or an admission that Contractor has complied with any provisions of this Agreement.

#### ***Contract Time***

- 11) The Contractor shall complete the Work within the number working days identified in the Contract Sheet, beginning as of the last to occur of the following: (i) the date on which Owner provides Contractor with a written notice to proceed, (ii) the site is available to begin Work, and (iii) Contractor's receipt of all building and fire permits; as the same is subject to adjustment as provided for herein ("Contract Time").

#### ***Warranty***

- 12) For the duration of the Agreement and for a period of one (1) year after Substantial Completion of the Work, the Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by this Agreement; and (2) the Work will be free from defects not inherent in the quality required or permitted.
- 13) OTHER THAN THE WARRANTY SET FORTH IN THE PRECEDING SECTION, THE CONTRACTOR EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MECHANABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



- 14) Without limiting the generality of the foregoing, the Contractor does not warrant the Work against damage from moisture, including but not limited to, humidity, cupping, buckling, warping, shrinkage, natural events or acts of God, or insect infestation, including beetles and termites. The Contractor is not responsible for damage caused by the moving of items or actions completed by other parties on behalf of the Owner.
- 15) Owner hereby acknowledges that all requested work shall be considered a repair only, and that existing structural issues, mold, asbestos, building defects, and any other existing conditions are expressly excluded from this agreement. Any existing conditions that the Owner has previously identified shall be made known to Contractor prior to commencement of work. Any aforementioned items identified by Contractor in the course of work shall be made known by written notice to Owner within three (3) days of discovery. Owner shall then determine and respond with their desired course of action to remedy the situation and notify contractor within a reasonable time to allow for continued work by the Contractor. All items shall be addressed fully at the Owners expense.
- 16) All materials supplied by Contractor shall be new. All Work shall be performed in a good and quality workman like manner, free from faults and defects, and in accordance with the highest standards of the trade and in accordance with the plans and specifications , applicable government building codes and guidelines, and any other laws, ordinances, rules, requirements, or regulations applicable to the Work.

***Insurance and Indemnity***

- 17) Contractor shall, in a manner satisfactory to Owner, maintain at its own expense until the completion of the Work and final payment therefor, the following insurance:
  - a) Worker's Compensation and Employer's Liability:
    - 1) Meeting the statutory requirements and covering any employees of Owner used by the Contractor.
    - 2) Coverage "B" - Employer's Liability - Limit \$100,000.
  - b) Comprehensive General Liability:
    - 1) Comprehensive General Liability Form.
    - 2) Contractual Liability; Blanket basis insuring the liability assumed under this Agreement (exclusions O, P, Q and R deleted.)
    - 3) Limits of Liability; Bodily Injury - \$500,000 each occurrence, \$500,000 aggregate; Property Damage - \$100,000 each occurrence aggregate.
  - c) Comprehensive Automobile Liability:
    - 1) Comprehensive Automobile Liability Form, including all owned, non-owned and hired vehicles.



- 2) Limits of Liability: Bodily Injury - \$250,000 each person; \$500,000 each occurrence; Property Damage - \$100,000 each occurrence aggregate.
- 18) Maintenance of the required insurance protection does not relieve the Contractor of responsibility for any losses not covered by the above required policies. Failure of Contractor to fulfill any of its obligations contained in this Section shall constitute a material breach of this Agreement.
- 19) Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until final completion of the Project. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.
- 20) Provided that Owner has satisfied its payment obligations hereunder, the Contractor shall indemnify and hold the Owner harmless from and against claims, damages, losses and expenses, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

#### ***Change Orders***

- 21) Following commencement of the Work, Owner may, by change order, make changes in the Work consisting of additions, deletions or revisions and the same shall result in an equitable adjustment in the Contract Sum and Contract Time based upon Contractor's actual additional costs and time necessary to implement such change.
- 22) The Contractor shall not be obligated to perform the Work until the change order has been signed by both parties. Any delays caused by changes requested by the Owner or failure of Owner to agree to a price for such change shall extend the completion date hereunder and shall entitle Contractor to a day for day increase in its general conditions costs, and those of its Subcontractors.

#### ***Termination of Agreement***

- 23) If the Owner fails to make payment when due, breaches any other obligation of this Contract, or if a structural defect or other condition not within the control of the Contractor is discovered which affects the Contractor's ability to progress the Work, the Contractor may, at its option, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials,



equipment, tools, construction equipment and machinery, including reasonable overhead and profit on Work not performed, along with other applicable damages.

- 24) If Contractor materially breaches its obligations under this Contract to perform its Work, Owner shall have the right to terminate the Contract, but only after delivering a written notice of default via Registered Mail to Contractor at the address shown on the first page of this Contract. The notice of default shall set forth Contractor's breach(es) of the Contract and grant Contractor a period of seven (7) days to commence and continue curing the breach(es) before any termination of the Contract is effective.

#### ***Arbitration***

- 25) Any controversy or claim arising out of or related to this Agreement, or the breach thereof, shall be resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. To the extent permissible by law, such arbitration proceeds shall be held in Denver County, Colorado; otherwise such arbitration proceedings will be held in the county in which the Project is located. An arbitration pursuant to this Agreement may be consolidated with, and Owner and Contractor hereby consent to being added (by joinder or otherwise) as a party to, any other arbitration or dispute resolution proceeding involving common issues of law or fact, or which relates to the Project and in which the Contractor's or Owner's and Owner's separate contractors and consultants' services are at issue. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity, and Owner's and Contractor's consent to joinder, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

#### ***Hazardous Materials***

- 26) If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos, lead, or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner. The Owner shall be responsible to conduct an assessment study to determine the presence of a hazardous material, coordinate the necessary abatement, and contract with the applicable parties for abatement. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The contract time shall be extended appropriately and the contract sum shall be increased in the amount of the Contractor's additional costs of shutdown, delay and start-up.

#### ***General Terms***

- 27) Contractor shall submit for the Owner's information a construction schedule for the Work. Contractor shall revise this schedule to reflect the actual progress of the Work at appropriate intervals throughout the Project.



- 28) Contractor shall be permitted to subcontract any portions of the Work to those contractors and suppliers (collectively "Subcontractors") that Contractor deems appropriate. At Owner's request, Contractor shall furnish the name of such Subcontractors, for Owner's information only. Communication between Owner and any Subcontractors shall be through Contractor.
- 29) The Contractor shall have complete control over the construction means, methods, techniques, sequences and procedures, and for coordinating the Work. The Owner acknowledges and agrees that, if the Work is part of a larger project, it is the Owner's responsibility to coordinate the Work so that (1) the Contractor will have unfettered access to the Project to perform its Work; (2) the Contractor's Work will not be interfered with by others; and (3) the Contractor's Work will not be damaged. The Owner agrees to be responsible for such damage to the Contractor's Work and to pay any damages resulting from any delays to the Contractor's Work.
- 30) Owner shall promptly furnish all information and services necessary for Contractor to carry out the Work. If Owner fails to furnish such information and services in a timely manner, Contractor shall be entitled to an equitable adjustment in the Contract Sum and Contract Time for such delay.
- 31) Prior to commencement of the Work and thereafter upon any change to the Contract Sum, Owner at the written request by the Contractor, shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Agreement. The Contractor shall have no obligation to commence or continue the Work until the Owner provides such evidence. If commencement or progress of the Work is delayed under this Section the Contract Sum and Contract Time shall be equitably adjusted.

#### ***Claims***

- 32) If concealed or unknown physical conditions are encountered at the site that differ from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor.
- 33) If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, labor disputes, fire, unusual delay in deliveries, adverse weather conditions, unavoidable casualties, or by any other causes beyond the Contractor's control; then the Contract Time and Contract Sum shall be equitably adjusted.
- 34) The Contractor shall not be liable for delays in the Work resulting from a cause beyond the Contractor's control.
- 35) The Contractor shall not be liable for any incidental, consequential or punitive damages associated with or in any way related to the Work, the Project or this Agreement.



- 36) Pending final resolution of a claim, except as otherwise agreed in writing, the Contractor shall proceed with performance of portion of the Work not in dispute and the Owner shall continue to make payments in accordance with the Contract Documents.

***Miscellaneous***

- 37) This Agreement, and all of its included documents, represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral.
- 38) To the extent permissible by law, this Agreement shall be governed by the laws of the State of Colorado; otherwise this Agreement shall be governed by the laws of the place where the Project is located.
- 39) Neither party to the Agreement shall assign the Agreement without written consent of the other, which shall not be unreasonably withheld.
- 40) Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.