



TERMS AND CONDITIONS FOR ENGINEERING SERVICES

These Terms and Conditions for Engineering Services ("Terms") shall govern all proposals, quotations, orders and contracts for the sale of engineering services of MSS to Client. These Terms supersede any prior written or oral agreement, understanding, representation or promise, and any pre-printed or standard terms and conditions contained in Client's request for proposal/quote, purchase order, invoice, order acknowledgement, contract or other similar document. These Terms may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement, signed by an authorized representative of MSS and Client. MSS's acknowledgement of Client's order shall not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described.

1. DEFINITIONS:

"MSS" and/or "Engineer" shall both mean MSS Solutions, LLC or the affiliated MSS entity named in the proposal or order which is providing the engineering services. "Client" means the company who accepted MSS's offer or is named in the order. "Project" means the Client project as set forth in the applicable proposals, quotations, orders and contracts for the sale of engineering services of MSS to Client. The goods and/or services provided by MSS to Client shall collectively be referred to as "Work".

2. CLIENT'S RESPONSIBILITIES:

Client shall provide full information regarding the design requirements, schedule and budget for the Project to MSS and its representatives and agents, and the Engineer shall be entitled to rely on the accuracy and completeness thereof. Client, for its own benefit may, from time to time on its own or retain others to perform certain tests, inspections, and analyses or other information and materials for use by Engineer. Engineer may and is expected to rely on such tests, inspections, analyses, opinions, data, reports, materials and other information without the need for independent evaluation and/or verification. Moreover, Client agrees to indemnify, defend and hold Engineer harmless from any and all losses, damages, and claims of any nature which may in any way arise out of or in connection with the use by Engineer of the tests, inspections, analyses, opinions, data, reports, materials and other information prepared by Client or others and furnished to Engineer in connection with this Project.

3. ENGINEER'S RESPONSIBILITIES:

Engineer shall be responsible only for the design shown in Engineer's signed and sealed drawings used for permit and construction (hereinafter referred to as "Contract Documents"). Client shall specifically hold Engineer harmless from any and all claims or damages arising from or relating to the contractor's failure to properly perform the work. Furthermore, Engineer shall not be responsible for or have control over the means, methods, procedures of construction, dimensions, quantities or instructions for installation or performance of equipment or systems designed by the contractor or site safety precautions employed by the contractor or subcontractors on the Project, which remain the sole responsibility of the contractor.

4. STANDARD OF CARE:

Engineer will perform services under this Agreement, consistent with that level of care and skill ordinarily exercised by members of Engineer's profession, practicing under similar circumstances in the same or similar locality in the same period of time. No guarantees or warranties are included or intended under these Terms or in any representation, opinion or otherwise of Engineer. THE REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES AVAILABLE TO CLIENT AND MSS HEREBY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. USE OF ENGINEER'S DESIGN BUILD DOCUMENTS:

Documents prepared by Engineer are "Instruments of Service" for use

solely with respect to this Project. Engineer's documents are restricted by N.C.G.S. § 89C and § 55 and all construction shown on plans bearing an MSS Certificate of Authorization shall be performed by MSS in compliance with the applicable N.C.G.S. Engineer retains all common law, statutory and other reserved rights, including the copyright thereto. Client will not use or permit the reuse of the Instruments of Service except by mutual agreement in writing with Engineer. Provided Client is not in default under these Terms, Client may retain copies solely for information and reference in connection with occupancy and maintenance of the Project.

6. CONSTRUCTION ADMINISTRATION SERVICES:

Engineer's visits to the construction site shall be for the sole purpose of becoming generally familiar with the progress and quality of the construction work within Engineer's scope and to determine in general if the Work, when completed, will be in accordance with the Contract Documents. Engineer's Scope of Services does not provide for continuous supervision or exhaustive inspection of the work performed by the contractor or subcontractors

7. PAYMENT FOR SERVICES:

Engineer will invoice for services in accordance with the progress of the Work. Payment shall be net thirty (30) days of the Client's receipt of our invoice. In the event Engineer does not receive payment when due, Engineer may terminate or suspend services without breach of contract upon giving Client seven (7) days written notice. In the event services are terminated or suspended, Engineer has no obligation to deliver documents and any consequences (including delay) resulting from such termination or suspension are the sole responsibility of Client. Engineer shall be compensated for all services performed up to the date of termination together with all reimbursable expenses then due. Client agrees to pay, without formal notice, one and one-half percent (1.5%) per month of the amount not paid when due, or, if such rate is in excess of applicable governing law, Client agrees to pay the maximum permitted rate. No deduction, whether by way of set-off, counterclaim or otherwise, shall be made by Client. If prerequisites for any payment (such as delivery, completion or formal acceptance) cannot be satisfied due to Client's breach, such payment shall nevertheless become due and payable at the time agreed to and MSS's further right to seek damages shall remain unaffected.

8. LIMITATION OF LIABILITY:

There are a variety of risks which potentially affect Engineer by virtue of entering into an Agreement to perform professional services on Client's behalf. In order for Client to obtain the benefit of a fee which does not need to account for unlimited risks, Client agrees to limit Engineer's liability to Client. To the fullest extent permitted by law and notwithstanding anything to the contrary set forth herein: (a) neither Party shall be liable, whether by way of indemnity or by reason of any breach of contract or of statutory duty or by reason of tort (including but not limited to negligence), for any loss of products, loss of profit, loss of revenue, loss of use, loss of production, loss of contracts, loss of business, third party charges & costs, or for any special or incidental costs, or for any financial or economic loss, or for any indirect, special, or consequential damages or losses whatsoever; and (b) except in the case of a Party's gross negligence or willful misconduct, Engineer's aggregate liability arising from or in connection with the Work performed under these Terms shall not exceed the lesser of, \$100,000 or the total fee paid to Engineer only (not including consultants).

9. ACCESS TO SITE:

Engineer shall have access to the Project site at all reasonable hours and shall be permitted to photograph the Project during construction and upon completion for its records and future use.

10. HAZARDOUS MATERIALS:

Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to



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asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Any language or provision of the agreement elsewhere contained which may authorize or empower the Client to change, modify, or alter the scope of work or services to be performed by MSS shall not operate to compel MSS to perform any work relating to the aforementioned hazards without MSS's express written consent.

11. HIDDEN CONDITIONS:

The Instruments of Service are based on observable conditions. A condition is hidden if it is concealed by existing finishes or cannot be investigated by reasonable visual observation. In the event Engineer, in the performance of the services, uncovers a hidden condition, Engineer shall not be responsible for costs associated with repairing, restoring, removing or otherwise correcting said condition. Engineer shall have no responsibility for hidden conditions or any subsequent damage to persons or property related to any hidden conditions.

12. BETTERMENT:

If due to Engineer's breach of the standard of care, any required item or component of the Project is omitted from Engineer's Contract Documents, Engineer shall not be responsible for paying the cost to add such item or component to the extent that such item or component would not have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Engineer be responsible for any cost or expense that provides betterment, upgrade or enhancement of the Project.

13. DELIVERY & PERFORMANCE: Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change, and MSS shall use commercially reasonable efforts to meet such dates; provided, however, that MSS shall not be liable in damages or otherwise, nor shall Client be relieved of its performance hereunder, because of MSS's failure to meet them. Additionally, MSS shall not be liable, directly or indirectly, for any delay in or failure to perform caused by carriers or suppliers; labor difficulties, shortages, strikes or stoppages of any sort; difficulty in obtaining materials; customer requested order changes; fires, floods, storms, accidents, or acts of God; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee and/or governmental restrictions; any statute, sanction, injunction or other governmental restraint or prohibition; or other causes beyond MSS's reasonable control.

14. COMPLIANCE WITH LAWS: MSS shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the Work. Licenses and permits of a permanent nature shall be procured and paid for by the Client.

15. APPLICABLE LAW; VENUE; ARBITRATION: The rights and duties of the parties hereunder shall be governed by the laws of the State where the applicable project is located, excluding its conflicts law and choice of laws principles. Any action or proceeding with respect to this agreement shall be resolved by binding arbitration through the American Arbitration Association ("AAA") conducted by arbitrator(s) selected in accordance with the Construction Industry Arbitration Rules currently in effect as of the date of filing a demand for arbitration ("Arbitrator"). This agreement is made pursuant to a transaction in interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C.A § 1, without regard to conflict with local applicable laws. The arbitration will be conducted in Charlotte, North Carolina at an office to be determined by the Arbitrator. The prevailing party (as determined by the Arbitrator) shall be entitled to recover the cost and expense of the arbitration, including reimbursement of all reasonable attorneys' fees, expert witness fees, costs of appeal and costs to enforce the arbitration provision contained herein. Nothing herein shall limit any rights under construction lien laws.

16. NO OTHER CONTRACT PROVISIONS; OTHER: There are no representations, agreements, obligations, or conditions, expressed or

implied, statutory or otherwise, relating to the subject matter hereof, other than contained herein. These Terms constitute a completely integrated agreement and cannot be modified unless modifications are accompanied by signed writing approved by MSS. For the avoidance of doubt and not in limitation of the foregoing, MSS shall not be bound by the terms of any contract between Client and any third party or other flow down provisions, regardless of whether Client notifies MSS of such terms unless MSS expressly agrees to be bound by such terms in writing by an authorized representative of MSS. If any provision hereof is invalid or not enforceable under applicable law, the remaining provisions shall remain in full force and effect. MSS reserves the right to transfer or assign its obligations, rights and responsibilities hereunder, so long as such successor or assign agrees to these Terms. Any assignment of Client's rights hereunder without MSS's consent (which shall not be unreasonably withheld) shall be void. MSS's failure to require Client's performance of any of these Terms shall not serve as a waiver of or diminish MSS's rights to require strict performance of these Terms.

17. EO CONTRACT CLAUSE: MSS and Client agree to abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, Sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, national origin, protected veteran status or disability.