

## **MC Wells Contracting, LLC Standard Terms and Conditions**

1. **The Agreement.** The services, equipment, and/or materials supplied (the “Work”) by MC Wells Contracting, LLC, a Nebraska limited liability company (“Contractor”), shall be provided to the customer requesting such Work from Contractor (collectively with its parents, subsidiaries and affiliates, “Customer”) only upon the following Standard Terms and Conditions (the “Agreement”). Contract formation and acceptance by Contractor are expressly conditioned upon Customer’s agreement to the terms of this Agreement. If the terms of this Agreement are not acceptable, Customer must notify Contractor of its objections at once upon the earlier of: (i) notice of the terms of the Agreement or (ii) Contractor’s arrival at Customer’s jobsite. If no such objections are tendered to Contractor, Customer shall be deemed to have agreed to this Agreement upon Contractor’s arrival on Customer’s jobsite. Contractor objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Customer’s orders for Work (“Work Order”) or in any other communication from Customer to Contractor, except to confirm the type and quality of services, equipment, and materials to be supplied to the Customer. This Agreement shall be for the benefit of Contractor and Customer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Contractor, to the extent they differ from, modify, add to or detract from the Agreement, shall not be binding on Contractor and are void ab initio. There are no agreements, promises or understandings, either verbal or written that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions.

2. **Termination or Modification.** If either party cancels any Work Order, any Work in progress on the effective date of such cancellation shall be controlled and governed by this Agreement until its completion. Customer shall pay Contractor, as compensation for the Work performed prior to said cancellation, all documented, reasonable costs incurred by Contractor; the documented, reasonable costs committed to by Contractor (such costs for orders of goods which orders are not cancelable or which goods cannot otherwise be utilized or sold in the ordinary course of Contractor’s business) and demobilization costs, if applicable.

3. **Terms of Payment.** Contractor shall receive the compensation specified in the Work Order, which shall be due and payable thirty (30) days from the date of Contractor’s invoice(s) therefor. Any balances unpaid after thirty (30) days of the date of invoice will be charged interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law. Should Customer dispute all or a portion of Contractor’s invoice, it shall so notify Contractor within thirty (30) days of the date of Contractor’s invoice, and shall pay the undisputed portion thereof within the same period of time. If Customer does not dispute such invoices within such thirty (30) day period, Customer shall be deemed to have accepted such invoice, and waive any further rights to object to the same. If Customer and Contractor’s agreed upon resolution to an invoicing dispute requires Contractor to submit a new or revised invoice to Customer, such new or revised invoice shall be deemed to have been received by Customer on the date Customer first received Contractor’s invoice which gave rise to the dispute. Contractor shall be entitled to recover all of the attorneys’ fees, expert fees, consultant fees, and court costs Contractor incurs to prosecute

any claim or counter-claim against Customer arising out of or related to this Agreement or any Work Order to the extent Contractor prevails on such claim or counter-claim.

#### **4. Limited Warranty.**

(a) Contractor warrants that it will perform all Work in material conformity with the specifications and requirements provided by Customer in the applicable Work Order. Such warranty of performance shall commence when Contractor first performs Work and shall extend until Contractor's departure from the applicable Work site after performing the Work (the "Warranty Period").

(b) If any of the Work is not in compliance with the warranties of this Section 4, Customer must provide Contractor written notice of such non-compliance during the Warranty Period. Failure by Customer to give such notice within the Warranty Period shall be deemed an absolute and unconditional waiver of Customer's claim for any breach of warranty under this Agreement. Provided that Customer timely provides such notice, Contractor, as Contractor's sole and exclusive obligation and Customer's sole and exclusive remedy for any breach of warranty under this Agreement, shall elect either to (x) re-perform the non-complying Work or (y) refund to Customer any amounts paid by Customer for such non-complying work.

(c) Contractor's warranty and the remedies related thereto exclude damages, defects, or nonconformities caused by: (i) modifications to the Work by someone other than Contractor; (ii) improper use or abuse of the Work by someone other than Contractor; or (iii) normal wear and tear. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR OTHERWISE, CONTAINED IN OR DERIVED FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, CONTRACTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES, DATA OR MATERIALS PROVIDED HEREUNDER.

#### **5. Indemnification.**

(a) Definitions.

i. "Claims" shall include, without limitation, any and all claims, losses, damages, causes of action, fines, penalties, enforcement proceedings, suits, and liabilities of every kind (including interest and all expenses of litigation, court costs, and attorneys' fees), whether arising in tort, contract, strict liability, under statute, or of any other character whatsoever.

ii. "Contractor Group" means Contractor, its parent, subsidiary and affiliated companies, and their contractors (of whatever tier), and its and their respective managers, directors, officers, employees, agents, and representatives.

iii. "Customer Group" means Customer, its parent, subsidiary and affiliated companies, and entities for whom it performs services for, and its and their co-lessees, partners, joint venturers, co-owners, contractors (other than Contractor), and its and their respective directors, officers, employees, agents, and representatives.

(b) Mutual Indemnification.

i. Customer shall defend, protect, indemnify and hold harmless each member of Contractor Group from and against any and all Claims against any member of Contractor Group which arise out of, relate to, or are connected with (i) the negligence or willful misconduct of any member of Customer Group or (ii) the breach of Customer of this Agreement.

ii. Subject to Contractor's insurance limits contained below, Contractor shall defend, protect, indemnify and hold harmless each member of Customer Group from and against any and all Claims against any member of Customer Group which arise out of, relate to, or are connected with (i) the negligence or willful misconduct of any member of Contractor Group or (ii) the breach of Contractor of this Agreement.

iii. Insurance. Contractor agrees to obtain worker's compensation insurance as is required by applicable law. Contractor further agrees to obtain comprehensive general liability and property damage insurance to protect the Contractor and Customer against claims for bodily injury or death or for damage to property occurring in connection with the Work, in an amount of not less than \$1,000,000.00 per occurrence for injuries or death to persons and \$100,000.00 per occurrence for damage to property.

(c) Survival. All indemnity provisions of the Agreement shall survive termination, expiration, or cancellation of the Agreement and/or any Work Order hereunder.

**6. WAIVER OF CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS GROUP FOR, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY AND ITS GROUP FROM, ANY OF THE RELEASING PARTY'S INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES INCLUDING, BUT NOT LIMITED TO, DAMAGES OR LOSSES FOR LOST PRODUCTION, LOST REVENUE, LOST PRODUCT, LOST PROFITS, LOST BUSINESS OR BUSINESS INTERRUPTIONS; PROVIDED, HOWEVER, THAT THE WAIVERS AND RELEASES IN THIS SECTION 6 SHALL NOT BE CONSTRUED TO LIMIT A PARTY'S OBLIGATIONS UNDER SECTION 5 TO DEFEND, PROTECT, INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FOR THIRD PARTY CLAIMS ARISING OUT OF THIS AGREEMENT OR WORK PERFORMED HEREUNDER.

**7. Force Majeure.** Contractor's failure to deliver Work by reason of any of the following events shall not constitute an event of default or breach of this Agreement and/or any Work Order hereunder: strikes, picket lines, boycott efforts, fires, floods, freeze, accidents, war (whether or not declared), revolution, riots, insurrections, acts of God, acts of government

(including without limitation any agency or department of the United States of America or any other country), acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other any other causes which are reasonably beyond the control of the defaulting party. Contractor shall notify the Customer of any such delay and its cause. Notwithstanding the preceding sentence, no such event shall excuse (i) an event of default or breach of an obligation to pay monies owed under this Agreement or (ii) a parties obligation to provide defense and indemnification as required hereunder.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, but without regard to any conflict of laws provisions of that state which would have the effect of applying the law of another state or jurisdiction. Any suit or proceeding hereunder shall be brought exclusively in state or federal courts located in Douglas County, Nebraska. Each Party consents to the personal jurisdiction and venue of the state and federal courts of said county and waives any objection that such courts are an inconvenient forum.

9. **Miscellaneous.** Each party agrees to comply with the provisions of all applicable federal, state, county, or municipal laws, regulations or ordinances. Should any clause, sentence or part of this Agreement be held invalid, such holding shall in no way affect the validity of the remainder, which shall remain in full effect. Failure to enforce any or all of the provisions of this Agreement in a particular instance or instances, shall not constitute a waiver or preclude subsequent enforcement thereof. Customer expressly warrants and represents that no promise, agreement, representation, inducement, or condition which is not herein expressed has been made to Customer by Contractor or any member of Contractor Group in executing this Agreement. Customer further warrants and represents that (a) it is not relying upon any statement or representation of Contractor or any member of Contractor Group in executing this Agreement; and (b) it is relying solely upon its own judgment in forming this Agreement.