

Standard Terms and Conditions (Sale/Rental of Equipment)

Any project-specific terms and conditions set forth in a quote or other documentation received from Matcor, Inc. and its subsidiaries and affiliates ("Supplier") related to this project or order shall control in the event of a conflict between them and these Standard Terms and Conditions. Supplier's quote or other documentation will identify whether Equipment is being sold or rented. Except to the extent provided otherwise herein, all of these Standard Terms and Conditions apply to both sales and rentals of Equipment by Supplier.

1. **Definitions.** As used herein, the following terms shall have the following meanings. "Agreement" shall mean these Standard Terms and Conditions and any project-specific or additional terms and conditions contained in a Supplier quote or other Supplier-provided documentation (such quote or documentation the "Supplier Document") related to this project or order. "Customer" shall mean the person or entity designated as such in this Agreement and, if different, the entity that is responsible for ordering the Equipment. "Equipment" shall mean any and all equipment identified in this Agreement or otherwise provided to the Customer by Supplier. "Loss" shall mean the loss, destruction, theft of, and/or damage to any Equipment, excepting normal wear and tear. "Services" shall mean any and all services identified in this Agreement or otherwise performed for Customer by the Supplier. "Parties" shall mean Supplier and the Customer together. "Party" shall mean Supplier or Customer individually, as the context requires. "Rental Period" shall mean the period of time commencing (i) in the case when rented Equipment will be picked up by or for Customer, at the earlier of the scheduled pick-up time at Supplier's facility or the time when the Equipment actually is picked up by or for Customer at Supplier's facility or (ii) in the case when rented Equipment is to be delivered to Customer by Supplier, at the time the Equipment leaves a Supplier facility to be transported to a Customer-specified location, and in either case, ending when the Equipment is received at the Supplier facility designated by the Supplier to receive the Equipment from the Customer. "Confidential Information" means, without limitation, Supplier's trade secrets, know-how, technical information, customer lists, customer purchasing histories and plans, costs, budgets, acquisition strategies, policies, procedures, methods of operation, pricing, samples, prototypes, sales and marketing plans or information, financial information, personnel or employee information, compensation programs, vendor sources, vendor identities and capabilities, manufacturing processes, research, engineering data, designs and drawings, design standards, formulas, products and product specifications, contemplated or new product or service developments, computer software and programs, blueprints, inventions and improvements, together with third party information Supplier holds in confidence. References in this Agreement to "days" mean calendar days unless expressly stated otherwise. "Reviewing Entity" is any federal, state, or local entity, agency, body, as well as the project owner, and/or Customer that will review and approve any of Supplier's engineering submissions.
2. **Acceptance and Modification.** SUPPLIER'S WILLINGNESS TO PROVIDE EQUIPMENT HEREUNDER IS EXPRESSLY CONDITIONED UPON CUSTOMER'S UNQUALIFIED ACCEPTANCE OF THIS AGREEMENT, AND CUSTOMER'S ACCEPTANCE OF THIS AGREEMENT IS EXPRESSLY LIMITED TO THE EXACT TERMS AND CONDITIONS SPECIFIED HEREIN. The rights of the Parties shall be governed exclusively by the terms and conditions set forth in this Agreement. Placement of an order for Equipment by Customer with Supplier, shipment, or delivery of Equipment pursuant to this Agreement, or the acceptance, use or retention of any Equipment by Customer shall constitute an unqualified acceptance by Customer of this Agreement. Any attempt by Customer to vary in any degree, the exact terms and conditions of this Agreement in any order, acceptance, acknowledgement, confirmation or other written or oral communication of any kind containing additional, inconsistent, or different terms or conditions is hereby expressly objected to and rejected by Supplier. Supplier's provision of Equipment pursuant to the terms of this Agreement shall not be deemed to be an acceptance of any additional, inconsistent, or different terms or conditions proposed by Customer. Should this Agreement be deemed an acceptance of a prior offer, quotation or proposal by Customer, such acceptance is limited to the express terms and conditions set forth herein. No course of prior dealings between the Parties and no usage of trade are relevant or admissible to supplement, explain, or vary any provisions hereof. Moreover, no other contract, specification, drawing or other item, including terms on "click-through" websites, shall be incorporated into or made a part of the Agreement or binding on Supplier unless it is agreed to in writing by Supplier. This Agreement cannot be amended or modified (including by prior course of dealing or trade usage) except through a writing that has been signed by both Customer and Supplier.
3. **Scope.** The scope of work ("Work") to be provided by the Supplier to the Customer is set forth in this Agreement. Customer is responsible for: (1) determining or verifying the bearing capacity of floors, roofs, walls, or any other structure or location upon which the Equipment will be located; (2) ensuring that the ground or structure upon which the Equipment will be placed is level, clear of debris and obstruction, and capable of withstanding the total load imposed by the Equipment and any materials and personnel upon the Equipment; and (3) any applicable Taxes (as defined in Section 49), licenses, or permits that may be required as a result of the Equipment to be provided by the Supplier. If Customer fails to satisfy its obligations under this Section, Customer is responsible for any resulting extra costs incurred by Supplier or others. The Agreement price constitutes the price for only those items of Equipment expressly set forth herein. Any additional equipment or services beyond those expressly set forth in this Agreement will constitute extra work and Customer is responsible for all costs and charges associated therewith. If Customer is unsure what costs or charges are included in the price, then Customer bears the responsibility for requesting clarification from Supplier. Customer shall compensate Supplier in a timely fashion for any extra work performed as requested orally or in writing by the Customer. If there is no prior agreement between the Parties as to the extra costs and charges, Supplier shall be entitled to reasonable compensation for any additional work performed, including profit and overhead.
4. **Warranty Disclaimer.** SUPPLIER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, WHICH IS PROVIDED "AS-IS". SUPPLIER EXPLICITLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. IN ADDITION, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER WILL NOT BE RESPONSIBLE FOR ANY EQUIPMENT FAILURE OR LIABILITY WHATSOEVER, UNLESS SUCH FAILURE OR LIABILITY IS PROVEN TO HAVE RESULTED SOLELY FROM SUPPLIER'S NEGLIGENCE.
5. **Inspection.** Upon receipt of Equipment, Customer shall inspect its condition and quantity. If the Equipment count is incorrect or if the Equipment received is damaged, Customer shall notify Supplier in writing within 48 hours after receipt. If the Equipment is not in good condition or repair at the time of

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delivery, then Customer shall not use the Equipment and shall immediately notify Supplier of any defects or other issues, and Supplier will, as its sole responsibility and as Customer's sole remedy, replace the affected Equipment with Equipment that is in good condition or, at Supplier's option, refund amounts paid by Customer for such Equipment under this Agreement. If the Customer does not inspect and count the Equipment when received, or does not notify Supplier in writing of any condition or quantity concerns within 48 hours after receipt, the Customer is deemed to have accepted the quantity as shown in Supplier's shipping documents as correct and, in addition, Customer is deemed to have accepted that the Equipment is in good, operating condition, and fit for its intended use. Supplier shall not be liable for any damage or other Loss of or to the Equipment that occurs after the time risk of Loss passes to the Customer, as such time is identified in the "Equipment Loss or Damage" Section below.

6. **Delays/Acceleration.** Supplier will only be liable for reasonable actual direct costs incurred by the Customer to the extent caused by inexcusable delays exclusively caused by events within Supplier's reasonable control. In the event of any other delay, suspension or acceleration, whether caused by Customer or otherwise, Supplier will be entitled to a reasonable extension of time for performance and reimbursement of all increased performance costs that it incurs as a result from such acceleration, suspension and/or delay.
7. **Price Adjustment.** The price of the Equipment and/or Services under this Agreement is based on the costs of the Inputs in effect on the date that such price is quoted to Customer by Supplier (the "*Pricing Date*"), plus Supplier's profit. "*Inputs*" means fuel (including both gasoline and diesel, and any other form of energy), freight, steel, materials, equipment, and labor, as well as any other service or commodity, in each case that is directly or indirectly used to procure, manufacture, and/or provide the Equipment and/or Services to Customer. Notwithstanding anything to the contrary contained in this Agreement, Supplier may, from time to time and in its sole discretion, issue surcharges on orders (including, but not limited to, orders that have already been accepted by Supplier) to recover the amount of any increase in Supplier's cost of manufacturing, procuring, or providing the Equipment or Services (whether or not foreseeable or unforeseeable) that occurs after the Pricing Date, including, but not limited to, any increased cost arising from or related to: (i) foreign currency exchange variation; (ii) increase in the costs of the Inputs (whether demonstrated by increases in recognized applicable indices, industry standards, or Supplier's records); (iii) duties, tariffs, and other government actions on the Equipment, Services or Inputs; and/or (iv) increased costs due to inflation (collectively, "*Economic Surcharges*"). Supplier shall invoice Customer, and Customer agrees to pay for, the Economic Surcharges pursuant to the payment terms in this Agreement. Any Economic Surcharges, as well as the timing, effectiveness, and method of determination thereof, will be separate from and in addition to any changes to pricing that are affected by any other provisions in this Agreement.
8. **Claims.** Any and all claims for losses, damages or back charges by Customer shall be submitted to Supplier in writing for review within 15 days after the first discovery of a potential claim; claims not made in accordance with this sentence shall be deemed waived. Customer shall have no right to impose or exercise any set-off or offset against Supplier, and Customer shall not attempt to impose or exercise any such set-off or offset.
9. **Important Safety Guidelines.** Customer acknowledges and agrees to strictly adhere to Supplier's EHS policies and procedures. SPECIFICALLY, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED SUPPLIER'S IMPORTANT SAFETY GUIDELINES FOUND ON SUPPLIER'S WEBSITE AT <https://brandsafway.com/uploads/files/importantsafetyguidelines.pdf>, AND THAT IT MAY ALSO OBTAIN A COPY OF SUCH IMPORTANT SAFETY GUIDELINES BY CONTACTING A SUPPLIER REPRESENTATIVE. Customer agrees to comply with all of these Important Safety Guidelines, and further agrees that any failure by Customer, its employees or agents, or other users of the Equipment to comply with the Important Safety Guidelines shall constitute a material breach of this Agreement by Customer. Company vehicles may be equipped with dash cameras that record video for safety and compliance purposes. Recordings are limited to vehicle operation and are not intended to capture proprietary or sensitive site information.
10. **Storage.** If requested or necessary, Customer shall provide Supplier with a jobsite Equipment storage area at no charge.
11. **Rented Equipment Inspection.** If Equipment is being rented to Customer, Supplier or its authorized agents have the right (but not the obligation) at any time and from time to time to enter the site where the Equipment is located for purposes of inspecting the Equipment. Customer shall ensure that Supplier or its agents are given full access to conduct such inspections as promptly as possible, and in any event within 24 hours after Supplier requests to conduct an inspection. Customer shall provide Supplier with unobstructed access to Equipment and/or Services at all times, including providing the access required to move or remove the Equipment.
12. **Substitution of Equipment.** In the event the proposed Equipment is unavailable to support Customer's schedule, Customer agrees that Supplier may substitute Equipment that performs the same function.
13. **Equipment Loss or Damage.** Risk of Loss of or to the Equipment shall pass to the Customer (i) in the case when Equipment will be picked up by or for Customer, at the earlier of the scheduled pick-up time at Supplier's facility or the time when the Equipment actually is picked up by or for Customer at Supplier's facility, or (ii) in the case when Equipment is to be delivered to Customer by Supplier, at the time the Equipment leaves a Supplier facility to be transported to a Customer-specified location. If Equipment is sold to Customer, Customer is solely responsible for any Loss of or to the Equipment and normal wear and tear on the Equipment occurring after the time risk of Loss passes to Customer. If Equipment is rented to Customer, the remainder of this Section shall be applicable: Customer shall be responsible to Supplier for any Loss occurring during the Rental Period. Regardless of whether or to what extent the Customer directly caused the Loss, Customer shall promptly pay to Supplier a sum equal to Supplier's then-current list price plus handling charges for any and all Equipment that is subject to the Loss, unless the Loss is proven to have been attributable solely to the negligence of Supplier. For health and safety reasons, damaged rental Equipment must be promptly returned to Supplier by Customer within a mutually agreeable timeframe, and

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Supplier shall not be obligated to return any such Equipment to Customer, regardless of any replacement costs incurred or paid by Customer pursuant to this Section.

- 14. Contaminated Equipment.** If Equipment is sold to Customer, Customer shall be solely responsible for any contamination that occurs to the Equipment and for cleaning and decontaminating such Equipment. If Equipment is rented to Customer, the remainder of this Section shall be applicable: Customer shall fully clean and decontaminate, in a manner satisfactory to Supplier, any and all Equipment exposed to materials containing lead, asbestos, radiation or toxic or hazardous substances, or any other materials that may reasonably represent a hazard to human health or the environment or would preclude or limit future use of the Equipment. Within 48 hours after Supplier's request, Customer shall provide to Supplier any and all documentation reasonably required to confirm such cleaning and decontamination has occurred. Should any Equipment be returned to Supplier without being cleaned or decontaminated, the Customer shall, at Supplier's sole option, either (1) clean and decontaminate the Equipment at Customer's sole cost (including any and all transportation costs associated therewith), or (2) reimburse Supplier for any and all reasonable costs incurred by Supplier in connection with cleaning or decontaminating the Equipment or engaging a third party to clean and decontaminate the Equipment. Should any Equipment be incapable of being cleaned or decontaminated to Supplier's satisfaction, Customer shall pay to Supplier an amount equal to Supplier's then-current list price plus any handling charges for any and all such Equipment. **IN ADDITION, CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SUPPLIER FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, JUDGMENTS, COSTS, LOSSES, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND LEGAL COSTS) WHATSOEVER RELATING TO ANY PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY RELATING TO CUSTOMER'S FAILURE TO PROPERLY AND ADEQUATELY CLEAN AND DECONTAMINATE THE EQUIPMENT.** For health and safety reasons, contaminated Equipment that is rented to Customer must be promptly returned to Supplier by Customer, and Supplier shall not be obligated to return any such Equipment to Customer regardless of any cleaning, decontamination, or replacement costs incurred or paid by Customer pursuant to this Section. **THE FOREGOING INDEMNITY SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.**
- 15. Rental Protection Plan.** Supplier shall provide a rental protection plan in connection with all Equipment rentals. The charge for the plan is 7% of scaffold rentals and 15% of motorized rentals. The plan generally grants a 50% discount on shortages, damages, and cleaning fees that are assessed upon return of Equipment, subject to the terms, conditions, exceptions and exclusions of the "Damage Waiver" attached and incorporated hereto as Addendum A.
- 16. Return of Equipment.** Except to the extent provided in the Damage Waiver, shortages and damages of and to the Equipment will be billed at Supplier's then current published list prices. At time of scheduled pick-up, Equipment is to be racked and stacked by Customer; Customer will be required to compensate Supplier for any restacking or additional freight expense, including overtime labor rates, incurred by Supplier if Customer fails to do so.
- 17. Service Fee.** If the scope of this Agreement includes forming and shoring Equipment rental, a five percent (5%) Service Fee ("*Service Fee*") shall be added to all rental invoices to cover the costs of ongoing maintenance and other operational expenses associated with fulfilling the terms of this Agreement, including cleaning, repair, wear and tear. The Service Fee shall not cover Equipment that, in Supplier's discretion, is deemed to be misused or abused. Equipment deemed unrepairable, missing, lost, and/or unreturned Equipment will not be covered by the Service Fee and will be invoiced at a thirty percent (30%) discount on Equipment's current list price.
- 18. Title to Equipment/Location.** If Equipment is sold to Customer, title to the Equipment shall pass to Customer when specified in the project-specific Supplier quote or other Supplier-provided documentation related to this project or order. If Equipment is rented to Customer, the remainder of this Section shall be applicable: title to the Equipment shall remain at all times with Supplier. The Equipment shall not without Supplier's prior written consent be removed from the site designated by the Customer in its order and shall not be intermingled with, connected to, or used with any equipment belonging to others. Supplier reserves the right, at any time, to file, give public notice of, or register its ownership interest and/or title in or to the Equipment as may be permitted by law.
- 19. Rental Rate.** If Equipment is rented to Customer, then unless otherwise agreed by the Parties in writing, the Equipment is rented initially for a Rental Period of a 28-day cycle and on a per day basis thereafter. Customer shall be billed for, and shall pay, the Rental Period based upon rates set forth in this Agreement, as may be adjusted in accordance herewith, plus any and all Taxes. A credit will be issued upon Customer furnishing satisfactory evidence of tax-exempt status, if applicable.
- 20. Credit and Payment.** If requested by Supplier, Customer shall complete and return a credit application. Supplier's obligation to provide Equipment is expressly conditioned upon the approval of Customer's credit by Supplier. Payment terms shall be net 30 days from the date of Supplier's invoice to the Customer, unless otherwise agreed upon by the Parties in writing, via ACH (Automated Clearing House). Supplier will submit an invoice to Customer for work performed and/or any advance payment as agreed between the parties. Customer shall not unreasonably withhold approval or delay payment of such invoice. A monthly service charge equal to the lesser of 1.5% or the maximum amount allowed by applicable law shall be assessed on all past due accounts. Supplier may issue progress billings during the term of the project, and those invoices shall be paid by Customer in accordance with the payment terms in this Section. Nothing set forth in this Agreement shall limit Supplier's rights under any bond or lien law. Supplier may recover, and Customer shall be responsible to pay, all costs of collection, including filing and service costs, expert and mediation fees, arbitration, court and litigation out-of-pocket expenses and attorneys' fees, related to Customer's failure to pay within the terms set forth in this Agreement. If Customer elects to pay an invoice using a credit card, where permitted by applicable law, Supplier may add a surcharge that shall not exceed the cost of acceptance of such credit card. The

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surcharge will not be applied to a debit card. Any price or quotation as set out in or attached to this Agreement is valid for 30 days from the date of Supplier's quote. Unless otherwise agreed in writing by the Parties, all prices under this Agreement are exclusive of (i) any Taxes; (ii) any packaging, labeling, handling, loading, unloading, freight, shipping, and transportation costs, either domestic or international. Supplier will not be liable for any Taxes in connection with the rental, sale, delivery, or use of the Equipment or Services, all of which shall be borne solely by Customer, either directly or by reimbursement to Supplier on Supplier's demand therefor.

21. **Technical Information.** Where Supplier has provided to Customer technical data, drawings, information and/or specifications for the use of Supplier Equipment (collectively, "*Technical Information*"), the following conditions shall apply:
- a. **CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SUPPLIER FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, JUDGMENTS, COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND LEGAL COSTS), AND LIABILITIES WHATSOEVER RELATING TO ANY PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH) ARISING OUT OF OR IN ANY WAY RELATING TO DEVIATION IN WHOLE OR PART FROM SUCH TECHNICAL INFORMATION.**
 - b. All Technical Information shall remain the property of Supplier and may not be used on any other project of any kind or nature without the express, prior written consent of Supplier.
 - c. Assembly drawing will be charged separately per Supplier's price list in effect at the time.
 - d. All notes, note sheets, specifications, and other information provided with Supplier's drawings shall become part of this Agreement.
 - e. In the event Supplier Equipment includes suspended products, Customer is responsible for commissioning a structural analysis to verify structural capacity and arrange necessary third-party engineering review of application-engineered drawings and submittals.
22. **Use and Maintenance of Equipment.** Customer expressly agrees that it shall erect, dismantle, possess, modify, operate, maintain, and use the Equipment in a safe and proper manner that is consistent with any and all applicable federal, state, provincial and local statutes, regulations, rules, codes and ordinances and accepted industry practices, including any instructions or Technical Information provided to Customer by Supplier. Customer agrees that its use of the Equipment shall represent its acknowledgement that the Equipment was in good condition and repair at the time of delivery. If the Equipment is not in good condition or repair at the time of delivery, then Customer shall not use the Equipment and shall immediately notify Supplier in writing of any defects or other issues with respect to the Equipment's condition. Customer shall at all times and at its own expense maintain the Equipment in good working condition. Any modification or relocation of scaffolding or other Equipment or its components by the Customer or by the contractor or any subcontractor using the Equipment shall be done solely at the Customer's risk and expense and shall at all times be done in compliance with and according to any and all applicable federal, state, and provincial occupational safety and health laws, rules, and regulations, in addition to applicable city, county and local codes. The Equipment shall only be used for the purposes for which it was designed. Customer shall not use Equipment for permanent maintenance work. Customer represents, warrants, and confirms that the Equipment will be used only for business or commercial purposes, and not for personal, family or household purposes. **IT IS UNDERSTOOD AND AGREED THAT SCAFFOLDS AND OTHER EQUIPMENT PROVIDED HEREUNDER MUST BE USED PROPERLY IN ACCORDANCE WITH THIS AGREEMENT, AND THAT CUSTOMER MUST AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS SUPPLIER FROM ANY AND ALL CLAIMS, DAMAGES, JUDGMENTS, COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES AND LEGAL COSTS), AND LIABILITIES WHATSOEVER RELATING TO ANY PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH) ARISING OUT OF OR IN ANY WAY RELATING TO DEVIATION FROM SUCH PROPER USE. THE INDEMNITY SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.**
23. **Engineering Fees, Approvals, and Iterations.** If applicable, any charges ("Engineering Fees") for provision of Services requiring approval of engineering documents by a Reviewing Entity include only one submission with a Reviewing Entity. Any additional submissions will incur a charge equal to Supplier's applicable hourly rate plus reasonable costs and will be invoiced separately and paid in accordance with the terms of this Agreement. Engineering Fees do not include accelerated scheduling or the cost of completing a site visit. If an accelerated schedule and/or a site visit is required, additional charges will be incurred and invoiced pursuant to the terms of this Agreement.
24. **Training, Operation and Maintenance.** Except if and to the extent Supplier is required to provide training services under the Agreement, Customer shall be fully responsible for any and all training of users of the Equipment. Customer agrees that it will not allow the use of the Equipment by any person unless and until that person has been adequately and properly trained. Customer also acknowledges its responsibility to operate and maintain the Equipment in accordance with the Operations Manual and all applicable laws, codes, and regulations. In addition, if Equipment is rented to Customer, Customer shall be fully responsible for any and all maintenance required on the Equipment during the Rental Period, except for the particular maintenance requirements by Supplier (if any) as set forth in the maintenance materials provided to the Customer by Supplier. Customer shall maintain adequate maintenance records as required by applicable law.
25. **Conduct and Antibribery Compliance.** Both Parties acknowledge and agree to comply with Supplier's Code of Conduct (available at <https://brandsafway.com/integrity>), which prohibits, among other activities, the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. Neither Party will violate or knowingly permit anyone to violate the Supplier's Code of Conduct in performing under this Agreement. Both Parties shall also comply with any other code of conduct and other ethics, anti-bribery, and anti-corrupt practices policies of Supplier as those are provided from time to time. Without limiting the foregoing, both Parties represent that they are knowledgeable of the US Foreign Corrupt Practices Act as amended ("*FCPA*"), the UK Bribery Act of 2010, and other applicable laws or regulations that prohibit the bribery of, acceptance of, or the providing of unlawful gratuities, facilitation payments, or other benefits to any government official or any other person, and that both Parties have and will continue to comply with such laws and regulations (collectively, the "*ABC Laws*"). Both Parties agree to comply in all respects with applicable

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ABC Laws and agree not to engage in or support any occurrence of bribery or other corrupt practices. Customer agrees, upon request, to provide written certification of compliance with this Agreement's anti-bribery provisions. Supplier reserves the right, upon reasonable notice, to audit Customer's compliance with these obligations. Supplier may immediately terminate or suspend service under this Agreement without penalty if Customer breaches this section.

26. **Sanctioned Persons.** Customer represents and warrants that neither Customer, its affiliates, their respective directors, officers, employees or agents, nor any person controlling Customer or having a beneficial interest in Customer: (a) are "sanctioned persons" under any federal or state program or law; (b) are subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the US Treasury Department ("OFAC"); and (c) have been listed on the General Services Administration's List of Parties Excluded from Federal Programs.
27. **Independent Contractor.** In providing Equipment under this Agreement, Supplier is at all times an independent contractor, and nothing in this Agreement shall be construed to make Supplier or any of its employees or subcontractors a partner, principal, agent, or employee of Customer. Subject to the terms of this Agreement, Supplier will determine the daily work schedule, method, details and means of providing the Equipment and will be responsible for all training, education, supplies and supervision of Supplier's personnel.
28. **Sustainable Business Acknowledgement.** Customer agrees to consider sustainability principles with respect to Supplier equipment and services and further agrees to promote long-term value through responsible business conduct.
29. **Enclosures, Cladding and Debris Netting.** Supplier may provide Equipment related to enclosures, cladding, and debris netting ("Enclosures"). Enclosures are designed for weather protection but are not fully waterproof. Customer is responsible for the following: cost of repair related to system leaks; verifying that the structure and/or ground conditions can accommodate specified wind loads and are level and stable to support the Enclosures; additional costs related to load mitigation efforts, such as, but not limited to, snow load removal; costs associated with tie-down removal and re-securing for temporary work. If Supplier provides Equipment related to Enclosures, then Customer acknowledges and agrees that the Equipment provided by Supplier, including but not limited to such Enclosures, is designed and intended to be detached or removed under certain weather conditions, including but not limited to high wind speeds, and that said Equipment may be damaged or destroyed as a result of such detachment. Customer shall be responsible for performing or arranging for detachment, replacement or removal of the Equipment, including but not limited to the Enclosures, in accordance with all applicable access requirements, including but not limited to OSHA requirements, and for any and all costs, damages, expenses (including maintenance expenses), and liabilities relating to such Equipment, including any and all costs and damages associated with or arising from the detachment, removal, or replacement thereof or Customer's failure to detach or remove said Equipment, when appropriate or otherwise required by certain weather conditions. If Customer wishes to engage Supplier to remove, replace or detach the Equipment, including but not limited to the Enclosures, and Supplier accepts to perform such removal, replacement or detachment upon a fee to be agreed by the Parties, Customer shall give Supplier a notice of seven (7) days in advance to Customer's requested date for removal, replacement or detachment of such Equipment. In addition and notwithstanding anything to the contrary herein, **CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SUPPLIER FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, JUDGEMENTS, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND LEGAL COSTS), AND LIABILITIES WHATSOEVER RELATING TO ANY PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY RELATING TO (i) THE ENCLOSURES (INCLUDING WITHOUT LIMITATION ANY INJURIES OR DAMAGES CAUSED BY THE DETACHMENT OF SUCH ENCLOSURES), OR (ii) ANY ENCLOSURES-RELATED SERVICES PROVIDED BY ANYONE OTHER THAN SUPPLIER. THE FOREGOING INDEMNITY SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.**
30. **Incident Notification.** Customer shall notify Supplier immediately of any incident or accident that involves (or potentially involves), directly or indirectly, any of the Equipment and that results (or may result) in death, personal injury, Loss, property damage or an event that otherwise triggers (or may trigger) Customer's indemnity obligations set forth herein. Customer shall at all times fully cooperate with Supplier to limit the extent of any losses or damages resulting from such an incident or accident. Customer shall also cooperate fully with Supplier during Supplier's investigation, testing or analysis of any such incident or accident, and understands that time is of the essence after an incident/accident to promptly investigate, isolate and protect the physical evidence (including the taking of photographs and other measures to prevent the spoliation of physical evidence). Customer is deemed to have knowledge of the incident or accident from the time that the Customer or any of its employees, agents, representatives, contractors, subcontractors, suppliers, vendors, or other parties who report to the Customer, learn of the incident or accident. Customer shall also notify Supplier of any inspection/investigation by OSHA, MSHA, EPA, OH&S or other similar enforcement agency regarding the Equipment or a work site where the Equipment is located.
31. **Force Majeure.** Supplier shall be excused from, and shall not be liable for any failure of or defect in Equipment, any delay in delivery or non-delivery, or failure to perform in whole or in part, by Supplier in commencing or performing Services, providing Equipment or picking up rental Equipment if and to the extent due to a cause beyond Supplier's reasonable control, whether foreseeable or unforeseeable, including, but not limited to, any act of God, act of Customer or third parties, fire, flood, earthquake, windstorm, severe weather, accident, war, act of terrorism, riot, civil unrest, epidemic, pandemic, quarantine, public health emergency, strike, slowdown, or labor strife, governmental order, act, or requirement, embargo, any new or increased tariffs, duties, or other trade restrictions imposed by a government authority, delay in transportation, defaults of common carriers, interruptions in power or communications, inability to obtain necessary labor, material, or manufacturing facilities at a commercially reasonable price, or any other similar event or occurrence (each, a "Force Majeure Event"). In the event of any delay due to such an event or occurrence, (i) Supplier shall have an absolute right to an extension of time to perform its duties, with the length of such extension to be no shorter than the time by which Supplier was delayed by the event

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or occurrence, and (ii) Supplier will be entitled to terminate any or all orders and/or the Agreement. Rental charges for rented Equipment shall not be excused or abated by the occurrence of any Force Majeure Event; rental charges shall be due and payable for the entire Rental Period, whether or not Customer is prevented from using the Equipment by a Force Majeure Event. If the occurrence of a contingency the non-occurrence of which was a basic assumption on which Supplier's agreement to sell hereunder was predicated affects only a part of Supplier's capacity to perform Supplier's contracts with Customer and others, and to provide for Supplier's internal use, for similar products or services, Supplier will allocate its available capacity first to the satisfaction of its internal needs and then in any manner that Supplier determines, in good faith. Notwithstanding anything to the contrary contained in the Agreement, to the extent Supplier's costs of performance are increased, directly or indirectly, by one Force Majeure Event or by a series of Force Majeure Events, Supplier will be entitled to adjust the prices or to apply a surcharge, in each case to recoup those costs plus Supplier's customary profit, by providing written notice to Customer.

32. **Information Supplied by Others.** Supplier is entitled to rely upon information supplied by or through Customer. Customer represents and warrants that the information it supplies to Supplier is accurate, complete, and appropriate for the project and Supplier's scope of work. **CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SUPPLIER FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, JUDGMENTS, COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES AND LEGAL COSTS), AND LIABILITIES, WHATSOEVER RELATING TO ANY PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH) ARISING OUT OF OR IN ANY WAY RELATING TO ANY ERROR, INACCURACY OR DEFECT IN THE INFORMATION SUPPLIED BY CUSTOMER OR ON CUSTOMER'S BEHALF TO SUPPLIER. THE FOREGOING INDEMNITY IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.**
33. **Change Orders.** A "Change Order" is a written instrument executed in writing by Supplier and Customer that states the Parties mutual agreement to a change in the Equipment to be provided. Either Party may request a Change Order by submitting a request to the other Party in writing. In the event Customer does not respond to Suppliers' written request for a Change Order within five (5) business days of receipt of such request, such written request shall be deemed a fully executed Change Order and Supplier shall have the right to proceed in accordance with the terms of such Change Order and this Agreement. In no event shall Supplier be obligated to proceed with any change to its obligations under a Change Order request from Customer unless documented in a Change Order executed by both Parties.

Promptly after the other Party receives a request for a Change Order, the Parties shall meet and, acting reasonably, negotiate in good faith a mutually acceptable Change Order. If Customer requests a change and then, after meeting with Supplier, decides not to follow through with the change, Supplier may charge Customer for the time it spent compiling and submitting any information in connection with the Change Order request on a time-and-material basis. If the Parties are unable to agree on a Change Order within five (5) business days after the other Party receives the Change Order request, then Supplier shall be entitled to suspend its performance under the Agreement pending resolution of the dispute under Section 45. If Supplier is the Party requesting dispute resolution related to a Change Order request, Supplier may, in its sole discretion, terminate the Agreement in accordance with Section 36, which termination is effective immediately on delivery of the termination notice to Customer. Notwithstanding the foregoing, pending resolution of any dispute, Supplier may continue to perform its obligations then-existing under this Agreement, and Customer shall continue to pay Supplier amounts as and when due and owing in accordance with the terms of this Agreement.

34. **Default and Termination.** Customer shall be in default of its obligations under this Agreement if any of the following occur: (1) Customer fails to pay Supplier as and when agreed; (2) Customer fails to procure or maintain any required insurance coverage; (3) Customer becomes insolvent or any proceeding in bankruptcy or receivership is commenced by or against Customer as debtor; (4) a termination or liquidation of Customer's business occurs; or (5) Customer is in breach of any terms or conditions of this Agreement. In the event of any default by Customer, Supplier shall have the right to stop performance on the project, remove any Equipment, terminate this Agreement, and/or seek any other remedies available to Supplier under this Agreement or at law or in equity. Customer shall bear and be liable for all damages, costs and expenses (including without limitation reasonable attorneys' fees and legal costs) incurred by Supplier as a result of Customer's default. In the event this Agreement is terminated for any reasons other than a default by Supplier, Customer shall compensate Supplier for (i) all Equipment supplied or rented prior to the effective date of such termination, (ii) all reimbursable expenses incurred by Supplier, and (iii) all costs and damages attributable to such termination, including without limitation the costs attributable to Supplier's termination of any subcontractor and consultant agreements, demobilization costs and the profit on the Equipment which have not yet been performed and/or provided or rented.
35. **Continued Use and Payment Obligation.** In the event Customer abandons or leaves the project for any reason, defaults on its obligations, or otherwise ceases payment under this Agreement, and Supplier's Equipment remains in use, integrated into, or in the possession and control of the Owner, Prime Contractor, and/or any other entity or person other than Customer then:
- Acknowledgment of Benefit:** Owner and/or Prime Contractor, upon notice and failure to return the equipment, shall be deemed to have accepted the benefit of Supplier's Equipment and Services.
 - Assumption of Obligations:** Continued use of the Equipment by Owner and/or Prime Contractor, or failure to facilitate its removal after notice shall constitute an assumption of the relevant rental obligations under this Agreement, including demobilization and freight costs, and they shall be jointly and severally liable along with Customer. If Owner and/or Prime Contractor refuse to acknowledge an assumption of the contract or obligations, Customer shall remain liable for the same unless and until it is later determined by a court or arbitrator that assumption occurred, and Supplier shall be entitled to recover all unpaid amounts, reasonable costs and expenses, including attorney and expert fees and interest at the rate of 1.5% per month or maximum permitted by law.

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- c. **Assignment of Claims:** Customer hereby assigns to Supplier all rights to payment from Owner and/or Prime Contractor related to the use of Supplier's Equipment, including any amounts withheld or offset by Owner and/or Prime Contractor for such use.
- d. **No Waiver of Rights:** Supplier's enforcement of this provision shall not constitute a waiver of its rights against Customer and shall not require Supplier to prove fair market value or unjust enrichment where rental rates are contractually established.
- e. **Payment Bond:** Customer shall be required to post a payment bond guaranteeing payment to Supplier for the continued use of the Equipment by Owner and/or Prime Contractor and any other rental obligations under this Agreement, including demobilization and freight costs within seven (7) days of Customer abandoning the Equipment, leaving the project for any reason, defaulting on its obligations, or otherwise ceasing making payments under this Agreement.

36. **Limitation of Liability.** SUPPLIER SHALL HAVE NO LIABILITY WHATSOEVER, WHETHER BASED ON BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT (INCLUDING BUT NOT LIMITED TO STRICT LIABILITY) OR ON ANY OTHER LEGAL THEORY, FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, LIQUIDATED, DELAY OR OTHER DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR REVENUES, LOSS OF PRODUCTION, LOSS OF USE, COST OF REPLACEMENT EQUIPMENT, OR ANY OTHER INDIRECT DAMAGE OR LOSS ARISING FROM OR RELATING TO THE EQUIPMENT, THIS AGREEMENT OR ITS PERFORMANCE OR BREACH, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. Notwithstanding anything to the contrary herein, Supplier's maximum liability under this Agreement and the project or order to which this Agreement relates shall not exceed in the aggregate either (i) an amount equal to the total rental or purchase price paid by Customer to Supplier for the Equipment under this specific Agreement during the 6-month period preceding the date on which the first claim (if any) is asserted or (ii) \$2,000,000, whichever is lower. The provisions of this Section shall apply to the fullest extent permitted by law. **This Section shall survive the expiration or any earlier termination of this Agreement.**

37. **Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SUPPLIER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND INSURERS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, PROCEEDINGS, AND JUDGMENTS, AS WELL AS ALL DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND LEGAL COSTS), OF WHATEVER KIND OR NATURE RESULTING FROM, ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE EQUIPMENT, AND INCLUDING, WITHOUT LIMITATION, ALL CLAIMS AND LOSSES RELATING TO (I) PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY, OR (II) THE DELIVERY, ERECTION, MAINTENANCE, ALTERATION, MODIFICATION, USE, POSSESSION, OPERATION, DISMANTLING, OR ENGINEERING OF THE EQUIPMENT OR EQUIPMENT ENCLOSURES. IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE CUSTOMER INDEMNIFY SUPPLIER TO THE MAXIMUM EXTENT ALLOWED UNDER THE LAW, AND THAT THE CUSTOMER BEAR FULL RESPONSIBILITY FOR ANY AND EACH CLAIM, DEMAND, SUIT, DAMAGE, LOSS, CAUSE OF ACTION, JUDGMENT, EXPENSE, FEE, COST OR OTHER LIABILITY ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE EQUIPMENT. THIS INDEMNITY OBLIGATION SHALL NOT APPLY, HOWEVER, TO ANY CLAIMS, DAMAGES, CAUSES OF ACTION, JUDGMENTS, OR OTHER LIABILITY PROVEN TO HAVE BEEN CAUSED SOLELY BY THE NEGLIGENCE OF SUPPLIER.

38. **Minimum Insurance Requirements**

- a. At all times while performing work on the project or otherwise using the Equipment, Customer shall at its sole cost maintain insurance of the following types in amounts not less than:
 - i. Workers' Compensation: Statutory amount;
 - ii. Employer's Liability: minimum limit of \$1,000,000 per accident;
 - iii. General Liability Insurance, including contractual liability, products, and completed operations: \$1,000,000 per occurrence and \$2,000,000 annual aggregate;
 - iv. Automobile Liability Insurance: combined single limit of \$1,000,000 per accident; and
 - v. Excess Liability Insurance combined single limit for Bodily Injury and Property Damage of not less than \$5,000,000 per occurrence.

In addition, if Equipment is rented to Customer, Customer shall at its cost maintain property insurance covering all risks of Loss of or damage to such Equipment from any cause whatsoever, including, without limitation, fire, destruction and theft, in an amount not less than the replacement cost value of such Equipment. Such property insurance must be in full force and effect throughout the Rental Period, and the policy must be endorsed to name Supplier as "loss payee" under said insurance.

- b. All insurance policies required herein shall:
 - i. Name Supplier, its directors, officers, employees, affiliates, and agents as additional insureds to the greatest extent allowed by law (except for items (a)(i) and (ii) above) on a broad form endorsement with coverage no less broad than ISO forms CG 2010 0413 and CG 2037 0413 such coverage being equivalent to Customer's indemnity obligations listed herein. A current certificate of insurance and corresponding policy endorsements must be provided by Customer to Supplier indicating the above coverages prior to the commencement of the work. Supplier shall have no duty to review said certificate, and any failure of Supplier to notify Customer of its non-compliance with this Section or any other provision contained in these requirements shall not act as a waiver of any right by Supplier;
 - ii. Contain an endorsement stipulating that Customer's policies are primary to and not contributory with any other policies affording coverage to Supplier and all other additional insureds, including any self-insurance retention or deductible maintained by the Supplier;
 - iii. Provide that no policy shall be materially changed, amended or canceled except after 30 days prior written notice to Supplier; and
 - iv. To the maximum extent permitted by law, be endorsed to waive all rights of subrogation against Supplier, its directors, officers, employees, affiliates and agents. The waiver of subrogation shall be effective as to a person or entity (1) even though that person

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or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

39. **Confidentiality.** Customer shall not disclose any Confidential Information to third parties, except with the prior written consent of Supplier or as required by applicable law, with reasonable prior written notice to Supplier. Customer shall protect Supplier's Confidential Information as confidential and proprietary (and at a minimum Customer shall employ the same safeguards to protect the Confidential Information as it would utilize to protect its own Confidential Information, but not less than reasonable safeguards). Customer shall use the Confidential Information only for the purposes of fulfilling the Agreement. Upon Supplier's request or within 14 days after expiration or earlier termination of this Agreement, Customer will return or destroy (as instructed by Supplier) all Confidential Information and all copies thereof in any media, unless Customer is required to retain such material under applicable laws. Customer further agrees that nothing in this Agreement limits or negates any statutory or common law rights, including those related to trade secrets, where such rights provide Supplier with broader protection of its Confidential Information. Each of Customer's agents and employees shall comply with the confidentiality restrictions set forth herein, and Customer shall indemnify, defend, and hold harmless Supplier from and against any and all damages, liabilities, losses, costs, and expenses (including reasonable attorneys' fees and legal costs) incurred by Supplier as a result of unauthorized disclosure or use of Confidential Information by Customer or Customer's agents or employees. **This Section shall survive the expiration and any earlier termination of this Agreement.**
40. **Promotional Materials.** Customer authorizes Supplier to use Customer's name, logo and/or trademark without notice to or consent by Customer in connection with certain promotional materials that Supplier may disseminate to the public. The promotional materials may include, but are not limited to, brochures, video tapes, internet websites, press releases, advertisements in newspapers and/or other periodicals, and any other materials relating to any services provided by Supplier to Customer, including, but not limited to, any existing or completed project, and such materials may be developed, disseminated and used without Customer's review; provided, however, that such advertising, promotion or similar public disclosures shall not indicate that Customer in any way endorses any Supplier products without prior written permission from Customer. Nothing herein obligates Supplier to use Customer's name, logo and/or trademark, in any promotional materials.
41. **Intellectual Property.**
- a. Background IP. Except as expressly contemplated hereunder, each Party will retain ownership of its intellectual property and technology designed, developed, created, and/or reduced to practice prior to the Effective Date hereof, or after the date hereof but completely independent of and not including or incorporating the intellectual property, technology, or Confidential Information of the other Party, including intellectual property that is designed, developed, created, invented, reduced to practice, owned, or controlled by a Party prior to the performance of, or completely independent of, any work under this Agreement, or otherwise independently created by a Party, its affiliates, or their respective employees, contractors, or agents outside the scope of work under this Agreement and not otherwise available or usable without a license or access from that Party, together with all improvements thereto that are designed, developed, created, and/or reduced to practice by such Party or its affiliates (collectively, "*Background IP*").
 - b. Supplier Intellectual Property. Supplier grants a nonexclusive, revocable license to Customer of Supplier's Background IP included as a deliverable in the Work for the sole purpose of utilizing the applicable Supplier's Equipment as agreed between the Parties. This license is conditioned upon Customer's compliance with the terms of the Agreement. Customer acknowledges and agrees that, except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to Supplier's Background IP.
 - c. Customer Intellectual Property. If Customer provides Background IP for the purpose of the Work, then Customer grants to Supplier a temporary, non-exclusive license to use, reproduce and modify any of Customer's Background IP, solely as needed to perform Supplier's obligations in connection with the Work. Supplier acknowledges and agrees that, except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Supplier or any third party any intellectual property rights or other right, title, or interest in or to Customer Background IP.
 - d. Ownership of New IP. All other ideas, materials, or concepts developed by either Party in the performance of the Work ("*Developments*"), other than the Confidential Information of the other Party, shall be the exclusive property of that Party. Upon payment in full, Supplier grants to Customer a license to use the Supplier's Developments to the extent included as a deliverable within the Work for the sole purpose of utilizing the applicable Equipment as agreed between the Parties.
 - e. Software. Any software provided as a part of Equipment or the Work is provided only as a non-exclusive, revocable license and not sold.
 - f. Reservation of Rights/Restrictions. All rights not expressly granted herein are reserved to Supplier. Supplier's Equipment is for internal use only and Customer may not distribute it or cause it to be distributed. Customer will not: (i) reverse engineer, decompile or disassembly any Equipment or deliverable of the Work, except to the extent applicable law permits it despite this limitation; or (ii) distribute, sublicense, rent, lease, lend or host any Equipment or deliverable of the Work except as permitted in this Agreement or in a separate written agreement signed by an authorized representative of each Party.
 - g. Non-Supplier Equipment. Customer is solely responsible for any non-Supplier Equipment, software, or other technology that it installs or uses with the Equipment or the deliverables of the Work. Supplier is not a Party to and is not bound by any terms governing Customer's use of non-Supplier Equipment, software, or technology. If Customer installs or uses any non-Supplier Equipment, software or technology with the Equipment or deliverables of the Work, it will not do so in any way that would subject Supplier's intellectual property or Equipment to obligations beyond those included in the Agreement.
 - h. Third Party Claims.

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- i. Supplier will defend and/or settle, at its cost and expense, any claims made by an unaffiliated third party against Customer alleging that the Equipment or a deliverable of the Work infringes a United States patent or a United States registered copyright of that third party (each, a “Claim”), and Supplier will pay all damages finally awarded and settlement amounts entered into by Supplier on Customer’s behalf related to a covered Claim. The foregoing indemnification obligation of Supplier is contingent upon Customer promptly notifying Supplier in writing of such Claim, permitting Supplier sole authority to control the defense or settlement of such Claim, and providing Supplier reasonable assistance in connection with such defense or settlement.
- ii. If a Claim occurs or Supplier determines a claim of infringement is likely to occur, Supplier will have the right, in its sole discretion, to either: (i) procure for Customer the right to continue to use the Equipment or the deliverable of the Work free of the Claim or potential infringement claim; or (ii) replace or modify the Equipment or the deliverable of the Work to make it non-infringing, without loss of material functionality. If Supplier determines that either of these remedies is not reasonably available to Supplier or if required by valid judicial or government order, Supplier may terminate Customer’s right to access or use the applicable Equipment or deliverable of the Work and refund to Customer any fees paid for the applicable Equipment or deliverable.
- iii. Notwithstanding the foregoing, Supplier shall have no obligation with respect to any Claim that is based upon or arises out of any of the following (the “Excluded Claims”): (i) the use or combination of the Equipment or the deliverable of the Work with any Equipment, hardware, software, products, data, or other materials not provided by Supplier, including Customer’s own Equipment, systems and data; (ii) modification or alteration of the Equipment or deliverables of the Work by anyone other than Supplier or its representatives; (iii) Customer’s misuse of the Equipment or deliverables of the Work or Customer’s use of the Equipment or deliverables of the Work in excess of the rights granted in the Agreement; (iv) use of infringing aspects of the Equipment or deliverables of the Work after Supplier has provided a non-infringing alternative or after Supplier has terminated Customer’s rights to access or use the applicable Equipment or deliverable of the Work, or (v) compliance with Customer’s designs, specification or instructions.
- iv. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAWS, THE PROVISIONS OF THIS SECTION STATE THE SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITY OF SUPPLIER FOR ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT, MISAPPROPRIATION, OR OTHER VIOLATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR RELATING TO THE SERVICE, THE DELIVERABLES AND/OR THE AGREEMENT. **CUSTOMER WILL INDEMNIFY, DEFEND, AND HOLD SUPPLIER HARMLESS FROM ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY’S FEES) ARISING OUT OF OR RELATED TO A CLAIM ARISING OUT OF OR RELATED TO (A) CUSTOMER’S NEGLIGENCE OR MISCONDUCT, (B) THE EXCLUDED CLAIMS; (C) CUSTOMER’S ACCESS TO OR USE OF THE EQUIPMENT OR DELIVERABLES OF THE WORK IN BREACH OF THE AGREEMENT, OR (D) ANY ALLEGATION THAT THE MATERIALS OR CONTENT THAT CUSTOMER SUBMIT OR OTHERWISE MAKE AVAILABLE UNDER THE AGREEMENT INFRINGE, MISAPPROPRIATE OR VIOLATE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. SUPPLIER WILL PROMPTLY NOTIFY CUSTOMER IN WRITING OF ANY SUCH CLAIM, PERMIT CUSTOMER SOLE AUTHORITY TO CONTROL THE DEFENSE OR SETTLEMENT OF THE CLAIM, AND PROVIDE CUSTOMER REASONABLE ASSISTANCE IN CONNECTION THEREWITH. THE FOREGOING INDEMNITY SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.**

42. **Data Usage.** As between the Parties, Supplier owns all rights in and to any data provided to Customer in providing the Equipment (“Supplier Data”). Customer may use Supplier Data only to the extent necessary to perform any Customer obligations under this Agreement. Customer may not use Supplier Data for any purposes other than as authorized under Agreement, including for benchmarking, research, product development, product improvement, training data or prompts for machine learning, deep learning, and other artificial intelligence technologies.
43. **Notice.** Any notice required or permitted to be given hereunder will be in writing and will be delivered by either of the following means with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; (c) by certified or registered mail, return receipt requested, upon verification of receipt; or (d) by electronic mail transmission, upon confirmed email transmission. Notice will be sent to the physical or electronic address of the Party as listed in this Agreement or any other address communicated in writing by such Party to the other. To the extent notice is sent to Supplier via email, a copy must also be sent to legalnotice@brandsafway.com.
44. **Dispute Resolution.** If any dispute, claim, or question shall arise out of or related to this Agreement, including, but not limited to, any Party’s rights, obligations, or interpretations (a “Dispute”), the Parties shall in good faith attempt to resolve such Dispute promptly and in an amicable manner under the informal dispute resolution procedure as set forth in this section prior to taking any formal legal action. Any Party claiming a Dispute must notify the other Party in writing of the Dispute, including the nature and basis of the Dispute, within 15 business days of when the notifying Party knew or reasonably should have known of the occurrence(s) giving rise to the Dispute. Within 10 business days after the other Party receives written notice of the Dispute, both Parties will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the Party representatives. Upon agreement, the Party representatives may use other alternative dispute resolution procedures, including mediation, to assist in the negotiations. If the designated Party representatives are unable to resolve any such Dispute within 10 business days of meeting, each Party may take whatever steps are necessary to protect its interests as provided in this Agreement.
45. **Venue and Governing Law.** This Agreement, and its negotiation, execution, performance and enforcement, shall be governed by and construed under the substantive and procedural laws of the state in which the associated project is located, without regard to that state’s conflict of laws principles. The venue for any cause of action arising out of this Agreement shall be the courts (either federal or state) of the state in which the project is located.

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46. **Assignment.** Customer shall not assign this Agreement to any third party without Supplier's prior written consent.
47. **Compliance with Laws.** Customer agrees to comply with all applicable laws, rules, and regulations (including, but not limited to, any health and safety, labor, environmental and anti-bribery or anti-corruption laws, **AND CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SUPPLIER FOR CUSTOMER'S FAILURE TO COMPLY WITH ANY SUCH LAWS. The foregoing indemnity in this Section shall survive the expiration or any earlier termination of this Agreement.** Customer shall promptly notify Supplier in writing if it becomes aware of any actual or suspected violation of applicable laws or this Agreement.
48. **Change in Laws.** In the event that, after the date of the Supplier Document to which these Standard Terms and Conditions are attached, there is a change in the current Taxes (as defined below) applicable to services, materials, and/or Equipment provided by Supplier under this Agreement, such as, new Taxes are created, Tax rates are changed, there are changes to the Tax calculation base, there is an amendment to applicable laws (including, but not limited to, change in interpretation of said laws by tax authorities and/or courts), there is a change in performance of obligations under this Agreement, that is agreed in writing between Customer and Supplier, existing Taxes are extinct, or fiscal incentives and/or exemption or reduction of Taxes are enacted or issued, which, directly or indirectly, effectively increase or reduce Supplier's tax burden, the originally agreed price shall be adjusted upwards or downwards in the same proportion of said Tax increase or reduction.
- "Tax(es)" means any federal, national, state, local, provincial, or organizational taxes levied, assessed, or imposed in relation to the performance of this Agreement by any applicable government, authority, department, commission, board, bureau, tribunal, agency or similar entity of any country, including, but not limited to, all customs, duties, and fees, and all import and export taxes and duties, tariffs, transport taxes, vehicle taxes, sales taxes, value-added taxes, excise taxes, ad valorem taxes, use taxes, or consumption taxes, fixed rental payments or any other rental or real estate taxes including land lease payments, land taxes and land use compensation payments, imposts, charges, fees or compulsory contributions, penalties, fines, or interest for late payment. Taxes do not include any tax calculated or assessed in relation to corporate profits, corporate net income, and corporate taxable margin.
49. **Entire Agreement.** This Agreement represents the entire understanding and agreement of the Supplier and Customer and may be modified only by a separate written agreement executed by both Parties. This Agreement supersedes and cancels any and all prior or contemporaneous agreements, conversations, proposals, negotiations, understandings and contracts, whether written or oral, between Supplier and Customer, express or implied, relating to the project.
50. **Miscellaneous.** In the event any term, provision or condition of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity, legality, or enforceability of the remainder of this Agreement. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns; there are no third-party beneficiaries of this Agreement, except for the officers, directors, employees, agents, affiliates, and insurers of Supplier who, along with Supplier, are the intended beneficiaries of the indemnification and insurance provisions of this Agreement. Upon the other Party's request, each Party agrees to execute such further documents as may be necessary to carry out the intent of this Agreement. This Agreement has been reviewed and approved by the Parties and their respective legal counsel. This Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties jointly prepared this Agreement.

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ADDENDUM A DAMAGES WAIVER

Upon entering into the Agreement between the Supplier and the Customer, the following additional terms and conditions shall apply. This Damages Waiver is not an insurance. In consideration of this Damages Waiver, Customer agrees to pay an additional, non-refundable charge of (a) 7% of the total scaffold and shoring rental amount owing under the Agreement, and (b) 15% of the total motorized rental amount owing under the Agreement.

What this Damages Waiver covers:

All damage during the Rental Period while Equipment is used under normal working conditions by a qualified operator.

What this Damages Waiver does not cover:

The Customer shall remain liable for any all Loss or damage of or to (a) any tire, tube or tracks under any circumstances, any propane tank or other accessories, the costs incurred by the Supplier associated with any cleaning time of the Equipment exceeding 2 hours, Equipment that is sub-leased, and power cables, hoses, fittings and flexible ducts, and (b) Equipment resulting from the following occurrences:

- Use of Equipment for a purpose with which it is not designed.
- Breach of the Agreement.
- Mysterious disappearance, theft, vandalism, mischief, conversion, or any intentional misconduct.
- The use or operation of the Equipment in violation of any law, rule, legislation, statute, regulation, code, or any other legal authority.
- Use of the Equipment by an unqualified operator. The Lessee specifically acknowledges that it shall only allow properly trained operators to use the equipment at all times.
- Lack of lubrication or other normal servicing of the Equipment as specified in the Equipment's daily check label.
- Damage to motors, or other electrical appliances or devices resulting from artificial currents.
- Overloading, exceeding weight capacities, misuse, abuse (reckless or abusive manner), neglect, negligent operation, damage resulting from striking objects (overhead or otherwise) or from improper transport, or any intentional misconduct, whether by the Customer or anyone with the Customer's permission or anyone for whom the Customer is responsible by law, including without limitation its employees, representative and agents.
- Failure to follow any instruction or operator's manual and/or any training provided to the Customer by the Supplier with respect to the Equipment.
- The Customer's failure to properly secure the Equipment by making access to the Equipment readily available to any unauthorized operator or otherwise not reasonably restricting access to the Equipment.
- Damage caused by Equipment to other property or persons.
- Wind.
- Failure of the Customer to take reasonable precautions to protect Equipment against fire.
- Mechanical breakdown.
- Use of Equipment under the influence of alcohol or drugs.
- Transportation (whether or not lawful) of the Equipment.
- Use of the Equipment in demolition activities.
- Sinking of the Equipment into mud or water.
- Any exposure to radioactive contamination or other hazardous materials.
- Change in ambient conditions (e.g., freezing), site mechanical failures, or site electrical failures (e.g., insufficient supply power).
- Loss, damage or failure of any tire, tube, or tracks under any circumstances.
- Any propane tank or other accessories loss or damage.
- Costs incurred by the Lessor associated with any cleaning time of the equipment exceeding two (2) hours.
- Equipment that is sub leased.
- Any or all damage or loss to power cable, hose, fittings, or flexible duct.

Damages Waiver deductible/limit of liability:

The Supplier agrees to limit, to the extent specified herein, the Customer's responsibility to the Supplier for damage to the Equipment to 50% of the actual damage caused. If the Equipment is damaged beyond repair, the Customer will be responsible for 50% of the current list price.