

# GENERAL TERMS AND CONDITIONS

## ENTIRE CONTRACT

These Terms and Provisions (these "Terms") apply to the sale of any and all goods or services provided by Flow Fire Protection, Inc. ("Seller") to any party who purchases any such goods or services ("Purchaser"). Purchaser and Seller may each be referred to herein as a "Party" or collectively as the "Parties." These Terms, together with the Invoices, and any other documents related to the work provided by Seller to Purchaser, constitute the entire agreement between the Parties ("the Agreement"). No oral or written changes or additions to the Agreement shall be binding upon Seller unless they are contained in a writing signed by an authorized representative of Seller. Purchaser covenants that, unless an authorized representative of Seller has signed a written instrument that expressly modifies the Agreement, Purchaser shall not assert for any purpose whatsoever that any term or provision of the Agreement has been terminated, waived, amended, or otherwise modified. The Agreement is not subject to cancellation, suspension or reduction in amount, except with Seller's written consent and upon terms which reimburse Seller for work performed and materials supplied, reasonable overhead, and lost profit.

## PAYMENT

Final payment shall be due and payable within thirty (30) days after the date of the applicable Invoice. Purchaser agrees to pay interest on all past due invoices at a rate of 12% per annum or the highest rate allowable by law, whichever is higher. Purchaser shall pay Seller's reasonable attorney fees and other costs incurred in the collection of any amount owed by Purchaser to Seller, regardless of whether litigation occurs. Seller may suspend the delivery of any Goods or performance of Services if Purchaser fails to pay any amounts when due and the failure continues for five (5) days following Purchaser's receipt of notice thereof. Purchaser shall not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller.

## DELAYS

Seller shall not be liable for any damages or penalties for delays in performance due to acts of God, acts or omissions of the Purchaser, acts of civil or military authorities, Government regulations or priorities, fires, floods, epidemics, quarantine restrictions, war, riots, strikes, differences with workmen, accidents to machinery, car shortages, inability to obtain necessary labor, materials or manufacturing facilities, delay in transportation, defaults of Seller's subcontractors, failure of or delay in furnishing correct or complete information by Purchaser with respect to location or other details of work to be performed hereunder, impossibility or impracticability of performance, or any other cause or causes beyond the reasonable control of Seller, whether or not similar to the foregoing examples. In the event of any such delay, the completion date shall be extended for a period equal to any such delay and the Agreement shall not be void or voidable as a result of any such delay. If Seller's performance is temporarily discontinued because of such delay, all unpaid installments of the invoiced price, minus the amount equal to the value of goods and services not furnished because of such delay, shall be due and payable upon receipt of invoice by Purchaser.

## EXCAVATION

If Seller performs excavation as one of the services provided to Purchaser, Purchaser shall pay, in addition to the invoiced price, the cost of any additional work performed by Seller due to water, quicksand, rock, or other unforeseen obstruction encountered, or shoring if required.

## SITE FACILITIES

Purchaser shall furnish all facilities necessary for Seller's performance, adequate space for storage and handling of material, light, water, heat, local telephone, watchman and crane and elevator service, and necessary permits. Where wet pipe system is installed, Purchaser shall supply and maintain sufficient heat to prevent freezing of the system.

## STRUCTURE AND SITE CONDITIONS

While employees of Seller will exercise reasonable care in this respect, Seller shall have no responsibility for loss or damage due to the character, condition, or use of foundations, walls or other structures not erected by Seller or excavation in proximity thereto, concealed piping, wiring, fixtures or other equipment, or condition of water pressure. All shoring or protection of foundations, walls, or other structures subject to being disturbed by any excavation required by the Agreement shall be the responsibility of Purchaser. Purchaser warrants the sufficiency of the structure to support the sprinkler system and its related equipment (including tanks). Purchaser shall have all things in readiness for installation, including, but not limited to, other materials, floor or suitable working base, connections, and facilities for erection at the time the materials are delivered. In the event Purchaser shall fail to have all things in readiness for installation at the time of receipt of the materials at the place of installation, Purchaser shall reimburse Seller for any and all expenses caused by such failure to have such things in readiness. Failure to make areas available to Seller during performance shall be considered a failure to have things in readiness for installation in accordance with the terms of the Agreement.

## INTERFERENCES

Purchaser shall be responsible for coordinating the work of other vendors (such as ducting, piping, electrical, etc.) and Purchaser shall be responsible for additional costs incurred by Seller arising out of interferences to Seller's performance caused by such other vendors.

## LIMITATIONS OF LIABILITY

In no event shall Seller be liable for special, consequential, or punitive damages. Seller's liability on any claim related to the goods and services it provides, whether based in contract or in tort or occasioned by Seller's active or passive negligence, or any obligation resulting therefrom, or from the manufacture, fabrication, sale, delivery, installation, or use of any materials related to this Agreement, shall be limited to the liability set forth in the following paragraph entitled "Warranty." In no event shall Seller's total aggregate liability to Purchaser for any claim brought by Purchaser against Seller exceed one-half of the total amount paid by Purchaser to Seller in the year preceding the filing of such claim, inclusive of all attorney fees, legal costs, and any other damages of any kind. The Agreement is for the sole benefit of Seller and Purchaser, and nothing in the Agreement, whether express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement or Seller's performance thereof.

## WARRANTY

Seller agrees that for a period of one (1) year after completion of said installation it will, at its expense, repair or replace any defective materials or workmanship supplied or performed by Seller. Upon completion of the installation, the system will be turned over to the Purchaser fully inspected, tested and in operative condition. Thereafter, it shall be the responsibility of Purchaser to maintain the system in operative condition. Seller does not guarantee the operation of the system.

## OSHA

Purchaser will indemnify and hold harmless Seller from and against any claims, demands or damages resulting from the enforcement of the Occupational Safety Health Act (Public Law 91-596), unless said claims, demands, or damages are a direct result of causes within the exclusive control of Seller.

## MODIFICATIONS AND SUBSTITUTIONS

Seller reserves the right to modify material of Seller's design sold hereunder and / or the drawings and specifications relating thereto, or to substitute material of later design to fulfill this contract providing that the modifications or substitutions will not materially affect the performance of the material or lessen in any way the utility of the material to the Purchaser.

EXCEPT FOR THE WARRANTIES SET FORTH IN THESE TERMS, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES PROVIDED BY SELLER, AND SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; AND (v) WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

## SEVERABILITY

Should any part term or provision of the Agreement be found by a court or other authorized tribunal to be illegal or in conflict with any law, the validity of the remaining provisions of the Agreement shall not be affected thereby.

## ASSIGNMENT

Any assignment of any or all parts of the Agreement by Purchaser without the prior consent of Seller in a written instrument signed by an authorized representative of Seller shall be void. Seller may assign any or all parts of the Agreement without consent from Purchaser.

## CHANGES. ALTERATIONS. ADDITIONS

Changes, alterations, or additions to the plans, specifications, or construction schedule for the Agreement shall be invalid unless approved in writing by Seller. Changes approved by Seller that increase or decrease the cost of work to Seller shall constitute a corresponding increase or decrease in the invoiced price as herein provided. The value of additional work shall ideally be agreed upon in writing prior to the performance of said work. However, if no written agreement is reached prior to the performance of additional work, and Seller elects to continue performance, then Seller's estimate of the value of the work shall be deemed accepted by the Purchaser.

## PRICES

In addition to the prices specified in the Agreement, Purchaser shall pay for all extra work requested by Purchaser or made necessary because of incompleteness of or inaccuracy in plans or other information submitted by Purchaser with respect to location, type of occupancy, or other details of work to be performed. If the layout of Purchaser's facilities has been altered or is altered by Purchaser prior to Seller's completion of performance, Purchaser shall advise Seller, and prices, delivery and completion dates may be changed by Seller as appropriate in Seller's sole discretion.

## LEGAL NOTICE

For the purpose of any notice permitted or required to be given hereunder, such notice or notices shall be deemed given when received by Seller by email at [Accounting@flow-fire.com](mailto:Accounting@flow-fire.com) or by Purchaser by email or mail at any email address or mailing address provided by Purchaser.

## CLAIMS

Any claim against Seller related to goods or services provided by Seller shall be deemed waived unless received by Seller in writing with particulars, within ten (10) days after it shall arise.

## TERMS AND CONDITIONS/TECHNICAL SPECIFICATIONS

These Terms shall be in addition to those set out in Seller's technical specifications and any inconsistencies shall be resolved by Seller's authorized representative.

## DISPUTE RESOLUTION

At the option of the Seller in its sole discretion, any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration proceeding shall be held in Fort Collins, Colorado. All claims or controversies arising out of or relating to the Agreement, including arbitration, shall be governed by the laws of the State of Colorado without regard to any choice of law rules. Purchaser agrees that the state courts in Larimer County, Colorado and the United States District Court for the District of Colorado have personal jurisdiction over Purchaser for all disputes related to any goods or services provided by Seller.

## OVERTIME

Unless otherwise specified by Purchaser, all of Seller's work will be performed during regular hours. If Purchaser shall require any overtime labor, Purchaser agrees to reimburse Seller for the overtime premium cost including all related payroll costs, plus Seller's overhead and profit, payable monthly, one (1) month after such overtime expense was incurred.

## INCIDENTAL LOSSES

All loss or damage from any cause (not the fault of Seller) to the materials, tools, equipment, work, or workmen of Seller or its agents or subcontractors while in or about the premises of Purchaser shall be borne by and paid for by the Purchaser.

## DEFAULT

In case of any default by Purchaser, Seller shall be entitled to payment for all work performed, all termination costs incurred, and any other costs incurred by Seller, including overhead and profit. Seller shall also be entitled to shut off the water from said system and remove all or a portion of the same. All such remedies of Seller are cumulative and not exclusive.

Default by Purchaser shall consist of: failure to pay any amount when due; any act or omission on the part of Purchaser that prevents or interferes with Seller's performance; Purchaser's receivership, bankruptcy, assignment for the benefit of creditors; or any other form of insolvency proceedings by or against Purchaser.

## BACKCHARGE

No charges shall be levied by Purchaser against Seller for any reason whatsoever, including without limitation any alleged work deficiencies or clean-up.