

PAYMENT TERMS:

INVOICING TERMS ARE NET 30 DAYS FROM INVOICE DATE UNLESS STATED OTHERWISE. PAYMENTS ARE TO BE PAID TO E.SAM JONES DISTRIBUTOR, INC., PO BOX 536794, ATLANTA, GA 30353-6794. ANY OUTSTANDING BALANCE OWED ON ANY INVOICE IS SUBJECT TO BEAR INTEREST AT THE RATE OF 18% PER ANNUM AFTER 30 DAYS FROM DATE OF SUCH INVOICE UNTIL PAID IN FULL. IF E. SAM JONES DISTRIBUTOR, INC., MUST LITIGATE FOR COLLECTION, CUSTOMER AGREES TO PAY, COLLECTION COSTS, COURT COST AND REASONABLE ATTORNEY'S FEES.

FREIGHT TERMS:

ALL SHIPMENTS ARE FOB SHIPPING POINT UNLESS OTHERWISE NEGOTIATED IN WRITING WITH ESJ. TITLE SHALL PASS FROM ESJ TO OUR CUSTOMER UPON TENDER OF FREIGHT TO CARRIER.

- NOTE CLEARLY ON DELIVERY RECEIPT ANY AND ALL EXCEPTIONS, SIGN AND DATE
- CONSEALED DAMAGE-IF NO NOTATION IS MADE ON DELIVERY RECEIPT YOU ARE RESPONSIBLE TO PROVE THE CARRIER IS RESPONSIBLE FOR DAMAGE.
- LEGALLY, CARRIER MUST BE NOTIFIED WITHIN 5 DAYS OF DELIVERY TO SCHEDULE AN INSPECTION. WE STRONGLY RECOMMEND THE CARRIER BE NOTIFIED WITHIN 48 HOURS AFTER DELIVERY.
- DAMAGE AND SHORTAGE CLAIMS NOTED ON BOL MUST BE SUBMITTED IN WRITING TO CARRIER WITHIN 30 DAYS OF RECEIPT OF PRODUCT.
- DAMAGED CLAIMS-YOU MUST MAKE THE DAMAGED PRODUCT AVAILABLE TO THE CARRIER. ONCE THE CLAIM IS SETTLED THEY WILL ADVISE YOU WHAT TO DO WITH THE PRODUCT.
- IF CARRIER TAKES THE DAMAGED GOODS, NOTE THE DELIVERY RECEIPT AND HAVE THE DRIVER SIGN.

RETURN PRODUCT:

PRODUCT CANNOT BE RETURNED TO ESJ WITHOUT PRIOR RETURN GOODS AUTHORIZATION (RGA) ISSUED BY ESJ. A REQUEST FOR AN RGA NUMBER CAN BE INITIATED BY CALLING ESJ CUSTOMER SERVICE. AN RGA IS ONLY VALID FOR 90 DAYS UNLESS OTHERWISE NOTED. MERCHANDISE MUST BE 1) UNUSED, 2) UNDAMAGED, 3) IN ORIGINAL SEALED CARTON AND 4) WITH PROOF OF ORIGINAL PURCHASE FROM ESJ. ANY PRODUCT RETURNED NOT ON THE ORIGINAL RGA WILL BE SCRAPPED, PRODUCT WILL NOT BE RETURNED. CUSTOMER IS RESPONSIBLE FOR RETURN FREIGHT CHARGES ON ALL RETURNS AND MUST INCLUDE THE RGA NUMBER ON THE SHIPPING LABEL AND DOCUMENTS. RETURN OF STOCK PRODUCT PURCHASED OVER 120 DAYS ARE SUBJECT TO A 15% RESTOCKING FEE. NON-STOCK ITEMS WILL HAVE MINIMUM RESTOCKING FEE AT 30% WITH EXACT AMOUNT DETERMINED BY THE MANUFACTURER. CUSTOM SPECIAL ORDER INCLUDING BUT NOT LIMITED TO BUILD TO ORDER ITEMS ARE NON-RETURNABLE. FAILURE TO FOLLOW THE ABOVE INSTRUCTIONS WILL RESULT IN **NO CREDIT ISSUED.**

DEFECTIVE PRODUCT:

ALL DEFECTIVE PRODUCT IS SUBJECT TO MANUFACTURER WARRANTY TERMS AND CONDITIONS.

CANCELLATION:

NON-STOCK ORDERS CANCELLED AFTER 48 HOURS OF PLACEMENT WILL BE SUBJECT TO THE CONDITIONS LISTED ABOVE IN REGARD TO RESTOCK CHARGE.

SECURITY INTEREST:

ESJ SHALL RETAIN A SECURITY INTEREST IN ALL GOODS SOLD UNTIL THE FULL AMOUNT OF THE PURCHASE PRICE (INCLUDING ANY SERVICE CHARGES) HAVE BEEN PAID BY THE CUSTOMER. IN THE EVENT THE CUSTOMER SHALL DEFAULT IN PAYMENT, ESJ (OR OUR ASSIGNEE) HAS THE RIGHT, IN ADDITION TO AND NOT EXCLUSIVE OF ANY OTHER RIGHTS IT MAY HAVE UNDER THE UNIFORM COMMERCIAL CODE OR TO OTHERWISE, TO ENTER UPON THE PREMISES WHERE THE GOODS ARE LOCATED AND RETAKE POSSESSION THEREOF, WITHOUT NOTICE.

LIMITATION OF LIABILITY:

IN NO EVENT SHALL ESJ BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, STRICT LIABILITY, OR TORT, INCLUDING NEGLIGENCE, NOR FOR LOST PROFITS; NOR SHALL THERE BE ANY LIABILITY OF ESJ FOR ANY CLAIMS OR DAMAGE ARISING OUT OF THE AGREEMENT OF THE MANUFACTURE, SALE, DELIVERY, USE, MAINTENANCE REPAIR OR MODIFICATION OF THE PRODUCTS, THIS LIMITATION OF LIABILITY SHALL APPLY TO ANY LIABILITY FOR DEFAULT UNDER OR IN CONNECTION WITH THE PRODUCTS, PARTS OR SERVICES DELIVERED HERUNDER WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE, NO LABOR CHARGES WILL BE ACCEPTED WITHOUT PRIOR WRITTEN APPROVAL. THIS CLAUSE SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

ACCEPTANCE:

THE CUSTOMER HEREBY AGREES TO THE TERMS AND CONDITIONS AS STATED ABOVE BY SIGNING FOR AND TAKING POSSESSION OF SHIPMENT/S.

RELATIONSHIP:

CONSULTANT ACCEPTS THE RELATIONSHIP OF TRUST AND CONFIDENCE ESTABLISHED WITH OWNER PURSUANT TO THIS AGREEMENT.

STANDARD OF CARE:

Consultant covenants with Owner to perform its services under this Agreement in a professional, skillful and competent manner in conformance with the standards of care and quality practiced by consultants with national experience performing similar services for projects of similar size, scope and complexity in a location similar to the Project with a thorough understanding of the Legal Requirements applicable to

the Project. Any designs, drawings, specifications or services prepared or furnished by Consultant that vary from or do not meet the standards of care and quality set forth above, that are contrary to any Legal Requirements, or that contain errors, conflicts or omissions (“**Defective Services**”) shall be promptly corrected by Consultant at no cost to Owner. The term “**Legal Requirements**” shall mean the requirements of all federal, state, county, city, local and municipal laws, ordinances, codes, rules and regulations, orders and decisions of any governmental authority applicable to the design, construction, use or occupancy of the Project, including but not limited to the applicable building codes and all accessibility laws, guidelines and regulations.

COMPLIANCE WITH LAWS:

At all times, Consultant shall comply, and shall cause its employees and require its sub-consultants (if and to the extent that any sub-consultants are retained by Consultant), to comply, with all applicable federal, state and local laws, rules, regulations, ordinances and codes in the performance of its services. Without limiting the foregoing, Consultant shall at its own expense comply with all applicable workmen's compensation, unemployment insurance, employer's liability, minimum wage and other federal, state, county and municipal laws, ordinances, rules, regulations and orders, including without limitation, the Federal Civil Rights Acts, Fair Labor Standards Act, Americans With Disabilities Act, and the Labor Management Relations Act, with respect to its employees.

AGREEMENT:

This Agreement, together with any Exhibits, constitutes the entire agreement between the parties and supersedes all previous written or oral agreements, if any, relative to the subject matter hereof. In the event of any inconsistency between this Agreement, and any Exhibits, this Agreement shall control over the Exhibits, unless specifically provided otherwise. In no event shall any proposal or contract form submitted by Consultant be part of this Agreement unless attached and referred to herein as an Exhibit, and in such event, only the portions of such proposal or contract form consistent with this Agreement and the other Exhibits shall be part hereof.

INSURANCE:

Consultant shall procure and maintain the insurance coverages as set forth in Exhibit E.

INDEMNITY:

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless and waive its rights of contribution against, Owner, and its members and their respective managers, members, shareholders, affiliates, officers, beneficiaries, agents and employees, (collectively, “**Indemnitees**”) from and against all claims, suits, damages (including, without limitation, any damages or injury to persons or

property), losses, fines, penalties, costs and expenses, including but not limited to attorneys' fees, expert costs, and litigation expenses, causes of action and liabilities (these are collectively referred to as "**Claims**"), that are brought against, imposed upon, paid or incurred by the Indemnitees arising out of or resulting from or in connection with the performance of the services under this Agreement to the extent that any such Claim is caused by a breach of this Agreement by Consultant or by any negligent act or willful misconduct of Consultant or any of Consultant's employees, sub-consultants or anyone for whose acts Consultant may be responsible. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist. The indemnities contained in this Section shall survive the expiration or termination of this Agreement. Nothing herein shall allow a party to be indemnified against its own negligence.

CLAIMS BY CONSULTANT'S EMPLOYEES:

In any and all claims against any Indemnitee by any employee of Consultant, anyone directly or indirectly employed by Consultant or anyone for whose acts Consultant may be liable, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant under workers' compensation acts, disability benefit acts or other employee benefit acts.

EXHIBIT "E"

Commercial General Liability Insurance

\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)
\$2,000,000 General Aggregate per Project
\$2,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury Limit

Business or Commercial Automobile Liability Insurance

\$1,000,000 combined single limit per accident

Workers' Compensation and Employers' Liability Insurance

\$100,000 Each Accident
\$100,000 Each Employee for Injury by Disease
\$500,000 Aggregate for Injury by Disease

Excess or Umbrella Liability

\$1,000,000 occurrence/aggregate

The Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds. The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor on any individual Project, whichever is later.