

HOEKSTRA ELECTRICAL SERVICES, LLC TERMS AND CONDITIONS

1. **General.** The Electrical Contractor Agreement and these Terms and Conditions (the "Contract") constitute the entire agreement between Hoekstra Electric Services, LLC and its subcontractors (collectively "HOEKSTRA"), and Customer for the Project/Job No. unless otherwise specifically provided for by HOEKSTRA in this document, and shall apply to the exclusion of any inconsistent or additional terms contained in Customer's order or acknowledgment or otherwise proposed by Customer. Customer's acceptance of these terms shall be conclusively presumed by Customer's signature on this form, by Customer's submission of a purchase order in response to this document or by Customer's acceptance of goods, services or work from HOEKSTRA. Any contract made for the sale of goods, services or work by HOEKSTRA is expressly conditional on Customer's assent to the terms stated in this document. HOEKSTRA objects to any additional or inconsistent terms proposed by Customer.
2. **Bids and Proposals.** Any bid or proposal by HOEKSTRA is not intended to, and does not, constitute an offer to perform services and/or deliver materials. Any bid or proposal is subject to Customer signing the Electrical Contractor Agreement and unconditionally accepting these Terms and Conditions.
3. **Contract Work.** HOEKSTRA shall furnish the labor, materials, equipment, tools, and services (the "Work") described in the Contract at the address identified in the Contract. The Work shall be conducted in a good, workmanlike manner consistent with accepted industry standards. There shall be no obligation to provide any additional work or services unless otherwise agreed to in writing by HOEKSTRA and Customer.
4. **Contract Sum.** The Contract Sum is the quoted price to be paid to HOEKSTRA for the Work. The quoted price does not include applicable taxes such as city, state or federal, sales, use, or excise taxes. Furthermore, the quoted price does not include any other goods, services or work not specifically described in this document. All taxes and charges shall be Customer's responsibility and may be added to an invoice as a separate and additional charge to Customer unless an acceptable exemption certificate is presented to HOEKSTRA. HOEKSTRA shall also have the right to separately bill Customer at any time for any taxes and charges that are attributable to the sale of any goods, that HOEKSTRA may be required to pay. Customer shall reimburse HOEKSTRA on demand for all those amounts. The Contract Sum is an estimate of the cost for the Work and not a fixed price. All Work, including additional work, is provided on a time and material basis which may be increased from the price reflected in the Contract. The Contract Sum is subject to escalation in the event of delays occasioned by the Customer, unforeseen site conditions and increases in the costs of wages, fuel, supplies and/or materials.
5. **Customer's Responsibilities.** Customer shall: (1) pay for and provide temporary electrical hookups and electrical power for HOEKSTRA's use to perform the Work; (2) pay for and obtain all permits necessary to perform the Work; (3) pay for all site preparation including, but not limited to, excavation, grading, filling and/or compacting; (4) pay for any engineering necessary for the Work; (5) pay for and provide concrete as necessary for the Work; and (6) not interfere with HOEKSTRA's performance of the Work.
6. **Payment Terms.** The Customer shall be responsible for full payment of all invoices. Terms of payment are net thirty (30) days from date of invoice. Customer shall be responsible for late fees in the amount of 1.5% per month for any and all balances more than thirty (30) days old. In the event Customer does not timely pay, HOEKSTRA may suspend all Work and/or pursue legal action. Customer agrees to pay all of HOEKSTRA's reasonable attorney's fees, litigation costs, and all other charges and costs incurred by HOEKSTRA in collecting payment from Customer. Customer also agrees to pay statutory charges applicable to a form of payment returned by Customer's bank for any reason.
7. **Site Conditions.** The Proposal does not include costs associated with underground items (i.e., septic tanks, drain fields, irrigation systems and utility services) and site conditions (i.e., rocks, debris, unstable, unsuitable, contaminated and/or compacted soils) which are not visible or which the Customer does not specify prior to the commencement of the Work. If the Work requires excavation, blasting and/or disturbance to subsurface soils, HOEKSTRA will not commence the Work until a dig notice is issued and all public underground utilities have been properly marked as set forth in the Michigan Miss Dig Underground Facility Damage Prevention and Safety Act, MCL § 460.721, et seq. Customer is solely responsible for locating and identifying private underground utilities or facilities including, but not limited to, irrigation systems, electrical wiring, wells, septic and drainage systems, and under no circumstances will HOEKSTRA be responsible for damage to private underground utilities or facilities not identified, properly marked or disclosed by the Customer.
8. **Site Damage.** Customer acknowledges that the nature of the Work and the use of equipment associated with the Work may result in unforeseen damage to the surrounding terrain. In acknowledging this risk Customer agrees that the costs associated with repairing such damage will be borne solely by Customer.
9. **Changes in the Work.** From time-to-time, Customer may order changes in the Work consisting of additions, deletions, or modifications. Such changes in the Work shall be by a written change order ("Change Order") signed by both the Customer and an authorized representative of HOEKSTRA. In no event, however, shall failure by the Customer to obtain a written Change Order for the Work relieve Customer from paying HOEKSTRA for any additional work performed by HOEKSTRA at Customer's request or because of changes to the Project's plans or specifications or unknown site conditions.
10. **Customer's Duties and Liability.** Customer agrees to defend, hold harmless and indemnify HOEKSTRA against all claims, lawsuits and any other liability or injury to persons or damage to property or personal injury (including death) arising from any and all the Work performed by HOEKSTRA.

11. **Limitation of Damages.** HOEKSTRA's liability and Customer's exclusive remedy shall, at HOEKSTRA's election, be to repair or replace that portion of the Work found by HOEKSTRA to be defective following its inspection. In no event, however, shall HOEKSTRA's liability to Customer or any of Customer's agents, contractors, successors, or assigns exceed the total proceeds actually received by HOEKSTRA from Customer for the Work. HOEKSTRA shall under no circumstances be liable for any liquidated, incidental or consequential damages including, but not limited to, damages for delay, loss of income or profits, lost revenues or any economic loss whether arising in contract, warranty and/or tort. If Customer believes that the Work or any portion thereof is defective or unsatisfactory, Customer shall provide written notice to HOEKSTRA within ten (10) days after the Work is completed, describing in detail why Customer believes the work is defective or otherwise unsatisfactory. If such notice is not timely provided, Customer shall be deemed to have accepted the Work and HOEKSTRA will have no obligation to repair or replace the Work.

12. **Ownership and Access.** Customer warrants that she/he/it owns the real property upon which the Work is to be performed, and that HOEKSTRA can legally and adequately access the property to perform the Work. Prior to the commencement of the Work, Customer will provide HOEKSTRA with all pertinent information as to the location of Customer's property boundaries, which HOEKSTRA may rely on to perform the Work. HOEKSTRA shall not be liable for damages or costs resulting from errors or omissions made by Customer regarding ownership rights or property boundaries including, but not limited to, claims for common law or statutory trespass and/or nuisance, and Customer further agrees to indemnify and defend HOEKSTRA from any claims arising from ownership or property rights which result from Customer's errors or omissions.

13. **Warranty.** The Work is warranted by HOEKSTRA from one year from its completion unless otherwise specified. This warranty does not include the labor necessary to replace defective supplies and materials. This warranty is void if the damage or loss is caused by the Customer due to negligence, improper care and/or maintenance, accident, act of God or any other event outside of HOEKSTRA's control.

HOEKSTRA MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY EQUIPMENT, MATERIAL, COMPONENTS OR APPARATUS PROVIDED BY IT IN CONNECTION WITH THE WORK. ALL SUCH WARRANTIES, IF ANY, ARE PROVIDED BY THE MANUFACTURER AND HOEKSTRA DOES NOT ENHANCE OR SUPPLEMENT THE SAME. OTHER THAN THE WARRANTIES STATED ABOVE, HOEKSTRA MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED INCLUDING ANY WARRANTY WITH RESPECT TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND HOEKSTRA DISCLAIMS ANY AND ALL STATUTORY WARRANTIES WHICH MAY APPLY TO THE EQUIPMENT.

14. **Copyright.** Ownership and copyright for any drawings or specifications used for the Work belong to HOEKSTRA and shall not be used by Customer for any other purpose other than for the Work performed by HOEKSTRA.

15. **Termination by Hoekstra.** HOEKSTRA may terminate the agreement with Customer at any time with or without cause upon 15 days written notice to Customer.

16. **Dispute Resolution; Claims.** Any dispute arising out of the Work or Equipment shall be governed by, and construed in accordance with, the laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether in the State of Michigan or any other jurisdiction). HOEKSTRA and Customer both irrevocably agree that any legal suit, action or proceeding against it arising out of or based upon Work or Equipment may be instituted in any state or federal court located in the State of Michigan (each a "Michigan Court"), and preferably the state court located in Allegan County and federal court located in Grand Rapids, Michigan, and irrevocably waives, to the fullest extent such party may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action in any Michigan Court, and irrevocably submits to the exclusive jurisdiction of any such Michigan Court in any such action.

17. **Enforceability.** If any provision herein is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability or the remainder of the provision or the remaining provisions.

18. **Waiver; Remedies.** No term or provision herein shall be deemed waived and no breach excused unless either (i) waiver or bar is required by these Terms and Conditions or (ii) such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, or waiver of, or excuse for any other different or subsequent breach.

19. **Assignment.** HOEKSTRA may assign to any third party its rights and obligations with respect to Customer.

20. **Force Majeure.** HOEKSTRA shall not be responsible or liable for any delays in the Work due to any cause or condition beyond its control, including, without limitation, fire, flood, earthquake, labor dispute, shortages of materials or supplies, riot or other civil disturbances, war, acts of God or nature, accident or any acts of government.