

## Master Terms and Conditions for Sales of Products and Services

These TERMS AND CONDITIONS FOR SALES OF PRODUCTS AND SERVICES ("Terms and Conditions") and the applicable Utility Safety & Design, Inc. ("USDI" or the "Company") quotation shall constitute the entire agreement between the Parties for each sale of Products and Services (the "Agreement") and supersedes any previous communications, representations, or agreements by either party whether verbal or written. These Terms and Conditions shall prevail over any additional or different terms proposed by the Buyer or any attempt by the Buyer to alter any of the terms herein. The Parties agree that additional or different terms shall have no force and effect unless a formal written amendment to these Terms and Conditions is executed by the Parties. The Parties specifically intend for these Terms and Conditions to govern all Product and Services sales and purchases between the Parties and acceptance by USDI of your order shall constitute acceptance of these Terms and Conditions.

### 1. Definitions

- 1.1 "USDI" shall mean Utility Safety & Design, Inc. entity identified on the face of the Quotation and providing Products or Services hereunder.
- 1.2 "Buyer" shall mean the party purchasing Products or Services from USDI.
- 1.3 "Products" shall mean any material, equipment, system, tool, instrument, consumable, spare part, component, good, or merchandise sold or provided by USDI to Buyer.
- 1.4 "Services" shall mean any type of service sold or provided by USDI to Buyer.
- 1.5 "Terms and Conditions" shall mean these Terms and Conditions for sales of Products or Services.
- 1.6 "Proposal" shall mean a formal statement of estimated costs for specified Products and/or Services provided by USDI to Buyer.
- 1.7 "Purchase Order" shall mean any document or authorization (written or verbal) issued by Buyer for the purchase of any Products and/or Services referenced in the Quotation.
- 1.8 "Liabilities" shall mean any costs, expenses, losses, fines, penalties, damages, claims, causes of action, including attorney's fees, investigation costs and litigation expenses.

### 2. Pricing and Payment

- 2.1 Prices: Buyer shall compensate USDI based on the prices and/or rates stated in the Quotation, except as may be otherwise provided, qualified or limited by USDI. Buyer shall be responsible for any lawfully imposed federal, state, tribal or local taxes or tariffs that may be applicable.
- 2.2 Payment and Delinquency Charge: Unless otherwise agreed to in the Purchase Order, payment for any Products or Services is due within twenty-one (21) days of receipt of invoice. Unless the Quotation stipulates differently, Buyer accepts that a delinquency charge of one percent (1.5%) per month will be added on any amount not paid within the stated terms of payment on all accounts in arrears, without exceeding the maximum allowable by law until paid. Buyer is responsible for all costs and expenses, including attorneys' fees, incurred by USDI in collecting any amounts owed beyond the agreed upon due date. Buyer accepts that any failure to make payments when due shall entitle USDI to suspend further performance until payment is received.
- 2.3 Pricing Terms: USDI hourly rates begin when USDI personnel leave the office, hotel, or specified beginning location and terminate when USDI personnel return to the office, hotel, or agreed upon location. USDI will record items such as, but not limited to, hours, equipment, and materials and will invoice Buyer pursuant to the applicable hourly or daily rates. USDI reserves the right to discount pricing terms, if for USDI's convenience, unused equipment remains on the job site.
- 2.4 Changes and Deviations: USDI may accept or reject, at its sole discretion, Buyer's request for changes or deviations from final Proposal. If accepted, any changes or deviation costs shall be invoiced and paid as agreed by Buyer and USDI.

### 3. Warranties and Guarantees

- 3.1 General Warranty: USDI warrants that Products and Services shall conform to any mutually agreed specifications and be performed in a good and workmanlike manner. USDI will repair or replace, at its sole option and cost, any materials and/or workmanship if, within twelve (12) months from USDI's delivery of the Products or completion of the Services. Manufacturer warranties apply to parts and equipment installed, subject to their terms. **THE PRODUCTS AND SERVICES SOLD**

**UNDER THIS AGREEMENT ARE PURCHASED BY THE BUYER "AS IS" AND SELLER DOES NOT PROVIDE ANY WARRANTY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES THAT THE PRODUCTS AND SERVICES ARE OF MERCHANTABLE QUALITY OR THAT THE PRODUCTS AND SERVICES CAN BE USED FOR ANY PARTICULAR PURPOSE.**

Buyer acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Products and that no such statements or representations have been made. The Buyer acknowledges that it has relied solely on the investigations, examinations, and inspections as the Buyer has chosen to make and that the Seller has afforded the Buyer the opportunity for full and complete investigations, examinations, and inspections.

- 3.2 Hot Tapping and Plugging ("HT&P") Services: Cutter replacement due to damage or wear and tear is considered normal operation and shall not constitute a delay in Services by USDI while completing HT&P Services. USDI does not guarantee the coupon (the portion of the pipe hot tapped out of the pipe) will be retained, or that the process will not result in shavings or minor debris remaining in the pipeline. Buyer assumes all liability for, or in conjunction with pipeline damage, all loss of any kind if the pipeline is shut down for any reason during these services. Buyer shall indemnify and hold USDI harmless from any and all Liabilities connected with the removal of any coupon, shavings or debris that may result from the performance of HT&P Services.

### 4. Indemnification and Limitation of Liability

- 4.1 Indemnity: USDI and Buyer shall each release, defend, indemnify, and hold the other harmless from all claims, actions, losses, damages, costs and expenses (including reasonable attorneys' fees) for person injury, including death, or property damages or loss, in favor of any third party for any loss or damage to the extent directly or indirectly caused by the indemnifying party's negligence or fault. When a third party loss is the result of joint or concurrent negligence of USDI and Buyer, the indemnitor's duty of indemnification shall be in proportion to its allocable share of negligence. A party shall not be indemnified under this agreement for any losses or damages caused directly or indirectly by that party's own gross negligence or intentional misconduct.
- 4.2 Limitation of Liability: IN NO EVENT SHALL USDI BE LIABLE UNDER THIS AGREEMENT TO THE BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, SHUTDOWN OR SLOWDOWN COSTS, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. THE LIABILITY OF USDI, AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND, REGARDLESS OF LEGAL THEORY, SHALL NOT BE GREATER THAN THE ACTUAL PURCHASE PRICE OF THOSE GOODS WITH RESPECT TO WHICH SUCH CLAIM IS MADE, OR WITH RESPECT TO SERVICES, SHALL NOT EXCEED THE AMOUNT PAID BY BUYER IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

5. **Force Majeure.** USDI will not be liable for non-performance or delay in performance when such delay is directly or indirectly caused by or in any manner arises from events beyond its reasonable control, including without limitation delay or failure to deliver by USDIs

suppliers, weather events, fires, floods, accidents, riots, war, governmental action or embargoes, strikes, or shortages of materials or labor, pandemics or epidemics, or other causes (whether or not similar to those specified) beyond its control. For delays resulting from such causes, time for performance will be correspondingly extended, and USDI agrees to make, and Buyer agrees to accept, delivery or performance at a reasonable time after the causes for delay or non-performance have been removed.

6. **Pollution and Hazardous Material:** USDI shall only be liable for costs, claims, losses, penalties, fines, or charges related to pollution or contamination (whether affecting the environment or third parties) from hazardous materials brought onto the project location by USDI. Buyer shall be liable for any costs, claims, damages, losses, penalties, fines or charges related to pollution or contamination (whether affecting the environment or third parties) in any way connected with the flow of Buyer's product, water, or other substances which may cause harm or damage. If hazardous materials of any kind are encountered, USDI reserves the right to cease work until the materials are properly remediated by licensed professionals at the Buyer's expense. In every instance, Buyer shall be responsible for waste management, extraction, collection, treatment and final disposal of waste and hazardous materials generated or dislodged during performance of the Services.

7. **Safety and Stop Work:** USDI, Buyer, and all employees and/or agents of same agree to adhere to applicable OSHA Standards, including but not limited to Subpart P-Standard on Excavation, and shall take reasonable efforts to prevent any condition which may jeopardize the safety of any person(s) in the work area. USDI and Buyer may stop work in the event it reasonably believes a safety or regulatory compliance matter exists, and such stoppage shall not be considered a delay of work.

8. **Pipeline, Site and Facility Damages:** Buyer represents and warrants the completeness and accuracy of any information provided on the conditions and operation of the pipeline, site, and facility. Buyer is responsible for identifying any concealed utilities not documented or readily apparent. USDI is not liable for damage to unmarked utilities. USDI shall work with Buyer to perform reasonable diligence with respect to Buyer's owned, private utilities including by not limited to pipeline, site, and facility specific information requests to Buyer. If Buyer declines or is unable to provide the pipeline, site, and facility information required, Buyer shall indemnify, defend and hold harmless USDI from and against any liabilities or third-party claims arising from variances in pipeline, site, and facility conditions, locations, or operations. USDI assumes no liability for the condition of the pipeline, site and/or facility prior to the commencement of Services.

9. **Miscellaneous**

- 9.1 USDI assumes no liability for settlement and/or restoration of soils, pavements, drainage, or other damages unless a separate Quotation is agreed to by USDI and Buyer.
- 9.2 USDI assumes no liability for the accuracy of GPS data, as-built drawings, documentation, or inspection records unless a specifically agreed to by USDI and Buyer.
- 9.3 Quotation excludes all costs associated with encountering solid rock excavation, boring and/or disposal of contaminated materials. Should solid rock or contaminated materials be encountered, this shall require an additional negotiated agreement to the Quotation.
- 9.4 Quotation assumes existing excavated material shall be used for backfill.
- 9.5 Quotation excludes dewatering and water dispelling services that cannot be routinely addressed with trash pumps and filter bags.
- 9.6 Quotation excludes pricing for engineered trench systems. In the event additional trenching systems are required, Buyer agrees that such Services will incur additional fees to be added to the Quotation.

9.7 Quotation excludes engineered compaction requirement or soil/concrete testing. In the event additional compacting and/or testing is required, such Services will incur additional fees to be added to the Quotation.

9.8 Unless otherwise agreed upon in the Quotation, Buyer shall obtain all required permits, licenses and/or authorizations to execute the Services, including those required to access the site. USDI agrees to obtain all permits, licenses and/or authorizations as may be specifically required of USDI under the applicable jurisdiction where USDI is engaged to perform work.

10. **Propriety Information.** Buyer acknowledges that USDI's Products and Services are based upon and embody various confidential and/or proprietary technology, processes, methods, information, and trade secrets of USDI and its suppliers and licensors. USDI and its suppliers or licensors (as applicable) shall exclusively own all inventions, technology, know-how, trade secrets, and other proprietary information of any kind used or embodied in the products, documentation, drawings, designs, specifications, software, and other items furnished by USDI, all intellectual property rights with respect thereto, and all reproductions or derivatives thereof in any form ("Proprietary Information"). Buyer shall neither acquire nor claim any right, title, or interest in, and shall exercise reasonable care to maintain the confidentiality of, USDI's Proprietary Information and shall use the same solely as required for its authorized use of USDI's products as supplied hereunder. Buyer may not directly or indirectly (a) copy, adapt, develop, disassemble, reverse engineer, recast, compile, decompile, translate, or create derivative works from any products, instructions, manuals, schematics, or other items provided by or on behalf of USDI, or permit any third party to do so, (b) remove, alter, or obscure any copyright, trademark, patent, logo, government restricted rights, or other notices or legends from items provided by USDI; or (c) disclose or use USDI's Proprietary Information for commercial purposes or in a manner detrimental to USDI. Disclosures of Proprietary Information may be made only to Buyer's representatives having a specific need to know and a written obligation to protect such information no less restrictive than the restrictions herein, and Buyer will be responsible for any breach by its representatives. It is agreed that any breach of this Section may cause USDI irreparable harm for which recovery of damages would be inadequate, and that immediate injunctive or other equitable relief is appropriate and available to USDI to prevent any violation, threatened or actual, in addition to other remedies and without proof of actual damage.

11. **Assignment:** Buyer's order is not assignable without USDI's prior written consent. These Terms and Conditions are binding upon and enforceable against any successor or permitted assignee.

12. **Governing Law & Dispute Resolution:** Except where expressly prohibited by statutory or constitutional restrictions governing choice of law by a political subdivision, agency, or instrumentality, these Terms and Conditions, all transactions to which they may apply, and any disputes arising out of Products or Services supplied hereunder will be governed by the laws of the state of Illinois, excluding any conflict of law provisions thereof. Any dispute, controversy, or claim arising out of or relating to this agreement, or the breach, termination, or validity thereof, shall be resolved by final and binding arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules. The arbitration shall be conducted by a single arbitrator (or three arbitrators, if the parties so agree) appointed in accordance with the AAA Rules. The place of arbitration shall be Chicago, Illinois, and the language of the arbitration shall be English. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

13. **Waiver, Severability:** The failure of USDI to enforce any provision herein will not constitute a waiver of that provision. If any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, then that provision will be amended to achieve as nearly as possible the same economic and practical effect as the original provision and the remaining provisions will not be affected.