

STANDARD TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** Thompson Company Inc. dba Thompson Ehle Company ("TEC") is a Georgia mechanical, electrical, plumbing ("MEP") engineering design firm providing MEP and Fire Protection engineering design services and related drafting, project management and contract administration and other consulting services. The Services (as defined below) are generally identified in a proposal ("Proposal") submitted to a Client ("Client") who is identified in such Proposal and/or named in a Request for Proposal ("RFP") for the specific project ("Project"). These Terms and Conditions are an integral part of any TEC Proposal and are specifically incorporated therein by this reference. TEC agrees to provide the Services to Client for its sole benefit and exclusive use on the Project as stated herein and in a Proposal, and for the benefit and use of the Client's Owner only as it pertains to this Project. There are no third party beneficiaries to TEC's performance of Services, except as permitted by TEC in writing.

2. **STANDARD OF CARE.** TEC will perform the Services generally in accordance with the Standard of Care (as defined below) for MEP Engineering Professionals. Except where specified otherwise in a Proposal **NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, IS MADE OR INTENDED AND THE SAME ARE SPECIFICALLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

3. **RELIANCE ON INFORMATION PROVIDED TO TEC.** Unless a Proposal states otherwise, TEC shall have the right to rely on the contents of Client, Owner or third party consultant documents provided to TEC without independent verification and analysis by TEC. Client acknowledges that (i) the Work Product (as defined below) may be based in part or in whole on facts and/or assumptions provided to, but not independently verified by TEC, (ii) Work Product will reflect TEC's findings as to conditions that existed at the time the Services were performed and may not reflect conditions at a later time; and (iii) TEC makes no representations as to such conditions subsequent to the time the Services were performed or with respect to any facts or assumptions provided to but not independently verified by TEC.

4. **WORK PRODUCT.** TEC will furnish Client with the Work Product as specified in a Proposal. All Work Product shall be TEC's sole property, as author and owner, and TEC hereby reserves and shall retain all common law, statutory and other rights thereto, including copyrights. TEC may retain copies of any or all Work Product and Client-provided documents. Client agrees that all Work Product furnished to Client or its agents or designees, if not paid for or if improperly

Used (as defined below), will be returned upon demand and will not be Used for any purpose whatsoever.

Client acknowledges that the Work Product is intended for the exclusive use and benefit of, and may be relied upon only by Client for the specific Owner and/or Project identified in a Proposal. If Client wishes to distribute any Work Product to any third party other than the Owner, Client and the third party must first execute TEC's Secondary Client Agreement. The Secondary Client Agreement shall provide that the limits of liability set forth herein in Section 9 shall be shared between or among Client and all Secondary Clients.

TEC makes no representation as to the suitability of any Work Product for any such third party's purposes. Client agrees to defend, indemnify and hold TEC harmless from and against all Claims and Liabilities related to or arising from any unauthorized Use of the Work Product.

Upon Client's request, Work Product may be provided on electronic media, including Revit and CADD format. The electronic copy is subject to all conditions contained in these T&Cs. Any modifications of the electronic copy by Client shall be at Client's sole risk and without liability to TEC.

5. **CLIENT'S ASSUMPTION OF DESIGN RISK AND ADDITIONAL SERVICES OPTIONS.** If, as a cost-saving measure, Client does not request additional Services, including any Additional Services specifically identified in Section V of a Proposal, which TEC advises Client may be needed to properly perform the Services, or to achieve a better MEP product for the Owner, Client agrees that TEC is in no way liable for any Claim or Liability for a condition which such Additional Services might have prevented. Client agrees that TEC is not an insurer or guarantor of the appropriateness of the architectural and or structural design of a Project, or the basic design concepts under which TEC was required to perform its Services.

6. **INSURANCE.** TEC maintains the following insurance coverages:

- a. Workers' Compensation Insurance – statutory amount.
- b. Commercial General Liability Insurance - \$1,000,000 per occurrence/\$2,000,000 aggregate.
- c. Automobile Liability Insurance - \$1,000,000 combined single limit.
- d. Professional Errors & Omissions - \$2,000,000 per claim/\$2,000,000 aggregate.

7. **CLAIMS BASED ON STANDARD OF CARE.** Client shall not be entitled to assert a Claim (as defined below) against TEC based on any theory of professional

negligence or violation of the Standard of Care unless and until Client has obtained and provided TEC with a written opinion from a licensed, independent and reputable MEP engineering professional, as appropriate for the Services in question, that TEC has violated the applicable Standard of Care.

8. **CLAIMS.** Any Claims, including claims based on breach of the standard of care, that Client may bring against TEC with respect to the Services must be commenced within one (1) year after the date of the specific Work Product which Client contends was improperly performed or which violated the applicable Standard of Care. The parties shall endeavor in good faith to resolve any such Claim within 30 days by communications among senior management. Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the Services to non-binding mediation. Mediation shall be conducted in Atlanta, Georgia under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party. This provision shall survive completion or termination of any Services, but under no circumstances shall either party call for mediation of any claim or dispute arising out of provision of Services after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the applicable law. Thereafter, if the dispute remains unresolved the Claim shall be settled by arbitration in accordance with the Arbitration Rules by proceeding to arbitration by the AAA, or by litigation. Any arbitrator will be selected by mutual agreement of the parties, provided, however, that if the parties cannot agree on the selection of an arbitrator, a party may demand that the arbitrator be selected in accordance with the Arbitration Rules, provided, that the arbitrator must be knowledgeable of and well versed in the Services which are in dispute. Each party will bear its own costs of the mediation, arbitration or litigation, including its attorneys' fees. The arbitrator may not award any remedy that a court having jurisdiction over the Claim could not award. The arbitrator will apply Georgia law as it exists on the date on which the Claim arose. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 2 et seq. and shall be entered as a final and binding judgment. The place of the arbitration shall be Atlanta, Georgia.

9. **DAMAGES AND LIMITATION OF LIABILITY. THE INCLUSION OF A LIMITATION OF LIABILITY PROVISION UNDER THE TERMS SET FORTH BELOW IS A MATERIAL CONSIDERATION FOR TEC'S WILLINGNESS TO PERFORM THE SERVICES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY, IN THE AGGREGATE, OF TEC AND ITS**

OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS TO CLIENT AND ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO TEC'S SERVICES, THE PROJECT OR THIS AGREEMENT, FROM ANY CAUSE OR CAUSES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY TEC FOR PERFORMANCE OF THE SERVICES, OR THE TOTAL AMOUNT OF \$50,000, WHICHEVER IS GREATER. IF THE CLIENT PREFERS TO HAVE HIGHER LIMITS OF PROFESSIONAL LIABILITY, THE LIMITS CAN BE INCREASED TO A MAXIMUM OF ONE MILLION (\$1,000,000.00) DOLLARS UPON THE CLIENT'S WRITTEN REQUEST AT THE TIME OF ACCEPTANCE OF A PROPOSAL PROVIDED THAT THE CLIENT AGREES TO PAY ADDITIONAL SPECIFIED CONSIDERATION. THE OWNER OF THE PROJECT FOR WHICH THE SERVICES ARE TO BE PERFORMED AND ALL THIRD PARTY BENEFICIARIES TO THE SERVICES, IF ANY, ARE INTENDED TO BE AND HEREBY ARE BOUND BY THE TERMS OF THIS LIMITATION OF LIABILITY AND THE AGGREGATE LIMITATION OF LIABILITY CONTAINED HEREIN.

THE DETERMINATION OF DAMAGES FOR WHICH TEC MAY BE LIABLE IS SET FORTH IMMEDIATELY BELOW, BUT IN NO EVENT SHALL EXCEED THE LIMITATION OF LIABILITY SET FORTH ABOVE.

In the event that TEC fails to perform in accordance with the Standard of Care which is applicable to the Services, Client agrees that the damages for which TEC shall be liable shall be limited to that proportion of damages which is attributable to TEC's percentage of fault. Further, in the event that TEC causes a deficient condition in the MEP portion of the Project in violation of the applicable Standard of Care, the liability of TEC, and Client's exclusive remedy, for any and all damages which result there from is limited to the cost to either remedy the condition or to place the property or applicable portion thereof in the specified condition, as applicable, but in no event shall TEC be liable for the entire cost of replacing the property or portion thereof that is subject to the deficient condition; provided, in the event that TEC has performed its Services in violation of the applicable Standard of Care and any such deficient condition cannot be remedied for a reasonable cost, the aforesaid liability of TEC will be limited to the resultant diminution in value of the portion of the Project affected.

10. **INDIRECT DAMAGES. NEITHER PARTY SHALL BE RESPONSIBLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY ECONOMIC, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFITS, FINANCING OF REPUTATION)**

ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE SERVICES.

11. **HOLD HARMLESS.** To the fullest extent allowed by law Client and TEC mutually agree to indemnify and hold harmless the other party, their principals, officers, employees and directors against any liability or damages, losses or expenses, including reasonable attorney fees, arising out of the Project to the extent caused by the negligence of the other party or other persons employed or utilized by the other party for whom the other party is legally responsible in connection with the Project and/or the performance of the Services. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statute of repose or statute of limitations.

12. **PROJECT SITE RESPONSIBILITY.** If TEC performs Construction Administration Services as identified in a Proposal Client will arrange for right-of-entry to the Project Site as needed and will execute any necessary site access agreement. The Services do not include supervision or direction of the means, methods or actual work of contractors, other professionals or consultants not retained by TEC. It is agreed that TEC is not responsible for safety or security of individuals on the Project Site, other than for TEC's employees, and that TEC does not have the right or duty to stop the work of others.

13. **UNANTICIPATED CONDITIONS.** Should TEC encounter conditions during the Project which were not reasonably anticipated and/or which increase the risk involved in TEC's performance of the Services, upon notice to Client, TEC, in its sole discretion, may (i) continue to perform the Services to completion, (ii) suspend activities and prepare a Change Order Request prior to proceeding or (iii) terminate all Services. Such termination shall not be a breach by TEC.

14. **OPINIONS OF COST.** If TEC is asked to provide opinions of cost for installation of materials, or construction of MEP systems based upon TEC's experience on similar projects such opinions are not intended for use in the Client or Owner's firm budgeting or negotiation unless specifically agreed otherwise in advance by TEC in writing. Client understands the actual cost of work depends on many factors beyond TEC's control and may vary significantly from TEC's opinions.

15. **TESTIMONY.** Should TEC or any employee of TEC be required by any party, including Client, or Owner or compelled by law to provide testimony (either as a fact or expert witness), produce documents or provide other evidence in a proceeding with respect to the

Project or the Services to which TEC is not a party, Client shall compensate TEC for its preparations, document retrieval and reproduction, and testimony at 2.0 times the rate shown on its then current Fee Schedule. Client also agrees to reimburse TEC for reasonable travel, lodging and meal expenses that are incurred in conjunction with providing the above testimony, and other related services.

16. **EXCUSABLE DELAY.** TEC shall not be in breach of its obligations to provide Services nor liable for damages due to delay or failure to perform any obligation if such delay or failure results from circumstances beyond the control of TEC. In the event of such delay, the time for TEC's performance shall be extended for the duration of the delay.

17. **ADVERTISING.** Client agrees that TEC in any manner may advertise and publish the fact that TEC has agreed to furnish Client with Services, as well as use any trademark, service mark and trade names of Client in TEC's advertising and promotional materials, web sites, client lists, etc. TEC agrees not to publish any confidential information provided by Client.

18. **TERMINATION.** Either party may terminate TEC's Services without cause upon 30 days' prior written notice. In such event, Client shall take possession of the Work Product paid for and belonging to Client, and TEC shall be paid for all Services performed to the date of termination. In the event Client requests termination without cause, TEC shall also be paid a fee of twenty (20%) of the remaining amounts due TEC as the reasonable expenses and costs incurred in Project close out. TEC's obligation to perform Services will terminate automatically and without notice upon the insolvency of, or upon the filing of a bankruptcy petition by or against Client or Owner.

19. **PAYMENT TERMS.** Client agrees to pay each and every one of TEC's invoices upon receipt, time being of the essence. All invoices must be paid within 45 days of receipt of invoice. Client agrees that notwithstanding the presence of a pay-when-paid clause in any other Order issued by Client, this provision shall control. If Client reasonably objects to all or any portion of an invoice, Client shall notify TEC in writing within 10 days from the date of receipt of TEC's invoice, give reason for the objection, and pay that portion of the invoice not in dispute. Failure of Client to provide such written notice within the allowed 10-day period shall be deemed to be a waiver of all objections to that invoice. TEC may suspend any and all of the Services if payment of any invoiced amount not reasonably in dispute is not received by TEC within 60 days from the date of TEC's invoice.

20. **GOVERNING LAW.** TEC's performance of Services shall be governed by the laws of the State of Georgia.

Each of the parties acknowledges that it has had an opportunity to review these Standard Terms and Conditions and negotiate TEC's performance of Services.

21. **PRIORITY.** The parties agree that the provisions of the T&Cs shall control and govern over any Orders or Contracts provided to TEC by Client, and that Orders may be issued by Client to, and accepted by, TEC without altering the terms hereof, regardless of any contrary language appearing therein, unless the parties specify in writing that such contrary term(s) apply to the Services which are the subject of such Orders.

22. **SURVIVAL.** All of Client's obligations and liabilities, including, but not limited to, its indemnification obligations and limitations, and TEC's rights and remedies with respect thereto, shall survive completion of the Services. If TEC provides Services to Client that the parties do not confirm through execution of a written acceptance of a Proposal or other writing the obligations of the parties to indemnify each other and the limitations on liability established in these Standard Terms and Conditions apply to such Services as if the parties had executed an agreement in writing.

23. **SEVERABILITY.** In the event any T&C provision is deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect, and the invalid or unenforceable provision shall be interpreted and enforced as closely as possible to the intent of the parties.

24. **ASSIGNMENT.** TEC's provision of Services may not be assigned by either party without the prior written permission of the other however Client specifically acknowledges and agrees that TEC may subcontract portions of the Services to specialty consultants, other MEP consultants, its affiliated companies and/or utilize employees of its affiliated companies in performing the Services without the written approval of Client.

25. **ENTIRE AGREEMENT.** These Terms and Conditions are an integral part of any TEC proposal and TEC's performance of Services and constitute the entire agreement between the parties and supersede any previous written or oral contracts, promises or negotiations and can be changed only by a written instrument signed by both parties.

26. **DEFINITIONS.** These terms will have the following meanings when used in herein and in any Proposal:

- a. AAA – American Arbitration Association.
- b. Arbitration Rules – The Commercial Arbitration Rules of the AAA.
- c. Claim(s) – All claims, causes of actions, suits, arbitrations, administrative proceedings, and demands

for any and all damages, injunctive or any other relief based upon any cause of action whatsoever.

d. Deliverables – The information to be produced and transmitted by TEC to Client as generally defined in Section II of a Proposal.

e. Division 21, 22, 23, 26, and 28 Specifications – The MEP construction specifications as identified in a Proposal.

f. Indemnitee(s) – Thompson Company, Inc., TEC, its subsidiaries, affiliates and subcontractors, including its respective officers, directors, employees, principals, partners, agents, successors and assigns.

g. Information to be provided to TEC by Client – The specific information which must be provided to TEC in a timely manner to enable TEC to produce and transmit the deliverables defined in a Proposal.

h. Liability(ies) – All liabilities, damages, losses, costs, expenses, settlements, judgments, awards, and governmental penalties and sanctions, including reasonable attorneys' and experts' fees, including those attributable to bodily injury (including death), personal injury and property damage.

i. Mediation Rules – The Commercial Mediation Rules of the AAA.

j. Order(s) – any order or other form writings issues or signed by the parties, such as purchase orders, contracts, or work orders.

k. Services – MEP and Fire Protection engineering design services and related drafting, project management and contract administration and other consulting services as specifically set forth in a Proposal.

l. Standard of Care – The degree of skill and care ordinarily exercised under similar conditions by reasonably prudent MEP engineers performing similar services and practicing in the same or similar locality at the time of the performance as applicable for the specific MEP Design or Contract Administration Services identified in a Proposal.

m. Use or Used – Any distribution, publication, use or reuse of Work Product.

n. Work Product(s) – All documents and deliverables including any engineering design documents, Schematic Design Documents, Concept Design Documents, Conceptual Design Narratives, Design Development Documents, Construction Documents including but not limited to layouts, drawings, floor plans, specifications, load analysis, special systems designs, diagrams, system schematics/flow diagrams, details, circuiting plans, panel schedules, raceways, load calculations, and progress drawings whether a work-in-progress or final and whether paid for or not, including, but not limited to, analyses, drawings, specifications, reports and related documents generated by TEC in performance of Services.