

## STANDARD SUBCONTRACTOR TERMS & CONDITIONS

- 1. Scope of Work:** The labor, materials, equipment and/or services to be furnished by Company ("Work") on a specific job shall be set forth in a Purchase Order ("PO"). Company shall not be authorized to perform any Work on the specific project until the PO is signed by both Company and Client. The PO shall include and incorporate these Terms and Conditions of the Master Subcontractor Agreement ("Master Terms") by reference. The PO with the incorporated Master Terms shall constitute the final, entire, integrated agreement between Company and Client related to the subject matter of the PO, and shall supersede all understandings, writings, proposals, bids, representations and communications, whether oral or written, of any of the Parties prior to the signing of the PO. The PO may contain any additional terms and conditions beyond these Master Terms and Conditions that are applicable to the specific Work. These Master Terms and the PO may be amended or modified only by a writing executed by authorized representatives of Client and Company.
- 2. Contract Documents:** The Contract Documents applicable to the Work shall include these Master Terms, the PO, the Client's contract with the party who hired it ("Customer") ("Client-Customer Agreement") and the plans, drawings, specifications, qualifications and assumptions applicable to the Work and existing at the time the PO is signed ("Contract Documents"). All of the Contract Documents other than these Master Terms are incorporated by reference herein. Company and Client agree to be bound by the terms and conditions of the Client-Customer Agreement which are related to the Work with Client having all rights, remedies and privileges against Company which are afforded Customer against Client in the Client-Customer Agreement.
- 3. Standard of Care:** Company shall perform the Work in a reasonable, workmanlike manner, in accordance with all applicable industry standards and any warranties provided by Company or the manufacturers supplying the materials or equipment that are part of the Work. The Work shall be in strict accordance with the Contract Documents and shall comply and conform with all applicable laws, ordinances, regulations, rules, statutes, building codes and standards. Company warrants that all materials used are new and that the Work shall not be defective in any manner, and Company shall repair or replace defective Work or Work otherwise not complying with this Article 3 which defect is discovered within two (2) years of substantial completion of the Work. In addition, Company shall comply with all warranty obligations related to the Work that Client owes to its Customer in the Client-Customer Agreement.
- 4. Payment:** Company shall issue invoices to Client for the Work completed in a given pay period. Client shall pay Company for all Work accepted and approved by Client within seven (7) days of Client's receipt of payment for the Work from Customer. Payment by Customer to Client for the Work is an absolute condition precedent to Client's obligation to pay Company for that Work. Client may withhold or offset any payment, in whole or in part, to Company due to Company's failure to: a) perform Work in accordance with the Contract Documents; b) perform Work in a reasonably diligent manner; c) repair or correct Work that is defective or not otherwise approved or accepted; d) reimburse Client for damages, liabilities or expenses, including reasonable attorney's fees, that Client has paid on behalf of Company for any reason; e) be able to complete the Work for the remaining balance of the PO price; and f) resolve any claims with its subcontractors or suppliers. To the extent there are insufficient funds to withhold from Company on a specific PO, Client may withhold or offset funds due Company under a different PO to satisfy this obligation.
- 5. Price:** Company's price set forth in the PO ("Price") is firm and is based upon Company's review of the Contract Documents, the existing conditions of the project site and existing buildings, and the Company's understanding of the climate, weather conditions, and typical physical site conditions affecting projects in the same geographic region. The Price shall not be adjusted for any improper or inaccurate assumptions by Company or Company's failure to reasonably consider these matters. Prior to commencing the Work, Company shall notify Client of any known errors, omissions, inconsistencies in the plans, drawings, or specifications or any known inconsistencies between the existing conditions and any information in the Contract Documents. The Price shall include, and Company shall pay timely, all applicable insurance costs for the Company and its employees; federal, state, and local taxes; and contributions which may be payable under applicable laws, including but not limited to any federal or state unemployment insurance, federal Social Security Act, or other taxes arising out of any sums paid by Client to Company.
- 6. Subcontracting & Assignment:** Company shall not subcontract any of the Work to others or assign any of its obligations or rights under the Contract Documents without prior written consent from Client. Client may demand the right to review the terms and conditions of any approved subcontract or purchase order between Company and subcontractors or suppliers. Company shall incorporate the terms and conditions of the Contract Documents into each subcontract or purchase order and shall obligate its subcontractor or supplier to comply with the same terms and conditions as Company is obligated to under the Contract Documents.

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7. **Company's Responsibility for the Work:** The Company hereby assumes entire responsibility and liability for the Work, including without limitation any and all damage to the Work prior to Work being fully performed, accepted and approved by Client.
8. **Change Orders:** Company shall not perform any additional or extra work without prior written approval from Client. Company shall not be entitled to any additional compensation or any extension of time for any additional or extra work performed by Company prior to receiving written approval from Client. Client may direct Company to perform additional or extra work in writing. Any claim by Company for additional compensation to perform the additional or extra work must be submitted in writing to Client within five (5) days of Company's receipt of the written directive to perform the additional or extra work. Company shall promptly and continuously furnish any labor, materials or equipment included in any request for additional or extra work notwithstanding any dispute over price or other adjustments, which dispute shall be resolved in accordance with Article 15 below. Oral change orders shall have no legal effect and shall not be binding upon Client.
9. **Insurance:** The Company shall comply, at its own expense, with the insurance requirements outlined in Attachments A and B hereto, unless the PO identifies different or other insurance that must be maintained for a specific project. The required types and amounts of insurance shall be procured by Company prior to furnishing any of the Work and Client shall not be obligated to pay Company for any of the Work until Company provides a certificate of insurance showing the existence of all required coverages, the additional insured endorsement page(s), and, if requested, copies of the applicable insurance policies.
10. **Waiver of Consequential Damages:** The Company waives any right to recover consequential, incidental, special, punitive or exemplary damages of any kind from Client for any reason, including without limitation, loss of profits or revenues, loss of use, cost of capital or financing, rental costs etc.
11. **Termination:** If the Company fails to comply with any of the terms and conditions in the PO, Master Terms or other Contract Documents, then Client, after having given Company written notice of its failure to perform and five (5) business days to cure the failure, or diligently commence the effort to cure the failure, shall have the right but not the obligation to supplement Company's effort to perform the Work with Client's forces or others at Company's expense, or immediately terminate the PO upon subsequent written notice to Company. If Company files for bankruptcy, assigns its assets to a creditor or otherwise becomes insolvent, the PO shall terminate immediately, without the need for any prior written notice. Once the PO is terminated, Company shall immediately remove itself, materials and equipment from the project. Upon termination, Company shall not be entitled to payment until the Work is completed by another. If the cost to complete the Work, and any repairs of defects in the Work, exceeds the remaining Price not yet paid to Company, then Company shall not be entitled to any further payment and shall pay Client immediately upon demand the reasonable cost incurred by Client to complete the Work in excess of the remaining unpaid Price. If the cost to complete the Work and repairs of defects in the Work is less than the remaining unpaid Price, then Client shall pay Company the remaining unpaid Price amount after deducting the reasonable cost to complete the Work and any repairs thereto.
12. **Indemnification:** Company shall indemnify, defend and hold harmless, Client, Customer, owner of the project if not Customer, the project architect and its consultants, and anyone whom Client is required to indemnify in the Client-Customer Agreement ("Indemnitees"), from and against any and all claims, damages, losses, liabilities, and expenses, including without limitation, reasonable attorney's fees and expert witness costs, arising out of, concerning or resulting from Company's performance of the Work, or the performance of the Work by Company's subcontractors, suppliers or anyone acting on behalf of Company, except to the extent that the claims, damages, losses, liabilities or expenses were caused by the sole negligence of any of the Indemnitees.
13. **Applicable Law:** The PO and Master Terms shall be governed and interpreted by the applicable laws of the State of Illinois.
14. **Force Majeure:** Company shall bear all risk of loss with respect to any damage to or destruction of the Work due to acts of God, fire, theft, natural disaster, malicious mischief, war, riots, civil unrest, strikes, or other actions beyond Client's control ("Casualties").
15. **Claims:** Company shall submit any claim for additional compensation or time in writing to Client within ten (10) calendar days of discovery of that claim, provided that if Client is required to submit the claim to Customer earlier than required herein, then Company must submit the claim within the time period Client is required to submit it to Customer. If any dispute arises between Company and Client that is governed or otherwise covered by the dispute resolution proceedings in the Client-Customer Agreement, then those dispute resolution procedures shall govern and apply to the dispute. If such procedures do not apply to the subject dispute, then the dispute shall be resolved by litigation filed in the county in which the project is located. If any



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dispute is resolved in litigation or arbitration, then the prevailing party as determined by the judge, jury or arbitrator shall be entitled to recover its reasonable attorney's fees and expert witness expenses from the non-prevailing party.

16. **Severability:** If any provision in the Contract Documents is in violation of any applicable law, then such provision shall be severed from the Contract Documents and all remaining provisions shall be given full legal force and effect to the fullest possible extent.

17. **Waiver:** No provision of the Contract Documents may be waived except by a written instrument signed by Client and Company, and then only to the extent set forth in such instrument. The failure of either Client or Company to enforce any provision of the Contract Documents shall not be construed as a waiver of such provision.

18. **Authorization:** Company and Client acknowledge and represent that all persons signing these Master Terms, any PO and any other Contract Documents are authorized to sign such documents and bind their companies to the legal obligations contained therein.

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### ATTACHMENT A

#### INSURANCE REQUIREMENTS

Subcontractor shall secure, pay for, and maintain, at a minimum, the insurance coverage(s) set forth below, and otherwise as required by Client/Customer, in writing. All coverage(s) required hereby shall be provided by a company or companies lawfully authorized to do business in the state in which Company's Work is performed, having ratings of A-/VII or better in the most recent version of Best's Key Rating Insurance Guide:

- A. Commercial General Liability insurance with limits of liability as set forth in ATTACHMENT B, written on a standard ISO CG 00 01 (10 01) policy form, or an equivalent form, including but not limited to equivalent premises-operations liability, products-completed operations liability, personal and advertising injury liability, and contractual liability coverages. The Commercial General Liability policy shall be endorsed with a per project general aggregate limit written on an ISO Form CG 25 03 or its equivalent; and
- B. Commercial automobile liability insurance, written on a standard ISO business or commercial auto form, or an equivalent form, providing coverage for liability arising out of owned, hired, and non-owned vehicles, with limits of liability as set forth in ATTACHMENT B; and
- C. Worker's Compensation insurance and Employer's Liability coverages as set forth in ATTACHMENT B; and
- D. Completed operations coverage for a minimum of two (2) years after final payment; and
- E. Excess/Umbrella coverages as provided in ATTACHMENT B. The Excess/Umbrella coverage shall be "follow on" coverage to the Commercial General Liability insurance.

The Commercial General Liability, Excess/Umbrella and Commercial Automobile insurance policy(ies) shall name ThermFlo, Inc, the Customer, the owner of the project, the project architect and anyone else whom Client must name as an additional insured in its contract with its Customer, and each of their respective officers, agents, and employees as additional insureds ("Additional Insureds").

The Commercial General Liability policy shall be endorsed in favor of all Additional Insureds on an ISO CG 2010 (11 85) endorsement form or both ISO CG 2010 (10 01) and CG 2037 (10 01) endorsement forms, or endorsement(s) that provide equivalent coverage. The Commercial automobile liability insurance policy shall be endorsed in favor of all Additional Insureds on an ISO CA 20 48 endorsement form or its equivalent. All additional insured coverage shall be written on a primary and non-contributory basis to any other coverage available to the additional insured(s). The required insurance policies shall also: (i) contain a waiver of subrogation in favor of Client; and (ii) thirty (30) days written notice required by all insurers to all Additional Insureds of any alteration or termination in coverage; and (iii) certificates of insurance, Declarations page(s), and copies of additional insured coverages and/or endorsement pages, and other policy documents requested by Contractor/Purchaser evidencing coverages as required; and (iv) shall provide updated documents as set forth in paragraph (iii) above upon each new policy period.

- F. Company waives all rights against Client and Customer for damages caused by fire, or other hazards or causes of loss, to the extent those losses are covered by property insurance required by this agreement or other property insurance applicable to this project or P.O., except such rights as they have, to proceeds of such insurance.



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## ATTACHMENT B

### MINIMUM SUBCONTRACTOR/PROVIDER COVERAGE REQUIREMENTS

#### TYPES OF WORK

Concrete - Level One	Fencing - Level One	Landscaping - Level One
Concrete Coring - Level Two	Fiber - Level Two	Maintenance – Level Two
Crane - Level Two	Fire Protection – Level Three	Mechanical Work – Level Two
Design Work – Level Three*	Fueling – Level Two	Painting - Level One
Directional Boring - Level Two	General Construction - Level Two	Paving - Level One
Electrical Work - Level Two	Ground Penetrating Radar – Level One	Plumbing – Level Two
Estimating - Level One	High/Low Voltage - Level Two	Rigging – Level Two
Equipment Transportation – Level One	Hydro Excavation - Level One	Roofing – Level Two
Excavation - Level Two	Insulation – Level One	Steel Erector Contractor – Level Two

**\*Any contractor providing design work as part of their scope of services must meet Level Three requirements in addition to the Level requirements set for other types of work being provided.**

#### LEVEL ONE Coverage Requirements:

1. Commercial General Liability insurance limits: One Million Dollars (\$1,000,000) per occurrence for bodily injury, One Million Dollars (\$1,000,000) per occurrence for property damage, and Two Million Dollars (\$2,000,000) in the Aggregate. Commercial General Liability shall be endorsed with a per project aggregate limit, as well as blanket contractual coverage, and completed operations coverage for a minimum of two (2) years or through the applicable statute of repose, whichever is longer.
2. Commercial Auto Liability insurance limits: One Million Dollars (\$1,000,000) per occurrence limit.
3. Workers Compensation coverage in the statutorily required amount.
4. Employers Liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000).
5. Excess or Umbrella Liability coverage in the minimum amount of One Million Dollars (\$1,000,000)

#### LEVEL TWO Coverage Requirements:

1. Commercial General Liability insurance limits: Two Million Dollars (\$2,000,000) per occurrence for bodily insurance, Two Million Dollars (\$2,000,000) per occurrence for property damage, and Four Million Dollars (\$4,000,000) in the Aggregate. Commercial General Liability shall be endorsed with a per project aggregate limit, as well as blanket contractual coverage, and completed operations coverage for a minimum of two (2) years or through the applicable statute of repose, whichever is longer.
2. Commercial Auto Liability insurance limits: One Million Dollars (\$1,000,000) per occurrence limit
3. Workers Compensation coverage in the statutorily required amount.
4. Employers Liability coverage with limits of not less than One Million Dollars (\$1,000,000)
5. Excess or Umbrella Liability coverage in the minimum amount of Five Million Dollars (\$5,000,000)

#### LEVEL THREE Coverage Requirements:

1. Professional Liability (Errors & Omissions) coverage with limits of not less than Two Million Dollars (\$2,000,000).

#### CERTIFICATE HOLDER:

ThermFlo, Inc.  
875 Busch Parkway  
Buffalo Grove, IL 60089

#### List the following as ADDITIONAL INSURED for all work performed:

ThermFlo, Inc., the Customer, the owner of the project, the project architect and anyone else whom Client must name as an additional insured in its contract with its Customer, and each of their respective officers, agents, and employees as additional insureds.