

FYFE CO. LLC TERMS AND CONDITIONS – SERVICES (USA)

1. **Applicable Terms.** These terms and conditions govern the sale of design, training, and/or inspection services (“Services”) by Fyfe Co. LLC (“Fyfe”) to Customer as outlined in the Services Quote (“Quote”). All terms and conditions contained in any other oral or written communication, including Customer’s request for proposal(s) or purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and will not be binding on Fyfe, whether or not they would materially alter this document, and Fyfe hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. These terms and conditions, together with the Quote, comprise the complete and exclusive statement of the agreement between the parties (the “Agreement”) with respect to the sale of the Services and supersede any terms contained in Customer’s documents (including any technical specifications) unless any such Customer document is separately signed by an authorized representative of Fyfe. Fyfe’s scope of services may only be increased or decreased upon mutual agreement and equitable adjustment of Fyfe’s compensation and schedule.
2. **Payment.** Customer agrees to pay for the Services in full within thirty (30) days after the date of Fyfe’s invoice unless provided otherwise in the Quote. In the event Customer fails to make any payment to Fyfe when due, Customer’s entire account(s) with Fyfe will become immediately due and payable without notice or demand. Customer will be charged 1.5% interest per month, compounded monthly, on all amounts not received by the due date. If Customer disputes Fyfe’s invoice, only the disputed portion(s) may be withheld from payment, and the undisputed portion(s) shall be paid.
3. **Schedule.** Fyfe shall perform services in accordance with the schedule set forth in the Quote. If the Quote sets forth specific periods of time for rendering Services, or specific dates by which Services are to be completed, and such periods of time or dates are extended or delayed through no fault of Fyfe, Fyfe’s compensation and schedule shall be equitably adjusted.
4. **Customer-Furnished Documents.** Fyfe may use requirements, programs, instructions, reports, data, and information furnished by Customer to Fyfe in performing its Services under this Agreement. Fyfe may rely on the accuracy and completeness of requirements, programs, instructions, reports, data, and other information furnished by Customer to Fyfe. Customer shall, only to the fullest extent permitted by law, waive any claims against Fyfe and its subcontractors, and indemnify and hold Fyfe and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys’ fees and costs) arising from Fyfe’s reliance on Customer-furnished information, except to the extent of Fyfe’s and its subcontractor’s negligent or wrongful acts, errors, omissions, or breach of contract.
5. **Fyfe’s Responsibilities.** Fyfe will perform the Services in accordance with the Quote. The standard of care for all professional services performed by Fyfe shall be the skill and care ordinarily exercised by other members of the profession, providing the same or similar services, under the same or similar circumstances, at the same time and locality as the services provided by Fyfe. The installation, construction, alteration, or repair of any object or structure by Fyfe shall be performed in a good and workmanlike manner in accordance with general industry standards. Interpretations and recommendations made by Fyfe shall be based solely upon information available to Fyfe at the time interpretations and recommendations are made. Fyfe will cause its employees to abide by the safety precautions established by Customer in connection with the work and communicated to Fyfe by Customer.
6. **Customer’s Responsibilities.** Customer will prepare the jobsite as required to enable Fyfe to properly perform the Services. Customer will be responsible for all safety precautions in connection with the performance of the work including providing traffic control and required safety barricades. Customer will be responsible for acquiring and providing access to the jobsite and all other areas reasonably required for the proper performance of the Services, including all requisite rights-of-way, storage, and staging areas. Customer will acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings where the work site is located, including those required for the performance by both Fyfe and Customer of their respective obligations under the Quote. All costs and expenses involved in the performance of the obligations under this Section 6 will be the responsibility of Customer.
7. **Warranties.** Fyfe makes no guarantees or warranties, express or implied, under this Agreement or otherwise, about Fyfe’s professional services. Fyfe warrants for one (1) year from substantial completion of the Services, that all goods delivered hereunder shall be new and free from defects in material or workmanship, and shall conform to the specifications, drawings, or sample(s) specified or furnished, if any, and shall be merchantable and fit for their intended purpose(s). Fyfe warrants that it has good and marketable title to all goods delivered hereunder, and that all goods delivered hereunder shall be free and clear of all claims of superior title, liens, and encumbrances of any kind.
8. **Review of Customer’s Shop Drawings and Submittals.** Shop drawings and submittals prepared by Fyfe shall be subject to the standard set forth in Section 5. If review of a Customer’s shop drawings and submittals are included in the Quote, Fyfe shall review and take appropriate action on the Customer’s submittals, such as shop drawings, product data, samples, and other data, which the Customer is required to submit, but solely for the limited purpose of checking for general overall conformance with Fyfe’s design concept. This review shall not include a review of the accuracy or completeness of details, such as quantities; dimensions; weights or gauges; fabrication processes; construction means, methods, sequences or procedures; coordination of the work with other trades; or construction safety precautions, all of which are the sole responsibility of the Customer. Fyfe’s review shall be conducted with reasonable promptness while allowing sufficient time, in Fyfe’s judgment, to permit adequate review. Review of a specific item shall not be construed to mean that Fyfe has reviewed the entire assembly of which the item is a component. Fyfe shall not be responsible for any deviations by the Customer in the shop drawings and submittals from the construction documents, which are not brought to the attention of Fyfe by the Customer in writing.
9. **Construction Observation.** If construction observation is included in the Quote, Fyfe shall visit the project site at intervals Fyfe deems appropriate, or as otherwise agreed to in writing by Customer and Fyfe, in order to observe and keep Customer generally informed of the progress and quality of the work. Such visits and observations are not intended to be an exhaustive check or a detailed

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inspection of Customer's work. Fyfe shall have no authority to direct Customer's actions or stop Customer's work. Customer shall be solely responsible for construction site safety, the quality of its work, and adherence to contract documents. Except for its own subcontractors and employees, Fyfe shall not be responsible for the acts or omissions of any contractor, subcontractor, supplier, or other person at the project site.

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, FYFE WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, FYFE'S TOTAL LIABILITY FOR DAMAGES IN THE AGGREGATE UNDER THIS AGREEMENT WILL NOT EXCEED THE PURCHASE PRICE PAID FOR THE SERVICES, WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY. WITH RESPECT TO PROFESSIONAL ERRORS AND OMISSIONS ONLY, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TOTAL PROFESSIONAL LIABILITY FOR DAMAGES IN THE AGGREGATE SHALL BE CAPPED AT TEN PERCENT (10%) OF THE TOTAL COMPENSATION ACTUAL PAID TO FYFE UNDER THIS AGREEMENT. THE REMEDIES SET FORTH IN THIS AGREEMENT ARE INTENDED TO CONSTITUTE A COMPLETE ALLOCATION OF THE RISKS BETWEEN THE PARTIES, AND CUSTOMER ACKNOWLEDGES THAT IT IS KNOWINGLY LIMITING THE REMEDIES THAT MIGHT OTHERWISE BE AVAILABLE TO CUSTOMER. BECAUSE THIS AGREEMENT AND THE PRICE PAID REFLECT SUCH ALLOCATION, THE REMEDIES PROVIDED TO CUSTOMER HEREUNDER WILL NOT HAVE FAILED OF THEIR ESSENTIAL PURPOSE EVEN IF THEY OPERATE TO BAR RECOVERY FOR CERTAIN DAMAGES THAT CUSTOMER MAY INCUR.

11. Set-off and Back Charges. Customer will not be entitled to set-off any amounts due to Customer against any amount due to Fyfe from Customer. Fyfe will not be responsible for any back charges unless approved in writing in advance by an authorized representative of Fyfe.

12. Remedies of Fyfe. Any of the following will constitute an event of default which will enable Fyfe, at its option and without liability to Customer, to cancel any unexecuted portion of this or any other order and to exercise any other right or remedy expressed herein or otherwise available at law or in equity: (i) the failure of Customer to make any payment required hereunder when due ("Payment Default") or to perform any other term or condition contained herein; (ii) the insolvency of Customer or its failure to pay its debts as they mature, an assignment by Customer for the benefit of its creditors, the appointment of a receiver for Customer or for the materials covered by this order, or the filing of any petition to adjudicate Customer bankrupt; (iii) a failure by Customer to provide adequate assurance of performance within ten days after a justified demand by Fyfe; or (iv) if Fyfe, in good faith, believes that Customer's prospect of performance under this Agreement is impaired. All rights and remedies of Fyfe herein are in addition to, and will not exclude, any rights or remedies that Fyfe may have at law or in equity. Fyfe's election of any remedy or remedies in the event of a default by Customer will not preclude Fyfe from exercising any other remedy or remedies available to Fyfe for the same or any other default. In the event it becomes necessary to incur any expense for collection of any overdue account, Fyfe's collection charges, including attorneys' fees and expenses, will be added to the balance due and Customer will pay all such charges together with interest thereon from the date incurred in accordance with Section 2.

13. Equal Employment Opportunity. To the extent applicable to Fyfe's activities under this Agreement, Fyfe shall comply with the following laws and regulations: Executive Order 11246 (and its implementing regulations at 41 C.F.R. part 60); the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-250); and Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations at 41 C.F.R. 60-741); and the equal employment opportunity clauses within each of the above regulations, as applicable, are included by reference in this Agreement.

14. Claims and Disputes. To the maximum extent permitted by law, as a condition precedent to commencing a judicial proceeding, a party shall give written notice of their claims, including all amounts claimed, and the factual basis for their claims, to the other party within one (1) year of when the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than one (1) year from the date of substantial completion of Fyfe's Services under this Agreement. As a condition precedent to commencing a judicial proceeding, a party shall first submit its claims to non-binding mediation through and in accordance with the rules of the American Arbitration Association. In case of litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

15. Termination. This Agreement may be terminated without further obligation or liability by either party, with or without cause, upon 30 days written notice to the other. Fyfe shall be entitled to Compensation for all Services performed prior to the termination of this Agreement.

16. Miscellaneous. No part of this Agreement may be changed or cancelled except by a written document signed by Fyfe and Customer. As used in this Agreement, "including" and its variants mean "including without limitation" and its variants. No course of dealing or performance, usage of trade or failure to enforce any term will be used to modify the Agreement. The headings used in this Agreement are for general ease of reference and are not a part of this Agreement. If any of these terms is unenforceable, such term will be limited only to the extent necessary to make it enforceable, and all other terms will remain in full force and effect. Customer may not assign this Agreement without Fyfe's prior written consent. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed to any third party. A waiver of the terms and conditions or breaches of this Agreement shall not operate as a subsequent waiver. Notwithstanding completion or termination of this Agreement for any reason, all representations, warranties, limitations of liability, and indemnification obligations contained in this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.