

RESIDENTIAL TERMS AND CONDITIONS 4-8-2021

Section 1. Force Majeure

If (a) the Contractor is delayed at any time in the commencement or progress of the work by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, pandemic, epidemic, government actions resulting from a pandemic or epidemic, now existing or future orders of any governmental authority that impacts Contractor's ability to operate at full capacity or at all, or other causes beyond the Contractor's control including unanticipated weather conditions (each, a "Force Majeure Event"), or (b) the Contractor is delayed in the commencement or progress of the Work by reason of labor or material shortages due to Contractor's fulfilling other work performed under agreements predating this contract which other work was adversely affected by one or more Force Majeure Events, then the schedule and completion date shall be adjusted by Change Order for such time as the completion date is so extended, as a result of the delay, and without decrease in the contract sum. Contractor's request for an extension of time due to the lost days arising from the above referenced causes of delay shall not be unreasonably withheld, and Contractor will not be held financially responsible for any delays in the schedule of the work or the schedules of other contractors or suppliers as a result of any of the aforementioned causes of delay.

Section 2. Disputes

Any claim arising out of or related to this Agreement, except those waived in this Agreement, shall be subject to arbitration administered by the American Arbitration Association in accordance with its Construction Mediation Procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. The award of the arbitrator(s) will be binding on each party. The judgment upon the award rendered by the arbitrator(s) may be entered and enforced in any court having jurisdiction thereof.

Section 3. Damages

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts Owner may request in writing that Contractor make changes to the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, so long as the Contract Sum and the time are adjusted accordingly. Contractor, prior to the commencement of such changed or revised Work, shall submit to Owner written copies of a claim for adjustment to the Contract Sum and time for such revised Work in a manner consistent with requirements of the Contract Documents. No modification with respect to the Work will be binding on Contractor unless the same is in writing and signed by an authorized representative of Contractor.

Section 4. Contract

This Agreement provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project (together, the "Work"). If there is any dispute between this Agreement and any other terms, then the terms and conditions of this Agreement will control. This Agreement may only be amended by a separate writing signed by Contractor and Owner.

Section 5. Contract Documents.

The Contract Documents consist of (1) this Agreement; (2) modifications issued after execution of this Agreement; and (3) plans, drawings, specifications or other technical data prepared for the Project and signed by the parties hereto or identified by the Architect.

Section 6. Payment Terms.

Owner will pay the Contractor in current funds for performance of this Agreement. Contractor does not accept the risk of Owner's receipt of payments from any source, and in no event will payments to Contractor be based upon or subject to, Owner's receipt of payment from Owner or Owner's lender for Contractor's Work.

a) Quotes. Any quotation that Contractor makes, in whatever form, regarding its products or its services with respect to the Work, unless the same is included in this Agreement, is not binding, but is revocable and subject to change at any time without notice to Owner until such time as it is included in this Agreement.

(b) Progress Payments. Owner shall make progress payments of the Contract Sum to Contractor in accordance with pay applications or invoices made by Contractor to Owner from time to time. Contractor shall submit a schedule of values to Owner prior to submitting Contractor's first application for payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by Contractor. The schedule of values shall allocate the entire Contract Sum among the various portions of Contractor's Work.

(c) Stored Materials. Monthly progress payments to Contractor shall include the value of material stored at the jobsite or an offsite location prior to incorporation into the Work.

(d) Retainage. A five percent (5%) retainage may be held from all progress payments, provided that such retainage shall be reduced to two and a half percent (2.5%) when the Work is fifty percent (50%) complete.

(e) Non-Payment. If the Owner does not pay the Contractor through no fault of the Contractor, within seven (7) days from the due date, then interest will accrue on the unpaid balance at the rate of one and a half percent (1.5%) per month or the maximum rate allowed by applicable law, whichever is lower. Contractor may, upon notice to Owner, stop the Work until payment has been received. If the Work is stopped due to the lack of payment, the Contract Sum may be increased by the amount of Contractor's reasonable costs of demobilization, delay and remobilization.

(f) Final Payment. When Contractor's Work is substantially complete, final payment, constituting the entire unpaid balance of the Contract Sum, including retainage, shall be made by Owner within thirty (30) days following Contractor's issuance of an application for payment. Substantial completion means that the Work has been sufficiently completed in accordance with all Subcontract Documents such that all other Project trades that require the completion of the Work in order to undertake their work could commence to undertake their work (regardless of whether such trades do commence their work).

Section 7. Modifications.

Owner may request in writing that Contractor make changes to the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, so long as the Contract Sum and the time are adjusted accordingly. Contractor, prior to the commencement of such changed or revised Work, shall submit to Owner written copies of a claim for adjustment to the Contract Sum and time for such revised Work in a

manner consistent with requirements of the Contract Documents. No modification with respect to the Work will be binding on Contractor unless the same is in writing and signed by an authorized representative of Contractor.

Section 8. Warranty.

Contractor warrants the Work against defects in materials or workmanship for a period of one (1) year from the date of substantial completion. If warranted material or workmanship is defective, then Contractor's obligation will be limited to, in Contractor's sole discretion, repairing, replacing, crediting or refunding the defective material or workmanship. Repaired or replaced materials or workmanship are warranted only for the remainder of the original warranty period.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS. WITH THE EXCEPTION OF THIS WARRANTY, CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

This warranty will not apply if any part of a purportedly defective Work (a) is altered, modified or repaired by anyone other than an authorized representative of Contractor; (b) is not maintained in accordance with Contractor's instructions; (c) is altered, covered or modified by the work of any other subcontractor or contractor of Owner after it is completed by Contractor; or (d) is improperly maintained, repaired, misused, or damaged by force majeure, as described in Section 5 of this Agreement, or if the failure is due to the fault or negligence of anyone other than an authorized representative of Contractor.

Section 9. Limitation of Liability.

Contractor's liability for any and all claims arising out of or in connection with the Work will be limited to actual damages of Owner and will under no circumstances exceed the Contract Sum. Under no circumstance will Contractor be liable to Owner or to any other person under this Agreement for any special, incidental, indirect, consequential; liquidated or punitive damages, including without limitation damages based on lost goodwill, lost sales or profits, delays in delivery, work stoppages, production failures, impairment of other goods, or any other cause, whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.

Section 10. Termination

(a) Termination by Contractor. Contractor may terminate this Agreement for nonpayment of amounts due under this Agreement for thirty (30) days or longer. In the event of such termination by the Contractor, or in the event of a termination by Contractor for any other reason which is not the fault of Contractor, subcontractors, suppliers or their agents, employees or other persons performing portions of the Work under contract with the Contractor, Contractor shall be entitled to recover from Owner payment for the Work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

(b) Termination by Owner. If Contractor repeatedly fails or neglects to carry out the Work in accordance with the Contract Documents or otherwise to perform in accordance with this Agreement and fails to commence and continue correction within a ten

(10) day period of receipt of written notice from Owner, Owner may, by written notice to Contractor, terminate this Agreement and finish the Contractor's Work. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Contractor's Work and other damages actually

incurred by the Owner and not expressly waived, such excess shall be paid to Contractor. If such expense and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. A termination by Owner under this Section 9(b) voids Sections 7 and 10 of this Agreement.

(c) Termination for Convenience. Either party may terminate this Agreement at any time for any reason upon ninety (90) days prior written notice to the other party. Upon termination of this Agreement, Contractor will cease all performance of the Work. Owner will compensate Contractor in full for any Work executed in accordance with this Agreement up to the time of cancellation or termination of this Agreement, including the cost of supplies, materials and other expenses incurred, and if such termination is made by Owner, Owner will compensate Contractor for Contractor's reasonable overhead and profit.

Section 11. Indemnity.

Contractor agrees to indemnify and hold harmless Owner, Architect, and their respective directors, officers, managers, employees, agents, shareholders and members, (each, an "Indemnified Party"), and to defend any Indemnified Party against any claims, damages, losses and expenses brought against or incurred by any Indemnified Party arising out of Contractor's Work under this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of Contractor, the Contractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

Section 12. Insurance.

The Contractor agrees to carry at its expense, commercial liability, property damage and bodily injury liability insurance protecting the Owner against all claims and liability for injuries to persons and for damages to public or private tangible property arising out of or in connection with the Work under this Agreement in amounts appropriate to its business.

Section 13. Taxes.

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded.

Section 14. Miscellaneous.

(a) Severability. If any provision of this Agreement is held to be invalid or unenforceable, then the provision will be enforced to the maximum extent permissible and the other terms and conditions of this Agreement will remain in full force and effect.

(b) Survival. All provisions of this Agreement that, by their nature, are intended to survive the termination, cancellation, completion or expiration of this Agreement, including without limitation any indemnities and limitations of liability, will continue as valid and enforceable obligations of the parties despite any such termination, cancellation, completion or expiration, except as set forth in Section 9(b) above.

(c) Assignment. Neither party shall assign this Agreement without the prior written consent of the other party.

(d) Waiver. No waiver by Contractor of any provision under this Agreement is effective unless explicitly set forth in writing, with a specific reference to this Agreement, and signed by Contractor. No failure to exercise, delay in exercising, or partial exercise of any right or remedy under this Agreement by Contractor will serve to waive or preclude any other or further exercise of such right or remedy, and no signed and written waiver by Contractor will operate to waive any failure, breach or default not expressly identified in such waiver.

- (e) If weather prohibits grouting of precast at time of erection and provisions are not made by the customer to protect grout from freezing or washout, KPI reserves the right to return at a later date to complete this operation as weather permits.
- (f) KPI will not be responsible for any damage to plank after erection.
- (g) Prices quoted herein are subject to change after 60 days from quote date. Product availability 3 - 4 weeks after acceptance and return of signed quotation to KPI.
- (h) Upon receipt of your order for the above-described work, we will send you an anticipated fabrication start date. We highly recommend that you schedule a visit to our production facility the day after fabrication commences in order to view your product and finalize acceptable finish requirements.

In the event you choose not to perform the review as recommended, then we will not assume responsibility for any repairs or replacements on delivered products related to minor imperfections and variations which might occur during fabrication and which could have been addressed prior to shipping.

- (i) This specific job quotation will become a binding contract between Kerkstra Precast, Inc. and the purchaser listed on this quotation.
- (j) KPI will not proceed on the project until this Specific Job Quotation is signed and returned to KPI
- (k) No back charges will be accepted or paid without prior written authorization by KPI of work being performed. If notification of any issues is not received in writing within 72 hours of occurrence, back charge will not be valid.
- (l) It is recognized that Contractor may be utilizing employees affiliated with the International Union of Brick Layers and Allied Craftsmen Laborers' International Union of North America in connection with the performance of its work contemplated by this Agreement. Contractor hereby consents to the use of such employees in connection with the performance of Subcontractor's Work under this Agreement.

Section 15. Governing Law.

This Agreement shall be interpreted and construed under the laws of the State of Michigan. Any dispute arising under this Agreement shall be filed and maintained in the Circuit Court for the County of Kent Michigan or the Federal District Court for the Western District of Michigan. The parties specifically consent and submit to the exclusive jurisdiction of such courts and waive any objections either may have based on improper venue or forum non conveniens of any proceeding in any such court. In any adversarial proceeding by which a party seeks to enforce its rights under this Agreement, the prevailing party will be awarded all reasonable costs incurred in the investigation and prosecution of such proceeding, including reasonable attorneys' fees.

Section 16. Additional Terms.

- (a) Should Owner become insolvent or Owner's credit become impaired, should Owner fail to make payments in accordance with the terms herein, or should Owner otherwise materially breach this agreement, KPI may elect to invoke any one or all of the following remedies: (1) Immediately stop the work; (2) Require payment in advance of delivery or scheduling of work; (3) Accelerate and recover all balances owed. In the event KPI elects such remedies, Owner agrees to pay all costs associated therewith, including remuneration of interest on past due balances, reimbursement for reasonable attorney's fees, and payments for all costs and collection associated therewith.
- (b) Plank length is determined by adding the amount of plank bearing to the inside-to-inside dimension of your bearing walls. The plank bearing surface typically required for concrete and masonry is 3-1/2 inches. For masonry bearing, a bond beam is required. Note that a multi-monomer plastic hardboard strip (or approved equal) is placed on wall 1/2-inch form

the inside edge to ensure proper plank bearing.

- (c) A mechanical connection between the plank and your structure may be required. Shown here are drilled bent bar connections which are provided by your erector. Your local producer may use other connections types. Connections will be shown on the erection drawings.
- (d) In cold weather areas, insulation should be placed around the entire perimeter between the plank and the wall and at the entrance between the plank and the topping edge. Insulation is provided and installed by the home builder.
- (e) A commercially available water-proofing membrane is recommended to be installed on top of the plank prior to placement of concrete topping. The membrane should be capable of flexibly bridging the insulation and small gaps around the perimeter walls. It should return up the walls and terminate at the top of the topping slab.
- (f) The membrane is necessary to prevent water from penetrating the plank, which could cause deterioration of plank reinforcing and concrete in the future years. It will also act as a vapor barrier in cold climates where the area below the floor is heated.
- (g) Quality, high-strength, air-entrained concrete, placed by qualified personnel, is the final important step to your project. Minimum concrete topping thickness is 2 inches and must be positively sloped to the garage door to ensure drainage and prevent water from ponding on the floor. If interior drains are used, the concrete should be sloped to the drains, and drain fixture details should be capable of draining moisture from the membrane
- (h) Reinforcing is recommended in the topping, and a concrete sealer should be applied after curing.
- (i) Additional reinforcing, such as mesh, properly placed in the topping at the door entrances, can minimize the possibility of a crack developing in the topping along the base of your overhead door.
- (j) At steel beams, plank bearing must extend at least 1 inch past the beam-web carrier to prevent beam rotation. A weld plate, or other mechanical connection, is required. This detail should be shown on the erection drawing.
- (k) Masonry should not be installed above plank-bearing elevation prior to plank erection, as it is highly susceptible to damage during plank erection.
- (l) In poured concrete wall situations, at least one edge lip (above plank bearing elevation) on the plank bearing wall has to be left down to provide ample space for erection tolerances."
- (m) Plank keyway joints must be grouted.

