

TERMS AND CONDITIONS

DEFINITIONS:

1. "Buyer". The term "Buyer" means the person or entity that purchases the services offered by STEELPLANIT. The Buyer presents itself to STEELPLANIT as either a professional steel erector, as a metal building manufacturer, or as a general contractor who shall engage a metal building manufacturer and/or a professional steel erector. A Buyer who fraudulently represents itself shall forfeit all assurances, guarantees and warranties provided by this Agreement.
2. "Change". The term "Change" means any variation, alteration or other divergence from the online order information for the Project submitted by the Buyer.
3. "Damages". The term "Damages" means any and all claims, demands and causes of action resulting from any accident, incident or occurrence arising out of, incidental to or in any way resulting from the use of the Design Documents or the Engineering Services, of whatever nature, whether in contract or in tort, that have accrued or may ever accrue to the Buyer or any other Person, including, but not limited to, liquidated, consequential, incidental or special damages, loss of profits, attorneys' fees and court costs.
4. "Design Documents". The term "Design Documents" means the Drawings, Details and Specifications prepared by the Engineer that define the pre-engineered metal building system based upon the Buyer's identified requirements. The Design Documents are commonly referred to as Erection Drawings.
5. "Engineer". The term "Engineer" means STEELPLANIT or the engineer employed by STEELPLANIT.
6. "Engineering Services". The term "Engineering Services" means the services to be provided by the Engineer as specified in this Agreement.
7. "Fabrication Drawings." The term "Fabrication Drawings" means the drawings that describe the material required to fabricate individual structural items. Fabrication Drawings produced by STEELPLANIT shall include the rigid frame columns and rafters, endwall columns and rafters, welded and loose clips, jambs, headers, and flange braces. Drawings or lists for punching purlins or girts are not an included service that is provided by STEELPLANIT.
8. "Owner's Agent." The term "Owner's Agent" means an individual or entity that has a direct contract with the Project Owner and is thereby contractually obligated to represent the Owner's interests. In construction contracts, an Owner's Agent is typically the Project Architect and/or Project Engineer.
9. "Person". The term "Person" means any individual, executor, administrator, business entity, trust or estate.
10. "Place of Performance". The term "Place of Performance" means Bell County, Texas.
11. "Pre-Engineered Metal Building." The term "pre-engineered metal building" or "PEMB" means the complete and integrated structural system that includes steel columns, rafters, purlins, girts, miscellaneous framing, roof and wall sheeting, and the fasteners and/or welds required to make all connections for such.
12. "Project". The term "Project" means the total of all structural, electrical, plumbing, and mechanical systems that are required for the construction of a complete building.
13. "Project Architect." The term "Project Architect" means an architect who is engaged by the Project Owner and serves as a representative of the Project Owner.
14. "Project Drawings". The term "Project Drawings" means any drawing, illustration or other visual interpretation of the Project prepared by the Buyer, Project Architect, Project Engineer, or other Person.
15. "Project Engineer." The term "Project Engineer" means an engineer who is engaged by the Project Owner and serves as a representative of the Project Owner.
16. "Project Specifications." The term "Project Specifications" means the specified material quality and/or material performance, specified Contractor performance, and the specified performance of any Persons associated with the Project. These Project Specifications may be developed by the Owner or any of the Owner's representatives.
17. "Purchase Request." The term "purchase request" means the purchase form provided on the website that is used by the Buyer to request engineering services from STEELPLANIT. Purchase requests shall not be effective until accepted by an officer of STEELPLANIT, and purchase requests may be refused by STEELPLANIT for any reason. After a Purchase Request has been accepted by an officer of STEELPLANIT, the terms of this Agreement form a binding contract.
18. "STEELPLANIT". The term "STEELPLANIT" means Steelplanit, LLC, a Texas limited liability company.
19. "Website". The term "Website" means www.steelplanit.com.

20. "Work". The term "Work" means the hoisting, connecting, welding, bolting, fastening, rigging and other tasks associated with the erection and assembly of the fabricated steel components involved in the construction of the metal building based upon the Buyer's identified requirements.

BASIC SCOPE OF SERVICES

The **Engineer** provides Engineering Services to its online customers by providing a menu-driven website (www.steelplanit.com) to define the critical information that the **Engineer** requires to produce the design of a complete metal building system. The services provided by the **Engineer** are limited solely to Engineering Services and shall not include any material goods other than the Design Documents. The **Buyer**, by execution of this Agreement, agrees that the terms and conditions defined in this Agreement shall control the actions, duties, responsibilities and liabilities of the **Engineer** and the **Buyer**.

Under this Agreement, the **Engineer** agrees to provide the following:

1. The **Engineer** shall design a complete pre-engineered metal building system (PEMB), relying on the information and identified requirements provided by the **Buyer**. The design shall include the steel rigid frames, light-gage purlins and girts, bearing frame endwalls, cable bracing, and other miscellaneous light-gage material and the fasteners required for installation and the roof and wall sheeting and the fasteners required for installation.
2. The **Engineer** shall prepare Design Documents under the direction and bearing the seal of an engineer licensed to practice in the State in which the project is located.
3. The **Engineer** agrees to provide to the Buyer three (3) copies of the Design Documents. Additional copies may be ordered online as an "Additional Service." At the option of the **Buyer**, singular copies of fabrication drawings and/or the design calculations may be separately purchased by the **Buyer**.
4. The **Engineer** shall review test reports and material data submitted by the **Buyer** to assure conformance to the Design Documents for material quality and workmanship.
5. Upon completion of the Work described in this Agreement, and upon completion of all inspections and the **Engineer's** acceptance of all reports, the **Engineer** shall provide a letter indicating whether the Work conforms to the Design Documents.
6. By entering this Agreement the **Buyer** acknowledges that, in some States, if the Work is defective or does not conform to the Design Documents, the **Engineer** is required by Law to inform the local jurisdiction of the deficiency.
7. All services not specifically listed above are specifically excluded from the scope of this Agreement.

Services and Responsibilities that are not specifically listed in the paragraph above specifically excluded from this Agreement. Services and Responsibilities that are specifically excluded are , but are not limited to:

1. The **Engineer** is not serving as the "Engineer of Record," Project Engineer, or "Project Administrator," and is not responsible for the content or accuracy of any documents submitted by any other party. The **Engineer is not** an Owner's Agent.
2. The **Engineer is not** responsible for the design of any building system other than the pre-engineered metal building as described in this Agreement.
 - a. The performance of any structural or non-structural items, other than the steel structure of the pre-engineered metal building, is specifically excluded in this Agreement.
 - b. The performance of accessories to the Project building, such as personnel doors, overhead doors, windows, vents or any other component is specifically excluded in this Agreement.
3. The **Engineer is not** responsible for the weather-tightness of the Project.
4. The **Engineer is not** responsible for the design of the anchor bolts for the pre-engineered metal building. The responsibility of the **Engineer** shall be limited to the calculation of the required number and diameter of anchor bolts. The determination of the depth of embedment into the concrete foundation shall be the exclusive responsibility of the Owner or any foundation designer selected by the Owner, the **Buyer**, or the General Contractor.
5. The **Engineer is not** responsible for the design and detailing of the PEMB trim. The **Buyer** acknowledges that trims are not structural members and are specifically excluded from the Design Documents. The **Buyer** agrees to refer to the instructions provided by the manufacturer of the sheeting and trim to determine the proper trim material and installation methods required.
6. The **Engineer is not** responsible for project management or for directing the Work or any other aspect of the construction or management of the Project for the **Buyer**, the Owner, the Contractor or subcontractors.

- a. The **Engineer** shall have no authority or responsibility in connection with the Contractor's or any subcontractors' timely performance, scheduling, sequencing, quality, functionality, completeness or costs incurred during construction of the Project. The **Engineer** shall not have the authority to stop the Work, but shall inform the **Buyer** if the material quality submittals or inspections indicate that the Work does not conform to the Design Documents.
 7. The **Engineer** is not responsible for payment of any fees to public entities or to any entity that is not a direct party to a contract with the **Engineer**.
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BUYER'S DUTIES

In addition to the duty to pay for services, the **Buyer** agrees to perform, provide, or permit the following:

1. The **Buyer** shall provide data to define the project dimensions, any Owner-specified requirements, identify all loads that will be applied on the Project structure, and will identify any issues that will limit the design solutions available to the **Engineer**. The names and contact information for the Owner/Owner's Agent, Architect, Project Engineer, General Contractor, subcontractors, and other project professionals shall be included with the project data provided to the **Engineer by the Buyer**.
 - a. The **Buyer** shall, at the time of online purchase of these Engineering Services, notify the **Engineer** if the Project is subject to any Project Specifications as required by a Project Architect or Project Engineer.
 - i. The **Buyer** shall promptly provide a copy of any Project Drawings or Project Specifications to the **Engineer** for review. The **Engineer** maintains the right to renegotiate or to reject the **Buyer's** purchase request upon review of the Project Drawings and Project Specifications.
2. The **Buyer** represents to the **Engineer** that the PEMB shall be founded on an adequately designed concrete foundation.
3. The **Buyer** shall arrange for the **Engineer** or the **Engineer's** agents to have access to the Project site if necessary to perform the Engineering Services under this Agreement.
4. The **Buyer** shall determine the quantities of all material that is necessary to construct the pre-engineered metal building system.
 - a. If requested by the **Buyer**, a sample Bill of Materials (BOM) shall be provided at no charge. This sample BOM shall be an approximation of the material that will be required to construct the PEMB, but the BOM is provided only on an AS-IS basis to the **Buyer** with no guarantee of its accuracy.
 - i. THE ENGINEER SHALL NOT BE LIABLE FOR INACCURATE MATERIAL ORDERS IF THE SAMPLE BOM IS USED BY THE BUYER.
 - b. If the **Buyer** uses the BOM provided by the **Engineer**, the **Buyer** agrees to hold the **Engineer** harmless if any deficiencies are discovered in the BOM.
5. The **Buyer** shall be responsible for the fabrication of the PEMB described in the Design Documents, whether by contracting with a fabricator for shop fabrication of field-bolted designs or by field-fabricating a "weld up" design at the Project site.
 - a. The **Buyer** shall assure that all building accessories purchased for the PEMB, such as personnel doors, overhead doors, windows, vents, and any and all other components of the PEMB are adequate for the design loads identified in the Design Documents.
 - b. The **Buyer** shall assure that all welding processes are performed by mechanics that are certified for the welds required by the Design Documents.
6. The **Buyer** shall engage or assures that the Owner shall engage an independent inspection agent who shall visually inspect the weldments as required by AWS D1.1 and any Project Specifications.
 - a. The **Buyer** shall submit welding certificates to the inspection agent.
 - b. The **Buyer** shall cause the weld inspector to submit a written report of the inspection to the **Engineer**.
 - c. If requested by the **Engineer**, the **Buyer** shall or shall cause the weld inspector to submit weld certificates to the **Engineer**. In the event the **Buyer** fails to provide weld certificates to the **Engineer**, the **Engineer** reserves the right to withhold a letter indicating that the Work conforms to the Design Documents or shall issue a letter indicating non-conformance, and the **Engineer** shall have no further liability to the **Buyer** unless and until the **Buyer** provides the certificates requested.
7. The **Buyer** shall, upon providing all Building Code information and loading information to the **Engineer**, assure that no loads in excess of the design loads are placed on the PEMB structure during erection.
 - a. The **Buyer** shall inform the Owner of the design loads for which the PEMB is designed and shall advise the Owner of any conditions, such as future mechanical equipment, that may exceed the design loads. The **Buyer** shall inform the Owner that loads on the PEMB structure in excess of the design loads indicated on the Design Documents are not permitted by contract and/or by Law. The **Buyer**

- shall hold the **Engineer** harmless for any loads placed on the PEMB structure that are in excess of the design loads.
8. The **Buyer** shall assure that all structural elements of the Project are completely installed as required by the Design Documents.
 9. If defective Work by the **Buyer**, Contractor, subcontractor, or steel erector requires additional design, review, or inspection, the **Buyer** shall recover any additional engineering fees from the Contractor, subcontractor, or erector on behalf of the **Engineer**. Any additional fees shall be paid to the **Engineer** directly from the **Buyer**. In the event the **Engineer** receives payment from the Contractor, subcontractor or erector, no contractual relationship shall be created thereby.
 - a. The **Buyer** shall immediately bring any defective Work to the attention of the **Engineer**. The need for any additional design or redesign shall be reviewed by the **Engineer**. The **Engineer** shall provide a written estimate of any additional engineering fees required to repair the error, and the **Buyer** shall make payment of the additional fees to the **Engineer** before the revised Design Documents are issued.

DESIGN FEES

In consideration of receiving benefits derived from the engineering services listed above, the **Buyer** agrees to pay the **Engineer** at the time that engineering services are purchased. Payment may be made by either one of two three methods:

- Pay online with an approved credit card.
- Pay via mailed cashier's check
- Pay via company bank check

If Additional Services are agreed upon, the fees for additional services shall be paid to the Engineer before any additional documents are submitted or services are rendered.

ADDITIONAL SERVICES & FEES

Services beyond those listed in the Basic Scope of Services shall be specified in writing and agreed to by co-signature prior to commencing the additional work. Any additional fees shall be quoted on a per-job basis.

PROJECT INFORMATION

The Engineering Services shall be based upon information provided to the **Engineer** by the **Buyer**, and the **Engineer** shall not be responsible for the accuracy of such information or for any omissions or failure to provide other information that could be pertinent to the Engineering Services. The responsibility of the **Engineer** is limited to conformance to applicable codes, statutes, and ordinances.

The **Buyer** is solely responsible for providing the correct building code information and dimensions of the Project. The **Buyer** shall immediately notify the **Engineer** if the **Buyer** discovers that any information concerning the Project is incorrect.

If the **Buyer** discovers an error after the Design Documents have been produced, then the **Buyer** is responsible for full payment of the **Engineer's** fees, even though the Design Documents are not used for construction of the Project or for submission to the local jurisdiction. In this case, the **Buyer** shall be required to reorder the design and pay the full price for new Design Documents unless an alternate proposal is negotiated with and agreed to by the **Engineer** in a signed written agreement.

Any Change to the online order information must be approved in writing by both parties prior to starting work on the Change. If both parties cannot agree to a material Change, either party may terminate the Agreement by giving written notice to the other party, and the **Buyer** shall be liable to the **Engineer** for any fees or reimbursable expenses incurred by the **Engineer**.

DEGREE OF CARE

The **Engineer** shall incorporate the degree of care and skill customarily exercised by reputable Engineers who practice under similar circumstances in the county of the place of performance. No other warranty, expressed or implied, is made or is intended by this Agreement. The **Buyer** agrees that "perfection" is not the standard of

professional performance, and that the **Engineer** shall remedy any material error that is discovered in the Design Documents within a commercially reasonable time upon receiving actual notice of any such error.

The **Engineer** shall only be responsible for producing Design Documents based on the information provided by the **Buyer** in writing. The data that the **Buyer** inputs on the Website, via written instructions or by menu choices, shall be deemed to fulfill the requirement for written information. Verbal information communicated by the **Buyer** shall not be considered to determine whether the **Engineer** has correctly performed the Engineering Services.

STANDARD OF DESIGN

The Engineering Services shall be performed in accordance with the governing building code design provisions in the locality in which the Project is located. These provisions provide minimum standards for the design of buildings to protect life and safety. The design code provisions are not intended to limit damage, maintain operations of the occupant, or provide for easy repair. If the **Buyer** requires a higher standard for design than provided by the applicable building code provisions, such requirements shall be clearly stated in writing and submitted to the **Engineer** prior to entering into this Agreement, and the content of such requirements shall be a material part of this Agreement.

The **Engineer** shall perform unique design calculations for the each PEMB design that is purchased by the **Buyer**. The Design Documents that the **Engineer** produces shall describe to the **Buyer** the type, quantity, quality, and size of the structural elements required to construct the PEMB.

If SPEEDY-BOLT or READY-WELD designs are purchased from STEELPLANIT, the **Buyer** agrees that the **Engineer's** predefined connections shall be constructed and that these connections may not be altered without the written approval of the **Engineer**.

FABRICATION ERRORS

The **Buyer** agrees that minor fabrication errors are normal occurrence and that minor onsite corrections by the Erector is standard industry practice. In these cases, the Erector may use drift pins to align bolted connections. In these cases, the **Buyer** agrees that the **Engineer** and the Fabricator shall not be liable for Damages.

If fabrication drawings are not purchased from STEELPLANIT, then the **Engineer** shall not be responsible for any fabrication errors.

If fabrication drawings are purchased from STEELPLANIT, the **Buyer** must demonstrate to the **Engineer** how and where the fabrication drawings are incorrect before seeking relief from the **Engineer**. If the **Buyer** cannot demonstrate error on the fabrication drawings, then the **Buyer** shall seek any relief directly from the Fabricator and hold STEELPLANIT and its Engineer harmless for such error.

The **Buyer** shall notify the **Engineer** before any modification is made to the PEMB structure due to an actual or perceived error, even if the **Engineer** is not responsible for the error, oversight or other cause requiring such modification. The **Buyer** shall not allow any modification to the PEMB structure unless the **Engineer** specifically approves such modification in writing. The failure of the **Buyer** to provide actual written notice to the **Engineer** and receive written approval from the **Engineer** shall relive STEELPLANIT and its engineer from any and all liability for Damages.

If the **Buyer** demonstrates that the fabrication drawings purchased from STEELPLANIT are defective, STEELPLANIT shall pay claims for error correction only if the **Buyer** strictly complies with the Claim Authorization Procedure, detailed below, and the claim is approved by an authorized officer of STEELPLANIT.

CLAIM AUTHORIZATION PROCEDURE

*The **Buyer** shall submit, in writing, to the Engineer:*

- 1. A detailed description of the alleged defect.*

2. *A detailed description of the manner in which the fabrication drawings have caused the alleged defect.*
3. *The proposed materials and methods to correct the alleged defect.*
4. *All costs for correcting the alleged defect, clearly defining the separate costs for material and labor for each alleged defect; to include quantities, unit prices, and labor rates.*

*The **Engineer** shall, in a commercially reasonable time,*

1. *Review the claim submitted by the **Buyer** to determine the validity of the claim*
2. *Determine whether the proposed corrections are proper and adequate*
3. *Evaluate and compare the proposed costs to market prices and prevailing labor rates*

*The **Engineer** shall, in writing,*

1. *Deny the claim if the claim is determined to not be justified, or*
2. *Authorize the corrective work if the claim is determined to be justified and pay the lesser amount of the proposed claim or the amount determined on the basis of the quantity, market prices and prevailing labor rates.*

The **Engineer** shall not pay any claim in which it is determined that the Erector has used defective, inadequate or improper equipment or material, or in which any resulting material damage is the result of the Erector's error. In no event shall the Engineer pay any claims for equipment costs, overhead, and profit.

INSPECTIONS

The **Engineer** is not responsible for the inspection of fabrication processes, fabricated material, or the installation of construction material. In the event inspections are required by the governing code, statute or ordinance, the **Buyer** or Owner shall independently contract for such services with an independent certified inspection agent and shall cause such third party inspector to submit written reports to the **Engineer**. In no event shall the **Engineer** be liable for any delay or other Damages resulting from the failure of the **Buyer** or such third party inspector to submit written reports to the **Engineer**.

If the **Engineer** is required to inspect the Work by statute or code, the **Buyer** agrees to reimburse the **Engineer** for all inspection fees and expenses plus a 15 per cent management fee.

OWNERSHIP OF DOCUMENTS

All reports, photographs, drawings, and calculations are the property of the **Engineer**, but shall be provided to the **Buyer** for the Buyer's use for a single PEMB. The **Buyer** shall not use the Design Documents for any other PEMB or Project or location other than that identified in the online purchase.

LIMITATION OF LIABILITY

The **Buyer** and any Person claiming through the **Buyer** agree to limit the liability of the **Engineer**, and its agents for all claims arising out of, in connection with, or resulting from the performance of the Engineering Services under this Agreement to an amount less than or equal to the total material and labor cost of the PEMB that is defined by the purchase request.

EXTENT AND ASSIGNMENT

This Agreement shall not be assigned by the **Buyer** without written consent of the **Engineer**.

This Agreement shall not be effective until it has been accepted by an authorized officer of STEELPLANIT. The acceptance or refusal of the **Buyer's** request for Engineering Services shall be acknowledged by a signed written document or by email. The **Buyer** agrees that no agent or employee of STEELPLANIT has the authority to change the terms of this Agreement, and that the **Buyer** may not rely on any actions or representations of the agents or employees of STEELPLANIT to assume that the terms of this Agreement have been modified.

The **Buyer** acknowledges that the **Engineer**, on the Website, may occasionally post an incorrect price. The **Engineer** reserves the right to, in addition to reviewing all aspects of the online order, review the price quoted. The **Engineer** reserves the right to refuse the online order if a pricing error is discovered.

Any documents the **Buyer** may use, such as purchase orders, shall have no effect on the terms of this Agreement. Any documents produced by the **Buyer** shall be deemed as merely administrative conveniences to the **Buyer**. In the event of any conflict between any terms of any documents provided by the **Buyer** and this Agreement, the terms of this Agreement shall control.

The **Engineer** reserves the right to change the terms and conditions of this Agreement at any time without notice.

GUARANTEES AND WARRANTIES

The **Engineer** guarantees that the Design Documents (Erection Drawings) for Speedy-Bolt and Ready-Weld designs will be delivered to the **Buyer** within 7 calendar days of the purchase date, subject to the following provisions.

1. The start date of the guaranteed delivery period shall be the date that the purchase request is completed online and credit card funds are transferred to the **Engineer**.
 - a. If the Purchase Request is made by mailing a cashiers check, then the purchase date shall be that date when the cashiers check and a copy of the Purchase Request is received. Purchase Requests that are received after 12:00 noon shall be considered as being received on the following day.
 - b. If the Purchase Request is made by mailing a bank check, the period for delivering the Design Documents is not guaranteed. The engineering design shall begin after bank funds are confirmed, and the Design Documents shall be shipped after funds have been transferred to STEELPLANIT.
2. The 7-day guarantee applies to those purchase requests that do not require any alteration of the standard menu options that are offered by STEELPLANIT.
3. Custom building designs shall not have a guaranteed delivery date.
4. If the purchase request is rejected by an officer of STEELPLANIT, the 7-day guarantee is void.
5. If the **Buyer** requests alterations to the basic menu options offered for Speedy-Bolt or Ready-Weld designs, the 7-day guarantee is void.
6. If the purchase request is subject to conformance with any Project Drawings or Project Specifications, the 7-day period will not begin until the **Engineer** has had adequate time, in the sole opinion of the **Engineer**, to review and accept or reject the terms of any Project Drawings or Project Specifications.
7. The **Buyer** acknowledges its obligation to answer, in writing, all specific design questions within one calendar day of receiving such questions from the **Engineer**. The **Buyer** agrees to receive such questions via email or fax at the address or facsimile number, as applicable, provided by the **Buyer**. For each additional day that the **Buyer** delays answering the design questions, the delivery period may be extended by an additional day at the **Engineer's** option.
8. In regions of the country where the applicable local Building Code requirements are deemed complicated in the discretion of the **Engineer**, the **Engineer** reserves the right to contact the local jurisdiction to confirm the Building Code requirements. The **Buyer** agrees that any delay by the local building code official in answering specific design questions may result in a commensurate delay in the delivery period at the **Engineer's** option.
9. The **Engineer** shall ship the Design Documents via common carrier. If the carrier attempts to make delivery of the **Engineer's** shipment at the **Buyer's** address within the 7-day period, but the delivery is not commercially practical, or if the **Buyer** refuses the delivery, then the **Buyer** agrees that the **Engineer** has fulfilled the delivery obligation. The **Buyer** shall provide a street address to receive deliveries.
10. The 7-day guarantee does not apply to the Fabrication Drawings.
11. If STEELPLANIT fails to deliver the Design Documents to the **Buyer** within a 7-day calendar period, and the conditions listed above are not applicable, and any delays beyond the control of the **Engineer** have not occurred (as described in the Warranty Disclaimer), then STEELPLANIT shall refund the full purchase price to the **Buyer**. If the **Buyer** tendered payment by credit card, the **Buyer's** credit card shall be credited the amount of the purchase price. If the **Buyer** tendered payment by bank check

or cashier's check, then STEELPLANIT shall issue a bank check for the full purchase price that will be delivered to the **Buyer** with the Design Documents.

The **Engineer** warrants that the Design Documents for the Project conform to the requirements of the applicable governing Building Code, subject to the accuracy of the information provided by the **Buyer**.

WARRANTEE DISCLAIMER:

All claims filed under the provisions of this warrantee must be presented in writing to the Engineer, except to the extent of the warrantee period and not more than thirty (30) days after discovery of any apparent defects. THIS WARRANTY IS SUBJECT TO THE CONDITIONS AND LIMITATIONS SET FORTH HEREIN AND IS IN LIEU OF ALL OTHER CONDITIONS AND LIMITATIONS WHICH EXTEND BEYOND THE DESCRIPTION WITHIN THIS AGREEMENT, WHETHER EXPRESSED OR IMPLIED OR STATUTORY, AND ALL OTHER LIABILITIES (CONTRACT, TORT, OR OTHERWISE, INCLUDING NEGLIGENCE) AND THE ENGINEER MAKES NO WARRANTEE OF MERCHANTABILITY FOR FITNESS OF ANY PARTICULAR PURPOSE. THE ENGINEER SHALL NOT BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF ANY KIND WHATSOEVER TO THE BUYER OR ANY OTHER PARTY. This limitation of liability of the **Engineer** shall include but is not limited to liquidated, consequential, incidental, or special damages or loss of profits arising from or caused by, directly or indirectly, fire, strike, act of God, war, insurrection, mob action, civil commotion, terrorism, act of government, loss, damage or delay of materials, floods, storms, inability to obtain materials, or other acts or circumstances that are outside the control of the **Engineer**. The **Buyer** acknowledges its responsibility to determine the use of the building to be designed, the required loads required by the Building Code or government jurisdiction, and special weather conditions. The **Engineer** shall not be responsible for loss or damage of goods in transit when shipping by common carrier. The **Engineer's** schedule is subject to delays due to causes beyond the control of the **Engineer** including, but not limited to, failure of **Buyer** to provide required or requested information to complete the engineering or detailing process, inability to obtain material or labor, acts of God, acts of government or public enemy, any preference, priority, or allocation order issued by government, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, or delays by suppliers of the **Engineer**. In the event of such delay, the delivery schedule shall be extended for a period equal to the time lost by reason of such delay. NOT WITHSTANDING THE FOREGOING LANGUAGE OF THIS PARAGRAPH, IN THE CASE OF ANY DISCREPANCY BETWEEN IT AND THE LANGUAGE OF THE ENGINEER'S STANDARD WARRANTIES AND DISCLAIMERS IN EFFECT AT THE TIME OF THE PURCHASE, THE LATTER WILL CONTROL THE RIGHTS AND OBLIGATIONS OF THE PARTIES.

COLLECTION OF PAST DUE ACCOUNTS:

For any invoiced amounts not paid within thirty (30) days of invoice date, the **Buyer** agrees that the **Engineer**, in addition to any other remedies available, may submit such invoice(s) to binding arbitration in the county of the place of performance under the current edition of the *Commercial Arbitration Rules* of the *American Arbitration Association*. The **Buyer** agrees that judgment upon the award rendered in such arbitration may be entered in any court having jurisdiction thereof. It is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in connection with such dispute, including court costs and attorney's fees.

SUSPENSION, TERMINATION, OR ABANDONMENT

This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party substantially fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

If the **Buyer** desires to Suspend the Agreement for a specified period of time, the **Buyer** shall submit actual written notice to the **Engineer**. The **Buyer** agrees to pay the **Engineer** for the percentage of completion of the work and/or any fees and reimbursable expenses incurred by the **Engineer**. The **Engineer** alone shall determine the amount payable at the point of Suspension. The Suspension will take effect when both parties agree in writing. If or when the **Buyer** desires to continue with this Agreement, such continuance must be agreed to in writing by both parties before the continuance becomes effective, and the **Buyer** agrees that the **Engineer** shall have the right to recover additional fees resulting from an adverse impact on the **Engineer's** operations.

Any failure to make payments to the **Engineer**, as described in this Agreement, shall be considered substantial non-performance by the **Buyer**. The **Engineer** may, without surrendering any other remedies, give seven (7) days written notice to the **Buyer** as described above. If the **Engineer** does not receive payment in full within seven (7) days of actual written notice, termination of this Agreement shall take effect without further notice. In the event of such termination, the **Engineer** shall bear no liability to the **Buyer** for damage or delay because of the termination of the **Engineer's** services. The **Engineer** shall, to the full extent of the Law, retain any rights to suspend or revoke any and all certifications.

Both parties shall be available for communication during normal business hours, and both parties shall provide contact information for agents with the authority to conduct business. If either party is unavailable for contact during normal office hours for a period of seven (7) days, then the party attempting to make contact may submit written notice of non-performance to the unavailable party. If the unavailable party does not respond within seven (7) days of written notice, then the contract will be terminated due to abandonment without further notice.

ENFORCEMENT

Should either party bring suit in court to enforce any of the terms of this Agreement, the prevailing party shall recover from the other costs of suit and reasonable attorney's fees.

If any party to this Agreement is a legal entity, including a partnership, corporation or trust, that party represents to the other that this Agreement, the transaction contemplated in this Agreement, and the execution and delivery of this Agreement, have been duly authorized by all necessary partnership, corporate, or trust proceedings and actions, including without limitation, action on the part of the directors, if the party is a corporation. Upon the request of a party, the other party shall deliver to the requesting party certified copies of such corporate or other resolutions authorizing the execution and delivery of this Agreement.

The validity of this Agreement, the terms or provisions, and the rights and duties of the parties hereto, shall be interpreted and construed pursuant to, and in accordance with, the laws of the State of Texas.

Any disputes between the parties to this Agreement concerning the subject matter of this Agreement shall be submitted for resolution to a County or District Court of Bell County, Texas.

Each party acknowledges that the terms and conditions of this Agreement, and each of them, are reasonable, fair and equitable.

This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, administrators, executors, legal representatives, successors and assigns.

This Agreement and the exhibits attached to and incorporated in it and contain the entire agreement of the parties. There are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the parties other than those set forth and duly executed in writing. No agreement of any kind shall be binding upon either party unless and until it has been made in writing and duly executed by both parties. On execution of this Agreement, all previous agreement, contracts, arrangements, or undertakings of any kind relative to the rights granted in this Agreement are cancelled, and all claims and demands are fully satisfied.

If any one or more of the provisions of this Agreement, or the application of any such provision to any person, entity, or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent at any time, the remainder of this Agreement, and the application of such provision to persons, entities, or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected, and shall continue to be enforceable to the fullest extent permitted by law. Any invalid, unlawful, or unenforceable provision hereof shall be reformed to the extent necessary to render it valid, lawful, and enforceable in a manner consistent with the intentions of the parties hereto regarding such provision.