

STANDARD TERMS & CONDITIONS

FRANKLIN CONSTRUCTION, INC., a California corporation (“FCI”) and the person, persons, entity, entities identified as the “Customer” here and in either or both of the COMMERCIAL CREDIT APPLICATION (the “Application”) and QUOTATION & CONTRACT (the “Quotation”) to which these STANDARD TERMS & CONDITIONS (the “Terms & Conditions”) are attached, both agree that upon the signing of the Application or the acceptance of the Quotation, The Terms & Conditions shall in all cases be controlling and set forth the exclusive rights and remedies of the parties in all cases.

1. Payment Terms. Customer agrees to pay all sums due on Customer’s Credit Account as and when due, as follows:

- a. Payment terms are net 30 days from the date of each invoice;
- b. Customer shall make all payments due hereunder in accordance with this these terms and conditions and that certain Commercial Credit Agreement signed by Customer, without any right of setoff for retention and without regard to any agreement Customer may have with other parties;
- c. Customer expressly understands, acknowledges, and agrees that Customer’s receipt of payment by Customer for any services performed by Customer for a third party, is not, nor shall it be construed as, a condition precedent to Customer’s obligation to timely and fully make all payments to FCI as and when due;
- d. If Customer fails to pay any invoice in full when due, Customer agrees to pay a monthly late payment charge in an amount equal to ONE AND ONE-HALF PERCENT (1 ½ %) of the past due account balance until paid in full, for each month that all or any portion of Customer’s account remains unpaid. The finance charge is not, nor shall it be construed as, a loan or an agreement by FCI that Customer may pay for the Goods purchased over time; and
- e. All costs of collection, including reasonable attorney’s fees and costs, shall be paid by Customer. The late payment charge set forth herein is not, and shall not be construed as, a loan of money or an agreement that payment under this Agreement may be paid in installments or over time.

2. Extra Work and Delays. FCI shall be entitled to an equitable adjustment in the quoted price and quoted time (time extensions) for additional costs or time or both arising out of (a) any one, all, or combination of extra work requested by the Customer, changes in the Work, differing site conditions, mandates and requirements, and conditions outside the reasonable control of FCI, (b) unanticipated project delays, or (c) accelerations caused by others whose acts are not FCI’s responsibility. Customer shall make no demand for, or withhold any amount of money on account of, liquidated damages from FCI.

3. Hazardous Materials. Customer represents and warrants to FCI that no materials containing hazardous materials, hazardous substances, or toxic substances (as defined by statute) shall or will, for any reason, be delivered or disposed of by Customer at any FCI facility. Customer further agrees that any such materials delivered or disposed of by Customer at any FCI facility shall be remediated and removed by Customer at Customer’s cost and expense.

4. No Withholding. No retention shall be withheld from FCI under any circumstances. Customer expressly agrees that receipt of payment by Customer from the Lender, or any other source of payment, or both shall not be a condition precedent to Customer’s obligation to make all payments in full to FCI when due.

5. Statutory Rights and Remedies. Nothing set forth in the Quotation, the Credit Application, or these Terms & Conditions shall be construed to waive, release, foreclose, limit, or modify any of FCI’s rights and remedies under California law in the event of non-payment by Customer, including, but not limited to, FCI’s rights and remedies under any one, all, or a combination of California Civil Code Sections 8800-8802 (Prompt Payment); 8818 (Failure to Pay Retention); 8830-8848 (Stop Work Notices); 8400-8470 (Mechanics' Liens); and 8500-8538 (Stop Payment Notices) and FCI’s right to recover statutory interest on amounts wrongfully withheld by Customer.

6. Right to Stop Work. If FCI is not timely paid all sums due under the terms of the Quotation, no provision of these Terms & Conditions, the Quotation, the Credit Application, an any agreement, oral or written, between FCI and Customer (including documents incorporated therein by reference), shall be construed as a waiver of (a) FCI’s right to stop the performance of any work or the delivery of any services or materials to Customer upon seven (7) days’ notice to Customer or (b) require FCI to continue performance if timely payments are not paid.

7. Back Charges or Claims of Customer. No back charges or claims of Customer for any work performed or materials or services delivered by FCI except by a modification in writing signed by FCI before such Work is performed.

8. Preparation of Project Areas. Customer is to prepare all areas of the subject site of the Work (the “Project”) as requested by FCI so as to allow FCI to perform the work or deliver services or materials as set forth in the Quotation and FCI shall not be called upon to start performance under its Quotation until sufficient areas are prepared in a manner that insures continued work. Customer shall furnish all temporary site facilities including suitable storage space, hoisting, temporary electrical, and water for the performance of the Work at no cost to FCI.

9. Time for Performance. Except as provided in the Quotation, FCI shall be given a reasonable time in which to make delivery of materials and/or labor to commence and complete the work. FCI shall not be responsible for delays or defaults where occasioned by any causes of any kind and extend beyond its control, including but not limited to delays caused or allowed by Customer, other contractors or subcontractors, architect, and/or engineers, delays in transportation, shortage of raw materials, civil disorders, labor difficulties, vendor allocations, fires, floods, accidents and acts of God. FCI shall not be bound to any schedule for the Work not approved in writing by FCI.

10. Insurance. Customer shall purchase and maintain all risk-insurance upon the full value of the entire Project, materials delivered to the Project, and equipment stored on the Project, which shall include the interests of FCI. As a condition precedent to FCI’s obligation to commence or perform the Work, Customer shall provide FCI a certificate of insurance for said insurance and all necessary endorsements, naming FCI as

an additional insured. If Customer fails or refuses to provide said insurance or name FCI as an additional insured (after demand by FCI), or fails to obtain and maintain all necessary endorsements, FCI is hereby authorized to obtain said insurance protecting FCI's interests and the costs and expenses of said insurance shall be paid by Customer.

11. Indemnification. To the extent allowed under California law, Customer shall indemnify and hold FCI harmless from and against any and all claims, actions, causes of action, damages, fees, fines, costs, losses, or liability arising out of, or related to, the delivery or disposal of any materials at any FCI facility, irrespective of FCI's active or passive negligence.

12. Substitution. The material described in the Quotation is identified for the purpose of describing the size, appearance, and quality of such material and FCI shall have the right to substitute any other material which is equal to, or better than the material described in this Quotation, except for materials specially ordered by Customer.

13. Special Orders. Payment for all materials that are produced to a specification ordered by Client ("Special Order Materials") is due and payable at such time as the materials are ready for delivery. Customer must take delivery of the entire quantity of the Special Order Materials ordered by purchased. If Customer does not take delivery of the entire quantity of the Special Order Materials ordered by Client, Customer agrees to pay to FCI materials storage fee to be determined by FCI based on the type and quantity of the Special Order Materials.

14. Dispute Resolution. In the event of a dispute arising under this Agreement or the performance of the Work, the parties agree to first meet informally in an effort to resolve said dispute. If the parties are unable to resolve their dispute informally, they may enlist the services of a mediator experienced in construction law to assist in the resolution of the dispute. If the parties are unable to resolve their dispute through these means, the parties agree to resolve their dispute through the process of voluntary Judicial Reference as set forth under sections 638, et seq. of the California Code of Civil Procedure. FCI shall be under no obligation, contractual or otherwise, to arbitrate any dispute arising under the contract between Customer and any third party. However, if FCI does agree to arbitrate, all such arbitration is binding and the arbitration shall be conducted in accordance with the California Code of Civil Procedure and the California Civil Discovery Act.

15. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party hereto, the prevailing party will be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorney's fees, costs, and expenses incurred in the action or proceeding by the prevailing party and such fees shall not be limited or reduced by any local rule or fee schedule adopted by the court.

16. Exclusions. The following are expressly excluded from the Work: (a) The removal and/or disposal of hazardous materials and/or substances and/or products including, but not limited to, asbestos, lead, petroleum, and/or hydrocarbon substances, and/or products and/or materials which contain asbestos, lead, petroleum, and/or hydrocarbon substances; (b) Permits, permit fees, transportation fees and costs, and/or approvals which are, or may be, required by any local, state, or federal agency or department; (c) Any work not specified in the Agreement or expressly incorporated by referenced by a duly signed extra work order or contract change order; (d) Design, engineering, and testing; and (e) the specific exclusions set forth in the Quotation.

17. Quotations. Unless otherwise stated, quotations expire 30 days from date thereof, and may be modified or withdrawn by FCI prior to any acceptance. All quotations and prices are subject to change without notice. Prices do not include any present or future sales, use, excise, value-added or similar taxes, and where applicable, such taxes shall be billed as a separate item and paid by the Customer. FCI reserves the right to correct all errors and omissions in any Quotation once such errors or omissions are discovered by FCI. Quantities and unit prices are for the specific quotations only. Any increase or decrease in quantities shall not be permitted without the express written agreement of FCI. FCI assumes no responsibility for quoted materials meeting any project specifications or requirements unless specifically stated in a written quotation from FCI.

CONTRACTORS ARE REQUIRED BYLAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

CUSTOMER: _____, a _____ By: _____ Title: _____ Date: _____	FRANKLIN CONSTRUCTION, INC., a California corporation By: _____ Title: _____ Date: _____
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