

ISS TERMS AND CONDITIONS (SUPPLY AND LABOR)

As used herein, "Customer" refers to a person to whom a quotation, proposal, offer, or bid (a "Proposal") is submitted by Associated Materials, LLC dba Alside/Installed Sales Solutions ("AM"). "Customer" includes such person's related entities, subsidiaries and affiliates. These ISS Terms and Conditions (Supply and Labor) (these Terms) shall apply to all Proposals made by AM, and apply in lieu of any course of dealing between the parties or usage of trade in the industry. In the event the Terms conflict with any of the terms and conditions affixed to or referenced in a purchase order, work order, subcontract agreement, construction agreement, services agreement, a procurement document issued by the Customer or any other agreement or document relating to the products and services to be provided by AM pursuant to a Proposal (the "Agreement"), these Terms shall govern, and acceptance by Customer of the Proposal is expressly conditioned upon Customer's acceptance of these Terms, irrespective of whether the Customer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. AM's failure to object to provisions contained in any communication from Customer shall not be deemed a waiver of the provisions herein.

1. Scope of Work. AM's Scope of Work shall be as described in the Proposal.
2. Contract Documents. No contract document shall be made a part of the Agreement or incorporated by reference or be binding against AM unless complete and legible copies are furnished to AM prior to execution of the Agreement. If Customer is contractually required to have its subcontractors accept provisions from another contract between Customer and another party, Customer will identify the specific applicable provisions and AM shall determine, in its sole discretion, whether it agrees to be bound by them.
3. Rights against Customer. AM shall have the benefit of all rights and remedies against Customer as Customer has, under a prime contract against the owner of the property.
4. Payment/Liens. AM shall receive payment for its work no later than 45 days from the date of AM's request for payment. If any nonpayment is not the result of a material failure of performance by AM which remains uncured after five business days' notice, then AM shall be entitled to suspend its performance and shall not then be obligated to resume its work until past due sums have been brought current. Nothing in the Agreement shall serve to void AM's right to file a lien or claim on its behalf or for labor performed or materials delivered or incorporated into the work, and AM shall have no obligation to maintain a "lien free" or "claim free" project unless AM is paid in full. AM explicitly rejects all pay when paid and pay if paid clauses. Regardless of the Customer receiving payment, the Customer will make timely payments to AM.
5. Retainage. Customer shall withhold no more retention from AM than is being withheld by the owner of the property from the Customer with respect to the AM's Work.
6. Subcontractors. AM may use subcontracted labor. AM shall remain liable for the actions of its subcontractors performing such labor to the same extent that it would be liable if it used its own employees to perform such labor.
7. Limitations to AM's Obligations:
 - a. AM's obligation to inspect the project site shall be limited to visible and reasonably detectible conditions. Commencement of any Work (whether at inception or pursuant to a change order) by AM shall not constitute a waiver of AM's right to a change order upon later discovery of any condition that would otherwise justify the issuance of a change order.
 - b. AM shall not be required to procure, pay for, or arrange for any permits or governmental inspections in connection with its work unless expressly provided for and priced in the proposal.
 - c. AM shall not be required to furnish any payment or performance bonds, securities or deposits in connection with its work.
 - d. AM shall not be responsible for delays or defaults where occasioned by any causes of any kind and extent beyond AM's control. AM shall be entitled to an equitable adjustment in the price and time due to unanticipated delays or disruptions to the performance or sequencing of AM's Work for reasons beyond AM's control or for the impact of changes directed by Customer.
 - e. AM shall have no liability for deviations or violations of any codes or applicable laws which are inherent in the design of the Work as set forth in the plans, specifications or other contract documents.
 - f. AM's liability for any delay, default or damage shall be limited to those directly caused by AM's negligence, and only for direct damages suffered by Customer or owner (inhouse costs, profit or overhead shall not constitute direct damages).
 - g. AM shall not be deemed to have waived any claims, notwithstanding any failure by AM to provide any timely notice.
 - h. AM's right of recovery against Customer for any claims or damages shall not be capped by any amounts Customer receives from owner.
 - i. AM shall not be liable for any damage, loss, cost or expense caused by any person other than AM or its employees, contractors or persons for whom AM is liable.
8. Lien releases.
 - a. Lien releases accompanying payment applications shall be conditioned upon payment, and shall be effective for the period in which the prior payment relates.
 - b. AM's obligation to remove or pay for any lien, claim, suit, and encumbrance and/or stop notice shall apply only if any such lien, claim, suit, encumbrance and/or stop notice was filed or initiated notwithstanding timely payment by Customer.
9. Change Orders. Change orders shall be effective upon mutual agreement, and AM shall have no obligation to commence work pursuant to any change order which has not been mutually agreed upon.
10. Testing. Customer shall ensure the Work is tested to meet the architectural specifications. Customer shall notify AM in writing at least 10 business days prior to the date of the testing. Unless waived by AM, the testing can take place only with an AM representative present.
11. Indemnity. The following Indemnification language shall replace, restate and supersede any indemnification obligation contained in the Agreement: AM will defend, indemnify and hold harmless the Customer for any claims or judgments obtained by third parties ("Claims") to the extent that such Claims are directly caused by (i) the wrongful or negligent acts of AM, its officers, directors, agents or employees, and (ii) AM's violation of any legal, regulatory or lawful obligation of AM, provided however, that AM shall have no indemnity obligation with respect to any Claims to the extent caused by the negligence or willful misconduct of any indemnitee. For any claim subject to indemnity or defense hereunder, (1) AM shall have the right to control the defense and the selection of counsel. If a separate representation of Customer is required or desired by Customer, Customer may employ separate counsel at its sole cost and expense, and (2) Customer and its counsel shall be obligated to keep AM reasonably apprised of information and developments relating to such separate representation and cooperate with AM in the defense of any such claim, action, suit or proceeding. Any indemnity obligation contained in the Agreement in excess of the above shall not be binding on AM.

12. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER CONTRACT DOCUMENT, UNDER NO CIRCUMSTANCES SHALL AM BE LIABLE IN ANY WAY FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST BUSINESS OR PROFITS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BASED IN BREACH OF WARRANTY, CONTRACT, OR NEGLIGENCE OR OTHERWISE IN CONNECTION WITH THE MANUFACTURE, USE OR SALE OF THE PRODUCTS OR SERVICES PROVIDED HEREUNDER. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY OTHER CONTRACT DOCUMENT, IN NO EVENT SHALL AM'S MAXIMUM LIABILITY FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR ANY OTHER LIABILITY (INCLUDING THE PAYMENT OF ANY DEDUCTIBLE IN CONNECTION WITH ANY CLAIM) EXCEED THE CGL INSURANCE AMOUNT AS IDENTIFIED BELOW. AM EXPRESSLY REJECTS ALL LIQUIDATED DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER CONTRACT DOCUMENT, UNDER NO CIRCUMSTANCES SHALL AM BE LIABLE IN ANY WAY FOR LIQUIDATED DAMAGES.
13. Insurance.
- a. AM shall not be obligated to modify the provisions or AM's insurance. Any special insurance requirements beyond that which is provided in AM's standard insurance certificate shall be at Customer's cost.
 - b. Any coverage afforded to an additional insured will apply solely to claims which stem from AM's work. In no event shall AM be responsible for, nor shall any additional insured be entitled to insurance coverage for (i) any work performed by a party other than AM; (ii) work performed by AM which was subsequently altered or modified by another party without AM's knowledge or written consent; or (iii) the failure or defect of product or material not manufactured, supplied, or chosen by AM.
 - c. AM's policy shall provide that a 30-day notice shall be given for any cancellation or expiration of the policy, but not for any changes to the policy.
 - d. AM will provide Commercial General Liability ("CGL") with bodily injury and property damage limits of \$1 million for each occurrence.
 - e. AM's CGL policy includes a self-insured retention of \$500,000.
14. Warranty.
- a. AM warrants that its work shall be free from material defects for a period of one year from the date of substantial completion of AM's work.
 - b. AM shall provide manufacturer's warranties for any materials used in its work.
 - c. AM hereby disclaims any and all implied warranties, and any warranties in excess of the above.
 - d. The AM's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by others, or abuse.
15. Force Majeure. AM shall not be liable for any damage, changes in pricing, penalty for any delay, or for failure to give notice of delay when such events are due to the elements, acts of God, acts of the Customer, act of civil or military authority, war, riots, labor difficulties, accidents, shortages of materials, delays of carriers, contractors or suppliers or any other causes beyond the reasonable control of AM. Any anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision. Furthermore, if AM is unable to supply Customer's total demand for materials because of an event under this provision, AM may allocate its available supply of raw materials and/or products among its customers, including Customer, in its sole and absolute discretion. Should Customer and AM be unable to reach a mutually agreeable solution upon the occurrence of a force majeure event, the Proposal and any Agreement shall be terminated without liability, bias, or prejudice to either party by either party giving a 30-day's written notice to the other party.
16. Default/Termination.
- a. Customer shall not exercise any remedies for an AM default unless AM has had at least five (5) business days following notice from Customer to commence a cure of any default.
 - b. Upon any default by AM or termination of the Agreement, Customer shall not have the right to take possession of, or use any of AM's equipment, tools, scaffolds, machinery, or other items brought on the jobsite by AM.