

TERMS AND CONDITIONS

1. This agreement contains the entire agreement between Client and ENGEO relating to the project(s) and the provision of services to the project(s). Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement or its referenced documents are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both Client and ENGEO.
2. ENGEO's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
3. If any term, condition, or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on Client and ENGEO.
4. This agreement shall be governed by and construed in accordance with the laws of the State of California.
5. All reports, documents, drawings and other instruments of ENGEO's service, and copies thereof, created by ENGEO pursuant to this agreement, shall remain the property of ENGEO. Client agrees that the instruments of service provided to Client by ENGEO shall not be subject to unauthorized reuse, that is, reuse without written authorization of ENGEO. Such authorization is essential because it requires ENGEO to evaluate the documents' applicability given new circumstances, not the least of which is passage of time. Accordingly, Client agrees to waive any claim against ENGEO, and defend, indemnify and hold ENGEO harmless from any claim or liability for injury or loss allegedly arising from unauthorized reuse of ENGEO's instruments of service. Client further agrees to compensate ENGEO for any time spent or expenses incurred by ENGEO in defense of any such claim, in accordance with ENGEO's prevailing fee schedule and expense reimbursement policy.
6. Samples will be discarded immediately after testing. Those not tested will be discarded 30 days after sampling. Samples shall remain the property of Client, and Client shall be responsible for removal and lawful disposal of hazardous materials and containers.
7. Client shall not permit or authorize changes in the reports and documents prepared by ENGEO pursuant to this agreement. Client acknowledges that any changes and their effects are not the responsibility of ENGEO and Client agrees to release ENGEO from all liability arising from the use of such changes and further agrees to defend, indemnify and hold harmless ENGEO, its officers, directors, principals, agents and employees from and against all claims, demands, damages or costs arising from the changes and their effects.
8. Client acknowledges that its right to utilize the services and instruments of service provided pursuant to this agreement will continue only so long as Client is not in default pursuant to the terms and conditions of this agreement and Client has performed all obligations under this agreement. Client further acknowledges that ENGEO has the unrestricted right to use the services provided pursuant to this agreement as well as all instruments of service provided pursuant to this agreement.
9. Client agrees not to use or permit any other person to use reports or other instruments of service prepared by ENGEO, which reports or other instruments of service are not final and which are not signed, stamped or sealed by ENGEO. Client agrees to be liable and responsible for any such use of nonfinal reports, or other instruments of service not signed, stamped or sealed by ENGEO and waives liability against ENGEO for their use. Client further agrees that final reports or other instruments of service are for the exclusive use of Client and may be used by Client only for the project described on the face hereof.
10. This agreement shall not be construed to alter, affect or waive any lien or stop notice right which ENGEO may have for the performance of services pursuant to this agreement. Client agrees to separately provide to ENGEO the present name and address of the record owner of the property on which the project is to be located. Client also agrees to separately provide ENGEO with the name and address of any and all lenders who would loan money on the project and who are entitled to receive a preliminary notice.
11. If payment for ENGEO's services is to be made on behalf of Client by a third-party lender, Client agrees that ENGEO shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition of receiving payment for services.
12. Charges not paid within thirty (30) days of invoice will accrue a late charge at a rate of 1.5 percent per month. If Client fails to pay ENGEO within thirty (30) days after invoices are rendered, Client agrees that ENGEO has the right to consider such nonpayment a material breach of this entire agreement, and, upon written notice, the duties, obligations, and responsibilities of ENGEO under this agreement are terminated. In such event, Client shall promptly pay ENGEO for all fees, charges, and services provided by ENGEO including collection costs and related attorneys' fees. Client agrees that all billings from ENGEO to Client are correct, conclusive, and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies ENGEO in writing of alleged inaccuracies, discrepancies, or errors in the billing.
13. Client agrees that in the event Client institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which ENGEO's principal place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.
14. Client acknowledges that ENGEO is not responsible for the performance or work by third parties including, but not limited to, the construction contractor and its subcontractors.
15. Client agrees that the sole recourse for damages to Client arising from the services provided to Client by ENGEO under this agreement shall be against ENGEO and Client waives any claim against any employees, directors, officers, agents, or affiliates of ENGEO.
16. The fee(s) quoted in this contract is valid for 60 days from the contract date and unless stated otherwise, is approximate only.
17. ENGEO'S LIABILITY FOR DAMAGE DUE TO PROFESSIONAL NEGLIGENCE, ACTS, ERRORS, OMISSIONS, BREACH OF CONTRACT AND CONSEQUENTIAL DAMAGES WILL BE LIMITED BY CLIENT TO AN AMOUNT NOT TO EXCEED AN AGGREGATE LIMIT OF FIVE THOUSAND DOLLARS (\$5,000) OR ENGEO'S FEE, WHICHEVER IS GREATER, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. Client further agrees to notify any contractor and subcontractor who may perform work in connection with any design, report or study prepared by ENGEO of such indemnification for design defects, errors, omissions, professional negligence, breach of contract and consequential damages, and to require as a condition precedent to their performing their work, a like indemnity of liability on their part as against ENGEO.
18. Subject to any shorter period provided under applicable statutes of limitations, Client agrees that it will not assert any claim or action arising from or in any way related to ENGEO's Services under this Agreement later than three years following the Completion Date. This provision applies regardless of whether such claim or action alleges breach of contract, tort, indemnity, or any other legal theory, and regardless of whether it alleges any patent or latent deficiency in ENGEO's Services. The Completion Date relating to the Services performed under this Agreement is the date the last published technical document required under this Agreement.