

Performance Fire Protection, LLC

TERMS AND CONDITIONS

May 17, 2023 Revision

Performance Fire Protection, LLC (hereinafter referred to as the Company) and the party authorizing Seller to perform any work, regardless of whether such authorization was made verbally or in writing, involving and/or related to the construction, maintenance, repair, modification, layout, inspection, or alteration of a water-based fire sprinkler system on any Agreement (hereinafter referred to as the Customer) hereby acknowledge and agree to the following Terms and Conditions:

1. THESE TERMS AND CONDITIONS SHALL GOVERN.

The terms and conditions of sale contained herein (Terms and Condition) apply to all quotations made and contracts of sale entered into by the Company, a North Carolina Limited Liability Corporation. If these Terms and Conditions conflict with other terms and conditions, if any, specified by Customer in a subsequent agreement, then the Company's acceptance of the Customers agreement is made on the condition that only these Terms and Conditions shall apply, irrespective of whether the Customer accepts these Terms and Conditions by a written acknowledgment, by implication, or by acceptance of and/or payment of services provided by the Company. In the event of any conflict between a subsequent Agreement between the Customer and the Company, this Agreement shall govern.

2. PERFORMANCE OF WORK

The Company, as an independent contractor, will furnish all supervision, labor, tools, equipment, services, materials, and supplies necessary to properly perform the scope of work agreed to between the Customer and Company. The Company owes the Customer the duties to timely and fully: (a) furnish all equipment, labor, materials, equipment, supervision, temporary facilities, required safety measures, employee parking, hoisting and scaffolding required for the proper and complete performance of its scope of work, with no unapproved deviations or substitutions; (b) comply with all applicable laws, codes and ordinances, including but not limited to OSHA and/or applicable state safety laws, (c) comply with all rules of the Customer and any owner (if applicable); (d) perform all work in accordance with schedules given from time-to-time to the Company by the Customer so as to maintain the schedule for the Customer and/or owner (as applicable); (e) timely pay all laborers, suppliers, and subcontractors, providing any requested evidence that all such payments have been made; (f) submit contingent lien waivers from the Company with each payment application (if expressly required by the Customer); (g) provide quality control and correct any work determined to be defective; (h) provide all requested written assurances of complete and timely performance; (i) comply with the Customers written directives; (j) submit proper notices, change order proposals, shop drawings, as built drawings, submittals, parts lists, stock, and other documents or things if required by the Customer; (k)

make requests for progress payments using the Customers established schedule using approved forms and complying with all payment requirements of the Customer (if expressly required by the Customer); (l) correct defects in the Company's work that appears within the one-year limited warranty provided by the Company as more specifically set forth herein, (n) maintain a clean job site; (o) perform all reasonable punch list requests; (p) inspect all work of other trades performing work for the Customer to insure that it has been performed properly to accommodate the Company's work, and advise the Customer if any other trade has deviated from their plans and/or drawings causing the Company difficulty in completing its work as designed (if applicable); (q) avoid any infringement of patents or copyrights; (r) provide daily reports if requested by the Customer and participate in construction coordination meetings at the Customers request; (s) remove any employee for reasonable cause upon written request of the Customer; (t) protect its work and stored materials from damage or destruction until the Company completes its work; and (u) bring to the site no hazardous materials

3. PAYMENT.

Payments shall be due within thirty (30) days from the invoice date, with the Company reserving the right to request payments on a progress basis for work completed through the date of each invoice. If Customer fails to make timely payment, Company shall assess the Customer with one percent (1%) interest per month as a penalty for any late payment(s).

4. CERTIFICATE OF INSURANCE

The Company agrees to provide a certificate of insurance prior to commencement of any work for the Customer at the Customers request. The Customer hereby agrees and acknowledges that is shall have no right to withhold payment from the Company for providing insurance in amounts greater than what it requires. In the event that the Customer requires insurance coverage greater than what is held by the Company, or on forms that are not standard to the Company's insurance policies in place, the Company shall be entitled to adjust its fee under any proposal, quote, agreement, or otherwise for such increase in insurance.

5. WORK TO BE PERFORMED DURING NORMAL WORKING HOURS

All work performed by the Company shall be performed during normal working hours, as defined by the Company, unless specifically agreed to otherwise in a written agreement between the Customer and the Company. For purposes of these Terms and Conditions, normal working hours shall be considered 8:00am-5:00pm Eastern Standard Time (Normal Working Hours). In the event the Customer requires work outside of normal working hours, the Company reserves the right to charge additional fees for those services.

6. AFTER-HOURS EMERGENCY SERVICE

The Customer agrees that any after-hours emergency service shall be any request for emergency services occurring after Normal Working Hours (Emergency Service Request). The Customer agrees to these Terms and Conditions by making an Emergency Service Request and agrees to pay the Company on a time and material basis, in addition to a seventy-five (\$75.00) dispatching fee, for all work associated with the Emergency Service Request. Note that the Company shall retain the right to increase the Emergency Service Dispatch Fee in proportion to the number of

incoming service calls it receives in times of emergency up to, but not to exceed \$290.00, which shall fairly and reasonably reimburse the Company for the labor expended to dispatch manpower in times where a high volume of service calls are being received (e.g. extreme weather causing the Company service area to experience freeze-ups).

7. SHORT-NOTICE RESCHEDULING REQUESTS

Customer acknowledges that the Company endeavors to receive the Customers approval prior to scheduling any work under these Terms and Conditions. Therefore, the Customer agrees that it shall not reschedule any scheduled work within forty-eight (48) hours prior to the scheduled work. If the Customer does make a Short-Notice Rescheduling Request (i.e., a request made within forty-eight (48) hours prior to scheduled work), the Customer agrees that it shall be responsible for paying for four (4) crew man hours to the Company as a rescheduling fee. This Rescheduling Fee is to compensate the Company for its lost man hours and/or time lost rescheduling work for its employees.

8. DEFAULT OF THE CUSTOMER

An Event of Default shall be: (i) the failure of the Customer to pay any amount within ninety (90) days after any invoiced amount is due and payable; (ii) abuse, neglect, and/or damage to any water-based fire sprinkler system which is subject to an Agreement between the Customer and the Company; (iii) dissolution, termination, discontinuance, insolvency, or business failure of the Customer; and (iv) any acts, omissions, or patterns of acts occurring at the Customers property that create an unsafe, hostile, discriminatory, harassing, or otherwise untenable workplace for the Company's employees. Upon the occurrence of an Event of Default, the Company may pursue one or more of the following remedies: (i) discontinuing current and scheduled work; (ii) by written notice declare the balance of unpaid amounts due and to become due under this Agreement immediately due and payable; (iii) receive immediate possession of any materials, supplies, and/or equipment for which the Customer has not paid; (iv) proceed at law or equity to enforce performance by the Customer or to recover damages for breach of this Agreement, and (iv) recover all costs and expenses, including all reasonable attorneys fees permissible under law for enforcing this agreement.

9. CUSTOMER REPRESENTATIONS AND WARRANTIES

If Customer is not the owner of the property at which the Company is required to perform its scope of work under any agreement with which it has been engaged to perform by the Customer, (i) the Customer represents, warrants, and covenants to Company that the Customer is authorized by the owner to enter into an agreement with the Company to perform its obligations under such agreement and shall allow Company to access the property and perform its scope of work, and (ii) Customer authorizes Company to communicate the results of any inspection, deficiency repair, impairment, or other similar situation with the Customer, owner, or any governmental or regulatory entity required to receive notice of such information.

10. DEFAULT OF THE COMPANY

The Company's failure to comply with any duty imposed upon it by these Terms and Conditions, or applicable law, shall constitute a default. The Company will be liable for any damages incurred by the Customer, subject to Paragraph 17 contained herein.

11. SPECIFIC TERMS AND CONDITIONS FOR THE INSPECTION, TESTING, AND/OR MAINTENANCE OF WATER-BASED FIRE SPRINKLER SYSTEMS.

The following Terms and Conditions shall apply (in addition to those Terms and Conditions contained herein) to Company's performance of inspections, testing, and/or maintenance of water-based fire sprinkler systems, or work occurring incidental to such inspections, testing, and/or maintenance of Customers water-based fire sprinkler system:

- a. All inspections, testing, and or maintenance of Customers water-based fire sprinkler systems shall be performed in accordance with the National Fire Protection Association 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (NFPA 25) or other applicable NFPA Standards.
- b. Company's inspection is limited to a visual inspection of external readily accessible parts of the system and will not include every component, including, but not limited to, sprinkler heads, pipe, fittings, hangers, or other parts of the system being inspected. Customer understands and agrees that if the Customers property consists of multiple buildings or buildings with multiple rooms, including, but not limited to, hotels, motels, nursing and personal care homes, hospitals, apartment buildings, dormitories, office building and similar occupancies, the Company does not generally price inspections to include inspecting every single sprinkler in every room for damage, obstructions, loading, or other deficiency. Although this is recommended and required by NFPA 25, the Company cannot, without the Customers coordination, endeavor to coordinate access to every room at the foregoing locations. Therefore, the Company can, at the Customers request, and subject to a revised amount, perform an NFPA 25 inspection of each sprinkler provided that the Customer ensure the Company can access every room that contains an unobstructed or accessible sprinkler head in one visit. In the event Customer cannot provide the Company with access to each room containing an unobstructed and accessible sprinkler head, the Customer shall be liable for the travel fees associated with a return visit to complete the agreed upon inspection.
- c. It is the Customers responsibility to monitor conditions that would affect the operation of a sprinkler in the event of a fire. It is also the responsibility of the Customer to notify the Company if they feel a condition exists that may impact sprinkler operation.
- d. Company does not guarantee or warrant the condition or operation of every pipe, fitting, sprinkler head, or other part of the water-based fire sprinkler system on the property when conducting any inspection, test, or maintenance for the benefit of the Customer.
- e. The Company can neither warrant nor guarantee that each system it tests will function as intended during a full-flow water pressure test. Accordingly, the Customer hereby acknowledges and understands that its water-based fire sprinkler system may fail during a full-flow water pressure test, which can result in water leaks, blown heads, or the failure of other components of the Customers existing water-based fire sprinkler system. The Customer hereby acknowledges

that any failure of the system or its individual components are outside the control of the Company when it performs a full-flow water pressure test.

f. The Company is not responsible for any damages due to the incompatibility of materials within an CPVC piping system, or corrosion and/or deterioration of piping due to Customers water supply, atmospheric conditions, soil quality, or any other condition at Customers facility that adversely affects the integrity of the fire protection system.

g. Company, following each inspection, will provide to the Customer a written Inspection Report. If required and/or with prior authorization, the Company will provide copies of the Inspection Report to the local or state authority having jurisdiction on behalf of Customer. If requested by Customer, a copy of the Inspection Report will also be forwarded to the Customers insurance company. The Inspection Report, noted deficiencies, and recommendations, if any, by the Company are only advisory in nature and are intended to assist the Customer in reducing the possibility of loss to its property by indicating obvious defects or impairments to the system(s) which were discovered by the Company's inspection, and which should receive prompt attention.

h. Company will make every reasonable effort to prevent the discharge of water into or onto areas of landscaping, decorative pavement, etc., at the Customers property; however, it is the Customers responsibility to provide sufficient and readily accessible means to accept the full flow of water that may be required by tests as determined by the type of inspection and to take measures to eliminate the formation of ice in any area where a slip and fall hazard could occur.

i. Prior to the Company performing any tests, the Customer shall be responsible for notifying any alarm monitoring company, the local fire department, and all occupants and tenants.

j. Customer acknowledges that the Company will not enter or inspect any dwelling unit without a Customer representative present.

k. The scope of the Company's inspection of jockey pumps is limited to gathering **only** the information contained on the Company's inspection form. This information is limited to the make, model, and serial number of the jockey pump, whether the jockey pump will start, stop, and the start pressures and stop pressures of the jockey pump.

12. CUSTOMERS RESPONSIBILITY FOR INSURANCE COVERAGE.

Customer agrees to obtain and shall be solely responsible to maintain property and casualty insurance for its property at which the Company shall perform work, all contents therein, and operations performed within or around such property. No insurance company, insurer, or bonding company or their successors or assigns shall have any right of subrogation or otherwise against the Company arising out of any work performed to these Terms and Conditions or other agreement between the Customer and Company or arising out of these Terms and Conditions or any agreement between the Customer and the Company.

13. WATER SUPPLY

The Company makes no claims and/or representations as to the presence currently or in the future of corrosion inducing matter, i.e., microbiological organisms, contained within the water supply. Furthermore, the Company makes no claims and/or representations that the water supply provided to the Customers property is of sufficient pressure or volume sufficient to provide

adequate water to an existing fire sprinkler system(s). The Company is not responsible for providing adequate water to the Customers fire sprinkler system(s), and does not represent that work done to an existing sprinkler system will work as intended unless such work is performed following design, pressure/flow tests, and hydraulic calculations approved by the authority holding jurisdiction to provide sufficient water supply to allow the repaired and/or modified existing system to perform as intended.

14. DRY PIPE SYSTEM

Customer is aware that dry pipe sprinkler systems must be drained after each operation of the dry valve to remove water from the system, as residual water may freeze, cause damage to the pipes or other components, and cause significant water damage to the premises and property therein. During the inspection, testing, repair, modifications, or alteration of dry pipe systems, the Company will utilize all accessible low point auxiliary drains and/or drum drips so that the residual water can be drained.

15. EXISTING SYSTEM

Where new work is connected to an existing system, any deficiencies detected in the existing system during testing, draining, filling, or charging of the system are solely the responsibility of the Customer and are not covered under any Limited Warranty that may be applicable to the Work. Customer hereby indemnifies and releases the Company from any and all claims arising out of or relating to the existing system and any damage, loss, or injury caused by or to the existing system.

16. PRESENCE OF POLYBUTYLENE PIPE

Polybutylene piping and fire sprinkler component parts are no longer an approved material for any fire sprinkler system. Shortly after the introduction of polybutylene pipe into fire sprinkler and plumbing systems, owners, contractors, and manufacturers became aware that certain conditions in water led polybutylene to become brittle and eventually break, causing extensive water damage. Accordingly, the National Fire Protection Association, and other governing bodies, removed any and all approvals and/or certifications for polybutylene pipe and/or components in fire sprinkler systems. Therefore, the Company recommends that any property containing polybutylene pipe and/or components as part of its fire sprinkler system **IMMEDIATELY REPLACE AND DISCONTINUE USE OF ITS POLYBUTYLENE SPRINKLER SYSTEM.** If Customer chooses not to replace and discontinue use of its polybutylene sprinkler system, the Company reserves the right to inform the local AHJ and have the AHJ determine the proper method for repairing Customers polybutylene sprinkler system. If the AHJ and Customer agree to allow the Company attempt to alter, fabricate, lay out, replace, modify, and/or repair its existing polybutylene system, the Customer agrees that any attempted alteration, fabrication, laying out, replacing, modification, and/or repair of the existing polybutylene system can only be done by using products and/or materials that are neither FM approved or UL listed for fire sprinkler systems. Customer hereby acknowledges and agrees that any attempts by the Company using non-approved methods to bring a polybutylene fire sprinkler system back into operation is against the advice and recommendation of the Company.

17. LIMITED WARRANTY

The Company warrants that its workmanship and materials it furnishes will be free from defects for a period of one (1) year from the date it completes its work for the Customer. Except as set forth herein, the Company disclaims all warranties, express or implied, including but not limited to any implied warranties of merchantability or fitness for a particular purpose with respect to the services it performs or the materials and/or equipment, if any, it provides.

18. WORK OF OTHERS

The Company makes no warranty as to the quality of work performed by others or the functionality and design of the originally installed water-based fire protection system(s) at the Customers property. The Company assumes that all existing systems it performs any repair, modification, alteration, or otherwise is in good working condition and has been maintained by the Customer per applicable codes and standards. The Company makes no warranties, express or implied, regarding the adequacy, performance, or condition of any fire protection equipment worked on, in any manner, by another person or company. Moreover, any repair, alteration, replacement, or modification made by another person or company to any work performed by the Company shall render any warranty, express or implied, void.

19. LIMITATION OF LIABILITY.

AS A MATERIAL INDUCEMENT FOR THE COMPANY TO PROVIDE ANY SERVICES TO THE CUSTOMER, CUSTOMER AGREES THAT COMPANY'S LIABILITY TO CUSTOMER AND ALL THIRD PARTIES WITH RESPECT TO ANY CLAIM MADE PURSUANT TO THESE TERMS AND CONDITIONS, ANY WORK PERFORMED BY THE COMPANY HEREUNDER, OR ANY AGREEMENT SHALL BE LIMITED TO THE LESS OF ONE THOUSAND DOLLARS (\$1,000.00) OR THE TOTAL CONSIDERATION ACTUALLY RECEIVED BY THE COMPANY FROM CUSTOMER PURSUANT TO THESE TERMS AND CONDITIONS OR ANY AGREEMENT. THE FOREGOING LIMITATION SHALL APPLY TO ALL CLAIMS REGARDLESS OF THE NATURE THEREOF, INCLUDING CLAIMS ASSERTED AS A BREACH OF CONTRACT, A BREACH OF WARRANT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE. IN NO EVENT SHALL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST PROFITS. If Customer desires Company to accept an increased limit of liability for the services provided under these Terms and Conditions, Company will provide an alternate proposal reflecting such increased limit, provided, however, that the increased limit shall be effective upon the Company's and Customers execution of a replacement agreement confirming the same and Customers payment of the alternate fee.

20. INDEMNITY

To the extent permitted by law, the Customer agrees to indemnify and hold harmless the Company from and against claims, liens suits, damages, liabilities, and expenses, including arbitration or court costs and attorneys fees, but only to the extent that they arise from the acts or omissions of the Customer or owner, or a breach or default under these Terms and Conditions

caused by the Customer or owner (if applicable). This obligation to indemnify and hold harmless does not limit the duty of any insurance carrier for the Customer under any insurance policy.

21. FORCE MAJEURE

Customer agrees that the Company shall not be held liable for any failure or delay in performing an obligation pursuant to these Terms and Conditions that is due to any of the following causes (which causes are hereinafter referred to as Force Majeure), to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the Covid-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy.

For the avoidance of doubt, Force Majeure shall not include minor fluctuations in market prices or conditions, or the Company's financial inability to perform its obligations hereunder.

22. CHOICE OF LAW

These Terms and Conditions shall be governed by the laws of the state of North Carolina, regardless of any choice of law rules to the contrary.

23. VENUE

Any claim or dispute between Subcontractor and Contractor arising out of or in connection with these Terms and Conditions, the sole and exclusive venue for all litigation shall be the State and Federal Court embracing Forsyth County, North Carolina.

24. SEVERABILITY

The invalidity of any one or more provisions of these Terms and Conditions shall not affect the validity of any other provision.

25. ASSIGNMENT

Any work performed for the Customer cannot be assigned without the express written consent of the Company. Customer must provide the Company thirty (30) days written notice in the event that it changes property management, ownership, billing address, or on-site property contacts.

26. WAIVER

No waiver of any provision by the Company hereof shall be effective unless made in writing and signed by the Company. The failure of any party to require the performance of any term or obligation of these Terms and Conditions, or the waiver by the Customer of any breach of these Terms and Conditions, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.