

## GENERAL TERMS & CONDITIONS FOR TANDEM BUILDING CORPORATION CONTRACTS

All Tandem Building Corporation's Contracts are subject to the following General Terms & Conditions:

1. **Termination after Initial Payment.** After initial payment, the Owner may not cancel or terminate the contract unless the Owner: (1) pays Contractor a cancellation fee of 10% of the Contract Price and (2) pays Contractor for all labor and materials incurred on the project on a time and materials basis.
2. **Final Payment.** Final payment (the remaining balance of the Contract Price including any withheld payments) is due within three (3) business days of the date when Contractor finishes all punch list work and submits Contractor's final Draw Request or Request for Final Payment, whichever is later. At the time of Substantial Completion, Owner shall inspect the Work and provide a punch list within three (3) days of Contractor's notice (the "punch list deadline"). If a punch list is not provided by the punch list deadline, final payment is due within three (3) business days of the date Contractor submits its final Draw Request or Request for Final Payment. Any punch list work identified after the punch list deadline shall be warranty work and shall not delay final payment. To be clear, even after Final Payment, Contractor will honor its warranty. There shall be no more than two (2) punch lists, after which all punch list work shall be considered warranty work. Upon request of the Owner and after receipt of Final Payment, Contractor shall provide complete and legally effective releases or waivers of all potential liens arising out of or filed in connection with the Work.
3. **Interest.** Payments due and unpaid to Contractor shall bear interest at the rate of the lower of 18% per annum, compounded daily or the maximum rate allowed by law at the place of the Work. Any interest that could be considered usurious is hereby disclaimed and any amount owed shall be automatically reduced to not be usurious.
4. **Contractor's Representation.** Contractor has familiarized itself with the Contract Documents, Work site, locality, and all local conditions and laws and regulations that may affect cost, progress, performance or furnishing of the Work. Contractor, or its employees or subcontractors, are duly licensed to perform the Work as required by local laws and regulations.
5. **Contract Documents.** The Contract Documents which comprise the entire Contract between Owner and Contractor about the Work consist of the Contract signed with the Owner, Exhibit A (description of the Work), Exhibit B (the Plans and Specifications, if any), (4) all Change Orders, and (5) these General Conditions.
6. **Contractor's Responsibilities.** Contractor will: (1) perform the Work per the Contract Documents and the standards of good and workmanlike construction applicable in the area, (2) be solely responsible for the means, methods, techniques, sequences and procedures of the Work, (3) provide competent, suitable personnel to perform the Work, (4) maintain good discipline and order at the Property, and (5) furnish and be fully responsible for all materials, equipment, labor, and incidentals necessary for the furnishing, performance, and completion of the Work, unless excluded on Exhibit A or B. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents.
  - 6.1. **Subcontractors.** Contractor will be responsible for all acts and omissions of its subcontractors, suppliers and other persons and organizations performing any of the Work under a direct or indirect contract with Contractor. Nothing in the Contract Documents shall create any obligation by Owner to pay any subcontractor, supplier or other person or organization directly except as may otherwise be agreed in writing, as stated in Exhibit A or B, or required by laws and regulations.
  - 6.2. **Permits; Inspections.** If specifically stated in Exhibit A or B, Contractor will obtain and will pay for all construction permits, licenses, and inspection fees, which will part of the Construction Costs. If permits, licenses, and/or inspections fees are not addressed in Contract Documents, such will be addressed by a Change Order if required which will be an additional Construction Cost which will be paid by Owner and will increase the Contract Price. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses.
  - 6.3. **Taxes.** Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor under the laws and regulations of the place of the Work applicable during the performance of the Work, which are part of the Construction Costs, unless excluded in Exhibit A.
  - 6.4. **Use of Premises.** Contractor shall be responsible for any damage to the Property resulting from performing the Work, unless excluded on Exhibit A. Contractor shall keep the Property reasonably free from accumulations of waste materials, rubbish and other debris, and at conclusion of the Work shall remove all waste materials, rubbish and debris from and about the Property.
  - 6.5. **Damage to the Work.** Contractor shall repair or replace, at Contractor's sole expense, every portion of the Work damaged or destroyed before Final Completion and caused in whole or in part by the acts or omissions of Contractor. Notwithstanding the foregoing, Owner shall pay for such repair or replacement if the sole cause of the damage or destruction of the Work was Owner's negligence.
  - 6.6. **Warranty.** Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any specific provision or applicable special guarantee in the Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner, either correct such defective Work, or if it has been rejected by Owner, remove it from the Property and replace it with non-defective Work.

6.7. **Indemnity and Hold Harmless; Waiver of Consequential Damages.** Contractor shall indemnify and hold harmless Owner against all loss, liability, cost expense, damage and economic detriment of any kind that arises out of or results from performance of the Work but only to the extent caused in whole or in part by the acts or omissions of the Contractor. **Notwithstanding the forgoing, Contractor and Owner waive all claims for consequential damages of any kind or character arising out of this Contract.**

#### 7. **Insurance.**

7.1. **Contractor's Insurance.** Contractor shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed.

7.2. **Owner's Insurance.** Owner shall purchase and maintain Owner's homeowners insurance or liability insurance and other reasonably appropriate insurance. If Owner is occupying the Property during the Work, Owner shall maintain their homeowner's insurance on the property. Contractor and Owner waive subrogation against the other.

#### 8. **Termination.**

8.1. **Termination by Owner.** If the Contractor materially breaches any of its obligations under this Contract, then Owner may terminate this Contract after giving Contractor a 14-day notice and opportunity to cure, provided that if any such breach cannot be cured within such time that Contractor begins to cure and diligently prosecutes cure to completion. If not, Owner may terminate this Contract and take possession of the Work. Alternatively, instead of terminating the Contract, Owner may cure any remaining breach and deduct the cost thereof from amounts otherwise owed to the Contractor.

8.2. **Termination by Contractor.** If the Owner materially breaches any of its obligations under this Contract, then Contractor may terminate this Contract after giving the Owner 14 days' notice and opportunity to cure, provided that if any such breach cannot be cured within such time that Owner begins to cure and diligently prosecutes cure to completion. If not, Contractor may terminate this Contract, shall have no further obligation to perform the Work, and shall maintain all rights in law or in equity for damages, including the right to recovery of profit and overhead.

12. **Dispute Resolution; Mediation/Arbitration.** If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by private mediation with a mediator agreed to by the parties. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by binding arbitration privately administered in accordance with the Construction Industry Arbitration Rules of the American Arbitration and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The parties shall agree on the single arbitrator within fourteen (14) days of the commencement of arbitration. Failing to reach agreement, each party shall select one person (who must be an attorney or AAA approved arbitrator) to act as arbitrator selector and the two selected shall select an arbitrator within ten days of their appointment, and such person shall serve as the single arbitrator for the arbitration. The two arbitrator selectors shall then be discharged. The arbitrator shall be a licensed Texas attorney with at least 10-years experience in construction law, or a retired Texas judge. The place of arbitration shall be Bastrop, Bastrop County, Texas, unless agreed by the parties. The arbitration shall be governed by the laws of the State of Texas. If the dispute is less than \$5,000 there shall be no discovery other than the exchange of documents. If the dispute is over \$5,000, discovery shall be determined in the sole discretion of the arbitrator upon motion and/or request of the parties. The arbitration will be based on the submission of argument and documents and there shall be no in-person or oral hearing. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 60 days of filing and awards rendered within 90 days. The Arbitrator shall agree to these limits prior to accepting appointment. The Arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The Arbitrator shall not award consequential damages in any arbitration initiated under this section. Any award in an arbitration initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to any party other than the direction to pay a monetary amount. The Arbitrator shall award to the prevailing party, if any, as determined by the Arbitrator, all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award of the Arbitrator shall be accompanied by a reasoned opinion. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**Confidentiality:** Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

For disputes under \$2,500, Contractor (Butler Brothers Odd Jobs, LLC) may waive mediation and arbitration and proceed to file a claim in Justice Court in Bastrop County, Texas.

#### 13. **Miscellaneous.**

13.1. No assignment of this Contract, or any right thereunder, is valid or binding without all parties written consent.

13.2. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives, to the other party, its partners, successors, assigns and legal representatives regarding all covenants, agreements and obligations in the Contract Documents.

13.3. This Contract and all issues, disputes and matters arising out of it shall be governed by and construed in accordance with the law of the state of Texas. Venue for any dispute is Bastrop County, Texas.

13.4 These General Conditions are subject to change at any time. Any changes will be updated on this website.

**Dated: February 9, 2020**