



General Conditions

Version 1.3 - FEB 2019

1.0 General

- 1.1. All sales by the member of the ABP Systems LLC, (collectively hereinafter "Company"), identified on the applicable sales order acknowledgement are made subject to the following terms and conditions. The Company expressly rejects any other terms or conditions contained in any document(s) submitted by the Client. The Company's provision of credit, acceptance of any purchase order and/or sale of any goods are expressly made conditional on the Client's acceptance of these terms and conditions. All orders by the Client are only accepted upon issuance of Company's sales order acknowledgement and execution of this Contract.
- 1.2. Except as otherwise agreed in writing signed by the Client and Company, these terms and conditions constitute the entire agreement between Company and Client relating to the sale and supply of such goods by the Company. Terms or conditions contained in any document issued by the Client that in any manner purport to alter, modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Client document and waived by the Client. The Company and Client expressly agree that the Company may modify these terms and conditions from time to time, and such modifications shall be binding.
- 1.3. Approved drawings and related documentation must be delivered to the Company by the Client before detailing and fabrication is scheduled. The Client cannot modify, cancel, or otherwise alter any order without the Company's written consent.
- 1.4. The purchase price of the goods shall be as stated on the face of the applicable Client customer order coinciding with a valid Company bid document and Contract; provided, however, Client expressly agrees that Company in its sole discretion may adjust the purchase price to take into account market fluctuations in the price of goods or in the case of changes due to design or engineering amendments and related additional quantities and works required. Payments to the Company are due upon Client's receipt of invoice. Tax is not subject to discount. No retainage will be permitted unless otherwise agreed prior in writing. Checks or payments, whether full or partial, received from or for the account of Client, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements, or documents, shall be applied by Company against the amount owing by Client with full reservation of all Company's rights and without an accord and satisfaction of Client's liability. Any remittance marked paid in full, or any correspondence related to any dispute must be emailed to Company at the following email address: Info@abpsystem.com
- 1.5. If, in the Company's opinion, the Client's credit becomes impaired, the Company may suspend performance until such time as Company has received full payment for any goods already delivered or in process and is satisfied in its sole discretion as to the Client's credit for future deliveries. If the Company suspends performance and later proceeds with such order, the Company shall be entitled to such extension of time for performance as is necessitated by the suspension. Further, in the event the Client fails to make payment, or to any third-party Company, of any amounts due and owing to Company or such third-party Company (including any applicable surcharge or freight charge), the Company shall have the right to terminate any Client order or any unfulfilled portion thereof, and the Company or any third-party Company thereof may terminate any other agreement between Company or third-party Company and Client. The Company may charge interest on the outstanding balance at an annual rate of 12% or the highest rate allowed by law (whichever is less). The Company shall have the right to employ an attorney to collect the balance due, and the Client agrees to pay all collection costs incurred by Company, including its reasonable attorneys' fees.



- 1.6. All taxes of any kind levied by any federal, state, municipal or other government authority which the Company is required to collect or pay with respect to the production, sale or shipment of goods sold hereunder shall be the responsibility of the Client. The Client agrees to pay all such taxes and further agrees to reimburse the Company for any such payments made by the Company.
- 1.7. The Company shall not be liable for delays in delivery or performance due to causes beyond its reasonable control, including but not limited to: acts of God; acts of Client including conditions on site; strikes, lockdowns or other labor disturbances; inability to obtain, or material increases in the cost of, fuel, raw material or parts; delays in transportation; repairs to equipment; fires; accidents; acts of war or terrorism; floods, storms, government directives and other similar occurrences. Acceptance of designs and goods upon delivery shall constitute a waiver by Client of any and all claims, including any claims for liquidated damages or consequential loss, for damages on account of non-shipment or delays in delivery or performance.
- 1.8. Delivery dates are approximate and are partially based upon prompt receipt of all necessary items from Client and responses where required. Title and risk of loss shall pass upon loading at Company's facility. The Company reserves the right to select the mode of shipment for the goods.
- 1.9. Unloading shall be the responsibility of the Client at the delivery point unless otherwise agreed in writing. If, in the opinion of a delivery truck driver, it is impractical or unsafe to reach the job site to unload the goods, unloading shall take place where the truck can, and in the driver's judgment, reasonably and safely proceed.
- 1.10. The Client agrees to carefully check goods against shipping documents upon unloading at destination. The Company shall NOT be liable for any claim for shortages, improper or damaged goods unless such claims are specifically noted on the shipping documents at the time of unloading with reasonable evidence provided. Should the Client not submit any claims in writing within one day of unloading, the delivery shall be deemed to have successfully occurred per the shipping documents. The Company shall have the right to deny any claims where it is reasonable to believe that such damage or loss occurred by third parties on site or by the Client itself.
- 1.11. The Company warrants to the Client that the goods furnished hereunder will conform to the Standard Specifications of the AISI S100 (North American Specification for the Design of Cold-Formed Steel Structural Members) and ICC ES Acceptance Criteria AC 46, whichever is applicable. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Company shall not have any liability for errors in design when it prepares erection drawings from designs furnished by any third party, including but not limited to the Client.
- 1.12. No claim for damages for goods that do not conform to specifications will be allowed unless the Company is given immediate notice after delivery of goods to the first destination to which they are shipped and allowed an opportunity to inspect and/or rectify them. Goods for which damages are claimed shall not be returned, repaired, or discarded without Company's prior written consent. THE CLIENT'S EXCLUSIVE REMEDY AGAINST THE COMPANY'S SOLE OBLIGATION, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE LIMITED TO THE REPLACEMENT OR REPAIR OF GOODS THAT FAIL TO MEET THE FOREGOING WARRANTY AT THE TIME OF DELIVERY OR, AT THE COMPANY'S OPTION, A REFUND OF THE PURCHASE PRICE FOR SUCH GOODS. IN NO EVENT SHALL THE COMPANY HAVE ANY LIABILITY FOR DAMAGES IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE GOODS IN QUESTION, NOR SHALL THE COMPANY HAVE ANY LIABILITY FOR INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES WHATSOEVER.



- 1.13. This agreement shall be governed by and construed in accordance with the laws of the state of Florida ("State") in which the Company's facility is located. The Client, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdictions of the state and federal courts of the State for any litigation which may arise out of or be related to any sales by the Company. The Company reserves the right to enforce these terms and conditions at any time and none shall be deemed waived unless such waiver is in writing signed by a duly authorized officer of Company. All rights and remedies granted herein are in addition to all remedies available at law or in equity.
- 1.14. The Client agrees to comply with the standard specifications and Technical Manuals of the International Code Council, along with the AISI S100 (North American Specification for the Design of Cold- Formed Steel Structural Members) and ICC ES Acceptance Criteria AC 46 in the handling, erection and installation of the goods sold hereunder, and further agrees to follow the "Recommendations for Handling and Erecting Company's Open Web Steel Joists, Steel Wall Panels Web Steel Trusses " as shown on Company's erection drawings and delivery tickets. Should erection or installation be provided by a third party, the Client agrees to notify such party of the necessity of compliance with the foregoing. The Client shall indemnify, defend, and hold harmless the Company, its affiliates, employees and agents, from and against all claims, losses, damages, and expenses (including, but not limited to, attorney's fees and expenses) in any manner arising out of, related to, or resulting from or alleged to arise from the improper erection or installation of any Company goods, and hereby releases Company from all liability based on any such claims.

2.0 Detailing

- 2.1. All detailing and engineering services performed, and related work-product generated by the Company, including without limitation all Plans (as defined below), shall be provided to the Client subject to these General Conditions of the Contract. No Project (as defined below) will be acceptable to, or accepted by, the Company unless the same is subject to these General Conditions, which shall not be amended, revised or modified except in a written instrument that specifically references the intent to modify these General Conditions signed by an authorized representative of Company. No statements, acknowledgements, representations, or assertions stated on any Client-issued documents shall have the effect of amending, revising or modifying these General Conditions.
- 2.2. DEFINITIONS. "Project" shall mean the detailing project for which Company is providing Plans. "Building" shall mean the building, frame or structure that is the subject of the Project, "Plans" shall mean the shop drawings for steel fabrication produced by Company for the Project, and "Agreement" shall mean the contract or subcontract between Company and Client, which shall be governed by these Terms.
- 2.3. PLANS. Company will furnish the Client with electronic copies of all Plans via email or cloud-based file-sharing site. Time-stamps on email transmittals shall be accepted by the parties as the record date of transmittal.
- 2.4. SCOPE OF WORK. The Company bid price includes a scope of work and list of contract documents known by Company at the time of bid. Client acknowledges that there are no other contract documents applicable to Company's provision of the Plans. Any change in the scope of work or contract document list must be accepted in writing by Company before work commences. Drawing standards required by Client must be clearly defined before the bid due date. Any drawing standards or changes received by Company after the bid due date may result in a change in contract price. The Company will not be liable for work caused by others or for misleading and/or incorrect information contained in any documents related to the Project. The Company's Bid pricing is valid per the term defined on the bid(s) documents. Due to supply chain demands pricing may be subject to change prior to confirmation and Client deposit.



Subject to finalization of plans following a deposit being received, the Company reserves the right to adjust the final pricing to allow for design variances or change orders following the exact quantities of steel being confirmed once detailing and engineering has been completed.

- 2.5. **SCOPE CLARIFICATIONS.** Unless otherwise stated, the Plans do not include allowance for any non CFS/Structural steel elements or foundation design. Company provided Plans do include general installation advice and coordination.
- 2.6. **DESIGN.** The Company shall not be required to check Architectural design drawings, nor will the Company be responsible for Architectural design intent unless explicitly stated in the Agreement. The Company will, however, point out obvious errors as they are actually found generally per the American Institute of Steel Construction Code of Standard Practices. The Company will not stamp drawings or designs over which the Company is not in complete supervisory control. All connections design, inspection and review is the responsibility of the Engineer of Record.
- 2.7. **REQUESTS FOR INFORMATION.** Requests for Information (“RFI”) may be required to allow detailing of a Project and/or items within a Project, which may affect cost and schedule. If excessive RFIs are needed, Company may charge additional fees (over and above the contract price) as determined by Company for such RFIs. The Company follows the standards code outlined by the National Institute of Steel Detailing and the American Institute of Steel Construction regarding the return of RFIs and Approval drawings from Client. Failure of Client to return RFIs timely and Approval drawings per these standards may result in cost and schedule impacts to the Client.
- 2.8. **CHANGE ORDERS; CANCELLATION.** Design changes, additions, and/or deletions, and additional fees related thereto, will be negotiated at the time that they occur or as identified. A formal Change Order shall be issued by the Company outlining specific changes, costs and schedule impacts. A signed Change Order or written acknowledgement must be received by Company for work on such Change Order to start. If the Project is canceled, the Client shall be assessed a cancellation fee determined by Company in its reasonable discretion including reasonable allowance for works performed, inventory costs, overhead and profit.
- 2.9. **NON-APPROVED PLANS.** Plans approved by the Company for fabrication shall be indicated by a clearly marked “Issued For Fabrication” on the Plans. The Company assumes no liability for the correctness of Plans prior to approval. The Client shall bear all risk of using non-approved Plans for fabrication, and the Company will not accept any back charges or claims related thereto.
- 2.10. **OWNERSHIP.** All Plans and other deliverables prepared by the Company are and shall remain the sole property of Company and may be used only for the purpose originally intended. Any other use of the Plans shall not be permitted without express written agreement of Company and reasonable compensation for same.
- 2.11. **BACK-CHARGES.** The Company back-charge policy is per the standard code of the National Institute of Steel Detailing and the American Institute of Steel Construction and shall in no case exceed the actual detailing cost of the affected item. Each claim shall be addressed within twenty-four (24) hours of occurrence and Company must participate in the solution and any other action necessary to correct any problems. The Company will not accept a back-charge deviating in any way from the foregoing. The Company will not accept any costs associated with any type of liquidated damages or consequential damages, and will not accept a contract containing them, whether expressed or otherwise.
- 2.12. **WARRANTY; LIMITATION.** ABP Systems LLC, warrants that the Plans will be in accordance with; (a) the agreed-upon Project documents, and (b) the standards code of the National Institute of Steel Detailing. **THE CLIENT’S EXCLUSIVE REMEDY, AND THE COMPANY’S SOLE OBLIGATION, RELATED TO SUCH WARRANTY SHALL BE LIMITED TO, AT THE**



COMPANY'S OPTION, COMPANY'S CORRECTION OR REPRODUCTION OF THE PLANS. THE EXPRESS WARRANTY SET FORTH ABOVE IS SUBJECT TO THE LIMITATIONS SPECIFIED, AND THIS AGREEMENT EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Any legal action or proceedings by the Client for breach of this Agreement must be commenced within six (6) months from date of delivery or the date the cause of action accrues, whichever is later. Any claims that have not been asserted by written notice within the designated periods of time are waived.

- 2.13. REMEDIES. IN NO EVENT SHALL THE COMPANY HAVE ANY LIABILITY TO THE CLIENT, REGARDLESS OF LEGAL THEORY, FOR (A) ANY DAMAGES IN EXCESS OF THE FEES PAID FOR THE PLANS, OR (B) INCIDENTAL, LIQUIDATED, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE, including, but not limited to, loss of profits, loss of rents, loss or expense arising from any building or plant closing, construction or completion delays, labor or overhead expense, increased operating expense, increased insurance or maintenance expense, business interruption, damage or loss to inventory or any other property, or any other type of consequential, incidental, or special loss or damage whatsoever, whether claims for such damages or losses shall be based upon contract, warranty, tort, negligence, strict liability, or any other cause of action.
- 2.14. BENEFIT. The Client may not assign, transfer or delegate this Agreement or any interest or obligation herein. The Agreement shall bind and benefit only the Company and the Client, shall not benefit any other persons or entities ("Third Parties"), and shall not be deemed to create any rights in favor of any Third Parties, whether or not referred to in the Agreement.
- 2.15. SEVERABILITY. If any provision of the Agreement is found to be invalid or unenforceable under applicable law, such provision shall be severable and the remaining provisions of the Agreement shall remain in full force and effect.