

1. **DEFINITIONS.** "Kiefner" means Kiefner and Associates, Inc. "Company" means any entity from which Kiefner has received an order which has been accepted, or to which Kiefner has extended an estimate, offer, or quote, which Company has accepted. "Work" means the performance of any services which are to be provided by Kiefner under these Standard Terms and Conditions (the "Terms").
2. **APPLICABILITY OF TERMS.** Company agrees that these Terms shall govern relations between Company and Kiefner to the exclusion of any other terms including without limitation, indemnity, conditions, and warranties (written or oral, expressed or implied) contained in any of Company's documents, unless duly executed agreement expressly governing the matters set forth herein is entered into between Kiefner and Company. No variation or qualification of these Terms or any Quote is valid unless agreed in a writing signed by Kiefner. **Kiefner HEREBY ADVISES COMPANY THAT its PERFORMANCE OF THE WORK IS EXPRESSLY CONDITIONED ON COMPANY'S ASSENT TO THE THESE TERMS.**
3. **QUOTATION.** Any price quote made by Kiefner shall remain open for a period of sixty (60) days from the date of issuance, unless Kiefner, in sole discretion, modifies such period in writing.
4. **PAYMENT & INVOICING.** Unless different prices have been specifically agreed to by in a duly accepted Quote, work order, or offer (collectively a "Quote"), all prices are subject to alteration without notice and Work shall be invoiced at Kiefner's prevailing prices for the area where the Work is be performed. All present and future taxes imposed by any federal, state or local authority of any country which Kiefner may be required to pay or collect, upon or with reference to the Work (except net income and equity franchise taxes) shall be for the account of Company. Kiefner shall invoice Company monthly, or as otherwise set forth in the Quote. Payment is due in full, without setoff, retainage, or withholding, thirty (30) days from receipt of the invoice unless otherwise agreed to in writing. Past due amounts are subject to a late fee of eight percent (8%) per annum. Attorney's fees and other costs incurred in collecting past due amounts shall be paid by Company.
5. **RECORDS.** Kiefner shall maintain a complete and correct set of records pertaining to all aspects of the Work for three years after completion of the Work or as may be required by law, whichever time period is shorter. Company shall have the right, at Company's sole expense, to inspect and audit Kiefner's financial records regarding the Work, at reasonable times and with notice, within a period of two (2) years after the termination of the Work; provided, however, that Kiefner has the right to exclude any trade secrets, intellectual property, formulae or confidential information from such inspection and audit.
6. **LIENS.** Company shall have the right to withhold final payment until Kiefner has furnished proof that all claims against Kiefner by any of its suppliers, contractors and subcontractors for labor, material, equipment, or goods of any kind furnished in connection with the Work have been released.
7. **WARRANTY.** Kiefner WARRANTS THAT THE WORK FURNISHED HEREUNDER SHALL BE FURNISHED IN ACCORDANCE WITH THE SPECIFICATIONS SET FORTH IN A DULY EXECUTED QUOTE, AND PERFORMED IN A GOOD AND WORKMANLIKE MANNER BY QUALIFIED PERSONNEL. HOWEVER, NO WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER REPRESENTATION OR WARRANTY, OR GUARANTEE, WHETHER EXPRESS OR IMPLIED, IS MADE RESPECTING SAID WORK, AND ANY SUCH WARRANTIES ARE WAIVED BY COMPANY. **KIEFNER SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF REDHIBITION OR LATENT DEFECTS FOR ANY PRODUCT OR SERVICE THAT MAY BE SOLD.**

SOLE REMEDY As Company's sole remedy for any breach of the foregoing warranty or any other alleged negligence in connection with the performance of the Work (collectively a "Breach"), if within twelve months of delivery of any Work the Company gives written notice setting forth any deficiency caused by a Breach, then Kiefner shall at its own expense re-perform the scope of work. Company agrees and understands that the issuance of a professional opinion or issuance of a final report does not create any obligations, warranties, or guarantees regarding the object; or fitness of use of the object, of the report.

8. **LIMITATION OF LIABILITY.** KIEFNER'S AGGREGATE LIABILITY AND RESPONSIBILITY TO COMPANY WITH RESPECT TO ANY LIABILITY, BREACH, OR OBLIGATION RELATING TO OR ARISING OUT OF ANY WORK IS LIMITED



TO ONE AND ONE-HALF TIMES THE COMPENSATION PAID TO KIEFNER FOR THE WORK (THE "LIMITATION OF LIABILITY"). THIS LIMITATION OF LIABILITY APPLIES TO ALL LAWSUITS, CLAIMS OR ACTIONS, WHETHER IDENTIFIED AS ARISING IN TORT, INCLUDING NEGLIGENCE (WHETHER SOLE OR CONCURRENT), PROFESSIONAL ERROR OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), NEGLIGENT MISREPRESENTATION, AND STRICT LIABILITY, CONTRACT, OR OTHER LEGAL THEORY, INCLUDING WITHOUT LIMITATION, KIEFNER'S INDEMNITY OBLIGATIONS TO COMPANY RELATED TO THE WORK PROVIDED IN THIS AGREEMENT AND ANY CONTINUATION OR EXTENSION OF OUR WORK. Company acknowledges that this LIMITATION OF LIABILITY provision has been reviewed, understood and is a material part of this Agreement, and that Company has had an opportunity to seek legal advice regarding this provision.

9. **NO CONSEQUENTIAL DAMAGES.** In no event shall Kiefner or Company be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits, damages for delay, or loss of use arising from or related to Work provided by Kiefner.
10. **SAFETY.** Kiefner is solely responsible for the safety and health of Kiefner's employees and lower tier subcontractors. Kiefner shall take necessary precautions for the safety of its employees. Kiefner specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by Kiefner. Should Company, or third parties, be conducting activities on the site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.
11. **INDEMNITY.** Kiefner agrees to indemnify Company, and its agents and employees, from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Company may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by the negligence or willful misconduct of Kiefner, its subcontractors and their respective employees.

Company agrees to indemnify Kiefner, and its agents and employees, from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Kiefner, its agents, employees, and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Company's negligence or willful misconduct. Company and Kiefner shall, in the event of liability arising out of their joint negligence or willful misconduct, indemnify each other in proportion to their relative degree of fault.

12. **INSURANCE.** Kiefner shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where Work is provided, (2) Employer's Liability with limits of \$1,000,000 each accident, (3) Commercial General Liability with limits of \$1,000,000 each occurrence/ \$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$1,000,000 each claim. Upon receipt of written request, Company shall be included as an additional insured under the General Liability and Automobile Liability policies on a primary and non-contributory basis for obligations and liabilities assumed hereunder by Kiefner. The insurance requirements hereunder shall in no way modify the limitations of liability contained elsewhere.
13. **COMPANY OBLIGATIONS.** Company warrants that all information provided to Kiefner regarding the Work and Work location are complete and accurate to the best of Company's knowledge.

Company agrees to furnish Kiefner, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Kiefner to enter onto the Work site to perform the Work, as required; Company agrees to disclose the identity and location of all utilities serving the Work Site and the presence and accurate location of hidden or obscured man-made objects known to Company that may be in Kiefner's work area. BEFORE COMMENCEMENT OF ANY WORK, Company shall, and without cost to Kiefner, remove or make safe any conditions at the job site or on the workplace which present a safety hazard, including, but not limited to, electric wires, flames, smoke, flammable liquids or gases, fumes, steam, poisons, asbestos, hazardous or toxic chemicals, and hazards from other contractors working above, below, or adjacent to the Kiefner Work area. Company shall supply adequate scaffolding, lighting, and handling facilities



at each Work area. If Company fails to perform any of the foregoing, it shall indemnify, defend, and hold Kiefner harmless for any damages of any type whatsoever which result therefrom.

14. **TIME.** Kiefner provides good faith estimates for the schedule of its services. Any periods of time quoted or accepted by Kiefner for completion of the Work shall be treated as estimates only as time is not of the essence.
15. **OWNERSHIP OF MATERIALS.** Company shall retrieve any materials sent to Kiefner for evaluation, analysis, inspection, within ninety (90) days of receipt of written notice from Kiefner that such property is ready for retrieval, failing which Kiefner may, in its sole and unfettered discretion, dispose of or use the material in any otherwise lawful manner it deems fit, and any disposal costs shall be reimbursed by Company.
16. **TERMINATION.** For Convenience-Upon written notice, Company or Kiefner may terminate the performance of any further Work included in this Agreement. Upon receipt of a termination notice, Kiefner shall stop all Work included in this Agreement and Company shall pay Kiefner within thirty (30) days for all Work performed up to the receipt of the termination notice.

For Cause-In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business day's written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause, Kiefner shall stop work on all Work included in this Agreement and Company shall pay Kiefner within thirty (30) days for all Work performed up to the termination.

17. **FORCE MAJEURE.** Kiefner shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Work results from any causes beyond its reasonable control. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Work. In the event that such acts or events occur, it is agreed that Kiefner shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit of the Work covered by these Terms.
18. **ASSIGNMENT AND SUBCONTRACTS.** Kiefner may subcontract, without written permission of Company, all or any portion of the Work to any qualified affiliate.
19. **CONFIDENTIALITY.** All information relating to the Work or the business of Company including, but not limited to, drawings and specifications relating to the Work, and Company information, shall be held in confidence by Kiefner and shall not be used by Kiefner for any purpose other than for the performance of the Work or as authorized in writing by Company. Confidential information shall not include information that (i) has become part of the public domain through no fault of Kiefner; (ii) is possessed by Kiefner, before receipt thereof from Company; (iii) is acquired independently and without any confidentiality obligation by Kiefner from a third party that has the right to disseminate such information; (iv) is developed by Kiefner independently; (v) is required to be disclosed by Kiefner due to applicable laws and regulations, government order or court order.
20. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether alike or different in character.
21. **MISCELLANEOUS.** These Terms supersede all earlier warranties, representations or statements (whether oral or in writing) and may only be varied or amended in a signed writing between the parties. The validity, interpretation, and performance of these Terms and the underlying Work shall be governed by and construed in accordance with the laws of the state of Texas. No amendment or modification to these Terms, or any waiver of any provisions hereof, shall be effective unless in writing signed by both Parties, and under no circumstances shall any such amendment or modification be deemed to have retroactive effect. To the extent Kiefner performs any other work for Company not contemplated by the quotation in connection hereof then these Terms shall govern the performance of such other work notwithstanding the absence of a quotation by Kiefner, or other written agreement in respect to such other work. If

any part of these Terms is found to be unenforceable, then the parties' intent is to have such part rewritten to attain as close as possible the original intent of the unenforceable provisions.

22. **CHOICE OF LAW, FORUM.** To the greatest extent permitted by law, the construction of these Terms shall be governed by Texas law, conflicts of laws principles notwithstanding, and any suit related to or arising out of the Work shall be brought exclusively in the state or federal courts located in Harris County, Texas, and each party consents to the personal jurisdiction of such courts.
23. **WAIVER OF JURY TRIAL.** TO THE GREATEST EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OR THE WORK.