



MarksEngineering
Design-It. Build-It.

42 Beeman St.
Canandaigua, NY 14424

MARKS ENGINEERING, P.C. STANDARD TERMS AND CONDITIONS

- 1. CONTRACT** – These Standard Provisions and the accompanying Proposal constitute the full and complete Agreement of the parties and may be amended, added to, superseded, or waived only if both parties agree in writing. These standard provisions apply to all project performed by Marks Engineering, P.C. A proposal can also be presented to the client in a verbal form.
- 2. DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations, and other documents prepared by Marks Engineering, P.C. (“Documents”) are instruments of Marks Engineering, P.C. services that shall remain Marks Engineering, P.C. property. The Client agrees not to use the Documents for future additions or alterations to this Project or for other projects without Marks Engineering, P.C. express written consent. Any unauthorized use of the Documents will be at the Client’s sole risk and without liability to Marks Engineering, P.C. or its subconsultants. Accordingly, Client shall defend, indemnify, and hold harmless Marks Engineering, P.C. from and against any and all losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized use.
- 3. CONSTRUCTION PHASE SERVICES** – When construction-phase services are included in the Agreement, Marks Engineering, P.C. will provide personnel to determine in general whether construction is proceeding in a manner consistent with the Documents. Marks Engineering, P.C. is not responsible for construction means, methods, techniques, sequencing or procedures, or for safety precautions or programs in connection with the Project.

In the event that Marks Engineering, P.C. scope of services does not include design phase services, Marks Engineering, P.C. shall not be responsible for the accuracy, completeness or adequacy of the design. Under such circumstances, the Client agrees to defend, indemnify, and hold harmless Marks Engineering, P.C. from and against any and all losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from the design of the Project.

- 4. STANDARD OF CARE** – Marks Engineering, P.C. and its subconsultants will exercise that degree of care and skill ordinarily exercised by similarly situated architects and engineers practicing under similar circumstances. Client agrees that services provided will be rendered without any warranty, express or implied. Marks Engineering, P.C. shall exercise usual and customary professional care in its efforts to comply with codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.
- 5. OPINION OF PROBABLE COSTS** – When required as part of our services, Marks Engineering, P.C. will furnish opinions of probable cost but does not guarantee, warrant or represent the accuracy of such estimates. Opinions of probable cost prepared by Marks Engineering, P.C. hereunder will be made on the basis of Marks Engineering, P.C. experience and qualifications and will represent Marks Engineering, P.C. judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that Marks Engineering, P.C. does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
- 6. SUSPENSION/TERMINATION OF WORK** – The Client may, upon seven (7) days written notice, suspend or terminate further work by Marks Engineering, P.C. The Client shall remain liable for, and shall promptly pay Marks Engineering, P.C. for all services rendered to the date of suspension or termination.

Marks Engineering, P.C. may suspend or terminate this Agreement upon seven (7) days written notice if the Client fails to substantially perform in accordance with this Agreement. Failure to make payments in accordance herewith shall constitute substantial nonperformance. This Agreement shall automatically terminate if payment are not brought current within seven (7) days of notice of suspension.

- 7. LIABILITY** – Marks Engineering, P.C. will furnish appropriate insurance certificates for general and professional liability upon request. The Client agrees that Marks Engineering, P.C. total aggregate liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney’s fees, arising out of or in any way related to the Project or this Agreement from any cause or causes, including, but not limited to, Marks Engineering, P.C. negligence, errors, omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the total amount of the Marks Engineering, P.C. fee received or \$50,000 whichever is less.



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- 8. BILLING AND PAYMENT** – Client shall pay Marks Engineering, P.C. in accordance with the rates and charges set forth in the Proposal. Marks Engineering, P.C. will submit to Client, on a monthly basis, an invoice of services rendered and expenses incurred during the previous period. Payment will be due upon receipt of Marks Engineering, P.C. invoice. In the event Client fails to pay Marks Engineering, P.C. within thirty (30) days after invoices are rendered, Client agrees that Marks Engineering, P.C. shall have the right to consider that event a breach of this Agreement and upon seven (7) days written notice, the duties, obligations and responsibilities of Marks Engineering, P.C. under this Agreement may be either suspended or terminated. Unless otherwise noted, payments shall be received within 15 days of receipt of invoice. A 3% monthly finance charge will be added to all invoices over 30 days past due.
- 9. CONSEQUENTIAL DAMAGES** – Marks Engineering, P.C. and the Client waive consequential damages, including but not limited to damages for loss of profits, loss of revenues and loss of business of business opportunities, for claims, disputes or other matters in question arising out of or relating to this Agreement.

10. MISCELLANEOUS

Governing Law: The substantive laws of the state that the planned project resides shall govern any disputes between Marks Engineering, P.C. and the Client arising out of the interpretation and performance of this Agreement.

Mediation: Marks Engineering, P.C. and the Client agree that any disputes arising under this Agreement and the performance thereof shall be subject to nonbinding mediation as a prerequisite to further legal proceedings.

Marks Engineering, P.C. Reliance: Unless otherwise specifically indicated in writing, Marks Engineering, P.C. shall be entitled to rely, without liability, on the accuracy and completeness of information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: Marks Engineering, P.C. shall not be required to sign any documents, no matter by whom requested, that would result in Marks Engineering, P.C. having to certify, guaranty, or warrant the existence of conditions that would require knowledge, services or responsibilities beyond the scope of this Agreement .

Third Parties: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Marks Engineering, P.C. Marks Engineering, P.C. services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Marks Engineering, P.C. because of this Agreement or Marks Engineering, P.C. performance of services hereunder.

Hazardous Materials: Unless otherwise specifically stated in the Scope of Services Marks Engineering, P.C. shall have no responsibility for the discovery, presence, handling, removal or disposal of any hazardous materials.