

Terms and Conditions

- 1. General.** There are many other service providers like us but you freely chose to enter into this Agreement. You acknowledge having had an opportunity before signing this Agreement to have it reviewed by your legal counsel. The primary purpose of this Agreement is for us to perform the Work in exchange for payment that covers our costs and expenses at a profit margin in an amount we determine. All payments made under this Agreement shall be in U.S. Dollars.
- 2. Relationship.** We will perform the Work as an independent contractor, not as your employee; you will make no deductions from any amounts payable to us for federal, state, or local taxes, or for any other purposes. We may use subcontractors in performing the Work. Nothing in this Agreement shall be construed as establishing any kind of partnership or joint venture between the Parties.
- 3. Contract.** This "Agreement" is a binding contract for services (any goods involved are incidental) made and entered into by and between Climb Electric, LC, a Utah limited liability company and the customer identified in the signature block of the estimate portion of this Agreement and is effective as of the date signed by the customer (each a "Party" and collectively the "Parties"). The customer is referred to herein as "you", "your", and the like, and Climb Electric, LC, is referred to herein as "we", "our", "us", and the like. This Agreement consists of: (a) these Terms and Conditions; (b) an attached estimate that describes the Work and may include additional terms and conditions; and (c) any other "Contract Documents" to the extent they describe the Work or Work-related aspects of the premises at which the Work is to be performed, such Contract Documents including drawings, specifications, addenda, alterations, or change orders. The term "estimate" as used herein also means "bid" or "proposal" as those terms are commonly understood in the industry. **IN THE EVENT OF A CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND ANY OF THE CONTRACT DOCUMENTS, INCLUDING ANY WARRANTIES THAT MAY BE PROVIDED THEREIN, THESE TERMS AND CONDITIONS SHALL PREVAIL.**
- 4. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the Work and supersedes and replaces any and all representations, negotiations, understandings, and other agreements (including standard form contracts and contracts of adhesion regardless of their effective date in relation to the date of this Agreement), oral or written. This provision shall survive termination of this Agreement.
- 5. Modifications and Alterations.** Other than the Contract Documents, this Agreement may only be altered, modified, or amended in writing(s) duly executed by the Parties. Notwithstanding the foregoing, any alteration (also known in the industry as a "change order") to the Work requested or issued by you, whether verbally or in writing, and agreed to by us after the estimate is delivered to you will change the actual cost and schedule of the Work. Notwithstanding anything to the contrary in this Agreement or elsewhere, you agree to pay us the actual cost of, and our profit margin for, the Work whether or not this Agreement is amended to reflect such alterations and whether or not such alterations are set forth in a signed writing.
- 6. Work and Exclusions.** The "Work" is as described in the estimate portion of this Agreement and includes any labor, parts, materials, and special equipment used in the Work whether or not described separately. The term "special equipment" as used herein refers to equipment to be used in performing the Work that we rent or otherwise temporarily obtain from a third-party. Except as expressly set forth in the estimate, the Work does not include: (a) earthwork including trenching, backfill, and compacting; (b) repair of concrete damage incurred to complete the Work; (c) repair of wall damage including to drywall, paint, and other wall finishes incurred to complete the Work; (d) after-hours, weekend, and holiday labor; (e) permits and other fees required by a governing entity; (f) engineering and design work; (g) low voltage wiring, devices, and related labor; (h) fire systems, devices, and related labor; and (i) intellectual property of any kind whatsoever. Except as expressly set forth in the estimate, the schedule for performing the Work shall be reasonable start and completion dates and times under the circumstances which shall include the specific Work to be performed, the availability and condition of the premises as they may change from time to time, the availability of labor, parts, materials, and special equipment, alterations to the Work as they may arise, and all other factors related to the Work.
- 7. Parts and Materials.** The price and availability of parts, materials, and special equipment needed for the Work is typically outside of our control, and we may substitute any substantially similar part or material for any other unless expressly set forth in the estimate. We will make reasonable efforts to inform you of significant changes in price or availability as we become aware of such changes. Except as expressly set forth in the estimate, you agree to be responsible for such changes in price and availability and for any related delays to and increased costs and expenses incurred for the Work.
- 8. Right of Entry.** Except as expressly set forth in the estimate, you authorize us to enter the premises at which the Work is to be performed during reasonable hours with or without notice in order to perform the Work and any tasks related thereto. You warrant that you will ensure the premises are and will be maintained in a safe and accessible condition suitable for us to perform the Work free of interference by you and others.
- 9. Pass-Through.** Except as expressly set forth in the estimate, we may pass through to you as an amount due under this Agreement, either before and after its termination, any taxes, fees (including fees for inspections, permits, licenses, and fines), or any other amount assessed by a governing or regulating body in relation to the Work.
- 10. Payment Terms.** Except as expressly set forth in the estimate, payments on all invoices we submit to you shall be due in full within 15 days from the date of such invoices. Any invoice amount not so paid shall be past due.
- 11. Late Payments.** If any amount you owe under this Agreement becomes past due, we may without further notice require future payments to be made in money orders or certified funds. All past-due amounts are subject to a \$25 late fee or an amount of two percent (2%) of the past-due amount, whichever is greater. Further, all amounts past due, including money judgements, shall bear interest from their due date at the rate of twenty four percent (24%) per annum compounded daily until paid in full. All payments made after an amount becomes past due will first be allocated to outstanding balances other than original invoice amounts and any remainder will be allocated to original invoice amounts.
- 12. Billing and Collection.** We may engage one or more agents to perform billing, collection, and other related tasks. You permit us to disclose to our agents any of your personal information necessary to perform such tasks even if your information is otherwise protected or considered private. Amounts you owe, including late fees and interest, that are delinquent for more than sixty (60) days may be submitted to a third party for collection at our sole discretion. You shall pay all amounts due under this Agreement along with related costs, fees, and interest provided for herein or allowed by law. Should such delinquent amount be assigned for collection, you covenant and agree to pay all collection costs and fees, including a fee in the amount of the maximum percentage allowed by law of the total delinquent amount, in addition to all legal fees related to collection, with or without suit, including attorney fees, court costs, filing fees, and all other costs and fees related to the delinquent amount and its collection. This provision shall survive termination of the Agreement.
- 13. Cash Payments.** You will not make any cash payment required under this Agreement; no cash payment will be evidence of a payment required by this Agreement. You agree to immediately notify us of any request by any employee or other party to make a payment in cash.
- 14. Breach.** If you determine that we are in breach of this Agreement, you must notify us in writing identifying the specific term or condition breached. Upon our receipt of such notice, we shall have a reasonable time to cure any actual breach. You will be in material breach of this Agreement if you: (a) fail to timely pay any amount due; or (b) fail to perform or comply with or violate any of your obligations in this Agreement. In the event of such a breach, we may at our sole discretion: (c) perform your breached obligation; (d) pass the cost of so doing on to you as an amount owed by you under this Agreement; and/or (e) pursue any remedy available at law or in equity.
- 15. Waiver.** Our failure to require your performance, to claim any right or ours, or to claim your breach under this Agreement, either before and after its termination, shall not be construed as a waiver of our right to require any other performance, claim any other or previously-unclaimed right, or claim any future or previously-unclaimed breach.
- 16. Termination.** This Agreement will terminate upon substantial completion of the Work, and may be terminated for cause as provided for herein. Regardless of the reasons for termination, you remain obligated after its termination to pay all amounts due under this Agreement in accordance with its terms and conditions.
- 17. Warranty.** We will cure any defect in the Work for a period of one (1) year from the date of substantial completion within a reasonable period of time upon receipt of a written notice describing the particular defect. Notwithstanding, we will have no duty to cure any damage or defect in the Work that results from or is related to: (a) alterations not performed by us; (b)

errors, omissions, abuse, or damage caused or made by any third-party; (c) improper use; (d) failure to properly maintain; and (e) normal wear and tear. Except as expressly set forth in the estimate, and other than the foregoing duty to cure, **WE MAKE NO WARRANTY OF ANY KIND IN RELATION TO THE WORK, EXPRESS, IMPLIED, OR OTHERWISE, IN FACT OR IN LAW, INCLUDING NO WARRANTY OF: (F) FITNESS FOR A PARTICULAR PURPOSE OR USE; (G) MERCHANTABILITY; (H) ABSENCE OF LATENT OR OTHER HAZARDS OR DEFECTS WHETHER OR NOT DISCOVERABLE; (I) COMPLIANCE WITH ANY LAW, ORDINANCE, BUILDING CODE, OR THE LIKE; AND (J) TITLE IN ANY PRODUCT OR SERVICE.** In any event, any warranty that may be found to exist shall not: (k) extend beyond one (1) year from the date of substantial completion; (l) extend to anything whatsoever beyond the Work itself; (m) be extended by any remedial work; or (n) for any part or material used in the Work, extend beyond any warranty provided by the manufacturer directly in favor of the customer. This provision shall survive termination of the Agreement.

18. Joint and Several Liability. If “you” are more than one person, then: (a) your liability shall be joint and several; (b) any one of you shall be considered the agent of all others of you for purposes of service of process and all other aspects of any legal proceeding; (c) breach of any aspect of this Agreement by any one of you shall be considered a breach by all of you; and (d) notice given to any one of you shall be considered notice given to all of you. This provision shall survive termination of the Agreement.

19. Time Limit for Claims. Any claim, action, litigation, or dispute of any kind by you against us in relation to this Agreement must be commenced within twelve (12) months of termination of this Agreement regardless of the reason for such termination. Any claim, action, litigation, or dispute of any kind not brought by you within twelve (12) months of such termination shall be forever waived and absolutely barred, and you will be liable to us for, and you shall indemnify us against, any damages and costs whatsoever, with or without suit, including attorneys’ fees, court costs, filing fees, judgements, and any other expenses related to you pursuing any such waived or barred claim, action, litigation, or dispute. This provision shall survive termination of the Agreement.

20. Limitation of Liability. OUR ENTIRE LIABILITY TO YOU UNDER THIS AGREEMENT, BOTH BEFORE AND AFTER ITS TERMINATION, INCLUDING ANY LIABILITY RELATED TO INDEMNIFICATION, INDEMNIFICATION-RELATED DEFENSES, AND ANY KIND OF DAMAGES WHATSOEVER SHALL NOT EXCEED THE AMOUNT YOU ACTUALLY PAID TO US FOR THE WORK MINUS THE COST THAT WE CHARGED YOU FOR ANY PARTS AND MATERIALS USED IN THE WORK.

21. Indemnification. With respect to this Agreement and the Work, and except for our own gross negligence, you will indemnify, defend, and hold us and our managers, employees, and subcontractors harmless from and against all claims (including third-party claims), damages, losses, penalties, fines, costs, and expenses, including attorneys’ fees, court costs, and all related expenses, with or without suit.

22. Mediation and Arbitration. We may, at our sole discretion, elect to mediate and/or arbitrate any dispute between the Parties in relation to this Agreement, either before or after its termination, even if you have already petitioned a court. Prevailing Parties shall be entitled to recover any mediation and arbitration costs and other related expenses from the non-prevailing Parties. Such election shall not preclude us from additionally pursuing a claim in court.

23. Attorneys’ Fees. Should any Party bring a dispute or suit to enforce this Agreement before or after its termination against any other Party, the prevailing Parties shall be entitled to recover attorneys’ fees and court costs, including witness fees and all other related costs and expenses, from the non-prevailing Parties.

24. Force Majeure. We will not be liable for non-performance of an obligation under this Agreement, either before and after its termination, if such non-performance is caused by, or if timely performance is delayed, hindered, or adversely affected by, a “Force Majeure”—i.e., one or more events that are unforeseen by us at the time of this Agreement, whether or not such events are unforeseeable at such time, and that are beyond our control and occur without our negligence, such events including but not limited to: (a) fire, flood, storm,

earthquake, or any other natural or man-made catastrophe; (b) acts of God; (c) acts of war or terrorism, insurrections, riots, civil commotions, or the like; (d) mistakes, omissions, delays, or the like by government or quasi-government actors, utilities, or other service providers; (e) quarantines, restrictive government or administrative actions, public health emergencies, or the like; (f) regulatory or other governmental or quasi-governmental measures, restrictions, or actions arising from or related to the foregoing; and (g) any other event or circumstance that renders performance impossible or impracticable or that otherwise frustrates the purpose of this Agreement. In the event of one or more such events that, in our sole judgment, substantially affect our ability to perform our obligations under this Agreement, we may terminate this Agreement. But in no event shall you be excused from the timely payment of any amounts due under this Agreement, even in the event of and after such termination.

25. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, representatives, successors, and assigns, subject to any explicit limitations herein, even after its termination.

26. Governing Law. This Agreement, both before and after its termination, shall be governed by and construed in accordance with the laws of the State of Utah without regard to principles of conflicts of laws.

27. Jurisdiction. The Parties: (a) agree that any action, suit, or other proceeding, other than mediation or arbitration, in relation to this Agreement, either before and after its termination, will be brought in the courts of the State of Utah or any federal court located therein; and (b) irrevocably consent and submit to the exclusive jurisdiction of such courts for the purpose of any such action, suit, or proceeding.

28. Assignment. Neither this Agreement nor any of its rights, interests, or obligations shall be assigned by you without our written consent.

29. Third-Party Rights. This Agreement, both before and after its termination, is directed solely to the Parties hereto and is intended to benefit only the Parties; it does not create any rights of any kind in any third party except as explicitly provided herein.

30. Severability. Should any term, condition, provision, or other aspect of this Agreement, either before and after its termination, be held invalid or unenforceable, the Parties hereby agree that such aspect shall be removed or restructured and interpreted as determined by a court of competent jurisdiction so as to accomplish the intent of the Parties as expressed in this Agreement, and the balance of this Agreement shall stand in full force and effect.

31. Notices. All notices, requests, demands, and any other communications between the Parties regarding this Agreement, both before and after its termination, shall be made in writing and will be deemed to have been duly given if delivered or sent by prepaid registered or certified mail, reputable next business day courier service, or by electronic mail or facsimile transmission (with a copy sent by first class mail, postage prepaid) to a Party at its address of record or to the Party’s registered agent.

32. Notice of Damage. You agree to provide us with written notice of any damage to the Premises, or to your personal property in, on, or about the Premises, immediately upon your discovery or awareness of such damage. **FAILURE TO PROVIDE SUCH NOTICE SHALL CONSTITUTE A WAIVER OF ANY CLAIMS RELATED THERETO.**

33. Headings. The headings in this Agreement are intended solely as a convenience and are not intended and shall not be deemed to define, limit, expand, or extend the interpretation, construction, meaning, intent, or scope of this Agreement.

34. Counterparts, Signatures, and Electronic Copies. This Agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered by email or via on-line signing services or in any facsimile or electronic or digital format shall be effective. Copies of this duly-executed Agreement, both before and after its termination, digital or otherwise, shall be considered original.

35. Authorization. Each of the individuals signing this Agreement as or on behalf of one of the Parties represents, swears, and warrants that he or she is duly authorized to execute and enter into this Agreement either as a private individual or, where applicable, on behalf of a Party in a representative capacity.