



AAC Standard Service Terms & Conditions

1. **Applicability.** These Standard Service Terms & Conditions (these "**Terms**") are the only terms which govern the purchase of the provision of services and any incidental goods or equipment, if any, described in the applicable quote, bid, proposal, or order confirmation ("**Services**") issued by Advanced American Construction, Inc. ("**AAC**") to the customer named on such quote, bid, proposal, or order confirmation ("**Customer**"). The applicable quote, bid, or order confirmation issued by AAC (the "**Proposal**") and these Terms (collectively, this "**Agreement**") constitute the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding, if a separate written contract signed by authorized representatives of both parties is in existence and applicable to the Services ("**Other Contract**"), the terms and conditions of the Other Contract shall control and prevail to the extent of any conflict with these Terms. These Terms prevail over any of Customer's general terms and conditions regardless of whether or when Customer has submitted its purchaser order, order confirmation, or such terms. This Agreement expressly limits AAC's acceptance and agreement to perform the Services to the terms of this Agreement. Customer's issuance of a purchase order, written notice to proceed, or acceptance of AAC's performance constitutes acceptance of these Terms.

2. **Services & Exclusions.** AAC shall provide the Services during ordinary business hours under the general direction and supervision of Customer and in accordance with the terms and subject to the conditions set forth in this Agreement. Unless otherwise expressly included in the Proposal, all Services exclude equipment rental/charter hire, retainage, overtime, travel/lodging/per-diem for crew, cranes / hoisting, engineering or other professional services, or any permitting. Customer shall be solely responsible for timely obtaining any and all permits or authorizations required in connection with the Services.

3. **Fees and Expenses.** For the Services to be performed hereunder, Customer shall pay to AAC the fees and other amounts as set forth in the Proposal (collectively the "**Fee**") without offset or deduction within thirty (30) days of the date of AAC's invoice. The Fee is exclusive of and Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder. All late payments shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer acknowledges that AAC shall have a maritime lien against any vessel to which the Services pertain for all amounts due or payable to AAC under this Agreement, which lien shall be deemed extinguished upon AAC's receipt of full and final payment.

4. **Additional Charges.** Any changes requested by Customer in the Services at any time shall be compensated by Customer at the rates provided by AAC in the proposal or AAC's then current standard rates. In the event AAC's performance is suspended or delayed by Customer, government personnel, weather or any other reason beyond AAC's control, AAC shall be paid at the rates identified in the proposal or AAC's then current standard rates then in effect for personnel and equipment that is required to standby, including any subcontractor costs, demobilization and mobilization costs, and other costs incurred as a result of such suspension or delay. Customer acknowledges that AAC is not familiar with the site conditions, equipment, or vessels associated with the Services (other than those supplied directly by AAC), and that AAC is relying upon the instructions, information, and directions provided by Customer in performing the Services. AAC shall not have any duty or responsibility with respect to inspection, seaworthiness, or suitability of any vessels or equipment used in connection with the Services. Customer understands and agrees that unknown or unanticipated conditions, changes in laws or required standards or directions by federal or state agencies shall be considered a change requested by Customer entitling AAC to additional time and compensation.

5. **Term.** This Agreement shall commence as of the earlier of the date AAC first commences performance or the date of Customer's purchase order and shall continue thereafter until the completion of the Services (the "**Term**").

6. **Suspension or Termination by AAC.** Customer agrees that AAC may suspend or terminate Services at any time, without penalty, liability or obligation, in the event Customer fails to timely pay amounts due, breach by Customer of any provision within these terms and conditions, and failure of Customer to provide reasonable assurance of the ability to pay for the Services. Customer shall be responsible for any and all charges incurred as a result of demobilization following such termination or suspension, in addition to charges for Services performed up until the date of termination.

7. **Insurance.** Customer shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, the following minimum insurance coverages during the Term: (a) Workers compensation and employers liability insurance, extended to provide coverage under applicable state acts as well as the United States Longshore & Harbor Workers' Compensation Act (USL&H), with statutory limits for workers compensation and limits of \$2,000,000 per occurrence for employers liability; (b) automobile liability insurance with policy limits not less than \$5,000,000; (c) all-risk first party property insurances upon all property and equipment owned/leased by Customer or its contractors (other than AAC) to the full replacement value(s) thereof (whichever is higher); (d) Hull and Machinery and P&I insurances upon any owned/leased vessels, to the full replacement value(s) thereof for hull and machinery and with limits no less than \$5,000,000 per occurrence for P&I including crew and liabilities under the Jones Act; (e) Commercial/marine general liability insurance, specifically including coverage for all of the contractual liabilities of such party with respect to this agreement, with limits no less than \$5,000,000 per occurrence and with any watercraft exclusion deleted in its/their entirety if the Work involves any watercraft or vessel(s) whatsoever; and (f) Vessel Pollution insurances on any owned/leased vessels including coverage for damages, cleanup and

restoration costs, as required by applicable laws. Upon AAC's request, Customer shall provide AAC with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name AAC as an additional insured with respect to all policies other than workers' compensation and employer's liability. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against AAC's insurers and AAC. The minimum limits above may be met with any combination of underlying and excess coverage.

8. **Indemnity.** To the fullest extent permitted under applicable law, Customer shall defend, indemnify, and hold harmless AAC and its subcontractors (of any tier) and each of their respective officers, employees, and agents for, from and against any and all claims, losses, damages, demands, suits, judgments, liabilities, fines, penalties (including without limitation all associated attorneys' fees and defense costs), and other kind of expense arising out of, resulting from, or in any manner directly or indirectly related to the Services, except to the extent caused by AAC's sole negligence, gross negligence, or willful misconduct. IN FURTHERANCE OF THE FOREGOING, CUSTOMER WAIVES ANY EXCLUSIVITY AFFORDED TO IT UNDER WORKERS COMPENSATION OR SIMILAR LAW.

9. **Limited Warranty, Disclaimer.** AAC warrants: (a) that it shall exercise due diligence to perform the Services in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services; and (b) that for a period of twelve (12) months following completion of the Services, any permanent work performed by AAC shall be free from material defects attributable to the Services. AAC (a) MAKES NO WARRANTIES EXCEPT FOR THAT SET OUT ABOVE IN THE PRECEDING SENTENCE; AND (b) DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO COMPLETION TIMES OR OF RATES OF PROGRESS OF THE SERVICES, OR ANY WARRANTY OF SEAWORTHINESS, MERCHANTABILITY, SUITABILITY, OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE. AAC's sole and exclusive liability and Customer's sole and exclusive remedy for breach of the limited warranty set out in this Section shall be reperformance of the affected Services.

10. **Limitation of Liability & Waiver of Consequential Damages.** IN NO EVENT SHALL AAC BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT AAC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT AAC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO AAC PURSUANT TO THIS AGREEMENT.

11. **Force Majeure.** AAC shall not be deemed in default of these terms and conditions or any duty hereunder to the extent that any delay of or failure to commence or complete performance of its obligations, without regard to fault, from any cause beyond its reasonable control, including, but not limited to, acts of God, mechanical breakdown, acts of any governmental body, acts or delays of other subcontractors or supplies, fire, flood, severe weather, and labor disputes.

12. General Provisions.

(a) **No Third-Party Beneficiaries.** Except as set forth in the following sentence, this Agreement benefits solely the parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever.

(b) **Governing Law and Disputes.** The parties will make a good-faith effort to resolve any dispute arising under or relating to this Agreement through discussion and mediation. This Agreement will be construed and governed by the laws of the State of Oregon without regard to the conflict-of-laws provisions of any state. The state or federal courts located in Multnomah County, Oregon, will be the sole and exclusive forum for any claim arising out of or related to this Agreement, and each party waives all objections to the jurisdiction of such courts including on grounds of lack of personal jurisdiction or improper venue and agrees only to bring claims in such forum. Notwithstanding the prior sentence, either party may bring action to enforce a judgment or final order issued by a state or federal court located in Multnomah County, Oregon, in any jurisdiction.

(c) **Attorney Fees.** If any suit or action is filed by a party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party will be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court and, if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

(d) **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(e) **Survival.** Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement specifically including, but not limited to, the following provisions: Insurance, Indemnification, Compliance with Laws, Confidential Information, Governing Law and Disputes, and Survival.

(f) **Amendment and Modification.** This Agreement may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.