

## **Construction Services – Standard Terms & Conditions for Carver Construction, Inc.**

**Effective Date:** January 1, 2025

These Standard Terms & Conditions (“Terms”) govern all proposals, estimates, quotes, purchase orders, work orders, change orders, field directives, and agreements (each, an “Order”) under which **Carver Construction, Inc.** (“Carver”) provides construction, civil, marine, design, and related professional or advisory services (collectively, the “Services”) and any materials or equipment (collectively, “Goods”) to the customer identified in the applicable Order (“Customer”). These Terms are **incorporated by reference** into every Order. By issuing or accepting an Order or allowing Carver to commence any Services, Customer agrees to these Terms.

If Services are performed at Carver-owned or operated terminals or job sites, **Carver’s Port Tariff/Terminal Rules** posted at the same URL as these Terms (including any “Port Tariff Information” page) are also incorporated by reference (the “Tariff”). In the event of conflict, the **Order of Precedence** in Section 22 applies.

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### **1) Scope; Site & Owner Responsibilities**

**1.1 Scope.** Carver will furnish the Services and Goods described in the Order. Unless expressly included, Carver’s price excludes: surveys; subsurface investigations; utility locates beyond “call before you dig” one-call ticket; engineering beyond basic means-and-methods; permits/fees; third-party testing; design peer reviews; traffic control; flaggers; dewatering; scaffolding; shoring; site security; temporary utilities; and disposal of hazardous materials.

**1.2 Site Access & Conditions.** Customer will provide uninterrupted site access, work areas cleared and made safe, adequate laydown space, staging, crane access, roads, and temporary utilities (power, water, lighting) suitable for the contemplated work and equipment.

**1.3 Underground/Hidden Conditions.** Customer is responsible for accurate as-built information and the location/mark-out of all underground or hidden utilities, structures, and obstructions not visible on reasonable inspection.

**1.4 Permits & Approvals.** Unless expressly stated otherwise, Customer secures and pays for all governmental permits, licenses, inspections, and approvals (including environmental permits and railroad/highway occupancy approvals).

**1.5 Pre-Existing Conditions.** Customer remains responsible for pre-existing defects, contamination, violations, or conditions not created by Carver.

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### **2) Changes; Field Directives; Time & Materials**

**2.1 Changes.** Customer may request changes in scope, sequence, or schedule. Adjustments to price, time, and terms will be memorialized by a written **Change Order**.

2.2 **Field Directives.** If Customer directs immediate work before a Change Order is executed, Carver will proceed at **Time & Materials** rates (prevailing Carver schedule + burden + overhead & profit) and equitable time extensions.

2.3 **Escalation.** For steel, concrete, aggregate, asphalt, fuel, and other volatile inputs, Carver's pricing is subject to price adjustment based on documented increases between bid date and incorporation into the work.

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### 3) Differing Site Conditions

If Carver encounters subsurface or latent physical conditions (including unknown utilities, rock, rubble, debris, unsuitable soils, groundwater, contamination) that materially differ from those indicated or ordinarily encountered, Carver is entitled to an equitable change in price, time, and methodology.

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### 4) Schedule; Delays

4.1 **Baseline & Float.** Carver's schedule is approximate. Project float, if any, belongs to Carver.

4.2 **Excusable Delays.** Carver is entitled to time and price relief for delays, suspensions, accelerations, resequencing, or inefficiencies caused by: Customer, its other contractors, design changes, late approvals, permitting/utility delays beyond Carver's control, differing site conditions, labor disputes not caused by Carver, embargoes, supply chain disruption, extreme weather, casualty, pandemics/epidemics, governmental orders, or other **Force Majeure** events.

4.3 **Standby.** Standby, remobilization, and idle time caused by others are compensable on a T&M basis.

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### 5) Price & Payment

5.1 **Invoices; Terms.** Carver invoices monthly (or more frequently for T&M), including approved change orders and T&M backup. **Payment due Net 15** days from invoice date.

5.2 **Interest & Costs.** Late amounts bear interest at the lesser of **1.5% per month** or the maximum allowed by law. Customer will pay Carver's reasonable collection costs, including attorneys' fees.

5.3 **No Setoff/Pay-When-Paid.** Customer shall not withhold, set off, or condition payment on Customer's receipt of funds from any third party (including insurers, lenders, or project owners).

5.4 **Suspension for Non-Payment.** If any undisputed amount is more than 10 days past due, Carver may **suspend** work and/or withhold deliveries; schedule relief and demobilization/remobilization costs shall apply.

5.5 **Security.** Upon reasonable grounds for insecurity, Carver may require advance payment, a payment bond, letter of credit, or other security.

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## 6) Taxes

Prices exclude sales, use, excise, value-added, and similar taxes. Customer is responsible for such taxes unless Carver's exemption applies and is accepted by the taxing authority.

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## 7) Title & Risk of Loss

Title to Goods passes to Customer upon full payment. **Risk of loss** for Goods and for work in place transfers to Customer upon delivery to the site or incorporation, whichever occurs first.

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## 8) Safety; Means & Methods

8.1 Carver controls its own means, methods, sequences, and safety for the portions of work under its control.

8.2 Customer is responsible for overall site safety and coordination when Customer controls the site, including public protection, traffic control, and areas not under Carver's control.

8.3 Carver personnel have **stop-work authority** if safety or environmental conditions are unsafe; time and cost impacts are compensable if not caused by Carver.

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## 9) Hazardous Materials; Environmental

9.1 Unless expressly included, Carver's scope excludes identification, testing, handling, abatement, transport, or disposal of hazardous materials, contaminated soils, or regulated substances.

9.2 Customer warrants the site is free of such materials except as disclosed. If encountered, Carver will promptly notify Customer; work will be suspended in the affected area and compensated changes issued to address remediation or work-around measures.

9.3 **Spills.** Customer remains responsible for environmental conditions not caused by Carver. Notwithstanding anything to the contrary, **Carver is responsible for environmental damage it directly causes solely to the extent resulting from Carver's willful misconduct or gross negligence.**

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## 10) Design & Professional Services

10.1 **Standard of Care.** To the extent Carver provides design, engineering, drafting, BIM, or professional advisory services, such services will be performed with the ordinary degree of professional care and skill exercised by reputable firms performing similar services in similar locales at the same time. No perfection, fiduciary, or strict liability standard is implied.

10.2 **Instruments of Service.** Carver retains ownership of all drawings, models, BIM files, specs, submittals, and other **Instruments of Service** and background IP. Upon full payment, Customer receives a non-exclusive, non-transferable, royalty-free license to use them **solely for the project**. No third-party reliance is authorized without Carver's prior written consent.

10.3 **Design Reliance.** Carver may rely on information, surveys, reports, and decisions furnished by Customer and its consultants.

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## 11) Submittals; Approvals

Submittals are for general conformance only. Customer/owner review, approval, or acceptance does not shift responsibility to Carver or waive any right to equitable adjustments.

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## 12) Warranties

12.1 **Workmanship.** Carver warrants its construction workmanship to be free from defects caused by faulty materials or workmanship for **one (1) year** from substantial completion of the applicable portion of the work, or such longer period expressly stated in the Order.

12.2 **Exclusions.** Normal wear and tear; abuse; improper maintenance; operation outside design parameters; acts or omissions of others; and Force Majeure are excluded. Manufacturer warranties are passed through to the extent assignable.

12.3 **Remedy.** Carver's sole obligation and Customer's exclusive remedy is repair or replacement of the non-conforming work.

12.4 **Disclaimer. EXCEPT AS EXPRESSLY STATED, CARVER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

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## 13) Limitation of Liability; Damages Waiver

13.1 **No Consequentials. CARVER SHALL NOT BE LIABLE** for consequential, incidental, special, exemplary, indirect, loss-of-use, loss-of-profits, or liquidated damages, howsoever caused.

13.2 **Cap. CARVER'S TOTAL AGGREGATE LIABILITY** arising out of or related to an Order is capped at the **amount actually paid to Carver** under the Order, except to the extent liability cannot be limited by law or results from Carver's willful misconduct or gross negligence.

13.3 **Independent Remedies.** These limitations apply even if a remedy fails of its essential purpose.

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## 14) Indemnification

14.1 **Customer Indemnity.** To the fullest extent permitted by law, Customer shall **defend, indemnify, and hold harmless** Carver, its affiliates, and their directors, officers, employees, and agents from and against any and all claims, losses, liabilities, fines, penalties, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to (i) Customer's or its contractors'/invitees' acts or omissions; (ii) site conditions not created by Carver; (iii) Customer-furnished design or specifications; and (iv) failure to provide accurate utility/location information; **except to the extent caused by Carver's willful misconduct or gross negligence.**

14.2 **Carver Indemnity.** To the fullest extent required by law, Carver shall indemnify Customer only for claims to the extent **directly caused by Carver's willful misconduct or gross negligence** in performing the Services.

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## 15) Insurance

15.1 **Customer's Insurance.** Before mobilization and throughout performance, Customer shall maintain at its expense: (a) Commercial General Liability (occurrence form) with limits not less than \$2,000,000 per occurrence/\$4,000,000 aggregate; (b) Automobile Liability \$1,000,000 combined single limit; (c) Workers' Compensation/Employer's Liability per statute and \$1,000,000; (d) **Builder's Risk** or installation floater covering Carver's work, Goods, and temporary structures at replacement cost, naming Carver as loss payee as interests may appear; and (e) when Services occur at or adjacent to navigable waters or Carver terminals, **Marine/Port/Wharfinger/Terminal Liability** with limits customary for the risk profile.

15.2 **Additional Insured; Primary/Non-Contributory.** Customer's liability policies will name Carver and its affiliates as **Additional Insureds** (CG 20 10 & CG 20 37 or equivalent), **primary and non-contributory**, with **waiver of subrogation** in favor of Carver. Certificates and endorsements shall be furnished upon request.

15.3 **Carver's Insurance.** Carver maintains insurance customary for contractors of similar size and scope.

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## 16) Suspension; Termination

16.1 **By Carver.** Carver may suspend or terminate for (i) non-payment; (ii) Customer default or breach; (iii) safety/environmental risk; or (iv) Force Majeure lasting 30+ days.

16.2 **By Customer for Convenience.** Customer may terminate for convenience upon 10 days' written notice and payment of (a) earned but unpaid amounts; (b) reasonable

demobilization and close-out costs; (c) committed costs not reasonably avoidable; and (d) a **10% convenience fee** on the unpaid contract balance in lieu of lost profits. 16.3 **Effect.** Upon suspension/termination, Carver is entitled to payment for work performed, stored materials, and reasonable costs, fees, and profit on work not performed due to termination for convenience.

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## **17) Confidentiality; Publicity**

Information marked confidential or reasonably understood as confidential shall be kept confidential and used solely for project purposes. Customer shall not use Carver's name, logo, photos, drone footage, or project data in publicity without Carver's prior written consent.

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## **18) Intellectual Property; Methods**

Carver retains all rights in its proprietary methods, know-how, processes, software, templates, and tools. No license is granted except as expressly provided in Section 10.2.

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## **19) Labor Relations**

If Customer requires specific union, PLA, or prevailing wage compliance, it must be expressly stated in the Order; otherwise such requirements are excluded and any resulting impacts are a change.

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## **20) Compliance with Laws**

Each party will comply with applicable laws, including environmental, export, OFAC/sanctions, and anti-corruption laws. Customer represents that the project is lawful and permitted.

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## **21) Assignment; Subcontracting**

Carver may subcontract portions of the work. Carver may assign an Order (in whole or in part) to an affiliate within the Carver Companies group without consent. Customer may not assign an Order without Carver's prior written consent.

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## **22) Order of Precedence; Conflicts; Entire Agreement**

22.1 **Precedence.** In the event of conflict: (1) a mutually executed master agreement (if any); (2) the signed Order (excluding Customer boilerplate terms); (3) these Terms; (4) the **Tariff** (for on-terminal work); (5) Carver's proposal/quote; then (6) referenced specifications/drawings.

22.2 **Customer Forms Rejected.** Any Customer terms (on POs, portals, or otherwise) that are additional, different, or conflicting are **rejected** and **do not apply** unless expressly accepted in writing by Carver's authorized signatory.

22.3 **Entire Agreement.** These Terms and the applicable Order constitute the entire agreement for the Services and supersede prior communications.

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## **23) Notices; Electronic Transactions**

Notices must be in writing and are deemed given when delivered to the addresses stated in the Order (including by email with confirmation). Electronic signatures and records are enforceable.

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## **24) Governing Law; Venue; Dispute Resolution**

These Terms and any Order are governed by the **laws of the State of New York**, without regard to conflicts principles. Exclusive venue lies in the **state or federal courts located in Albany County, New York. JURY TRIAL IS WAIVED.** At Carver's election, disputes may first be submitted to non-binding mediation; costs shared equally.

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## **25) Severability; Survival; No Third-Party Beneficiaries**

If any provision is unenforceable, it will be modified to the minimum extent necessary to be enforceable, and the remainder will remain in effect. Sections addressing payment, IP, confidentiality, warranties, limitations, indemnities, venue, and other provisions that by their nature should survive will survive. No third-party beneficiaries are intended.

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## **26) Equal Opportunity**

Carver is an equal opportunity employer and contractor.