



## GENERAL TERMS AND CONDITIONS

### 1. THE AGREEMENT

These General Terms and Conditions, the attached proposal, and any exhibits or attachments constitute the Agreement between CTI and Associates, Inc. (CTI) and the client (Client), superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this Agreement must be mutually agreed to in writing.

### 2. GOVERNING LAW AND SURVIVAL

The law of the state of Michigan will govern the validity of these terms, their interpretation, and performance. If any of the provisions contained herein are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

### 3. CONFIDENTIALITY

CTI agrees to maintain in confidence all information that may be gained as a result of CTI's working relations with Client. However, it is understood and agreed that in those situations that CTI personnel have a statutory duty to report hazards or violations, that they shall make such reports without liability for violation of confidentiality.

### 4. SITE ACCESS AND SITE CONDITIONS

Client will provide for right of entry for CTI personnel, subcontractors and for all equipment necessary in order to complete the work. While CTI will exercise reasonable precautions to minimize any damage to the site, it is understood by Client that in the normal course of work some damage may occur. CTI shall restore the premises to as close to original conditions as is reasonably possible. Client agrees to hold CTI harmless for any damage to subterranean structures which are not called to CTI's attention or not correctly shown on the plans furnished by Client. Hazardous materials may exist at a site where there is no reason to believe they could be present. CTI and Client agree that the discovery of unanticipated hazardous materials constitutes a changed site condition requiring a re-negotiation of the scope of work.

### 5. FEES AND PAYMENT SCHEDULE

Client shall be invoiced once each month for work performed during the preceding month. Client shall be responsible for payment of CTI invoices within thirty (30) days of their receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of 1.7 percent per month until paid in full. Client further agrees to reimburse CTI for all costs including reasonable attorney fees incurred by CTI in efforts to collect overdue payments from Client.

### 6. SCOPE OF WORK

Client and CTI have agreed to a list of basic services to be provided by CTI, as detailed in the attached proposal. Client shall rely upon CTI's judgment as to the continued adequacy of this agreement in light of occurrences or discoveries that were not originally contemplated by or known to CTI. In general, changes greater than 20% of the quantities stated in the applicable proposal agreement shall constitute a change in scope and shall be re-negotiated. Should CTI call for contract renegotiation, CTI shall identify the changed conditions necessitating renegotiation and CTI and Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this agreement.

### 7. SAMPLING/TESTING LOCATIONS

Unless agreed upon otherwise, it is not the intent of this Agreement to require CTI to employ surveying services for accurate location of sampling, testing or boring points. Coordinates and elevations presented in CTI's reports to delineate locations of sampling, testing or boring are approximate and are based on information furnished by Client or its agent or estimated in the field by CTI personnel. If locations are precisely specified by Client, CTI reserves the right to deviate a reasonable distance from the specified location, especially when the site conditions prevent access to the specified locations.

### 8. SAMPLE DISPOSAL

CTI shall dispose of all samples thirty (30) days after submission of the report covering those samples. Prior to such disposal, arrangements for further storage or transfer of samples may be made at Client's expense, upon Client's written request.

### 9. STANDARD OF SERVICES

Client recognizes that subsurface conditions may vary from those observed at locations where borings, test, or explorations are made, and that site conditions may change with time. Data, interpretations and recommendations by CTI will be based solely on information available to CTI. CTI is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed. Services performed by CTI under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the engineering profession practicing contemporaneously under similar conditions in the locality of the project. No warranty, expressed or implied, is made.

### 10. MONITORING OF CONSTRUCTION

CTI's design and/or construction recommendations are based upon the subsurface conditions encountered during its investigation. As stated in Paragraph 9, Client recognizes that unanticipated or changed conditions may be encountered during construction. Client agrees to retain CTI to monitor construction, and CTI agrees to assign to the monitoring function, persons qualified to observe and report on the quality of work performed by contractors, et al. Client recognizes that construction monitoring is a technique employed to minimize the risk of problems arising during construction. Provision of construction monitoring by CTI is not insurance nor does it constitute a warranty or guarantee of any type. In all cases, contractors, et al, shall retain responsibility for the quality of their work and for adhering to plans and specifications.



Should Client for any reason not retain CTI to monitor construction, or should Client unduly restrict CTI's assignment of personnel to monitor construction, or should CTI for any reason not perform construction monitoring during the full period of construction, CTI shall not have the ability to perform a complete service. Should CTI for any reason not have the ability to perform a complete service, Client waives any claim against CTI, and agrees to indemnify, defend and hold CTI harmless from any claim or liability for injury or loss arising from problems during construction that allegedly result from findings, conclusions, recommendations, plans or specifications developed by CTI. Client also agrees to compensate CTI for any time spent and expenses incurred by CTI in defense of any such claim, with such compensation to be based upon CTI's prevailing fee schedule and expense reimbursement policy.

**11. CLIENT DISCLOSURE OF HAZARDOUS & TOXIC MATERIALS AND CONDITIONS AT THE PROJECT.**

Client warrants to CTI that to the best of its knowledge, based upon currently available information, no hazardous or toxic materials, as defined by the laws and regulations of the Federal Government or the State of Michigan exist at the Project site. If Client is aware of any hazardous or toxic materials at the site, CTI will be informed by Client and knowledge of such materials will be acknowledged by both parties in writing.

**12. LIMITATION OF LIABILITY**

A) In recognition of the relative risks and benefits of the project to both Client and CTI, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of CTI and its sub-consultants to Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of CTI and its sub-consultants to all those named shall not exceed \$50,000.00, or CTI's total fee for services rendered on this project, whichever is greater. Such claims and causes include but are not limited to negligence, professional errors and omissions, strict liability, breach of contract or warranty.

B) CTI will not be liable for damages to Client unless suit is commenced within two years of the date of injury or loss or within two years of the date of the completion of CTI's services, whichever is earlier. In no event will CTI be liable unless Client has notified CTI of the discovery of the claimed negligent act, error, omission or breach within 30 days of the date of this discovery and CTI has been given an opportunity to investigate and to recommend ways of mitigating damages.

C) Neither Client nor CTI will have any liability for nonperformance caused in whole or in part by causes beyond CTI's reasonable control. Such causes include but are not limited to acts of God, civil unrest and war, labor unrest and strikes, equipment failures, matrix interference, acts of authorities, and failures of subcontractors that could not be reasonable anticipated.

**13. INDEMNIFICATION**

Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless CTI, its officers, employees, agents and sub-consultants from and against all damage, liability or cost, including attorney's fees and defense costs, arising out of or in any way connected with this project or the performance by any of the parties above named of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of CTI or anyone for whose acts or omissions CTI may be liable. In the event that either party shall bring any suit, cause of action, claim, counter, cross or third party claims against the other, then to the extent that CTI prevails (as defined by the applicable laws and Court Rules) with reference to the other party, then CTI shall be entitled to recovery of reasonable attorney's fees, costs, witness fees and other related expenses as taxable pursuant to applicable Court Rules and Statutes. Neither Client nor CTI shall be liable to the other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this Agreement.

**14. DISPUTES RESOLUTION**

In an effort to resolve any conflicts that arise during the project or following the completion of the project, Client and CTI agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

The mediation will be conducted in accordance with the rules of the American Arbitration Association and mediation will take place in the City of Southfield, Michigan, within 15 days after submission of the dispute to the American Arbitration Association or in accordance with the mediation rules of the American Arbitration Association. All parties will attend the mediation unless otherwise mutually agreed, and all persons present at mediation will have full settlement authority. The parties, who shall appear without legal counsel, will participate in the mediation in good faith.

In the event the conflict is not resolved through the mediation process, either party may take any legal action otherwise available to it.

**15. TERMINATION**

The Agreement may be terminated by either party upon seven days written notice to the other given by email or in a writing that is either sent to the other party by facsimile, U.S. Mail or a courier such as FedEx or DHL. In the event of termination, CTI shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses, and beyond the termination date for the completion of such services and records as are necessary to protect CTI's professional reputation.

**16. ASSIGNMENT**

Neither Client nor CTI may delegate, assign, subcontract, or transfer its duties or interests in this Agreement without the written consent of the other party.