



## Terms and Conditions

**KOBA Energy Inc. ("KOBA")** will provide products and/or services to and for the Buyer the work identified in the associated Invoice or Proposal ("Work") for the price indicated within the Invoice or Proposal.

**REASONABLE VALUE.** The term reasonable value as mentioned herein shall be defined as the cost of labor, materials, and business overhead plus a reasonable net profit on such total cost.

**COMMENCEMENT AND CONTINUANCE OF WORK.** Because of the instability of the cost of labor and materials, the contract price is based on the understanding that KOBA may commence work within 20 days from the date specified unless time limit is extended by mutual consent of all parties hereto in writing. It is also conditioned that the completion of the project will proceed in the usual manner and in the usual manner without delay and as rapidly as similar projects are usually completed, and if there is any unusual delay in the completion of the project at any time during the progress of such work then KOBA may, at their sole option, by notifying the Buyer in writing, claim reasonable additional compensation, which said additional compensation the Buyer hereto agrees to pay upon the completion of the project work, or KOBA may, at KOBA's sole choice, be relieved of all obligations to commence or continue the work any further, as the case may be, and shall be entitled to recover the reasonable value of the work completed, if any, without completion of the project, as well as other damages resulting from the delay, and KOBA shall be in no way liable for any damages whatsoever by reason of the refusal to start or to continue such work.

**WORK STOPPAGES.** If, after the work has been started, anything does occur that directly or indirectly prevents or otherwise delays the carrying on of the work as specified and over which KOBA has no control, KOBA shall immediately be entitled to and must be paid the full amount of the reasonable value of the work that has been performed and the material furnished as well as any other damages incurred resulting from the delay.

**CANCELLATION AND DELAY.** Customer will have the right at any time to cancel all or a portion of a Purchase Order or to delay the delivery date of some or all of the Products by giving KOBA written notice. If Customer cancels all or a portion of a Purchase Order, Customer will pay KOBA reasonable cancellation charges which will consist of all administrative costs, and direct costs for labor and materials for the Purchase Order expended or accrued by KOBA, or KOBA's supplier prior to the cancellation, or fifteen (15) per cent of the value of the canceled Purchase Order or the canceled part of the Purchase order whichever is the greater.

Notwithstanding the foregoing, special orders or custom orders (defined as orders containing items that are not listed on the then current KOBA price list) are NOT MODIFIABLE, CANNOT BE CANCELLED, and are NON-REFUNDABLE. If Customer delays the delivery date of some or all the Products under this Section, Customer will pay KOBA reasonable delay charges on which the Parties agree and that will consist of necessary increases in the direct costs of labor or materials for the Purchase Order for which KOBA has not been compensated by escalation. KOBA will take all reasonable actions to minimize any cancellation or delay charges and will provide an accurate accounting of all charges to Customer at the time KOBA makes a request for payment of those charges.

Cancellation and delay charges will not include any incidental or indirect charges or expenses or any lost or anticipated profits. If the sum of Customer's prior payments and deposits under a Purchase Order exceed the cancellation and delay charges and other amounts due under such Purchase Order, KOBA will refund the balance to Customer.

**PAYMENT.** Payment is due on the day of service unless otherwise noted within the Invoice or Proposal. Credit Card payments are subject to a processing fee of 3% (Subject to change). Payments not received in full on the day of service are subject to a late fee and or Interest. Unpaid invoices after 30 days are subject to collections which include, but are not limited to, Property Lien, Theft of Services filed at the Local Police Department, Civil Court and reporting to all national collection agencies. Any discounts previously granted are subject to be voided due to non-payment or outstanding balances. Upon execution of the Invoice or Proposal Buyer will provide payment as provided in the Invoice or Proposal. The Buyer shall pay all invoices, including change orders, within the time frame outlined in the Invoice or Proposal. Work will be scheduled upon receipt of deposit as outlined in Proposal. If the Buyer has secured institutional financing for the Work, Buyer shall request the institution to issue payments for the Work as either as one-party checks, made payable to KOBA, or two-party checks, payable to Buyer and KOBA. Any sums due after 30 days will incur interest charges of 18 percent per annum, compounded monthly. All Work performed by KOBA shall be completed



## Terms and Conditions

in a workmanlike manner according to standard practices, and under applicable municipal and State codes. If the Buyer's check is returned for non-sufficient funds, the Buyer expressly authorizes their account to be electronically debited, or bank drafted for the amount of the check plus any applicable fees. The use of a check for payment is the Buyer's acknowledgment and acceptance of this policy and its terms and conditions. KOB reserves the right to withhold any future work or warranty work including labor and materials at any point if payment is not made without penalty.

**CUSTOMER ACCOUNTS.** Customers may set up an account with KOB for billing purposes. Commercial accounts must include a signed credit application along with the terms and conditions of the account agreement and are subject to a credit check. Customers with accounts can choose to be invoiced for work performed with payment due as per outlined on the invoice. Customers may also choose to process payment for the invoiced amount at the time of service to a credit card held on file. Credit card fees apply.

**BUYER'S PRELIMINARY REQUIREMENTS.** Unless otherwise agreed, prior to KOB commencing Work the Buyer shall, at their sole cost and expense: complete engineering, survey, or other plans for the project; obtain any federal, state, and municipal approvals or permits required for KOB to perform the contemplated Work; provide a work site capable of supporting and permitting KOB's Work to occur without any additional, ancillary or incidental steps by KOB not explicitly identified in the Invoice or Proposal; clear the project site prior to construction of any debris, equipment, personal items and/or construction materials that would materially interfere with KOB's performance of the Work. The Buyer's failure to meet the conditions identified above, on or before the date identified above, for any reason other than KOB's negligence, shall constitute breach of these Terms and Conditions and result in damages as provided in the Damages section.

**CHANGES TO THE WORK.** All Change Orders must be in writing by the Buyer and accepted by KOB. The Buyer or Local Code Official, without invalidating these Terms and Conditions, may order changes to the Work including, but not limited to, additions, deletions, or modifications. Changes to Work may be made as the work progresses, and the Buyer agrees that any changes to the system(s) installed by KOB that differ from the written Invoice or Proposal, shall be conclusive proof of the Buyer's authorization to change the system(s) from the Invoice or Proposal. The Buyer will pay all costs associated with change orders and will receive any cost reduction associated with the deletion and/or substitution of Work, if any. KOB is not liable for existing conditions related to power and/or other system(s). The Buyer will pay all costs that may occur if it is necessary or if required by a local Code Official to upgrade to current electrical code for a safe and proper working system(s). Any Proposal is based on visible conditions and Buyer agrees that the price may vary due to nonvisible electrical or other conditions.

**COMPLETION.** KOB will complete the Work in the Proposal and any change orders as quickly as practicable. Buyer agrees, however, that KOB shall not be responsible for any damages to the Buyer, either direct or incidental, arising from any delays in completing the Work before any date discussed between Buyer and KOB, unless explicitly agreed to in writing between KOB and Buyer. Work dates are subject to change due to unforeseen circumstances and will be rescheduled in a timely manner.

**DAMAGES.** Buyer agrees that the only damages that may be brought by Buyer against KOB relate to KOB's failure to complete the contracted work, or damage to the Buyer's property or persons while on Buyers' property. Buyer agrees that any breach of these Terms and Conditions shall result in damages to KOB, including all direct and incidental damages arising from the breach. Buyer agrees that KOB's damages shall include, but not be limited to: KOB's time, resources, equipment and overhead used in mobilization, purchasing materials, and preparing plans, KOB's loss of reasonably anticipated profits on this project or other projects occasioned by Buyer's breach or termination of this agreement, KOB's losses arising from delays during the prosecution of this Proposal awaiting Buyer's receipt of any plans, approvals, or permits for KOB to complete the Work not arising from KOB's negligence; and KOB's reasonable attorneys' fees and costs associated with any legal action as a result of Buyer's breach, including any claim for mechanic's lien.

**PERMIT FEES.** Permit fees are not included, unless otherwise noted in the Invoice or Proposal, and will be at an additional cost which Buyer agrees to pay.

**TERMINATION.** KOB may terminate the contract either for cause, arising from the Buyer's inability or refusal to pay invoices on a timely basis, or alternatively, from Buyer's failure to agree to a change order arising from differing site conditions identified after commencing the Work that make the contemplated Work impractical or



## Terms and Conditions

impossible to perform. The Buyer may terminate the contract prior to completion of the Work but shall pay KOB for completed Work that has not been paid, and for all resulting direct and incidental costs and damages identified in Damages. The Buyer shall pay KOB for materials purchased specifically for this Invoice or Proposal.

**ENVIRONMENTAL CONDITIONS.** Unless specifically indicated, the Work contemplated by KOB presumes that no permits are required for any environmental impacts, including, but not limited to subsurface conditions, wetlands impact, hazardous or solid waste (s) for the work contained in the Invoice or Proposal; or alternatively, the Buyer will, prior to the commencement date, procure all such permits. If KOB believes that permits are required to complete all Work contained in the Invoice or Proposal, KOB shall inform the Buyer when KOB learns or reasonably believes any approval or permit is required, and Buyer shall retain appropriate professionals to review the situation and submit any required applications. The buyer agrees to defend and indemnify KOB for any environmental claims arising from KOB's performance of the Work where the alleged violation arises from missing or inadequate environmental permit (s) or existing conditions. The buyer's indemnification shall not cover any claims not included herein or any claims that result from KOB's actions or negligence that violates applicable law.

**WORK OUTSIDE KOB JOB SCOPE.** Work which KOB is not licensed, insured or capable of completing may be necessary and required to complete the work listed on this Invoice or Proposal and it is not included unless otherwise noted. No warranty is given for Buyer supplied fixtures and/or material. The Buyer agrees to pay any additional fees that may occur for repair or re-installation of supplied fixtures and/or material that KOB does not provide. The buyer agrees to pay for any cost associated with core drilling, concrete cutting, removing, and patching, trenching, back-filling and tamping of earth, electrical or other wiring, disposal cost for removal of old material or fixtures.

**LEGAL PROCEEDINGS.** Any legal action shall be pursued in the courts of Georgia, and notwithstanding any conflict of law principles, shall be governed by Georgia law. Payments not made in full will be subject to property lien. Acceptance of these terms is considered legal notice of property lien.

**INDEMNIFICATION.** Buyer shall defend, indemnify, and hold KOB harmless from any and all claims, penalties, or assessments arising from, the breach of any covenant, representation or warranty herein, or from any act, omission, or misrepresentation of the Buyer, and/or Buyer's employees, agents or representatives, including architects, engineers, surveyors, or others engaged to perform preliminary steps necessary for KOB to perform its work. This indemnification shall be as broad as permissible under Georgia law.

**ENTIRE AGREEMENT.** There are no promises, terms, conditions, or obligations other than those contained within the Terms and Conditions. These Terms and Conditions supersede all prior communications, representations, or agreements, either verbal or written, between the parties hereto, and may not be amended except in writing, other than the scope of Work as described in these terms.

**WARRANTY.** All work described on Invoice or Proposal has a one-year warranty on workmanship unless noted on contract. KOB supplied equipment, fixtures or materials have a manufacturer's warranty. The consumer is responsible for submitting manufacturer's warranty registrations. Warranty is void if a balance remains unpaid.

**USE OF PICTURES.** Buyer agrees to allow KOB to use any pictures of the work performed for purposes of advertising and showing others without penalty or fees from Buyer.

**TESTIMONIALS.** Buyer agrees to allow KOB the rights and privileges to use any and all testimonials written or verbal in our advertisements without penalty or fees from Buyer.

**EMAIL.** Buyer agrees to allow KOB to use Buyer's email address for receiving advertisements and specials without penalty or fees from Buyer. KOB agrees to keep all email and personal information private from others.

**FORCE MAJEURE.** Nonperformance of either party (except for payment obligations) shall be excused to the extent that performance is rendered impossible by strike, fire, flood, act of God, governmental acts, failure of suppliers or any other reason beyond the reasonable control of the non-performing party.