



## TERMS AND CONDITIONS

**WORK WEEK:** Birdair, Inc. will supply labor for the Work on a regular 40-hour week without any overtime. If the Customer requires overtime, Birdair, Inc. will be reimbursed for any additional costs incurred as a result of working overtime, including an adjustment for loss of productivity.

**DRAWINGS:** Birdair, Inc. will supply drawings, samples and technical data as appropriate for the Work described on the cover page. Such items will be supplied upon Customer's request and within a reasonable time Birdair, Inc. may inscribe a legend on the cover page of these items indicating their confidential or proprietary nature and will restrict the publication and dissemination of such material to its employees who have a need to know of their contents.

**GUARANTEE:** Birdair, Inc. will repair or replace materials furnished hereunder which are not in accordance with the specifications described on the cover page and will correct labor supplied which is not performed in a workmanlike manner, provided that Customer gives written notice to Birdair, Inc. of such items within one year from the date of Birdair, Inc.'s substantial completion of its Work. **BIRDAIR, INC.'S LIABILITY IS LIMITED TO THE FOREGOING AND BIRDAIR, INC. SHALL NOT IN ANY CASE BE LIABLE OTHERWISE, NOR SHALL BIRDAIR, INC. BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE.**

**INSURANCE:** Birdair, Inc. will supply workman's compensation coverage in the forms and amounts required by the applicable statutes of the state in which the Work is performed. In addition, Birdair, Inc. will furnish comprehensive automobile liability and comprehensive general liability insurance protecting against bodily injury, liability, and property damage liability with policy limits of \$1,000,000 per person and \$1,000,000 per occurrence.

**INDEMNITY:** Birdair, Inc. will indemnify and hold harmless Customer from loss or damage to persons or property arising directly from Birdair, Inc.'s performance of the Work and caused solely by, and only to the extent of, the negligent acts of Birdair, Inc. and its employees.

**PROTECTION OF WORK:** Birdair, Inc. will protect the Work of portions thereof from the time the Work, or portions of it, is released to Birdair, Inc. until the time Birdair, Inc. releases the same back to the Customer or other trades. During such time, Birdair, Inc. will not be responsible for loss or damage caused by other persons or not reasonably to be expected in the custom and practice of Birdair, Inc.'s trade.

**CLEANUP:** Birdair, Inc. will remove refuse and debris caused by its operations in accordance with the custom and practice of Birdair, Inc.'s trade. If Customer desires additional cleanup, it may request Birdair, Inc. to perform the same and an additional charge will be made. Customer may perform cleanup on Birdair, Inc.'s behalf only if Birdair, Inc. has agreed to the same in writing beforehand.

**STORAGE:** Customer will provide, without cost to Birdair, Inc., sufficient storage space which is fully protective of materials and equipment furnished for the Work at and convenient to the place of application of the Work.

**FACILITIES:** Customer will provide, without cost to Birdair, Inc., light, heat, power, and water which are required for the performance of the Work in the custom and practice of Birdair, Inc.'s trade.

**TAXES:** Customer will pay for any and all taxes and duties which are now or may be imposed on the Work by any local, state or federal taxing authority, law, ordinance, rule or regulation, unless otherwise noted on the cover page. In the event that the price of materials required to perform the scope of work enumerated in this Agreement increases after the date of execution of this Agreement due to the imposition of tariffs, Birdair shall be entitled to receive additional compensation for the actual increase in the cost of materials directly attributable to the imposition of tariffs."

**FEES:** Any and all costs for permit fees, royalties and licensing requirements are not included.

**PAYMENTS:** Unless otherwise agreed upon by the parties in any given proposal, for Work commenced and completed in any one calendar month, Customer will pay the contract price in full in cash upon completion of the Work. Otherwise, Customer will pay the price in cash, in progress payments, on the 10th day of the month following submission by Birdair, Inc. of a Statement of Work performed in accordance with Birdair, Inc.'s schedule of values. Birdair, Inc. will be entitled to include labor expended during the period and materials stored at its factory or stored at the job site, or at nearby storage facilities prior to their installation in the evaluation of Work performed.

**APPROVAL:** This proposal offers to the Customer the terms and conditions upon which Birdair, Inc. will perform the Work described on the cover page. This proposal may be changed at any time prior to acceptance by written notice to the Customer and will be deemed to be withdrawn if not accepted by the Customer by acceptance appearing on the cover page.

**AGREEMENT:** If Customer signs this Proposal, or otherwise indicates its consent, then this Proposal will represent the entire agreement of the parties with regard to all of the details of performance and payment of the Work. If Customer subsequently requests Birdair, Inc. to sign its own form of contract, this Proposal will be deemed to be part of the contract and will govern any other conflicting term of that contract, unless this Proposal is expressly excluded by the parties. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

**CHANGES AND EXTRAS:** The Work may be changed by "Field Order," Change Order," "Extra Work Order," or otherwise authorized by the Customer or his agents. Such changes may include changes in scope, method, scheduling or other performance requirements. In such event, the contract price and the completion date will be equitably adjusted. Birdair, Inc. will notify Customer of such changes within a reasonable time after discovery.

**SUSPENSION:** The Customer may order Birdair Inc. in writing, or otherwise, to suspend delay or interrupt all or any part of the project schedule for such period of time as it may determine for its convenience. If the performance of all or any part of the Work is suspended, delayed or interrupted by an act of the Customer or its agents, or by its failure to act within the time contemplated (or if no time is specified within a reasonable time), an adjustment in price shall be made for any increase in the cost of performance of the Work caused by such event, and the schedule shall be extended accordingly. Birdair, Inc. will submit its claim for such cost increases or extensions of time within a reasonable time after receipt of the order to suspend delay or interrupt, or after it becomes aware of the Customer's act or failure to act, whichever occurs later.

**BIRDAIR, INC. SUPPLIED PROPERTY:** Whenever the Customer, its employees, contractors and subcontractors, other than Birdair, Inc., use ladders, scaffolding, tools, vehicles, equipment or property of any kind either owned or rented by Birdair, Inc., Customer shall indemnify and hold Birdair, Inc. harmless from any and all claims, demands, damages, causes of action and suits of whatsoever nature and kind arising out of or connected with the use of such ladders, scaffolding, tools, vehicles, equipment or property provided; however, the Customer shall not be so obliged to indemnify and hold Birdair, Inc. harmless in the event the claim, demand, damage, cause of action or suit is caused solely by Birdair, Inc.'s active negligence.

**CUSTOMER-SUPPLIED PROPERTY:** If the Work described on the cover page requires Customer to supply materials, equipment or other property, Customer warrants that such items shall be fit for the use for which they were intended. If such items do not so conform, Birdair, Inc. will notify the Customer within a reasonable time after it has notice of the non-conformance and may request additional compensation under the clause entitled "Changes and Extras" for any increase in the cost of performance which results from the non-conformance.

**DIFFERING SITE CONDITIONS:** Customer shall notify Birdair of all site conditions which may have an impact on Birdair rendering the services provided in this Agreement. If Birdair, Inc. encounters sub-surface or latent physical conditions at the site differing materially from those indicated in the bid documents, or unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered by Birdair, Inc.'s trade, Birdair, Inc. will promptly notify the Customer. If such conditions cause an increase or decrease in the cost of, or the time required for, performance of any part of the Work, an equitable adjustment in price will be made and the contract time modified accordingly.

**FORCE MAJEURE:** Birdair, Inc. shall not be deemed in default, nor be liable for damages for any failure or delay in performance of its Work which arises out of causes beyond its reasonable control. Such causes may include, without limitation, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, material shortages or unusually severe weather. If Birdair, Inc.'s Work is terminated for default and it is subsequently determined that Birdair, Inc. was not in default, Birdair, Inc. will be entitled to Compensation for all Work completed hereunder based on prices contained herein, if applicable, the cost of any Work in progress, any costs incurred by Birdair, Inc. as a result of the termination, and an equitable allowance for profit on the foregoing.

**TERMINATION:** If payment is not made to Birdair, Inc. as required by the clause entitled "Payments," if Customer assigns or transfers, or attempts to assign or transfer this Proposal in whole or in part, if Birdair, Inc. has reason to believe that Customer becomes the subject of any insolvency or bankruptcy proceeding, then Birdair, Inc. may terminate its performance without further notice and remove from the job site any and all of its labor forces, materials, facilities and equipment. In such event, Birdair, Inc. may, at its election, recover the amounts due for Work performed under the Proposal price and any sums due for loss of profits and other damages, or regard the non-payment as a termination for convenience and recover all costs incurred in performing the Work prior to termination, plus a reasonable allowance for profit on such Work. Birdair may also suspend Work if Customer does not issue payment in accordance with this Agreement and be entitled to any costs incurred as a result of such suspension, including but not limited to labor inefficiencies, loss of productivity, loss of mobilization, demobilization.

**DISPUTES:** In the event of any dispute with regard to contract requirements, the Customer may, by written notice, require Birdair, Inc. to proceed with the performance of the Work, including any Work in dispute, pending a resolution of the dispute within a reasonable time thereafter. Birdair, Inc. will submit a written statement of its position to the Customer. If, within 30 days after the submission of such statement, the parties have not agreed on a settlement, the parties may submit the matter to arbitration. Submission will be effected by written request of either party. Any such arbitration will be held in accordance with the then current rules of the American Arbitration Association relating to Construction Industry Arbitration. The decision of the arbitrator will be final and binding on the parties. If, within 90 days after Birdair Inc. has submitted its written statement, the parties have not submitted the dispute to arbitration, the parties may avail themselves of any remedy otherwise available to it under the contract or otherwise available to it under the contract or otherwise available by law.

**PROPRIETARY INFORMATION:** This Proposal contains proprietary information and may not be copied or distributed. The information contained herein shall not be disseminated to any outside party.

**ACCESS:** Suitable roads and access for cranes and trucks to reach all areas as necessary for the performance of this Work must be provided.

**DRAWING APPROVAL:** All approvals of Birdair, Inc. drawings by others must be completed in a timely manner. Our price is based on approval of less than 10 days.

**BUILDER'S RISK:** A comprehensive builder's risk policy is to be provided by others.

**FIELD OFFICE:** Location for portable job site office to be provided within a reasonable distance from the Work. Electrical and telephone hookup must be available at this location.

**PRELIMINARY INFORMATION:** Any and all information provided by Birdair, Inc. stamped "Preliminary" is not to be used for construction, or in any way incorporated into this Work. **WAIVER:** Birdair, Inc.'s waiver of any term herein, will not be construed as a waiver of such terms at subsequent times.

**VALIDITY:** In the event any part or portion of the Proposal shall be held to be invalid, void, or otherwise unenforceable, such holding shall not affect the remaining part or portions of the Proposal.

**INTERPRETATION:** This Proposal shall be construed in accordance with the law of the jurisdiction where the Work is performed.

### **Birdair, Inc.**

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