

HOME PERFORMANCE ASSESSMENT STANDARD TERMS AND CONDITIONS

1. **SERVICES.** Contractor will assess the performance of the premises at the Project Address for the purpose of evaluating the energy and comfort performance of such premises as expressly set forth in the home performance assessment report that we provide you ("Services"). In performing this assessment, Contractor is not inspecting or assessing, and undertakes no responsibility to inspect or assess, such premises (or any component or system thereof) for any other purpose.
2. **LIMITED WARRANTY.** Except as otherwise required by law, Contractor warrants that the Services will be performed in a good and workmanlike manner according to established trade practices and standards. **THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** This limited warranty does not cover damages relating to (a) accident, misuse, abuse, neglect, or normal wear and tear; (b) failure to use or maintain any product in accordance with the manufacturer's instructions; and (c) alteration, repair or attempted repair by anyone other than Contractor or its authorized representative. You shall be solely responsible for the correctness of the plans and specifications and shall release and hold harmless Contractor from any damages resulting from improper, inadequate or vague information supplied by you. Contractor does not take on any obligation to inspect or evaluate the work of other parties in any manner or aspect (not including our subcontractors or representatives). This warranty is not transferable.
3. **INSURANCE.** Contractor shall maintain workers' compensation (employer liability) insurance, as required by law, and \$1,000,000 in general liability insurance while performing the Services. Contractor reserves the right to be self insured to the extent allowed by applicable law.
4. **LIMITATION OF REMEDIES.** Your sole and exclusive remedy against Contractor for any and all claims for damages arising out of or alleged to have arisen out of the Services will be limited to or to the issuance of a credit for such nonconforming Services in accordance with these terms and conditions. You must give written notice to Contractor of any claim with respect to the Services. Contractor must be given a reasonable opportunity to inspect the Services within 30 days after Contractor's receipt of the notice and confirm such nonconformity. This exclusive remedy shall not be deemed to have failed of its essential purpose if Contractor issues a credit in accordance with these terms and conditions. If you fail to give the required notice and/or fail to allow Contractor the required opportunity to inspect, you waive any and all rights for damages and/or correction of Services against Contractor. This Limitations of Remedies may be pled as a complete bar to any action in violation of this clause.
5. **LIMITATIONS ON ACTIONS AND LIABILITY.** To the extent permitted by law, all claims and/or lawsuits including but not limited to claims or lawsuits for indemnity and/or contribution against Contractor arising under this Agreement must be made within 13 months from the date of the Certificate of Completion. **THE MAXIMUM LIABILITY, IF ANY, OF CONTRACTOR FOR ALL DAMAGES OF ANY KIND UNDER ANY THEORY WITH RESPECT TO ITS SERVICES IS LIMITED TO THE PAID CONTRACT PRICE. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, OR SPECIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS YOUR EXCLUSIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**
6. **TERMS.** You shall pay the Price established by Contractor for the Services. Past due payments are, at Contractor's option, subject to interest at 1.5% per month (18% per annum) to the extent permitted by law. You agree to receive (or permit Contractor to receive) near the Services site, any materials and products needed to complete the Services. You agree to protect such materials and products from damage or loss and provide Contractor, free of charge, with reasonable use of utilities, storage space, and available elevators and hoists as needed. Contractor may charge you a fee and its actual expenses if the Project Address is not ready for Services on the date(s) set by Contractor.
7. **FORCE MAJEURE.** CONTRACTOR SHALL NOT BE LIABLE FOR ANY DELAY, FAILURES, OR DEFAULT IN PERFORMANCE OF THIS AGREEMENT OR OTHERWISE, IN WHOLE OR IN PART, CAUSED BY THE OCCURRENCE OF ANY CONTINGENCY BEYOND THE CONTROL OF CONTRACTOR. If any contingency occurs, Contractor may allocate production, deliveries, and performance of work among its customers or substitute substantially similar materials, in its sole discretion, without liability for doing so.
8. **CREDIT APPROVAL.** Performance of the Services by Contractor shall at all times be subject to the approval of Contractor's credit department and Contractor may at any time decline to perform any Services except upon receipt of payment or upon terms and conditions or security satisfactory to Contractor. By signing this agreement, you authorize Contractor to check your credit and references.
9. **BINDING ARBITRATION.** Except for disputes involving a claim of personal injury or as otherwise provided below, any dispute between you and Contractor shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association (AAA) and conducted in accordance with AAA's Supplementary Procedures for Consumer-Related Disputes of the Commercial Arbitration Rules, to the extent consistent with AAA's Construction Industry Arbitration Rules, and AAA's Consumer Due Process Protocol. Collectively these AAA rules and protocol shall be referred to as the "Rules." **YOU THUS GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS UNDER THESE TERMS AND CONDITIONS. YOUR RIGHTS WILL THEREFORE BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT A JUDGE OR JURY.** You and Contractor shall agree on another arbitration forum if AAA ceases operations. Such arbitration shall be conducted at a mutually agreeable location. The parties shall agree upon an arbitrator, or if the parties cannot agree within 30 days of the filing of an arbitration demand, an arbitrator shall be appointed by the AAA in accordance with the Rules. **ANY DECISION RENDERED IN SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON THE PARTIES, AND JUDGMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.** The arbitration, or any portion of it, shall not be consolidated with any other arbitration and shall not be conducted on a class-wide or class action basis. **UNDER THE AAA RULES, YOU RETAIN THE RIGHT TO SEEK RELIEF IN A SMALL CLAIMS COURT FOR DISPUTES WITHIN THE SCOPE OF THE SMALL CLAIMS COURT'S JURISDICTION.** Further information may be obtained from the AAA at www.adr.org or by calling 800-778-7879 or writing to American Arbitration Association, 1633 Broadway, 10th Floor, New York, NY, 10019.
10. **ENTIRE AGREEMENT.** This Agreement (including addenda) is the entire agreement between us relating to the Services and may only be waived or changed by a Change Order signed by both of us. If any provision of this Agreement is not enforceable, that provision shall be effective only to the extent permitted by law and all other provisions of this Agreement shall remain. The laws of the State where the Services are performed govern this Agreement.
11. **MISCELLANEOUS.** Contractor may terminate this Agreement upon notice in the event of quoting errors or hazardous or unforeseen condition or substances are present at the Project Address in which case you agree to pay Contractor for any Services performed or reasonable expenses incurred on or before the date of Contractor's notice of termination. Contractor assumes no responsibility for the condition of the Services premises (or any component or system thereof) or Project Address, including without limitation compliance with any code or regulatory requirement, except to the extent expressly covered by the Services. You represent and warrant that there are no such code violations and that

there are no hazardous conditions or substances present at the Project Address. Any materials remaining after completion of the Services shall remain Contractor's property, without any credit to you or adjustment to any Price.

12. CUSTOMER OBLIGATIONS. You shall remove all personal property from the Services area before performance of the Services, and Contractor shall not be liable for damages to any such property if you do not do so. You agree to indemnify, defend and hold Contractor, its officers, directors, employees, subcontractors and affiliates harmless for any claims arising from or relating to any asbestos, lead or other hazardous conditions or substances or to any pre-existing code violations at the Project Address. You authorize applicable utility and fuel providers to release directly to Contractor the utility and other fuel bills for the Project Address for the 12 month period prior the date when the Services are provided or otherwise specified by Contractor and to sign documentation as may be required by any provider so that Contractor can obtain such bills. If any utility or fuel provider does not provide such bills directly to Contractor, you agree to provide them directly to Contractor upon request. You further agree that Contractor may use such bills and related utility and fuel data in any manner and for any purpose in connection with its business.