

Terms and Conditions for the Supply of Goods and Services by Victaulic Virtual Design and Construction

These Terms and Conditions apply only to the provision of goods and services by Victaulic Virtual Design and Construction (VDC) in association with a Victaulic VDC Quotation. Such Quotation and any Exhibits attached thereto, together with this document, constitute the entire Agreement between Victaulic ("Victaulic" or "Seller"), as an independent contractor, and the buyer ("Buyer") (each a "Party" and together the "Parties") regarding the provisions of certain Goods and Services by Victaulic, whether directly or indirectly.

- 1. DEFINITIONS.** "Goods" means all tangible material to be delivered to the Buyer by or through Victaulic for the project listed on the Quotation (the "Project"), other than Buyer-supplied materials (such as pipe or other components); and "Services" means ancillary services performed by Victaulic that are either (i) incidental to supplying the Goods to Buyer or (ii) done at the specific request of Buyer.
- 2. PRICE AND PAYMENT.** Where the Goods and Services are purchased by Buyer indirectly through a distributor as noted on the VDC Quotation, the price listed on Exhibit A is as has been arranged between the Buyer and the distributor on terms as shall be arranged between Buyer and the distributor. Otherwise, the prices listed on the Quotation are payable directly to Victaulic, exclude taxes, but are otherwise firm, fixed, and you will receive progress billings unless otherwise stated in this Agreement. For direct orders, payment terms are net thirty (30) days from the mailing of invoice for a given installment and is not subject to retainage. If payment on the account is identified to be delinquent all work being performed by Victaulic will immediately be placed on hold until the account is back in good standing. Victaulic shall have no liability for any delays or damages that result from such a hold.
- 3. CHANGES.** Only written Change Orders signed by both Parties in the form of Exhibit D may change the terms of the Agreement. Only an authorized representative has the authority to provide Victaulic's approval for a Change to the Agreement. Victaulic's authorized representative(s) are limited to the signatory of this Agreement or a representative more senior than such signatory.
- 4. NEW MATERIAL; PACKAGING, SHIPPING.** All Goods to be delivered hereunder shall consist of new materials. Seller shall use standard commercial practice in packaging the Goods to prevent damage or deterioration, unless otherwise specified in the Agreement which shall be at Buyer's cost; and unless otherwise stated in the Agreement, shipments shall be F.O.B. a Victaulic fabrication facility, chosen at Victaulic's option relative to the location of the Project.
- 5. INSPECTION AND ACCEPTANCE.** Buyer's final acceptance of Goods or Services shall be deemed to occur ten (10) days after Buyer's receipt of the Goods or Services, except for those Goods or Services that have been timely rejected as non-conforming. If Victaulic delivers non-conforming Goods or Services, Buyer shall promptly, but not later than 10 business days after receipt of the non-conforming Goods or Services, give Victaulic written notice of the non-conformity. Upon receipt of the notice of non-conformity, Victaulic shall elect (in its sole and exclusive discretion) to (i) authorize the return of the Goods for refund or credit; (ii) promptly resupply the Goods or Services; (iii) correct the nonconformance of the delivered Goods or Services; or, (iv) obtain conforming Goods or Services from another source. Victaulic's election shall be Buyer's sole remedy for all direct and indirect harm or damage suffered by Buyer as a result of (in whole or in part) its receipt of non-conforming Goods or Services.
- 6. FORCE MAJEURE.** Delays in performance shall be excused (day for day) due to a force majeure event only for the following occurrences: (a) acts of God or of a public enemy (including terrorism); (b) acts of government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; (i) unusually severe weather, (j) war, and (k) unanticipated material shortages or software unavailability (caused by forces outside of Seller's control). A Party relying on such an event to excuse its performance must notify the other Party in writing of the nature of the event and the prospects for future performance and thereafter, while the event continues, respond promptly and fully in writing to all written requests for information from the other Party relating to the event and those prospects.
- 7. TERMINATIONS.**
 - (a) For Convenience.** By written notice only, Buyer may, without cause, direct Seller to terminate this Agreement in whole or in part at any time. In such event, Buyer shall have all rights to title and possession of the Goods and Services already paid for. Upon receipt of the written notice of termination for convenience, Seller shall immediately stop work and limit costs incurred on the terminated work. Buyer shall reimburse Seller for the actual costs, overhead, volume discounts, and profit for work done prior to the Seller's receipt of the written notice of termination.
 - (b) For Fault.** Only by written Notice of Default to Seller, Buyer may terminate this Agreement in whole or in part if the Seller inexcusably and solely (i.e., by reason of something other than Buyer's fault or a force majeure) fails to deliver the Goods or to perform the Services within the time specified in this Agreement. Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed Goods. Payment for completed Goods delivered to and accepted by Buyer shall be at the Agreement price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer shall be at a price determined in the same manner as provided in Termination for Convenience.
- 8. INTELLECTUAL PROPERTY AND PROPRIETARY INFORMATION.** Any work, writing, idea, discovery, improvement, invention (whether patentable or not), trade secret or intellectual property of any kind made or conceived by Seller during performance of this Agreement, even if derived from the use of information supplied by Buyer, shall be the exclusive property of the Seller. All documents and drawings provided under this Agreement, electronically or otherwise, are instruments of service provided solely for use on the Project. Any unauthorized use of the instruments of service, including their reuse or modification, shall be at Buyer's sole risk and without liability to Victaulic. Neither this Agreement nor the provision of Goods and Services hereunder provides Buyer with any right to access or use Victaulic's confidential information, proprietary information or any other form of intellectual property.

TERMS AND CONDITIONS (CONTINUED)

9. WARRANTY FOR GOODS; STANDARD OF CARE FOR SERVICES. THE SOLE WARRANTY MADE BY VICTAULIC FOR ALL GOODS PROVIDED HEREUNDER IS VICTAULIC'S STANDARD WARRANTY – [PUBLICATION 29.01-C](#). ALL OTHER WARRANTIES ARE DISCLAIMED BY VICTAULIC AND RELEASED BY BUYER. THE STANDARD OF CARE FOR ALL SERVICES PERFORMED OR FURNISHED BY VICTAULIC HEREUNDER INCLUDING PROFESSIONAL AND RELATED SERVICES (WHEN SPECIFICALLY INCLUDED) WILL BE THE CARE AND SKILL ORDINARILY USED IN THE PROVISION OF SIMILAR SERVICES UNDER SIMILAR CIRCUMSTANCES AT THE SAME TIME AND IN THE SAME LOCATION. VICTAULIC MAKES NO WARRANTY, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE, IN CONNECTION WITH ANY SERVICES PERFORMED OR PROVIDED BY VICTAULIC.

10. INFORMATION AND EXPORT CONTROL COMPLIANCE; WARRANTY BY BUYER. Buyer acknowledges that U.S. and foreign export control laws, rules, and regulations, including (without limitation) the International Traffic in Arms Regulations promulgated by the U.S. Department of State and the Export Administration Regulations of the U.S. Department of Commerce, as well as other regulations, such as those pertaining to Controlled Unclassified Information (collectively, the "Regulations") impose restrictions on the handling, control and export of information. Buyer hereby represents and warrants that it will comply with the Regulations, and that unless it has otherwise advised Victaulic in writing, the information it has provided associated with the Project is either not subject to restrictions under the Regulations, or that the materials are subject only to the No License Required designation.

11. INSURANCE. Each party shall maintain commercially reasonable insurance, including Commercial General Liability insurance, Environmental Insurance (Contractor's Pollution Liability), and Pollution Legal Liability. Proof of Seller's insurance will be provided upon request.

12. INDEMNITY. To the fullest extent permitted by law, Buyer shall indemnify and hold harmless Victaulic and its agents, employees, contractors and directors from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from Buyer's acts or omissions, as well as any defects in Buyer-provided materials, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property.

13. DISPUTES. All disputes, controversies, or claims arising out of or related to the negotiation, formation, or performance of this Agreement shall be referred to and finally resolved by confidential arbitration as administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules, which are deemed incorporated by reference herein, by one or more arbitrators appointed in accordance with said rules. The arbitrator(s) shall not award consequential damages in any arbitration initiated under this section. The arbitration shall be conducted in the English language. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. The governing law of this Agreement shall be the laws of the State of New York, and the arbitration shall take place in Toronto, Ontario.

14. ASSIGNMENT. Neither this Contract nor any interest or claim hereunder may be transferred, novated, assigned or delegated by Buyer without Seller's prior written consent, and any such attempts to so transfer or assign will be void.

15. COMMUNICATION WITH THIRD PARTIES. Unless otherwise mutually agreed, Buyer shall be Seller's sole point of contact for the Project.

16. GOVERNING AGREEMENT. The Parties' binding understanding is strictly limited to the Agreement (comprising the VDC Quotation, Exhibits attached thereto, and these Terms and Conditions), written Change Orders executed as required by this Agreement, and the Parties' course of dealing (prior to and after the date on which Victaulic signs this Agreement). In the event of a conflict between these Agreement documents, the order of precedence shall be: (a) These Terms & Conditions, (b) the VDC Quotation, (c) executed Change Orders, (d) Exhibits affixed to the Quotation, (e) the Warranty, and (f) the Parties' course of dealing (prior to and after the date on which Victaulic signs this Agreement). Victaulic shall not be bound to additional or differing terms, conditions, or limitations, whether in a quote, acceptance or delivery document, unless attached as an Exhibit hereto or executed as a Change Order in accordance with Section 3 above. This Agreement constitutes the complete and exclusive agreement between the Buyer and Victaulic regarding the Project; it supersedes all other agreements, purchase orders, understandings and promises, oral and/or written, by or between the parties with respect to the Project.

17. PIPING COORDINATION. Victaulic will coordinate pipe routing with other trades within the quoted areas listed. Services under this Agreement do not include participation in BIM coordination meetings, unless requested and listed in Exhibit C. Buyer will provide Victaulic with all information required to coordinate pipe routing, and any changes requested to the model as a result of coordination meetings.

18. ALTERNATIVE MATERIALS OF CONSTRUCTION. If the specifications do not clearly specify which material is to be used and/or where, Victaulic will use carbon steel in its quotation(s). If after the service has been purchased and the material chosen by the Buyer is anything other than the products included in the original quotation, Victaulic shall have the right to a change order adjusting the value of the contract for any cost increases (plus markups) caused by the variance between the material types.

19. ALTERNATIVE METHODS OF CONSTRUCTION. If the specifications do not identify the method of construction that is to be used, Victaulic will use Victaulic Grooved as the exclusive method of construction. If after the service has been purchased, the method of construction is changed by Buyer, Victaulic reserves the right to terminate this agreement and bill for services rendered and/or re-quote for a change order.

20. MISCELLANEOUS.

(a) Severability. Each clause, paragraph and subparagraph of this Agreement is severable, and if one or more of them are declared invalid, the remaining provisions of this Agreement remain in full force and effect, unless the invalidity of the of a provision(s) denies the Parties their fundamental benefits of the contract.

(b) Survivability; Waiver. All of the provisions of this Agreement shall survive the termination (whether for convenience or default), suspension or completion of this Agreement. Victaulic's intended or unintended failure to enforce at any provision of this Agreement or applicable law shall not be construed as a waiver. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

TERMS AND CONDITIONS (CONTINUED)

- (c) **Subrogation.** The Parties waive all rights against (i) each other and, assuming a reciprocal waiver is given, any of their Contractors, sub-Contractors, agents and employees, each of the other, and (ii) assuming a reciprocal waiver is given, the Owner, the Architect, the Architect's consultants, separate contractors, and any of their Contractors, sub-Contractors, agents and employees for damages to the extent covered by insurance covering any project into which any of the Goods or Services provided under this Agreement are incorporated, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary.
- (d) **Limitation on Damages.** THE PARTIES WAIVE ANY AND ALL CLAIMS AGAINST THE OTHER FOR CONSEQUENTIAL, INDIRECT, EXTRAORDINARY, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST BUSINESS OPPORTUNITY, OR DOWNTIME ARISING OUT OF OR RELATING TO THE NEGOTIATION, FORMATION, OR PERFORMANCE OF THIS AGREEMENT INCLUDING THE PROVISION OF GOODS AND SERVICES. VICTAULIC'S CUMULATIVE LIABILITY TO BUYER AND THIRD-PARTIES AFFILIATED WITH BUYER FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATING TO THE NEGOTIATION, FORMATION, OR PERFORMANCE OF THIS AGREEMENT SHALL BE THE LESSER OF (I) SUPPLYING REPLACEMENT MATERIAL FOR ALL DAMAGED VICTAULIC-SUPPLIED GOODS; (II) EIGHTY PERCENT (80%) OF THE AMOUNT PAID TO VICTAULIC UNDER THIS AGREEMENT FOR SERVICES; OF WHICH A MATERIAL CREDIT OF NOT MORE THAN 50% OF THE VALUE OF ANY DAMAGES PROVEN TO BE CAUSED SOLELY BY VICTAULIC'S NEGLIGENCE MAY BE GIVEN.
- (e) **Non-solicitation.** During the term of this Agreement and for one year thereafter, Buyer shall not solicit or induce for employment Victaulic's employees, agents, or representatives, without prior written consent from Victaulic. Should the Buyer breach this provision, Buyer shall pay Victaulic a fee as liquidated damages, of three times the greater of (i) such employee's new annual compensation (annual base salary plus any applicable bonus, commission, or other incentive compensation) or (ii) such employee's highest total annual compensation (annual base salary plus any applicable bonus, commission, or other incentive compensation) while employed by Victaulic.
- (f) **Field Deviation and Construction.** Victaulic shall not supervise, direct, or control the means, methods, techniques, or personnel involved with the installation or construction of the Project. Buyer is responsible to rectify in the field any deviations between locations as provided on the drawings vs. actual installed locations including but not limited to: Equipment Nozzles, Existing Field Connections, Floor/Wall Penetrations, Maintenance Clearance, Pipe Locations, Obstructions not shown on contract plans, and etc.
- (g) **Schedule of Deliverables.** Victaulic will develop a workable schedule that addresses project milestone deliverables. Missing or delayed information, piping, or other componentry that Buyer was to have provided Seller may delay the provision of deliverables beyond their scheduled delivery date. If either such Buyer supplier information and/or piping or componentry is excessively delayed or is not furnished, or Buyer and Seller cannot come to agreement on an acceptable schedule of deliverables, Seller may terminate this Agreement in whole or part, and the Parties' rights and obligations upon such termination shall be as if Buyer had terminated for convenience under the terms of this Agreement.
- (h) **Buyer Supplied Information and Materials.** Buyer agrees that requirements, drawings, specifications, and other information (collectively, "Buyer Information") it provides to Victaulic (including those identified on Exhibit A) are a basis for, and may be incorporated into, the Services. Buyer is responsible for the accuracy and completeness of all Buyer Information it provides Victaulic under this Agreement and acknowledges that Victaulic may rely on such Buyer Information in the performance and provision of the Services. Buyer acknowledges that Victaulic is not in a position to be able to judge the accuracy or completeness of the Buyer Information, but agrees that Victaulic may, but has no obligation to, question or make suggestions concerning the Buyer Information ("Feedback"). Buyer's acceptance or use of the Feedback is at Buyer's sole option and risk without liability to Victaulic. Any assumptions made by Victaulic which are noted within the Services, or upon the instruments thereof, will be deemed Buyer Information upon acceptance of the Services. Victaulic's commitment in this Agreement, including to the schedule of deliverables, is predicated on the timely receipt of PDF files, CAD/Revit(R) files, specifications, and other applicable information, and any Buyer-supplied materials (such as, but not limited to, pipe or other components). If CAD/Revit(R) models/drawings are supplied from the Buyer and/or any third-parties, Buyer shall ensure that the CAD files have had all external reference files (X'refs) bound, and all Revit(R) links and central models have been detached from central and "relinquish all mine" has been selected prior to saving. If files are received and they are not in conformance with the above, they will be returned to the Buyer for maintenance. Any material delay in the timely delivery of the information complying with the above format(s), shall relieve Victaulic's obligation to perform in accord with this Agreement; in such a case, Victaulic shall provide Buyer with the new conditions of performance that shall be made part of this Agreement by change order. Buyer shall have no right to any excess materials provided to Victaulic, which may be retained by Victaulic or disposed of at Victaulic's sole option.
- (i) **Effective Date.** The Effective Date of this Agreement shall be as agreed to by the parties, or failing such an agreement, the date on which both parties have signed this Agreement, even if done in counterparts.
- (j) **Professional Services.** Unless (and in that case, only to the extent) specifically noted on Exhibit B, no professional services, including professional engineering services, are provided under this Agreement.

Trademarks

Victaulic and all other Victaulic marks are the trademarks or registered trademarks of Victaulic Company, and/or its affiliated entities, in the U.S. and/or other countries.
