

## TES - GENERAL TERMS AND CONDITIONS – INDUSTRIAL SERVICES

**1. Definitions.** (a) "TES" means Tidewater Environmental Services, Inc., a Washington corporation, dba West Coast Marine Cleaning Services, and any of its employees, officers and directors. (b) "Client" refers to the individual(s) and entities that have entered into this Agreement with TES. (c) "Agreement" means the complete agreement between Client and TES, and consists of all of the following: 1) the Work Order Authorization describing the work to be performed by TES ("Work"); 2) these General Terms and Conditions for industrial services; 3) any documents expressly incorporated by reference into the Work Order Authorization or these General Terms and Conditions; 4) any modification to the Agreement as agreed to in writing by Client and TES ("Change Order"). (d) "Hazardous Materials" means any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous waste, toxic substances or pollution. (e) "Work Site" means the location where the Work is to be performed.

**2. Access and Authorization.** Client will provide TES with all necessary access to the Work Site. Client warrants that it has the authority and permission of the owner/occupant of the Work Site to grant such access. Client warrants that it has obtained (or will obtain prior to performance of the Work), and will comply with, all necessary permits, licenses, consents and authorizations required in connection with the performance of the Work. Delays related to Client's change in schedule or delays in obtaining access to the Work Site or required documentation may result in additional fees.

**3. No Warranties.** TES will endeavor to perform the Work with that degree of care and skill ordinarily exercised under similar conditions by members of TES's profession practicing in the same discipline at the same time and location. No warranty or guarantee, either express or implied, is made or intended by this Agreement. TES waives all other representations or warranties, express or implied. By virtue of entering into the Agreement or performing the Work, TES does not assume control or responsibility over Client's personnel or equipment or as an operator of the Work Site, nor does TES assume any responsibility for reporting to appropriate government agencies any accidents or injuries or conditions of the Work Site that may present a danger to human health or the environment.

**4. Care of the Property.** During the term of this Work Order, Client will protect TES's property from any and all damage. While the property is on Client's premises, Client assumes all risk of damage to or loss of the property (or of any machinery, equipment, or materials obtained or intended for the property) from any cause whatsoever except acts of God or TES's sole negligence.

**5. Spills and Environmental Pollution.** (a) **Mitigation.** In the event of any spill or discharge into the environment of Hazardous Materials caused by TES or by Client's personnel, TES is authorized but not obligated to mitigate or minimize immediately such spill or discharge. (b) **Containment and Cleanup.** TES is authorized but not obligated to commence containment or cleanup operations as TES deems necessary or appropriate or as required by any governmental authority. Client may also, at Client's option, either assume the containment or cleanup operations or allow TES to complete such operations. In either event, TES shall have, at its option, the right to participate in all containment and cleanup operations. (c) **Costs.** All reasonable costs, fees, and expenses of containment or cleanup or resulting liability related to any spill, discharge, or environmental pollution will be borne jointly by TES and Client in proportion to each party's negligence.

**6. Discovery of Unanticipated Hazardous Materials or Conditions.** The discovery of any Hazardous Materials at the Work Site that Client has not identified as being present and which existence is not reasonably anticipated will constitute a changed condition that will require a Change Order or termination of this Agreement. If TES discovers such unanticipated Hazardous Materials, TES will notify Client as soon as practicable. The discovery of unanticipated Hazardous Materials may necessitate that TES take immediate protective measures. Client will pay the cost of any such additional protective measures. Client is responsible for reporting releases of Hazardous Materials to appropriate government agencies as required by law.

**7. Notice of Conditions or Specifications.** TES may rely on information regarding utilities, and subsurface conditions provided by Client and others. TES will have no liability for losses or damages of any kind related in any way to utilities or subsurface structures that were incorrectly marked or identified on maps, drawings, specifications, or other documents provided to TES in connection with the Work.

**8. Site Safety.** TES disclaims any authority or responsibility for general job site safety and for the safety of persons who are not employed by TES. TES is not responsible for job safety or site safety of the general project and is not responsible for compliance with safety programs and related OSHA and state regulations that apply to other entities or persons. Client is independently responsible for requiring that its employees and other contractors take responsibility for general job site safety.

**9. Permits and Approvals.** Client is to provide and arrange, at no additional cost to TES (unless the relevant Work Order Authorization specifically obligates TES), all necessary permits, bonds, testing, inspection, and approval of materials or workmanship by the proper authorities.

**10. Compliance with Applicable Laws.** Client must comply with all applicable laws and regulations, and Client agrees to indemnify and hold harmless TES for any loss, damage, fine, penalty, or any expense whatsoever as a result of Client's failure to comply with such laws and regulations.

**11. Billing and Payment.** (a) TES will bill for its services monthly. Payment is due on receipt of the invoice. A service charge of 1.5% per month will apply to any amounts that are more than 30 days past due. In addition to any past due amount, Client will pay all of TES's reasonable expenses necessary for collection of any past due amounts including, but not limited to, attorneys' fees and expenses, filing fees, lien costs and stafftime. (b) TES may invoice Client for additional charges incurred in the event of an unanticipated increase in project-related taxes, fees or similar levies; or if TES must modify project-related services, facilities or equipment to comply with new laws or regulations or changes to existing laws or regulations that become effective after execution of this Agreement.

**12. Force Majeure.** Client agrees that TES is not responsible for damages arising directly or indirectly from any delays for causes beyond TES's control. Such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, terrorist acts, wars or other emergencies. If the delays resulting from any such causes increase the cost or time required by TES to perform the Work, TES will be entitled to an equitable adjustment in schedule and/or compensation.

**13. Insurance.** Client, at its sole cost and expense (including the cost of all deductibles), must procure and maintain in force during the term of this agreement the following insurance coverages, which will apply independently of indemnity obligations contained herein: (a) Workers' compensation insurance as the law requires for all of Client's employees, agents, and subcontractors, and employer's liability insurance in an amount not less than \$1,000,000 per accident. Such insurance must provide coverage in the location in which Client performs the work and in Client's domicile. If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, and/or other statutes applicable to maritime employees, Client agrees to maintain insurance for such injuries or illnesses, and to provide evidence of such insurance. Client hereby waives immunity and exclusive remedy provisions under any applicable workers' compensation laws. (b) Commercial general liability insurance, where applicable, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability, with watercraft exclusions deleted and "in rem" coverage as may be applicable, at a minimum limit of \$1,000,000 per accident or occurrence. (c) Automobile liability insurance, where applicable, covering Client's owned, rented, leased, and hired vehicles, with limits of liability

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not less than \$1,000,000 per occurrence. **(d)** With respect to the delivery or removal of fuel or other hazardous products, or waste disposal operations TES performs: pollution insurance or environmental impairment insurance with limits of liability not less than \$5,000,000 per occurrence, and any other public liability or environmental impairment coverage that federal, state or local regulatory authorities require. **(e)** All policies must be endorsed to name TES, its parent, subsidiary, or affiliated companies and their shareholders, officers, directors, agents, and employees as additional insureds (except Workers Compensation) with a waiver of subrogation. **(f)** The amount or scope of insurance described herein does not place any limitation on the liability the Client assumes, and should Client maintain insurance limits higher than the limits listed above, TES will benefit from those higher limits. Client must require its subcontractors performing hereunder to maintain insurance of the types and amounts this Agreement requires of Client. Policies of Client are primary to any insurance TES carries, and Client must amend any "other insurance" clauses under its policies accordingly. Should Client fail to procure or maintain any of these insurance coverages, or by any act or omission vitiate or invalidate any of the aforesaid insurance coverages, Client must pay to TES all losses and indemnify TES against all claims and demands that insurance otherwise would have covered. Irrespective of the requirements as to insurance Client or its subcontractors must carry as this Agreement describes, insolvency, bankruptcy, or failure of any insurance company to pay all claims accruing does not relieve Client of any of its obligations. Such insurance must be written with insurers carrying no less than a "A-" rating from A.M. Best's. Commencement of operations without receipt of the required certificates of insurance does not constitute a waiver of the Client's obligation to maintain the required insurance coverages and to provide TES with certificates of insurance.

**14. Indemnification.** Except to the extent caused by TES's sole negligence or wrongful act or omission, Client will defend, indemnify and hold TES and its agents and employees harmless from and against any claims, liabilities, damages and costs (including, but not limited to, reasonable attorney fees and costs of defense) arising out of (i) death or bodily injury to persons; (ii) damage, loss or destruction of property (including loss of use thereof); or (iii) allegations that TES is liable under any law related to Hazardous Materials, each caused by, arising out of, resulting from or occurring in connection with Client's breach or nonperformance of its obligations under the Agreement or any conditions or Hazardous Materials at the Work Site; or (ii) any negligent or wrongful act or omission by Client, its agents or employees.

**15. Limitation of Liability.** TES's aggregate liability and responsibility to Client under the Agreement is limited to \$50,000 or the amount of TES's owed and paid fee under the Agreement, whichever is greater. This limitation of remedy applies to all lawsuits, claims or actions, including appeals, whether identified as arising in tort, contract or other legal theory related to TES's services under this Agreement. The Agreement will not limit or deprive TES of any statutory protection against, exemption from or limitation of liability under applicable law, statute, or regulation, and all rights and benefits under all such laws, statutes and regulations are expressly claimed and reserved by TES.

**16. Consequential Damages.** TES is not responsible for indirect or special damages, including without limitation extra expense, loss of use of property, delay, or damages consequential upon loss of use, whether resulting from negligence or breach or otherwise.

**17. Priority.** If there is any conflict between the terms of the Work Order Authorization and these General Terms and Conditions, the terms of the Work Order Authorization shall prevail.

**18. Termination.** Either party may terminate the Agreement without cause upon ten days' prior written notice. In the event Client requests termination prior to completion of the Work, Client agrees to pay TES for all reasonable charges incurred to date and associated with termination of the Work.

**19. No Third Party Rights.** All duties and responsibilities undertaken pursuant to the Agreement are for the sole and exclusive benefit of Client and TES and not for the benefit of any other party. No third party will have the right to rely on the product of TES's services without TES's prior written consent and the third party's agreement to be bound to the same terms and conditions as the Client.

**20. Relationship of the Parties.** In performing the Work, TES will be acting in the capacity of an independent contractor to Client, and nothing herein shall be deemed to create a partnership, agency, joint venture or any other relationship between the parties.

**21. Assignment of Contract or Claims.** Neither the Client nor TES may delegate, assign, sublet, or transfer the duties, interests or responsibilities set forth in this Agreement, or any cause of action or claim relating to the services provided under this Agreement, to other entities without the written consent of the other party. However, TES may employ any other party, including subcontractors, it deems necessary or proper for any part of the services to be performed by TES under the Agreement.

**22. Survival.** All provisions of the Agreement for indemnification and the allocation of responsibility or liability survive the completion of and payment for the services under this Agreement and the termination of this Agreement, whether for cause or for convenience.

**23. Severability.** If any provision of this Agreement is held unenforceable, all remaining provisions will continue in full force and effect. Client and TES agree that they will attempt in good faith to replace any unenforceable provision with one that is valid and enforceable, and which conforms as closely as possible with the original intent of any unenforceable provision.

**24. Entire Agreement.** This Agreement (including these Terms and any Terms posted at [www.westcoastmarinecleaning.com/industrial-terms-and-conditions](http://www.westcoastmarinecleaning.com/industrial-terms-and-conditions), the relevant Work Order Authorization, and any attachments or incorporations) constitute the entire agreement between the parties with respect to the services. Any writing containing proposals or terms additional to or different from those herein is not binding unless TES expressly agrees in writing.

**25. Miscellaneous.** **(a)** A notice that these Terms requires or permits one party to give to the other must be in writing addressed to that other party at its registered office or principal place of business or such other address (including email) as the party may have designated in writing. **(b)** If a court or other competent authority holds any provision of these Terms to be invalid or unenforceable in whole or in part, the other provisions of these Terms and the remainder of the provision in question will remain valid. **(c)** The parties will construe the Agreement, these Terms, and the Work Order in accordance with, and govern all disputes by the laws of the State of Oregon. Client agrees to submit to the jurisdiction of the U.S. District Court for the District of Oregon. The prevailing party will be entitled to recover reasonable attorneys' fees, legal costs, and other claim-related expenses, including on appeal.