

PETCOSKY COMPANIES NEW YORK TERMS AND CONDITIONS

- 1. Scope of Undertaking.** CONTRACTOR is defined as any one of the Petcosky Companies, which includes Petcosky Fire Protection Inc., Petcosky Fire Protection South Inc and Petcosky & Sons Plumbing and Heating D/B/A Petcosky Mechanical that is performing the Work or Services described herein. CONTRACTOR will perform the services described on the front of this CUSTOMER Work Order (the Work). No other services are included. The amount payable to the CONTRACTOR for the Work is based solely upon the value of the services performed and other terms and conditions herein and is unrelated to the value of the CUSTOMER's property and/or the property of others located in/on the premises. CONTRACTOR makes no guarantee or Warranty that equipment or services supplied by CONTRACTOR will detect or avert occurrences or the consequences there from that the equipment or services are designed to detect or avert. AS A MATERIAL INDUCEMENT FOR CONTRACTOR TO PROVIDE THE SERVICES AND/OR MATERIALS SPECIFIED HEREIN AT THE PRICE QUOTED IN THIS AGREEMENT, CUSTOMER AGREES THAT THE CONTRACTOR'S LIABILITY TO THE CUSTOMER AND ALL THIRD PARTIES ON CUSTOMER'S PROPERTY OR RELATED TO THE CUSTOMER WITH RESPECT TO ANY CLAIM, DEMAND OR CAUSE OF ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO THE LESSER OF \$1000.00 OR THE TOTAL CONSIDERATION ACTUALLY RECEIVED BY THE CONTRACTOR UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO ALL CLAIMS, DEMANDS AND CAUSES OF ACTION REGARDLESS OF THE NATURE OR BASIS THEREOF, INCLUDING CLAIMS, DEMANDS AND CAUSES OF ACTION FOR BREACH OF CONTRACT, BREACH OF WARRANTY OR IMPLIED WARRANTY, NEGLIGENCE, STATUTORY LIABILITY, OTHER TORT LIABILITY, AND INCLUDING ANY TYPE OR AMOUNT OF DAMAGES, INCLUDING DIRECT, INDIRECT, LOSS OF PROFITS, OR PUNITIVE DAMAGES. If the CUSTOMER desires the CONTRACTOR to accept an increased limit of liability for services and/or materials provided under this Agreement, CONTRACTOR can provide an alternate price quote reflecting such increased liability limitation, provided, however, such changes shall not be effective unless and until the CONTRACTOR and CUSTOMER execute a new and separate Agreement.
- 2. Equipment Disconnections.** CUSTOMER is on notice that the system(s)/device(s) listed on the face of this CUSTOMER Work Order and Agreement will be temporarily or permanently disconnected and no longer in service and thus, cannot detect, perform and/or report occurrences or transmit signals. CUSTOMER understands this is a normal consequence of this type of Work and shall make no claim or demand with respect to the same.
- 3. Existing System.** Where new work is connected to an existing system, any deficiencies or lack of performance detected in the existing system during testing or charging of the system are the responsibility of the CUSTOMER and are not covered by any warranties contractual obligations that may be applicable to the Work. CUSTOMER releases CONTRACTOR from any and all claims, demands and causes of action regarding the existing system and/or any damage or injury caused by or to the existing system.
- 4. CPVC Sprinkler & Piping Systems.** The CONTRACTOR is not responsible for any damages arising from or due to: (1) incompatibility of materials within a CPVC piping system, or (2) corrosion, or deterioration of piping due to CUSTOMER's water supply, atmospheric conditions, soil quality, or any other condition at CUSTOMER's facility that adversely affects the integrity of the fire protection system.
- 5. Existing System Design & Installation.** The Company does not know, has not analyzed, and does not represent whether the current fire protection system on the Property was originally designed and installed in such a way that the system will perform as originally intended or is suitable and sufficient for its intended purpose given the way in which the Property has been or will be used. In other words, the Property has been or may be used in ways such that the configuration of partition walls, the location of and types of materials (including the presence of hazardous materials) and other conditions of the Property's use are such that the materials (including the presence of hazardous materials) and other conditions of the Property's use are such that the fire protection system is inadequate, insufficient or unsuitable for the Property. THIS AGREEMENT IS NOT A GUARANTY OR WARRANTY THAT THE SYSTEM WILL IN ALL CASES (i) PROVIDE THE LEVEL OF PROTECTION FOR WHICH IT WAS ORIGINALLY INTENDED (ii) IS FREE OF ALL DEFECTS AND DEFICIENCIES AND (iii) IS IN COMPLIANCE WITH ALL APPLICABLE CODES. CUSTOMER agrees that it has not retained CONTRACTOR to make these types of assessments unless specifically indicated on the Work Order.
- 6. Liquidated Damages.** It is impractical and extremely difficult to determine the actual damages, if any, that may proximately result from failure on the part of CONTRACTOR to perform any of its obligations under this CUSTOMER Work Order. Accordingly, CUSTOMER agrees that, CONTRACTOR shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences there from, and/or concerning any repair of the system or system components. Should CONTRACTOR be found liable for any loss, damage or injury arising from a failure or failure to perform adequately of the equipment or service in any respect, CONTRACTOR's liability shall be limited to the lesser of \$1,000 or an amount equal to the CUSTOMER Work Order price if paid. Where multiple sites are covered by one CUSTOMER Work Order, liability will be limited to the amount allocable to the site where the incident occurred, subject to the preceding sentence. As a condition precedent to any claim or lawsuit against CONTRACTOR, all outstanding invoices must have been paid in full when due, without compromise or offset on amounts owed.
- 7. Actions by others.** In no event shall CONTRACTOR be liable for any damage, loss, injury, or any other claim, dispute or causes of action arising from any servicing, alterations, modifications, changes or movements of the covered system(s) or any of its component parts made by the CUSTOMER or any third party.
- 8. Waiver of Subrogation.** The CONTRACTOR is not an insurer against loss or damage. Sufficient insurance shall be obtained by CUSTOMER to cover the premises (and property therein) where the work will be performed. CUSTOMER agrees to rely exclusively on CUSTOMER's insurance to recover for injuries or damages in the event of any loss, damage or injury to the premises or property therein. CUSTOMER, for itself and all others claiming by or through it under this Agreement, releases and discharges CONTRACTOR

from and against all damages covered by CUSTOMER's insurance, it being expressly agreed and understood that no insurance company, insurer or other entity/individual will have any right of subrogation against CONTRACTOR.

- 9. Incidental/Consequential Damages.** CONTRACTOR shall not be liable for indirect, incidental or consequential damages of any kind, including but not limited to damages arising from the use, loss of use, performance, lack of performance or failure of the covered system(s) to perform. Furthermore, in the event of a breach of this Agreement by the CUSTOMER, the CONTRACTOR shall be entitled to recover all reasonable attorneys' fees, expert fees and court costs from CUSTOMER. The Parties agree that New York law applies and that the venue for any action or proceeding shall be Broome County, New York. The Parties further agree to waive their right to a jury trial.
- 10. LIMITED WARRANTY.** CONTRACTOR WARRANTS THAT ITS WORKMANSHIP AND MATERIAL (the Work) FURNISHED UNDER THIS CUSTOMER WORK ORDER WILL BE FREE FROM DEFECTS FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE SAID WORK IS COMPLETED. CONTRACTOR AGREES TO REPAIR OR REPLACE THE WORK PROVIDED THE WORK HAS NOT FAILED OR FAILED TO FULLY PERFORM DUE TO CIRCUMSTANCES UNRELATED TO THE MATERIALS OR WORKMANSHIP FURNISHED BY CONTRACTOR. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPLIED HEREUNDER.
- 11. Indemnity.** CUSTOMER agrees to indemnify, hold harmless and defend CONTRACTOR, to the fullest extent permitted by law, against any and all losses, damages, costs, including expert fees and expenses including reasonable attorney defense costs, arising from any party, including any and all third party claims for personal injury, sickness, death, property damage, loss of use or any other economic loss, including specifically any damages resulting from the exposure of workers to Hazardous Conditions whether or not CUSTOMER pre-notifies CONTRACTOR of the existence of said hazardous conditions, arising in any way from performance of the Work or the Work itself whether caused in whole or in part by CONTRACTOR, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence) strict liability or otherwise. CONTRACTOR reserves the right to select counsel to represent it in any such action applicable to this paragraph to be paid by CUSTOMER.
- 12. Water Supply.** CONTRACTOR makes no claims and/or representations as to the presence currently or in the future of corrosion inducing matter, i.e. microbiological organisms, or chemicals of any kind harmful to people or property, contained within the water supply. CONTRACTOR recommends that the water supply be tested and, as needed, treated. Testing and treatment of the water supply and costs associated therewith are the sole responsibility of CUSTOMER. Any such testing must be pursuant to a separate written agreement.
- 13. Affiliates.** The terms and conditions set forth in this CUSTOMER Work Order shall inure to the benefit of all parents, subsidiaries and affiliates of CONTRACTOR, whether direct or indirect, and CONTRACTOR's employees, agents, owners, officers and directors.
- 14. System Deficiencies.** CUSTOMER agrees that any corrective actions proposed by CONTRACTOR as part of this agreement, including but not limited to service, maintenance, repair of or replacement of parts, installation of new parts, and other recommendations made by CONTRACTOR, may identify and indicate deficiencies within the existing system(s) of CUSTOMER. As an element of safety, CUSTOMER agrees that it is at their sole discretion and choice to leave existing system(s) operational and assumes any and all liability for occurrences, failures, loss, or damages, resulting from existing deficiencies within CUSTOMER's system(s), whether or not deficiencies contributing to such loss or damage have been identified within the scope of work of this Work Order. CUSTOMER agrees that CONTRACTOR shall have no liability for occurrences, failures, loss, damages, or a breach of this agreement, including no liability for any loss occurring within the elapsed time between when work is proposed by CONTRACTOR and executed by CONTRACTOR, if any, resulting from existing deficiencies within CUSTOMER's system(s).
- 15. Limitation On Lawsuits:** It is agreed that no suit, cause of action or other proceeding shall be brought against CONTRACTOR more than one (1) year after the accrual of the cause of action or one (1) year after the claim arises, whichever is shorter, whether known or unknown when the claim or cause of action arises, or whether based on tort, contract, or any other legal theory. It is agreed that CUSTOMER hereby knowingly waives and shall forfeit any right of recourse or recovery against CONTRACTOR, and further agrees that CONTRACTOR has no liability to CUSTOMER for any damage, injury, or loss, when a claim, cause of action or lawsuit is not commenced against CONTRACTOR within the time period specified herein.
- 16. Authorization:** The person executing this Agreement on behalf of the CUSTOMER, expressly warrants and covenants that he/she is the authorized representative of the Owner of the premises and is authorized to enter into this Agreement for and on behalf of the Owner or Owner's designee.
- 17. Acceptance:** An electronic, written, or verbal acknowledgement of these terms and conditions shall bind CUSTOMER to all terms and conditions contained herein.