

TERMS OF SERVICE

The following terms of service (“Terms of Service”), the Work Authorization, and the invoice (the “Invoice”) rendered to Customer by Alpha Leak Detection Services, Inc. (“Alpha”) shall constitute the entire agreement (the “Agreement”) between the parties regarding the subject matter hereof. All previous negotiations, proposals, and representations, including but not limited to any request for proposal or purchase order submitted by Customer (whether or not accepted by Alpha), are superseded hereby, and this Agreement shall constitute a complete and exclusive statement of the terms of the agreement between Customer and Alpha.

TERMS AND CONDITIONS: All descriptions, quotations, proposals, offers, acknowledgments, acceptances, products provided, and services performed by Alpha are subject to and shall be governed exclusively by these Terms of Service. Alpha’s acceptance of any request for products or services by Customer is expressly conditioned upon Customer’s assent to all these Terms of Service. Any conduct by Customer that recognizes the existence of a contract pertaining to the products or services which are the subject of the Invoice (including, without limitation, acceptance of the products or services or payment for them) shall constitute acceptance by Customer of this Agreement and all its terms. All orders received from Customer are subject to acceptance by Alpha. In no event shall Alpha be bound by any terms or conditions proposed by Customer that are in addition to, or inconsistent with, those stated herein. No such additional, different, or inconsistent terms or conditions shall become part of this Agreement unless expressly accepted in writing by Alpha.

INVOICING AND PAYMENT TERMS: Alpha will send an Invoice weekly to Customer, including to the Customer Contact listed in the Work Authorization. The Customer Contact shall promptly review each Invoice and immediately thereafter, but in no event later than five (5) days after receipt of the Invoice, advise Alpha of any dispute about the Invoice. Customer shall timely pay all undisputed amounts. Unless otherwise agreed in writing by Alpha, payment of all invoiced amounts is due and payable net 30 days from the date of the Invoice. Any invoiced amounts not paid within 30 days of the Invoice date will be delinquent (a “Delinquency”). Interest shall accrue on the amount of any Delinquency at the lesser of 1.5% per month (18% annually) or the maximum rate allowed by Texas law. All payments received may be applied against open charges in the sole discretion of Alpha. Alpha shall have a right of setoff, in the amount of all Delinquencies, against any amounts that Alpha may owe Customer. Customer agrees that, upon any Delinquency, Alpha shall have all Customer’s right, title, and interest in and to any easement, right of way, or license to real property upon which Alpha has performed any work. Failure to pay any Invoice when due shall be a material breach of these Terms of Service.

TAXES: Unless otherwise indicated on the face of the Invoice, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes. If any such taxes must be paid by Alpha or if Alpha is liable for the collection of such tax, the amount thereof shall be in addition to the amounts for the products and services sold. Customer agrees to pay all such taxes or to reimburse Alpha therefor upon receipt of the Invoice. If Customer claims exemption from any sales, use, or other tax, Customer shall indemnify and hold harmless Alpha from and against

any such tax, together with any interest or penalties thereon which may be assessed if the products or services are held to be taxable.

MATERIALS SUPPLIERS AND SUB-CONTRACTORS: Unless otherwise agreed between Alpha and Customer at added cost to Customer, Alpha may, in its sole discretion, acquire the products and materials that it uses to provide the services under this Agreement from any supplier or contractor.

PROGRESS REPORTS: On the Work Authorization, Customer will specify (i) a Customer contact who shall serve as the primary contact person at Customer (“Customer Contact”) and (ii) the form of daily and weekly reports to be given by Alpha to the Customer Contact to keep Customer apprised of the progress being made by Alpha in performing the services.

WARRANTY; EXCLUSION OF OTHER WARRANTIES; AND LIMITATION OF ALPHA LIABILITY: Alpha warrants only to Customer that, at the time of delivery, and only at the time of delivery, all services delivered under this Agreement will be performed in a good and workmanlike manner, consistent with industry practice. **Alpha makes no warranty of any kind if Customer requests Alpha to perform work in a manner that deviates from Alpha’s standard process and procedures – all such work shall be performed by Alpha at Customer’s sole risk of loss and liability.**

THIS WARRANTY IS IN LIEU OF, AND ALPHA DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER ARISING BY LAW, CUSTOM, OR COURSE OF CONDUCT. CUSTOMER’S SOLE REMEDY AND ALPHA’S SOLE LIABILITY FOR ANY MATERIAL DEFECTS IN MATERIAL OR WORKMANSHIP AT THE TIME OF DELIVERY OF THE PRODUCT OR SERVICE SHALL BE LIMITED EXCLUSIVELY TO ALPHA’S REMEDYING OR REPAIRING ANY SUCH MATERIAL DEFECTS IN MATERIAL OR WORKMANSHIP.

In no event shall Alpha be liable to Customer for any consequential, incidental, indirect, exemplary, punitive, or special damages, including, without limitation, loss of revenue, production, or anticipated profits. In no event shall Alpha be liable to Customer for any amount in excess of the total amounts invoiced by Alpha to Customer under the Work Authorization that gives rise to Customer’s claim.

INDEMNITY BY CUSTOMER: Customer agrees to defend, indemnify, and hold Alpha harmless from and against any and all claims, demands, causes of action, fines, penalties, expenses (including attorneys’ fees and expert fees), consequential damages and losses on account of personal injury, death, or property damage whether based upon contract, tort, negligence, strict liability, any statute, or misrepresentation of warranty arising out of, or directly or indirectly resulting from, (1) damage to or loss of Customer’s property or (2) the products or services provided by Alpha pursuant to this agreement, **even if such injuries, death, or damage is caused by Alpha’s sole or concurrent negligence, gross negligence, strict liability, statutory or regulatory liability, or statutory or regulatory strict liability.**

FORCE MAJEURE. Alpha shall not be liable for any delays or failures in performance due to circumstances beyond its reasonable control, including acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, terrorism, insurrections, cyber and electronic hacking or attacks, interruptions of power supply, interruptions of internet access, changes in laws or regulations, epidemics, pandemics and other public health emergencies, and restraints of government (including, but not limited to, restrictions imposed by governmental authorities in response to a pandemic or other health emergencies). The suspension of performance shall be of no greater scope and no longer duration than is reasonably required, and Alpha shall use reasonable efforts to remedy its inability to perform.

STOPPING WORK: Alpha, in its sole discretion, may stop work at any time (a) if Customer is in material breach of this Agreement or (b) to prevent accidents or damage to persons or property on or in the vicinity of the job site.

JURISDICTION, CHOICE OF LAW, AND ATTORNEYS' FEES: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas without reference to Texas choice of law provisions. The state and federal courts sitting in, or presiding over, Galveston County, Texas shall have exclusive jurisdiction over any lawsuit arising out of or relating to this Agreement. Customer hereby irrevocably consents and submits to the jurisdiction of such courts, and irrevocably waives the right to object that such court does not have jurisdiction over Customer. No actions arising out of or relating to this Agreement may be brought by either party more than two (2) years after the cause of action accrues. If Alpha sues Customer to enforce this Agreement, Alpha shall be entitled to recover its reasonable attorneys' fees, expert witness fees, expenses, and costs associated with the suit.

NON-WAIVER BY ALPHA: Neither the failure of Alpha to exercise any right given to it hereunder nor to insist upon strict compliance by Customer with its obligations hereunder, nor any custom or practice of the parties at variance with these Terms of Service, shall constitute a waiver of Alpha's right to demand exact compliance by Customer with the terms hereof. Any rights or remedies provided to Alpha in this Agreement shall be cumulative and shall not be to the exclusion of any other right or remedy available under this Agreement or under any law.