



## TERMS AND CONDITIONS OF INSTALLATION

**The following Terms and Conditions of Installation apply to all installation agreements or contracts. The terms and conditions of the Vendor Qualification Form, as well as the terms and information in each Project Addendum, are incorporated herein. If there is any conflict in these Terms and Conditions and those in the Vendor Qualification form or the Project Addendum, these Terms and Conditions control.**

### Section 1 – Definitions

- 1.1. “MESA” shall mean MESA Logistics Group, LLC
- 1.2. “INSTALLER” shall mean the person or entity retained by MESA, as identified in the Project Addendum, to provide Installation Services for Project and shall include said person’s or entities’ officers, directors, employees, and agents while acting within the scope or course of their employment.
- 1.3. MESA and INSTALLER may sometimes be referred to as the “Parties”
- 1.4. “Confidential Information” shall mean (a) customer lists, pricing information, contracts, forms, reporting procedures, service policies and (b) all trade secrets or confidential information designated as such in writing by MESA, whether by letter or by the use of an appropriate stamp or legend, prior to or at the time any such trade secret or Confidential Information is disclosed by MESA to INSTALLER. In addition, any other information which is disclosed to INSTALLER orally or in writing shall constitute Confidential Information if it would be apparent to a reasonable person in the installation industry that such information might be of a confidential nature.
- 1.5. “Customers” shall mean any person or entity that retained MESA to procure Installation Services.
- 1.6. “Material” and “Materials” shall mean furniture, fixtures, equipment, facility operating supplies, or any other item of personal property to be installed on a Project.
- 1.7. “Project” shall mean the Project identified on the Project Addendum.
- 1.8. “Project Addendum” shall mean the addendum signed by both Parties prior to beginning work on the Project that details the Project name, address, the Installation Services, and INSTALLER’s rates for the Project.
- 1.9. “Installation Services” shall mean the services identified in the Project Addendum and shall include but not be limited to receiving deliveries at installation projects, unloading, documenting, transporting within buildings, placing, assembling, and installing Materials in designated areas as directed or according to written specifications, floor plans, and drawings.
- 1.10. “Vendor Qualification Form” shall mean

### Section 2 – MESA’s Responsibilities

- 2.1. Information from MESA. MESA shall provide to INSTALLER all necessary information concerning the Project. This information shall include the Project location, anticipated date(s) of installation, project staffing

requirements, merchandise lists, schedule, drawings, elevations, and designer or vendor specifications for the Materials

- 2.2. Shipping Information. MESA will direct its Project warehouse, as well as vendors and suppliers to ship the Materials as follows: “(Customer’s name) c/o (INSTALLER’s name).”
- 2.3. Access. MESA shall require that its Customer provide INSTALLER ready and safe access via driveways and sidewalks to the buildings and through receiving areas, hallways, elevators, floors and rooms where a Project is in progress.
- 2.4. Ownership of Materials. MESA has authority to direct INSTALLER to install the Materials and otherwise has authority to authorize INSTALLER as its subcontractor to handle the Materials in accordance with this Agreement. MESA shall indemnify INSTALLER against any an adverse claim for loss or damage to the Materials that occurred outside of INSTALLER’s care, custody, and control of the Materials, including providing a defense for INSTALLER in the event of litigation.

### **Section 3 – INSTALLER’s Responsibilities**

- 3.1. General. INSTALLER shall provide all Installation Services in connection Project as set forth in the Project Addendum.
- 3.2. Equipment, Tools, & Supplies. INSTALLER shall be solely responsible for procuring, leasing and providing the moving equipment, installation hand tools, and power tools used for proper performance under this Agreement. INSTALLER shall provide all supplies and equipment necessary to protect the Project building surfaces including, but not limited to floor surfaces, walls, corners, door frames and the like, unless the cost of such equipment and supplies is expressly assumed by MESA. INSTALLER agrees to keep the assigned Project work areas clean and orderly at all times it is on the Project.
- 3.3. Identification and Inspection of Materials Delivered by Warehouse. Upon receipt of each shipment or delivery from a warehouse, INSTALLER shall identify the delivered Materials and confirm the quantity and condition of the same by reviewing and completing the warehouse’s receiving report (the “Delivery Document”). To complete the Delivery Document, INSTALLER must identify and notate all over, short, and damaged (“OS&D”) Materials. INSTALLER shall photograph any OS&D Materials and their packaging. INSTALLER will send the completed Delivery Document to MESA within twenty-four (24) hours of receipt of the Materials.
- 3.4. Identification and Inspection of Materials Delivered by Vendor. Upon receipt of each shipment or delivery direct from a Material vendor, INSTALLER shall identify the delivered Materials and confirm the quantity and condition of the same on MESA’s receiving report (the “Receiving Report”). To complete the Receiving Report, INSTALLER must identify the quantity of Materials and notate all OS&D. INSTALLER shall inform MESA’s designated representative for that project that a freight claim must be initiated. MESA, working in conjunction with the INSTALLER, will request that the motor carrier make a formal inspection of the damage and prepare a report describing the damage. After the motor carrier’s inspector examines the damaged Materials, the inspection report, freight bill, MESA’s Receiving Report, and claim form must be forwarded to MESA by INSTALLER within forty-eight (48) hours of completing the Receiving Report so that a claim may will be filed with the motor carrier. If damaged Materials are repairable, INSTALLER shall, as may be requested by MESA, assist in arranging for the repair of the Materials.
- 3.5. Responsibility for Damaged Materials. INSTALLER shall bear the cost of repairing or replacing any and all Materials damaged while in INSTALLER’s care, custody, or control. INSTALLATION SUBCONTRACTOR understands and agrees that if it fails to inspect the Materials, or complete and send the Delivery Document or Receiving Report to MESA, it assumes liability for replacement or repair of damaged Materials as though they were damaged while in INSTALLER’s care, custody and control.

- 3.6. Delivery Request & Receiving of Materials. When ordering delivery of Materials, INSTALLER shall refer to the Receiving Report or other inventory control method utilized in connection with the Project. All deliveries must be ordered through MESA's designated project representative. At least two (2) working days advance notice is required to schedule and order deliveries. INSTALLER shall use its best effort to receive deliveries at the agreed upon time. If delivery overtime is required due only to INSTALLER's failure to meet the schedule, MESA may at its sole option charge such delivery overtime charges to INSTALLER.
- 3.7. Job Site Returns. Materials returned by INSTALLER from Project site to the Project warehouse must be clearly documented on the delivery or pickup driver's bill of lading or Delivery Ticket paperwork. A copy of this document must be faxed or e-mailed to the MESA project representative, clearly stating why the Materials were returned.
- 3.8. Defective Installation Services & Notice to Cure. If the Installation Services under this Agreement are defective, MESA shall provide written notice of said defects and an opportunity to correct them. If INSTALLER fails or refuses to correct the noticed defects within 15 days of MESA's notice, then MESA may hire a new subcontractor to correct the defects at INSTALLER's sole expense.
- 3.9. Personnel. Unless otherwise specified in a Project Addendum, INSTALLER agrees to engage or otherwise provide properly qualified, trained and licensed personnel to perform the Installation Services and related scope of work under this Agreement and any duly executed project addendum hereto in a safe, efficient and economical manner. Such personnel (whether agents, employees or independent contractors of INSTALLER) shall conduct themselves in a professional manner at all times. Such persons or parties are not and shall not be deemed employees or agents of MESA.
- 3.10. Governmental Regulations. INSTALLER shall comply with all applicable laws, rules, regulations and ordinances in performing the Installation Services under each Project Addendum.

#### **Section 4 –Rates, Billing, and Payment**

- 4.1. General. Compensation for the Installation Services provided by INSTALLER will be determined on a project by project basis and shall be set forth in a Project Addendum. The rates reflected in the Project Addendum shall remain in effect for the duration of the Project.
- 4.2. Stand-By Time Charges. MESA agrees to pay INSTALLER for stand-by time resulting from labor disputes or inaccessible Project facilities. The rate to be paid for stand-by time will be negotiated with the Project owner through the change order process but will begin thirty (30) minutes after MESA's project representative has been informed of the delay and will be limited to the rates of those INSTALLER employees or subcontractors that cannot be deployed to other non-Project work during the stand-by period. INSTALLER shall make commercially reasonable efforts to avoid stand-by time charges by deploying its employees or subcontractors to other non-Project work where possible. MESA is not liable to pay for any stand-by time charges that are not paid by the Project owner.
- 4.3. Additional Services. INSTALLER will be compensated for additional services requested or approved by MESA's Project representative at the applicable Project Addendum labor rate. For additional services, compensation will be paid for actual hours incurred unless otherwise set forth in a Project Addendum. Hardware, materials, and supplies associated with additional services will be compensated at the actual value, per receipt, plus a service charge as set forth in the Project Addendum, not to exceed 15%.
- 4.4. Overtime. If MESA requests work on Saturday, Sunday, a holiday, or at a time other than normal business hours on regular working days, such approved overtime will be paid according to the Project Addendum for additional labor. If the overtime incurred is related to base contract work, only the differential between the straight time rate and the applicable overtime rate will be paid. If the overtime work incurred is related only to authorized additional work, all hours worked will be paid at the overtime rate in the Project Addendum.

- 4.5. **Billing.** INSTALLER shall invoice MESA within seven days of achieving the completion milestone as set forth in the Project Addendum or upon Project completion, whichever comes first. INSTALLER shall include approved charges for all additional services completed during the time period covered by the progress payment milestone or prior to the Project completion invoice. INSTALLER shall include with the invoice to MESA all documentation relating to the time period being invoiced, including MESA sign-off forms for areas completed, receipts for additional supplies, etc. If INSTALLER fails to provide the necessary documents to support its charges, MESA may, at its discretion, refuse to approve any invoice, in whole or in part, until such documentation is provided.
- 4.6. **Payment for Services.** MESA will pay INSTALLER's approved invoices within 45 days of receipt, except that MESA may extend the normal payment terms if the Project owner or general contractor has not paid MESA. In such circumstance, INSTALLER understands and agrees that MESA will pay INSTALLER within thirty (30) days of receiving payment from the Project owner or general contractor. INSTALLER shall not communicate with Customers, directly or indirectly, relating to compensation or payment.

## **Section 5 – Insurance, Liability, and Indemnification**

- 5.1. **Liability.** As set forth in Section 3, INSTALLER is liable to MESA for the actual replacement or repair value of any Materials lost, damaged, or stolen while in its care, custody and control. When the Materials are lost, damaged, or stolen because of INSTALLER's failure to secure the Materials, or by the negligence, accidental acts, or omissions of the INSTALLER or its agents, servants or employees, INSTALLER will be liable up to \$500,000 per occurrence, or replacement cost, whichever is less.
- 5.2. **Insurance.** INSTALLER shall purchase and maintain the following types and limits of insurance, from a company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located:
- a) Workers' Compensation: As required by the laws of the state in which work is to be performed, including the Broad Form Other States endorsement.
  - b) Employer's Liability Insurance: Limits of not less than \$500,000/\$500,000/\$500,000
  - c) General Liability for bodily injury and property damage on an occurrence form naming MESA and MESA customers as additional insured on a primary and non-contributory basis for limits of not less than:
    - \$1,000,000 each occurrence
    - \$1,000,000 products & completed operations in the aggregate
    - \$2,000,000 general aggregate – per project basis.
  - d) Excess/Umbrella Liability: \$1,000,000 per occurrence/aggregate.
  - e) Automobile Liability: Covering all owned, non-owned& hired vehicles: \$1,000,000 combined single limit.
  - f) Installation Floater: \$500,000 per occurrence.
  - g) Completed operations: \$1,000,000 per occurrence.
  - h) Cargo Liability Insurance, if applicable: \$250,000 per vehicle.
  - i) Employee Fidelity: \$500,000 per employee or per occurrence.
- 5.3. **Evidence of Insurance.** INSTALLER shall furnish to MESA certificates of insurance evidencing the above coverages prior to commencement of any services. MESA reserves the right to ask for written confirmation of coverage from insurance company and/or broker. INSTALLER will name MESA as an additional insured and a certificate holder with any notice of cancellation or change in coverage sent to MESA at least 30 days prior to any change.
- 5.4. **Indemnification.** INSTALLER shall defend, indemnify, and hold MESA harmless from any and all liability, costs and damages, including attorneys' fees, to persons and/or property, including cargo, arising out of INSTALLER's performance under this Agreement.

- 5.5. Delays. INSTALLER shall be liable for any expense incurred by MESA or its Customer for delay in completing the Project at the time specified, due to delays caused by, but not limited to failure to properly staff the project, installation workmanship defects or refusal to perform as directed. INSTALLER liability for delay shall not exceed \$1,000.00 per day. There shall be no liability for delay caused by any condition included in the Force Majeure provision.

## **Section 6 – Confidentiality and Back-Solicitation**

- 6.1. Confidentiality. In the course of handling services under this Agreement, INSTALLER may come in contact with MESA's Confidential Information. INSTALLER shall not disclose (or permit its personnel to disclose) Confidential Information to any person outside of its organization. MESA's Confidential Information may be shared only within INSTALLER's organization to personnel who have need to know the information to perform the work covered by this Agreement. The obligations of INSTALLER described in this paragraph shall not apply if INSTALLER can demonstrate by clear and convincing evidence that Confidential Information was (a) generally known to the public at the time of INSTALLER's disclosure or became known through no wrongful act or omission on part of INSTALLER; or (b) was required to be disclosed by INSTALLER to comply with applicable laws or the requirements of any regulatory authority. Confidential Information shall be returned to MESA upon request. In the event of termination of this Agreement for any reason, INSTALLER shall immediately deliver to MESA all documents, including all copies, containing or relating to any Confidential Information as well as all other MESA property, including notes, memoranda, records, plans, manuals, and reports. These Confidentiality obligations survive the termination of this Agreement.
- 6.2. No Back Solicitation. INSTALLER shall not solicit, for itself or another third party, business from any Customer of MESA when (a) the availability of such business first became known to INSTALLER as a result of MESA's efforts, or (b) the business of MESA's Customer was first tendered to INSTALLER by MESA. This restriction shall commence on the date that the business first became known to or was last tendered to INSTALLER and continue for one year after that date. If INSTALLER breaches this Agreement and back-solicits and/or obtains business from such a Customer, MESA is entitled, for 15 months after the involved business commences, to a commission from INSTALLER of 25% of the gross revenue received from the customer. These No-Back-Solicitation obligations survive the termination of this Agreement.
- 6.3. Violation. The provisions on Confidentiality and Back-Solicitation are necessary for the protection of the business and goodwill of MESA and are considered reasonable by INSTALLER for such purpose. Any violation of these provisions would result in irreparable injury to MESA; therefore, in addition to other remedies that may be available, MESA may obtain injunctive relief to enforce these provisions. If MESA incurs expenses to enforce these provisions, INSTALLER will pay all costs, fees and expenses of enforcement, including attorneys' fees, whether or not litigation is commenced.

## **Section 7 – General Terms**

- 7.1. Term & Termination of Agreement. This Agreement shall be effective upon execution by both parties and shall continue indefinitely, subject to the right of either party to terminate this Agreement with or without cause upon 30 days written notice. Notice of termination is to be sent by fax, e-mail or overnight delivery to the address of the other party set forth below the party's signature. In addition to MESA's right to terminate this Agreement for breach, if INSTALLER's services in connection with any Project fail to conform to this Agreement, MESA may demand that INSTALLER take any action or actions that will cause the services to meet the Agreement specifications.
- 7.2. Lien. INSTALLER may have a right to lien a Project for labor or material furnished to a Project covered by this Agreement, limited by the laws of the state in which the work is performed. Such lien does not extend to the Materials furnished to any other Project Addendum. INSTALLER must notify MESA forty-eight (48) hours before recording any lien against any Project.

- 7.3. Force Majeure. INSTALLER shall not be liable for physical loss or damage to an article or articles of Materials caused by acts of God, terrorism, public enemy, public authority, quarantine, war, insurrection, strikes, labor troubles, riots, earthquake, flood, deterioration by time, moth, termite, vermin, rodent, leakage of items included in the Materials, changes in temperature, the act or default of MESA or its customers or their representatives, the shipper or delivering carrier, and any other risks causing physical loss or damage beyond the control of MESA or INSTALLER.
- 7.4. Business Change/Successorship. INSTALLER shall provide MESA with at least 60 days prior written notice of any change in address, or of any cessation or curtailing of operations, including, but not limited to, INSTALLER going out of business, filing for protection under insolvency laws and/or administratively dissolving. If INSTALLER sells all or part of its business, whether by stock sale or by asset sale, it will provide MESA with 60 days prior written notice of the sale or transfer, make the assumption of this Agreement an express condition of that sale and will disclose this Agreement to any prospective purchaser. Should INSTALLER fail to do so, it will assume responsibility for any and all reasonable expenses incurred in the enforcement of this Section, including expenses paid to another installer, or workers employed by MESA, and/or legal expenses
- 7.5. Jurisdiction. Negotiations for the offering, tendering and/or supply of installation services to MESA are be deemed to have been conducted within the State of Missouri. Accordingly, except to the extent (if any) that they are preempted by federal law, the laws of the State of Missouri shall govern the construction and interpretation of these Terms and Conditions and the dealings of INSTALLER with MESA. INSTALLER expressly submits to the jurisdiction of the Courts of the State of Missouri and the United States District Court for the Eastern District of Missouri and agrees that jurisdiction and venue shall be proper in such Courts and Carrier waives any claim or defense that such Courts will be an inconvenient forum.
- 7.6. Entire Agreement. This Agreement, along with the project addendum and vendor qualification form, constitutes the entire understanding between the Parties and may not be modified in any way except in a writing signed by both Parties.