

Terms and Conditions

Gopher Excavation, Inc.

Northern Colorado · Berthoud, CO

TERMS AND CONDITIONS OF GOPHER EXCAVATION, INC. TO PERFORM WORK

As an inducement for Gopher Excavation, Inc. (hereafter “Gopher”) to agree to any work, agreement or contract for work: Contractor, Owner and Anyone seeking any agreement with Gopher for Gopher to perform any work (hereafter collectively “COA”) agrees that notwithstanding anything to the contrary in any other Agreement, Contract, Work Order, Appendix, Addendum, or any other place or writing the following shall apply and shall supersede any other terms or language to the contrary in all respects and should these Terms and Conditions be determined to not apply for any reason, Gopher Excavation Inc. is entitled, at its sole and subjective determination and election to terminate any other agreement for convenience, rescission & restitution of such other agreement and/or reformation of any other agreement or contract to include these Terms and Conditions:

1. No provision of any other contract, plans, specifications, change order or other document or terms, including but not limited to any contract between COA and others shall apply to Gopher unless actually received and agreed to expressly in writing and signed by Gopher, delivery to the Gopher is not sufficient.
2. If there are any conflicting provisions in Gopher’s bid, estimate or proposal (if any) and any other agreement or these Terms and Conditions, then the bid, estimate or proposal shall control.
3. Gopher’s scope of work will include only the work described in the bid, estimate or proposal as of the last and most recent bid, estimate or proposal from Gopher and only the plans and specifications actually provided to Gopher for such bid, estimate or proposal. Should additional or changed plans and/or specifications be provided to Gopher than the parties shall agree to a change order and will cooperate to reach terms of said change order.
4. Gopher will not be responsible for and shall be entitled to a reasonable change order for:
 - a. Concealed or unknown conditions,
 - b. Delay’s caused by weather, acts of God or availability of materials, increased cost of materials, and,

- c. Changes in the scope of work or schedule.
- 5. Gopher is not responsible for the hiring, retention or payment of any professionals (such as engineers, surveyors, etc.), including but not limited to tests, inspections, etc., unless specifically stated in Gopher's bid, estimate or proposal, if any.
- 6. Unless specifically stated in Gopher's bid, estimate or proposal, if any, Gopher is not responsible for obtaining or paying for any permits.
- 7. Gopher will carry 1MM in CGL, liability vehicle insurance, and employee related insurance including unemployment insurance and workman's compensation insurance and no other insurance or terms related to insurance or any insurance waivers are required, effective or enforceable.
- 8. The parties agree to cooperate in scheduling all work to be completed and unless so stated in the proposal or estimate no written or other schedule has been provided to Gopher to date.
- 9. Gopher warrants its work and materials to be free from defects for a period of 1 year after completion of said work.
- 10. Unless agreed to by Gopher, all estimates and proposals expire unless accepted in 30 days.
- 11. Gopher may submit progress reports with its pay applications but daily reports are not necessary.
- 12. Gopher will invoice in its discretion for progress on its work and COA will fully pay such invoicing. All payments will be due on such invoices no later than 30 days from the date of invoicing for Gopher's work. Retention, allowed only and if stated in the Bid, estimate or proposal, if any, will be due no later than 30 days after substantial completion of Gopher's work. Gopher will provide progress and final lien releases if requested with any invoicing or subsequent to payment.
- 13. Except as stated herein, no party may terminate for convenience or within sole discretion.
- 14. No back charges or deductions are permitted except for defective work by Gopher.
- 15. No pay-if-paid or pay-when-paid terms are included or agreed to nor are they conditions precedent to payment.
- 16. No bond from Gopher is required or requested.
- 17. All indemnity and hold harmless terms or related terms and paragraphs in any other contract or agreement shall be deemed mutual with mutual obligations between the COA and Gopher regardless of how worded in said contract or agreement.
- 18. If Gopher is directed or requested to perform any changed work or work outside the scope identified in the proposal or estimate and does perform changed work it shall be paid a

reasonable sum for said changed work. Gopher does not assume the risk of non-payment or rejection of any requests for changes or additional compensation from COA.

19. No liquidated damages or damage limitations, except as stated herein are agreed to or part of any Contract.
20. No waiver provisions related to timeliness of any notice or notification are applicable.
21. Gopher shall have at least ten (10) business days to cure any breach after written notice by COA unless a longer period of time is provided elsewhere, subject to weather, conditions beyond the control of Gopher and acts of God.
22. The Prevailing party in any litigation to enforce any agreement between the parties will be entitled to their attorney fees and cost together with interest at 3% compounded per month on any money due.
23. No mediation or arbitration terms or requirements are applicable as between the COA and Gopher for any reason.
24. The parties agree and waive jury trial.
25. The parties agree that jurisdiction and venue shall be with the state and federal court where the project and work is to be performed.
26. Gopher will not be charged with any knowledge of any issue simply because it is stated in any contract or other document.
27. Gopher is not limited to any specific remedies for non-payment or to effect or make effective any security for non-payment by COA.