



**OSSFA- Form #11.2 Terms and Conditions – 2019 \*<sup>1</sup>** (5 pages)

\*<sup>1</sup> These Terms and Conditions (#1- #39) are designed for all tendering and contracts and specifically contracts signed with the Owner after October 1, 2019 or subcontracts relating to such contracts prior.

**\*\*FILL IN BLANKS AT SECTIONS 1 \*\***

**1. Acceptance and Completion** – Upon acceptance (which acceptance may be by purchase order, letter of intent, verbal instruction, correspondence, or email), and receiving all the required documents (\*item #13), the Fabricator will order materials and start drafting shop drawings. Subject to the timely performance of the Client's obligations herein, and acts of God beyond the control of parties, the Fabricator shall complete the fabrication and erection of the structural steel \_\_\_\_\_ weeks after acceptance. The steel fabricator and the client agree on a tentative delivery date to job site of \_\_\_\_\_ which will be dependent on timing of receiving all required information and the return of our approved shop drawings for Structural Steel & Steel Joists.

**2. Structural Drawings** – The Client shall supply structural drawings prepared by the Primary Structural Engineer (PSE) in accordance with “Structural Engineering Design Services for Buildings Guideline” (SEDSBG) issued by PEO (June 2017) (“Structural Drawings”). The PSE must be an engineer licensed to practice in the Province of Ontario and shall abide to this PEO Guideline (SEDSBG).

**3. Scope** – Unless specifically excluded in the Fabricator’s quote, and as limited by these Terms and Conditions, the Fabricator’s scope of work includes steel and steel joists as shown, sized, and specified as to type and weight on the Structural Drawings only (hereinafter “ Shown, Sized and Specified on Structural Drawings”). Steel that may appear in the Architectural, Mechanical, or Sprinkler drawings is excluded from the Fabricator’s scope of work unless specifically included in the Fabricator’s quote or also Shown, Sized and Specified on the structural drawings. The Fabricator will perform the work to the latest codes and standards of the CISC to the extent they define the scope of work.

**4. Supply and Install** – Unless specifically excluded in the Fabricator's quote, the Fabricator's scope of work includes the supply and installation of the following if they are Shown, Sized and Specified on Structural Drawings: columns, beams, trusses, vertical/horizontal bracing, OWSJ- steel joists, girts, purlins, girders, steel lintels that are attached to other supplied steel, door frames and door jambs connected to steel framing, canopies, steel supports for HVAC, roof opening frames, steel supports for roof anchors and structural bolts.

**5. Supply Only Items** - Unless installation is specifically included in the Fabricator's quote, the following materials are supply only even if they are Shown, Sized and Specified on Structural Drawings: anchor rods, anchor bolts, levelling plates, embedded steel for structural steel, wall/bearing plates, steel lintels located and quantified on the Structural Drawings (but- that are not shown on a lintel schedule) and floor and edge angles. The Fabricator shall ship supply only items to the jobsite. The Fabricator shall insure supply only items until they arrive at the jobsite. Supply only items shall be unloaded, properly set and verified by others before steel erection starts.

**6. Drilling and Coring** – If any drilling or coring is included in the Fabricator's quote, it is limited to drilling and coring concrete anchors Shown, Sized and Specified on Structural Drawings for those specific structural steel members that are connected directly to concrete (but not for anchor rods or anchor bolts- which are supply only items). Any drilling through concrete with rebar or metal, if encountered, is unknown and is not included by the fabricator and any subsequent core-drilling through steel will be performed by others.

**7. Primer** - Unless specifically excluded in the Fabricator's quote, the Fabricator's scope of work includes one coat of standard primer (either 1-73a or 2-75). This is not a finished paint system (see item 21.) Thus, any further touch-up primer/painting/cleaning/ sanding required following delivery to the site will be done by others. Any finish paint system for a desired smooth finish is excluded from the Fabricator's scope of work unless otherwise noted in the Fabricator's quote. The Fabricator is not responsible for any rust appearing on the steel more than 30 days (1-73a) and 45 days (2-75) after the fabrication date.

**8. Standard Exclusions** – Unless specifically included in the Fabricator's quote, or clearly Shown, Sized and Specified on Structural Drawings, the Fabricator's scope of work does not include any of the following: miscellaneous metals (MM), stairs and landings, handrails, pit and trench dock levelling angles, ladders, bollards, steel lintel schedule- by Miscellaneous Metals- MM, floor and edge angles, rebar and welding rebar, precast connections, shoring, demolition, grouting/concrete removal, concrete anchors (e.g. Hilti bolts) and its drilling work, lateral masonry wall supports, bent plates, door jambs, overtime work, policing & permits, hydro cost to wrap hydro lines, cleaning mud off of steel, protecting the steel in any way, sprinkler lines over 4”in diameter, galvanizing, metal decking, readjustment of steel due to deflection, readjustment needed because of work done by others, holes for wood, shimming, bonding, liquidated damages, x- ray, Inspection fees and typical details that are not shown and referenced with exact locations and quantities on the structural drawings.

**9. Connection Design** – If the design of structural steel connections is included in the Fabricator's scope of work, then the Client and PSE must show on the Structural Drawings or specifications the design criteria, connection forces and all necessary information required for safe, accurate and economical connection design including, but not limited to, vertical/horizontal bracing connections, moment connections, axial connections, truss and shear connections. If design criteria for beam end reactions are not noted on the Structural Drawings, then simple shear connections will be designed for 50% UDL for non-composite and 75% for composite beams in accordance with the newest CISC Handbook.

**10. Design by Others** – The Fabricator shall not be liable for cost, loss, or damage arising out of design or design issues performed by others, except the Fabricator's own engineer, if any. The Client shall indemnify and hold the Fabricator harmless for any costs, loss, or damages incurred by the Fabricator as a result of errors in design by others. Furthermore, the contract/subcontract time shall be extended to the extent that the Fabricator is delayed as a result of errors in design by others. A reasonable fee may be charged for costs the fabricator incurs plus 15% for Overhead & Mark-up.

**11. Deficient Work Performed by Others** - The Fabricator does not assume any responsibility for deficiencies in work done by others, including the Client's own forces. Such deficiencies may include, but are not limited to, misaligned anchor rods, and levelling plates, bearing plates, and/or base plates installed at the wrong elevation. The repair of all deficiencies in work by others, including the Client's own forces, shall be performed and coordinated by the Client. The Client shall indemnify and hold the Fabricator harmless for any costs, loss, or damages incurred by the Fabricator as a result of deficiencies in work performed by others, including the Client's own forces. Furthermore, the contract/subcontract time shall

**Continued...** (11.) be extended to the extent that the Fabricator is delayed as a result of deficient work performed by others, including the Client's own forces.

**12. Requests for Information** – The Client, or those for whom the Client is responsible, shall reply to any Request for Information by the Fabricator within 48 hours, failing which the contract or subcontract time shall be extended.

**13. Client's Obligation to Supply Information and Documents** – The Client, or those for whom the Client is responsible, shall supply the Fabricator with all of the information and documents necessary to prepare its shop drawings one time and within 2 days of the date the contract/subcontract is awarded to the Fabricator (the "Delivery Date"). Relevant information and documents will often include roof opening sizes, ESFR sprinkler requirements, and roof top unit weights and exact locations. The Client shall indemnify and hold the Fabricator harmless for any costs, loss, or damages incurred by the Fabricator as a result of delays in the supply of information and/or documents needed to complete shop drawings. Furthermore, the contract/subcontract time shall be extended to the extent that the delivery of complete information and documents by the Client is delayed beyond the Delivery Date.

**14. Incomplete and Deficient Contract Drawings** - Contract drawings are often incomplete and/or deficient. The submission of shop drawings often prompts the Client to make changes to the contract/subcontract work. Time and material spent by the Fabricator preparing additional shop drawings or revising shop drawings to address changes, incomplete drawings, or deficient drawings shall be charged an extra price to the contract/subcontract price. Furthermore, the contract/subcontract time shall be extended to the extent of the time spent by the Fabricator addressing changes, incomplete and/or deficient drawings.

**15. Shop Drawing Review Time** - Unless otherwise agreed by the Fabricator and the Client, the subcontract/contract time shall be extended if the Client, or those for whom the Client is responsible, takes longer than 10 working days to have the Fabricator's shop drawings fully reviewed by all parties and returned to the Fabricator with all supplied information and verifications completed.

**16. Shop Fabrication Drawing Review** - Shop fabrication drawings ("SFD") are intended for shop use only. If the Client or the Consultant ask to review the Fabricator's SFD, the contract/subcontract time shall be extended for the length of time taken by the Client or the Consultant to perform the review.

**17. Storage** – Storage of fabricated steel up to two days (i.e. 48 hours) after the original delivery date is included in the contract/subcontract price. Any additional storage of steel will be subject to trailer storage fees and/or unloading costs.

**18. Site Access** – The Client shall supply leveled, compacted, roads to accept the Fabricator's steel trailers and equipment to safely enter in and around the jobsite and safely and efficiently carry out the Fabricator's work and store the Fabricator's materials close to the working areas.

**19. Muddy Site Conditions** – If the Fabricator is delayed in the erection process by muddy conditions at the site, the contract/subcontract time shall be extended to the extent of any such delays. The Client shall indemnify and hold the Fabricator harmless for any costs, losses, or damages resulting from such delays.

**20. Delays and/or Changes to the Erection Schedule** – Delays and/or changes to the erection schedule are very disruptive and potentially costly. The disruptions may include the loss of the Fabricator's sub-contracted steel erector. The Client shall indemnify and hold the Fabricator harmless for any costs, losses, or damages incurred by the Fabricator as a result of delays and/or changes in the erection schedule by the Client or by anyone for whom the Client is responsible. Furthermore, the contract/subcontract time shall

be extended to the extent that the erection schedule is delayed by the Client or anyone for whom the Client is responsible.

**21. Protection of the Steel & Delivery to The Site** – The Fabricator is not responsible for protecting its steel at any time from the elements and or damage to its steel while it is stored at the site. The Client is responsible for any damage to the steel after it is delivered to the site including rust, dirt, mud, and/or scratches in the primer.

**22. Minor 'Deficiencies'** – The Client expressly waives any claim against the Fabricator relating to minor 'deficiencies' following the erection of steel including, but not limited to, scratches in the primer, minor rust, and/or mud, dust or dirt on the steel. Repair of any minor deficiencies by the Fabricator shall be charged to the Client as an extra to the contract/subcontract.

**23. Changes** - Notwithstanding any other term of the contract or subcontract, the Client may not assert against the Fabricator that any employee of the Client does not have the authority to authorize changes in the Fabricator's work. The Fabricator shall be entitled to payment for additional work, or varied work, requested by the Client or its employees, orally or in writing, notwithstanding any other term of the contract or subcontract. A fee of 15% for Overhead & Mark-up will be added to the costs incurred.

**24. Unit Prices** – Steel prices are highly variable and depending on the scope, mix and complexity of the work and to the timing of performing the changes in the fabricators process. Unless expressly stated by the Fabricator, any unit prices that may be supplied by the Fabricator are for the Client's budget purposes only and prior to starting the work. After which they are not binding upon the Fabricator for the purpose of any changes, extras, or deletions from the original scope of work. Any changes requested after the Fabricator has started, including drafting shop drawings will then be charged based on the actual time and material cost plus overhead, mark-up, and applicable taxes.

**25. Taxes and Duties** – The contract/subcontract price includes all taxes, known tariffs, and custom duties in effect at the time of the Fabricator's quotation. Any increase in costs to the Fabricator due to changes in such included taxes, tariffs, and/or duties after the Fabricator's quotation shall increase the contract/subcontract price accordingly.

**26. Safety** – The erection of structural steel is very dangerous work. The Client and the Fabricator hereby agree that safety comes first. Notwithstanding any other term of the contract or subcontract, the Fabricator and its subcontractors shall not perform work – and the Client shall not demand that the Fabricator or its subcontractors perform work - in conditions determined by the Fabricator, acting reasonably (see OSSFA Form #22- Inclement weather policy) in its sole discretion to be unsafe.

**27. Deposit** – The Client shall pay the Fabricator a non-refundable deposit of twenty-five percent (25%) of the contract or subcontract price. If the Client cancels its order the deposit will be absolutely forfeited to the Fabricator on account of damages, without prejudice to the Fabricator's other remedies.

**28. Progress Draws** - The Fabricator may bill monthly for completed work and steel material delivered to the Fabricator's yard. The amount claimed shall be for the value, proportionate to the amount of the price of the contract or subcontract, of work performed and material received in the Fabricator's yard. Work performed shall also include purchased and received materials, products that have been fabricated and are ready for delivery to the project, whether the Client is ready to take delivery or not.

**29. Prompt Payment** - Where the Client is the owner of the project, any invoice that includes the information set out in sub-sections 6.1 (1. to 7.) of the Construction Act shall be deemed to be a proper invoice for the purpose of Part I.1 of the Act.

**30. Terms of Payment** - Where the Client is the owner of the project, the Fabricator's invoices are payable 28 days from the submission of proper invoice in accordance with the Construction Act. Where the Client is a contractor or subcontractor, the Fabricator's invoices are due within 7 days of the date that the client is paid in accordance with the Construction Act.

**31. Waiver of Set-Off and Back charges** - The Client agrees to pay Fabricator's accounts in full when due. The Client hereby waives any present or future right of set-off or deduction.

**32. Costs** - The Client agrees to pay all costs incurred by the Fabricator, including all legal and adjudication costs, on a full indemnity basis for the collection of any overdue account.

**33. Interest** - The Client shall pay interest at 12 per cent per annum on overdue accounts.

**34. Progressive Release of Holdback** - Where the Client is a contractor, the Client shall request progressive release of the holdback from the Owner in accordance with section 33 of the Construction Act forthwith upon the completion by the Fabricator of its work.

**35. Adjudication** - The Fabricator or the Client may refer a dispute to adjudication respecting the matters described in subsections 13.5(1) 2, 3, 5, and 6 of the Construction Act even after the contract or subcontract is complete. In respect of a dispute that is the subject of a notice of non-payment, the Client shall be deemed to waive any defence to the Fabricator's claim not identified in the Client's notice of non-payment.

**36. Default** – The Fabricator may give the Client notice in writing that the Client is in default of its contractual obligations if the Client fails to pay the Fabricator in accordance with these Terms and Conditions. If the Client fails to cure its default within five (5) working days of receipt of the notice in writing, the Fabricator may suspend or terminate the contract or subcontract.

**37. Passage of Property** – Property in the Fabricator's work shall pass to the Client once the work is incorporated into the project and all accounts are paid in full.

**38. Laws and Jurisdiction** - This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract. Subject to any applicable arbitration clause, the parties hereto hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario in connection with this Agreement.

**39. Interpretation** – Notwithstanding any other term, these Terms and Conditions shall prevail in the event of a conflict with any other contract or subcontract documents, and the contract drawings shall prevail in the event of a conflict with the specifications, if any. Furthermore, the Client and the Fabricator have each had a full opportunity of obtaining legal advice and accordingly any rule of construction to the effect that any ambiguity in these Terms and Conditions is to be resolved against the drafting party shall not be applicable in the interpretation of these Terms and Conditions.

**(End- 5 page OSSFA Form # 11.2 , Revised July 5<sup>th</sup>, 2019)**