

## **ROOF TESTING AND INSPECTION SERVICES TERMS AND CONDITIONS**

**A. General.** All F.E.T. Proposals and/or Agreements for Services, including any Addendum(s) thereto as further described below, (collectively referred to herein as the "Agreement") shall be deemed cancelled and/or withdrawn within 30 days of issuance if same are not fully executed by an authorized agent of Client and delivered to Federal Engineering & Testing, Inc. ("F.E.T.") via fax/email to 954-784-7875 or [marilyn@fed-eng.com](mailto:marilyn@fed-eng.com). As used in any and all F.E.T. Agreements and herein, the word "or" is not exclusive, the word "including" is always without limitation, the word "days" means calendar days and the word "Client" identifies that person or party that signed the Agreement as the authorized agent thereof.

**B. Fees.** In consideration of the services to be furnished by F.E.T. as described in an F.E.T. Agreement ("Services"), Client agrees to pay the fee described therein. If said fee does not include sales tax, Client shall pay applicable sales tax required by law. Payment is due upon receipt of any invoice. Client shall notify F.E.T. in writing within ten (10) days of the date of the invoice if Client objects to any portion of the invoice and shall promptly pay the undisputed portion. Failure to timely provide written notice shall constitute acceptance of the invoice in full. F.E.T. shall withhold its reports until all payments due and owing from Client are paid in full. Client shall pay a finance fee of 1.5% per month or the maximum allowed by law for all unpaid balances 30 days or older. Client agrees to pay all collection-related costs, including reasonable attorneys' fees, which F.E.T. may incur to obtain past-due payments from Client. F.E.T. may suspend Services for lack of timely payment. Payment of any invoice submitted to Client shall not be subject to, or contingent upon, F.E.T.'s completion of Services or upon Client's receipt of any other relating project, company and/or payment. A travel fee of \$85.00 shall be incurred if the project/property to receive Services is located more than thirty (30) miles from F.E.T.'s office. An \$85.00 mobilization fee will apply if Services are cancelled while F.E.T. is in route to the project/property.

**C. Access.** It is Client's responsibility to ensure suitable access for F.E.T. equipment and personnel to the project/property receiving Services. An \$85.00 mobilization fee shall be incurred for locked/closed gates, poor access, no access, or any like impediment, including excessive construction debris and ponding water. An \$85.00 mobilization fee shall be incurred if Client fails to provide access to roof(s) over 24' in height.

**D. Acceptance/Termination.** Client agrees that the execution of F.E.T.'s Agreement is a material element of the consideration F.E.T. requires to provide Services. If Services are initiated by F.E.T. prior to the execution of the Agreement as an accommodation for Client at Client's request, both parties agree that commencement of Services constitutes formal acceptance of all terms and conditions of the Agreement, including those herein. In the event Client uses its own purchase order or other form to administer an agreement to Services, the use of such form shall be for convenience purposes only and any additional or conflicting terms contained therein are stricken. The Agreement shall not be assigned without prior written consent of all parties. Either party may terminate the Agreement upon written notice to the other. In such case, F.E.T. shall be paid for costs incurred and fees earned up to the date of termination plus the reasonable costs of terminating the Services.

**E. Scope of Services.** The scope of F.E.T.'s Services is solely as described in the Agreement, unless otherwise described in a written Addendum as provided below. F.E.T.'s Services do not include the investigation or detection of, nor do recommendations in F.E.T.'s reports address the presence or prevention of, biological pollutants (e.g. mold, fungi, bacteria, viruses, or their byproducts) unless specifically called for by the Agreement, nor other occupant safety issues, such as vulnerability to natural disasters, terrorism, or volcano. F.E.T.'s findings, opinions, and

recommendations are based solely upon data and information obtained by or furnished to F.E.T. at the time of the Services. If, within the scope of the Agreement, F.E.T. is to rely upon information provided by Client, F.E.T. shall not be responsible for any and all consequences resulting from the inaccuracy of the information provided.

**F. Performance of Services by Third Parties.** Client acknowledges and understands that some Services offered by F.E.T. are performed by third parties. Client agrees that F.E.T. shall not be liable for the actions of, work performed by, or reports/information generated by said third parties.

**G. Additional Services Requested by Client.** In the event Client desires F.E.T. to provide additional services not set forth in the Agreement, Client shall execute a written Addendum to the Agreement for the payment of additional services prior to F.E.T.'s commencement of same. Upon execution, the Addendum shall be incorporated into the original Agreement, become a part thereof and subject to the Agreement's terms and conditions, including those herein. F.E.T. reserves the right to request that payment be made in full prior to the commencement of work under the Agreement or any Addendum thereto.

**H. Ownership of Tests/Reports.** All test results and/or reports prepared by F.E.T. pursuant to the Agreement shall remain the property of F.E.T. until all monies due and owing by Client to F.E.T. are paid in full. Proprietary concepts, systems, and ideas developed during performance of Services are the sole property of F.E.T. Files shall be maintained pursuant to F.E.T.'s document retention policies and practices.

**I. Entire Agreement.** Each party hereto agrees and represents that the Agreement, any Addendum(s) thereof, and the terms and conditions herein comprise the full and entire agreement and understandings between the parties affecting the Services, and no other agreement or understanding of any nature concerning the Services will be recognized, and that all negotiations made prior to the execution of the Agreement shall be deemed superseded by the Agreement.

**J. Third Party Reliance.** Client acknowledges and agrees that the Agreement and the Services provided thereby are for F.E.T. and Client's sole benefit and exclusive use, with no third party beneficiaries intended. To the extent that any other person or entity, including but not limited to a contractor and/or any subcontractors and/or other design professionals, is benefited by the Services performed by F.E.T. pursuant to the Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the Agreement. F.E.T. shall have no liability to the Client or any other party arising out of or related to the use of the information, data, or reports generated by F.E.T. during the performance of the Services by a third party for any reason whatsoever.

**K. Governing Law/Venue.** The Agreement shall be considered for all purposes a Florida document and shall be interpreted and enforced pursuant to the laws of the State of Florida. All lawsuits or proceedings related to the Agreement or the transactions herein described shall be commenced and held exclusively in Broward County, Florida.

**L. Amendments.** The Agreement may be amended, modified or supplemented only by a written instrument executed by the parties thereof.

**M. Warranties.** F.E.T. will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, F.E.T. MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED,

RELATING TO F.E.T.'S SERVICES AND F.E.T. DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE. No hurricane or wind damage warranty shall be implied or given.

**N. Non-Waiver.** The failure of F.E.T. to enforce any of the terms and/or conditions of the Agreement, including those herein, at any time shall not constitute a waiver of that term/condition or of any other term/condition of the Agreement nor shall such action be deemed to be an act of ratification, amendment or consent.

**O. WAIVER OF CONSEQUENTIAL DAMAGES.** Client hereby waives any and all claims against F.E.T. for consequential damages, special damages, and/or delay damages arising out of or related to the Agreement and/or the Services provided thereby. This waiver includes, but is not limited to, damages incurred by Client for the cost of substitute facilities, goods, or services; cost of capital; loss of use, opportunity, income, profit, revenue, financing, business, or reputation; loss of management or Client's extended general conditions; loss of good will; or for any special, consequential, indirect, punitive, or exemplary damages arising out of or relating to the Services provided by F.E.T. regardless of whether such claim or dispute is based upon an alleged breach of contract, willful misconduct or negligent act or omission of F.E.T. or its employees and/or agents, or other legal theory.

**P. Dispute Resolution.** The parties agree that any and all disputes arising under the Agreement and/or the Services provided therein shall be subject to non-binding mediation as a prerequisite to further legal proceedings. In the event of said disputes, whether or not a lawsuit or other proceeding is filed, F.E.T. shall be entitled to recover its reasonable attorneys' fees and costs, including legal fees and costs incurred in any trial or appeal.

**Q. Representation Fees.** In the event of future conflict between the owners of the project/property to be serviced by F.E.T. and any third party, F.E.T.'s legal and/or company representation and preparation for representation fees shall be billed at an hourly rate.

**R. SITE ACCESS AND SAFETY.** Client shall obtain all site related approvals, permits, licenses, and consents necessary to commence and complete Services and shall execute any necessary site access agreement. F.E.T. shall be responsible for the supervision and site safety measures of its own employees, but shall not be responsible for same for any other person or entity, including but not limited to Client or third parties performing Services.

**S. DESTRUCTIVE TESTING.** Client acknowledges and understands that portions of the roof, including but not limited to tiles, underlayment, and fascia board may be damaged, destroyed and/or otherwise altered in the process of F.E.T.'s performance of the Services. In the absence of F.E.T.'s gross negligence, Client expressly waives and releases F.E.T. from any and all liability and claims for damage caused directly or indirectly as a result of F.E.T. moving about the roof, removing and/or inspecting the roof, and/or otherwise performing the Services. Upon request, F.E.T. may, in its sole discretion and for an additional fee, offer to provide temporary patches for subject test areas. Client acknowledges and agrees that F.E.T. cannot guarantee the life of any patch F.E.T. provides, nor its ability to prevent moisture intrusion. F.E.T. shall not be liable for any claims arising from patched test areas, whether or not patched by F.E.T., including but not limited to damage caused by moisture intrusion. Client is solely responsible for permanently waterproofing all test areas after F.E.T.'s completion of the Services. If roof is under warranty, an approved roofing contractor must make all necessary repairs to maintain warranty.

**T. FORCE MAJUERE.** F.E.T. shall not be held responsible for any damages caused by Acts of God, including, strikes, riots, hurricanes, inclement weather, shortages of labor or materials, war, governmental laws or regulations or any other causes that are beyond the reasonable control of F.E.T.

**U. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AGREES TO LIMIT F.E.T.'S LIABILITY TO THE CLIENT AND TO ANY AND ALL OF THE CLIENT'S PARENTS, SUBSIDIARIES, AFFILIATES, PARTNERS, OFFICERS, DIRECTORS,

SHAREHOLDERS, EMPLOYEES, AGENTS, CONSTRUCTION MANAGERS, CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, SUBCONSULTANTS AND INSURERS FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATING TO THE PERFORMANCE OF F.E.T.'S SERVICES UNDER THIS AGREEMENT, SUCH THAT F.E.T.'S AGGREGATE LIABILITY TO SAME WILL NOT EXCEED THE LESSOR OF (I) F.E.T.'S FEE FOR ITS SERVICES ON THE PROJECT OR (II) F.E.T.'S AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE AT THE TIME OF ANY SETTLEMENT OR JUDGMENT. IN THE EVENT THAT THIS LIMITATION OF LIABILITY PROVISION IS DEEMED VOID AS A MATTER OF LAW, THEN F.E.T.'S LIABILITY PURSUANT TO THIS PARAGRAPH SHALL BE LIMITED TO THE LOWEST AMOUNT ALLOWABLE AS A MATTER OF LAW. To the fullest extent permitted by law, Client further agrees that no shareholder, officer, director, partner, principal or employee of F.E.T. shall have personal liability for any act, omission, breach, tort, fault or wrong arising from or relating to F.E.T.'s Services on the project/property receiving Services.

**V. Indemnity.** Client shall indemnify and hold harmless F.E.T. and all of its personnel from and against any and all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of and/or resulting from the performance of the Services, provided that any such claim, damage, loss, or expense is caused in whole or in part by the negligent act or omission and/or strict liability of Client, anyone directly or indirectly employed by Client, including but not limited to a contractor, or anyone for whose acts any of them may be liable, with the exception of F.E.T. Client shall further indemnify and hold harmless F.E.T. and its personnel from and against any and all claims, damages, losses and expenses, including reasonable attorneys' fees, arising from the presence, discharge, release or escape of asbestos, hazardous waste, or other contaminants during performance of the Services.

**W. NOTICE OF CLAIM.** Client agrees that any claim rising from the Agreement or the Services to be performed thereunder shall be made in writing to F.E.T. within ten (10) days of its discovery. Failure to serve such written notice within ten (10) days shall serve as a waiver of any such claim.

**X. Notice.** Any notice required or called for by the Agreement or herein shall be delivered to F.E.T. at 250 SW 13th Ave, Pompano Beach, Florida 33069, via Certified U.S. Mail.

**Y. Severability.** If any term of the Agreement or herein is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

**PURSUANT TO SECTION 558.0035 OF FLORIDA STATUTES, A DESIGN PROFESSIONAL WHO IS EMPLOYED BY OR IS AN AGENT OF FEDERAL ENGINEERING & TESTING, INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE.**