

## **EAGLE EYE UTILITY LOCATING TERMS AND CONDITIONS**

Please note that no method of underground utility locating can ever guarantee 100% accuracy or completeness. Many variables, including the age and condition of the facilities to be located, soil type, and moisture content, among other factors, can adversely affect our ability to find and trace utilities, and on rare occasions may even result in errors or omissions beyond our control. Some utilities simply cannot be located. Once the marking is complete and excavation begins, liability transfers to the excavator who must perform all risk mitigation spotting required by the state.

In addition, please note that we will rely on the information you provide us. We typically require maps/plans, schematics and/or as-built drawings. In addition, we require full access to all areas on the job site, including mechanical rooms and utility buildings. We are not responsible to the extent that information you provide is inaccurate or incomplete, or we do not have full access.

Finally, at times we may mark facilities owned and maintained by public utility providers in order to eliminate them from our search process. You should never rely on our marks for public utility providers; you should instead contact the public utilities as mandated by law.

\*Marking means paint will be used to show where the specified utility is located. The paint that we use is standard utility locating paint, is not permeant, and will slowly fade in time.

### **STANDARD TERMS**

1. **EFFECT OF THESE TERMS AND CONDITIONS.** By using our services, you are deemed to have accepted these Standard Terms and any terms in the document into which these Standard Terms were incorporated.
2. **COMPENSATION.** The Contractor will charge the Client a flat fee of the amount on the invoice for the Services (the "compensation"). The Contractor will invoice the Client prior to the Services being completed and the invoice is due before the service is completed. If the work takes longer than the original flat fee, the Contractor will charge the Client an additional \$45 per 15 minutes of work completed. The Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Client in addition to the Compensation.
3. **MODIFICATION.** These Terms and Conditions may only be modified in a written document signed by our authorized representative. Subsequent invoices, confirmations, acknowledgments, sales orders, quotations, or other documentation from you are not sufficient to modify these Terms and Conditions. Please note that our representatives at job sites are not authorized to modify our Terms and Conditions.
4. **INCONSISTENT TERMS.** To the extent that your prior or future invoices, confirmations, acknowledgments, purchase orders, quotations or other documents or communications contain terms that contradict these Terms and Conditions or are explicitly or implicitly inconsistent with these Terms and Conditions, then we object to and reject such terms, which are null and void; and these Terms and Conditions shall apply. Additional terms concerning a subject covered by these Terms and Conditions shall be deemed inconsistent terms for purposes of these Terms and Conditions.
5. **ADDITIONAL TERMS.** We object to and reject terms included in your prior or future invoices, confirmations, acknowledgments, sales orders, quotations or other documents that are in addition to these Terms and Conditions, and such terms are not effective, are not included in the parties' contract, and are null and void.

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6. CANCELLATION. Services need to be cancelled 24 hours prior to the agreed service date in order to avoid paying the full service fee. If the client requests to cancel within 24 hours of the service date, the client will be charged the full amount of the service call.
7. CONSEQUENCES OF NON-PAYMENT. In the event you fail to timely pay us, we will charge you 1.5% per month of interest on the total amount due (including past due principal and past due interest or other costs, fees or charges) that your payment is late.
8. ATTORNEYS' FEES. In the event that you fail to timely pay us and we are required to retain counsel to enforce our rights, you are responsible for our reasonable attorneys' fees and other legal or litigation costs. These amounts include the fees and costs associated with investigating our claims as well as filing and prosecuting litigation (including defense of counterclaims) in any tribunal, including but not limited to courts, arbitrations, mediations or before administrative agencies.
9. DEFINITIONS OF YOUR CUSTOMER AND PROPERTY WHERE WE PERFORM OUR SERVICES. For purposes of these Terms and Conditions, (a) "Your Customer" means the person or entity with whom you have a contract to supply goods or perform services that is related to our agreement, and/or the owner of the property where such goods are to be sent or on which such services are to be performed; and (b) the "Property where we perform our services" includes all real and personal property at the location where we perform our service and all contiguous real or personal property with the same owner.
10. DISCLAIMER OF WARRANTIES. WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE DISCLAIM WARRANTIES THAT OUR WORK IS FREE FROM DEFECTS OR MEETS ANY STANDARD OF WORKMANSHIP OR CUSTOMARY QUALITY OR FITNESS. ACCEPTANCE OF OUR WORK WAIVES ANY CLAIM THAT OUR SERVICES WERE DEFECTIVE OR INADEQUATE.
11. LIMITATIONS ON LIABILITY OR REMEDIES. FOR ANY CLAIM RELATED IN ANY WAY TO THE PARTIES' AGREEMENT, THE WORK THAT WE PERFORM FOR YOU OR YOUR CUSTOMER OR THE PROPERTY WHERE WE PERFORM OUR SERVICES, WE EXCLUDE AND DISCLAIM, AND SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES (WHETHER IN CONTRACT, TORT OR OTHER GROUNDS FOR A CLAIM) FOR DAMAGES THAT ARE CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE.
12. INDEMNIFICATION BY SELLER/SUPPLIER/OTHER PARTY. You agree to indemnify, defend and hold harmless (including the payment of attorneys' fees, litigation expenses and costs) us and our officers, directors, employees and representatives (collectively, "Our Parties") from and against any claims, lawsuits, demands, damages, liability, causes of action, costs and expenses (collectively, "Claims") arising out of or related to our agreement, the work we perform for you or your Customer, the property where we perform our services, or the work you performed for your Customer, to the extent such Claims assert that or arose because of (a) your actual or alleged strict liability, negligence, gross negligence, or reckless, intentional or willful misconduct, (b) your actual or alleged failure of your goods or services to meet applicable law or standards, or (c) your goods or services were actually or allegedly defective or (d) because any of your express or implied representations were actually or allegedly inaccurate or false. No indemnified claims may be settled without our written consent, which shall not be unreasonably withheld. For purposes of this paragraph, "you" or "your" includes you, your officers, directors, employees, agents and representatives, and independent contractors that you have hired.
13. ARBITRATION/ALTERNATIVE DISPUTE RESOLUTION. We reject any provision requiring the parties to engage in arbitration, mediation or any other alternative dispute resolution procedures in connection with any dispute.

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14. DISPUTE PROCEDURES. In the event you believe we are liable for damage to any property or person for any reason, you agree to: (a) promptly notify us to allow us to assess the damage and investigate the worksite within 72 hours and prior to changes being made and/or corrective action occurring, and (b) allow us to access to assess the damage and investigate the worksite prior to changes being made and/or corrective action occurring, or (c) in the event that, due to the exigencies of the circumstances, you cannot provide us with an opportunity to assess the damage and investigate the worksite, take video and/or photographs of the site sufficient to determine who is responsible for the damage (this evidence must include, among other things, the markings that we made). If you fail to comply with this provision, then you waive the right to assert that we are responsible and/or liable for damages of any kind.
15. SET-OFF AND RECOUPMENT. We retain all rights to recoup and/or set-off any amounts owed by you against any amounts we owe or will owe you now or in the future, whether mutuality exists, whether the amounts we withhold are related to this transaction or to any other transaction, and whether the amounts owed are liquidated or unliquidated.

The Parties hereby agree to the terms and conditions set forth in this Agreement. This agreement is demonstrated by their PAYMENT OF THE INVOICE