

A.) Terms & Conditions for use of Hosted Software Application

1.) **Generally:** Access to and use of this Website and the hosted software application, search services and estimating services available through this Website (herein called "Services") are subject to the following terms, conditions and notices (the "Terms of Service"). By using the Services, you are agreeing to all of these terms, conditions and notices, without modification. Furthermore, you acknowledge that the Terms of Service may be updated by us from time to time. This Web site also contains links to other Web sites, Web pages and services, which are not operated by Prime Estimating & Software Services, LLC (known as "Linked Sites"). Your use of such Linked Sites will be subject to the terms of service contained within each such site and the respective terms of service will control the use of the respective site. In any event your link through to such a site will be governed by those Terms of Service. You recognize that Prime Estimating & Software Services, LLC has no control over such Linked Sites and information, and you accept that Prime Estimating & Software Services, LLC provides no guarantee as to the accuracy or reliability of such sites or the information contained in them and you agree that we shall have no responsibility as to whether such links locate unintended or objectionable content or otherwise cause you distress, loss or damage.

2.) **Prohibitions:** You will not: commit or encourage a criminal offence; send or receive any material which is in any way offensive or obscene, or in breach of confidence, copyright, privacy or any other rights; act contrary to the acceptable use policies of any Linked Sites or community standards generally; transmit or distribute a virus; hack into any aspect of the Service; corrupt data; cause annoyance to other Users; infringe upon the rights of any other person's trade marks or other proprietary rights; send any unsolicited advertising or other promotional material, commonly referred to as "spam"; or attempt to affect the performance or functionality of any computer facilities of or accessed through the Prime Estimating & Software Services, LLC Web site.

3.) **Intellectual Property, Software and Content:** The intellectual property rights in all software made available and content supplied to you remains the property of Prime Estimating & Software Services, LLC, its licensors, advertisers or content suppliers. You will comply with the terms of any agreement required by the owner of intellectual property rights in all software and content supplied to you as notified to you and you hereby acknowledge that all software that is not made readily available to you is confidential, and that all other rights including but not limited to database rights and copyright are asserted and reserved by Prime Estimating & Software Services, LLC, its licensors, advertisers or content suppliers. You may store, manipulate, analyze, reformat, print and display the content supplied solely for your own personal use. In no event are

Prime Estimating & Software Services, LLC

you permitted to publish, distribute or otherwise reproduce in any format any of the content or copies of the content supplied to you or which appears on the Prime Estimating & Software Services, LLC site and you are prohibited from using any such content in connection with any business or commercial enterprise including, without limitation, any media business or enterprise. You shall not modify, translate, reverse engineer, decompile, disassemble (except to the extent that applicable laws expressly or impliedly prohibit such restriction) or create derivative works based on any software or any documentation accompanying such software supplied by Prime Estimating & Software Services, LLC, its licensors, advertisers or content suppliers. No license or consent is granted to you to use these marks in any way, and Prime Estimating & Software Services, LLC reserves all rights in these and any related marks. You agree not to use these marks or any marks which are colorably similar without the written permission of Prime Estimating & Software Services, LLC.

4.) *Software Use:* By making a request/order you are offering to purchase or use a software product which we will accept to sell to you on the following Terms and Conditions. All requests are subject to availability and confirmation of the order price by us. Prime Estimating & Software Services, LLC are absolutely entitled to refuse any request made by you. If your order is accepted we will inform you by emailing you or else by calling you. We will also provide the identity of the party you have contracted with. This may be Prime Estimating & Software Services, LLC or in certain cases a third party. Where a contract is made with a third party Prime Estimating & Software Services, LLC is not acting as either agent or principal and the contract is made between yourself and that third party. When making a request you undertake that all details you provide to us requesting goods or services or bids made at time of purchase or lease are true and accurate, that you are an authorized user of the credit, debit card or check used to make your request or bid and that there are sufficient funds to cover the cost of the goods, services or bid. It is your responsibility to inform us of any changes to these details as soon as possible. Once paid, no returns allowed on software or refund on balance of any lease term. Should payment not be upheld use of software shall be suspended immediately upon notice by Prime Estimating & Software Services, LLC. The amount due shall be due and payable immediately and the cost to full collect shall be borne by the purchaser. All prices advertised are subject to such changes.

5.) *Disclaimer of Warranties:* The services and all information, products and other content including or accessible from this Web site and related Linked sites are provided on an "as is" and "as available basis" and are subject to change at any time without notice to the client.

6.) *Disclaimer of Liability:* Unless expressly stated to the contrary to the fullest extent of the permitted law, Prime Estimating & Software Services, LLC, its content, content providers, advertisers if any or linked sites shall not be liable for any damages whatsoever including but not limited to any direct, indirect, special, consequential, punitive or incidental damage, or damage for the loss of use, profits, data or other intangibles, goodwill or reputation, or the cost of procurement of substitute goods and services, arising out of or the related use of, inability to perform arising out of or relate

Prime Estimating & Software Services, LLC

use, inability to use, performance or failure of this web site or the linked sites, regardless if Prime Estimating & Software Services, LLC had been advised of the possibility of such damages and irrespective of whether such damages arise in contract, tort, equity, restitution, by statute, at common law or otherwise. YOU HAVE READ THIS DISCLAIMER AND AGREE TO IT ON THE BASIS THAT YOU AGREE IT IS REASONABLE.

7.) Indemnity: You agree to indemnify, defend and hold harmless Prime Estimating & Software Services, LLC, its directors, officers, employees, consultants, agents, and affiliates, from any and all third party claims, liability, damages and/or costs (including, but not limited to, legal fees, lost profits, etc.) arising from, without limitation, your use of the Prime Estimating & Software Services, LLC services, your breach of the Terms of Service, your infringement of any intellectual property right or any other right of any person or entity, or your breach of any duty of confidence or privacy, or any defamatory statements made by you in any form.

8.) Invalidity: If any part of the Terms of Service is unenforceable (including any provision in which we exclude our liability to you) the enforceability of any other part of the Terms of Service will not be affected all other clauses remaining in full force and effect. So far as possible where any clause/sub-clause or part of a clause/sub-clause can be severed to render the remaining part valid, the clause shall be interpreted accordingly. Alternatively, you agree that the clause shall be rectified and interpreted in such a way that closely resembles the original meaning of the clause /sub-clause as is permitted by law.

9.) Governing Law: These terms and conditions shall be in accordance with the laws as governed by the State of Florida and the courts of Collier county OR the jurisdiction as deemed necessary by Prime Estimating & Software Services, LLC's election. You hereby consent to the jurisdiction as deemed by Prime Estimating & Software Services, LLC for any and all disputes relating to the Terms of Service, use of this Web site or any Linked site .

10.) Entire Agreement: The above Terms of Service constitute the entire agreement of the parties and supersede any and all preceding and contemporaneous agreements between you and Prime Estimating & Software Services, LLC. Any waiver of any provision of the Terms of Service will be effective only if in writing and signed by the managing member of Prime Estimating & Software Services, LLC.

11.) Scope: This agreement shall apply to all information, goods and/or services ordered by the client from Prime Estimating & Software Services, LLC

12.) Payment: Payment is due upon receipt of invoice without delay. While any payment due under the agreement remains outstanding, Prime Estimating & Software Services, LLC shall be entitled at its sole and absolute discretion to withhold or cancel services and/or use of the Web site that it would otherwise be obliged to provide under the agreement. All payments by cheque, bankers draft or money order must be made in US

Prime Estimating & Software Services, LLC

dollars. All credit card and debit card transactions will be processed in US Dollars if available. Fees charged on a prepay basis are non-refundable.

In situations where the cheque returns unpaid or payment is not made within the agreed terms Prime Estimating & Software Services, LLC will immediately suspend all facilities until the outstanding charge is processed successfully. In addition, Prime Estimating & Software Services, LLC reserves the right to suspend other services until the outstanding debt is cleared. The customer is responsible for all money owed on the account from the time it was established for the period of the term as set forth in the agreement including any and all cost to collect the outstanding account including but not limited to legal cost, court cost, etc.

13.) Liability: Prime Estimating & Software Services, LLC hereby excludes itself, its Employees and or Agents, contractors from all and any liability for loss or damage caused by any inaccuracy; omission; delay or error, whether the result of negligence or other cause in the use of the web site. All and any liability for loss or damage to clients information supplied for the site where immaterial whether the loss or damage results from negligence or otherwise. It is the sole responsibility of the client to review, check and confirm all data as delivered from the initial setup of your account with default values to each and every completed estimate.

14.) Copyright: Any web page; design or entire site owned by Prime Estimating & Software Services, LLC carries a copyright, and cannot be reproduced without written consent. The placing of an order by the client or other person/Agency on behalf of the client constitutes a guarantee that all necessary authority and permissions have been obtained in respect of the artwork, design and photographs, for use in the advertisement. The Advertiser/customer must indemnify Prime Estimating & Software Services, LLC in respect of all actions; proceedings; costs demands and claims arising from any such breach.

15.) Delivery: Where the clients site is being hosted by their own server, Prime Estimating & Software Services, LLC reserve the right to delay uploading of deliverables until full payment has been received.

16.) Severability: In the event any one or more of the provisions of this Agreement and/or Order Form shall be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement and/or Order Form shall be unimpaired and the Agreement and/or Order Form shall not be void for this reason alone. Such invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

17.) Disclaimer: Prime Estimating & Software Services, LLC will not be responsible for any damages your business may suffer including loss of profit. Prime Estimating & Software Services, LLC makes no warranties of any kind, expressed or implied for services we provide. Prime Estimating & Software Services, LLC disclaims any warranty

Prime Estimating & Software Services, LLC

or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non deliveries, wrong delivery, and any and all service interruptions caused by Prime Estimating & Software Services, LLC and its employees. Prime Estimating & Software Services, LLC reserves the right to revise its policies at any time.

B.) Terms & Conditions for Host Server

1.) **General:** Prime Estimating & Software Services, LLC provides World Wide Web page hosting and reserves the right to suspend or cancel a customer's access to any or all services provided by Prime Estimating & Software Services, LLC when Prime Estimating & Software Services, LLC decides that the account has been inappropriately used or otherwise.

2.) **Server Use:** Personal accounts are to be used by the primary owner only. Personal account holders are not permitted resell, store or give away web-hosting services of their website to other parties. Web hosting services are defined as allowing a separate, third party to host content on the owner's website. Exceptions to this include ad banners, classified ads, and personal ads.

Customers may not resell our services, goods or software without written consent of Prime Estimating & Software, LLC.

Prime Estimating & Software Services, LLC reserves the right to refuse service and /or access to its servers to anyone for any reason.

Prime Estimating & Software Services, LLC reserves the use any secure server site without notice to the client.

Prime Estimating & Software Services, LLC do not allow any of the following content to be stored on its servers:

i.) legal Material - This includes copyrighted works, commercial audio, video, adult, obscene or music files, and any material in violation of any Federal, State or Local regulation.

ii.) Adult Material - Includes all pornography, erotic images, or otherwise lewd or obscene content. The designation of "adult material" is left entirely to the discretion of Prime Estimating & Software Services, LLC.

iii.) Pirated software, ROMS, emulators, phreaking, hacking, password cracking. IP spoofing, etc., and encrypting of any of the above. Also includes any sites which provide "links to" or "how to" information about such material.

3.) **Unlimited Usage Policy: High bandwidth usage:** Prime Estimating & Software Services, LLC offers an unlimited use policy by maintaining very large ratios of

Prime Estimating & Software Services, LLC

bandwidth per customer. In rare cases, Prime Estimating & Software Services, LLC may find a customer to be using server resources to such an extent that he or she may jeopardize server performance and resources for other customers. In such instances, Prime Estimating & Software Services, LLC reserves the right to impose the High Resource User Policy for the consideration of all customers. Resources are defined as bandwidth and/or processor utilization. Prime Estimating & Software Services, LLC may implement the following policy to its sole discretion when a website is found to be monopolizing the resources available Prime Estimating & Software Services, LLC reserves the right to suspend that site immediately. This policy is only implemented in extreme circumstances and is intended to prevent the misuse of our servers. Customers may be offered an option whereby Prime Estimating & Software Services, LLC continues hosting the website for an additional fee.

4.) *Indemnification:* Customer agrees that it shall defend, indemnify, save and hold Prime Estimating & Software Services, LLC harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Prime Estimating & Software Services, LLC, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless Prime Estimating & Software Services, LLC against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Prime Estimating & Software Services, LLC' server; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customer from Prime Estimating & Software Services, LLC' server.

5.) *Disclaimer:* Prime Estimating & Software Services, LLC will not be responsible for any damages your business may suffer. Prime Estimating & Software Services, LLC makes no warranties of any kind, expressed or implied for services we provide. Prime Estimating & Software Services, LLC disclaims any warranty or merchantability or fitness for a particular purpose. The includes loss of data resulting from delays, non deliveries, wrong delivery, and any and all service interruptions caused by Prime Estimating & Software Services, LLC and its employees. Prime Estimating & Software Services, LLC reserves the right to revise its policies at any time.

“Knowledge is the key to data; Data is the key to Knowledge”