

Construction Services Agreement Terms & Conditions

INCLUSION IN AGREEMENT

These terms & conditions are attached to and form part of the Construction Services Agreement; hereafter “Agreement,” between Greg Norman & Associates, Inc, doing business as BathMasters; hereafter “Contractor,” and homeowner, authorized manager and/or responsible party; hereafter “Owner.” BathMasters is a registered trademark owned by Greg Norman & Associates, Inc. All rights reserved.

AGREEMENT TERMINOLOGY

Unless specifically stated otherwise in the “Scope of Work” section, any Agreement wording corresponding to the following 7 paragraphs, are used with the following meanings, assumptions, clarifications and limitations:

1) Painting: “Painting” includes 2 coats of Benjamin Moore Aura Bath and Spa paint; 1 color for the walls; white paint on the ceiling & trim. “Painting” does not include repairing existing blemishes/retexturing, etc. unless specified in Agreement.

2) Tile Installation: Assumes ceramic or porcelain 4” x 4” or larger with an approx. 1/8” grout joint. Natural stone, marble, granite or other simulated natural stone installations not included. Does not include glass field tile or mosaic field tile. Installing 1 row of decorative tile is included. Tiled shower pans assume 2x2 tiles mounted on sheets by the manufacturer. Installation of pebbles, rocks, glass or natural stone on shower floor not included. Contractor uses best judgment on pre-sealed grout color unless color specified in Agreement. Sealants are not needed or included. Included tile layouts are grid or offset joint(brick). Complex tile layouts using various sized tiles/angles/mosaics are not included. Tiles will be installed according to sketches attached to the Agreement or using the Contractor’s best judgment. Floor tile installation includes an approximately 3/16th of an inch grout joint. Tiled base, tile wainscoting, built in niches, seats, curbless showers, etc. are not included unless specified in Agreement.

- 3) Shower Doors: A) Stock: Except for a “custom shower door,” Agreement refers to a stock bypass/slider, 1/4” clear glass model like the Kohler Fluence or similar w/ polished silver trim. Upgrades to additional finishes are available if specified in the Scope of Work. Other models (Levity) require additional labor and charges apply. B) Custom Shower Doors: 3/8” clear glass will be used for the door/panels. Hardware will be similar finish to plumbing trim. Templating occurs after tile install. Computer software used to determine re-quired hardware. Brackets/hinges used for glass to glass connections. A 1” track may be used where the glass meets the finished tiled wall, top of knee wall, top of curb etc. Rarely, a track may be required along the top of the glass panels. Includes “D” shaped handle . Fabrication takes about a week. Installation about 2 weeks after templating.
- 4) Recessed Medicine Cabinets: Included only when replacing existing recessed medicine cabinet of same width. If recessing a cabinet newly is specified, Contractor will open the wall and if no structural support, bearing wall, piping, electrical or structural supports are in the way, Contractor will cut out, as needed, 1 partial stud and frame in for the medicine cabinet. If any aforementioned items are in the way, Contractor will flush mount the cabinet or charge for the extra labor by change order. No guarantee made not to dam-age the opposite side of wall. Change orders may be executed for any needed repairs.
- 5) Vent Fans: Vent fan installs assume adequate duct work exist. Agreement does not include running new duct work unless specified. In some condos, it may be impossible to connect to any vent duct-work and a re-circulating vent fan may be required.
- 6) Accessories: Accessories are installed according to Contractor’s best judgment unless locations are specified in advance.
- 7) Plumbing rough-in: Agreement includes installation of standard stock tub/shower valve in same location as existing valve. Additional plumbing rough-in required to relocate shower valves, install transfer valves, handhelds, body sprays, etc. is not included unless specified. Relocation or replacement of drain lines and traps is not included. Agreement does not include installation of wall mount faucets unless specified.

WARRANTY

Thank you for choosing our company to perform this work for you. Your satisfaction with our work is a high priority for us, however, not all possible complaints are covered by our warranty. Contractor does provide a limited warranty against material defects on all Contractor—and subcontractor—supplied labor and materials

used in this project for a period of three years following substantial completion of all work. This warranty covers normal usage only. You must contact the Contractor at 8110 Ulmerton Road, Largo, FL 33771 in writing for warranty service immediately upon discovering an item in need of warranty service. If the matter is urgent, you must also call the Contractor and send written notice of the need for warranty service. Failure to notify the Contractor of the need for warranty service within ten days of discovery of a warranty item may, at Contractor's sole discretion, void this warranty. Additionally, Owner's hiring of others or direct actions by Owner or Owner's separate contractors to repair a warranty item are not covered by this warranty and will not be reimbursed by Contractor without the written advance approval by Contractor—before work is commenced. No Warranty is provided by Contractor on any materials furnished by the Owner for installation. No warranty is provided on any existing materials that are moved and/or reinstalled by the Contractor within the dwelling or the property (including any Warranty that existing/used materials will not be damaged during the removal and reinstallation process). Warranty does not cover electronic toilet seats, steam generators, digital or electronic shower valve systems; pumps, hoses, valves or jets on tubs. After Contractor's three year warranty period, Owner's sole remedy (for materials and labor) on all materials that are covered by a manufacturer's warranty is strictly with manufacturer, not with Contractor. Repair of the following items and related damages of every kind are specifically excluded from Contractor's warranty: problems caused by lack of Owner maintenance; problems caused by Owner abuse; Owner misuse; vandalism; Owner modification, or alteration; and ordinary wear and tear. Damages resulting from mold, fungus, and other organic pathogens are excluded from this warranty unless caused by the sole and active negligence of Contractor as a direct result of a construction defect which caused sudden and significant amounts of water infiltration into a part of the structure. Deviations that arise such as the minor cracking of concrete, stucco, and plaster; minor stress fractures in drywall due to the curing of lumber; warping and deflection of wood; shrinking/cracking of grouts and caulking; fading of paints and finishes exposed to sunlight are all typical (not material) defects in construction, and are strictly excluded from Contractor's warranty. The express warranties contained herein are in lieu of all other warranties, express or implied, including any warranties of merchantability, habitability, or fitness for a particular use or purpose. This limited warranty excludes consequential, incidental, and special damages and limits the duration of implied warranties to the fullest extent permissible under state and federal law. Some states restrict limitations on various warranties, and so a consumer's rights under this warranty may vary. This limited warranty may not be verbally modified by any person. This limited warranty is governed by the laws of the state where the work was performed.

LIMITATION OF WARRANTY WHEN CONTRACTOR INSTALLS OWNER-SUPPLIED FIXTURES AND MATERIALS

Contractor cannot warrant any Owner-supplied materials or fixtures (new or used). If Owner-supplied fixtures or materials fail due to a defect in the materials or fixtures themselves, Contractor will charge for all labor and materials required to repair or replace both the defective materials or fixtures, and any surrounding work damaged by these defective materials or fixtures.

STANDARD EXCLUSIONS

Unless specifically included in the "Scope of Work" section, the Agreement does not include labor and materials for the following: plans; engineering fees; governmental permits and fees of any kind; additional work required by governmental plan checkers on final plans that are yet to be issued; testing, removal and disposal of any materials containing asbestos (or any other hazardous materials as defined by the EPA); custom milling of any wood for use in project; moving Owner's property around the site; labor or materials required to repair or replace any Owner-supplied materials; final construction cleaning (Contractor will leave site in "broom swept" condition); correction of existing out-of-plumb or out-of-level conditions in existing structure; correction of concealed substandard framing; rerouting/removal of vents, pipes, ducts, structural members, wiring or conduits, steel mesh which may be discovered in the removal of walls or the cutting of openings in walls; removal and replacement of existing rot, mold or insect infestation; failure of surrounding part of existing structure, despite Contractor's good faith efforts to minimize damage, such as plaster or drywall cracking and popped nails in adjacent rooms; exact matching of existing finishes; cost of correcting/testing/remediating mold/fungus/mildew and organic pathogens.

PERMITS/PERMIT CHARGES

If Agreement specifies "permits included," all Contractor administrative charges incurred to pull the permit and up to a maximum of \$350 in governmental fees are included in the Agreement. Any permit related fees in excess of \$350 will be charged to Owner and due upon submittal of invoice from Contractor. If permits are not specified in Agreement but Contractor/Owner are informed by governmental agency that permits are required, any actual fees associated with pulling permits, providing stamped architectural/engineer drawings/letters etc. will be charged to Owner and due upon receipt of invoice. Owner holds Contractor harmless for any delays to project commencement or completion caused by governmental permit offices. Owner may be required to have someone present at job site to allow access to various building inspector officials.

DATE OF WORK COMMENCEMENT AND SUBSTANTIAL COMPLETION

Work commencement and completion dates do not include delays and adjustments for delays caused by: holidays; inclement weather; accidents; governmental offices, inspectors, shortage of materials; additional time required for Change Order and additional work; delays caused by Owner and other delays unavoidable or beyond the control of the Contractor such as delays occurring on previously executed Agreements by Contractor which are ahead of Owner's project in Contractor's scheduling queue. As Contractor services hundreds of customers/projects annually with a flexible first-to-pay, first-to-start scheduling system by project category, commencement/substantial completion dates in Agreement are good faith estimates only and not guaranteed by Contractor. Project categories include Complete Master Bathroom(with 2 wet areas); Complete Standard Bathroom (1 wet area); Acrylic Tub/ Shower Package; Choreograph Tub/Shower Package; Tiled Tub/Shower Package; and Kitchens. Once deposit is paid, Contractor adds Owner's project to the applicable queue. Commencement dates depend on Owner's placement on the applicable queue and arrival of materials. Owner understands a queue based scheduling system will be used and exact start dates are only available as Owner's position in the queue approaches. Substantial Completion takes about 4 to 8 days for the various "wet area" only projects; 15 to 30 days for Complete standard bathrooms; 20 to 40 days for Complete Master Bathrooms and Kitchens. Custom templated glass doors, counters & mirrors not included in above estimates. Estimates are based on total business days, not calendar days.

DELIVERY OF OWNER-SUPPLIED MATERIALS

If Owner is supplying their own products, all products must be on site before the project is begun. If 100% of the products are not on site, Contractor may reschedule the project until 100% of products arrive. If Contractor agrees to any local pick-ups and delivery to job site for Owner supplied materials, \$125 charge will be billed for each vendor/trip. Contractor is not responsible for checking such orders for accuracy or for damage caused in transit, missing items etc.

DESIGN LAYOUTS

If Owner is supplying some or all of the products to be installed, Owner is responsible for forwarding full design layouts to Contractor before the job begins as well as having such layouts at the job site for review.

CHARGES FOR ADDITIONAL WORK: CONCEALED CONDITIONS, DEVIATION FROM SCOPE OF WORK, AND CHANGES IN THE WORK

This Agreement is based solely on the observations Contractor was able to make with the project in its condition at the time the work of this Agreement was bid. If concealed conditions are discovered once work has commenced or after this Agreement is executed which were not visible at the time this Agreement was bid or are discovered during the permit process, Contractor will point out these concealed conditions to Owner, and these concealed conditions will be treated as Additional Work under this Agreement. Contractor and Owner shall execute a Change Order for this Additional Work. Contractor is released, by Owner from all pre-existing mold, fungus, mildew, and organic pathogen problems and is not responsible for costs or damages associated with correcting, containing, testing, or remediating the same.

DEVIATION FROM SCOPE OF WORK

Any alteration or deviation from the Scope of Work referred to in this Agreement involving extra costs of materials or labor (including any overage on ALLOWANCE work and any changes in the Scope of Work required by Owner or governmental plan checkers or field building inspectors) will be treated as Additional Work under this Agreement resulting in an additional charge to Owner as set forth herein. Contractor and Owner may execute a Change Order for this Additional Work.

RATES CHARGED FOR TIME-AND-MATERIALS WORK

The rate is \$100.00 per man hour. [Time spent by Contractor's personnel at lumberyards and material supply houses (including travel time to and from) to pick up materials, and time required to move tools and equipment onto the job site at the start of the project and away from the job site at the end is included in the number of man hours.] Material: Any materials purchased by Contractor will be included in the invoice.

PAYMENT OF CHANGE ORDERS/ADDITIONAL WORK

Payment for Additional Work is due upon submittal of invoice by Contractor.

FINAL CONTRACT PAYMENT

The final contract payment is due and payable upon "Substantial Completion" (not Final Completion) of all work under contract. "Substantial Completion" is defined as being the point at which the home improvement is suitable for its intended use or the final building department approval whichever occurs first.

PAYMENT METHODS

Contractor accepts checks, “phone checks” and cash for all payments at no charge. Credit Card payments are subject to a pass-thru charge of 2.6% added to every payment. Contractor may choose to accept credit card payments for down payments on packages and products as a “special offer” from time to time but not in combination with any other discounts or offers. If customer applies for and is approved for financing from GreenSky or similar finance company, the financing can be used at no charge to the customer but the original Agreement is not acceptable for use with the financing. The original Agreement is only valid for non-finance transactions only. Once GreenSky or similar financing is approved, a separate “Financed Transaction Agreement(s)” will be prepared and signed by Owner. Once signed, the “Finance Transaction Agreement(s)” will supersede any other signed Agreement between the parties. This is to ensure compliance with finance company rules as well as acceptable payment terms for Contractor and usually involves multiple Agreements by trade.

HOLD BACK FROM FINAL PAYMENT FOR PUNCHLIST WORK

At or near the time of Substantial Completion, a representative of Contractor will meet with Owner and complete a “Punch List” form of additional work to be completed by Contractor. Owner and Contractor will place a fair and reasonable value on each Punch List item and will then execute the Punch List form. At time of making the final contract payment, Owner may hold back 150% of the value of all Punch List work. This 150% hold back for Punch List work assures Owner that all Punch List work will be completed by Contractor in a timely manner. Payment for completed items on the Punch List form is due and payable upon submittal of invoice for those completed items, even though the entire Punch List may not be completed.

MATCHING EXISTING FINISHES

Contractor will use his best efforts to match existing finishes and materials. However, an exact match is not guaranteed by Contractor due to such factors as discoloration from aging, a difference in dye lots, discontinuation of product lines, and the difficulty of exactly matching certain finishes, colors, and planes. Custom milling of materials is not included. Any material not readily available at local lumberyards or suppliers is not included in the Agreement.

CONTROL AND DIRECTION OF EMPLOYEES AND SUBCONTRACTORS

Contractor, or his appointed Supervisor, shall be the sole supervisor of Contractor's Employees and sub-contractors. Owner must not direct, supervise or advise Contractor's Employees or subcontractors in any form when it comes to the remodeling process. Any concerns or advice from Owner should be solely directed to one of Contractor's job supervisors or Contractor's customers service liaison team. Any such "agreements" made in a manner that is not consistent with this paragraph shall not be enforceable against the Contractor. All changes in the work are to be first discussed with Contractor and then performed according to the Change Order process as set forth in the Agreement.

OWNER COORDINATION WITH CONTRACTOR

Owner agrees to promptly furnish Contractor with all details and decisions about unspecified construction finishes, and to consent to or deny changes in the scope of work that may arise so as not to delay the progress of the Work. Delays in furnishing design decisions after construction has commenced will also increase the contract time. Owner agrees to furnish Contractor with continual access to the job site.

COMPANY IDENTIFICATION PLACEMENT ON OWNER'S PROPERTY

Contractor reserves the right to place a company sign in the front yard of the Owner's Property where applicable and available during the time of construction.

CONTRACT REVIEW/MODIFICATIONS

Agreements prepared solely on information provided by the Owner are not binding on either party until Contractor does a site survey. If Contractor, in writing, agrees that the Agreement terms are acceptable, then the Agreement become binding on the parties. If after the site survey, Contractor notifies Owner that the quote needs to be revised, the Owner can either approve the changes in writing or cancel the Agreement and obtain a full refund.

ENTIRE AGREEMENT, SEVERABILITY, AND MODIFICATION

This Agreement represents the entire agreement between the parties relating to the subject matter hereof. This Agreement alone fully and completely expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein. This Agreement may not be amended or modified, except by a written agreement signed by all parties hereto. If any term, covenant, condition, or provision of Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

WORK STOPPAGE AND TERMINATION OF AGREEMENT FOR DEFAULT

Contractor shall have the right to stop all work on the project and keep the job idle if payments are not made to Contractor strictly in accordance with the Payment Schedule in the Agreement, or if Owner repeatedly fails or refuses to furnish Contractor with access to the job site and/or product selections or information necessary for the advancement of Contractor's work. If Contractor stops work on the project, the Contractor will give Owner written notice of the nature of Owner's breach of contract at the address set forth on the contract. If after 14 calendar days the Owner has failed to take significant steps to cure the default, Contractor may, without prejudicing any other remedies Contractor may have, give written notice of the termination of this Agreement to Owner and Owner agrees to immediately pay Contractor, within five (5) days for all completed work and materials installed through the date when Contractor stopped work along with an amount equal to 20% of the balance of contracted work not completed.

CANCELLATION/REFUND

Owner may cancel the Construction Services (Labor) portion of the Agreement any time prior to project commencement and receive a refund of their payments minus any fees paid to local authorities for permits and an amount equal to 10% of the total Construction Services (Labor) portion set forth in the Agreement. Products which can be returned to manufacturer's/distributors will be subject to a restocking fee of 25%. In the event of cancellation, any "custom," "special order," "made-to-order," non-stock products purchased and paid for through Contractor's retail showroom will be delivered to Owner's home in a timely manner. Contractor may cancel the Agreement prior to project commencement by providing written notification to Owner and 100% refund of all monies paid to Contractor.

FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND:

Payment may be available from the Florida Homeowners' Construction Recovery Fund if you lose money on a project performed under contract, where the loss results from specified violations of Florida Law by a licensed contractor. For information about the recovery fund and filing a claim, contact the following telephone number and address: Construction Industry Licensing Board: 2601 Blair Stone Road, Tallahassee, Florida 32399-2215; Phone 850.487.1395

DISPUTE RESOLUTION AND ATTORNEY'S FEES

Any controversy or claim arising out of or related to this Agreement involving an amount less than \$5000 (or the maximum limit of the Small Claims court) must be heard in the Small Claims Division of the Municipal Court in Pinellas county. Any dispute over the dollar limit of the Small Claims Court arising out of this Agreement shall be submitted to an experienced private construction arbitrator that shall be mutually selected by the parties to conduct a binding arbitration in accordance with the laws of the state where the project is located. The arbitrator shall be either a licensed attorney or retired judge who is familiar with construction law. If the parties do not mutually agree on an arbitrator within 30 days of written demand for arbitration by either party, then the parties agree to submit the dispute to binding arbitration before the American Arbitration Association in accordance with the Construction Industry Rules of the American Arbitration Association then in effect. Judgment upon the award may be entered in any Court having jurisdiction thereof. The prevailing party in any legal proceeding related to this Agreement shall be entitled to payment of reasonable attorney's fees, costs, and post-judgment interest at the legal rate. No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation. The arbitrator is not authorized to award punitive or other damages not measured by the prevailing party's actual damages. Judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.