

Agreement

Made as of the [DATE (Day)] day of [DATE (Month)] in the year of [DATE (Year)].

Between

the Seller:

Rubb Inc.

1 Rubb Lane

Sanford, ME 04073

Hereinafter referred to as "Rubb"

and the Customer:

[Customer Business Name]

[Customer Business Address 1]

[Customer Business Address 2]

Witnesseth

Whereas, the Customer desires to have Rubb design, fabricate and supply a Rubb structure and associated systems (hereinafter referred to as the "facility") at [Building Address].

Whereas, Rubb desires to design, fabricate and supply the facility for and on behalf Customer under the terms and conditions hereinafter set forth:

Now, therefore, the parties agree as follows:

This contract includes the Project Pricing and Payment Schedule, Rubb's General Terms and Conditions of Sale (Exhibit A) and other Exhibits as detailed below or incorporated herein by reference if not attached hereto. Where any exhibit conflicts with the terms of this contract agreement, the terms of this contract agreement will have precedence over the terms of said exhibit:

Additional Exhibits:

Exhibit B:

Exhibit C:

Exhibit D:

Areas of Responsibility

1. Rubb Shall Furnish:

- a. All engineering design, fabrication services and technical services required to deliver to Customer a complete structure according to the specifications contained in the referenced exhibits and supporting documentation.
- b. Rubb shall appoint a single company representative/ project manager to oversee and coordinate Rubb work on the project who will work closely with Customer's representative to ensure a successful project.

2. The Customer Shall Furnish:

- a. All required permits and local approvals including payment for all local permits, taxes and other applicable fees.
- b. A reasonably level and properly designed foundation system onto which the Rubb structure will attach.
- c. Any other items required to complete the facility which are not specifically included in Rubb's proposal including secure materials storage areas, installation, proper handling of materials on site and general conditions items including telephone, rest room and trash removal.
- d. The Customer shall appoint a single owner's representative/project manager who is to act as the primary contact point for day to day administrative decisions required on the project.

3. Contract Changes

It is the intent of this contract that Rubb shall provide a facility in accordance with the scope and purpose of the final drawings and specifications as approved, and revised as agreed in writing, by the parties hereto. At any time during the term of this agreement, however, the Customer shall have the right to require Rubb to increase or decrease the scope of work to be furnished hereunder. Such increases and decreases shall be accomplished through the use of change orders which shall be properly documented and agreed to by all parties as to price, time and terms of payment and performance.

In the event that Rubb has incurred expenses in relation to deleted work, such expenses will be reimbursed with overhead and profit, unless otherwise agreed. In the case that any changes in the specifications or drawings are required by said change orders, then these changes will be incorporated into the final drawings and specifications. Once approved and revised any changes shall thereafter be deemed to be incorporated by reference and made a part of this agreement.

Rubb's Overhead and Profit on any such increases or decreases in scope which occur through change orders shall be calculated using the percentages below:

For extra work: Cost of change plus 15% of change cost for Overhead and Profit:

For deleted work: Cost of change plus 10% of change cost for Overhead and Profit.

Rubb will be responsible for maintaining a change order summary and obtaining proper approval by the Customer before undertaking such changes. The Customer shall have the right to request documentation or audit of the actual costs of any required change orders prior to making payment for said change orders.

4. Communication

- a. The Customer and Rubb shall promptly make available to one another information which affects the scheduling of work, scope of work or other aspects of the project. The parties shall cooperate in scheduling and performing the work so as to avoid conflicts and promote an efficient installation.
- b. Rubb shall not give instructions or orders directly to employees or workmen of the Customer except as authorized by Customer's designated representative. The Customer will likewise not give direct instructions or orders directly to employees of Rubb without authorization of Rubb's designated representative.

5. Warranty

- a. Rubb warrants to the Customer that the materials and equipment furnished under this contract will be of good quality and new unless otherwise required and/or permitted by the contract documents. Rubb warrants that the work will comply with the requirements of the contract and acknowledges that work not conforming to these requirements may be considered defective, in which case said defects will be remedied at no cost to the Customer under the terms of Rubb's standard or extended term warranty as applicable.
- b. Rubb's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Rubb, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty required by law or other contract documents.
- c. The specific obligation of Rubb under this warranty is limited, at Rubb's option, to allowance for credit, repair or replacement of defective materials. This warranty shall be void in the event that the building or its components are exposed to environmental or other factors beyond stated capability, harmful chemicals, falling or flying objects or if the structure is improperly operated or maintained. Acts of God, war, or negligence of the purchaser, his agent, or a third party may also serve to void this warranty. Rubb, Inc. shall not be liable for any consequential damages including, but not limited to, loss of profits or revenue, loss of use in equipment or facilities due in whole or in part to defects in the material or workmanship of the covered product.

6. Indemnification

- a. To the fullest extent permitted by law, each party shall indemnify and hold the other party and its agents harmless from and against claims, damages, losses and expenses, including but not limited to attorney's fees for acts which are not attributable to the negligent acts or omissions of the respective party or its agent.
- b. Each party shall also be responsible for providing and maintaining comprehensive liability insurance in not less than an amount of \$1,000,000 (USD) for bodily injury per person or occurrence and property damage and not less than \$5,000,000 (USD) for combined single limit liability. Each party shall also be responsible for providing evidence of insurance to the other party upon request and will provide "named insured" protection as requested.

7. Disputes and Termination

- a. Disputes shall be settled by arbitration conducted in accordance with the Construction Industry Rules of the American Arbitration Association currently in effect unless the parties agree otherwise.
- b. Should the Customer choose to terminate the contract for convenience, Rubb will be entitled to recover from the Customer full payment for work executed and for proven loss with respect to materials, equipment and machinery, including reasonable overhead, profit and damages.
- c. Should Rubb repeatedly fail or neglect to carry out the work in accordance with this agreement and fail within seven days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, then the Customer may, after seven days following receipt by Rubb of an additional written notice and without prejudice to any other remedy the Customer may have, terminate the contract.

8. Safety

- a. Each party shall work to promote a safe work site and shall be solely responsible for initiating, maintaining and supervising all necessary safety programs and precautions necessary to prevent injury to its employees and agents on the site.

RUBB INC. GENERAL TERMS AND CONDITIONS OF SALE EXHIBIT "A"

- 1.) **Acceptance.** All orders for any materials, products, services, and/or any other item (herein referred to as the "Goods") and acceptance of the Goods by any Customer (herein referred to as the "Buyer") are **EXPRESSLY CONDITIONAL ON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE STATED HEREIN ARE BINDING ON RUBB INC.** (herein the "Seller") **UNLESS AGREED TO IN WRITING BY AN AUTHORIZED RUBB EMPLOYEE.**
- 2.) **Title and Risk of Loss.** Title to the Goods shall pass to the Buyer upon tender of delivery F.O.B. Seller's manufacturing facility. Risk of loss or damage shall remain with the Seller and shall pass at completion of installation, except that a security interest in the Goods shall remain with the Seller and the Seller shall have full rights to repossess the Goods until full payment has been made. Buyer agrees upon request to do all things and acts necessary to perfect and maintain said security interest and to protect the Seller's interest. Seller shall be responsible for adequately insuring the Goods as construction work in progress against loss or damage from any cause until the Goods are completely installed.
- 3.) **Price, Taxes and Interest Charges.** Prices quoted are F.O.B., Seller's manufacturing facility, and the amount of any local, state or federal sales, use or other taxes, duties or levies payable on the Goods are the sole responsibility of the Buyer. Buyer agrees to pay all such taxes promptly and failing to do so accepts responsibility for any penalties or interest which may accrue to the transaction due to buyer's failure to remit taxes due. Buyer represents that it is solvent and can and will pay for the goods sold to Buyer in accordance with the terms hereof. All shipments shall be subject to the approval of Seller's credit department. Seller reserves the right before making any delivery to require payment in cash or security for payment and if buyer fails to comply with such requirement, Seller may terminate any contract with Buyer affected thereby. The seller reserves the right to assess an interest charge of one and one-half percent (1-1/2%) monthly (18% annual rate) or the maximum allowed by law, whichever is less, to be paid by Buyer on past due accounts.
- 4.) **Delivery.** Rubb recognizes that time is of the essence in this contract. However, **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CLAIMS FOR LABOR OR FOR ANY CONSEQUENTIAL, LIQUIDATED OR ANY OTHER DAMAGES RESULTING FROM FAILURE OR DELAY IN DELIVERY.**
- 5.) **Force Majeure.** In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to, any delay in delivery or performance which is due to any act of God, local labor shortage, fire, flood, or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, break down of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.
- 6.) **Laws, Ordinance and Regulations.** Seller shall utilize reasonable efforts to cause the Goods to comply with its interpretation of federal safety, health and environmental regulations and insurance codes of a national scope. However, Seller shall not be responsible for compliance with local interpretations of such federal regulations or insurance codes nor with any local laws, ordinances, codes and/or regulations which may at any time be in effect at any location where the Goods are to be utilized, unless such responsibility shall be expressly assumed by the Seller in writing.
- 7.) **Changes in Design.** The seller warrants that products sold will be of sound material and workmanship, however, the Seller reserves the right to discontinue the manufacture or sale of any model, style or type of the Goods, or of any parts or accessories, and the right to alter the design or composition of the Goods. Design details and specifications as shown in general brochures may be subject to change without notice.
- 8.) **Warranty.** The Seller warrants that the Goods (a) are in accordance with the provisions of a product specific written warranty published and delivered to Buyer from Seller, or (b) in the absence of a product - specific warranty warrants that the same are in accordance with the Seller's published specifications at the time of order and that it will repair or replace, at Seller's option, such Goods as fail to conform to its published specifications, provided notice of claim under this warranty is given within 30 days of the Buyers knowledge of alleged defect and that Buyer has acted reasonably to mitigate damages arising from said defect. The Seller shall in no event be responsible for any unreasonable cost of field labor, freight or any other charges incurred by Buyer returning any products to the Seller for repair or replacement. No return shall be made without prior written consent of the Seller.

RUBB INC. GENERAL TERMS AND CONDITIONS OF SALE EXHIBIT "A"

9.) **Exclusion of Other Warranties.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ON THE PRECEDING PAGE, THERE ARE NO Exclusion of Other Warranties. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ON THE PRECEDING PAGE, THERE ARE NO WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH APPLY TO THE GOODS. NO WARRANTIES OR REPRESENTATIONS MADE BY ANY AGENT OF THE SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE EXPRESS WARRANTY OR ANY OTHER TERMS HEREOF.

10.) **Technical Advice.** Seller shall not be responsible for the result of any technical advice in connection with the design, installation or use of the Goods. In all cases, the Buyer shall be responsible for the secure fastening of the building to the ground. Information given in this respect is only by way of illustration only. The Buyer should, if necessary, use a local consultant to provide technical advice on the foundation.

11.) **Galvanizing.** The steel structure of the Rubb building is hot dip galvanized for maximum corrosion protection. The Seller is responsible for the installation of the structure must take care to ensure that no lumps of galvanizing material are present on the outer surface of the steel which may come into contact and abrade the PVC cover. The Buyer will not under any circumstance accept responsibility for damage of any kind arising from the failure of Rubb personnel to remove lumps of galvanizing material.

12.) **Liability Limitation.** Seller's liability here under shall be limited to the obligation to repair or replace the Goods pursuant to clause 9 above. Seller's total cumulative liability in any way arising from or pertaining to any Goods sold or required to be sold under any contract shall NOT in any case exceed the purchase price paid by the Buyer for such Goods. **IN NO EVENT SHALL SELLER, HAVE ANY LIABILITY FOR COMMERCIAL LOSS, CLAIMS FOR LABOR, OR ANY CONSEQUENTIAL DAMAGES OF ANY OTHER TYPE WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE THE BUYER'S EXCLUSIVE REMEDIES.** Seller makes no representation of warranty that the delivery or use of the Goods shall be free of the claim of any third party by way of infringement.

13.) **Cancellation or Changes of Order.** No order may be withdrawn or canceled by the Buyer, or may they be deferred when ready, unless the Seller shall first be paid a cancellation or deferral charge of a reasonable amount acceptable to the Seller. In the event Buyer shall request changes in its order after receipt thereof by Seller, Buyer shall be responsible for all charges reasonably assessed by Seller with respect to such changes.

14.) **Return or Repurchase of Goods.** Rubb may agree to repurchase product which has been in use by a Buyer under an installment loan, other contract or rental/lease where applicable. In the case that Goods are returned to Rubb, the Buyer shall be responsible for all costs associated with return of the Goods including dismantling, freight and necessary cleaning and repair of the Goods, reasonable wear and tear excepted. Where the Goods have come into contact with hazardous substances, the Buyer shall be responsible for decontamination of the Goods in compliance with accepted national standards. Buyer bears full responsibility for the costs of repair or replacement of parts which are missing or damaged so as to require replacement.

15.) **Applicable Law.** The terms and conditions applicable to any sale of Goods by the Seller shall be determined and construed in accordance with, and shall be governed by, the laws of the State of Maine and Buyer and the Seller agree to submit to the jurisdiction of the appropriate state or federal court or arbitrator within Maine for purpose of resolving any dispute or claim arising in connection with said transaction.

16.) **Freight.** The Seller, at Buyer's expense, shall make proper provision for the transport of the building by an independent contractor from the premises of the Seller to the place where the building is to be erected or used.

17.) **Proprietary Data.** Any drawings or specifications which may be supplied by the Seller to the Buyer or to any person on behalf of the Buyer remain the property of the Seller. The Buyer agrees that he will not permit any copy of such drawings or specifications to be made or permit information taken from such drawings or specifications to be transmitted to any person other than a person directly and necessarily engaged in the erection of the building and will supply information only to the extent that such information is essential to that person's involvement in the project.

18.) **Default.** Should the Buyer default in it's obligation to make full payment for the Goods, the Buyer agrees that in addition to the interest charges set forth in item 3, that he shall reimburse the Seller for all it's expenses including attorney's fees incurred in connection with the Sellers enforcing its rights under this contract.