

## TERMS AND CONDITIONS

According to Florida's construction lien law (sections 713.001- 713.37, Florida statutes), those who work on your property or provide materials and services and are not paid in full have a right to enforce their claim for payment against your property. This claim is known as a construction lien. If your contractor or a subcontractor fails to pay subcontractors, sub-subcontractors, or material suppliers, those the people who are owed money may look to your property for payment, even if you have already paid your contractor in full. If you fail to pay your contractor, your contractor may also have a lien on your property. This means if a lien is filed your property could be sold against your will to pay for labor, materials, or other services that your contractor or a subcontractor may have failed to pay. To protect yourself, you should stipulate in this contract that before any payment is made, your contractor is required to provide you with a written release of lien from any person or company that has provided to you a 'notice to owner.' Florida's construction lien law is complex, and it is recommended that you consult an attorney.

1. By OWNER's or agent's signature on the front of this form, OWNER agrees: (a) "Work" includes the items described on the front of this form, and any future changes and/or extras requested by OWNER. Full payment is due at EMERALD's principal place of business, at the dates set forth on the front of this form. Past due amounts accrue interest at the rate of 1 1/2% per month including pre and post-judgment amounts.
2. Any payment subsequent to this contract and/or pursuant to this contract shall be deemed ratification of the terms herein.
3. Within 5 business days from substantial completion, OWNER must deliver written notice to EMERALD of: (a) billing discrepancy(ies); (b) claims of non-conformity which include, but are not limited to, description, quality of workmanship, quantity, prices, defect(s), damage or otherwise; and (c) a detailed written description of patent damage or defect.
4. Failure to notify EMERALD of any dispute related to the Work establishes acceptance and responsibility for prompt payment and waiver of all claims against EMERALD related thereto. Written notice of a latent defect in the Work must be delivered to EMERALD within a reasonable time from the time it is or should have been discovered, but no later than expiration of the applicable statute of limitations; otherwise all claims for latent defects are waived.
5. EMERALD is not liable for delay or non-conforming work due to any cause beyond EMERALD's control and OWNER waives all claims related thereto. OWNER agrees that EMERALD's superintendent's daily journal shall be conclusive for the fact of all quantities, dates, and manner of workmanship.
6. All notices shall be sent to EMERALD CONTRACTORS, INC., 1118 East Court Street, Tarpon Springs, Florida 34689 by U.S. certified mail. In no event shall EMERALD be liable for claims or damages of any nature in excess of the original contract price.
7. If any writing, purchase order, business form, contract, letter, etc. of OWNER, to include the original contract between EMERALD and OWNER, ("Forms") conflicts or is inconsistent with any term(s) of this form or EMERALD's forms, then the Forms provided by OWNER shall be void and the terms hereof or EMERALD's form shall control. OWNER agrees EMERALD's use, acknowledgement(s), or acceptance of OWNER's Form(s) is solely for OWNER's internal purposes and shall in no way alter the terms hereof or EMERALD's form(s).

8. OWNER agrees invoices rendered pursuant to this contract or any future change/extra orders shall be deemed a demand for direction regarding application of payment(s) due. Failure to provide directions allows EMERALD to apply payments in its sole discretion. EMERALD has the right of set-off against any credits or funds due OWNER.
9. OWNER and EMERALD agree that all Work shall be completed as defined in the Residential Construction Performance Guidelines for Builders and Professional Remodelers as written by the National Association of Homebuilders.
10. If either OWNER or EMERALD brings an action under this contract, the non-prevailing party agrees to pay all costs, expenses, and attorney fees related to the dispute through appeal and judgment enforcement. In the event suit is brought by OWNER or EMERALD relating to or arising out of any dealings between OWNER and EMERALD, each agrees to: (A) WAIVE JURY TRIAL WHICH WAIVER INCLUDES ALL CAUSES OF ACTION, COUNTERCLAIMS, CROSSCLAIMS, AND DEFENSES WHICH ARE OR COULD BE ASSERTED; (B) agree venue shall be in Pinellas County, Florida including all pre and post judgment depositions. Florida law governs the terms hereof.
11. OWNER agrees it is OWNER's responsibility to insure any building materials or supplies once the building materials or supplies are affixed to OWNER's real property as to be considered a fixture or incorporated under Florida law.
12. OWNER agrees that any requests for changes or extras to the Work must be approved by an officer of EMERALD, in writing, prior to performance of the changes or extras. EMERALD may perform any such changes or extras which shall be required by building codes or the standards set forth in para. 9 and EMERALD is entitled to additional reasonable compensation for these changes and extras. These terms and conditions shall govern any changes or extras.
13. Only statutory waivers and releases of lien rights may be required. If a check is given for payment, any waivers or releases in exchange for that check are conditional until clearance of the check.
14. OWNER and EMERALD agree to attempt a good faith negotiation within two weeks upon receiving notice of a dispute arising out of this agreement before resorting to any formal dispute resolution process. Should the parties not reach a mutually agreed upon solution during the good faith negotiations, OWNER and EMERALD agree to mediate any dispute as a condition precedent to any litigation. If the parties cannot agree on a mediator, each shall select one name from a list of mediators maintained by any bona fide dispute resolution provider; the two selected shall then choose a third person who will serve as a mediator. OWNER and EMERALD shall have 45 days within which to commence the first mediation session following the conclusion of their good faith negotiations.
15. These terms and conditions set forth the entire agreement and understanding between OWNER and EMERALD and supersedes all prior written or verbal discussions and negotiations between them.
16. In the event that EMERALD is delayed by acts of God, material shortages or unavailability, changes or extras in the Work, or events that are beyond EMERALD's sole control, then EMERALD is entitled to a reasonable extension of time for the impact of such events.
17. Should unknown conditions exist in the ground or at the work site which are unusual in nature, different from conditions ordinarily encountered, or which conditions were not actually known to EMERALD, then EMERALD may make a claim to increase the contract price if notice of such claim is given to OWNER within ten days of discovering the condition.

**Right to Cure:** FLORIDA LAW (CHAPTER 558, FLORIDA STATUTES) CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR, SUBCONTRACTORS, SUPPLIER, OR DESIGN PROFESSIONAL A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND MAKE AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER FLORIDA LAW.

The 1968 Truth in Lending Act and the 1969 Federal Reserve Board Regulation Z rules under the Consumer Credit Protection Act gives property owners a three day cancellation/recession right. You, the Buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the separate Notice of Cancellation for an explanation of this right. The Owner has the unconditional right to cancel this Contract, without penalty or obligation, until midnight of the third business day after the Contract was signed. This cancellation must be made in writing. Upon such cancellation, any payments made under this agreement and any negotiable instrument executed will be returned within ten (10) business days following receipt of the cancellation notice. Federal law requires that each Owner be given two copies of the Notice of Cancellation and further must be verbally informed of the rights included therein. Please initial here acknowledging receipt of two copies of the Notice of Cancellation.

All prices subject to full plans, specifications, trade contractor and building department review.

**Note:** Homes built prior to 1978 will require that you receive the EPA Lead Paint information pamphlet, sign that you have read it and understand it. Additionally, effective April 22<sup>nd</sup> 2011, you may be required to abide by new EPA lead base paint protocols. You may want a lead base paint assessment. Procedures for the prevention of airborne lead base paint particulates may be required as well as the abatement, containment or removal of materials containing lead base paint.

In the case where permits are not specifically stipulated to be obtained nor budgeted for in the scope of work but the municipality in which the work is being done, requires they be obtained, the client agrees they will be responsible for **all** costs for obtaining said permits. Costs to include but not be limited to: architectural drawings, shop drawings, engineering costs, administrative costs, travel time, permit services costs plus the contractor's normal burdens for supervision, overhead and profit.

This contract specifically does not require or include any investigation, abatement or removal of any existing hazardous materials on the project site, including but not limited to radon gas, asbestos in any form, lead based paints and/or chemical or petroleum contaminations of any kind, mold or mildew. Such removal shall be considered as additional work and shall be handled in the manner as previously outlined in the section on changes. If in the course of construction, the Builder encounters materials reasonably believed to be hazardous or toxic which have not been rendered harmless, the Builder may suspend the performance of the work until a licensed, EPA approved contractor abates or corrects said problem and renders the work area free of such hazard. In the event the Owner elects not to proceed with the project because of the discovery of any hazardous materials or any other environmental health hazard, the Builder shall be entitled to terminate this contract and shall be entitled to be paid for all unpaid costs, fees and expenses including the prorated cost of overhead and supervision expenses earned at the time of termination, as well as a prorated percentage of the Builder's total anticipated profits. To the fullest extent permitted by law, the Owner shall indemnify and hold the Builder harmless from and against all claims, costs, losses, damages and expenses, including attorney's fees, arising from or involving any such hazardous materials. Such removal shall be considered as additional work and shall be handled in the manner as previously outlined in the section on changes.

Contractors Initials \_\_\_\_\_ Owners Initials \_\_\_\_\_