

INSPECTION AGREEMENT

This is a legally binding contract. Please read carefully

Report Prepared for:

For Property Located at:

Report # _____

Inspector hereby agrees to conduct an Exterior Cladding MOISTURE PROBE Survey Report
On _____ at _____ am

Client hereby agrees to pay the Inspector at the time of the inspection
\$ _____ - \$ _____ for such an inspection

Customer/Client acknowledges and agrees that the Testing Procedure may necessarily require Testing Company to make test holes in multiple locations as needed in the exterior surface of the Subject Property, and, accordingly, the Owner of the Subject Property must execute an Authorization Agreement before the Testing Procedure may begin. Customer/Client is solely responsible for procuring the signed Authorization Agreement prior to the scheduled date for the Testing Procedure from the Seller of the property. Additionally, in order to minimize damage to the exterior surface of the Subject Property, the Testing Procedure has limitations, which prevent Testing Company from warranting the effectiveness of the Testing Procedure. Accordingly, Customer/Client acknowledges and agrees to the limited warranty and limited remedies, which are specified below.

1. No other exterior system(s) or cladding, items, or appliances are tested, evaluated, or inspected during the Testing Procedure. Excluded is any testing or inspection of any structure, surface, system, or item not included in the Testing Report Performance of the Testing Procedure is not intended as a substitute for an owner/seller's disclosure.
2. No engineering test will be made and no engineering services will be made to determine compliance with any governmental ordinance, regulation, or code (notwithstanding any reference in the Testing Report to any code provision). The Testing Report is not to be considered an implied or express warranty or insurance on the Subject Property or its future use, operability, habitability, or suitability. The sole purpose of the performance of the testing services is for Customer/Client to be provided with the information, which is presented in the Testing Report. Customer/client has no expectation of Testing Company identifying, or of Customer/Client being notified of all evidence of moisture, and waives any claim for evidence of moisture or conditions, which are not reported. Testing Company is not responsible for any condition, which occurs subsequent to the performance of the testing services or which is intermittent or not detected during the performance of the testing services.

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3. **The fee is due and payable upon Customer's execution of this Contract.** The fee is based upon the estimate, which has been supplied to Customer. Testing Company reserves right to perform additional testing work, which will be specified in the Testing Report, which is, in the judgment of the Testing Company, required to implement the Testing Procedure in response to unforeseen conditions provided, however, the additional cost shall not exceed 10% of the total fee (without Customer's approval or acquiescence). This additional cost shall be due and payable prior to delivery of the Testing Report. After execution of this Contract and payment of the fee, and prior to the date scheduled to commence the Testing Procedure, Customer MUST procure the signature of the Owner of the Subject Property on the Authorization Agreement, which is attached hereto. Due to Testing Company's ongoing performance of work in preparation for the Test Procedure, THE FEE IS NOT REFUNDABLE. In the case the Testing Company is unable to perform the Test Holes the fee may be slightly reduced. Testing Company shall have the right to verify the signature(s) on the Authorization Agreement. It is the responsibility of the Customer to make the Subject Property accessible for testing services. Testing Company personnel shall be solely responsible for decisions relating to safety and the non-performance of any testing services due to safety reasons, regardless of whether conditions, which are deemed unsafe, are included within the estimate. Testing Company shall credit (and refund, if appropriate) to Customer the reasonable value of the testing services which are not performed due to safety decisions. Post-testing consultation with Customer in excess of the time specified in the estimate, if any, shall be at Testing Company's standard hourly rates of \$375.00 per hour, payable at the time of the consultation. Testing Company shall be entitled to interest to 1% per month on all unpaid amounts, and shall be entitled to recover all costs and attorney's fees expended to collect any amount due to Testing Company.
4. CUSTOMER ACKNOWLEDGES THAT TESTING COMPANY WARRANTS ONLY THAT ITS TESTING SERVICES WILL BE PERFORMED IN ACCORDANCE WITH THE EMIA (EIFS Manufacturers Installers Association) GUIDELINES OR INDUSTRY STANDARDS AND THE TESTING REPORT ISSUED. THIS IS A LIMITED AND NONTRANSFERABLE WARRANTY AND IS THE ONLY WARRANTY GIVEN BY TESTING COMPANY. TESTING COMPANY MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTY, EXPRESS, OR IMPLIED. ALL OTHER WARRANTIES INCLUDING ALL LIABILITIES OR OBLIGATIONS OF TESTING COMPANY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF TESTING SERVICES AND ANY DELIVERY AND USE OF AND RELIANCE ON THE TESTING REPORT ARE DISCLAIMED. CUSTOMER WAIVES ANY CLAIM FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES, EVEN IF TESTING COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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5. IN THE EVENT OF A BREACH OR A FAILURE OF THE FOREGOING WARRANTY, NEGLIGENT TESTING BY TESTING COMPANY OR ANY OTHER CLAIM AGAINST TESTING COMPANY (EXCLUDING WILLFUL MISCONDUCT), CUSTOMER AGREES THAT THE LIABILITY OF TESTING COMPANY, AND ITS AGENTS, EMPLOYEES AND PERSONNEL, FOR CLAIMS OR DAMAGES, COSTS OF DEFENSE AND SUIT, ATTORNEYS FEES. AND EXPENSES AND PAYMENTS ARISING OUT OF OR IN ANY WAY CONNECTED WITH ERRORS OR OMISSIONS IN THE TESTING SERVICES OR THE TESTING REPORT SHALL BE LIMITED TO LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO ALL AMOUNTS PAID TO TESTING COMPANY BY CUSTOMER FOR THE TESTING SEVICES. Customer and Testing Company acknowledge the liquidated damages are not intended as a penalty but are intended (i) to reflect the fact actual damages may be difficult and impractical to ascertain; (ii) to allocate risk among Testing Company and Customer; and (iii) to enable Testing Company to perform the testing services at the stated fee. In the event of the tender by Testing Company of a refund of the fee, such refund shall be full and final settlement of all present and future claims and causes of action (excluding willful misconduct) and Testing Company shall be there upon generally and fully released.
6. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CUSTOMER AGREES TO INDEMNIFY AND HOLD TESTING COMPANY HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, CAUSES OF ACTION, DAMAGES AND ACTIONS, INCLUDING THE TESTING COMPANY'S BREACH OF CONTRACT AND NEGLIGENCE, ACTIONS BY THE OWNER OF THE SUBJECT PROPERTY AND ANY OTHER THIRD PARTIES, AND ANY OTHER ACTIONS, INCLUDING COSTS AND ATTORNEYS FEES, RELATED TO OR ARISING FROM THE CONDUCT OF THE TESTING SERVICES WHICH ARE THE SUBJECT OF THIS CONTRACT (EXCLUDING ONLY WILFUL MISCONDUCT).
7. CUSTOMER HERBY EXPRESSLY WAIVES ANY LIABILITY, CLAIM, OR CAUSE OF ACTION AGAINST TESTING COMPANY AND ITS PERSONNEL, EXCLUDING ONLY WILLFUL MISCONDUCT, AND AGREES TO LOOK SOLELY TO TESTING COMPANY FOR ANY AND ALL LIABILITY RELATED TO THE TESTING SERVICES INCLUDING THE NEGLIGENCE OF TESTING COMPANY PERSONNEL. CUSTOMER HERBY AGREES TO INDEMNIFY TESTING COMPANY AND ITS PERSONNEL FOR ANY AND ALL CAUSES OF ACTION, INCLUDING COSTS OF DEFENSE AND ATTORNEYS FEES, RELATED TO OR ARISING FROM ANY CLAIM BROUGHT BY CUSTOMER AGAINST TESTING COMPANY.
8. In the event Customer has a claim of a breach or failure of warranty, or for negligent performance of testing services, Customer shall provide Testing Company with 30 working days to inspect and re-test the Subject Property before Customer performs repairs of any kind. This right of inspection and re-testing is to protect Testing Company and Customer from the business practices of contractors. If Customer fails to allow Testing Company to inspect or re-test, Customer waives any claim against Testing Company.

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9. Prior to the filing of any legal action by the Customer, the Customer shall submit such dispute and Customer's intent to file a legal action, and Testing Company shall have 30 days to submit dispute to binding arbitration in Cleveland, Ohio. Such arbitration shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association, except for the rules pertaining to the arbitrator selection. The parties submitting the dispute shall appoint an arbitrator by mutual agreement, who is knowledgeable in, and familiar with, the EIFS/Stucco Industry and who will follow substantive rule of law. In the event of no agreement on the Arbitrator then A. A. A. C.I. R. shall apply. Each party further agrees to pay its own arbitration costs. Any award made by the arbitration and in compliance with this contract shall be enforceable as a judgment in any court of competent jurisdiction. No arbitration of any dispute whether in contract or tort, shall be brought against Testing Company by arbitration or a court of law beyond the earlier of one year following the date of the Testing Report or 30 days after discovery by Customer of the condition which forms the basis of the action. The arbitrator shall have authority to make an award of Attorney's fees to prevailing party.
10. The testing Report is not intended for use by anyone other than the Customer. No third party shall have any right arising from this Contract or the Testing Report. In consideration of the furnishing of the Testing Report, and subject to all terms and limitations of this contract, the customer shall indemnify the Testing Company from all costs, expenses, legal fees, awards, settlements and judgments in any legal proceeding brought by any third party who claims that he/she relied on representations made in such Testing Report or was damaged thereby. Customers request that Testing Company release copies of the Testing Report shall be at Customer's risk with respect to the contents of this paragraph.

The undersigned has agreed to this contract, its terms and conditions

PAYMENT IS DUE AT TIME OF INSPECTION

_____ X _____ Date: _____
Contract Agreed and Accepted by Customer:

_____ Date: _____

Inspector Name: [Thomas A. Gaba](#)
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