

STANDARD TERMS AND CONDITIONS OF SALE - GPR

Diamond Subsurface Imaging (DIAMOND) requires clear and uninterrupted access to the work area and expects all work available in one mobilization unless otherwise specified.

Clear and uninterrupted access means no obstructions (equipment, vehicles, supplies, furniture, shrubbery, etc.) in the target areas to be scanned. Surface must be free of obstructions to allow the antenna to roll freely. Proposal is based on scanning the immediate area described, additional scanning may affect price. DIAMOND may assess an hourly fee for down time occurring at no fault of its own.

Any generated reports will be based on DIAMOND's interpretation of the data collected and are provided solely for illustration and instructional purposes. Reports are provided only if itemized as a deliverable in this proposal.

Due to the size and shape of the antenna, GPR scanning is limited in the area immediately adjacent to a wall. Please discuss job conditions with DIAMOND representative. Scanning at depths greater than 12' requires mobilization of a larger antenna at additional cost.

GPR scanning cannot be performed in areas with standing water.

GPR scanning of soils cannot be performed immediately after rainfalls.

Although DIAMOND uses only state-of-the-art GPR scanning equipment and techniques, and provides ongoing GPR training for its operators, locates are only as accurate as the information imaged by the radar, i.e., GPR scanning does not see everything all the time. Every effort is made to minimize missed targets by collecting and assessing all available information relative to the job site, including layout and configuration of the area to be scanned, existing drawings, historical knowledge of personnel, and prior experience with similar sites.

Data Collection Equipment is a commercial broadband pulsed radar system using antenna (s) with survey wheel encoder.

Disclaimer: DIAMOND MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS ALL, WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE NATURE, QUANTITY OR QUALITY OF THE SERVICES TO BE PERFORMED HEREUNDER. EXCEPT TO THE EXTENT OF ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, DIAMOND SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY DAMAGES AS A RESULT OF ITS PERFORMANCE OR FAILURE TO PERFORM THE SERVICES. THE STRUCTURAL SURVEY REPORT IS BASED UPON DIAMOND'S INTERPRETATION OF THE DATA COLLECTED AND IS PROVIDED SOLELY FOR ILLUSTRATION AND INFORMATIONAL PURPOSES. DIAMOND IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE CAUSED, ARISING OUT OF THE USE OF, OR RELIANCE ON THE DATA COLLECTED OR THE REPORT GENERATED.

Terms: The Contract Price, plus any additional charges or per hour charges shall be paid within thirty (30) days from invoice date. If the services to be provided hereunder (the "Services") should take longer than originally estimated by DIAMOND because of extended coverage, or as a result of the area being surveyed by DIAMOND not being properly prepared for the survey, etc., such additional time shall be paid to DIAMOND at an hourly rate provided at the time of service.

1. **Warranties and Limitations of Remedies.** Without limitation of the Disclaimer on the first page hereof, (a) the parties agree that DIAMOND did not manufacture any equipment used by DIAMOND in the performance of the Services and, as such, DIAMOND SHALL NOT BE RESPONSIBLE FOR, OR LIABLE FOR, ANY DAMAGES ARISING OUT OF ANY DEFECT OF SUCH EQUIPMENT; (b) DIAMOND WARRANTS ONLY THAT IT SHALL USE THE EQUIPMENT IN THE PERFORMANCE OF THE SERVICES IN ACCORDANCE WITH INSTRUCTIONS PROVIDED FROM THE MANUFACTURER THEREOF AND FURTHER DOES NOT WARRANT OR GUARANTEE THE RESULTS OF SUCH USE OR THAT SUCH EQUIPMENT IS FUNCTIONING PROPERLY; (c) The foregoing warranty is subject to all other conditions contained herein; (d) THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. DIAMOND AND ITS AGENTS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; and (e) CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY MADE BY DIAMOND IN CONNECTION WITH THE PROVISIONS BY DIAMOND OF ANY SERVICES HEREUNDER IS THE RIGHT TO RECOVER AN AMOUNT NOT TO EXCEED THE AMOUNT PAID TO DIAMOND FOR THE SERVICES.

2. **Contract Claims Only.** CUSTOMERS CLAIMS WITH RESPECT TO THE SERVICES FURNISHED HEREUNDER SHALL BE LIMITED TO THE CONTRACTUAL WARRANTIES AND REMEDIES PROVIDED IN THIS AGREEMENT AND MAY BE BROUGHT ONLY IN AN ACTION FOR BREACH OF CONTRACT. CUSTOMER SHALL NOT MAKE ANY CLAIM AGAINST DIAMOND BASED ON ANY THEORY OF TORT, INCLUDING BUT NOT LIMITED TO STRICT LIABILITY OR NEGLIGENCE THEORIES, except to the extent of the gross negligence or will misconduct of DIAMOND
3. **Liability of DIAMOND** The total liability of DIAMOND under this Agreement for breach of warranty, or for any other breach of the Agreement or for any claim related to services furnished by DIAMOND under this Agreement, shall in no event exceed the amount paid to DIAMOND by Customer hereunder. IN NO EVENT SHALL DIAMOND OR ITS AGENTS BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR FOR THE LOSS OF PROFITS OR REVENUE, OR FOR LOSS OF USE, OR FOR ACTUAL LOSSES OR FO LOSS OF PRODUCTION OR PROGRESS OF CONSTRUCTION, WHETHER RESULTING IN ANY MANNER FROM SERVICES FURNISHED UNDER THIS AGREEMENT OR FROM DIAMOND'S BREACH OF ANY WARRANTY OR ANY OTHER OBLIGATION OF DIAMOND UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF DAMAGES AND DISCLAIMER OF SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES SHALL APPLY TO ALL CAUSES OF ACTION WHATSOEVER ASSERTED AGAINST DIAMOND PERTAINING TO THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR OF DIAMOND'S OTHER OBLIGATIONS UNDER THIS AGREEMENT.
4. **Modification and Waiver/Acceptance and Integration.** This document is intended by the parties as a final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement. Without limiting the foregoing, no additional or conflicting provisions in Customer's documents shall be deemed a part hereof and DIAMOND specifically objects to and rejects any such provisions. No affirmation, representation or warranty, however made, which is not specifically included with the agreement is a part hereof. No course of prior dealings between the parties, no usage of the trade, no representation by DIAMOND's agent or in DIAMOND's advertisements shall be relevant to supplement or explain any term used in the Agreement. Acceptance of or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of the Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Customer shall accept the Agreement, including the terms and conditions in this document if: i) Customer has signed this document or any proposal to which these terms and conditions are made applicable, ii) Customer has in any manner authorized performance of the services, iii) DIAMOND shall perform the Services without objection by Customer, or iv) Customer has paid the purchase price or any portion thereof. The agreement can be modified or rescinded only by a writing signed by Customer and DIAMOND No claim or right arising out of a breach of the agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Waiver by DIAMOND of any breach or breaches hereunder by Customer shall not be deemed a continuing waiver of such breach nor as a waiver of or permission for any subsequent breach. Without limitation of the foregoing, the terms of this Agreement shall govern over any conflicting terms contained in any other writing related to the Services, including, but not limited to, any invoice DIAMOND or any purchase order of Customer.
5. **Severability.** The invalidity or unenforceability of any provisions of the Agreement shall not affect any other provisions, and the Agreement shall be construed as if such invalid or unenforceable provisions were omitted.
6. **Assignment and Successor.** The Agreement shall be binding upon and insure to the benefit of the parties hereto and their heirs, personal representatives, successors and permitted assigns. Customer may not assign any of its rights or obligations under the Agreement without the prior written consent of DIAMOND
7. **Governing Law; venue.** This agreement shall be construed in all respects under the laws of the state of Michigan without regard tot the dictates of conflicts of laws thereof and the parties agree to submit to exclusive jurisdictions and venue in the United States Federal District Court for the District of Michigan, or the District Court of Kent County, Michigan.