

DuraFuse Frames® Information and Instructions for all Customers

DuraFuse Frames, LLC (“DuraFuse”) offers a patented structural steel connection for either wind- or seismic-controlled designs that reduces steel tonnage, simplifies fabrication, and allows for rapid, safe erection. For designs controlled by seismic demands, DuraFuse provides seismic resistance for buildings that makes them more economical and more resilient. Buildings that incorporate DuraFuse’s patented seismic fuse-plate can be rapidly and economically repaired following a damaging earthquake. Moreover, construction costs for DuraFuse buildings are lower due to elimination of seismic beam bracing, reduction of detailing requirements, and a minimized protected zone.

DuraFuse charges an entity that procures, fabricates, and erects structural steel (“Fabricator”) a fee (“Fee”) for its services, which include connection design, and review of fabrication drawings. The portion of the services provided by the Fabricator considered herein are specific aspects of the construction project (“Project”) which were prepared by DuraFuse and included in the contract drawings (“Drawings”). You have requested the Fee for the Project. The Fee and other requested information will be sent to you by email upon acceptance of the following Terms and Conditions.

- 1. DuraFuse Frames® Fee.** The Fabricator shall include DuraFuse Frames’ Fee in its bid to fabricate structural steel for the Project and such Fee shall be included in the Fabricator’s first construction draw. DuraFuse will submit invoices for services within 30 days of receipt of the Fabricators Purchase Order/Contract. Payment terms are Net 45 days and are not subject to retainage. The Fee is based on a single Fabricator completing the services on the Project at a single site. For joint ventures and/or multiple fabrication sites on the Project, the Fabricator shall inform DuraFuse of this condition. An equitable adjustment of the Fee will be communicated to the Fabricator based on the number of fabrication sites.
- 2. Intellectual Property Rights.** The design, engineering calculations, drawings, computer files, notes and other items prepared by DuraFuse are not “works for hire,” and are instead a proprietary engineering work product in which DuraFuse shall retain all intellectual property rights, including, but not limited to copyright. Notwithstanding DuraFuse’s exclusive retention of all intellectual property and other similar rights existing under statutory or common law, DuraFuse will grant the Fabricator a limited, non-assignable, and nonexclusive, license to use DuraFuse’s work product solely for the purposes of fabricating and erecting structural steel for the Project. Fabricator expressly agrees not to use, modify, adapt or otherwise attempt to apply DuraFuse’s proprietary engineering work product on any other buildings, projects or works of construction. To be in alignment with USPTO provisions, the Fabricator will be supplied with an Intellectual Property Rights Notice (“Notice”). The Notice shall be attached to any drawing or specification containing DuraFuse’s proprietary information (e.g. shop drawings).
- 3. Electronic-Data (“E-data”).** DuraFuse will provide, upon request, electronic files (“E-data”) that are suitable for assisting the Fabricator in estimating and detailing the Project. The E-data typically includes: (1) a spreadsheet containing summary take-off (“Take-Off”) information for connection material sizes and quantities, and (2) an XML file(s) containing connection details that can be imported into Tekla and/or SDS2 using the DuraFuse Frame plug-ins (“Plug-ins”). You acknowledge and accept that the E-data is a tool for convenience and is not a part of the Drawings. The E-data is not a substitute for the Drawings and the Drawings will control for any deviation or discrepancies. You agree to waive and release any claims against DuraFuse and the directors, officers, and employees of DuraFuse relating to the E-data.
- 4. Basis for DuraFuse’s Work – Potential Changes.** DuraFuse is not the structural engineer of record (“SEOR”) on the Project. Instead, DuraFuse uses design specifications provided or established by the SEOR to perform its work, prepare drawings, and provide other services to Fabricators. In the event of material changes to the Project’s design specifications by the SEOR prior to fabrication of the structural steel covered by DuraFuse’s services, it may be necessary for DuraFuse to make appropriate, equitable adjustments to DuraFuse’s Fee for its service on the Project. Notifications of any changes, whether during design or construction phases, to the Project will be sent to the email address you provided.
- 5. Limited Warranty.** DuraFuse will use reasonable care in performing its work on the Project and will prepare all drawings and other engineering work according to generally accepted professional engineering standards and practices. DURAFUSE MAKES NO WARRANTIES OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, REGARDING OR RELATING TO THE SERVICES FURNISHED UNDER THIS AGREEMENT. IN PARTICULAR, DURAFUSE SPECIFICALLY AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES.
- 6. Exclusive Limited Remedy for Limited Warranty/Errors or Omissions.** The Fabricator, or parties, agree that the Fabricator’s sole and exclusive remedy for DuraFuse’s breach of its limited warranty hereunder will be DuraFuse’s prompt correction of any such errors in its services, which will be done or performed without additional cost to the Fabricator.
- 7. Notifications.** Notifications with respect to the Project shall be provided to the contact information (including email address) previously provided when requesting the Fee information through DuraFuse’s website.
- 8. Governing Law.** This Agreement shall be governed by the laws of the State of Utah without regard to its conflict of law provisions.

Terms and Conditions

The following terms and conditions (“Terms and Conditions”) are expressly incorporated into DuraFuse’s agreement to provide services and license its technology to Fabricator in connection with a construction Project (“Project”). These Terms and Conditions cannot be waived, modified, or amended except in writing by an authorized representative of DuraFuse.

- 1. Payment Terms.** Payment in full for DuraFuse’s fee (“Fee”) on the Project shall be included in Fabricator’s first invoice to owner, construction manager or higher-tiered contractor on the Project. Regardless of whether Fabricator has received payment on said invoice, Fabricator will pay DuraFuse all amounts due within forty-five (45) days of the date of that invoice. DuraFuse retains the right to not release to Fabricator its final shop/fabrication drawings for the Project without receiving payment of Fee in full. Fabricator agrees that payments later than the date specified above shall bear interest at the rate of 10% per year. In the event DuraFuse is required to take legal action, including but not limited to filing liens or making bond claims, Fabricator shall be responsible for any attorneys’ fees and costs incurred by DuraFuse in collection amounts due hereunder.
- 2. Assistance to Fabricators.** DuraFuse agrees that it will—to a commercially reasonable degree—respond to RFI’s and other inquiries regarding the services it provides on the Project. DuraFuse agrees to provide such services on a timely basis and within the time constraints applicable to the Project. Fabricator hereby acknowledges that such review and consultation by DuraFuse is provided solely as a convenience to Fabricator and that DuraFuse cannot and will not thereby assume any legal or financial responsibility for Fabricator’s contractual obligations to perform fabrication of structural steel for the Project. DuraFuse’s liability for services it provides to Fabricator is limited in accordance with its Limited Warranty.
- 3. Sales or Use Taxes.** DuraFuse’s Fee does not include any amount for sales, use or value added taxes. Fabricator or Project’s Owner will be responsible for any such taxes.
- 4. Assignment.** Fabricator cannot assign this Agreement without prior written consent from DuraFuse.
- 5. Single Project.** Fabricator expressly agrees that the work and services provided by DuraFuse are unique and applicable to the single Project covered by this Agreement. Fabricator therefore expressly agrees not to use, modify, adapt, or otherwise attempt to apply DuraFuse’s proprietary engineering work product on any other buildings, projects or works of construction.
- 6. Integrated Agreement.** This invoice, including these Terms and Conditions, and the Information and Instructions to All Customers to which Fabricator agreed when requesting a Fee from DuraFuse, constitute the complete, integrated agreement between DuraFuse and Fabricator. This Agreement may only be modified in writing signed by authorized representatives of both parties.
- 7. Waiver of Consequential and Liquidated Damages.** Under no circumstances will DuraFuse be liable to Fabricator or any third party, in connection with the Project, for any consequential or liquidated damages.
- 8. Limitation of Liability.** Notwithstanding anything to the contrary, under no circumstances will DuraFuse’s total aggregate liability to Fabricator or any third party, in connection with the Project and under any theory of recovery, whether based in contract, in tort (including negligence and strict liability), under warranty or otherwise, exceed the total price paid by Fabricator to DuraFuse (i.e. the Fee), nor shall DuraFuse be liable for any indirect, special, incidental, consequential, or punitive damages whatsoever.
- 9. Governing Law.** The laws of the state of Utah will govern any dispute arising from or relating to this Invoice, without regard to principles of conflicts of laws. The parties agree that any legal proceedings brought under or arising out of this agreement shall be venued exclusively in Salt Lake County, State of Utah, which shall have jurisdiction over the parties. Any such legal action shall be tried solely by a judge and both parties hereby waive their right to trial by jury of any such dispute.
- 10. Indemnity.** In connection with The Project, Fabricator will defend, indemnify, and hold DuraFuse harmless from all claims, damages, losses, and expenses (including reasonable attorneys’ fees) arising out of or relating to: (1) Fabricator’s negligence or willful misconduct or of anyone for whom Fabricator is responsible, and (2) Fabricator’s breach of any of Fabricator’s obligations under this Invoice.