



Subcontract Standard Conditions

I. Performance of Work.

(A) The Subcontractor shall perform and furnish all the work, labor, services, materials, supplies, equipment, tools, appliances, scaffolds, and other things necessary for completion of the scope of work included in this Subcontract, as more particularly described in Appendix 5 (hereinafter called the "Work"). The Work shall be performed in accordance with all provisions of the plans, specifications, general conditions, special conditions referred to herein, and pursuant to the terms of this Subcontract.

VIII. Other Subcontractors and Contractors. The Subcontractor shall cooperate fully with the Contractor and other subcontractors and contractors employed, either directly or indirectly, by the Principal and/or Owner and working on-site, in accordance with the Prime Contract. The Subcontractor shall so plan and conduct the Subcontract Work to be performed hereunder as not to interfere with the operations of the Contractor or such other subcontractors and contractors as required by the Prime Contract. The Contractor will not be responsible for any delays or interference resulting from the acts or operations of other subcontractors or contractors employed by the Principal and/or Owner.

IX. Settlements of Disputes.

(A) In case of any dispute between the Contractor and the Subcontractor, DUE TO ANY ACTION OR INACTION OF THE PRINCIPAL AND/OR OWNER OR INVOLVING THE CONTRACT DOCUMENTS, the Subcontractor agrees to be bound to the Contractor to the same extent that the Contractor is bound to the Principal and/or Owner by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made thereunder by the party, board or court so authorized in the Contract Documents or by law, whether or not the Subcontractor is a party to such proceedings. In case of such dispute, the Subcontractor will comply with all provisions of the Contract Documents, allowing a reasonable time for the Contractor to analyze and forward to the Principal and/or Owner any required communications or documentation. The Contractor will, at its option, 1) present to the Principal and/or Owner, in the Contractor's name, or 2) authorize the Subcontractor to present to the Principal and/or Owner, in the Contractor's name, all of the Subcontractor's claims, and shall answer the Principal and/or Owner's claims involving the Subcontractor's Work, whenever the Contractor is permitted to do so by the terms of the Contract Documents. The Contractor will further invoke on behalf of the Subcontractor, or allow the Subcontractor to invoke, those provisions in the Contract Documents for determining disputes. If such dispute is prosecuted or defended by the Contractor, the Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by the Contractor and to pay or reimburse the Contractor for all costs incurred, including attorneys fees, in connection therewith. The Subcontractor shall proceed with work as directed by the Contractor pending resolution of any dispute under the terms of the Contract Documents. Failure to proceed with the Subcontract Work pending resolution of a dispute shall be a material breach of Subcontract.

The Subcontractor will participate in and be bound by any dispute resolution terms of the Prime Contract.

(B) With respect to any controversy between the Contractor and the Subcontractor NOT INVOLVING THE PRINCIPAL AND/OR OWNER OR THE CONTRACT DOCUMENTS, the Contractor shall have the option of: 1) litigating the matter in a court of competent jurisdiction, 2) settling the matter by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof, or 3) issuing a decision which shall be followed by the Subcontractor without interruption, deficiency or delay, and which shall result in the Subcontractor being entitled to an equitable adjustment in the Subcontract Price as his sole remedy. The Subcontractor shall only be entitled to the actual direct costs of all labor, material and subcontractors expended by the Subcontractor, plus profit and overhead not to exceed twelve percent (12%) of the foregoing, plus the cost of equipment (including profit and overhead), which will be limited to seventy-five percent (75%) of the applicable rates shown in the "Rental Rates & Specifications" compiled by the Associated Equipment Distributors current at the time the equipment was used. In any event, notification of any such claim must be asserted in writing to the Contractor within ten (10) days of the Subcontractor's knowledge of the claim, or the same shall be deemed to have been waived. In the case of arbitration, the arbitration shall be held in Charlotte, North Carolina, unless another location is mutually agreed upon.

(C) The Subcontractor shall cooperate with the Contractor and provide any documentation required in accordance with the Prime Contract to pursue claims under the Prime Contract. Failure to do so will result in the Contractor's right to seek recovery from the Subcontractor.

(D) No claim, dispute or other matter in controversy shall interfere with the progress of the Subcontract Work, and the Subcontractor shall proceed with the Subcontract Work despite the existence of, and without awaiting the resolution of, any such dispute.

(E) In any instance whereby the Contractor is entitled, under the terms of this Subcontract, to be indemnified by or recover any monies from the Subcontractor, the Contractor shall be entitled, in addition, to recover from the Subcontractor:

- 1) interest on any sums due from the Subcontractor at the rate of LIBOR (*London Inter-Bank Offered Rate*) + 2 ½ % until paid;
- 2) reasonable attorneys' fees incurred by the Contractor for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys; and
- 3) all court costs, fees paid to experts, arbitration fees and like expenses.

(F) In the event the Contractor is obligated to arbitrate a dispute with the Principal and/or Owner or any other third party and the subject matter of such arbitration, in the Contractor's sole opinion, arises out of or is associated with this Subcontract or the work performed hereunder, the Subcontractor agrees to join in such arbitration proceedings as directed by the Contractor, and the Subcontractor consents to the jurisdiction of such arbitration provision and agrees to be finally bound by any decision which may be rendered in accordance with such arbitration proceedings.

(G) Any litigation or arbitration between the Contractor and Subcontractor not involving the Principal and/or Owner shall be brought in Charlotte, Mecklenburg County, North Carolina.

(H) The parties agree that pursuant to any arbitration, the arbitrator(s) may award attorneys' fees and costs to the prevailing party.

X. Warranties and Performance Guaranties. The Subcontractor warrants the Subcontract Work hereunder to the Contractor on the same terms, and for the same period, as the Contractor warrants the work to the Principal and/or Owner under the Contract Documents; and, with respect to the Subcontract Work, the Subcontractor shall provide all warranty and performance obligations and responsibilities assumed by the Contractor under the Contract Documents.

XI. Payment for Labor and Supplies. The Subcontractor shall promptly make payments to all persons supplying the Subcontractor with labor, materials, equipment and/or supplies used or to be used in the prosecution of the Subcontract Work or in connection therewith. Any payments not so made by the Subcontractor when earned or due may be made by the Contractor and the amounts thereof deducted from any monies at any time earned or due the Subcontractor under this Subcontract or any other contract between the Contractor and the Subcontractor. The Subcontractor will receive all payments made by the Contractor and will hold such payments in trust to be applied first to the payment of any persons furnishing labor, materials or services for the Subcontract Work.

XII. Liens. In the event that liens or claims against any party hereto and/or the Contractor's surety are filed by anyone in relation to the labor and/or material being furnished to or by the Subcontractor for the Subcontract Work hereunder, the Subcontractor agrees to:

- (A) have the same discharged, by posting a bond with the appropriate authorities, or otherwise,
- (B) within five (5) days of notice from the Contractor, hold the Contractor, the Contractor's surety, and the Principal and/or Owner harmless from any loss, cost and/or expense, including without limitation, attorney fees, incurred by either or both of them resulting from such lien. In the event such

lien is not so discharged, the Contractor shall have the right to terminate this Subcontract for default. The Subcontrac

between the Contractor and the Subcontractor. Partial payments shall be paid within thirty (30) days after receipt of payment to the Contractor from the Principal and/or Owner subject to other requirements of this Subcontract.

- (B) The Contractor shall have the right to withhold, adjust or reduce any partial payment(s), whether based on unit prices or on payments to the Contractor by the Principal and/or Owner, in order to ensure that the remaining payments (including retainage) due the Subcontractor under this Subcontract will be sufficient to pay any and all costs required to complete the Subcontract Work.
- (C) UPON THE COMPLETION OF THE PRIME CONTRACT and payment therefore in full to the Contractor by the Principal and/or Owner, the Subcontractor shall be paid within thirty (30) days thereafter the remaining amount due it under this Subcontract, except that any remaining amount due the Subcontractor may have set-off or applied against it any sums due the Contractor by the Subcontractor under this Subcontract or any other agreement between the Contractor and the Subcontractor or by reason of the breach of either.
- (D) All prior partial payments shall be subject to correction in the final payment; provided, that if, on completion of the Subcontract Work by the Subcontractor and prior to the completion of the Prime Contract as a whole, the Subcontractor shall receive full payment for the Subcontract Work according to the computations of the Principal and/or Owner or Architect/Engineer, any changes thereafter made in said computations shall be binding upon the Subcontractor. Final payment to the Subcontractor as herein provided shall release the Contractor from any further obligation whatsoever in respect to this Subcontract. It is an express Condition Precedent for receipt of final payment that the following have been satisfied:
- (1) The completion and acceptance of the work by the Contractor, the Owner, Principal and/or Architect;
 - (2) Upon request, the Subcontractor has provided evidence satisfactory to the Contractor that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or items performed, furnished, or incurred in connection with the work;
 - (3) Receipt of all documents, drawings, manuals, warranties or other items required under the Contract Documents.
- (E) The Subcontractor shall, upon request by the Contractor, as a Condition Precedent to his entitlement to receive any progress or final payment, execute and deliver to the Contractor a full and valid release and complete discharge of the Contractor, Architect/Engineer and Principal and/or Owner of and from any and all claims and demands whatsoever for all matters growing out of, or in any manner connected with or founded upon, this Subcontract or the Subcontract Work contemplated hereby, and the Subcontractor shall furnish to the Contractor satisfactory assurances, including sworn affidavits if requested, that all bills for labor, services and materials incurred by him have been paid.
- (F) The estimates and calculations made by the Principal and/or Owner and the Architect/Engineer as to the amount of Subcontract Work performed hereunder by the Subcontractor shall be final and binding as between the parties hereto, and shall conclusively establish the amount of work done by the Subcontractor hereunder. It is understood and agreed that the Subcontractor shall receive no compensation for any work done by him which is not approved and accepted by the Principal and/or Owner and the Architect/Engineer; provided, that if the Subcontractor, by written direction of the Contractor, performs any work or furnishes any services, supplies or materials not provided for in the Contract Documents, he shall be paid therefore as provided herein.
- (G) PAYMENTS BASED ON UNIT PRICES. If the Subcontract Price is based on unit prices for work, payment to the Subcontractor will be based on the unit prices shown in this Subcontract. All unit prices will include all direct costs, indirect costs, home office overhead, profit and any other costs required to complete the Subcontract Work. If quantities are given, they are subject to change and Subcontractor will be paid as follows: a) If payment by the Principal and/or Owner to the Contractor for work in this Subcontract is based on quantities of work performed, then the Subcontractor will be paid for the same quantity(s) which the Principal and/or Owner pays the Contractor, less any amounts performed by the Contractor or others, or b) if the Contractor is not paid based on quantities of work performed, then the Subcontractor will be paid for actual quantities performed by the Subcontractor and necessary in performance of the Subcontract Work.

The Contractor does not guarantee or warrant the accuracy of anticipated quantities. No adjustment will be made in unit prices for underrun or overrun in quantities unless payment to the Contractor by the Principal and/or Owner is adjusted. In such case, adjustments will be limited to the amount of adjustment given to the Contractor by the Principal and/or Owner. If the price in this Subcontract is a Lump Sum Price and the Subcontractor receives progress payments based on Unit Prices for work done, the Contractor does not warrant the quantities used for calculating progress payments, and the total payment shall not exceed the Lump Sum total price regardless of actual quantities of work performed.

- (H) In consideration of the promises, covenants and agreements of the Subcontractor herein contained, and the full, faithful and prompt performance of this Subcontract and the plans and specifications constituting a part hereof, the Contractor agrees to pay to the Subcontractor and the Subcontractor agrees to receive and accept as full compensation for doing all Subcontract Work and furnishing all materials, supplies, etc. contemplated and embraced in this Subcontract also for all loss or damage arising out of the nature of the Subcontract Work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Subcontract Work until its acceptance by the Contractor, the Principal and/or Owner and the Architect/Engineer; and for all risks of every description connected with the Subcontract Work; also for all expenses incurred by or in consequence of any suspension, other than for the Contractor's convenience or discontinuance of the Subcontract Work, and for well and faithfully completing the Subcontract Work and the whole thereof, in the same manner and according to the terms of this Subcontract and the requirements of the Contractor and the instructions of the Architect/Engineer in charge of the Subcontract Work payment at the Price(s) herein set forth.

XXIII. Applicable Law . This Subcontract shall be interpreted in accordance with the laws of North Carolina, and any dispute hereunder or in connection herewith between the parties hereto shall be instituted, prosecuted, or arbitrated (at the Contractor's option, as provided in Section IX of this