

Terms and Conditions

1. The term "Contract Documents" as used herein includes the Subcontract Agreement between Contractor and Subcontractor, these Terms and Conditions, the contract between the Owner and Contractor, and all plans, drawings, specifications, general and supplementary conditions, addenda, amendments, modifications, schedules, and all other documents incorporated into any of the foregoing. Subcontractor agrees that all terms and conditions of the Contract Documents are incorporated herein, and Subcontractor agrees to be bound to Contractor by all such terms and conditions to the extent applicable to Subcontractor's Work as defined herein. In the event of any conflict between Contract Documents, the more strict provision in favor of the Contractor or Owner will govern.

2. Subcontractor, as an independent contractor, will furnish all supervision, labor, tools, equipment, services, materials, and supplies necessary to properly perform the scope of work specified in the attached Scope of Work (the "Work") in accordance with the Subcontract and Contract Documents. The Subcontract Price includes all material, labor, applicable, sales tax, supervision, insurance, deliverables, overhead, and profit necessary to fully complete the Work. With respect to its Work, Subcontractor owes to Contractor the duties to timely and fully: (a) furnish all equipment, labor, materials, equipment, supervision, temporary facilities, required safety measures, employee parking, hoisting and scaffolding required for the proper and complete performance of the Work, with no unapproved deviations or substitutions; (b) comply with all applicable laws, codes and ordinances, including but not limited to OSHA and/or applicable state safety laws, (c) comply with all rules of Contractor and Owner regarding the Project site; (d) perform all Work in accordance with schedules given from time-to-time to Subcontractor by Contractor so as to maintain the schedule for Contractor, other subcontractors, and Owner; (e) timely pay all laborers, suppliers, and subcontractors and maintain a lien-free Project, providing any requested evidence that all such payments have been made; (f) submit waivers of lien and claims from Subcontractor and its suppliers and subcontractors, on forms approved by Contractor, with each payment application; (g) provide quality control and correct any Work identified as defective; (h) provide all requested written assurances of complete and timely performance; (i) comply with the Contractor's written directives; (j) submit proper notices, change order proposals, shop drawings, as built drawings, submittals, parts lists, attic stock, and other documents or things required by the Contract Documents; (k) requisition for payment monthly on Contractor's established schedule using approved forms and complying with all payment requirements of the Contract Documents; (l) correct defects in the Work which appear within the guaranty or warranty required by the Contract Documents, (n) clean up daily from its operations as required by Owner or Contractor; (o) provide all required punch lists and perform all punch list work; (p) prevent damage to or trespass on adjoining lands or facilities; (q) inspect all work of other trades to insure that it has been performed properly to accommodate Subcontractor's Work, and advise Contractor in writing of any deficiencies; (r) avoid any infringement of patents or copyrights; (s) provide daily reports if requested by Contractor and participate in construction coordination meetings as Contractor requests; (t) remove any employee for reasonable cause upon written request of the Contractor; (u) protect its Work and stored materials from damage or destruction until final payment, and prevent damage to the work or materials of other trades; (v) be responsible for the acts or omissions of its laborers, subcontractors, and suppliers at all tiers, and insure that the obligations of the Contract Documents are incorporated into all agreements involving such subcontractors or suppliers; (w) bring to the site no hazardous materials; (x) unless excused elsewhere in this Subcontract, provide payment and performance bonds (each in the amount of this Subcontract) on Contractor's forms, from sureties acceptable to Contractor; (y) comply at all times with this Subcontract and other Contract Documents, assuming toward Contractor all obligations that Contractor has assumed towards Owner in the Contractor Documents, and being bound to Contractor in the same manner as Contractor is bound to Owner or any upstream contractor under the Contract Documents. **Time is of the Essence for this Agreement.**

3. Subcontractor's failure to comply with any duty imposed upon it by this Subcontract, the Contract Documents, or applicable law shall constitute a material default. Subcontractor will be liable for any damages incurred by Contractor, including those payable to Owner or Owner's contractors, to the extent caused by Subcontractor's default. Contractor may use all reasonable means of mitigating damages due to a default, without liability to Subcontractor. Both parties waive all claims for their own, special, indirect or consequential damages, provided, however, this waiver does not preclude Subcontractor's liability for liquidated damages or consequential damages recoverable by Owner, Owner's contractors, or payable to third parties.

4. Contractor will pay Subcontractor amounts approved by Contractor and Owner for payment in its requisition within 45 days of receipt of the requisition, or earlier if required by the Contract Documents; however, to the fullest extent permitted by law, payment from Owner to Contractor of amounts due on account of Subcontractor's Work is a condition precedent to Contractor's obligation to pay Subcontractor. Contractor may withhold payment from Subcontractor to the extent that Owner withholds payment from Contractor for sums requested on account of Subcontractor's Work, and/or to the extent Contractor reasonably determines that it has incurred or may incur damages for which Subcontractor is liable. Retainage will be withheld and paid in accordance with the requirements in the Contract Documents.

THIS AGREEMENT IS SUBJECT TO ARBITRATION

5. Subcontractor shall provide all required certificates of insurance prior to commencement of any work on the project. Receipt of all required certificates of insurance by Contractor shall be a condition precedent to Contractor's obligation to pay Subcontractor. The failure of Subcontractor to provide any required certificate of insurance shall constitute a material breach of the Subcontract. At a minimum, Subcontractor shall meet the insurance requirements as outlined below in addition to the requirements established in other Contract Documents.

- Commercial General Liability policy ("CGL") with limits of insurance not less than \$1,000,000 each occurrence and \$2,000,000 aggregate.
 - If the CGL coverage contains a General Aggregate Limit, such General Aggregate Limit should apply separately to each project.
 - CGL Coverage should be written on ISO occurrence form CG 00 01 10/01 or an equivalent, providing coverage for liability arising from premises, operations, blanket contractual of a type that provide coverage for the indemnification clause in this Agreement, independent contractor, products-complete operation, and personal and advertising injury. Insurance company shall be A- or better by A.M. Best.
 - The Contractor, Owner and all other parties required of the Contractor, are to be named as additional insureds on the Subcontractor's CGL policy using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 10 (10 93) AND CG 20 37 (10 01) or CG 20 33 (10 01), AND CG 20 37 (10 01), or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - Subcontractor is required to maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 5 years after completion of the work or the length of the state's statute of repose, whichever is greater.
 - Contractor shall be provided written notice 30 days in advance of any cancellation of Subcontractor's insurance coverages.
 - Other coverages – General Liability and Umbrella policies are to have no exclusion for residential work. In addition, if required by the Subcontractor's work, Hazardous Materials, Professional Liability, Rigger's Liability, and Aircraft Liability, or other unique coverages are to be provided.
- Business Automobile Liability coverage with limits of \$1,000,000 each accident. Coverage to include liability arising out of all owned, leased, hired, and non-owned automobiles. General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the auto policy.
- Commercial Umbrella Coverage with limits of at least \$2,000,000. Coverage to include all entities that are additional insureds on the CGL.
- Workers' Compensation and Employers' Liability coverage with limits of at least \$500,000 for each accident, \$500,000 for bodily injury by accident, and \$500,000 each employee for injury by disease. Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement and/or the Maritime Coverage Endorsement to be attached to the policy.
- To the fullest extent permitted by law, the Subcontractor and its insurers shall waive subrogation on the CGL, Business Automobile, Workers' Compensation, and Umbrella Liability policies.
- Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies required by this Article shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor.
- A copy of the additional insured endorsement is to be provided by Subcontractor.

6. If required by the terms of the Subcontract, Subcontractor shall provide payment and performance bonds prior to commencement of any Work on the Project. Receipt by Contractor of any required bonds shall be a condition precedent of any obligation of Contractor to pay Subcontractor. The failure of the Subcontractor to timely provide any required bonds shall constitute a material breach of the Subcontract.

7. To the extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Contractor, Owner, and others as required by the Contract Documents from and against claims, liens, suits, damages, liabilities, and expenses, including arbitration or court costs and attorney's fees, to the extent that they arise from negligent or intentionally wrongful acts or omissions of, or breach of or default under the Contract Documents by, Subcontractor or any of its employees, agents, representatives, subcontractors, suppliers, or anyone for whose acts Subcontractor may be liable. This obligation to indemnify and defend does not limit the duty of any insurance carrier for Subcontractor to defend or indemnify Contractor under any insurance policy. This obligation survives the termination of this Subcontract.

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8. Contractor may order additions, deletions, or other revisions to the Work and Subcontractor agrees to proceed with such Work when so directed by Contractor. If the directive involves the conduct of the Owner or an interpretation or requirement of the Contract Documents, then Subcontractor will be entitled to an adjustment to its price only to the extent that Contractor receives an adjustment from Owner. If Subcontractor is delayed in performing its Work due to causes beyond its control, Subcontractor will be entitled to an extension of time and/or additional compensation only to the extent that Contractor receives a time extension or additional compensation for Subcontractor from Owner; except where the delay is caused solely by Contractor's sole negligence in scheduling or coordinating the Work. In that case, Subcontractor will be entitled to an equitable adjustment to schedule and/or price for its reasonable and documented increased costs. As a condition precedent to any claim for compensation, Subcontractor will provide written notice to Contractor in sufficient time for contractor to make a claim to the Owner under the Contract Documents, but in any event: (a) before performing any Work it considers to be a change; and/or (b) within three (3) days after commencement of any delay which it considers compensable.

9. This Subcontract will be governed by the laws of the state of North Carolina, regardless of any choice of law rules to the contrary. Any claim or dispute between Subcontractor and Contractor arising out of or in connection with this Subcontract, the Project, or the Work shall, at the sole option of Contractor, be determined solely and exclusively by binding arbitration in accordance with the North Carolina or Federal Arbitration Acts. No claim or dispute shall interfere with the progress of the work, and Subcontractor shall proceed with the work pending resolution of any claim or dispute. In the event of any arbitration proceeding, mediation, or litigation, the prevailing party shall be entitled to an award of all costs incurred, including but not limited to, attorneys' fees, compensation of mediator(s) or arbitrator(s), witness fees, copying costs, and the like in the resolution of any claim or dispute. Subcontractor agrees to be joined in any arbitration proceeding involving claims or disputes relating to Subcontractor's Work. The exclusive locale of any arbitration proceeding shall be in Winston-Salem, North Carolina. In the event the Contractor does not elect binding arbitration for dispute resolution, the sole and exclusive venue for all litigation shall be the State and Federal Court embracing Forsyth County, North Carolina.

10. Contractor may terminate this Subcontract for Contractor's convenience at any time and without cause by written notice to Subcontractor. In case of termination for Contractor's convenience, Subcontractor will be paid for Work executed through the date of termination. No recovery will be allowed for any Work which has not yet been performed by the date of termination. If Subcontractor has not corrected, or where correction is not possible has not commenced and continued to pursue correction of, any default within three (3) business days after written notice (by any reasonable means) from Contractor, then Contractor may terminate this Subcontractor for default. Termination for default will not relieve Subcontractor of any liability for damages caused by any default including, but not limited to, costs of completion in excess of costs that would have been incurred if Subcontractor completed the Work pursuant to its Subcontract. If a court or arbitrator determine that Contractor erred in terminating Subcontractor for default, Subcontract is limited to the damages it would have recovered had it been terminated for convenience.

11. The person executing this Subcontract on behalf of Subcontractor has actual authority to execute it. Subcontractor warrants that anyone who executes the Subcontract, any change order, waiver, or release has authority to do so. This Subcontract contains the complete agreement of the parties and no part of this Subcontract may be assigned by Subcontractor without Contractor's written consent. The terms of this Subcontract may not be modified or amended except by a writing signed by the Parties.

12. Subcontractor shall provide all material, labor and product warranties for a minimum of twelve (12) months from final completion of the entire Project.

13. Subcontractor shall have an authorized, English speaking representative at each weekly and monthly progress or schedule meeting. Subcontractor shall be subject to a back-charge of \$100 per meeting for failing to have said authorized representative in attendance.

14. In the event Subcontractor fails to timely fulfill any obligations of this Subcontract, Contractor shall be allowed to immediately take any action required to fulfill the obligations of Subcontractor. Subcontractor shall be responsible for all reasonable costs incurred. In that regard, Contractor shall be entitled to withhold payment of monies due Subcontractor pending corrective action or completion to the satisfaction of Contractor and/or set off Contractor's losses, costs and expenses attributable to Subcontractor's refusal or failure against any monies due Subcontractor under the Subcontract or under any other contract between Contractor and Subcontractor.

15. Retainage shall be released to Subcontractor after final completion of the Project and receipt by Contractor of payment of all monies due Contractor from Owner. Receipt by Contractor of all warranties and a final release of all lien rights, claim rights and any and all other claims from Subcontractor and all sub-subcontractors and suppliers of Subcontractor shall be a condition precedent to payment of retainage to Subcontractor.

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16. If any Subcontractor, laborer, or material supplier of the Subcontractor or any other person directly or indirectly acting for or through it files a mechanic's lien or claim against the Project, the Property, or any part thereof or any improvements thereon or against any monies due or to become due from the Owner to the Contractor or from the Contractor to the Subcontractor, for or on account of any work, labor, services, materials, equipment, or other items furnished in connection with the Work or any change order in connection with the Project, the Subcontractor agrees to satisfy, remove, or discharge such liens or claims at its own expense by bond, payment, or otherwise within ten (10) calendar days of the date of the filing thereof. If the Subcontractor shall fail to do so, the Contractor shall have the right, in addition to all other rights and remedies provided by the Contract Documents or by law, to satisfy, remove, or discharge such liens or claims by whatever means the Contractor chooses at the entire expense of the Subcontractor, including Contractor's reasonable attorneys' fees in doing so.

17. Final Payment shall be made after satisfactory completion of Work included in this Subcontract. Final payment shall be withheld until Subcontractor furnishes satisfactory proof of payment of all bills for labor, materials, taxes, services or other expenses and claims in connection with this Subcontract, as well as a fully executed final lien waiver and release of all claims form from Subcontractor and all sub-subcontractors or suppliers of Subcontractor and all required close-out documentation, but in no event shall such final payment become due until seven (7) days after Performance Fire Protection, LLC receives final payment from the Owner for such work.

18. Subcontractor shall abide by all applicable federal, state, and local laws governing Subcontractor's relationship with its employees, including, but not limited to laws regarding (1) employment eligibility verification of Subcontractor's employees, (2) nondiscrimination, (3) tax withholding and wage payment (including but not limited to minimum wage and overtime payment), (4) occupational safety and health, (5) youth employment, (6) unemployment compensation, (7) workers' compensation; (8) state and local building and fire codes, and (9) industry standards, including NFPA, as applicable. The failure of Subcontractor to abide by such laws shall constitute a material breach of the Subcontract. Subcontractor shall defend, indemnify and hold harmless Contractor and Owner, and their agents and employees, from and against any claim, cost, expense, damages, loss, or liability (including attorney's fees) arising out of or resulting from Subcontractor's failure to abide by such laws.

19. The invalidity of any one or more provisions of this Subcontract shall not affect the validity of any other provision. The failure of Contractor to insist upon any of the terms or provisions of the Subcontract shall not be construed as a waiver of such terms or provisions.

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