



# DESIGN BUILD TERMS AND CONDITIONS

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### 1. DEFINITIONS.

- 1.1 The following terms shall have the meanings defined below, and in the event of a conflict between these definitions and the definitions in the *Standard Terms and Conditions* of the *Subcontract Master Agreement*, these definitions shall control.
- 1.2 *Project Criteria.* The "Project Criteria" may be identified in the Contract Documents and may describe the character, scope, relationships, forms, size and appearance of the Work, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.
- 1.3 *Work.* "Work" means the design, construction and services required by the Project Criteria and/or Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Subcontractor to fulfill Subcontractor's obligations. The Work may constitute the whole or a part of the Project.
- 1.4 *The Project.* "Project" is the total design and construction of which the Work performed by Subcontractor may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

### 2. DESIGN SERVICES.

#### 2.1 Licensed Design Professionals.

Subcontractor shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Subcontractor, or procured from qualified, independent licensed design consultants, the necessary design services, for the preparation of the required drawings, specifications and other design submittals to permit Subcontractor to perform and complete the Work in conformity with the Project Criteria and/or Contract Documents.

#### 2.2 Study Existing Conditions.

Subcontractor shall carefully study and compare the Project Criteria and/or Contract Documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to Contractor any errors, inconsistencies or omissions.

#### 2.3 Design Documents.

Subcontractor shall prepare and provide to Contractor for Contractor's written approval design documents sufficient to establish the size, quality and character of the Work, its architectural, structural, mechanical and electrical systems, if any, and the materials and such other elements of the Work to the extent required by the Project Criteria and/or Contract Documents. Deviations, if any, from the Work shall be disclosed in writing.

#### 2.4 Construction Documents.

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Upon Contractor and the Owner's written approval of the design documents submitted by Subcontractor, Subcontractor shall provide construction documents for review and written approval by Contractor and the Owner. The construction documents shall set forth in detail the requirements for construction of the Work. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Project Criteria and/or Contract Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall: (a) be consistent with the approved design documents; (b) provide information for the use of those in the building trades; and (c) include documents customarily required for regulatory agency approvals.

### 2.5 Meetings with Contractor.

Subcontractor shall meet with Contractor periodically to review the progress of the design and construction documents.

### 2.6 Governmental Approvals.

Upon Contractor's written approval of the construction documents, Subcontractor shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Work.

### 2.7 Certifications.

Subcontractor shall obtain from each of the Subcontractor's professionals and furnish to Contractor and the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria and Contract Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Work, and (b) that Contractor and the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

### 2.8 Standard of Care for Design.

The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the foregoing, if the parties agree upon specific performance standards for any aspect of the Work, the design professional services shall be performed to meet such standards.

## 3. CONSTRUCTION.

### 3.1 No Work Until Approved.

Subcontractor shall perform no construction Work prior to Contractor and the Owner's review and approval of the construction documents. Subcontractor shall perform no portion of the Work for which the Contract Documents require Contractor or the Owner's review of submittals, such as shop drawings, product data and samples, until Contractor or the Owner has approved each submittal.

### 3.2 Deviations or Errors.

The construction Work shall be in accordance with approved submittals, except that Subcontractor shall not be relieved of responsibility for deviations from requirements of the Project Criteria and/or Contract Documents by the Owner's approval of design and construction documents or other submittals such as shop drawings, product data, samples or other submittals unless Subcontractor has specifically informed Contractor in writing of such deviation at the time of submittal and (a) the Owner has given written approval to the specific deviation as a minor change in the Work, or (b) a Change Order has been issued authorizing the deviation. Subcontractor shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as shop drawings, product data, samples or other submittals by Contractor or the Owner's approval thereof.

### 3.3 Notice of Revisions.

Subcontractor shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as shop drawings, product data, samples or similar submittals, to revisions on previous submittals. In the absence of such written notice, Contractor or the Owner's approval of a resubmission shall not apply to such revisions.

### 3.4 Certifications.

When the Contract Documents require Subcontractor to provide professional design services or certifications related to systems, materials or equipment, or when Subcontractor in its discretion provides such design services or certifications through a separate party, the Subcontractor shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. Contractor and the Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

### 3.5 Construction Means.

Subcontractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

### 3.6 Keep Contractor Informed.

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Subcontractor shall keep Contractor informed in writing of the progress and quality of the Work.

### 3.7 Safety.

Subcontractor shall be responsible for the supervision and direction of the Work, using the Subcontractor's best skill and attention. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Subcontractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If Subcontractor determines that such means, methods, techniques, sequences or procedures may not be safe, Subcontractor shall give timely written notice to Contractor and shall not proceed with that portion of the Work without further written instructions from Contractor.

### 3.8 Inspection of Portions of Work.

The Subcontractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### 3.9 Subcontractor Financial Responsibility.

Unless otherwise provided in the Contract Documents, Subcontractor shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

### 3.10 Substitution.

When a material is specified in the Contract Documents, the Subcontractor may make substitutions only with the written consent of Contractor and the Owner and, if appropriate, in accordance with a Change Order.

### 3.11 Skilled Persons.

Subcontractor shall enforce strict discipline and good order among the Subcontractor's employees and other persons performing the Work. The Subcontractor shall not permit employment of any unfit person or persons not skilled in tasks assigned to them.

## 4. OWNERSHIP AND USE OF DOCUMENTS.

### 4.1 Ownership.

Subcontractor conveys, assigns and transfers to the Owner all common law, statutory or other rights, including copyrights, to the drawings, specifications and other documents prepared by Subcontractor in connection with the Work. Owner shall retain legal title to such documents whether or not the Work or Project is completed.

### 4.2 Copyrights.

Subcontractor warrants that the documents prepared by Subcontractor in connection with the Work do not infringe upon any copyrights, trade secrets or other property rights of any third party, and Subcontractor shall defend, indemnify and hold harmless Contractor and Owner from and against any such claim of infringement, and all costs, expenses, damages, or liabilities related thereto, including, without limitation, attorneys' fees.

## 5. INDEMNIFICATION.

### 5.1 Indemnification for Negligence.

To the fullest extent permitted by law, Subcontractor shall indemnify and hold Contractor and the Owner and their consultants, agents and employees harmless from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performance of the Work to the extent caused by the negligent acts or omissions of Subcontractor or its employees, agents, subcontractors, suppliers or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, regardless of whether such claim, damage, loss or expense is caused in part by Contractor or the Owner.

### 5.2 Effect of Insurance.

The indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## 6. CONTRACTUAL LIABILITY INSURANCE.

In addition to other insurance required by the Subcontract Master Agreement and DOA(s), Subcontractor shall purchase and maintain from a company lawfully authorized to do business in the jurisdiction where the Project is located contractual liability insurance for claims arising out of Subcontractor's indemnification obligations hereunder.

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**7. SIGNATURES.**

I \_\_\_\_\_, the \_\_\_\_\_ of  
*(Printed Name)* *(Title)*  
\_\_\_\_\_  
*(Full Company Name)* ("Subcontractor"),

hereby understand and agree that the Subcontractor will be bound by and agrees to these *Standard Terms and Conditions* for the Subcontract for Construction for all work undertaken under a *Delivery Order Authorization* between Contractor and Subcontractor. Subcontractor further agrees that these *Standard Terms and Conditions* shall be incorporated into each *Delivery Order Authorization* as if reprinted therein in their entirety.

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Federal Tax Identification Number)*

**For Contractor Use Only**

Forms Accepted by: \_\_\_\_\_