

General Terms and Conditions

1. ENTIRE AGREEMENT

Subcontractor, by signing this Subcontract, delivering the supplies, or performing the requirements indicated herein agrees to comply with all the terms and conditions and all specifications and other documents that this Subcontract incorporates by reference or attachment (if any). Contractor hereby objects to any terms and conditions contained in any acknowledgement of this Agreement that are different from or in addition to those mentioned in this document. Failure of Contractor to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor a waiver of the right of buyer to enforce each and every provision. All rights and obligations shall survive final performance of this Subcontract.

2. INVOICING AND PAYMENT

- a) **Itemized costs** - If expenses are allowed as provided in this Agreement, Subcontractor must also separately itemize these costs and provide copies of actual receipts in order to be reimbursable.
- b) **Payment** - Subcontractor shall be paid the prices set forth herein, less deductions, if any, after delivery and acceptance by the Contractor and upon the submission of proper invoices according to the terms expressly stated in this Subcontract. Failure to submit invoices in the format required by this clause will result in withholding of payment.
- c) **Invoice submittal** - Subcontractor shall submit invoices within 30 days. Payment for an acceptable invoice shall be mailed to the Subcontractor's address Net 30 days unless otherwise stated herein. Payment will be made on partial deliveries accepted by the Contractor, according to terms stated in this Subcontract. Payment may be withheld if Subcontractor fails to submit any submittals if required by this Subcontract. Invoices shall be sent by the Subcontractor to Electronic Billing. Please include your Company Name and Subcontract Number in the subject line and send via e-mail to: ap@specproenv.com. Any payments made for Articles delivered prior to final acceptance of the Articles shall not constitute final acceptance of the Articles. THE CONTRACTOR'S SUBCONTRACT NUMBER AS SHOWN ON THE FACE OF THIS SUBCONTRACT MUST APPEAR ON ALL INVOICES. Delays in receiving invoices as well as errors and omissions thereon will be considered just cause for withholding payment without losing discount privileges.

As a prerequisite for final payment, Subcontractor shall submit a "Lien Waiver and Release Upon Final Payment" attached hereto for the amount previously received by the Subcontractor and its lower tier subcontractors, vendors or suppliers, if any, utilized for the Work and must be signed by a duly authorized company representative. Final payment shall not be made until the lien waivers have been properly executed by the Subcontractor and all of its lower tier subcontractors (if any). Subcontractor's failure to obtain the Lien Waiver and Release from all lower tier subcontractors, vendors, and suppliers will constitute a waiver of any kind against Contractor and its sureties resulting from nonpayment to any lower tier subcontractor, vendor, or supplier not disclosed to Contractor. Release and lien waivers must be submitted using the forms attached hereto. No other forms will be accepted. Facsimile or other electronic transmittals of the forms are acceptable, however, the sender is responsible for ensuring receipt and only legible copies will be accepted. Lien Waiver and Release Forms must be submitted with the invoice for final payment.

3. CHANGES

The Contractor may at any time prior to final delivery under this Subcontract by notice make changes within the general scope hereof in any one or more of the following: (1) drawings, designs or specifications where the Articles to be furnished are to be specially manufactured for the Contractor in accordance therewith; (2) method of shipment or packing; (3) the place of delivery; (4) description of services to be performed, (5) time of performance of the services (e.g.), hours of day, day of the week and place of performance of the services, and (6) the delivery schedule.

If any such change causes an increase or decrease in the cost or time required for performance of this Subcontract, an equitable adjustment shall be made in the price or delivery schedule or both, and this Subcontract shall be modified accordingly. Any claim by the Subcontractor for adjustment under this clause must be asserted within seven (7) days from the date of notification of the change; provided, however, that the Contractor, if the Contractor decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment of the Subcontract. Failure to agree to an adjustment shall not excuse the Subcontractor from proceeding with the Subcontract as changed. If the Subcontract is placed under a Government prime contract, the cost principles set forth in Federal Acquisition Regulation (FAR), Part 31, or the Department of Defense (DOD) FAR Supplement (DFARS) Part 231 shall be applicable in the determination and negotiation of any equitable adjustment of price hereunder.

Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon the Subcontractor unless directed in writing by a member of the Contractor's Contracts & Purchasing Department.

4. INSPECTION

All Articles called for hereunder or portions thereof shall be subject to inspection and test by the Contractor and authorized Government representatives, if applicable, at any point during the manufacture thereof and in any event prior to acceptance. Final inspection and acceptance shall be after delivery in accordance with this Subcontract. The Contractor shall have the right to reject Articles found upon inspection not to conform to the Subcontract, to require their correction (either in place or at Subcontractor's plant, at the Contractor's option), or to accept nonconforming Articles at a reduction in price which is equitable under the circumstances. The Contractor shall not be required to inspect or test Articles hereunder. It shall be the Subcontractor's responsibility to adequately test and inspect the Articles to be tendered for acceptance to assure that such Articles are in strict conformance with all the requirements of this Subcontract. By such tender Subcontractor assures the Contractor that such Articles offered so comply. Except as otherwise provided in this Subcontract, final acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

5. WARRANTIES

- a) All standard manufacturer's and/or Subcontractor's standard warranties shall apply. Subcontractor warrants that the management personnel (if any) proposed to perform the work hereunder are qualified to perform their assigned tasks. Subcontractor warrants that it has obtained all required licenses, unless otherwise stated herein, necessary to perform the work under this Subcontract. Subcontractor shall notify Contractor in the event of any revocation, suspension, or otherwise discontinued required license. Failure to provide the required notice constitutes Subcontractor's breach and is basis for termination of this Subcontract.
- b) The above warranties shall be in addition to any other rights and warranties available to the Contractor.

6. TERMINATION

Contractor may terminate at any time for its convenience or terminate for Subcontractor's breach, all or any part of this Subcontract. If this Subcontract is terminated for Subcontractor's breach or if Subcontractor is in breach of this Subcontract when it is terminated for convenience, Subcontractor shall have no claim against Contractor for any costs incurred or any profit with respect to the terminated or cancelled portion of this Subcontract. If this Subcontract is otherwise terminated by

Contractor, Subcontractor shall be paid an equitable amount to cover the effort actually expended by Subcontractor plus a reasonable profit thereon; provided, however that no amount shall be paid for any anticipatory profits and the total amount shall not exceed the prices contained within this Subcontract for the Articles terminated. Where the prime contract has been awarded under the Small Business Administration 8(a) program, termination for convenience may be used to reduce Subcontractor's work in whole or in part in order for the Contractor to comply with the Small Business Administration 8(a) self-performance requirements established at FAR 52.219-14. Also, in addition to Contractor's right to cancel, all or a portion of this Subcontract may be cancelled upon the happening of Subcontractor, voluntarily or involuntarily, filing petition under the Bankruptcy Laws of the United States, the execution of an assignment for the benefit of creditors, or an application for the appointment of a receiver. The rights and remedies provided herein shall not be exclusive, but are cumulative and in addition to any other rights and remedies provided by law or covered under this Subcontract.

7. INDEMNIFICATION

Each party shall hold the other, the Owner, together with their agents, servants, employees, representatives, officers, directors, sureties and attorneys, harmless from and against and shall indemnify the other for all claims, bodily injury, death or damage to real or tangible property, taxes, liability, loss, costs, expenses, or damages to the extent of its negligent acts or omissions in performing under this Subcontract. Subcontractor warrants that it carries adequate insurance to cover its indemnification obligations hereunder, as specified in the Insurance provisions set forth in this Subcontract.

To the extent of its negligence and/or gross or willful misconduct, the indemnifying party shall reimburse the other for said action at its own expense and shall pay and discharge any judgment that may be rendered in any such action. In the event of any indemnified claim against Contractor by any third person, Contractor reserves the right to choose legal counsel and direct the defense of such claim at Subcontractor's sole cost and expense. Such undertaking of defense shall not be deemed an admission of liability, an agreement to assume liability, or a waiver of any right or remedy which the Contractor may have. This right may only be exercised if the Subcontractor is notified of the claim, the claim is the result of Subcontractor's performance of the work under this Subcontract, and the Subcontractor either fails or neglects to defend the claim.

Subcontractor's indemnity obligations shall remain in full force and effect regardless of whether the claim relates to a claim under Subcontractor's Worker's Compensation Policy.

Each party shall protect, indemnify, and hold harmless the other party hereto from and against any and all damages and expenses arising out of a claim of actual or alleged infringement of patent, copyright, trademark or trade name asserted in connection with the use of equipment, tools, or methods of operation furnished pursuant to this Subcontract.

In no event, regardless of the legal theory under which such damages are sought, shall either party be liable to the other for incidental, indirect, or consequential damages, including but not limited to, loss of profits, or revenue, loss of use of equipment or facilities, costs of capital, cost of substitute or underutilization of equipment, facilities or labor, downtime costs, or claims of customers resulting from the performance or nonperformance of obligations of this Subcontract, even if it has been advised of the possibility of such damages.

8. CONFIDENTIALITY

Subcontractor shall keep confidential all information, drawings, specifications, or data, and return to the Contractor upon request all documents furnished by the Contractor and marked proprietary, and shall not divulge or use such information, drawings, specification, or data for the benefit of any other party except as required for the efficient performance of this Subcontract. This Subcontract, its entire contents, including but not limited to the scope of work and the nature of the business relationship between the parties, are private, trade secret, confidential, and proprietary and the existence of which shall not be disclosed without prior written approval by both parties.

9. ASSIGNMENT

Subcontractor may not assign this Subcontract nor any interest herein, in whole or in part, without the prior written consent of Contractor. However, Subcontractor may assign rights to be paid amounts due to a financing institution if buyer is promptly furnished a written notice and a signed copy of such assignment. Subcontractor shall perform all services hereunder with its own personnel and shall not enter into a subcontract for any portion of the work without the prior written consent of the buyer. If assigned, all covenants, stipulations and promises of this Subcontract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

10. COMPLIANCE WITH LAWS

Subcontractor represents that it has and will continue during the performance of this Subcontract to comply with the provisions of all applicable federal, state and local laws and regulations. Subcontractor agrees to furnish the Contractor upon request, satisfactory evidence of compliance.

11. DISPUTES

Subcontractor will provide Contractor with a timely and detailed written notice of all claims and disputes. All disputes relating to questions of law or fact related to the Prime Contract will be governed by the Prime Contract disputes clause. If a decision relating to the Prime Contract is rendered by the Client and the decision relates to this Subcontract, said decision, if binding upon the Contractor, shall also be binding upon the Subcontractor. If Contractor appeals the Client's decision, any decision on appeal if binding upon the Contractor shall be binding upon the Subcontractor as it relates to the Subcontract. If any dispute or claim of Subcontractor is prosecuted or defended by Contractor, and Subcontractor is not directly a party, Subcontractor agrees to cooperate fully with Contractor and shall assist Contractor as necessary to diligently pursue all claims. Subcontractor shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute. Subcontractor consents to joiner in any proceedings between Contractor and Client upon the request of Contractor. Pending the final disposition of any disputes, Subcontractor shall proceed as required by the Subcontract documents and as directed by Contractor during any pending claims and/or appeals. Subcontractor agrees that it will not take, or will suspend, any other action or actions (including but not limited to any arbitration(s) or action(s) commenced pursuant to the Federal Miller Act, state Miller Act, state lien statutes, Bond or Retainage Act(s)) with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination of any dispute resolution procedure between Customer and Contractor. For all other matters, the Contractor and Subcontractor agree to attempt to resolve any dispute by direct negotiations and in good faith. If these negotiations prove unsuccessful, the following rules shall apply: The Parties agree that this Subcontract, shall be governed and construed in accordance with the substantive and procedural laws of the State of Tennessee, except for FAR and FAR supplement clauses, if applicable, which shall be determined in accordance with Federal law. Unless otherwise prohibited, any dispute, controversy, claim or difference arising out of or relating to, or resulting from this Subcontract, its application or interpretation, or a breach thereof, which cannot be settled amicably by the Parties, shall be resolved exclusively by arbitration under the Rules of Procedure of the American Arbitration Association (the "Rules") then prevailing, which arbitration shall be held in Knoxville, Tennessee, United States of America. Arbitration shall be by a

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single arbitrator in accordance with the Rules. The decision of the arbitrator shall be final and binding on the parties, and judgment upon any award rendered may be entered in any court having jurisdiction thereof. If arbitration is prohibited the dispute will be resolved in the applicable court in the state of Tennessee. Any time which elapses in attempting to resolve the Dispute through either or both negotiation or arbitration shall extend day-for-day any applicable statute(s) of repose or limitation of actions. The Parties agree that this Arbitration obligation shall survive the termination of this Subcontract, whether by default or convenience. Notwithstanding anything to the contrary, (a) Contractor reserves the right to pursue and obtain injunctive or equitable relief from a court of law; (b) if a lawsuit or arbitration is brought against Contractor in a court of law and such claims involve, directly or indirectly, Subcontractor's Work, Contractor reserves the right to join Subcontractor in such arbitration or lawsuit, and (c) if any claims by Subcontractor involve, directly or indirectly, the work or obligations of other persons, Contractor reserves the right to join such other persons to its arbitration or litigation with Subcontractor. The prevailing party shall be entitled to recover its reasonable costs and attorneys' fees from the non-prevailing party in connection with the dispute

12. TAXES

Subcontractor shall, unless otherwise stated in this Subcontract, pay all taxes, levies, duties, and assessments of every nature due in connection with the Work under this Subcontract and shall make any and all payroll deductions and withholdings required by law and hereby indemnifies and holds harmless Contractor and its Client from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

Unless otherwise provided herein, the price of the supplies/services includes all applicable federal, state and local taxes.

13. HEALTH, SAFETY, AND ENVIRONMENT (HSE)

The Subcontractor shall comply with HSE requirements of all applicable laws and regulations Government policies and the Health and safety Program specifically issued for the Work. The Subcontractor shall cooperate with Contractor, Federal and non-Federal agencies having jurisdiction over HSE matters under this Subcontract.

14. WAIVER

No waiver by the Contractor of any breach of this Subcontract shall be held to be a waiver of any other or subsequent breach. All rights and remedies available to the Contractor shall be taken and construed as cumulative, that is, in addition to any other rights and remedies provided herein or by law.

15. INSURANCE

(a) The Subcontractor shall procure and maintain insurance coverages as required by the Owner and/or Contractor at Subcontractor's sole expense and with insurance companies with a minimum A- rating by A.M. Best Company. Prior to moving on the site or starting the Subcontract Work, whichever is earlier, Subcontractor must submit a certificate of insurance naming Contractor as the certificate holder, reflecting its general liability, umbrella, workers' compensation, automobile, equipment, and professional coverages required on the Project. Subcontractor shall maintain such coverage throughout the period of performance of this Subcontract and all warranty periods applicable to the Work being performed by Subcontractor. In the event the Subcontractor fails to obtain insurance coverage required under this Subcontract, the Contractor may terminate this Subcontract for default.

(b) ADDITIONAL INSURED. Subcontractor shall, in addition to and without limitation of the requirements established herein, cause the insurance policies described herein to include Contractor, its parent, subsidiaries and affiliated companies or of any named working interest owners or joint ventures and all of their officers, directors and employees as additional insureds except for Workers' Compensation and Professional Liability coverages. The Subcontractor's insurance shall include contractual liability insurance covering the Subcontractor's obligations under this Subcontract and shall provide specific policy coverage to Subcontractor, Contractor and Owner for the generally insurable elements of the indemnity and hold harmless agreement contained in Article entitled Indemnification. All policies shall provide coverage on a primary basis.

(c) REQUIRED LIMITS OF LIABILITY. The general liability, umbrella, workers' compensation, automobile, equipment, and professional coverages, required, shall be written with limits of liability not less than provided below at (j).

(d) NUMBER OF POLICIES. Comprehensive or Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

(e) WAIVER OF RIGHTS. Subcontractor's insurance will be primary, and Contractor's and Owner's insurances will be secondary and non-contributing at all times. Subcontractor shall require all lower-tier subcontractors to maintain the required insurance for the duration of the Subcontract and to produce evidence of such insurance as may be reasonably requested by Contractor. Subcontractor agrees to waive any and all rights of subrogation which it or its insurers have or may have against Contractor or Owner and their agents, representatives, employees, officers, directors, sureties, and insurers for any loss, expense or damage to the extent covered by Subcontractor's insurance or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance; provided, however, that such waiver shall not extend to the acts or omissions of the Subcontractor's subcontractors, consultants, and the agents or employees of any of them.

(f) LOWER TIERS. Subcontractor shall be responsible for any liability arising directly or indirectly out of the work performed by each of its lower tier subcontractors that is not otherwise covered by such Subcontractor's insurance.

(g) NOTICE. Subcontractor must notify Contractor immediately in the event any insurance coverage required by this Subcontract has or will become ineffective for any reason. The notice shall provide the date(s) and identify the specific coverage(s) that has or will become ineffective and a certificate of replacement or continued insurance showing evidence of coverage as required by this Subcontract or a request for Contractor to obtain replacement insurance coverage at Subcontractor's expense or terminate this Subcontract for default. If Subcontractor's insurance coverage becomes ineffective and the Subcontractor has failed to provide the above-required notice, the Subcontractor shall indemnify Contractor against any claim resulting from Subcontractor's liability arising out of Subcontractor's operations, completed or otherwise, under this Subcontract that is not covered by Subcontractor's insurance. Subcontractor's failure to provide insurance as required by the Subcontract may result in withholding of payment.

(h) OPERATIONS LIABILITY. The Subcontractor shall maintain completed operations liability insurance for one year after acceptance of the Subcontract Work, substantial completion of the

project, or to the time required by the Subcontract Documents, whichever is longer. The Subcontractor shall furnish the Contractor evidence of such insurance at the time of completion of the Subcontract Work.

(i) ENDORSEMENT. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

(j) INSURANCE LIMITS: In accordance with the Article entitled Insurance of the Subcontract, Subcontractor shall provide and maintain coverage with limits of liability not less than the following:

1. Commercial General Liability Insurance including products-completed operations with a limit of \$1,000,000 Each Occurrence, \$1,000,000 General Aggregate

2. Automobile Liability Insurance with a combined single limit of \$1,000,000 Each Accident

3. Workers' Compensation and Employer's Liability Insurance with statutory limit for Workers' Compensation and Employer's Liability limits as follows:

3.1. Bodily Injury by Accident: \$1,000,000 each accident

3.2. Bodily Injury by Disease: \$1,000,000 each employee

3.3. Bodily Injury by Disease: \$1,000,000 policy limit

3.4. For monopolistic states (WA, WY, OH, ND) Workers' Compensation, and when applicable, Employer's Liability, must meet the referenced limits and be provided by the applicable state administered program.

4. If checked, PROFESSIONAL LIABILITY INSURANCE is required for this Subcontract. When required, Subcontractor and all lower-tier subcontractors shall obtain professional liability insurance for claims arising from the negligent performance of professional services under this Subcontract, written for not less than \$1,000,000 per claim and in the aggregate. Professional Liability Insurance shall contain coverage sufficient to cover all services performed by the Subcontractor. These requirements shall be continued in effect for three (3) year(s) after the Date of Substantial Completion.

5. If checked, CONTRACTOR'S POLLUTION LIABILITY INSURANCE is required for this Subcontract. When required, Subcontractor and all lower-tier subcontractors shall obtain pollution liability insurance for claims arising from the negligent performance of services involving demolition of pre-existing structures, excavation, moving or removal of any hazardous or contaminated materials, or handling of any hazardous or contaminated materials (to include asbestos and lead), written for not less than \$1,000,000 per claim and in the aggregate.

These requirements shall be continued in effect for three (3) years after the Date of Substantial Completion. All deductibles shall be paid by Subcontractor.

16. SEVERABILITY AND INTERPRETATION

If one or more of the provisions contained herein shall be held for any reason to be invalid, illegal, or unenforceable in any respect, such provision shall not affect any other provision herein, and this Subcontract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

17. SURVIVABILITY

If this Subcontract expires, is completed or is terminated, Subcontractor shall not be relieved of the obligations in the following provisions:

(a) Compliance with Laws; Warranties; Indemnification; Confidentiality; Advertisements; Export Controls; Disputes;

(b) Those U.S. Government flowdown provisions incorporated into this Subcontract that by their nature should survive.

18. NOTICES

Any notice to be given under this Subcontract issued under the Terms and Conditions hereunder must be in writing. Notices may be sent via certified or registered mail; via fax with a conforming copy; or via electronic means provided an electronic signature confirms its authenticity, in a manner agreed to in advance. Notice will be deemed to have been given when received. All notices from Subcontractor to Contractor should be mailed to the attention of the Contracts Manager, at the facility from which the specific Subcontract was issued.

19. SMALL BUSINESS CERTIFICATION

By initialing below, Subcontractor certifies it is properly and currently qualified, in accordance with applicable regulations, as the following type(s) of business:

- 8(a) Small Disadvantaged Business
- Other Small Disadvantaged Business
- Woman-Owned Small Business
- Service-Disabled Veteran-Owned Small Business
- Veteran-Owned Small Business
- HUBZone Small Business
- Other Small Business
- Large Business

If Subcontractor is uncertain of which business type applies, see the CFR Title 13, subparts 121.410 and 121.411. Further guidance regarding appropriate size standards may be found at <http://www.sba.gov/size> as well as FAR 19.7 or 52.219-8.