



GORDON & REES
SCULLY MANSUKHANI

YOUR 50 STATE PARTNER®

“Out With the Old in With the New” Downstream Contracts



Happy New Year!

BEGIN 2022 RIGHT

Angela M. Richie
Denise M. Motta
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Auld Lang Syne



GRSM Template Contracts

- Sub-Fabricator Agreement
- Detailer Agreement
- Structural Engineer Agreement
- Stair and Handrail Fabricator and Detailer Agreement
- Erector Agreement
- Fireproofing Agreement



Format of Template Contracts

- Subcontract
 - Identify the parties and the project
 - Identify the contract documents
 - Identify the scope of work
 - Address bond requirements
 - Identify contract amount and payment terms
 - Establish time is of the essence and start date
 - Identify Designated Representatives for Notice
 - Identify Designated Competent Person
 - Merger provision
 - Establish Acceptance based on notice/direction to proceed
- Terms and Conditions supplement the Subcontract

Subcontract Terms



Contract Documents

- Project schedule, **as modified and updated**
- 2022 Subcontract Terms and Conditions
- Change Orders
- Lien and Claim Releases
- Steel Fabricator Agreement
- Prime Contract
- If federal project, all applicable federal regulations and flow down provisions
- **NOTE: Proposal is not listed – BE CAREFUL about including the proposal from the subcontract as the terms will be part of the contract**



Additional Contract Documents

- **Sub-Fabricator/Miscellaneous Metals Agreement**
 - Structural Steel/Miscellaneous Metals to be fabricated
 - Create an exhibit that identifies scope
- **Detailer Agreement**
 - Structural steel and miscellaneous metals to be fabricated
 - Create an exhibit that identifies scope
- **Structural Engineer Agreement**
 - Create Exhibit A for scope of services
- **Erector Agreement**
 - Subcontractor Safety Manual (latest version)
 - Signed Safety Commitment Letter

Scope of Work – Sub-Fabricator

- Make selection (both may apply)

C. SCOPE OF WORK. SUBCONTRACTOR SHALL PERFORM THE FOLLOWING WORK (“WORK”): [CHECK ALL THAT APPLY]:

C.1. [] Subcontractor shall prepare and submit to Steel Fabricator within _____ days of the effective date of this Subcontract all shop drawings, samples, and other submittals required by the Subcontract. Submittals shall be subject to approval by Contractor and Owner’s Architect or Engineer. Submittals must comply with all Subcontract requirements; approval of non-conforming submittals shall not relieve Subcontractor of the obligation to comply with the Subcontract. No submittal, approved or not, shall modify any requirements of the Subcontract.

C.2. [] Subcontractor shall furnish all supervision, management, labor, materials, tools, and equipment necessary, and all work incidental thereto, to fabricate all structural steel and miscellaneous metals, if any, required by this Subcontract in strict accordance with the plans, specifications, this Subcontract, and to the satisfaction of Contractor and Owner.



Services -- Detailer

- Form allows you to specify what is included:

C. SERVICES.

Subcontractor, through itself and any subconsultants it may engage, has agreed to provide, as required by this Subcontract and all applicable Contract Documents, the following services ("Services" or "Work"): [check all that apply]

__ **Structural Steel & Misc. Detailing** - All detailing services to provide complete detailed steel erection, fabrication and part drawings including model files (CAD, Tekla, CNC files), DWG, PDF files, NC files, and XSR reports for the complete scope of work listed below per the contract documents and as otherwise directed by Steel Fabricator as required by the contract between Steel Fabricator and Contractor and the Contract Documents. Subcontractor agrees that if a model is used, that it will update the model with any revisions per the schedule set forth in this Subcontract in order to preserve the integrity of the model, and that the software being used will track such revisions or Subcontractor will point out such revisions to Steel Fabricator. This scope of work will include, but not be limited to preparing the following documents: Advance Bill of Materials; General Arrangement Drawings; and bolt lists and summaries.

__ **Connection Design and Detailing** - All design and detailing services to provide complete connection designs for the structural steel for Project as set forth in this Subcontract. Subcontractor shall comply with Section 3.1.2 of the American Institute of Steel Construction's Code of Standard Practice in carrying out these services. If Subcontractor is performing connection design that requires the services of a licensed engineer, the services must be performed by an engineer licensed in the state the work is being performed.

__ **Stair and Rail Calculations** - Steel Fabricator will prepare detailed drawings to complete the stair and rail design for the Project for submission to Owner's Agents to review for conformance with the Contract Documents. Subcontractor will assist with the preparation of those detailed stair and rail drawings, including providing sealed engineering calculations, a representation that the design conforms to the Contract Documents, and other design services (including connection designs) necessary to complete the stair and rail design for the Project as set forth in this Subcontract. Subcontractor shall follow all contract requirements applicable to stairs and railings that are highly visible and/or designated as monumental stairs.

__ **Complete Stair and Rail Design** - All design and detailing services to provide a complete stair and rail design for the Project as set forth in this Subcontract.

__ **Additional Services/Special Conditions** - Additional detailing services or special conditions as follows:

Services – Structural Engineer

- Form allows you to specify what is included
 - Same as Detailer, but includes Structural Steel Design option:

Structural Steel Design - All structural engineering services to provide a complete structural steel design (including connection design) for the Project as set forth in this Agreement.



Services – Miscellaneous Metals

- Form allows you to specify what is included:

C. SCOPE OF WORK. Subcontractor shall perform the following work ("Work"): **[check all that apply]**:

C.1.1 Detailing and/or Design

C.1.1.1. **Detailing** - Subcontractor shall prepare all detailed shop drawings necessary to fabricate and erect **all miscellaneous metals including but not limited to stairs and handrail** for the Project, and such detailed shop drawings shall comply with the Contract Documents and be subject to the review and approval as set forth in the Contract Documents. All detailing services to provide complete detailed steel erection, fabrication, and part drawings including model files (CAD, Tekla, CNC files), DWG, PDF files, NC files, and XSR reports as required by the Contract Documents and as otherwise directed by Steel Fabricator. Subcontractor agrees that if a model is used, that it will update the model with any revisions in order to preserve the integrity of the model, and that the software being used will track such revisions or the detailer will point out such revisions to Steel Fabricator. This scope of work will include, but not be limited to preparing the following documents: Advance Bill of Materials; General Arrangement Drawings; and bolt lists and summaries. Subcontractor shall comply with the American Institute of Steel Construction's Code of Standard Practice including Section 3.1.1.

C.1.1.2. **Stair and Hand Rail Calculations** - Subcontractor shall provide providing **sealed engineering calculations** necessary to fabricate and erect **all miscellaneous metals including but not limited to stairs and handrails** for the Project, and such calculations shall be in strict accordance with the with the Contract Documents and be subject to the review and approval as set forth in the Contract Documents.

C.1.1.3. **Complete Stair and Hand Rail Design** - Subcontractor shall provide all **design, engineering, and detailing services** necessary to fabricate and erect **all miscellaneous metals including but not limited to stairs and handrails** for the Project, and such design, engineering, and detailing services shall be in strict accordance with the Contract Documents and be subject to the review and approval as set forth in the Contract Documents.

C.2.1 Fabrication

C.1.2.1. Subcontractor shall furnish all supervision, management, labor, materials, tools, and equipment necessary, and all work incidental thereto, to fabricate all miscellaneous metals including but not limited to stairs and handrail for the Project in strict accordance with Contract documents, which shall be subject to the review and approval as set forth in the Contract Documents.

C.3.1 Erection

C.1.3.1. Erection is not provided by Subcontractor, shall be self-performed by Subcontractor, or Subcontractor shall subcontract erection to an erector. **[check one]**

C.1.3.2. If erection services are provided by Subcontractor, whether self-performed or subcontracted, Subcontractor shall (1) prepare all necessary erection drawings and/or critical lift plans; and (2) perform all work and shall furnish all supervision, management, labor, materials, tools, equipment, cranes, safety equipment and procedures, licenses and permits, supplies, and all other things necessary and incidental thereto for the complete, proper, and safe erection of the miscellaneous metals, including but not limited to stairs and handrail, for the Project in strict accordance with the Contract Documents, which shall be subject to the review and approval as set forth in the Contract Documents. If required by the Contract Documents, Subcontractor shall maintain daily logs and submit them as required by the Contract Documents. Approval of non-conforming submittals shall not relieve Subcontractor of the obligation to comply with the Contract Documents.

Scope of Work -- Erector

- Erection drawings and critical lift plans
- Perform all work for safe erection

Subcontractor shall (1) prepare all necessary erection drawings and/or critical lift plans; and (2) perform all work and shall furnish all supervision, management, labor, materials, tools, equipment, cranes, safety equipment and procedures (including site-specific safety plans), licenses and permits, supplies, and all other things necessary for the complete, proper, and safe erection of the structural steel in full accordance with the plans, specifications, and all work incidental thereto, in strict accordance with the terms of the Subcontract, and to the satisfaction of Contractor and Owner (“Work”).

- Require Erector to submit erection drawings and other documents within a certain period of time

Subcontractor shall prepare and submit to Steel Fabricator within [REDACTED] days of the effective date of this Subcontract all erection drawings, site-specific plans, welding procedures, welding certifications, welder continuity logs, samples, and other submittals required by the Subcontract. Submittals shall be subject to approval by Contractor and Owner’s Architect or Engineer. Submittals must comply with all Subcontract requirements; approval of non-conforming submittals shall not relieve Subcontractor of the obligation to comply with the Subcontract. No submittal, approved or not, shall modify any requirements of the Subcontract.

- Project superintendent or foreman required to report prior to beginning work and regularly – either daily or weekly as selected

Scope of Work -- Fireproofing

- Similar to Erector
 - “prepare all necessary submittals required by the Contract Documents including the provision of product information:
 - perform all work and shall furnish all supervision, management, labor, materials, tools, equipment, cranes, safety equipment and procedures, licenses and permits, supplies, and all other things necessary for the complete, proper, and safe fireproofing of the structural steel in full accordance with the plans, specifications, and all work incidental thereto, in strict accordance with the terms of the Subcontract, and to the satisfaction of Contractor and Owner (“Work”).”



Bonds

- Strongly recommend that you require performance and payment bonds or high risk for larger subcontracts



D. BONDS

D.1. Subcontractor shall provide a performance bond and a payment bond for itself for the Subcontract Sum, and shall be issued by a surety and contain language acceptable to the Steel Fabricator. Subcontractor's failure to obtain a bond shall be grounds for termination of the Subcontract. The Steel Fabricator's approval of the surety and the language of the bonds shall be a condition precedent to payment under the Subcontract. The bonds shall be maintained in effect for the life of the agreements.

Payment Terms



- Include Subcontract sum
- Include pay-if-paid language:

E.2. The Applications for Payment shall be submitted on the ___ of the month. Subject to the 2021 Subcontract Terms and Conditions, Progress Payments and Final Payment shall be made to Subcontractor within seven (7) days of Steel Fabricator's receipt of payment from Owner or Contractor for Subcontractor's work.

- More payment terms in T&Cs
- Structural Steel Engineer Contract breaks down payment by phase (Schematic, Design Development, Construction Documents, Bidding & Construction)

Time/Schedule



- Time is of the essence.
- State date that subcontractor will begin work
- Work to be completed as set forth in the Project Schedule as modified and updated.

F. TIME/SCHEDULE

F.1. Time is of the essence of this Subcontract. Subcontractor shall commence work on _____ and shall prosecute the work in a manner that will not delay the completion of the Project. Subcontractor shall complete its Work as set forth in the Project Schedule, as modified and updated (“Contract Time”).

- Structural Steel Engineer Contract set completion dates by phase (Schematic, Design Development, Construction Documents, Bidding & Construction)

Time/Schedule – Fire Proofing

- Two options – Standard Provision or optional provision based on completion of quantity of square feet/week

ii. Subcontractor shall comply with the initial Schedule which includes the following production rates: Subcontractor shall commence work no later than [INSERT DATE] at a minimum rate of [INSERT QUANTITY] SQ/FT per week. This rate will increase on [INSERT DATE] to a minimum rate of [INSERT QUANTITY] SQ/FT per week, and will further increase on [INSERT DATE] to a minimum rate of [INSERT QUANTITY] SQ/FT per week. After [INSERT DATE], production will be at a minimum rate of [INSERT QUANTITY] SQ/FT per week, and may increase up to [INSERT QUANTITY] SQ/FT per week without impacting the Agreement Price in any way. Subcontractor has agreed that its standard production includes working two (2) forty hour shifts per week excluding weekends and holidays, that it can fireproof approximately [INSERT QUANTITY] SQ FT per week.



Acceptance

- Subcontract will govern if a notice/directive to proceed and Subcontractor commences work even if not signed:

J. ACCEPTANCE.

J.1. In the event that Subcontractor is given a notice to proceed, directed to purchase material, or otherwise directed by Steel Fabricator to commence any of the Work contemplated by this Subcontract prior to Subcontractor signing this Subcontract, Subcontractor upon commencement of such work shall be deemed to have accepted all of the Terms and Conditions of this Subcontract as set forth herein. No amendment or modification of any provision of these Terms and Conditions shall be binding unless the same is in writing, signed by the party to be bound, and is specifically described as an amendment or modification of these Terms and Conditions.



Notices to Designated Representatives

- Important to designate specific Designated Representative for each party
 - Person who is able to bind the company for change orders and other terms
 - Make sure this is the person you want to designate
 - Any review by management?
- Notice when postmarked by registered mail or other means, including electronic means:

G. NOTICES

G.1. All notices between Steel Fabricator and Subcontractor shall be in writing addressed to the parties Designated Representatives set forth below, and shall be considered as delivered when postmarked, if dispatched by registered mail, or when sent by other means, including by electronic means:

Designate Competent Person for Safety

- Subcontractor's Competent Person responsible for safety, OSHA compliance



H. DESIGNATION OF COMPETENT PERSON(S)

H.1. In accordance with the Section 18 of the 2021 Subcontract Terms and Conditions, Subcontractor's "Competent Person(s)" who shall be responsible for safety on behalf of Subcontractor shall be:

Name:
Address:
Phone:
Cell Phone:
Email:

Delivery -- Fireproofing

- Options
 - Steel Fabricator provide freight and delivery
 - Subcontractor provide freight and delivery – certain required terms

SHIPMENT. On shipments Subcontractor shall promptly notify Steel Fabricator of the shipping point and the initial carrier. If Steel Fabricator is to pay freight charges, routing must be approved by Steel Fabricator before shipment is made. Discount periods will be calculated from the date of receipt of specified purchase or the date an invoice complying with the terms of this Purchase Order is received by Steel Fabricator, whichever is later.

DELIVERY. Deliveries shall be made at the time and in the manner specified. Time is of the essence if deliveries are not made at the time specified. Steel Fabricator reserves the right to modify the delivery time. All packing, cartage charges and taxes are included in the price. Price additions will not be allowed by Steel Fabricator unless otherwise specified on the face hereof. If deliveries are so far behind the schedules specified in this Purchase Order as to make it necessary for Steel Fabricator to request Subcontractor to make shipments by other means, it is understood that Subcontractor will pay the increased transportation cost. The F.O.B. term used in this contract is a delivery term, but risk of loss shall remain with Subcontractor until acceptance by Steel Fabricator at the delivery destination. Notwithstanding the foregoing portions of this paragraph, no delivery shall be made without at least 24 hours advance notice being given by Subcontractor to Steel Fabricator.

Merger Clause

- Standard term but very important
 - Only the subcontract is the agreement
 - Rejects alternate terms including proposals
 - Only revised by agreement signed by the parties (signed change orders)

I. ENTIRE AGREEMENT.

I.1. The terms and conditions of this Subcontract shall constitute the entire agreement between Steel Fabricator and Subcontractor and may not be altered except as set forth herein, and supersedes all prior or contemporaneous negotiations, representations, or agreements, oral or written, between the parties. Any additional or different provisions contained in any acknowledgements, proposals, sales memoranda, invoices, or in other documents issued against or in response to this Subcontract that purport to alter or vary any of the terms and conditions of this Subcontract are hereby rejected and objected to in advance and shall not become a part of the parties' Subcontract unless otherwise specifically agreed in a writing signed by the parties.



Execution of Subcontract

- Make sure it is signed!

BOTH PARTIES HAVE READ AND UNDERSTAND THIS SUBCONTRACT. THIS SUBCONTRACT IS NOT BINDING UPON STEEL FABRICATOR UNTIL ACCEPTED AND SIGNED BY AN OFFICER OF STEEL FABRICATOR.

IN WITNESS WHEREOF, and intending to be bound thereby, the parties have executed this Subcontract effective as of the day and year set forth above.

STEEL FABRICATOR

SUBCONTRACTOR

(Name of Steel Fabricator)

(Name of Subcontractor)





2022 Terms & Conditions

New Terms and Revisiting Key Terms

- **Definitions**
 - Defined certain terms
 - Additional definitions can be added if appropriate
- **Scope of Work**
 - Governed by AISC Code of Standard Practice
 - Flow Down
 - Identification of an Subcontractors and Vendors
 - Reporting
- **Payment**
 - Conditions precedent to payment
 - Acceptance of payment as waiver
 - Withholding
 - Payment to subcontractors and joint checks



New Terms and Revisiting Key Terms

- **Insurance**
 - Evidence of Coverage
 - Cancellation/Failure to Maintain
 - Waiver of Subrogation
- **Indemnity**
- **Subcontractor obligations**
 - Waiver of claims if fail to notify of defective conditions
- **Time**
 - Participation and cooperation with scheduling
 - Obligation to accelerate
 - Time extensions agreed by owner
 - Provisions for requesting change order for delays
 - No damages for delays
 - Liquidated damages



New Terms and Revisiting Key Terms

- **Subcontractor's Liability**
- **Changes**
 - Directives to proceed
 - Relief limited to approval by contractor or owner
 - Full compensation for change order
 - Change orders requested by Steel Fabricator
 - Deadline for submission of change orders
- **Claims and Disputes**
 - Notice
 - Mediation as condition precedent to arbitration
 - Duty to continue work
 - Steel Fabricator authority to resolve downstream claims



New Terms and Revisiting Key Terms

- **Damage Notification**
- Intellectual Property
 - Make sure you have rights necessary for upstream
- Inspections and Acceptance
 - Must replace rejected work
- **Termination**
 - Default
 - Convenience
- Responsibility for Work
- **Warranties**
 - Specifically manufactured equipment and tools
- Taxes and Permits



New Terms and Revisiting Key Terms

- **Liens and Claims**
 - Form Lien Waivers
 - Requirement to bond off any liens
 - Reimbursement of claims paid on payment bond
- Owner Approval of Subcontractor
- Safety
 - Comply with OSHA and other safety directives
 - Zero Tolerance policy
- **Miscellaneous**
 - Contract interpretation
 - Right to recoupment/offset
 - Right to audit



Definitions – New Provision

- Added to clarify meaning of certain terms in the T&Cs
- Other terms are defined within the T&Cs



1. DEFINITIONS.

1.1. Terms used in this Subcontract shall have the same meanings established by the Prime Contract unless otherwise specified herein, with the following specific terms defined as follows:

1.2. Day or Days shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.3. Project Schedule refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Steel Fabricator's obligations to Contractor.

1.4. Substantial Completion is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project, or a portion thereof, for its intended purposes

Additional Definitions – Detailer/Structural Engineer

- Definitions specific to Detailer:

1. DEFINITIONS.

1.1 Terms used in this Subcontract shall have the same meanings established by the Prime Contract unless otherwise specified herein, with the following specific terms defined as follows:

1.2 Day or Days shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.3 **Electronic Data** is defined as information, communications, drawings, multi-dimensional modeling (“BIM”), or other design data created or stored for the Project in digital or electronic format.

1.4 **Owner’s Agents** shall include the architect and engineer of record for the Project.

1.5 **Owner’s Project Criteria** are the Owner’s requirements and objectives for the Project, developed by Owner, Owner’s agents, and/or its consultants, including, but not necessarily limited to, use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor’s performance of the Prime Contract.

1.6 Project Schedule refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Steel Fabricator’s obligations to Contractor.

1.7 Substantial Completion is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project, or a portion thereof, for its intended purposes.

1.8 **Services** shall include all Design Phase Services, and Construction Phase Services required by this Subcontract and necessary to accomplish Owner’s Project Criteria to the same extent for which Steel Fabricator is responsible.

Scope of Work – Key Terms

- Always incorporate AISC Code of Standard Practice:

2.1. AISC Code of Standard Practice. Subcontractor and Steel Fabricator agree that the Work shall be provided in accordance with the terms of this Subcontract and the American Institute of Steel Construction Code of Standard Practice for Buildings and Bridges, the edition set forth in the Contract Documents if no edition is cited in the Contract Documents, then in accordance with the current edition.

- Always flow down upstream contracts:

2.2. Flow Down. With respect to the Work, Subcontractor shall assume toward Steel Fabricator all obligations, risks, and responsibilities which Steel Fabricator has assumed towards Contractor and Owner under the Contract Documents including, without limitation, all requirements relating to the scope, quality, quantity, timeliness of the work, warranties, safety, insurance, inspections, waivers of special, incidental, punitive, or consequential damages, confidentiality, indemnification, change orders, claims, lien rights, compliance with laws, clean-up, and intellectual property.

Scope of Work – Key and New Provisions

- Approval of Subcontractors and Vendors:

2.6. Subcontractors and Vendors. Subcontractor shall provide to Steel Fabricator, within five (5) business days of the effective date of this Subcontract and before starting work, the names and addresses of all material manufacturers, suppliers, and sub-subcontractors Subcontractor intends to use in completing the Work. Should any of those proposed be unacceptable to Contractor, Steel Fabricator, or Owner, Subcontractor shall use another supplier, manufacturer, or sub-subcontractor acceptable to Contractor, Steel Fabricator, or Owner at no additional charge to Steel Fabricator.

- Require your subcontractor to provide reports:

2.7. Reporting. Subcontractor shall report to Steel Fabricator before beginning work on the Project and periodically thereafter as required by Steel Fabricator, but no less than at the end of each day or week as specified in Steel Fabricator Agreement.



Detailer/Structural Engineer Agreement – Scope of Work

- Services provided

2.1 Services. Subcontractor, through itself and any subconsultants it may engage, has agreed to provide all Services required by this Subcontract and all applicable Contract Documents, and to prepare as required by the scope of this Subcontract coordinated, checked design plans, calculations, specifications, reports, analyses, and/or recommendations in connection with those services. Steel Fabricator and Subcontractor agree that to the extent applicable in the performance of the Services, Subcontractor will have the same rights, responsibilities, and obligations as to Steel Fabricator as Steel Fabricator has to Contractor pursuant to the Steel Fabricator Agreement. Subcontractor will perform the services contemplated by this Subcontract, including all work product to be provided, through examination of Owner's Project Criteria, Contract Documents, site visits, review of existing drawings, consultation with Owner and Owner's Agents, Contractor, and Steel Fabricator and by preparing preliminary outlines, sketches, or other similar work product. Subcontractor agrees to provide all services in accordance with the criteria, standards, and requirements of Steel Fabricator, Contractor, Owner, and Owner's Agents, and to furnish any documents or certificates reasonably requested by any of them in connection with the Services. Subcontractor shall furnish all required documents or drawings, in the form and quantity required by the Contract Documents, to Steel Fabricator.

Detailer Agreement – Scope of Work

- Detailing Services
 - Reviewed design criteria and design documents
 - Approvals of interim design submissions solely for the purposes of establishing conformed set of construction documents
 - Review or approval “shall not be deemed to transfer any design liability from Subcontractor to Steel Fabricator, Contractor, or Owner.”
 - Assist Steel Fabricator with obtaining approvals by governmental agencies.
- Required to make revisions
 - Comply with change order provision
- Provide electronic data
- Collaborate with Steel Fabricator

Structural Engineer and Misc. Metals -- Services

- Design Phase:
 - In addition to provisions in Detailer Agreement:
 - » Prepare a complete set of drawings, calculations, and specification for approval for (1) schematic design; (2) design development; and (3) final construction documents

- Construction Phase:
 - Provide clarifications and interpretations
 - Expeditiously review, revise, and approve submittals
 - Interpret drawings and specifications within a reasonable time
 - Explain interpretations to the Steel Fabricator
 - Attend meetings

Erector/Fireproofing Agreement – New Term

- Require full-time on-site Superintendent
 - Must attend all progress meeting

2.8. Superintendent. Subcontractor shall maintain a full time on-site Superintendent for the duration of Subcontractor's work on the Project. Subcontractor's Superintendent or Foreman shall attend all progress and safety meetings while the Work, or any part of it, is in progress, or as requested by Steel Fabricator, and shall be prepared to address schedules, manpower, deliveries, and relevant safety issues. Representatives of sub-subcontractors whose work is critical under the current schedule shall also be required to attend these meetings.



Payment – Key Terms



- Conditions Precedent to Payment
 - “To the fullest extent allowable by law, receipt of payment by Steel Fabricator from Owner and Contractor shall be a condition precedent for payment to Subcontractor by Steel Fabricator.”
 - Other conditions precedent (both progress and final payments):
 - (1) Owner, Contractor, and Steel Fabricator have approved the Work as being in accordance with the Subcontract (including applicable Contract Documents requirements);
 - (2) Subcontractor has provided Steel Fabricator with satisfactory proof it has paid all amounts it owes in connection with the Subcontract, including providing lien waivers in a form acceptable to Steel Fabricator and Contractor, which include the lien waivers in **Exhibit 1**;
 - (3) Owner or Contractor has actually paid Steel Fabricator for that Work;

Payment

- Other conditions precedent to progress payments:
 - (4) Steel Fabricator has received a signed copy of this Subcontract from Subcontractor; and
 - (5) Steel Fabricator has received the proper Certificates of Insurance demonstrating the insurance requirements are met.
- Other conditions precedent to final payment:
 - (4) Steel Fabricator receives all warranty documentation required by the Contract Documents.



Acceptance of Payment – Key Term

- Acceptance of progress payment as waiver:

3.2.6. Acceptance of Payment. Subcontractor's acceptance of periodic progress payments shall constitute a waiver of any and all claims by Subcontractor against Steel Fabricator, Contractor, Owner, and Architect, through the date of the Application for Payment, unless such claims are expressly reserved in writing on the face of the Application for Payment.

- Acceptance of final payment as waiver:

3.3.3. Acceptance of Payment. Acceptance of final payment shall constitute a waiver of all of Subcontractor's claims for further compensation or claims under the Subcontract.



Withholding of Payment – Key Term

- Non-exclusive grounds for withholding:
 - (1) defective Work not remedied;
 - (2) third-party claims which may be or have been filed against Steel Fabricator as a result of matters relating to the Work, or reasonable evidence indicating probable filing of such claims;
 - (3) failure of Subcontractor to make required payments in accordance with the Subcontract or make prompt payment to sub-subcontractors or suppliers for labor, materials, or equipment;
 - (4) reasonable evidence that lump sum price items cannot be completed for the unpaid balance of the agreed lump sum price;
 - (5) damage to property of Steel Fabricator, Contractor, Owner or another contractor or subcontractor working at the Project;



Withholding of Payment – Key Term

- Non-exclusive grounds for withholding:
 - (6) reasonable evidence that the Work will not be completed within the Contract Time;
 - (7) failures to carry out the Work in accordance with the Subcontract or Steel Fabricator's directions;
 - (8) failure of Subcontractor to provide schedule updates, or any permit or license information including, but not limited to, license numbers if requested by Steel Fabricator; or
 - (9) any material breach of the Subcontract



Authority to Pay Parties/Joint Checks

- Rights to pay others and joint checks:

3.4.2. Subcontractor agrees that Steel Fabricator may pay all materialmen, suppliers, laborers, consultants, sub-subcontractors, unions, and any other persons who have not been paid the monies due them in connection with this Subcontract (“Sub-Subcontractors”), and that Steel Fabricator may credit the amount of any such payment against amounts otherwise due Subcontractor. Steel Fabricator has the right, but not the obligation, to make payments directly to Sub-Subcontractors or by joint check, whichever shall seem more advantageous to Steel Fabricator, in its sole discretion. This provision, allowing direct payment to Sub-Subcontractors is intended for the protection of Steel Fabricator only, and does not confer rights upon anyone not a direct party to this Subcontract, as a third-party beneficiary or otherwise. Monies retained by Steel Fabricator as a result of Subcontractor’s failure to make payments to Sub-Subcontractors shall be regarded as trust funds that may be paid directly to Sub-Subcontractor and consequently, any such payments made, whether directly or by joint check, shall not constitute bankruptcy preferences. However, no amounts Steel Fabricator pays to Subcontractor in good faith, and which do not subsequently reach Sub-Subcontractors shall give rise to liability of Steel Fabricator to Sub-Subcontractors.

3.4.3. Subcontractor agrees that all payments made to Subcontractor, whether by joint check or otherwise, shall be used by Subcontractor first to pay amounts due to Sub-Subcontractors supplying labor or materials for the Work, and that only money remaining after such payments are made may be used for any other purpose. Monies paid by joint check shall be deemed to have been paid fully to Sub-Subcontractors named as a joint payee, unless Steel Fabricator agrees otherwise in writing. Steel Fabricator may require that all Sub-Subcontractors who are to receive payment by joint check

Insurance – Key Terms

- Require and obtain evidence of coverage
 - “No progress payment will be made unless Steel Fabricator has been furnished evidence of required coverages and endorsements as required by this Subcontract. Work may not begin until Subcontractor has delivered satisfactory evidence to Steel Fabricator that all required insurance is in place. Any delays in the completion of the Work due to Subcontractor’s failure to obtain or maintain insurance shall be treated as delays due to Subcontractor’s breach of contract.”
- Protection for cancellation
 - Requires 30-day notice prior to cancellation
- Failure to maintain coverage = material breach



Waiver of Subrogation – Revised

- Waiver to rights parties have to insurance against each other to the extent covered by insurance, except professional negligence
- Waiver by subcontractor for damages to the extent claims are covered by insurance

4.7. Waiver of Subrogation. Subcontractor and Steel Fabricator hereby waive rights of subrogation, except such rights as they may have to the proceeds of such insurance, against each other and each other's employees, agents, affiliates, consultants, and contractors to the extent such claims are covered by insurance provided under this Subcontract by either party, provided, however, that no such waiver shall apply to claims arising out of, or related to, alleged professional negligence on the part of Subcontractor. If the policies of insurance referred to in this Section 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. Subcontractor waives all rights against Contractor, Owner, and Architect, and their Agents, Officers, Directors, and Employees for recovery of damages to the extent these damages are covered by insurance policies required to be maintained per the requirements states herein.

E&O Insurance

- Professional Liability/Errors & Omission Insurance required:

4.2 Professional Liability / Errors and Omissions Insurance. Subcontractor shall obtain and maintain professional errors and omissions liability insurance for all claims, losses, damages, and expenses in any way arising from or related to the performance of this Subcontract, with policy limits in an amount not less than \$1,000,000 per claim. If the Subcontract Sum is in excess of \$1,000,000, Subcontractor is required to provide limits equal to the Subcontract Sum plus fifty percent. If said insurance is written on a claims made basis, the retroactive date shall precede the effective date of this Subcontract thereby giving coverage for services performed under this Subcontract. Such insurance shall be renewed so as to provide continuous coverage during the term of this Subcontract and for a period of at least ten (10) years after the date of final payment to Subcontractor.

4.3 EXCESS OR UMBRELLA LIABILITY. Subcontractor shall include Excess or Umbrella Liability insurance in an amount not less than \$5,000,000.

- Make sure limits are sufficient based on project

Indemnification – Key Terms



- Indemnification of Steel Fabricator and upstream
 - Injuries and contractual liability
 - Subcontractor and those working for subcontractor
 - **No indemnity for negligence of Steel Fabricator or upstream**
 - Payment of legal expense for counsel of choosing

5.1. Indemnification. To the full extent permitted by law, Subcontractor agrees to indemnify, defend, and hold harmless Steel Fabricator, Owner, Contractor, and Architect, and all of their respective officers, directors, shareholders, partners, members, agents, employees, consultants, representatives, subsidiaries, affiliated and related companies, and any other person or entity as required by the Contract Documents (the “Indemnitees”), from and against any and all claims, demands, injuries, fines, penalties, losses, expenses (including attorneys’ fees), damages, and liabilities of any nature, including contractual liability (“losses”), to the extent arising out of or resulting from the negligent acts or omissions of Subcontractor, or any of its consultants of any tier, the respective successors and assigns of Subcontractor or anyone acting on Subcontractor’s behalf in connection with this Subcontract or its performance; provided, however, Subcontractor shall not be required to indemnify any of such Indemnitees against liability for damages to the extent caused by or resulting from the negligence of the Indemnitees. Subcontractor shall be responsible for paying the legal costs (including attorney’s fees and costs) for the attorney of Steel Fabricator’s choosing relating to any claim covered by Article 5.

- No limitation for workers’ compensation or other benefits
- Duty to indemnify for liens

Subcontractor Obligations – Key Terms

- Subcontractor required to notify of defective conditions
 - Failure to notify = waiver



6.1. Subcontractor shall carefully examine this Contract and the Contract Documents, identify those portions affecting its work, and notify Steel Fabricator in writing of any deficiencies, discrepancies, ambiguities, inconsistencies, non-conformities, omissions, or errors (collectively referred to herein as “Defective Conditions”) before proceeding with the affected work. Failure to notify Steel Fabricator of any Defective Conditions within 48 hours of proceeding with the affected work shall constitute a full and complete waiver of any and all claims related to or arising out of the Defective Conditions.

6.2. Subcontractor represents that it is fully able, qualified, and experienced to perform the work required by this Subcontract. It acknowledges that, before executing the Subcontract, Subcontractor has ascertained, by its own independent investigation, the general and local conditions involved in performing the Work including, without limitation, the location of the work, accessibility, and character of the site, and all other matters that could affect the work or its cost under this Subcontract. Subcontractor has verified all information furnished by Steel Fabricator or others and is satisfied with its correctness and accuracy. The failure of Subcontractor to identify any Defective Conditions in connection with any previous or surrounding work performed by others and to notify Contractor, in writing, of same before commencing the work shall relieve Steel Fabricator of any and all responsibility related to or arising out of the Defective Conditions, and Subcontractor shall be responsible and liable for all resulting damages, costs, and expenses incurred by Subcontractor arising as a result of the Defective Conditions.

Time – Key Terms

- Participation and cooperation in scheduling times and sequences
 - “Within ten (10) business days of the effective date of this Subcontract, Subcontractor shall provide Steel Fabricator with its baseline schedule, which complies with the milestone dates set forth in the current Project Schedule. **During the Project, within three (3) business days of a request from Steel Fabricator, Subcontractor shall provide an updated schedule (which is manpower loaded) that reflects Subcontractor’s ability to meet the Project Schedule.** The failure to submit updated schedules shall be deemed a material breach of this Subcontract.”

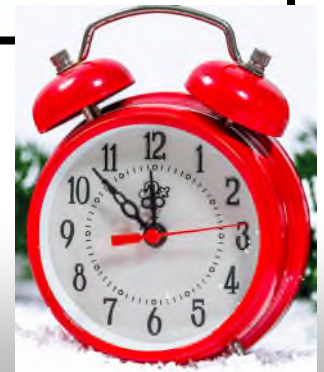


Duty to Accelerate – Key Terms

- Requires Subcontractor to accelerate

7.2. If necessary to assure such prompt performance, Subcontractor shall accelerate its performance, at its own cost, to make up any delays caused by its own actions or omissions or those of its Sub-subcontractors or suppliers. If Subcontractor fails to do so, Steel Fabricator may itself take whatever actions it deems necessary to expedite material deliveries or completion of work, and charge the resulting costs to Subcontractor.

7.4. If Subcontractor fails to adhere to the established schedules, or misses any milestone in any such schedule, or if Subcontractor abandons the job, or fails to have its workers on the Site, and productively employed for three (3) days or more, Steel Fabricator may direct Subcontractor to accelerate its work, by incurring overtime, double-shifting, expediting deliveries, or otherwise. Subcontractor shall promptly comply with such a direction and accelerate its work at its own cost and without adjustment to its compensation, unless it is determined that Subcontractor was entitled to a Change Order extending the time within which to complete the Work. Further, if Subcontractor's acceleration causes Steel Fabricator to incur additional costs, Subcontractor shall pay those costs, without reimbursement by Steel Fabricator, unless it is determined that Subcontractor is entitled to a Change Order as set forth in this Subcontract. If Subcontractor disagrees with an order to accelerate, it shall nevertheless comply, and may pursue a claim as provided in this Subcontract.



Time Extensions and Change Orders

- Limited to time extensions received from the Owner or Contractor “and to no other extensions of time.”
- Subcontractor may request a change order (following change order procedures)
- If delays or acceleration are caused by the negligence of the Steel Fabricator, Subcontractor may request a change order for direct costs.
 - No other damages for delay:
 - » “Except as stated in this paragraph, Subcontractor shall not be entitled to and shall make no other claim against Steel Fabricator for damages arising out of or relating to delays, disruptions, suspensions, interferences, accelerations, stacking of trades, inefficiencies, or impacts upon the work, including, but not limited to any delays in starting the work under this Subcontract.”



Liquidated Damages – Key Term

- Subcontractor liable for liquidated damages or actual damages attributed to Subcontractor:

7.8. Liquidated Damages. If the Contract Documents provide for assessment against Steel Fabricator of liquidated delay damages, or actual delay damages suffered by Owner, Subcontractor shall be liable to Steel Fabricator for any portion of such damages that may be attributed to Subcontractor's delays. Subcontractor shall also be liable for any actual damages suffered by Steel Fabricator as a result of the delays. Subcontractor agrees that it would be impossible to ascertain the actual damages precisely, and therefore, Subcontractor agrees to pay Steel Fabricator for any portion of liquidated damages that may be attributed to Subcontractor's delays. Subcontractor agrees that such sums are liquidated damages and are not a penalty. Steel Fabricator may deduct the damages prescribed in this paragraph from any unpaid amounts then or thereafter due Subcontractor, and any damages not so deducted shall be payable to Steel Fabricator by Subcontractor within thirty (30) days of demand by Steel Fabricator.



Subcontractor Liability – Key Terms

- Assumes risk until final acceptance, liable for any damage:

8.1. Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor, and materials provided hereunder and for all equipment, supplies, and other things provided by Subcontractor until final acceptance of the work by Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable for it, and shall repair, rebuild and make good the loss, damage, or destruction at Subcontractor's own cost.

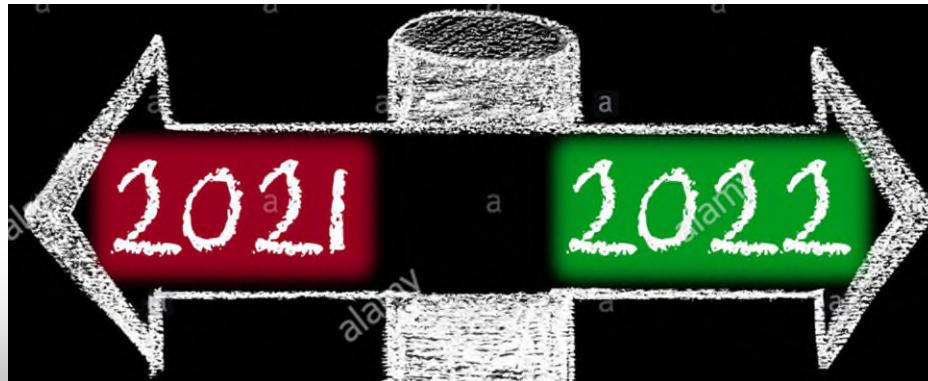
- Liable for all costs for failure to perform work in strict compliance:

8.2. Subcontractor shall be liable to Steel Fabricator for all costs, including attorneys' fees, which Steel Fabricator incurs as a result of Subcontractor's failure to perform its work in strict compliance with this Subcontract, including the Contract Documents requirements applicable to the Work. Such costs shall include, but not be limited to, actual costs and liquidated damages arising from delay damage claims Owner makes against Steel Fabricator as a result of delays Subcontractor caused, Steel Fabricator's increased costs to perform the Contract work as a result of delays or improper work caused by Subcontractor, warranty and rework costs arising from Subcontractor's Work, liability for accidents to persons or property caused by Subcontractor, or litigation costs and attorneys' fees arising from actions to enforce this Subcontract, to recover for its breach, or to deal with third-party claims arising from Subcontractor's breach of this Subcontract.



Change Orders – Key Terms

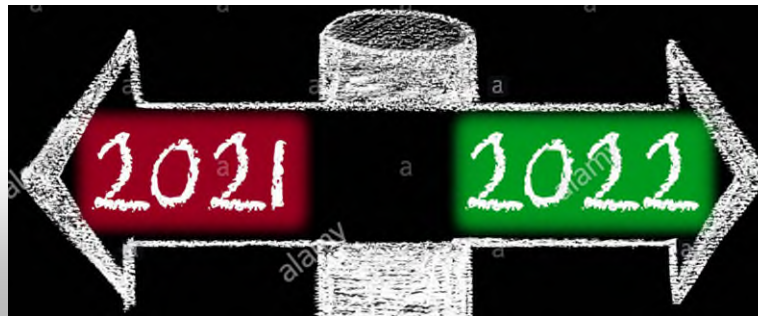
- Directed Change Orders
 - Steel fabricator can direct change orders unilaterally or by agreement
 - Unilateral change order must be signed by Steel Fabricator’s Designated Representative
 - Any agreed change order must be in writing and signed by both Designated Representatives
 - “Any work completed without a written signed change order or written directive from Steel Fabricator’s Designated Representative is at the expense of Subcontractor.”
 - Subcontractor must perform, without delay, even without agreement
 - Failure to proceed is a material breach



Owner-Caused Changes – Key Term

- Subcontractor must request in time to allow compliance with Contract Documents, but no later than time in Notice of Claims
- Limited to adjustments allowed by Owner or Contractor
 - Full and only remedy or compensation for adjustments obtained from Owner or Contractor

9.3. Subcontract adjustments shall be made only to the extent that Steel Fabricator is entitled to relief from, or must grant relief to Owner or Contractor. If a change involved the work of more than one subcontractor or of Steel Fabricator itself, Subcontractor shall be entitled only to a reasonably allocable share of the total adjustments made by any Change Order from Owner to Steel Fabricator. Subcontractor's allocable share shall be determined by Steel Fabricator, after allowance of Steel Fabricator's normal overhead, profit and other interest in any recovery by making a reasonable apportionment, if applicable, between Subcontractor, Steel Fabricator and other subcontractors or persons with interest in the adjustment. This Paragraph shall apply to all equitable adjustments or other relief allowed by the Contract Documents. Subcontractor's recovery of its allocable share of adjustments obtained from Owner or Contractor shall be its full and only remedy or compensation as a result of Owner-directed or Contractor-directed changes, deficiencies, or discrepancies in the Contract Documents, or unforeseen site conditions.



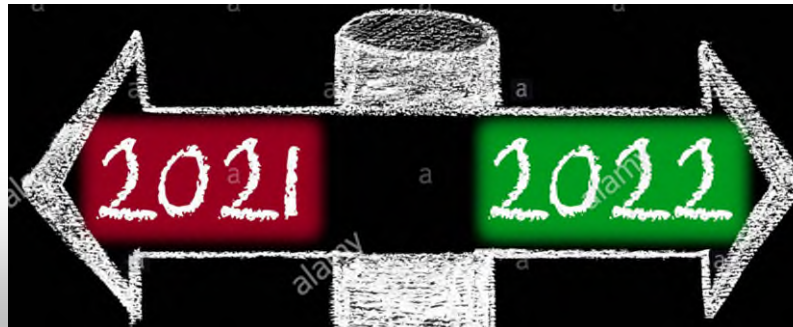
Steel Fabricator-Caused Changes

- Must be signed by Designated Representative:

9.4. If the Designated Representative of Steel Fabricator orders changes, independent of Owner, Contractor or the Contract Documents, and those changes materially affect the cost of performing the Work, Subcontractor shall be entitled to an equitable adjustment in the Subcontract Price, which must be set forth in a Change Order or Change Directive signed by the Designated Representative of Steel Fabricator.

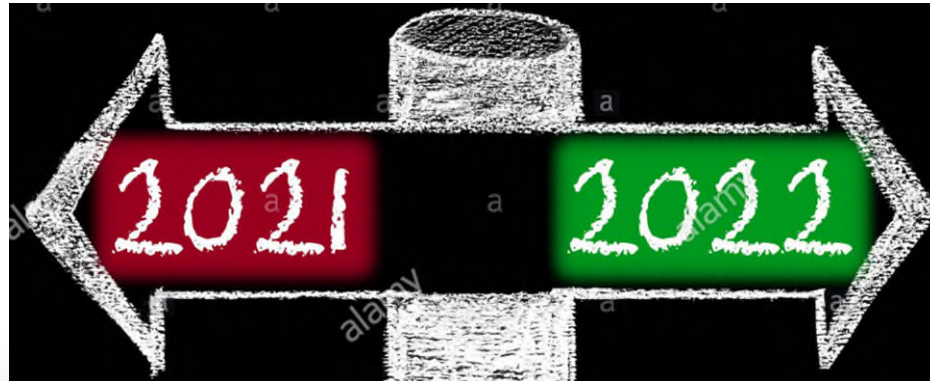
- Acceptance of any change order = full and complete compensation for work, including any delays:

9.5. In accepting any Change Order, Subcontractor agrees that the adjustment contained in it constitutes full and complete compensation for all work required by the change, including any delays, disruptions, inefficiencies, acceleration, escalations, impacts, or other consequences or costs, direct or indirect, that result from the change, and that no further adjustment shall be sought with respect to that change.



Notice of Change Orders/OHP

- Notice of changes within 5 business days of when Subcontractor knew or should have known of the claim or 2 business days prior to the date required in the Steel Fabricator Agreement, whichever is earlier.
 - Subcontractor must submit a price quotation or Steel Fabricator can use a reasonable estimate.
- OHP provision – make sure it does not conflict with Steel Fabricator Agreement



Claims and Disputes – Key Provision

- Notice of changes within 5 business days of when Subcontractor knew or should have known of the claim or 2 business days prior to the date required in the Steel Fabricator Agreement, whichever is earlier
 - Failure to comply = waiver of claim
- Owner disputes governed by the Prime
- Contractor disputes governed by Steel Fabricator Agreement
- Disputes
 - Mediation as condition precedent to arbitration
- Duty to continue work where there is a good faith dispute



10.5. Duty to Continue Work. Provided that Steel Fabricator has promptly paid Subcontractor, all amounts due under this Subcontract, other than those subject to a good faith dispute, Subcontractor shall proceed with the Work, including any disputed portion thereof, as well as directed change order or acceleration work, without interruption or delay, while any claim or dispute is being considered, arbitrated, or litigated. Failure to continue to work or to accelerate work as directed diligently during the pendency of a dispute or claim shall constitute a material breach of the Subcontract.

Settlement of Claims – New Provision

- Authority to resolve upstream claims:

10.6. Settlement of Claims. Steel Fabricator has authority to, and may, settle, resolve, negotiate, pay, or likewise dispose of any and all claims relating to Subcontractor or Subcontractor's Sub-Subcontractors' scope of work or Steel Fabricator's scope of work. Steel Fabricator may withhold or credit against Subcontractor any amounts owed for any such settlement, resolution, or payment. This includes, but is not limited to, resolving all deductive change orders or claims from Contractor or Owner arising from Subcontractor's scope of work.



Damage Notification – Key Term

- Requires notice of damages and additional costs within time set forth in Notice of Claims provision or deemed waived
 - No claims allowed for change order work done without executed change order
 - Only Designated Representative has authority to bind Steel Fabricator



11.1. Notice of damages or additional costs for which Subcontractor alleges Steel Fabricator is responsible shall be submitted in writing as required by the Notice of Claims provision in this Subcontract or be deemed waived. Subcontractor shall make no claim for extra or additional work unless the work is done pursuant to a written change order executed by Steel Fabricator's Designated Representative. Only the Designated Representative of Steel Fabricator shall have authority to bind Steel Fabricator to change orders or other written orders authorizing extra work or payment therefore.

Termination – Key Terms

- Default -- Non-exclusive list of material breaches:
 - (1) fails promptly to pay for materials, supplies, labor, or other items purchased or used in connection with the Work;
 - (2) fails to pursue the Work promptly, in accordance with the Subcontract and the schedules established by Contractor, Owner, or Steel Fabricator, or misses any milestones that have been established in the schedule;
 - (3) fails, due to strikes, picketing, boycotts, cessations of work, or for any other reason, to supply a sufficient number of properly skilled supervisors, workmen, or sufficient amounts of materials, equipment, or supplies of the appropriate quality to properly and expeditiously carry on Work;



Default Termination – Material Breaches

- Non-exhaustive list of material breaches:
 - (4) interferes with, disrupts, or threatens to interfere with or disrupt the operations of Steel Fabricator Contractor, Owner, or any other laborer, materialman, supplier, subcontractor, or other person working on the Project, whether due to labor disputes, picketing, boycotting, or any other reason;
 - (5) has filed against it any lien for unpaid taxes for federal, state, or municipal authorities;
 - (6) files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, makes a general assignment for the benefit of its creditors, or has a receiver appointed;
 - (7) allows any insurance required under the Subcontract to lapse, has such insurance canceled, or otherwise fails to maintain all required coverages for the full term required by the Subcontract;

Default Termination – Material Breaches

- Non-exhaustive list of material breaches:
 - (8) fails, upon demand, promptly to comply with any Subcontract provision relating to the removal of liens that have been placed upon the Project or relating to defense of lien claims;
 - (9) fails promptly to indemnify Steel Fabricator against any payment bond claims asserted as a result of Subcontractor's failure to pay its sub-subcontractors or suppliers;
 - (10) fails to carry out the Work in a proper, workmanlike manner, and in full compliance with the specifications; or
 - (11) fails to comply with the safety provisions in the Contract Documents. Other breaches by Subcontractor may also be material



Default Termination

- Drafted to allow for immediate termination
 - Notice and opportunity to cure may be required

14.1.2. If Subcontractor materially breaches the Subcontract, Steel Fabricator may terminate the Subcontract effective immediately for default. Upon such a termination, Steel Fabricator may, at its option, enter onto the premises and take possession, for the purpose of completing the work, of all materials and equipment of Subcontractor. Steel Fabricator may complete the Work itself or through others, by whatever method Steel Fabricator deems expedient.

- No further payment to Subcontractor
 - Subcontractor required to pay if unpaid balance is less than expense to complete work or other damages
- Converted to termination of convenience if determined to be wrongful termination

Termination for Convenience

- Subcontract may be terminated for convenience at sole discretion of Steel Fabricator
- Payment limited to
 - Documented mobilization costs
 - Percentage complete of lump sum price items
 - Agreed unit price
 - Reasonable and documented costs for terminating sub-subcontracts
- Termination for convenience does not relieve Subcontractor of other contractual obligations



Warranties – Key Terms

- Warranty for same period as required by Steel Fabricator Agreement and Contract Documents

16.1. Subcontractor warrants and agrees to provide a warranty for its Work for the same warranty period and under the same terms as set forth in the Steel Fabricator Agreement and Contract Documents. Subcontractor agrees to make good, at its own expense and at the convenience of Owner, any defect in material or workmanship which may occur or develop prior to the end of the warranty period. To the extent Steel Fabricator is given notice of the need for warranty work, Steel Fabricator shall provide such notice to Subcontractor within three (3) business days. If no warranty period is otherwise specified in Steel Fabricator Agreement or Contract Documents, Subcontractor warrants, for a period of one year from Substantial Completion of the Project, or such longer time as the Contract Documents require, that the Work is in full conformity with the Subcontract, and is free from defects in workmanship or materials.

- No waiver by inspection, acceptance or payment
- Advanced warranty waivers rejected.



Specifically Manufactured Equipment and Tools – New Provision

- Warrants title to all Work, materials, and equipment tools specifically manufactured for the Project:

16.6. Specifically Manufactured Equipment and Tools. Subcontractor warrants and guarantees that title to all Work, materials, and equipment tools specifically manufactured for the Project, either included in an application for payment or specially manufactured for the Project, whether incorporated into the Project or not, will pass to Steel Fabricator upon receipt of such payment by Subcontractor, free and clear of all liens, claims, security interests, or encumbrances. Tools and



Liens and Claims

- Lien waiver required for progress payment:

**SUBCONTRACTOR'S INTERIM LIEN WAIVER AND
 RELEASE UPON PROGRESS PAYMENT**

(To be provided by Subcontractor with each application for payment to Steel Fabricator)

STATE OF _____

COUNTY OF _____

The undersigned, _____ ("Subcon"), has been engaged under contract with the _____ ("Steel Fabricator") to furnish certain materials, equipment, services and/or labor to _____ ("Contractor") for the construction of improvements known as _____, together with all improvements and appurtenances attendant thereto ("Project"), which is located at _____, and is owned by _____ ("Owner").

Upon receipt of the sum of \$ _____, the Subcontractor waives, releases and satisfies any and all liens or claims of liens, or payment bond claims it has upon the foregoing described property through the date of _____ ("Current Date"), except for retainage.

Exceptions as follows: None.
 (If no exception or "none" is entered above, undersigned shall be deemed not to have reserved any rights or liens.)

Subcontractor further affirms, warrants, and represents (a) that subcontractors, suppliers, and vendors have been paid in full for all work performed and all materials, equipment, labor or services supplied to the Subcontractor for use at the Project through and including _____ (date of Subcontractor's last prior application for payment), and (b) that the Subcontractor is not indebted to any person or entity for labor, equipment, services or materials used in connection with or as a part of such Project in any amount whatsoever through and including the date hereof, except as noted below:

NAME	SCOPE	CONTRACT PRICE	BALANCE DUE
TOTAL LABOR, EQUIPMENT, SERVICES, AND MATERIAL TO COMPLETE			

Subcontractor agrees that this waiver and release form is in compliance with applicable law. The undersigned hereby warrants that it has not and will not assert or assign any lien or claim of lien waived herein.

Liens and Claims

- Lien waiver required for final payment

ARTICLE 2

**SUBCONTRACTOR'S INTERIM CLAIM WAIVER AND
RELEASE UPON PROGRESS PAYMENT**

(To be provided by Subcontractor with each application for payment to Steel Fabricator)

STATE OF _____

COUNTY OF _____

The undersigned _____ ("Subcontractor"), has been engaged under contract with _____ ("Steel Fabricator") to furnish certain materials, equipment, services, and/or labor to _____ ("Contractor") for the construction of improvements known as _____, together with all improvements and appurtenances thereto ("Project"), which is located at _____ and is owned by _____ ("Owner").

Upon receipt of the sum of \$ _____, Subcontractor waives, releases, and discharges the Steel Fabricator, Contractor, Owner, and each of their insurers, parents, subsidiaries, related entities, affiliates, members, past and present officers, directors, heirs, and administrators, from any and all suits, debts, demands, torts, charges, interest, penalties, fees, causes of action and claims, whether known or unknown, including, but not limited to: claims for payment, change orders, extra work, delay, disruptions, acceleration, stacking of trades, interferences, impact claims, claims under state municipal or federal laws, claims relating to payment bonds, prompt payment statutes through the date of _____ ("Current Date"), except for retainage.

Exceptions as follows: None.
(If no exception or "none" is entered above, Subcontractor shall be deemed not to have reserved any claim.)

The Undersigned certifies, warrants, and guarantees that all work it has performed on the Project has been performed in accordance with its contract documents on the Project, that it has complied with all federal, state and local tax and employment laws, including but not limited to Social Security, unemployment and workers' compensation laws, applicable to its Subcontract and Work on the Project through the date hereof.

The Subcontractor further affirms, warrants, and represents that there are no outstanding claims of any nature, contractual or otherwise, or for any personal injury, death or property damage, arising from or associated with the performance of the Subcontractor's work through and including the date hereof which might be the basis of any claim, suit, lien, or demand that could be asserted against either Steel Fabricator, Contractor, Owner, the Project, or any property, real and personal, related to the Project.

Liens and Claims

- Subcontractor required to bond off liens within 5 days
- Required to reimburse amounts that are paid out on payment bond due to subcontractor's failure to pay its subcontractors:

18.3. Failure to Make Payments. Subcontractor shall immediately reimburse Steel Fabricator for any amounts that are paid out under Steel Fabricator's payment bond for the Project, if any, due to Subcontractor's failure to make payments due, and/or for any costs, including attorneys' fees, which are incurred as a result of such failures by Subcontractor. If Steel Fabricator incurs, via indemnity obligations or otherwise, any costs or expenses whatsoever as a result of Subcontractor's failure timely to pay amounts it owes to Sub-subcontractors, suppliers, or others in connection with the Work, Subcontractor shall immediately reimburse Steel Fabricator for such costs, including attorneys' fees.



Miscellaneous Provisions

- Contract Interpretation
 - If conflict, Subcontract and Exhibits control
- Right to Recoupment or Offset
 - Permits recoupment and offset from any Project

21.11. Right of Recoupment or Offset. Subcontractor authorizes Steel Fabricator to recoup or offset against amounts otherwise due and owing to Subcontractor under the Subcontract, any and all amounts due to Steel Fabricator from Subcontractor, regardless of the origin of such obligations, whether on this or any other Project. The right of recoupment or offset shall be grounds for withholding of payment on this or any other Project.

- Retention and Audit of Records
 - Maintain records for SOL or at least three years
 - Provide access to documents to audit within 10 days



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