

TERMS AND CONDITIONS

(for installation labor/services)

CONTRACT: This Contract is composed of Contractor's Purchase Order, any written change order and these Terms and Conditions. This Contract expressly excludes any of Subcontractor's terms and conditions of sale or any other document issued by Subcontractor in connection with this Contract.

TIME: Time is of the essence of this Contract.

CHANGE ORDERS: Any alteration or deviation from Subcontractor's proposal (the "Proposal") will be executed only upon written change order. Contractor will not be responsible for payment for any work not expressly contained in the Proposal, this Contract or a written change order.

OVERDUE PAYMENTS/DEFAULT: All payments are due at the time set forth in this Contract. Contractor shall be deemed in default hereunder for the failure to timely perform any obligation contained herein, including the failure to pay to Subcontractor any amount due pursuant to the terms of this Contract, only if Contractor fails to correct any such matter within 10 business days after receiving written notice from Subcontractor.

MATERIALS: Subcontractor shall use materials called for in the Proposal. Any changes shall be subject to the prior written approval of Contractor.

COOPERATION: Subcontractor shall cooperate and not interfere with other work activities on the property where the work is performed (the "Property").

CUMULATIVE REMEDIES: The rights and remedies under this Contract are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise.

FINAL COMPLETION: Subcontractor's work that is the subject of this Contract (the "Project") shall be deemed finally completed when (i) Subcontractor has constructed the Project in substantial conformance with the Proposal, passed all required inspections of the Project, and removed all of Subcontractor's debris and equipment from the Property, (ii) Subcontractor has delivered a lien waiver to Contractor in form satisfactory to Contractor, and (iii) Contractor has inspected the Project to Contractor's satisfaction.

INDEMNIFICATION: Subcontractor shall defend, indemnify, and hold harmless Contractor and Contractor's parent company, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Subcontractor's performance of its obligations, Subcontractor's presence on the Property or Subcontractor's negligence, willful misconduct or breach of the terms of this Contract or any allegation that possession or use of the materials provided by Subcontractor pursuant to this Contract infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Subcontractor shall not enter into any settlement without Contractor's prior written consent.

SAFETY: Subcontractor shall be responsible for maintaining Subcontractor's work, equipment and materials in a safe and secure manner. Subcontractor will submit a safety plan to Contractor, acceptable to Contractor in Contractor's sole discretion, at least five (5) days before entering the Property. Subcontractor agrees to comply with any safety plan applicable to the Property or the Project.

PERMITS: Subcontractor shall at its own expense obtain all permits necessary for the work to be performed, unless otherwise specifically directed by Contractor.

INSURANCE: Subcontractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect Subcontractor from claims set forth below which may arise out of or result from Subcontractor's operations and completed operations under this Contract and for which Subcontractor may be legally liable, whether such operations be by Subcontractor or by anyone directly or indirectly employed by Subcontractor, or by anyone for whose acts Subcontractor may be liable: (i) Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Project; (ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of Subcontractor's employees; (iii) Claims for damages because of bodily injury, sickness or disease, or death of any person other than Subcontractor's employees; (iv) Claims for damages insured by usual personal injury liability coverage; (v) Claims for damages, other than to the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (vi) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and (vii) Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than four (4) years after final payment. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Project until the date of final completion of the Project and termination of any coverage required to be maintained after final payment, and, with respect to Subcontractor's completed operations coverage, for no less than four (4) years after final payment. Subcontractor shall deliver to the Contractor before commencing work on the Project Certificates of Insurance in form and substance satisfactory to the Contractor evidencing the required coverages. The coverage afforded under any insurance policy shall be primary to any valid and collectible insurance carried separately by Contractor. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days' prior written notice shall be given Contractor in the event of material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. If Subcontractor fails to purchase and maintain any insurance required, the Contractor may, but shall not be obligated to, upon five (5) days' written notice to Subcontractor, purchase such insurance on behalf of Subcontractor and shall be entitled to be reimbursed by Subcontractor upon demand. The insurance shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater:

Commercial General Liability: \$1,000,000 per occurrence/\$2,000,000 general aggregate for bodily injury and property damage including products and completed operations, with a \$2,000,000 Excess Liability (Umbrella Form) policy. This insurance shall be primary, include Contractor as additional insured and contain a waiver of subrogation, and shall be on an occurrence (not claims made) policy.

Automobile: \$1,000,000 Combined Single Limit (CSL) per accident bodily injury, death, and property damage. This insurance shall be primary and contain a waiver of subrogation.

Employer's Liability: \$100,000 each accident, \$500,000 policy limit, and \$100,000 per employee.

Worker's Compensation: statutory worker's compensation insurance as required by law.

PERFORMANCE OF SERVICES: Subcontractor represents and warrants that it will perform all work and provide all equipment (i) in accordance with this Contract and the approved Purchase Orders, including all schedules and time limits described herein or therein; (ii) in a good, professional and workmanlike manner, free from defects in material and workmanship and in accordance with industry standards;

(iii) in strict accordance with Contractor's specifications, samples or other descriptions provided to Contractor or approved or adopted by Contractor; (iv) in compliance with all laws; (v) efficiently and in a cost-effective manner subject to the requirements of this Contract; and (vi) using qualified personnel with suitable training, education, experience and skill to perform the work and provide the equipment in accordance with timing and other requirements of this Contract.

TAXES: Unless specified otherwise on the face of the Contract, all prices are inclusive of, and Subcontractor shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Contract by Contractor.

FORCE MAJEURE: Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). If a Force Majeure Event prevents Subcontractor from performance for a continuous period of more than fifteen (15) business days, Contractor may terminate this Contract immediately by giving written notice to Subcontractor.

SUBCONTRACTING: Subcontractor may not subcontract or delegate the performance of any part of the work hereunder with Contractor's prior written consent. Contractor may require Subcontractor to replace any previously approved subcontractor whose performance, in Contractor's judgement, has been unacceptable. Subcontractor is responsible for managing its subcontractors and is responsible for all subcontractors to the same extent as if the subcontracted work was retained by Subcontractor. Subcontractor will include in subcontracts any provisions of the Contract that may be applicable to performance of the subcontract and all other provisions intended for the protection of Contractor.

CONFIDENTIAL INFORMATION: All non-public, confidential or proprietary information of the Contractor, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Contractor to Subcontractor, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Contract is confidential, solely for the use of performing the Contract and may not be disclosed or copied unless authorized by Contractor in writing. Upon Contractor's request, Subcontractor shall promptly return all documents and other materials received from Contractor. Contractor shall be entitled to injunctive relief for any violation of this paragraph.

RELATIONSHIP OF THE PARTIES: Subcontractor is an independent contractor of Contractor. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

ENTIRE CONTRACT: This Contract comprises the entire agreement between the parties. Each party acknowledges that any representations, inducements, promises or agreements, oral or otherwise, which are made by any party and not embodied in this Contract shall not be valid or binding. This Contract supersedes all negotiations, conversations, discussions, correspondence and memoranda. All changes hereto must be in writing and signed by both parties.

SEVERABILITY: In the event any portion of this Contract should be declared to be invalid, the remaining portions shall remain in full force and effect and this Contract shall be interpreted so as to carry out the original intent of the parties.

CONSTRUCTION: The rule of construction that a written agreement is construed against the party preparing or drafting such agreement shall

not be applicable to this agreement.

BINDING ON SUCCESSORS: This agreement is binding on and will inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties; *provided, however,* that Subcontractor shall not assign this Contract without Contractor's prior written consent.

NON-WAIVER OF BREACH: The parties agree that failure by a party to require strict performance of any provision shall in no way affect the party's right to enforce the same, nor shall waiver by one party of any breach of any provision hereof be held to be a waiver of any succeeding breach of the same or any other provision of this agreement.

ATTORNEY FEES: The parties agree that in the event a legal proceeding is brought to interpret or enforce the terms of this Contract, the prevailing party shall be entitled to recover reasonable costs and attorney fees in the legal proceeding or any appeal.

GOVERNING LAW & VENUE: This Contract shall be governed by the laws of the State of Oregon without reference to conflict of laws principles, and the parties submit to the exclusive jurisdiction of the courts located in Lane County, Oregon and shall not claim that such jurisdiction or venue is invalid or inconvenient.