

## **GENERAL CONDITIONS FOR FIELD LABOR CONTRACTS**

### **1. Contract Documents; Scope of Work**

The CONTRACTOR shall provide all tools, equipment, construction equipment, temporary facilities, materials (except that specified to be supplied by Others), labor and supervision necessary to complete the work described in the Contract Documents listed on the face of the attached Purchase Order and all work incidental thereto all in strict accordance with the requirements of the Contract Documents, and applicable Codes as required to make the work complete in every respect.

### **2. Workmanship, Materials and Employees**

The work shall be executed in the best and most workmanlike manner by qualified and efficient workers in strict conformity with the requirements of the Contract Documents and the best standard practice. The site shall be kept free of waste and, on completion, left "broom clean." If the CONTRACTOR fails to maintain the site free of waste or fails to leave the site in broom clean condition upon completion of the work, BUYER may correct at CONTRACTOR's expense.

If requested, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials to be used.

Subject to the limitations expressed in this contract, the CONTRACTOR shall have exclusive control of the manner and method of performing the work and shall be responsible for persons engaged on the work, none of whom shall constitute employees of BUYER. CONTRACTOR assumes responsibility for loss or damage to materials, tools, equipment or other property to be or being installed by the CONTRACTOR, whether furnished by BUYER or others.

### **3. Schedule; Time of Completion**

Time is of the essence of this Contract. CONTRACTOR shall complete the work within the Contract Time set forth in the Contract Documents and in accordance with the Project Schedule. The BUYER reserves the right, but is not obligated, to coordinate, schedule and inspect the work; provided, however, that if the BUYER's exercise of its right to coordinate, schedule, and inspect the work will or may result in delay to the critical path of the Project Schedule, the CONTRACTOR shall promptly notify the BUYER of such delay. CONTRACTOR's sole remedy for such delay shall be an extension of time to complete the work. CONTRACTOR shall update the Project Schedule at regular intervals, but not less frequently than monthly, throughout the term of this Contract.

### **4. Site and Local Conditions**

By entering into this Contract, CONTRACTOR agrees that it has examined the site in order to acquaint itself with local conditions including regulations governing admission to the site, safety and plant security. CONTRACTOR accepts conditions at the site as of the date of this Contract and expressly agrees that no adjustment in the Contract Price or Contract Time will be made after contract award for any site conditions that would have been revealed by a reasonable site investigation.

BUYER reserves the right to let other contracts adjacent to this work. The CONTRACTOR shall afford such other contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their work and shall properly coordinate with their activities as directed by BUYER.

If CONTRACTOR's work joins that of others, CONTRACTOR shall notify BUYER immediately in writing of any conditions which may affect completion of the work or the cost thereof. Absence of such notification shall constitute a waiver of the effect of such condition.

The CONTRACTOR assumes responsibility for the cooperation of its employees and those of its subcontractors with those employed on adjacent work.

**5. Measurements**

BUYER shall provide reasonable facilities to enable CONTRACTOR to set points and make measurements. Differences must be submitted to BUYER before proceeding with the work. No claim because of difference in actual and indicated dimensions will be allowed.

**6. Supervision and Employment**

CONTRACTOR shall keep on the work a competent superintendent or foreman who shall be its authorized representative for all purposes under this Contract and shall not be changed for the duration of the work, except with BUYER's approval.

While on BUYER's premises, the CONTRACTOR's employees shall confine themselves to areas designated by BUYER.

**7. Permits, Licenses and Easements**

CONTRACTOR shall give all notices and secure and pay for required permits, licenses and easements.

**8. Safety, Health and Environmental Procedures**

CONTRACTOR will require its employees, agents and subcontractors to perform all work in strict compliance with (i) BUYER's safety procedures which are attached hereto; (ii) the best safe standards for construction of this type; (iii) and all applicable federal, state, and local laws and regulations governing its conduct hereunder, including but not limited to all United States Department of Labor Equal Employment Opportunity Commission and Office of Federal Contract Compliance Programs rules and regulations, and all laws and regulations enacted to protect safety, health, and the environment including all regulations promulgated pursuant to the Occupational Safety and Health Administration ("OSHA"). CONTRACTOR shall be liable to BUYER for any cost incurred due to failure to comply with any such laws and regulations. CONTRACTOR shall also be responsible for providing certification to BUYER that CONTRACTOR, its employees, agents and subcontractors have satisfactorily completed the medical examinations required by OSHA.

CONTRACTOR will require its employees, agents and subcontractors to take all safety and training courses by BUYER which BUYER deems appropriate. BUYER reserves the right to bar any individual from the site for security, health, safety, or other reasons as may be determined appropriate by BUYER. Contractor, in turn, will bar from the site any subcontractor (or any subcontractor employee) for security, health, safety, or other reasons as may be determined appropriate by BUYER.

CONTRACTOR shall be solely responsible for the selection and maintenance of all equipment used to perform services hereunder. All such equipment shall be suitable for the performance of services hereunder, comply with all applicable laws and regulations and shall conform with the highest industry standards. BUYER may, however, direct CONTRACTOR to make any changes in the selection, maintenance, or operation of such equipment which BUYER feels are necessary to protect health, safety, or the environment.

CONTRACTOR agrees it will immediately notify BUYER upon the occurrence of any unusual incident occurring in connection with the performance of services hereunder, including but not limited to fire, injury, property damage or spill of any hazardous material.

**9. Correction of Defective Work**

CONTRACTOR shall remove materials or work not in compliance with the requirements of the Contract Documents, whether incorporated in the work or not, and re-execute such work at no cost to BUYER, and shall pay for repairing, replacing, correcting or otherwise making good other work damaged by such removal and re-execution.

If CONTRACTOR does not remove and re-execute defective work promptly, BUYER may do so and store materials at CONTRACTOR's expense. If CONTRACTOR does not pay the removal expense in 10 days, BUYER may, on 10 days' written notice, sell the materials and account to CONTRACTOR for the proceeds, after deducting all expenses, which must be borne by CONTRACTOR.

Neither acceptance of nor payment for work shall relieve CONTRACTOR of responsibility for faulty materials or workmanship. The CONTRACTOR shall remedy, at no cost to the BUYER, defects appearing within one year from the date of final payment and pay for the resulting damage to other work. BUYER shall give prompt notice of observed defects.

#### **10. Changes and Additions to Work**

BUYER may make changes in or authorize additional work by written order. In all cases affecting the character or amount of the work to the extent of requiring an adjustment of the Contract Time or Contract Price such adjustment shall be agreed upon prior to performance of the change or addition. All extra work must be approved in writing by BUYER before said work is begun.

If BUYER and CONTRACTOR are unable to agree on the adjustment to Contract Time or Contract Price, if directed to do so by BUYER, CONTRACTOR shall promptly perform such changed or extra work, and shall maintain accurate records of the actual cost incurred in completing such work.

#### **11. Subcontracts**

CONTRACTOR shall not subcontract work without prior written consent of BUYER. Rejection by BUYER of any proposed subcontractor shall not obligate BUYER for additional cost. If required, the CONTRACTOR will furnish to BUYER a copy of any and all subcontracts.

#### **12. Terms of Payment; Payments Withheld**

Installment payments will be made only if expressly provided for and will be made only on the basis of billings for materials installed and for work actually completed and approved by BUYER, less 10% retainage. In no event shall the BUYER be obligated to pay more than 90% of the total Contract Price until BUYER's final acceptance of the work. Balance will be paid after completion and final acceptance by BUYER.

BUYER reserves the right to withhold payment to the extent necessary for the BUYER's protection if the BUYER determines that: (1) the ratio of payments made to total Contract Price would exceed the ratio of work actually performed to total work called for under the Contract; (2) CONTRACTOR has not corrected defective work; (3) CONTRACTOR has failed to make payments to laborers, suppliers, or subcontractors; (4) CONTRACTOR has damaged the work of another contractor working on or adjacent to the site; (5) CONTRACTOR persistently fails to perform the work in accordance with the Contract Documents and the BUYER's instructions.

#### **13. Cost Accounting**

CONTRACTOR shall furnish in a form acceptable to BUYER, a breakdown of the contract price for cost accounting purposes within 30 days from the date of award of contract.

#### **14. Trade Analysis Information**

If required by BUYER, after purchase, the CONTRACTOR shall furnish BUYER a breakdown by manufacturers and dollar value of major materials entering into this contract.

## **15. Mechanics' Liens**

For work done in any state, BUYER shall have the right to require CONTRACTOR to furnish a complete release of liens before final payment is made.

15.1 Waiver of Liens. To the extent permitted by applicable law, the CONTRACTOR hereby expressly waives and relinquishes its right to file a mechanics' lien against the BUYER, the work, or the BUYER'S real estate for work done or materials furnished with respect to this Contract. CONTRACTOR agrees to execute additional documents as may be necessary to effectuate this waiver.

15.2 Indemnification for Mechanics' Liens. Provided that the waiver of paragraph 15.1 is enforceable under applicable law, if the CONTRACTOR, or anyone furnishing labor or materials for the Contract through the CONTRACTOR, files a lien, notwithstanding this waiver, the BUYER shall have the right to discharge the lien by appropriate legal proceedings and to retain out of any payment then due the CONTRACTOR, an amount sufficient to completely reimburse and indemnify the BUYER against the expenses and losses resulting from such lien.

If the waiver of lien rights in advance of payment is not enforceable under applicable law, so long as the BUYER is in compliance with its payment obligations under the Contract, if the CONTRACTOR, or anyone furnishing labor or materials for the Contract through the CONTRACTOR, files a lien, the BUYER shall have the right to discharge the lien by appropriate legal proceedings and to retain out of any payment then due the CONTRACTOR, an amount sufficient to completely reimburse and indemnify the BUYER against the expenses and losses resulting from such lien.

## **16. Title**

If materials and/or equipment are to be furnished by CONTRACTOR hereunder, title shall pass to BUYER upon installation in the work.

## **17. Insurance; Bonds**

CONTRACTOR will comply with all applicable statutes with respect to Workers' Compensation, Employer's Liability, Unemployment Compensation and/or Old Age Benefits, and all other applicable laws relating to or affecting the employment of labor.

CONTRACTOR will maintain at its expense the following insurance: Workers' Compensation in the required statutory limits; Automobile Liability and Comprehensive General Liability Insurance, including contractual liability and completed operation liability, all such insurance to be carried with companies acceptable to BUYER and all such Automobile Liability and Comprehensive General Liability Insurance to have limits satisfactory to BUYER. CONTRACTOR shall upon request by BUYER, file with BUYER Certificates of Insurance evidencing such insurance signed by authorized representatives of the insurance companies and stating that, in the event of any material change in or cancellation of the coverage, at least thirty (30) days prior written notice will be given to BUYER.

The BUYER and CONTRACTOR waive all rights against each other and any of their contractors, subcontractors, sub- subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by any property insurance applicable to the Work, so long as the policies do not prohibit such waivers of subrogation and there is otherwise no adverse effect upon the coverage afforded because of this waiver. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an

insurable interest in the property damaged. CONTRACTOR shall ensure that all contracts contain an identical waiver of subrogation in favor of BUYER.

If requested by the BUYER, the CONTRACTOR shall furnish performance and payment bonds in the amount of 100% of the Contract Price, in form and substance acceptable to the BUYER.

## **18. Indemnification**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless, and defend BUYER and all of its agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of CONTRACTOR's work or of other project work undertaken by CONTRACTOR provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, or patent infringement, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any act or omission of CONTRACTOR or anyone directly or indirectly employed by it or anyone for whose acts it may be liable, or is caused by or arises out of the use of any products, material, or equipment furnished by CONTRACTOR, regardless of whether it is caused in part by a party indemnified hereunder. In any and all claims against BUYER or any of its agents or employees, by any employee of CONTRACTOR or anyone directly or indirectly employed by CONTRACTOR, or anyone for whose acts CONTRACTOR may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR under Workers' Compensation acts, Disability Benefit acts or other employee benefit acts.

## **19. Termination**

19.1 For BUYER's Convenience. BUYER may terminate this Contract at any time, at the sole discretion of the BUYER, upon written notice to CONTRACTOR. Provided that the CONTRACTOR is not in breach of this Contract, upon such termination BUYER shall pay CONTRACTOR all costs incurred prior to the date of termination together with costs reasonably necessary for winding up the work, payments reasonably necessary for termination commitments to suppliers and subcontractors plus a termination fee equal to 10% of such costs, less prior payments made on account of the work; provided, however, that in no event shall the total of all payments to the CONTRACTOR exceed the Contract Price. Reimbursement of the costs set forth in this paragraph shall be the CONTRACTOR's exclusive remedy in the event that the Contract is terminated hereunder.

19.2 For CONTRACTOR's Default. BUYER may terminate this Contract at any time following a material breach of its terms by CONTRACTOR, upon written notice to CONTRACTOR. In the event of termination under this paragraph 19.2, CONTRACTOR shall be liable to BUYER for all damages allowed by law and this Agreement, including but not limited to the amount by which the costs of completing the work exceed the unpaid balance of the Contract Price under this Contract.

Final payment to the CONTRACTOR of any unpaid balance of the Contract Price less the costs and damages incurred by BUYER to complete the work shall be made upon final completion of the work; provided, however, that if the BUYER'S damages and cost to complete the work exceed any amount otherwise due the CONTRACTOR, the CONTRACTOR shall promptly reimburse the BUYER such difference.

BUYER may terminate this Contract following any material breach of its terms, including but not limited to the following:

(1) if the CONTRACTOR fails to prosecute the work diligently, or fails to make the progress on the work which the BUYER believes, in its reasonable judgement, is necessary to complete the entire work within the time required hereby;

(2) if the CONTRACTOR fails to maintain progress on the construction of the work substantially in accordance with the BUYER approved schedule;

(3) if the CONTRACTOR abandons the work (as determined by the BUYER) for a period of two (2) or more days, or fails to pay laborers, mechanics, materialmen, contractors or suppliers when due;

(4) if the CONTRACTOR fails to carry out any of its obligations under the Contract;

(5) if there shall be filed by or against the CONTRACTOR in any court pursuant to any statute of the United States or any State, a petition in bankruptcy, insolvency, for reorganization or for the appointment of a receiver or trustee of all or a portion of the CONTRACTOR's property, or if the CONTRACTOR shall make an assignment for the benefit of creditors or petition for or enter into an arrangement, or if the CONTRACTOR shall refuse pursuant to any statute of the United States or of any State and if, by reason of any of these events, the CONTRACTOR's obligations under this Contract may be assigned to or performed by a person other than the CONTRACTOR; or

(6) if the CONTRACTOR shall fail to pay its debts in a timely manner or if the CONTRACTOR becomes insolvent, or if the BUYER shall have any reason to believe that the CONTRACTOR does not have the financial ability to carry out its obligations under this Contract and the CONTRACTOR fails to give the BUYER prompt and reasonable assurances of its ability to perform.

If, after notice of termination under this paragraph 19.2, it is determined that the CONTRACTOR was not in default of its obligations under this Contract, the parties agree that the rights, obligations, and remedies of the parties shall be determined as if the notice of termination had been issued pursuant to paragraph 19.1 above.

## **20. Delay**

CONTRACTOR's sole remedy for delay, however caused, shall be an extension of time and CONTRACTOR shall not be entitled to adjustment in the Contract Price or other damages for delays, whether caused in whole or in part by BUYER, except for increases in the cost of the work due to uniform salary increases paid to all CONTRACTOR's employees.

## **21. Arbitration**

At the sole election of BUYER, any dispute or controversy or claim arising out of or related to this Contract or the breach thereof, may be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

## **22. Assignment**

This Contract shall not be assignable by CONTRACTOR without the prior written consent of the BUYER, and BUYER shall be under no obligation whatsoever to recognize any such assignment, without its prior consent, and shall be at liberty, regardless, to pay the proceeds of this Contract to the CONTRACTOR.

## **23. Modifications**

This Contract contains the entire agreement between BUYER and CONTRACTOR and may be modified only by a written change order (supplement) issued by BUYER and accepted by CONTRACTOR pursuant to the terms stated herein.

## **24. Equal Employment Opportunity**

If the value of this Contract exceeds \$10,000, then pursuant to Executive Order 11246 (dated September 24, 1965 with respect to Equal Employment Opportunity), SELLER agrees to comply with the obligations of the clause set forth at 48 C.F.R. §52.222-26(b) in addition to Section 503 of the Rehabilitation Act of 1973, as amended, 38 U.S.C. § 4212 of the Vietnam Veterans' Readjustment Assistance Act of 1974, as amended, and all provisions of 29 CFR part 470 (Executive Order 13201). For purposes of this clause, the term "Contractor" as used therein shall mean SELLER.

**25. Governing Law**

This Contract shall be governed by the laws of the state in which the work will be performed.