

Subcontractor General Conditions

(Contractor in the document refers to Central Conveyor Company)

SECTION 1: STATEMENT OF WORK AND RESPONSIBILITIES

1. **Services Provided by the Contractor.** Subcontractor shall perform all the work required by the contract documents for the project described and contract documents for the noted Owner's project on said Owner's premises and noted in any and all General Terms and Conditions attached thereto. Work shall consist of the provision of all supervision, labor, material, equipment and services required to complete the project.
2. The Subcontractor shall provide for the job site all the labor, supervision, and materials hereinafter set forth in exact accordance with the specifications and as shown on plans, drawings and details hereto annexed or described therein, which are to be returned to Contractor upon completion of the work. The plans drawings and details which are to be returned upon completion of the work shall include an accurate record of "as built" conditions recording any variations with particular reference to work which will be subsequently concealed. The intention of this Agreement is to include all labor, materials, supplies, equipment, tools, and transportation thereof necessary for the proper execution and completion of the work. Subcontractor must refer any questions respecting the specifications, plans, drawings, and details about which it is in doubt, or which seem to admit of a dual interpretation, to Contractor for its decision, by which Subcontractor must abide.
3. **The Subcontractor Documents.** The Subcontractor Documents for this Contract consist of the Purchase Order, this Agreement and any Exhibits attached hereto, the Conditions of the Contractor between the Owner and Contractor (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to execution of the Agreement between the Owner and the Contractor and Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Subcontract, or other contract documents, if any, listed in the Owner Contractor Agreement, the bid documents for this Subcontract, and Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire Agreement between the parties and supersedes any prior negotiations, representations or agreements, whether written or oral.
4. Copies of the above documents which are applicable to the Work under the Subcontract shall be furnished to the Subcontractor upon his request.
5. **Rights and Responsibilities.** The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of the Agreement between the Owner and Contractor apply to the work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under its contract, assumes towards the Contractor, and the Subcontractor shall assume towards the Contractor all obligations and responsibilities which the Contractor, under obligations and responsibilities which the Contractor, under its contract, assumes towards the Owner. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under its contract, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor, which the contractor under its contract, has against the Owner, insofar as applicable to this Subcontract. Where a provision of the Agreement between the Owner and the Contractor is inconsistent with the provision of this Agreement, the more restrictive provision will govern.
6. The Contractor may require the Subcontractor to enter into agreements with Sub-Subcontractors performing portions of the work of this Subcontract by which the Subcontractor and the Sub-Subcontractor are mutually bound, to the extent of the work to be performed by the Sub-Subcontractor, assuming towards each other all obligations and responsibilities which the Contractor and the Subcontractor assume towards each other and having benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of this Agreement.
7. The Subcontractor shall cooperate with the contractor in scheduling and performing the Subcontractor's work to avoid conflict, delay in or interference with the work of the Contractor, other Subcontractors or the Owner's own forces.
8. The Subcontractor shall promptly submit shop drawings, product data, samples and similar submittal required by the Subcontractor Document with reasonable promptness and in such sequence as to cause no delay in the work or in the activities of the Contractor or other Subcontractors.
9. Subcontractor shall furnish, without extra charge, all work and materials not specifically mentioned or referred to in the Contract Documents, but which may be reasonably inferred from the Contract Documents or which are reasonably necessary for the proper execution and completion of the work and, also, all work or materials of the kind herein contracted for must conform to all laws and the rules and regulations of all authorities having jurisdiction over this type of work.
10. The Subcontractor shall furnish to the Contractor periodic progress reports on the work of the Subcontractor as required by the Contractor and/or the Owner.
11. The Drawings and Specifications as described herein are intended to be complimentary and all inclusive for the complete project as related to each trade or subdivision of the work. All items of work described by either the Drawings or Specifications shall be construed as if called for by both. The described work shall be complete in every detail, although every item may not be particularly mentioned or shown. Details, section and work shown on the Drawings in part only shall continue throughout unless distinctly marked otherwise. Should any error or inconsistency appear in the Drawings or Specifications, the Subcontractor shall not proceed with the work in uncertainty, but shall consult with the Contractor and/or Owner regarding revisions to the Drawings and/or Specifications. If found to be justified, bulletins will be issued by the Owner or Contractor to cover such changes.
12. Shop drawings, as required by the Specifications, shall be submitted by the Subcontractor to the Contractor in a form and number as required by the Owner. All shop Drawings shall be submitted in ample time to prevent delays of material deliveries. Drawings shall be

submitted in the order in which the materials are needed without necessarily waiting for completion of all Drawings before submitting part of them for approval.

13. Shop drawings found to be inaccurate or otherwise in error shall be corrected by the Subcontractor responsible for the work.
14. No changes shall be made on approved shop drawings without the written consent of the Contractor and/or Owner. The Contractor and/or Owner's approval of shop drawings and manufacturer's Drawings and Specifications is for general arrangement only, unless otherwise noted, and does not relieve the Subcontractor from full responsibility for the proper and correct execution of his work. Where errors and omissions are discovered later, they must be made good by the Subcontractor irrespective of any prior approvals of the Contractor and/or Owner.

SECTION 2: DEFINITIONS

1. **Owner.** Persons or entity identified as such in the Agreement and referred to throughout the contract documents. The "Owner" means the Owner of the Owner's authorized representative.
2. **Architect-Engineer.** The Owner's local engineering department or home office of the independent contractor engaged by the Owner to perform architectural and/or engineering services.
3. **Field Representative.** The Architect-Engineer's employee designated to represent the Architect-Engineer at the project site or the Owner designated representative when the Architect-Engineer does not have a field representative.
4. **General Contractor.** The Contractor designated by the Owner as General Contractor.
5. **Contractor.** Any party having direct Contract with the Owner.
6. **Subcontractor.** Any party who agrees to assume a portion of a contract from a Contractor and agrees to construct a portion of the work for which the Contractor has been engaged to construct under its contract with the Owner.
7. **Sub-Subcontractor.** Any party who has direct or indirect contract from a Contractor and agrees to construct a portion of the work for which the Contractor has been engaged to construct under its contract with the Contractor.
8. **Assigned Contractor.** A Contractor who becomes a Subcontractor by virtue of its contract being assigned by the Owner to another Contractor.
9. **Superintendent.** A representative who must have authority to act for the General Contractor, Contractor, or Subcontractor respectively.
10. **Material man.** Any party furnishing materials required under this contract for the improvement of property. If the Material man incorporates the materials into construction itself, the Material man shall be designated under this contract as a Subcontractor.
11. **Bid Documents.** These documents shall only include Drawings, Specifications (including General Conditions and Special Conditions) and Bulletins issued and dated on or before the date of contract with the Owner's approval.

SECTION 3: STATEMENT OF QUALIFICATION

1. The Subcontractor states that it is qualified and is well experienced to perform they type of work described herein. The Subcontractor has reviewed all of the applicable drawings and specifications, has visited the job site, and has become thoroughly familiar with all of the necessary information to provide a fully comprehensive bid on the specified and intended scope of work.
2. Although each and every item may not be mentioned in the drawings and specifications, it is expected that such items will be included to provide a complete system which is free from defects in material and workmanship, fit and sufficient for the purpose intended in strict compliance with the specifications and other contract documents. The work of the Subcontractor shall be in compliance with any and all applicable industry codes or standard practices. In addition, all work performed by the Subcontractor shall be consistent with applicable government regulations and laws.
3. Execution of the Agreement by the Subcontractor is a representation that the Subcontractor has visited the site, become familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of the contract documents.

SECTION 4: SUBCONTRACT COMPENSATION

1. The price to be paid by Contractor and accepted by Subcontractor for the performance of this Subcontract is as set forth in the covering Purchase Order, subject to additions and deductions as provided in the Subcontract document herein.
2. Subcontractor shall comply with all laws relating to taxes, wages, hours and equal employment opportunity requirements. Subcontractor agrees, when required by law, to make payments to Subcontractor's employees or their dependents and to save Contractor and Owner harmless from all liability for such payments, and Subcontractor hereby agrees to indemnify Contractor in accordance with Section 16 below.
3. Subcontractor agrees to pay all local, state and federal taxes, including but not limited to sales and use taxes and similar levies on all materials, tools, and equipment furnished under this Subcontract and to assume all risk and liability for loss and damage, however caused, to Subcontractor's material, tools and equipment not incorporated in the work.

4. The compensation stated herein to be paid to Subcontractor is inclusive of all taxes imposed by all laws whether or not stated and charged separately, based upon, including, but not limited to sales tax, use taxes and personal property taxes levied and assessed against the Owner, Contractor and Subcontractor arising out of the furnishing of labor and services in connection with the work done by Subcontractor and its subcontractors. Where the law requires taxes to be stated and charged separately, the total of all items included within the work and the added tax shall not exceed the Compensation stated herein.
5. The Subcontractor, in making and ordering shipments, shall not consign nor have materials consigned in the name of Contractor. Contractor shall not make payments for charges on shipments made by and to the Subcontractor, except at its option, in which case the Subcontractor shall reimburse Contractor for such expense.
6. The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Subcontractor's Work, the furnishing of which is required of Contractor by the Contract Documents.

SECTION 5: PROGRESS PAYMENTS

1. This Subcontract is expressly made subject to the Contract of Contractor with the Owner. The Subcontractor hereby agrees that as a condition precedent to Contractor's obligation to make any payment to the Subcontractor under this Subcontract, Contractor must receive payment therefor from the Owner. In the event that Contractor does not receive all or any part of the payments from the Owner in respect to the work provided by the Subcontractor pursuant to this subcontract, whether because of a claimed defect or deficiency in the work, or for any other reason, Contractor shall not be liable to the Subcontractor for any such sums in relation thereto. Unless otherwise provided in the contract Documents, Contractor shall pay the Subcontractor each progress payment and the final payment under this Subcontract no later than (10) working days after her receives payment from the Owner, except as provided in Section 5, #7. The amount of each progress payment to the Subcontractor shall be the amount indicated on the application for payment as approved by Contractor which shall reflect the percentage of completion applied to the Contract Sum of this Subcontract which represents the value of work completed less the indicated retainer.
2. The period covered by each application for payment shall be on (1) calendar month ending on the last day of the month.
3. Provided an application for payment is received by the Contractor not later than the twentieth (20th) day of a month, the Contractor shall include the Subcontractor's work covered by that application in the next application for payment which the Contractor is entitled to submit to the Owner. The Contractor shall pay the Subcontractor payment within (10) days after the Contractor receives payment from the Owner.
4. If an application for payment is received by the Contractor after the twentieth (20th) of a month, the Subcontractor will not be paid and the Subcontractor's work covered by the untimely application shall be included by the Contractor in the next application for payment submitted to the Owner.
5. Each application for payment shall be based upon the most recent schedule of value submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of value shall allocate the entire Subcontract sum among the various portions of the Subcontractor's work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor and/or Owner may require. This schedule, unless objected to by the Contractor, shall be used as basis for reviewing the Subcontractor's application for payment.
6. Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontract's work as of the end of the period covered by the application for payment.
7. Contractor may withhold payment to the Subcontractor from any application for payment, on account of (1) failure of the Subcontractor to comply fully with any requirements of this Subcontract, including the failure of the Subcontractor to make payments to subcontractors for material or labor, (2) the failure of the Subcontractor to prevent the filing of liens or claims against the Owner, the project, or the Subcontractor and (3) damage to another subcontractor by reason of acts or failure to act of the Subcontractor.
8. With each application for payment, Subcontractor must supply the required sworn statements and appropriate waivers of lien to satisfy the Contractor and/or Owner.
9. No partial or entire occupancy of the project by Owner nor any statement given or payment made shall be evidence of the performance of this Subcontract either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.
10. All operation and maintenance manuals, close-out documents, spare parts lists, written guarantees and as built drawings shall be delivered prior to submission of an application for final payment. Upon submittal of the application for final payment, Subcontractor shall furnish an affidavit (in addition to any sworn statement required by the Owner) that all payrolls, bills for materials and equipment, and other indebtedness connected with Subcontractor's work have been paid or otherwise satisfied. The Subcontractor, its subcontracts, its Material man and all persons acting for, through, and under them, covenants that no mechanics liens and claims be field and maintained by them, against the work, building and site appurtenant thereto and part thereof, for or on account of work, labor done and materials furnished by them, under this Subcontract, in connection with the erection and construction of the work; and the Subcontractor itself and its subcontractors and all persons acting for, through and under them, hereby expressly waive and relinquish all liens and encumbrances of every kind and nature against the work, building and site appurtenant thereto and part thereof, and agree that this agreement of waiver shall be an independent covenant and shall operate and be effective as well with respect to work and labor done and materials furnished under any supplement, alteration and addition to this Subcontract and for extra and additional work, although not herein or therein referred to, as to work and labor done and materials furnished under this Subcontract. Contractor, at its option, may require the Subcontractor to furnish satisfactory bond to indemnify Owner and Contractor against any liens and encumbrances attempted in violation of this Section.

11. Contractor, at its option, may retain from monies owing by it to Subcontractor such sums to indemnify it against losses, liabilities, and obligations for which the Subcontractor is liable under this Subcontract.
12. Contractor may disburse from monies owing by it to Subcontractor sum sums as it may determine to be necessary to pay for materials, equipment, labor and supplies used, ordered and delivered for incorporation into work to be performed by Subcontractor.
13. Should Subcontractor, in any case dispute, fail to pay claimed obligations for such materials, equipment, labor and supplies, then Subcontractor shall furnish bond or securities sufficient to protect Contractor and Owner against filing of any lien or encumbrance against the property of Owner.

SECTION 6: TIME OF COMPLETION

1. Subcontractor shall complete under this Subcontract to the satisfaction of Contractor and Owner, within the schedule number of working days after the date Subcontractor begins, or is instructed to begin, said work, whichever is earlier. Time is of the essence of this Subcontract. Subcontractor shall so schedule its work so that it is properly coordinated with Contractor's schedule and other phases of the projects. No additional monies will be paid Subcontractor for completion of work ahead of schedule.
2. The Subcontractor shall submit to the Contractor for approval a detailed incremental progress schedule for work included in the Subcontract. This schedule shall reflect the contract dates and include all construction activities such as detailing, shop fabrication, delivery of purchase items, field activity duration, etc. and shall be sufficiently detailed to enable the Contractor and/or Owner, at all times throughout the duration of the work, to compare actual with scheduled progress. This schedule, when approved by the Contractor and/or Owner, shall be the Subcontractor's approved schedule.
3. The Contractor and/or Owner reserves the right to issue a written modification of the sequence of work set forth in the Subcontractor's approved schedule.
4. In the event that the Subcontractor fails to provide the incremental progress schedule within the time period so agreed between the Subcontractor and the Contractor, the Contractor may establish and prepare said schedule at the expense of the Subcontractor. This schedule, when forwarded to the Subcontractor, shall be the approved schedule.
5. If the Subcontractor fails to maintain the approved schedule, or if the progress or performance of the work or procedure employed in the work is such that, in the opinion of the Contractor and/or the Owner, the work will not be completed within the time or times stated in the contract, the Subcontractor shall, at its own expense, work overtime, additional shifts, Saturdays, Sundays and/or holidays and/or hire additional employees, and revise or implement its construction procedures as may be necessary to restore adherence to the approved schedule. The Subcontractor will be responsible for the handling of any jurisdictional disputes or work stoppage which may arise during performance of the work and shall promptly utilize available remedies to effect assumption of the work.
6. Should the Subcontractor contend that it is entitled to an extension of time for completion of any portion of the work, the Subcontractor shall, within forty-eight (48) hours of the occurrence of a delay, notify the Contractor and/or the Owner in writing setting forth the cause of the delay, a description of the portions of the work affected thereby, and all pertinent details. Within one (1) week after cause for the delay has ceased to exist, the Subcontractor shall submit written application to the Contractor and/or the Owner for the specific extension of time requested.
7. The only remedy available to the Subcontractor shall be an extension of time. The Subcontractor agrees that, whether or not any delay shall be the basis for an extension of time, it shall have no claim against the Contractor and/or Owner for an increase in the contract price, a payment or allowance of any kind for damage, loss or expense resulting from delays, or any damage, loss or expense resulting from interruptions to, or suspensions of, its work to enable other Subcontractors or the Contractor to perform their work.
8. If Subcontractor, in the opinion of Contractor, delays the progress of the work, then, if requested by Contractor, Subcontractor shall, at its sole expense, perform such overtime work as may be necessary to finish said work within the specified time. Contractor's decision governing the necessity of said overtime shall be final.
9. If, in the judgment of Contractor, it becomes necessary at any time to accelerate the work at any particular location, then the Subcontractor shall, as directed by Contractor cease work where Subcontractor is engaged, transfer his equipment and work force to other locations and execute such portions of his work as may be required to enable others to expedite their work. No additional payment shall be made by Contractor to the Subcontractor for this acceleration of the work.
10. Should the Subcontractor, in the opinion of the Contractor, at any time during the performance of the contract; neglect or refuse to supply a sufficiency of properly skilled workmen or of materials of proper quality, fail in respect to prosecute the work with promptness and diligence, fail to perform any terms of the conditions of the contract, become insolvent, file a voluntary petition of bankruptcy or be subject to an involuntary petition of bankruptcy; then the Contractor may, after giving forty-eight (48) hours written notice to the Subcontractor, provide any necessary labor, materials or equipment required to assist the Contractor in the completion of the work and deduct the cost thereof from any monies due or thereafter due the Subcontractor under this Subcontract.
11. In the alternative, for the purpose of completing the work under the Subcontract, the Contractor shall be at liberty to terminate the employment of the Subcontractor for the work and enter upon the premises and take possession of all materials, tools, and equipment; and to employ any other person or persons necessary to finish the work on a fixed sum contract basis, cost, plus percentage of cost, cost plus fixed fee basis, or a combination thereof. In case of discontinuance of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under the Subcontract until the work is finished. If the unpaid balance of the amount to be paid under the Subcontract shall exceed the cost and expense incurred by the Contractor in finishing the work, the excess shall be paid by the Contractor to the Subcontractor. If the cost and expenses shall exceed the unpaid balance of the Subcontract, the Subcontractor shall pay the difference to the Contractor.

SECTION 7: RECORDS AND AUDIT

1. Subcontractor agrees to keep records and books of account showing the actual cost to it of all items of labor, materials, equipment and supplies, services and other expenditures of whatever nature for which payment to it is authorized under the provisions of this Subcontract.
2. Contractor shall, at all times, have access to all books, records, correspondence, instruction, receipts, facilities and memoranda of every description in connection with the work.

SECTION 8: ALTERATIONS AND CHANGES IN THE WORK

1. Contractor, at any time prior to the completion of the work, may order additions, omissions or alterations to or in the said work, material, or equipment, but no such changes shall be made except by a written order signed by Contractor and when so ordered, the value of the work added or omitted shall be agreed upon by the Subcontractor and Contractor, and the amount thereof added to or deducted from the Subcontract price as the case may be. Other work not constituting "additions, omissions or alterations" may be ordered by Contractor but under price, terms and conditions agreed to at the time of acceptance. Any additional work performed by Subcontractor without written authorization by Contractor Purchasing Department will be considered part of the original scope of the work and invoices relative to this work will not be honored. Nothing contained herein entitles Subcontractor for additional payment for acceleration of the work as provided in Section 6.09 herein.
2. Any changes, omissions or extra work shall be subject to all provisions of the Contract Documents and to the same extent as the work contracted for and no changes, omissions or extra work shall annul or invalidate this Subcontract.

SECTION 9: PROCEDURE FOR AN ALLEGED CHANGE IN COST

1. The Subcontractor shall make all claims promptly to Contractor for additional cost, extensions of time, and damages for delays or other cause in accordance with the Contract Documents. Any such claim which will affect or become part of a claim which Contractor is required to make under the Contract Documents within a specified time period or in a specified manner shall be made in sufficient time to permit Contractor to satisfy the requirements of the Contract Documents. Such claims shall be received by Contractor not less than two (2) working days preceding the time by which Contractor's claim must be made. Failure of the Subcontractor to make such timely claim shall bind the Subcontractor to the same consequences as those to which Contractor is bound.
2. Should the Subcontractor perform any work or should it proceed in any manner which it may subsequently allege has caused it an increased cost, damage or loss, purporting in each case to have acted upon verbal instruction or with tacit consent or acceptance or approval other than written from the Contractor's Purchasing Department, the Subcontractor shall be held to have done so as its own peril and the Subcontractor shall have no claim against the Contractor or Owner on account of the alleged increased cost, damage or loss.
3. The Subcontractor's Superintendent shall represent the Subcontractor on the site of the work and all directions given to this person shall be as binding as if given to the Subcontractor.
4. If the Subcontractor shall contend that such directions will result in an increase in the cost of the work, damage or loss; the Subcontractor shall, except in the situation of an emergency, notify the Contractor's Purchasing Department in writing within four (4) days of the receipt of such directions. Subcontractor shall not proceed with the directions or with the work affected thereby until the Subcontractor has received, in writing, acknowledgment of the claim and instructions from the Contractor's Purchasing Department. The Subcontractor shall comply with the written instructions, and unless the claim is finally disposed of by the acknowledgment and instructions, compliance shall be without prejudice to the rights of the Subcontractor and Contractor. In the event of an emergency, the Contractor shall proceed with the work necessary and shall keep accurate and complete records of the costs of the work, which records shall be presented to the Contractor's Purchasing Department as soon as the emergency ceases to exist.
5. If the Subcontractor shall contend during the performance of the work that the Subcontractor is entitled to payment from the Contractor for increase in the cost of the work, damage or loss because of any action or omission of the Contractor or others engaged by the Contractor; the Subcontractor shall not delay its work on account thereof and shall, within seven (7) days after the first observance of the occurrence, notify the Contractor's Purchasing Department, in writing, of the amount of its claim and all details in connection with its contention.
6. Within seven (7) days after receipt by the Contractor's Purchasing Department of the Subcontractor's written notice claim, the Contractor's Purchasing Department shall, in writing, acknowledgment receipt of the notice. At the time of this acknowledgment or within a reasonable time thereafter, the Contractor's Purchasing Department shall certify or deny the validity of the Subcontractor's claim. The Subcontractor shall furnish all information requested by the Contractor's Purchasing Department to assist them in making their decision.
7. It is a condition precedent to the consideration or prosecution of claims by the Subcontractor that the foregoing provisions be strictly observed in each instance, and if the Subcontractor fails to comply, the Subcontractor shall be deemed to have waived the claim. Neither the provisions of this Section 9 or the acknowledgment of the receipt of any claim by the Contractor's Purchasing Department shall constitute admission on the part of the Contractor that any claim is valid.

SECTION 10: WORKMANSHIP, INSPECTION AND SITE MAINTENANCE

1. Subcontractor shall cooperate with the Contractor and all other subcontractors and materialmen employed on the work in order to avoid complications and insure high quality workmanship in every respect, and in the manufacturing, assembling and erection of the work shall employ only workers who are qualified, careful and efficient, in strict conformity with high quality standard practices.
2. Subcontractor shall cooperate with the Contractor in scheduling and performing its work in order to avoid conflicts or interference in the Contractor's and any other Subcontractor's work. As soon as practicable after execution of this Subcontract, Contractor shall provide the Subcontractor with a copy of the estimated progress schedule of Contractor's entire work which Contractor has prepared and submitted

for the Owner's information, together with such additional scheduling details as will enable the Subcontractor to plan and perform its work properly.

3. Contractor shall promptly notify the Subcontractor of all modifications to the Contract between the Owner and Contractor which affect this Subcontract and which were issued or entered into subsequent to the execution of this Subcontract.
4. Subcontractor shall provide proper facilities at all times for the inspection of the work by Contractor. Subcontractor, within twenty-four (24) hours after receiving written notice from Contractor to that effect, shall, at its own expense, proceed to repair and replace or remove from the ground or buildings all material, whether worked or unworked, condemned by Contractor, and take down all portions of the work which Contractor has, by written notice, condemned as unsound or improper, or as in any way failing to conform to the drawings and specifications.
5. By executing this Subcontract, the Subcontractor represents that it has thoroughly familiarized itself with the building site and soil conditions, and with the request for quotations, instructions to bidders, addenda issued prior to the date for receiving of proposals, plans and specifications for said work, material and equipment and is familiar with the shipping and delivery facilities and all other matters and conditions which will affect the operation and completion of said work and it assumes all risk therefrom.
6. All Subcontractor's employees shall conform to rules and regulations of Owner and Contractor on the premises. The Subcontractor shall at all times keep the site free from accumulation of waste materials or rubbish caused by its employees or work and, at the completion of the work, it shall remove all its tools, scaffolding, and surplus materials and shall daily, or more frequently as the Owner or Contractor may require, collect its rubbish at places where directed by the Owner and Contractor and shall remove the rubbish from the site without necessary delay. The Subcontractor shall do all required cleaning within twenty-four (24) hours after notice from the Owner or Contractor, whether verbal or in writing, and if the Subcontractor fails to do such cleaning, to the satisfaction of the Owner and Contractor, the Owner and Contractor may do the cleaning and charge the Subcontractor for all costs incurred as a result thereof.
7. If so required by the Owner or Contractor, the Subcontractor shall, at its own cost, provide, erect and maintain, at locations designated by the Owner or Contractor, fire proof tool sheds for storing the Subcontractor's tools, materials and equipment. The Subcontractor shall relocate its tool sheds as requested by the Owner or Contractor at the Subcontractor's own costs. The Owner or Contractor will not be responsible for any clothing, tools, materials, or equipment lost, damaged, stolen, or destroyed.
8. The Subcontractor, during the construction of its work and while it is working on the site in any capacity whatever, and until the completion of the project, shall protect all unfinished work and all materials on the site, all adjacent property and all tools, plant, equipment, and other appliances for the Subcontractor's use or incidental thereto for the execution of this contract, whether furnished by the Subcontractor or Owner, from the elements and from all other kinds of damage which may be caused in any manner whatsoever, and the Subcontractor shall be entirely responsible for any loss or damage done to said work, materials, tools, plant, equipment, and other appliances in any manner aforementioned.
9. If at any time there shall be an encumbrance on the project including a lien, claim against payment bond or any claim asserted, for which, if established, the Owner and Contractor might become liable, which arises from the work of the Subcontract, Contractor shall have the right to retain, out of any payment due or thereafter to become due, an amount sufficient to indemnify the Owner and Contractor which it deems proper to secure protection and/or satisfy such claim or lien. Should there prove to be any such lien or claim after all payments are made to the Subcontractor, it shall reimburse the Owner and Contractor may be compelled to pay in discharging such lien or claim including any and all legal fees or other charges.

SECTION 11: SUBCONTRACTOR INDEMNITY BONDS

1. The Owner and/or the Contractor may require the Subcontractor to furnish bonds which indemnify the Owner and/or Contractor for obligations of the Subcontractor in connection with the contract.
2. Any bonds furnished by the Subcontractor shall be executed by a bonding company in an amount and form acceptable to the Owner and/or Contractor and executed by a duly authorized attorney-in-fact of a licensed corporate surety company or companies.
3. The Contractor will reimburse Subcontractor only for performance and payment bonds in the amount of the contract when such bonds are required by the Owner.

SECTION 12: LIABILITY AND WORKERS' COMPENSATION INSURANCE REQUIREMENTS

1. Prior to commencement of any work under this contract and until completion and final acceptance of the work, the Subcontractor and each and every other Sub-Subcontractor under its direction shall, at its sole expense, maintain the following insurance on its own behalf:

- a) Statutory workers' compensation with employer's liability insurance coverage with limits of liability at least equal to the amount required by the Owner in the Owner's general specifications.

If a Subcontractor is self-insured for purposes of workers' compensation, the Subcontractor must submit a copy of a current letter, permit or certificate issued by the appropriate state agency in the state where the work will be installed for the Owner. In the event that a Subcontractor is a qualified, approved self-insurer of workers' compensation, the following provision is included in the Subcontract Agreement:

The Subcontractor waives any right of recovery Subcontractor may have or acquire against Owner, Architect-Engineer, Contractor, other Contractor or other Subcontractor of all tiers by reason of the Subcontractor having paid workers' compensation benefits as self-insurer.

- b) Liability Insurance.

Comprehensive General Liability Insurance in form providing coverage of not less than that of a standard comprehensive general liability insurance policy with limits equal to or greater than the amount required by the Owner's specifications including the following perils:

Broad Form Blanket Contractual Liability for liability assumed under this contract and all other contracts relative to the installation of this system.

Completed Operations/Products Liability with a five (5) year extension beyond completion and acceptance of the installation of this system.

Broad Form Property Damage.

Personal Injury Liability.

Such insurance must include the interest of the Owner, Contractor, and all other indemnified parties named in the contract as additional insured parties.

Comprehensive Automobile Liability Insurance covering the use of all owned, non-owned, and hired automobiles with a bodily injury and property damage limit equal to the amount required by Owner's specifications.

All of the above insurance shall contain the following wording verbatim:

"It is agreed that this insurance will not be canceled, materially changed or not renewed without at least a thirty (30) days written advance notice to Owner and Contractor at their principle mailing address."

2. In the event of a failure of the Subcontractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Owner and/or Contractor shall have the right to take out and maintain the same for all parties on behalf of the Subcontractor, who agrees to furnish all necessary information thereof and to pay the cost thereof to the Owner and/or Contractor immediately upon presentation of a bill.
3. Should the Subcontractor engage a Sub-Subcontractor, the conditions under this Agreement with respect to the securing of insurance will apply to each such Sub-Subcontractor.
4. The Contractor and Subcontractor waive all rights against each other and against the Owner, separate contractors, and all other subcontractors for damages caused by fire or other perils to the extent covered by property insurance required under the General Conditions, except such rights as they may have to the proceeds of such insurance.

SECTION 13: WARRANTY AND GUARANTEES

1. The Subcontractor warrants to the Owner, and the Contractor that all materials and equipment furnished shall be new unless otherwise specified, and all work under this Subcontract shall be of good quality, free from faults, and defects and in conformance with the Contract Documents. The Subcontractor specifically, but not exclusively, warrants that all work furnished by the Subcontractor shall be merchantable and fit for the particular purpose as specified in the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
2. The Subcontractor guarantees the installation for the term as specified in the Owner Specifications or one (1) year from such time as the system is accepted by the Owner, whichever is longer. The Subcontractor agrees during the guarantee period to make any repairs required to correct any damage, defects or faults which may appear during the guarantee period at no expense to Contractor or Owner. The guarantee shall include all materials and equipment assigned Subcontractor by Contractor and Owner for installation.
3. The Subcontractor assumes full responsibility for the furnishing and satisfactory operation of all equipment outlined and/or implied in the specification and contract documents.

SECTION 14: SUBLETTING AND ASSIGNMENT OF THE SUBCONTRACT

1. Subcontractor shall not assign or sublet the whole or any part of the work without the written consent of the Contractor; provided, however, the Subcontractor shall remain fully responsible.
2. To the extent that assignments or subletting is contemplated by the Owner of the project and are stated in the Bid Documents or Special Conditions of the Specifications, all costs and expenses related to said assignments or subletting must be included in the Subcontractor's price.

SECTION 15: MAINTENANCE AND OPERATING INSTRUCTIONS

1. The Subcontractor shall furnish installation, maintenance and operating instructions, including parts list in quantities required by Contractor and/or the Owner within sixty (60) days from the date of this Subcontract. Failure to provide these instruction manuals will delay final payment to the Subcontractor.
2. Manufacturer's standard brochures or manuals must be modified to reflect only the model or series of equipment furnished including any field or special modifications.

3. Instructions should include: An index, the Manufacturer's Name, Address and Phone, the Manufacturer's Representative's Name, Address and Phone, Procedures for Operation, Start-Up, Maintenance, Calibration and Trouble Shooting, Complete Electrical Wiring Diagrams, Complete Parts List, in addition to other data required by the Contract Documents.
4. Subcontractor shall furnish qualified personnel to provide operation and maintenance instructions to Owner's personnel, without additional cost to Contractor, if so required by the Contractor's agreement with the Owner.
5. Subcontractor shall furnish ship tests, installation check, supervision for start-up and performance testing as required by Contract Documents.
6. Applicable spare parts and special tools as required by Contract Documents are included in this Subcontract.

SECTION 16: INDEMNIFICATION

Subcontractor shall:

1. Indemnify, defend with counsel reasonably acceptable to Contractor, and hold Owner and Contractor, and their respective shareholders, directors, members, managers, officers, employees, agents, successors and assigns (collectively, the "Indemnitees"), harmless from and against any and all claims (including construction or mechanics lien, builders trust fund or similar claims), liabilities, losses, damages, costs and expenses, including attorney's fees, resulting from, arising out of or in connection with (i) any alleged or actual infringement or violation by Subcontractor of any patent or patent right in connection with this Subcontract and any work performed hereunder and (ii) any failure to pay by Subcontractor, or its subcontractors, laborers, vendors and materialmen, for labor, services or material provided in connection with Subcontractor's work under this Subcontract.
2. Indemnify, defend with counsel reasonably acceptable to Contractor, and hold Contractor, and its members, managers, officers, employees, agents, successors and assigns (collectively, the "Indemnitees"), harmless from and against any and all claims, liabilities, losses, damages (including injury to or death sustained by any person, including Subcontractor's employees, agents and subcontractors (the "Subcontractor Parties"), or damage to property of any kind), costs and expenses, including attorney's fees (collectively, "Damages"), resulting from, arising out of or in connection with (i) the performance of work by the Subcontractor Parties, (ii) the presence of the Subcontractor Parties on the work site, or (iii) any breach of this Subcontract by Subcontractor, whether or not caused by the active or passive negligence or other fault of the Indemnitees; provided that Subcontractor shall not be liable for any Damages under this Section B that are caused by the sole negligence of the Indemnitees. The indemnification obligations of Subcontractor under Section A above and this Section B shall survive the termination of this Subcontract, for whatever reason.
3. Pay for all materials, equipment, including repairs thereof and parts, fuel and labor, including related sales taxes and other taxes, ordered for or used by Subcontractor in connection with its work under this Subcontract. Subcontract shall not permit any claim of lien or statutory withholding notice to be filed or served with respect to the work performed by Subcontractor under the Contract and shall present to Contractor, on demand, satisfactory evidence of any such payment.
4. In the event of any accident or occurrence resulting in damages or injuries, including death, to any property or persons, the Subcontractor shall immediately notify the Contractor of the accident or occurrence and shall submit a written report within forty-eight (48) hours.
5. Except as otherwise provided pursuant to the insurance provisions of this Agreements, the Subcontractor assumes all risks of damages or injuries, including death, to any property or persons used or employed on or in connection with the work, and all risks of damages or injuries, including death, to any property or persons wherever located, resulting from any action, omission or operation under the Subcontract or in connection with the work.
6. In the event the Subcontractor sublets any work to a Sub-Subcontractor, a similar indemnification provision as provided above shall be included in the agreement between the Subcontractor and its Sub-Subcontractors.

SECTION 17: DEFENSE OF PATENTS, PAYMENTS OF ROYALTIES

1. The Subcontractor shall defend all suits or claims for infringement by it of any patent rights that may be brought against Contractor or the Owner arising out of the work, and shall hold Contractor or Owner harmless from loss on account thereof. The Subcontractor shall pay all royalties and shall obtain and pay for all licenses and permits pertaining to its work.

SECTION 18: ARBITRATION

1. Any dispute or claim arising out of, or relating to this Subcontract or breach or performance thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise.
2. The decision and award of the arbitrators shall be final and binding upon both parties, and judgments may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
3. This section shall not be deemed a limitation of rights or remedies which the Subcontractor may have under federal law, under state mechanic's lien law or under applicable labor or material payment bonds unless such rights or remedies are expressly waived by the Subcontractor.
4. Such arbitration shall take place in the State of Michigan.

SECTION 19: INTERPRETATION OF AGREEMENT

1. This Subcontract shall be construed according to the laws of the State of Michigan.

SECTION 20: WAIVER

1. The failure of the Owner or Contractor to insist in any one or more instances upon a strict compliance with any provision of this Subcontract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of the right of the Owner or Contractor hereafter to require compliance with such provision of this Subcontract, or a waiver of the right of the Owner or Contractor thereafter to exercise such option by such provision or option will remain in full force and effect.

SECTION 21: TITLE TO WORK AND MATERIALS

1. The Subcontractor warrants the title to all work and materials covered by an application for payment will pass to the Owner no later than the time of payment. The Subcontractor further warrants that upon submittal of an application for payment, all work and materials for which certificates for payment have been previously issued and payments received from the Contractor shall be free and clear of liens, claims, security interest or encumbrances in favor of the Contractors, Subcontractors, materialmen, suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the work.

SECTION 22: SEPARABILITY

1. If any provision or part of this Subcontract shall be held invalid, all other provisions and parts of this Subcontract shall nevertheless be deemed valid and binding upon Subcontractor and Contractor.

SECTION 23: APPLICABLE LAWS, PERMITS, FEES AND NOTICES

1. The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and order of public authorities bearing on performance of the work of this Subcontract. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's work, the furnishing of which is required of the Contractor by its agreement with the Owner.
2. The Subcontractor shall comply with federal, state and local tax laws, social security acts and employment compensation acts and workers' compensation acts insofar as applicable to the performance of the Subcontract.
3. The Subcontractor shall comply with all federal, state and local laws including but not limited to the Fair Standards Act of 1938, as amended; the Occupational Health and Safety Act, as Act, including any and all Executive Orders; and any other laws pertaining to the performance of work under this Subcontract by the Subcontractor.
4. Unless otherwise stated in the contract documents, words which have well-known technical or construction industry meanings are used in the contract document in accordance with such recognized meanings.

SECTION 24: SUBCONTRACT TERMINATION OR CANCELLATION CLAUSE

1. The Contractor reserves the right to terminate this Subcontract at any time with or without cause. In such event, the Subcontractor shall be paid to date of termination for such portions of the work as the Subcontract and its Sub-Subcontractor have completed and for materials which have been provided, fabricated or delivered and which have been approved by the Owner and the Contractor, including reasonable expenses arising directly from the termination. No allowance shall be made for anticipated overhead and profit on that portion of the work not completed. This right to terminate shall be in addition to all other rights and remedies granted the Contractor under this Subcontract.