



COBASYS

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GENERAL TERMS AND CONDITIONS

FOR SUBCONTRACTS

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GENERAL TERMS AND CONDITIONS FOR SUBCONTRACTS

1. CONTRACT WITH OWNER OR GENERAL CONTRACTOR

All contract documents forming the agreement between COBASYS LLC (hereinafter referred to as "Purchaser") and Owner or General Contractor are hereby incorporated herein by reference, and Seller agrees to be bound by all of the terms and conditions thereof insofar as applicable to its work, so that Seller shall have the same duties and obligations to Purchaser with regard to Seller's work as Purchaser has to Owner or General Contractor.

2. CHANGES

- (a) Purchaser may, from time to time during the progress of the work, make changes in, additions to or subtractions from the work and/or the sequence in which Seller is to perform the work (hereinafter collectively referred to as a "change" or "changes") and Seller shall comply with such changes in accordance with all of the terms and conditions of this subcontract.
- (b) In every case a change shall be made by written change order executed by Purchaser. No Purchaser employee has authority to authorize a change other than by written change order. No extension of time or extra compensation shall be granted to Seller in respect of any work alleged to be a change unless such a written change order has been issued.
- (c) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of the work, the contract price shall be increased or decreased by the reasonable cost of the change as hereinafter computed, or an extension of time shall be granted, or both. Provided, however, that no claim for an increase in the contract price or for an extension of time under this section shall be granted unless Seller makes a written request therefore within ten (10) days after receiving notice of such change. The reasonable cost of a change in absence of other written agreement executed by both Purchaser and Seller shall be computed by adding the direct cost of material f.o.b. the work site, the cost of direct labor (workmen and foreman) necessary to incorporate such materials into the work, the additional direct costs of Seller's subcontractors which would be compensable to Seller pursuant to this section, plus ten percent (10%) of the total of the foregoing enumerated costs as complete compensation for all of Seller's overhead, profit and any other costs of any character.
- (d) No claim by Seller for an increase in the contract price under this section shall be asserted after acceptance of the final payment under this subcontract.

3. CLAIMS

- (a) If Seller claims that it is entitled to any extra compensation or damages because of any instruction, request or direction given to Seller by Purchaser, by drawing or otherwise, or because of any act or failure to act by Owner, its agents or contractors, or Purchaser or any party for whose actions Purchaser is responsible, whether such claim is made pursuant to contract or in tort or any other legal theory, Seller shall deliver written notice to Purchaser that Seller intends to make a claim within ten (10) days after the occurrence of the event giving rise to the claim. Seller waives each and every claim and releases Purchaser, Owner and General Contractor from liability therefore for which no written notice is timely delivered pursuant to this section. If the event giving rise to a claim is continuing one, a single notice from Seller shall be sufficient, but Seller waives the claim and releases Purchaser, Owner and General Contractor from liability to the extent that the commencement of a continuing event precedes the delivery of notice to Purchaser by more than ten (10) days. Written notice shall include description of the event giving rise to the claim and an explanation of the reason why Seller believes it is entitled to compensation. Delivery means actual receipt by Purchaser. Pending resolution of a claim, Seller shall proceed with the work.
- (b) Should any such claim for extra compensation or damages arise from any act or failure to act by the Owner, its agents or contractors other than Purchaser, Seller shall be entitled only to such extra compensation or damages or portion thereof which Purchaser is able to recover from Owner, its agent or contractor. Purchaser shall present Seller's claim to Owner, its agent or contractor. In no event shall Purchaser be liable for such extra compensation or damages in an amount greater than is obtained from Owner, its agent or contractor in respect to Seller's claim.
- (c) Should any such claim for extra compensation or damages arise from any instruction, request or direction given to Seller by Purchaser, by drawing or otherwise, or from any act or failure to act by Purchaser or any party for whose actions Purchaser is responsible, Seller shall accept as full payment for such claim for extra compensation or damages, if any, its reasonable costs as set forth in Section 2(c). In no event shall Purchaser be liable to pay Seller any amount on account of indirect costs, profit, extended overhead or other or further incidental or consequential damages.
- (d) Purchaser shall not be liable to pay extra compensation or damages resulting from events beyond its control such as, but not limited to, inclement weather, labor disputes, acts of civil or military authorities, shortages of material or labor, fire or explosion.
- (e) Seller must commence suit with respect to any claim for extra compensation or damages, whether such claim is made pursuant to contract or in tort or any other legal theory, within two (2) years of the occurrence of the event giving rise to the claim and before acceptance of the final payment under this subcontract, or Seller shall be forever barred from asserting such claim.

4. DELAYS AND EXTENSIONS OF TIME

- (a) All the requirements of Section 3 are applicable to claims for extra compensation or damages resulting from delays.
- (b) Should Seller be critically delayed at any time in the progress of the work by any act or neglect of Owner, its agents, or by any contractor employed by Owner other than Purchaser, or by inclement weather, labor disputes, acts of civil or military authorities, shortages of material or labor, fire, explosion or other causes beyond the control of Seller, other than those mentioned below, then the time of completion of Seller shall be extended for the same period of time by which Purchaser's time of completion is extended pursuant to Purchaser's contract with Owner or other Contractor. Section 3(b) shall govern Seller's entitlement, if any, to extra compensation or damages for such delay.
- (c) Should Seller be critically delayed by Purchaser or by subcontractors of Purchaser other than Seller, then, at Purchaser's sole option, Seller shall be entitled to either: (i) an extension of time of completion of the same duration as the delay and compensation for extra costs resulting from the delay or (ii) compensation for Seller's increased costs of performance resulting from the compression of Seller's work schedule. Under option (i) Seller shall accept as full compensation for its extra costs, if any, the additional costs of material and/or direct labor resulting from the delay and in no event shall Purchaser be liable to pay Seller any amount on account of indirect costs, profit, extended overhead or other or further incidental or consequential damages. Under option (ii) Seller's increased costs shall be computed by adding: the cost of additional direct labor hours (including insurance and payroll taxes) necessitated by the compression; the premium cost only of labor which would not have been performed on premium time except for the compression of the schedule; the direct rental cost of additional tools or equipment or the value of the use of such tools or equipment if owned by Seller which are incurred as a result of the compression; and the additional direct costs of Seller's subcontractors which would be compensable to Seller pursuant to this section; but in no event shall Purchaser be liable to pay Seller any amount on account of indirect cost, profit, extended overhead or other or further incidental or consequential damages.
- (d) Notwithstanding anything to the contrary herein, if liquidated damages are specified in the contract between Owner and General Contractor and Purchaser, and Purchaser is required to pay any penalty or liquidated damages because of failure to complete within the specified time and said failure is the result of the Seller's failure to perform this subcontract promptly and expeditiously, then Seller will reimburse Purchaser for any penalty and/or damage so assessed and paid by Purchaser.

5. RISK OF LOSS AND INDEMNIFICATION

- (a) Seller assumes all risk of loss or damage to property, or of bodily injury, sickness, disease or death of persons used or employed on or in connection with the performance of its work under this subcontract, and of all loss or damage to property, or of bodily injury, sickness, disease or death of persons wherever located, resulting from or arising out of any action, omission or operation under this subcontract or in connection with its work under this subcontract.
- (b) To the fullest extent permitted by law, Seller shall protect, defend, indemnify and hold harmless Purchaser (including its affiliates, parent and subsidiaries, and agents and employees of any of them) and any other person or entity which Purchaser has agreed to indemnify pursuant to the contract documents forming the agreement between Purchaser and Owner or General Contractor from and against claims, damages, losses and expenses, including attorneys' fees, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than Seller's work itself) including loss of use resulting therefrom, arising out of or in connection with performance of Seller's work under this subcontract, regardless of whether or not such claim, damage, loss or expense is caused in part by a person or entity indemnified hereunder. This indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits, payable by or for Seller or its subcontractors under workers' compensation acts, disability benefit acts or other employees benefit acts.

6. TAXES AND PERMITS

Seller shall pay all sales, consumer, use and all other taxes and obtain all necessary permits applicable to the work under this subcontract.

7. INSURANCE

Seller shall maintain, at its sole expense, at all times while performing this agreement, the following types of insurance with the minimum limits set forth below, with full limits to apply:

- A. Workers Compensation insurance as required by the laws and regulations applicable to and covering Seller's employees engaged in the performance of the services. Buyer shall not be responsible for Workers Compensation for Seller, Seller's employees or Subcontractors;
- B. Employers Liability insurance protecting Seller against common law liability in the absence of statutory liability, for employee bodily injury (including death) arising out the master-servant relationship with a limit not less than \$500,000/\$500,000/\$500,000.

- C. Commercial General Liability insurance including Products and Completed Operations with limits of not less than \$1,000,000 each occurrence, but subject to annual aggregate limits of \$1,000,000 for Products and Completed Operations Liability and \$2,000,000 for all other claims. Further, if the seller is engaged in operations involving digging or trenching, XCU (Explosion, Collapse, Underground) coverage of not less than \$1,000,000 shall be provided.
- D. Business Automobile Liability insurance including Owned, Non-owned and Hired vehicles coverage with limits of liability of not less than \$1,000,000 Combined Single Limit for bodily injury and property damage, each occurrence.
- E. In the event Seller is engaged in any activities dealing with pollutants or other hazardous materials or instrumentalities which Buyer in its sole discretion determines hazardous, Buyer reserves the right to require additional appropriate insurance coverage.
- F. Certificates of insurance, with the exception of Workers Compensation, shall be endorsed to name the Company as Additional Insured. The certificates shall provide that any material change restricting or reducing coverage or the cancellation of any policies under which certificates of insurance are issued shall not be valid as respects the Company's interest therein until the Company has received thirty (30) days written notice of such change or cancellation. Further, it shall be specifically indicated that (a) Contractual Liability is provided, (b) that the insurances are primary coverage and are not concurrent or excess over any other valid collectible insurance that may be available to the Company. Each policy, with the exception of Workers Compensation shall be indorsed to provide waivers of subrogation in favor of the Company.

8. WORK SCHEDULE

- (a) Time is of the essence of this subcontract. All work under this subcontract shall be arranged and carried out by Seller in such a manner that the work will be completed by the completion date specified in this subcontract including changes thereto pursuant to written change orders issued under Section 2 or extensions of time granted under Section 4. Failure of Seller to keep its work in such a state of progress, which will permit the work to be completed by the specified completion date, shall be a breach of this subcontract.
- (b) Should Seller neglect or refuse, in the opinion of Purchaser, to supply a sufficiency of properly skilled workmen or of material of proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the terms and conditions contained herein, in addition to any other legal or contractual remedies available to it, Purchaser may:
 - (1) Direct Seller at its sole expense to work such additional hours including overtime or furnish additional labor, materials, tools or machinery as may be necessary in Purchaser's sole and final discretion to complete the work by the specified completion date; or
 - (2) After giving two (2) days written notice to Seller, provide any labor, materials, tools or machinery as may be necessary in Purchaser's sole and final discretion to complete the work by the specified completion date and deduct the cost thereof from any monies then due or thereafter to become due to Seller under this subcontract.

9. INSPECTION

Purchaser and Owner or General Contractor shall, at all times, have access to the work wherever it is, in preparation or in progress and Seller shall provide proper facilities for such access and for such inspection. Purchaser and Owner or General Contractor shall have such right to reject materials as set forth in the contract documents between Purchaser and Owner or General Contractor.

Seller shall examine the contract site and shall inform and satisfy itself as to all matters necessary for the performance of its work, including without limitation, general working conditions, labor requirements, accessibility, condition of the premise and, in particular, any pre-existing hazardous conditions such as toxic exposure due to lead paint, obstructions, drainage conditions, actual levels, excavating, filling and the like. Seller agrees that Seller has taken all these matters into account in agreeing to the price, performance schedule and all other terms of this subcontract. No allowance or extra payments shall be made to Seller by Buyer arising out of any such items or conditions.

10. QUALITY OF MATERIAL AND WORKMANSHIP

All work shall be done by persons qualified in their respective trades, and the workmanship shall be first-class in every respect. The work shall be conducted in a safe, competent and workmanlike manner and with regard for the safety of the workmen and protection of property. Seller shall observe and enforce all safety instructions, rules, and regulations established at the jobsite by Owner or General Contractor. All materials and equipment furnished shall be the best of their respective kinds for the intended use and, unless otherwise specified, same shall be new and of the latest design. Purchaser shall make all decisions with respect to questions concerning the quality of fitness of materials, equipment and workmanship.

11. TERMS OF PAYMENT

- (a) Upon proper applications by Seller, Purchaser shall make monthly payments to Seller in such amount which, in the opinion of Purchaser, constitutes ninety percent (90%) of the value of the work executed or materials in place at the jobsite less the aggregate of all previous payments and less deductions, if any, as herein provided.
- (b) Seller's affidavit executed on form approved by Purchaser, and supporting waivers of lien from each subcontractor and material supplier for the amount requested in their name, shall accompany all formal applications for payment. Seller's waiver of lien for the net amount requested shall accompany the application. Purchaser is not obligated to make payments unless and until these requirements are complied with.
- (c) Purchaser may deduct from any payment due Seller as may be necessary to protect Purchaser and/or Owner or General Contractor from loss on account of:
 - (1) Defective work not remedied.
 - (2) Claims filed or reasonable evidence indicating probable filing of claims.
 - (3) Failure of Seller to make payments properly to subcontractors or for material or labor.
 - (4) A reasonable doubt that this subcontract can be completed for the balance then unpaid.
 - (5) Damage to other contractors working at the jobsite for which Purchaser may be liable.
 - (6) Liens by suppliers of material labor or services.
 - (7) Any amounts owed by Seller to Purchaser on account of any other provision of this subcontract or any other transaction between them.

When the grounds for the withholding are remedied, the withheld amount shall be paid to Seller.

- (d) Purchaser will make final payment of the balance due and retainage only when this subcontract and changes, if any, are completed and accepted by Owner or General Contractor and Purchaser is paid by Owner or General Contractor.
- (e) Acceptance of such final payment by Seller shall be a complete waiver of any and all claims of any nature and whether known or unknown against Purchaser and owner or General Contractor arising out of or in connection with this subcontract.

12. LIENS

Neither partial nor final payment nor any part of the retainage shall become due until Seller shall deliver to Purchaser a waiver of liens, claims for liens, and right to claim liens, arising out of this subcontract (or an appropriate portion thereof in the event a partial lien waiver is required) and an affidavit that all labor and material has been paid for in full and that so far as it has knowledge or information the releases or waivers include all labor and materials for which a lien could be filed. If any lien should remain unsatisfied after all payments are made, Seller shall refund to Purchaser all monies that Purchaser may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee: in addition, Purchaser retains all rights it might have against Seller for breach of its release and affidavit. When Seller has been paid in full by Purchaser, Seller agrees that it will thereafter indemnify and save Purchaser and Owner or General Contractor harmless from liens or claims of laborer, material suppliers, and mechanics or any other liens or claims upon the premises of Owner or General Contractor upon which the work is to be performed, arising out of the labor and materials furnished by, or in any other way chargeable to, Seller or by any of its vendors in connection with the work.

13. WARRANTY

- (a) Seller warrants the work covered by this subcontract on the same terms and conditions, and for the same period, as Purchaser warrants such work under the contract documents forming the agreement between Purchaser and Owner or General Contractor. Seller shall perform all warranty obligations and have all responsibilities assumed by Purchaser under such contract documents.
- (b) If no warranty or guarantee is required of Purchaser in such contract documents, Seller shall warrant that the work covered by this subcontract will be free from defects in material, workmanship, equipment and design, and will conform to the requirements of all applicable specifications, drawings or other contract documents. Seller shall correct, repair, replace and make good any defects in materials, workmanship, equipment or design for the period of one year from acceptance of the work. If seller does not correct such defects, after notice, Purchaser may do so and Seller will pay Purchaser all costs and expenses incurred in making such corrections.
- (c) Seller shall execute any special warranties required by the specifications, drawings or other such contract documents prior to final payment.

14. CONTROL OF WORK

All questions concerning interpretation or the acceptable fulfillment of this subcontract or specifications by Seller or any other dispute shall be submitted in writing to Purchaser for determination. Pending resolution, Seller shall proceed with the work in accordance with Purchaser's instructions.

15. TERMINATION

If Seller should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or fail, except in cases for which extension time is provided, to supply enough properly skilled workmen or proper materials, or fail in any respect to prosecute the work with promptness and diligence, or if it should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances, or the instructions of Purchaser or Owner or General Contractor or otherwise violate or breach of any provision of this subcontract, then Purchaser

may, without prejudice to any other right or remedy, and after giving Seller two (2) days written notice, terminate the right of Seller to continue performance of this subcontract, take possession of the premises and of all materials, tools and appliances thereon, and finish the work by whatever method it may deem expedient. Seller shall not have the right to continue the work under this subcontract by curing its default within said 2-day period. In such case, Seller shall not be entitled to receive any further payment until the work is finished. If the expenses of finishing the work, including compensation for additional managerial and administration services exceed the unpaid balance of the subcontract price, Seller shall pay such excess to Purchaser. If purchaser is found to have wrongfully terminated this subcontract, then Purchaser's action shall be considered a cancellation pursuant to Section 16(b) below.

16. SUSPENSION AND CANCELLATION

- (a) Purchaser shall have the right to suspend any part or all of Seller's performance hereunder, as may be necessary or desirable for Purchaser's convenience or at the instruction of the Owner if the Owner has retained the right to suspend or cancel the performance of Purchaser's subcontractors. If Seller claims that extra compensation is due it because of such a suspension, the claim shall be presented pursuant to Section 4.
- (b) Purchaser may cancel any part or all of this subcontract and Seller will immediately take all reasonable steps to minimize its costs. If the cancellation is for a reason other than described in Section 15 set forth above, Purchaser shall pay Seller for the cost of materials actually completed in conformity with this subcontract and work in progress. Seller shall deliver the completed material and work in process in accordance with Purchaser's instructions. Not later than thirty (30) days after cancellation, Seller shall submit its cancellation costs to Purchaser and payment shall be made when Purchaser has received payment from Owner or General Contractor for same and following delivery of the material. Seller shall not receive an allowance for unperformed work or anticipated profits and Seller's costs shall not include any charges in excess of ten percent (10%) of the direct costs of the completed material and work in process. Seller shall not be entitled to any claim or claim of lien against Purchaser or against Owner of General Contractor for any additional compensation or damages in the event of such cancellation and payment.

17. SUBCONTRACTS AND ASSIGNMENTS

Seller shall not subcontract any portion of the work without the written consent of Purchaser, nor shall Seller assign any monies due or to become due it hereunder without the written consent of Purchaser.

18. OTHER CONTRACTS

Purchaser reserves the right to let other contracts in connection with the work and to do a portion of the work itself. Seller shall afford other contractors and Purchaser reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs. If any part of Seller's work depends for proper execution or results upon the work of any other contractor, Seller shall inspect and promptly report to Purchaser any defects in such work which renders it unsuitable for such proper execution and results. Seller's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of Seller's work, except as to defects which may develop in the other contractor's work after execution of Seller's work.

19. LAWS AND REGULATIONS

Seller shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations applicable to its work under this subcontract. If Seller observes that any drawing specification or other document is at variance with such laws, ordinances, rules or regulations, it shall promptly notify Purchaser in writing. If Seller performs any work knowing it is contrary to such laws, ordinances, rules or regulations and without notice to Purchaser, Seller shall bear all costs necessary to correct the work.

20. SAFETY

Seller shall carry on its work in a safe manner and in accordance with all applicable federal, state and local laws, ordinances and rules. Seller shall be solely responsible for the protection and safety of its employees, for the selection of all safety methods and safeguards, for required safety reports and records, for regular inspections of its work area and equipment, and for the instruction of its employees on health and safety.

21. JOBSITE

Seller will make and shall be deemed to have made a careful examination of the jobsite conditions, local labor conditions and all other matters that may affect the cost and time of completion of this subcontract. Purchaser will not be obligated to pay claims for extra work or grant extensions of time because of such conditions or other matters which affect the work, which Seller could have anticipated by a careful examination of such conditions.

22. PURCHASER'S WORK

Seller shall be solely responsible for familiarization and understanding of Purchaser's work, material and equipment, and with special regard to their purpose, use, capacity, function, strength, imposed loads, duty cycle, ambient temperatures of operation, environment of operation, general operation, sequence of operation, objects to be handled in the system, vibration and complexities; and to be familiar with and understand all other work, material and equipment related to its work and the work of Purchaser, General Contractor, Owner and other contractors. Any information presented by Purchaser, General Contractor or Owner is for reference only and the interpretation and understanding of such information is the sole responsibility of Seller.

23. LABOR

Seller shall abide by all labor agreements governing the job. Seller shall not employ labor for installation which will cause labor disruptions with respect to the job. All labor problems are to be handled by Seller, and Purchaser will not be subject to extra charges as a result of the outcome of any labor dispute.

24. SELLER'S TOOLS

Unless otherwise specified, Seller will furnish all electric power, lighting, heat, water, sanitary facilities, field tools, hand tools, and miscellaneous installation material necessary to complete its work.

25. LUBRICATION

Seller shall, unless otherwise specified, make initial lubrication of the machinery installed using the lubricant specified by Purchaser.

26. CLEANING UP

Seller shall periodically and frequently during the progress of work, remove and properly dispose of accumulations of dirt, debris, cartons and other items of rubbish as required by Purchaser's direction.

27. PROTECTION OF WORK

Seller shall continuously maintain protection of all its work and materials from damage or loss and shall protect Owner's or General Contractor's property from injury or loss arising in connection with this subcontract. It shall make good any such damage, injury or loss, except such as may be caused by agents or employees of Purchaser or Owner or General Contractor. It shall adequately protect adjacent property as provide by law and the contract documents between Purchaser and Owner or General Contractor.

28. OPERATION BEFORE COMPLETION

Purchaser reserves the right for itself and Owner or General Contractor to occupy any portion of the work before it has been entirely completed, and Seller agrees that such occupancy shall not constitute acceptance of the work or any part thereof, or of any work performed under this subcontract.

29. DESIGN AND ENGINEERING

Seller assumes all responsibility for the design and engineering of its work and material. Approval of any drawings of its work by Purchaser, Owner, Owner's Representative, Architects, Engineers, or General Contracts shall not relieve Seller of obligations hereunder.

30. SUPERVISION

Seller shall keep on the jobsite during the entire progress of the work a competent Superintendent and necessary assistants all satisfactory to Purchaser or Owner or General Contractor. Such personnel as prove unsatisfactory to Purchaser or Owner or General Contractor shall be promptly replaced. Seller's Superintendent shall be Seller's agent for purposes of this subcontract and may act on behalf of Seller. Notice given to Superintendent or delivered to his or her office shall be deemed notice to Seller.

31. MOVING MATERIALS

If it becomes necessary at any time during Seller's work to move materials or equipment, tools or supplies which have been temporarily placed, Seller, when so directed by Purchaser, shall move them or cause them to be removed, without additional charge to Purchaser.

32. WAIVERS

A waiver by Purchaser of any event of default shall not be deemed nor shall the same constitute a waiver of any subsequent event of default.

33. CONSTRUCTION OF CONTRACT

This subcontract is to be governed by and construed under the laws of the State of Michigan.

34. AGREEMENT

The terms and conditions contained herein and any accompanying purchase order, specifications and drawings are the entire terms upon which Purchaser is willing to contract with Seller, and Purchaser specifically rejects any conflicting terms proposed by Seller unless accepted by Purchaser in an executed writing.



COBASYS

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