

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA



---

AGC DOCUMENT NO. 603

**STANDARD SHORT FORM AGREEMENT BETWEEN  
CONTRACTOR AND SUBCONTRACTOR**

**(Where Contractor Assumes Risk of Owner Payment)**

The original text of this document is endorsed by The Associated Specialty Contractors, Inc. (ASC), an umbrella organization composed of the following seven specialty contractor groups: Mechanical Contractors Association of America, National Electrical Contractors Association, National Insulation Association, National Roofing Contractors Association, Painting and Decorating Contractors of America, Plumbing-Heating-Cooling Contractors' National Association, and Sheet Metal and Air Conditioning Contractors' National Association.

Job No.: \_\_\_\_\_

Account Code: \_\_\_\_\_

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by and between

CONTRACTOR,

and

SUBCONTRACTOR,

PROJECT:

OWNER:

ARCHITECT/ENGINEER:

1 **SUBCONTRACT WORK** To the extent terms of the agreement between Owner and Contractor (prime agreement) apply to the work of Subcontractor, Contractor assumes toward Subcontractor all obligations, rights, duties, and redress that Owner assumes toward Contractor. In an identical way, Subcontractor assumes toward Contractor all obligations, rights, duties, and redress that Contractor assumes toward Owner and others under the prime agreement. In the event of conflicts or inconsistencies between provisions of this Agreement and the prime agreement, this Agreement shall govern. Subcontractor shall perform Subcontract Work under the general direction of Contractor and shall cooperate with Contractor so Contractor may fulfill obligations to Owner. Subcontractor shall provide Subcontract Work for the Project in accordance with the Progress Schedule to be prepared by Contractor after consultation with Subcontractor, and as it may change from time to time. Subcontractor shall give timely notices to authorities pertaining to Subcontract Work and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete Subcontract Work. Subcontractor to provide \_\_\_\_\_ (Brief Description of Subcontract Work), as more fully described in Exhibit A.

2 **SUBCONTRACT AMOUNT** Contractor agrees to pay Subcontractor for satisfactory and timely performance and completion of Subcontract Work: \_\_\_\_\_. Retainage shall be \_\_\_\_\_ percent (\_\_\_\_\_ %), which is equal to the percentage retained from Contractor's payment by Owner for Subcontract Work.

3 **INSURANCE** Subcontractor shall purchase and maintain insurance that will protect Subcontractor from claims arising out of Subcontractor operations under this Agreement, whether the operations are by Subcontractor, or any of Subcontractor's consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor shall maintain coverage and limits of liability as set forth in Exhibit E.

4 **BONDS** Subcontractor \_\_\_ shall \_\_\_ shall not furnish to Contractor, as Obligee, surety bonds in a form as set forth in Exhibit F to this Agreement, and through a surety mutually agreeable to Contractor and Subcontractor, to secure faithful performance of Subcontract Work and to satisfy Subcontractor payment obligations related to Subcontract Work.

5 **EXHIBITS** The following Exhibits are incorporated by reference and made part of this Agreement:

EXHIBIT A: Subcontract Work, \_\_\_\_\_ pages.

EXHIBIT B: Prime agreement, Drawings, Specifications, General, Special, Supplementary, and other conditions, and addenda.

(Attach a complete listing by title, date and number of pages.)

EXHIBIT C: Progress Schedule, \_\_\_\_\_ pages.

EXHIBIT D: Alternates and Unit Prices, include dates when alternates and unit prices no longer apply, \_\_\_\_\_ pages.

EXHIBIT E: Insurance Provisions, \_\_\_\_\_ pages.

EXHIBIT F: Bonds, \_\_\_\_\_ pages.

EXHIBIT \_\_: Other \_\_\_\_\_, \_\_\_\_\_ pages.

6 **SAFETY** To protect persons and property, Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to (1) those required or recommended by governmental and quasi-governmental authorities having jurisdiction and (2) requirements of this

Agreement. Subcontractor shall keep project site clean and free from debris resulting from Subcontract Work.

7 ASSIGNMENT Subcontractor shall not assign the whole or any part of Subcontract Work or this Agreement without prior written approval of Contractor.

## 8 TIME

8.1 TIME IS OF THE ESSENCE Time is of the essence for both parties. The parties agree to perform their respective obligations so that the Project may be completed in accordance with this Agreement.

8.2 SCHEDULE In consultation with Subcontractor, the Contractor shall prepare the schedule for performance of Contractor's work (Progress Schedule) and shall revise and update such schedule, as necessary, as Contractor's work progresses. Subcontractor shall provide Contractor with any scheduling information proposed by Subcontractor for Subcontract Work and shall revise and update as Project progresses. Contractor and Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to Subcontractor reasonably in advance of required performance. Contractor shall have the right to determine and, if necessary, change the time, order and priority in which various portions of Subcontract Work shall be performed and all other matters relative to Subcontract Work.

9 CHANGE ORDERS When Contractor orders in writing, Subcontractor, without nullifying this Agreement, shall make any and all changes in Subcontract Work, which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or time of performance shall be authorized by a Change Order. No adjustments shall be made for any changes performed by Subcontractor that have not been ordered by Contractor. A Change Order is a written instrument prepared by Contractor and signed by Subcontractor stating their agreement upon the change in Subcontract Work. If commencement and/or progress of Subcontract Work is delayed without the fault or responsibility of Subcontractor, the time for Subcontract Work shall be extended by Change Order to the extent obtained by Contractor, and the Progress Schedule shall be revised accordingly.

## 10 PAYMENT

10.1 SCHEDULE OF VALUES As a condition of payment, Subcontractor shall provide a schedule of values satisfactory to Contractor not more than fifteen (15) days from the date of this Agreement.

10.2 PROGRESS AND FINAL PAYMENTS Progress payments, less retainage, shall be made to Subcontractor, for Subcontract Work satisfactorily performed, no later than seven (7) days after receipt by Contractor of payment from Owner for Subcontract Work. Final payment of the balance due shall be made to Subcontractor no later than seven (7) days after receipt by Contractor of final payment from Owner for Subcontract Work. These payments are subject to receipt of such lien waivers, affidavits, warranties, guarantees or other documentation required by this Agreement or Contractor. If payment from Owner for such Subcontract Work is not received by Contractor, through no fault of Subcontractor, Contractor will make payment to Subcontractor within a reasonable time for Subcontract Work satisfactorily performed.

**10.3 PAYMENTS WITHHELD** Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage caused by Subcontractor's failure to (1) timely perform Subcontract Work, (2) properly pay subcontractors and/or suppliers, or (3) promptly correct rejected, defective or nonconforming Subcontract Work.

**10.4 PAYMENT DELAY** If Contractor has received payment from Owner and, if for any reason not the fault of Subcontractor, Subcontractor does not receive a progress payment from Contractor within seven (7) days after the date such payment is due, or if Contractor has failed to pay Sub-contractor within a reasonable time for Subcontract Work satisfactorily performed, Subcontractor, upon giving seven (7) days' written notice to Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to Subcontractor has been received. Subcontract Amount and time of performance shall be adjusted by the amount of Subcontractor's reasonable and verified cost of shutdown, delay and startup, and shall be affected by an appropriate Change Order.

**10.5 WAIVER OF CLAIMS** Final payment shall constitute a waiver of all claims by Subcontractor relating to Subcontract Work, but shall in no way relieve Subcontractor of liability for warranties, or for nonconforming or defective work discovered after final payment.

**10.6 OWNER'S ABILITY TO PAY**

**10.6.1** Subcontractor shall have the right upon request to receive from Contractor such information as Contractor has obtained relative to Owner's financial ability to pay for Contractor's work, including any subsequent material variation in such information. Contractor, however, does not warrant the accuracy or completeness of information provided by Owner.

**10.6.2** If Subcontractor does not receive the information referenced in Subparagraph 10.6.1, Subcontractor may request information from Owner and/or Owner's lender.

**11 INDEMNITY** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Contractor's other subcontractors, Architect/Engineer, Owner and their agents, consultants, employees and others as required by this Agreement from all claims for bodily injury and property damage that may arise from performance of Subcontract Work to the extent of the negligence attributed to such acts or omissions by Subcontractor, Subcontractor's subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

**12 CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT**

**12.1 FAILURE OF PERFORMANCE** Should Subcontractor fail to satisfy contractual deficiencies or to commence and continue satisfactory correction of the default with diligence or promptness within three (3) working days from receipt of Contractor's written notice, then Contractor, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct deficiencies and charge the cost thereof to Subcontractor, who shall be liable for such payment, including reasonable overhead, profit and attorneys' fees. In the event of an emergency affecting safety of persons or property, Contractor may proceed as above without notice, but Contractor shall give Subcontractor notice promptly after the fact as a precondition of cost recovery.

**12.2 TERMINATION BY OWNER** Should Owner terminate the prime agreement or any part which includes Subcontract Work, Contractor shall notify Subcontractor in writing within three (3) days of termination and, upon written notification, this Agreement shall be terminated and Subcontractor

shall immediately stop Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, Contractor liability to Subcontractor shall be limited to the extent of Contractor recovery on Subcontractor's behalf under the prime agreement. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of Owner termination and to permit Subcontractor to prosecute the claim, in the name of Contractor, for the use and benefit of Subcontractor, or assign the claim to Subcontractor.

**12.3 TERMINATION BY CONTRACTOR** If Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) days after written notification issued under Paragraph 12.1, then Contractor may, in lieu of or in addition to Paragraph 12.1, issue a second written notification, to Subcontractor and its surety, if any. Such notice shall state that if Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by Contractor to Subcontractor at the time Subcontractor is terminated. Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of Contractor's work. All costs incurred by Contractor in performing Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At Subcontractor's request, Contractor shall provide a detailed accounting of the costs to finish Subcontract Work.

**12.4 TERMINATION BY SUBCONTRACTOR** If Subcontract Work has been stopped for thirty (30) days because Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of Subcontractor, then Subcontractor may terminate this Agreement upon giving Contractor seven (7) days' written notice. Upon such termination, Subcontractor shall be entitled to recover from Contractor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and attorneys' fees, costs and expenses. However, if Owner has not paid Contractor for the satisfactory performance of Subcontract Work through no fault or neglect of Contractor, and Subcontractor terminates this Agreement under this Article because it has not received corresponding progress payments, Subcontractor shall be entitled to recover from Contractor, within a reasonable period of time following termination, payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead and profit. Contractor's liability for any other damages claimed by Subcontractor under such circumstances shall be extinguished by Contractor pursuing said damages and claims against Owner, on Subcontractor's behalf, in the manner provided for in Paragraph 12.2 of this Agreement.

## 13 CLAIMS AND DISPUTES

**13.1 CLAIMS RELATING TO CONTRACTOR** Subcontractor shall give Contractor written notice of all claims within seven (7) days of Subcontractor's knowledge of facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between Contractor and Subcontractor shall be resolved in the manner provided in this Agreement.

13.2 DAMAGES If the prime agreement provides for liquidated or other damages for delay beyond the completion date set forth in this Agreement, and such damages are assessed, Contractor may assess a share of the damages against Subcontractor in proportion to Subcontractor's share of responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against Contractor. Nothing in this Agreement shall be construed to limit Subcontractor's liability to Contractor for Contractor's actual delay damages caused by Subcontractor's delay.

13.2.1 CONTRACTOR CAUSED DELAY Nothing in this Agreement shall preclude Subcontractor's recovery of delay damages caused by Contractor.

13.3 WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, Subcontractor shall continue Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If Subcontractor continues to perform, Contractor shall continue to make payments in accordance with this Agreement.

13.4 MULTIPARTY PROCEEDING The parties agree, to the extent permitted by the prime agreement, that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between Contractor and Subcontractor involve in whole or in part disputes between Contractor and Owner, disputes between Subcontractor and Contractor shall be decided by the same tribunal and in the same forum as disputes between Contractor and Owner.

13.5 NO LIMITATION OF RIGHTS OR REMEDIES Nothing in Article 13 shall limit any rights or remedies not expressly waived by Subcontractor which Subcontractor may have under lien laws or payment bonds.

13.6 STAY OF PROCEEDINGS In the event that provisions for resolution of disputes between Contractor and Owner contained in the prime agreement do not permit consolidation or joinder with disputes of third parties, such as Subcontractor, resolution of disputes between Subcontractor and Contractor involving in whole or in part disputes between Contractor and Owner shall be stayed pending conclusion of any dispute resolution proceeding between Contractor and Owner.

13.7 DIRECT DISCUSSION If a dispute arises out of or relates to this Agreement, the parties shall endeavor to settle the dispute through direct discussion.

13.8 MEDIATION Disputes between Subcontractor and Contractor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

13.9 OTHER DISPUTE PROCESSES If neither direct discussions nor mediation successfully resolve the dispute, the parties agree that the following shall be used to resolve the dispute.

\_\_\_ Arbitration Arbitration shall be pursuant to the Construction Industry Rules of the American Arbitration Association, unless the parties mutually agree otherwise. A written demand for arbitration shall be filed with the American Arbitration Association and the other party to the Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding has run. The arbitration award shall be final. This agreement to arbitrate shall be governed by the Federal Arbitration Act, and judgment upon the award may be confirmed in any court having jurisdiction.

\_\_\_ Litigation Action may be filed in the appropriate state or federal court.

13.10 COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute that goes beyond mediation arising out of or relating to this Agreement or its breach shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute.

14 JOINT DRAFTING The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

CONTRACTOR: \_\_\_\_\_

BY: .....

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

SUBCONTRACTOR: \_\_\_\_\_

BY: .....

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

