

## INDUSTRIAL ELECTRIC CO. GENERAL TERMS AND CONDITIONS

### 1. INSURANCE

Before commencing its Work required under the Subcontract, the Subcontractor shall procure and maintain, at its own expense, such insurance as will protect against suits and claims for Bodily Injury or death, as well as for damage to property, that may arise in any manner out of the Subcontractor's operations and completed operations, or by any sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts anyone of them may be liable. Unless the Contractor allows different coverages, the minimum coverages and limits of liability listed on [IEC website](#).

### 2. INDEMNITY

The Subcontractor agrees to the extent of its negligence, indemnify and hold harmless the Owner for all damages or injury to all persons, and to all property, resulting from the execution of the Work under this subcontract and to the fullest extent permitted by law.

### 3. PAYMENT

A. Payment will be made to the Subcontractor within 10 days after the Owner pays Contractor for the Work and Contractor shall have no obligation to pay Subcontractor for the Subcontract work unless and until Owner pays Contractor for the same. Receipt of funds by payment from Owner for specific payment to the Subcontractor shall be a condition precedent to Contractor's obligation to pay Subcontractor, except for those instances where non-payment of the Owner is due to the actions or inactions of the Contractor. A minimum of 10% retainage shall be retained until the Project is completed and accepted. Retainage above 10% will be in the same amount as the Owner retains from Contractor. No partial payment to the Subcontractor shall operate as approval or acceptance of any Work done or materials furnished under the Subcontract; in addition, the Subcontractor agrees to reimburse the Contractor in the event that there is an overpayment on the basis of the Work performed or materials furnished under this Agreement. Payments will not be made without invoices, waivers and sworn statements. Contractor shall incorporate Subcontractor's final payment application into Contractor's application to Owner. Conditioned upon precedent payment by Owner, except in those instances where non-payment of the Owner is due to the actions or inactions of the Contractor, Contractor will pay to Subcontractor the final payment for the Subcontract work within the ten (10) days after receipt thereof from Owner. Acceptance of final payment shall constitute a release by Subcontractor in favor of Contractor, its Surety (if any), and Owner of all claims arising out of this Subcontract including but not limited to claims for extra work, claims for changed conditions, claims for inefficiencies, delay and/or acceleration, or the claimed breach thereof. No payment to Subcontractor shall operate as acceptance of defective workmanship or materials. Subcontractor's indemnity, warranty and other continuing Subcontract obligations shall survive completion of the Subcontract work and final payment.

- If payment by the Owner is withheld due to actions or inactions of anyone other than Subcontractor, Contractor agrees to pay Subcontractor within thirty days of receipt of a demand letter from Subcontractor to Contractor for such payment.

B. Any sums due or owing the Contractor from the Subcontractor under this agreement or any other relationship or agreement between the parties may be deducted by the Contractor from the amounts otherwise owing to Subcontractor by Contractor under this Subcontract.

C. It is further agreed that in the event of any breach of any provision of this Subcontract by Subcontractor or any liability of the Subcontractor arising out of any aspect of the Subcontract, or Work performed hereunder including nonpayment of any labor, material or equipment suppliers of Subcontractor, Contractor may withhold from payment(s) otherwise due to Subcontractor an amount sufficient to protect the Contractor and/or its surety or insurer(s) against any and all loss, damage, claims, or expense incurred, alleged or reasonably anticipated by Contractor. Contractor shall have the right to retain said funds until the situation is remedied or adjusted by the Subcontractor to the satisfaction of the Contractor.

D. All sums tentatively earned by Subcontractor by the partial or complete performance of the Subcontract work and any balance of unearned Subcontract price, if and when paid by Owner to Contractor, shall constitute a fund for the purpose of (a) full and timely completion of the Subcontract work and fulfillment of all Subcontract requirements, (b) payment of any back charges or claims due Contractor from Subcontractor based upon this Subcontract or otherwise, and (c) payment to the sub-subcontractors, workers, design professionals, material and service suppliers of Subcontractor, and others who have valid and enforceable mechanic's lien or bond claims and/or rights. Such tentative earning shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place and stead, including but not limited to a Trustee in bankruptcy or receiver, unless and until such Subcontract work is fully and satisfactorily completed and all Subcontract requirements are fulfilled.

E. Progress payments and final payment may be withheld in whole or in part of Contractor on account of: (a) defective or improper materials, equipment, services or work; (b) claims or liens, or any notice thereof, but only to the extent payment has been made to Subcontractor according to this agreement; (c) any breach by Subcontractor or any provision of this Subcontract or obligation of with respect to the Subcontract Work; (d) a reasonable doubt that the Subcontract work can be completed for the balance then unpaid; (e) a reasonable doubt that Subcontractor has paid sub-subcontractors, vendors,

## INDUSTRIAL ELECTRIC CO. GENERAL TERMS AND CONDITIONS

workers, or others for work performed; (f) a reasonable doubt that Subcontractor is, for any reason, able to timely and properly complete the Subcontract work, or (g) failure of Owner to pay Contractor for such work, but only if the failure is due to the fault of Subcontractor. If the foregoing causes are remedied or secured to Contractor's reasonable satisfaction, the withheld sum shall be paid promptly. If the said causes are not so remedied or secured, where appropriate, Contractor may remedy the same for Subcontractor's account and charge the entire cost thereof to Subcontractor.

F. The execution of any waiver of lien by the Subcontractor shall also constitute and be deemed a release of any claim arising from and relating to the Subcontract through the date of the waiver of lien except for those claims which have been presented and remain unsettled.

G. All costs associated with any bonds required by Contractor to cover any liens applied by the Subcontractor or its sub-subcontractors will be back charged to the Subcontractor but only to the extent Subcontractor has been paid according to this Agreement.

### 4. CONFORMITY WITH LAWS AND REGULATIONS, INCLUDING SAFETY

A. The Subcontractor agrees to conform to all laws and regulations, whether State, Federal, County or Municipal, which may now apply or which may during progress of the Work, be made effective with respect to the Work required herein and to obtain and pay for all permits, licenses and official inspections made necessary by the Work.

B. The Subcontractor agrees to be bound by and comply with Fair Employment Practices provisions and regulations of Federal, State or other Government Authority having jurisdiction; as said provisions and regulations, including revisions or amendments thereto, are incorporated in or set forth in the Prime Contract, Subcontractor acknowledges that it has read said provisions, and is familiar with the terms thereof.

C. Subcontractor shall comply with all statutes and regulations relating to safety on the job site and relating to proper disclosure of the composition of all materials, substances and supplies utilized by the Subcontractor in performance of the Work, and recommended procedures in the handling of such items. By signing of the Subcontract, the Subcontractor certified it has assigned a competent employee of the Subcontractor as responsible for knowledge and awareness of OSHA and MIOSHA requirements and of "Right to Know" laws, statutes and regulations, and similar governmental requirements Subcontractor has provided the training and informational data required by governmental laws and regulation. Subcontractor will require its subcontractors, suppliers and material suppliers to comply with all laws and regulations relating to the Project.

D. (1) Safety Accident Prevention: In the performance of the Subcontractor, the Subcontractor shall comply with all applicable Federal, State, Municipal and local laws and regulations governing safety, health and sanitation. In addition, Subcontractor shall comply with construction safety orders issued by the Owner, a Government Agency, or the Contractor. Failure to comply with the applicable laws or the aforesaid construction safety orders and to correct all deficiencies within five (5) days after receipt of notice of such deficiencies may be considered a breach of the Subcontract and grounds for termination and/or cancellation thereof by the Contractor; provided, however, that the Contractor may at its option in lieu of such cancellation correct such deficiencies and charge all cost of such correction to the Subcontractor.

(2) Subcontractor shall, within ten (10) days after execution of the Subcontract, submit to the Contractor, Subcontractor's proposed safety program for the Project including a list and description of the safety measures to be taken and the safety equipment to be used and issued to Subcontractor's employees by Subcontractor.

### 5. MINIMUM WAGE

Subcontractor shall comply with any prevailing wage provisions of the Prime Contract relating to its Work.

### 6. TRAFFIC CONTROL

The Subcontractor agrees to maintain, at its own expense, traffic barricades or any other means necessary for traffic control, as may be required for the Work.

### 7. EXTRA OR CHANGED WORK

A. Subcontractor agrees not to perform any extra or change order work without written authorization, which may be in the form of an email followed up by a Change Order within 7 days of the initial email request, from the Contractor and further agrees that it shall be entitled to no compensation for extra or change order work performed without such written authority.

B. If there is a dispute between Contractor and Subcontractor as to the scope of Subcontractor's Work, Subcontractor shall perform the Work upon the Contractor's written order to do so and the dispute shall be resolved pursuant to this Section.

## INDUSTRIAL ELECTRIC CO. GENERAL TERMS AND CONDITIONS

C. Claims for additional compensation or damaged for delays, changed conditions, acceleration, unforeseen circumstances, altered character of the Work, or delays caused by the Contractor, the Owner, or other subcontractors shall be recoverable from the Contractor and an extension of time for completion timely requested and granted shall be paid to the Subcontractor; provided, however, that timely notice is given to Contractor and all costs incurred are substantiated. Subcontractor must comply with all requirements in dealing with Contractor as are required by Contractor in dealing with the Owner in the Prime Contract as it relates to such claims. In the event that Contractor prosecutes a claim against the Owner for additional compensation for any delays, changed conditions, acceleration, unforeseen circumstances, altered character of the Work, delays caused by the Owner or other Subcontractors, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay its proportionate share of costs and expenses incurred in connection therewith, including reasonable attorney's fees, to the extent that such claim is made by Contractor at the request of or on behalf of Subcontractor.

D. If the Subcontractor deems that the services or Work to which its Work is to be applied or affixed are unsatisfactory or unsuitable, written notification of said conditions shall be given to the Contractor within five (5) days after the Subcontractor knew or should have known of such unsatisfactory or unsuitable conditions. The Subcontractor shall have no claim for extra compensation, nor will any consideration be given to non-responsibility for the Subcontractor's Work due or caused by such unsatisfactory or unsuitable conditions if the provisions of this paragraph are not complied with.

### 8. SUBCONTRACTOR CLAIMS

Subcontractor represents that it is best qualified to analyze the plans and specifications and has inspected the job site with respect to physical conditions impacting its Work and that it has entered into this Subcontract based upon such analysis and inspection and not based upon any representation or statements of Contractor concerning those conditions. Subcontractor acknowledges that all of the Subcontract Documents are on file in the Contractor's office and have been made available to Subcontractor for examination. Subcontractor represents that it has carefully examined all of such Subcontract Documents or waives examination thereof.

A. All claims of the Subcontractor arising in whole or part out of acts or omissions of the Owner, design professional or any entity other than Contractor, shall be presented to the Owner by the Contractor on behalf of the Subcontractor and finally resolved through the claims procedure (arbitration, litigation or otherwise) applicable between the Contractor and Owner. Subcontractor shall pay all costs and expenses, including reasonable attorney's fees, related to the presentation and prosecution of such claim(s). Subcontractor's sole remedy against Contractor shall be to receive the amount received by the Contractor from the Owner with respect to Subcontractor's Work but only to the extent Contractor or another Subcontractor is not at fault for any such fault.

B. Unless precluded by the Prime Contract, any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place at offices of the American Arbitration Association in Southfield, Michigan, and the arbitrator(s) shall be bound to utilize the laws of the State of Michigan in rendering their decision.

### 9. MONTHLY STATEMENT

A. The Subcontractor shall submit to Contractor by the 25<sup>th</sup> of each month or as otherwise directed an itemized statement listing all Work by item completed to date on the Project and an itemized statement listing all work by item completed in the preceding month(s). Included in this statement shall be all additional or extra work performed that was required. No estimates will be paid until the monthly statement is received.

B. If required by the Prime Contract, the Subcontractor shall submit weekly payrolls as required. These payrolls shall be submitted directly to the Contractor.

### 10. AFFIDAVITS AND SWORN STATEMENTS

For work performed on a Time & Material or Cost Plus a Fee basis, the Subcontractor shall submit to Contractor affidavits concerning payments of bills, liens and other claims when required by Contractor. The Subcontractor shall submit by the 25<sup>th</sup> of each month or as otherwise directed a detailed sworn statement listing all expenses incurred on the Project to date and if required by Contractor, Subcontractor shall submit conditional waivers of lien. For work performed on a Lump Sum basis, the Subcontractor shall submit to Contractor sworn affidavits and payment application on a percentage of completion basis with conditional waivers of lien. Contractor may take such steps as it may reasonably deem necessary to protect itself, its surety and the Owner against any such bills, liens or other claims attributable to Subcontractor, including the withholding of payments to the Subcontractor. It is agreed that the Contractor shall have the right at its option to cancel this Subcontract in the event that Subcontractor makes an assignment for the benefit of creditors or becomes involved in bankruptcy proceedings whether initiated by the Subcontractor or others or otherwise becomes

## INDUSTRIAL ELECTRIC CO. GENERAL TERMS AND CONDITIONS

unable to timely perform this Subcontract. In that event, the rights of the parties shall be the same as if Subcontractor had failed to perform the contract in whole or in part.

## 11. CLEAN-UP

A. The Subcontractor shall at times keep streets and any public or private premises temporarily occupied by it for purposes of Work under this Contract free from accumulation of waste material or rubbish caused by its employees or Work to the satisfaction of Contractor, including but not limited to: Construction equipment, temporary buildings, and excess material shall be properly removed from the site as they become no longer needed for the progress of the Work; all working areas shall be left broom clean; dust control shall be provided at all times during construction; trucks hauling excavated materials, cement, sand, stone or other loose materials from or to the site, shall be tight so that no spilling will occur (before trucking start away from site, their loads shall be carefully trimmed to prevent spillage). This requirement likewise applies to suppliers making deliveries to the site and the Subcontractor will be held responsible for compliance by its suppliers.

B. If the Subcontractor refuses or fails to perform this cleaning as directed by the Contractor, the Contractor shall have the right and power to proceed with said cleaning and the Subcontractor shall, on demand, repay to the Contractor the actual costs of labor plus 15% thereof to cover supervision, insurance, overhead, etc.

## 12. ASSIGNMENT OF SUBCONTRACT

The Subcontractor shall not assign or sublet this Subcontract or any part thereof without written consent of the Contractor. If such written consent is granted by the Contractor, the Subcontractor shall require its subcontractor to provide insurance as required under Section 1 of this Subcontract. Certificates of such insurance shall be provided to the Contractor prior to the performance of any Work by the Subcontractor. The Subcontractor shall further furnish the Contractor written proof from its subcontractor that the provisions and requirements of this Subcontract are familiar to it and have further been made a part of the agreement between Subcontractor and its subcontractor. It is likewise agreed that the Subcontractor shall not assign any of the monies payable to it under this Contract, or its claim thereto, except with the written consent of Contractor.

## 13. TIME

A. It is understood and agreed that time is of the essence in the performance of Subcontractor's Work, and that the Work shall be conducted and scheduled by the Subcontractor as to ensure its completion in accordance with the contract schedule. The Subcontractor shall commence Work upon five (5) days' notice and continue until completion where possible if the contract has various stages the Subcontractor shall schedule its Work accordingly to be completed as the contract requires. If the Prime Contractor's operations are delayed, then the Subcontractor shall revise its schedule accordingly.

B. Should the Subcontractor fail to timely prosecute its Work thereby causing actual or liquidated damages against Contractor, Subcontractor hereby agrees to repay the Contractor its proportionate share of any additional expense or damages incurred by the Contractor by such action. Subcontractor shall cause no hindrance or delays to other contractors or subcontractors. Subcontractor shall be responsible for all damage done by Subcontractor or its subcontractors or suppliers to the Work of other contractors or subcontractors. If Subcontractor's material is not delivered promptly thereby causing or threatening to cause delay in general progress of the Work, the Contractor shall have the right to investigate the cause of said delay and expedite deliveries, and all expense thus incurred by the Contractor shall be charged to and paid by Subcontractor.

C. Neither party shall be liable to the other for any delay or failure in performing its obligations under this agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or public enemy, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts riots, industry-wide labor strikes, embargoes or industrial disturbances.

## 14. CANCELLATION OR COMPLETION OF WORK BY CONTRACTOR

In the event that the Subcontractor for any reason whatsoever fails to timely or properly perform any item of Work, including warranty or guarantee obligations or to furnish sufficient labor, equipment or materials so called for after ten days written notice from the Contractor to so perform or furnish, the Contractor *may*, in addition to its other rights held under the Subcontract, cancel the Subcontract or without cancelling the Subcontract, complete said item or items of Work, use any or all of the Subcontractor's material and supplies on the Project to complete its items of Work, or furnish said materials at its own expense either through its own sources or through contractual arrangements with third parties. The Subcontractor shall be indebted to the Contractor for the amount of such expense incurred by Contractor in performing Subcontractor's Work (including attorney's fees) to which shall be added a 10%.

## 15. NOTICE OF PROBLEMS/COORDINATION

Subcontractor shall:

- A. Immediately notify Contractor orally and in writing of any known defect, inconsistency, error or omission in the Subcontract

Documents, or any instruction, process, unsafe condition, hazardous waste, asbestos, PCB's, toxic substances, work not in proper condition to receive Subcontract work, or other problems encountered or associated with the Subcontract Work;

- B. Cooperate with Contractor and all others whose work may interfere with Subcontractor's Work and specifically note and

## **INDUSTRIAL ELECTRIC CO. GENERAL TERMS AND CONDITIONS**

immediately advise Contractor within three (3) days in writing of any such interference, Subcontractors failure to comply with the foregoing notice provisions shall constitute a waiver of any claims that the Subcontractor may have to the extent permitted by the Subcontract Documents relating to or arising from any of the conditions or matters which may be the subject of the notice; and

C. Participate in the preparation of coordination drawings and work schedules in areas of congestion;  
D. Not take pictures, including without limitation, still photos, videos or motion pictures, without the advance written consent of Contractor;

E. Not use toxic or hazardous substances of the project site without giving all notices required by law;

F. Be responsible for all costs and damages, including, but not limited to, Contractor's attorney's fees and costs resulting from Subcontractor's failure to comply with the above requirements.

### **16. PROPERTY FURNISHED BY OTHERS**

If the scope of Subcontractor's work includes installation of materials or equipment furnished by others, Subcontractor shall receive and immediately examine the items so provided. Any known shortage or defects must be called to Contractor's attention immediately and confirmed by a written notice within three (3) working days or any claim relative thereto is waived and all resulting costs and damages shall be for Subcontractor's account. Otherwise Subcontractor shall accept, handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation.

### **17. PRIME CONTRACT INCORPORATED BY REFERENCE**

The Work shall be done as specified. The Subcontractor shall assume toward this Contractor all obligations and responsibilities which the Contractor assumes toward the Owner but only to the extent such obligations and responsibilities involve the Subcontractor's work under this agreement and all agreements between the Contractor and Owner (Prime Contract) are hereby incorporated by this reference.

### **18. SUBCONTRACTOR WARRANTY AND GUARANTEE**

The Subcontractor warrants and guarantees the material and workmanship supplied hereunder for one year from the date of completion of Subcontractors work and agrees to make good at Subcontractor's expense any defect in workmanship or materials which may occur during this one year period..

### **19. PUNCH LIST**

Punch list items which are not completed within two (2) weeks of punch list issuance will be completed by Contractor and charged to the Subcontractor, including but not limited to supervision, general conditions, liquidated damages assessed by the Owner, and other direct costs to the extent such punch list work is attributable to the Subcontractor.