

[Your letterhead]

# Proposal

Customer:  
Address:

Date of Proposal:

Telephone:

Project:

Project Location:

Estimated Start Date:

Estimated Duration of Work:

We propose to furnish the following labor and material for the above project, all work to be completed in a workmanlike manner in accordance with standard practices in the trade:

Price(s) for work complete: \$\_\_\_\_\_

Terms of Payment: \_\_\_\_\_

This Proposal is withdrawn if not accepted within \_\_\_\_ days. When accepted, this Proposal becomes a legally binding contract, subject to the terms and conditions set forth on the reverse side of this Proposal.

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**Acceptance of Proposal:** The above price(s) for the work specified, and the terms and conditions set forth on the reverse side of this Proposal, are hereby accepted, and you are authorized to perform the work as described, with payment to be made as specified.

Buyer:

By: \_\_\_\_\_

## **Contract Terms and Conditions**

1. This document contains the entire agreement between the parties, and no representations or promises not set forth herein are valid or binding. This agreement may only be amended in writing signed by both parties.
2. All sums not paid when due shall bear interest at the lesser of 1.5% per month, or the maximum permitted by state law. All costs of collection, including attorneys' fees of 20% of the amount found due, shall be paid by Buyer.
3. Seller shall have no liability to Buyer for any delays to Seller's performance caused by events beyond its control, including but not limited to strikes, civil disorders, fires, floods, adverse weather conditions, labor difficulties, delays in transportation, shortages of materials, delays in approval and return of drawings or submittals, and delays in predecessor activities.
4. Buyer shall have responsibility for fire insurance on the structure under construction.
5. Seller accepts no design responsibility. Compliance of the Contract Documents with applicable federal, state and local laws and building codes is not the responsibility of Seller.
6. Buyer shall be responsible for any damage to or alteration of Seller's work which occurs after such work has been inspected and approved by Buyer.
7. Materials are guaranteed for the same period of time, and to the same extent, as provided in the warranty extended by the manufacturer. It is the duty of the Buyer to inspect and approve the Seller's installation, and Seller's liability extends only to the replacement of defective materials. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
8. Any disputes between Buyer and Seller shall be resolved by arbitration pursuant to the Construction Industry Rules of the American Arbitration Association. The parties agree to meet in person, in the locality of the project, without counsel, to attempt to resolve any disputes prior to making a demand for arbitration. Refusal upon reasonable notice and request to participate in good faith in a settlement meeting shall result in assessment of fees and costs of arbitration against such party.

## **Special Terms for Home Improvement Contracts**

1. If this contract is for the provision of labor and materials for an existing residence, you are hereby advised that you have a right to cancel this contract prior to commencement of the work, upon three days written notice to Seller, at the address set forth at the top of this Proposal. Your notice must be postmarked within three business days of the date hereof. Upon cancellation, any cash down payment will be returned in full.
2. All home improvement contractors must be licensed by the state. Further information concerning your rights may be obtained from the appropriate state officials.

[Company letterhead]

## **Subcontractor Bid Proposal**

Contractor:

Date of Proposal:

Project:

Location:

This Proposal is based on the following drawings, specifications, and addenda:

Subcontractor proposes to perform the work described in Attachment A hereto for the following price(s):

This bid is valid for sixty days from the date hereof.

**IMPORTANT NOTICE:** The Standard Form Terms and Conditions on the reverse side of this Bid Proposal set forth the basis upon which Subcontractor offers to perform its work, and these Terms and Conditions are a material part of Subcontractor's bid to Contractor. Subcontractor has not included any contingency money in its bid, and the shifting by Contractor of any additional business or credit risks to Subcontractor shall require additional compensation. Acceptance of Subcontractor's bid price is specifically conditioned upon acceptance of these terms and conditions, which shall be incorporated by reference into the Subcontract Agreement or Purchase Order and prevail over other terms in the Contract Documents to the contrary. Refusal to accept these Terms and Conditions in full shall be deemed a counteroffer. Issuance of a notice to proceed with any portion of the work, including preparation of shop drawings, shall be deemed acceptance of these terms and conditions.

## STANDARD BID TERMS AND CONDITIONS

1. Although payments may be made to Subcontractor out of the proceeds of Contractor's pay requisitions to Owner, such practice shall govern only the timing of payment, and not the obligation of Contractor to pay Subcontractor on a timely basis.
2. Payments are due and payable 30 days from invoice or pay requisition. In the event Contractor fails to make a payment to Subcontractor on any work performed for Contractor within 45 days of the submission of a timely invoice or pay requisition, Subcontractor shall have the right to suspend its work on all projects, upon 7 days written notice, until payment is made.
3. No retainage shall be withheld from Subcontractor's payments.
4. All sums not paid when due shall bear interest at the lesser of 1.5% per month, or the maximum permitted under state law. All costs of collection, including attorneys fees of 20% of the amount found due, shall be paid by Contractor.
5. Nothing in the Contract Documents shall cause to be voided or diminished in any manner Subcontractor's right to enforce its mechanic's lien rights or obtain payment under an applicable payment bond if Subcontractor is not timely paid.
6. If Contractor believes in good faith that it has a claim against Subcontractor, Contractor shall promptly notify Subcontractor in writing of the full details of such claim, including a detailed statement of the amount claimed. Subcontractor shall have the option of posting a surety bond in the amount of such claim, in which case Contractor shall have no right to withhold any payments otherwise due to Subcontractor. In the event it is subsequently determined that the claim in question lacks merit, Contractor shall reimburse Subcontractor for the costs of such bond and any attorneys fees incurred by Subcontractor in enforcing this clause.
7. Contractor shall make no demand to Subcontractor for liquidated damages for delays, or actual damages for delays, other than actual amounts paid by the Contractor to Owner, and then only for damages arising out of unexcused project delay caused solely by Subcontractor.
8. Subcontractor shall have no liability to Contractor for any delays to Subcontractor's performance caused by events beyond its control, including but not limited to strikes, civil disorders, fires, floods, adverse weather conditions, labor difficulties, delays in transportation, shortages of materials, delays in approval and return of shop drawings or submittals, and delays in predecessor activities.
9. Subcontractor agrees to indemnify and hold harmless the Contractor and Owner against claims and damages for bodily injury or property damage to the extent, and only to the extent, caused solely by the negligent or wrongful acts or omissions of Subcontractor, its agents and employees. Subcontractor shall bear no responsibility for the negligent or wrongful acts of Contractor, Owner, or any third party. In the event the Contract Documents require that any other party be added to a Subcontractor insurance policy as an additional insured, Subcontractor's insurance shall be deemed secondary and noncontributory.
10. In the event Contractor orally directs or instructs Subcontractor to perform extra work, any requirement in the Contract Documents that change orders or extra work orders be in writing shall be waived by such actions. Contractor's superintendent shall have full authority to act on behalf of Contractor, including signing extra work tickets.
11. Nothing contained in the Contract Documents shall cause to be voided or to limit in any way Contractor's duty implied by law to cooperate with Subcontractor and not to interfere with or hinder Subcontractor's efficient performance.
12. Clauses contained in any of the various Contract Documents setting forth notice requirements, waivers of claims, or waivers of rights of any kind shall not be effective against Subcontractor unless prior to execution of the subcontract agreement Contractor delivers to Subcontractor a copy of each document in which such a clause appears.
13. Contractor shall cause to have Subcontractor added to the Builder's Risk policy as an additional named insured, with a waiver of subrogation endorsement.
14. In the event a claim on behalf of Subcontractor arises resulting from defects in Owner-supplied plans or specifications, or other acts of the Owner or Owner's representatives, upon written request Contractor shall assign to Subcontractor the right to pursue such claim against the Owner in Contractor's name, in which event Contractor shall have no liability to Subcontractor for any such losses or damages.
15. Subcontractor's insurers' right of subrogation shall not be waived.
16. When delays not the responsibility of Subcontractor result in rescheduling of work during a period in which Subcontractor has previously scheduled other work, upon written request of the Contractor Subcontractor agrees to proceed on an overtime or extra-shift basis. Contractor shall pay Subcontractor's extra costs.
17. Any disputes between Contractor and Subcontractor shall be resolved by arbitration pursuant to the Construction Industry Rules of the American Arbitration Association. The parties agree to meet in person, in the locality of the project, without counsel, to attempt to resolve any disputes prior to making a demand for arbitration. Refusal upon reasonable notice and request to participate in good faith in a settlement meeting shall result in assessment of fees and costs of arbitration against such party.

[Subcontractor Letterhead]

## **Attachment A -- Scope of Work**

Contractor: \_\_\_\_\_

Project: \_\_\_\_\_

### **A. Scope of Work Description**

[Detailed description of work here]

### **B. Exclusions**

[Add list of exclusions here]

### **C. Special Terms.**

1. Subcontractor's scope of work shall be limited to that specifically described herein, and no work shall be implied or inferred which is not described. Nothing contained in the plans and specifications for the work of other trades shall be included in Subcontractor's work unless specifically enumerated herein.

2. Subcontractor accepts no design responsibility. Compliance of the Contract Documents with applicable federal, state and local laws and building codes is not the responsibility of Subcontractor.

3. Contractor shall be responsible for any damage to or alteration to its work which occurs after it has been inspected and approved by Contractor.

4. Materials are guaranteed for the same period of time, and to the same extent, of the warranty extended by the manufacturer. It is the duty of the Contractor to inspect and approve the Subcontractor's installation, and Subcontractor's liability extends only to the replacement of such materials. . THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

[Your letterhead]

## Standard Form Addendum to Subcontract

Contractor: \_\_\_\_\_ Project: \_\_\_\_\_

Contractor's Subcontract Agreement is amended to provide as follows:

1. Although payments may be made to Subcontractor out of the proceeds of Contractor's pay requisitions to Owner, such practice shall govern only the timing of payment, and not the obligation of Contractor to pay Subcontractor on a timely basis.
2. Payments are due and payable 30 days from invoice or pay requisition. In the event Contractor fails to make a payment to Subcontractor on any work performed for Contractor within 45 days of the submission of a timely invoice or pay requisition, Subcontractor shall have the right to suspend its work on all projects, upon 7 days written notice, until payment is made. No retainage shall be withheld from Subcontractor's payments.
3. All sums not paid when due shall bear interest at the lesser of 1.5% per month or the maximum permitted by state law. All costs of collection, including attorneys' fees of 20% of the amount found due, shall be paid by Contractor.
4. Nothing in the Contract Documents shall cause to be voided or diminished in any manner Subcontractor's right to enforce its mechanic's lien rights or obtain payment under an applicable payment bond if Subcontractor is not timely paid.
5. If Contractor believes in good faith that it has a claim against Subcontractor, Contractor shall promptly notify Subcontractor in writing of the full details of such claim, including a detailed statement of the amount claimed. Subcontractor shall have the option of posting a surety bond in the amount of such claim, in which case Contractor shall have no right to withhold any payments otherwise due to Subcontractor. In the event it is subsequently determined that the claim in question lacks merit, Contractor shall reimburse Subcontractor for the costs of such bond and any attorneys' fees incurred by Subcontractor in enforcing this clause.
6. Contractor shall make no demand to Subcontractor for liquidated damages for delays, or actual damages for delays, other than actual amounts paid by the Contractor to Owner, and then only for damages arising out of unexcused project delay caused solely by Subcontractor.
7. Subcontractor shall have no liability to Contractor for any delays to Subcontractor's performance caused by events beyond its control, including but not limited to strikes, civil disorders, fires, floods, adverse weather conditions, labor difficulties, delays in transportation, shortages of materials, delays in approval and return of shop drawings or submittals, and delays in predecessor activities.
8. Subcontractor agrees to indemnify and hold harmless the Contractor and Owner against claims and damages for bodily injury or property damage to the extent, and only to the extent, caused solely by the negligent or wrongful acts or omissions of Subcontractor, its agents and employees. Subcontractor shall bear no responsibility for the negligent or wrongful acts of Contractor, Owner, or any third party. In the

event the Contract Documents require that any other party be added to a Subcontractor insurance policy as an additional insured, Subcontractor's insurance shall be deemed secondary and noncontributory.

9. In the event Contractor orally directs or instructs Subcontractor to perform extra work, any requirement in the Contract Documents that change orders or extra work orders be in writing shall be waived by such actions. Contractor's superintendent shall have full authority to act on behalf of Contractor, including signing extra work tickets. Extra work tickets shall be deemed approved for payment unless promptly rejected by Contractor.

10. Nothing contained in the Contract Documents shall cause to be voided or to limit in any way Contractor's duty implied by law to cooperate with Subcontractor and not to interfere with or hinder Subcontractor's efficient performance.

11. Contractor shall cause to have Subcontractor added to the Builder's Risk policy as an additional named insured, with a waiver of subrogation endorsement.

12. In the event a claim on behalf of Subcontractor arises resulting from defects in Owner-supplied plans or specifications, or other acts of the Owner or Owner's representatives, upon written request Contractor shall assign to Subcontractor the right to pursue such claim against the Owner in Contractor's name, in which event Contractor shall have no liability to Subcontractor for any such losses or damages.

13. When delays not the responsibility of Subcontractor result in rescheduling of work during a period in which Subcontractor has previously scheduled other work, upon written request of the Contractor, Subcontractor agrees to proceed on an overtime or extra-shift basis. Contractor shall pay Subcontractor's extra costs.

14. Subcontractor accepts no design responsibility. Compliance of the Contract Documents with applicable federal, state and local laws and building codes is not the responsibility of Subcontractor.

15. Contractor shall be responsible for any damage which occurs after Subcontractor's work has been inspected and approved by Contractor.

16. Materials are guaranteed for the same period of time, and to the same extent, of the warranty extended by the manufacturer thereof. It is the duty of the Contractor to inspect and approve the Subcontractor's installation, and Subcontractor's liability extends only to the replacement of defective materials. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17. Any disputes between Contractor and Subcontractor shall be resolved by arbitration pursuant to the Construction Industry Rules of the American Arbitration Association. The parties agree to meet in person, in the locality of the project, without counsel, to attempt to resolve any disputes prior to making a demand for arbitration. Refusal upon reasonable notice and request to participate in good faith in a settlement meeting shall result in assessment of fees and costs of arbitration against such party.

## **Sample Rubber Stamp Amendment of Lien Waiver**

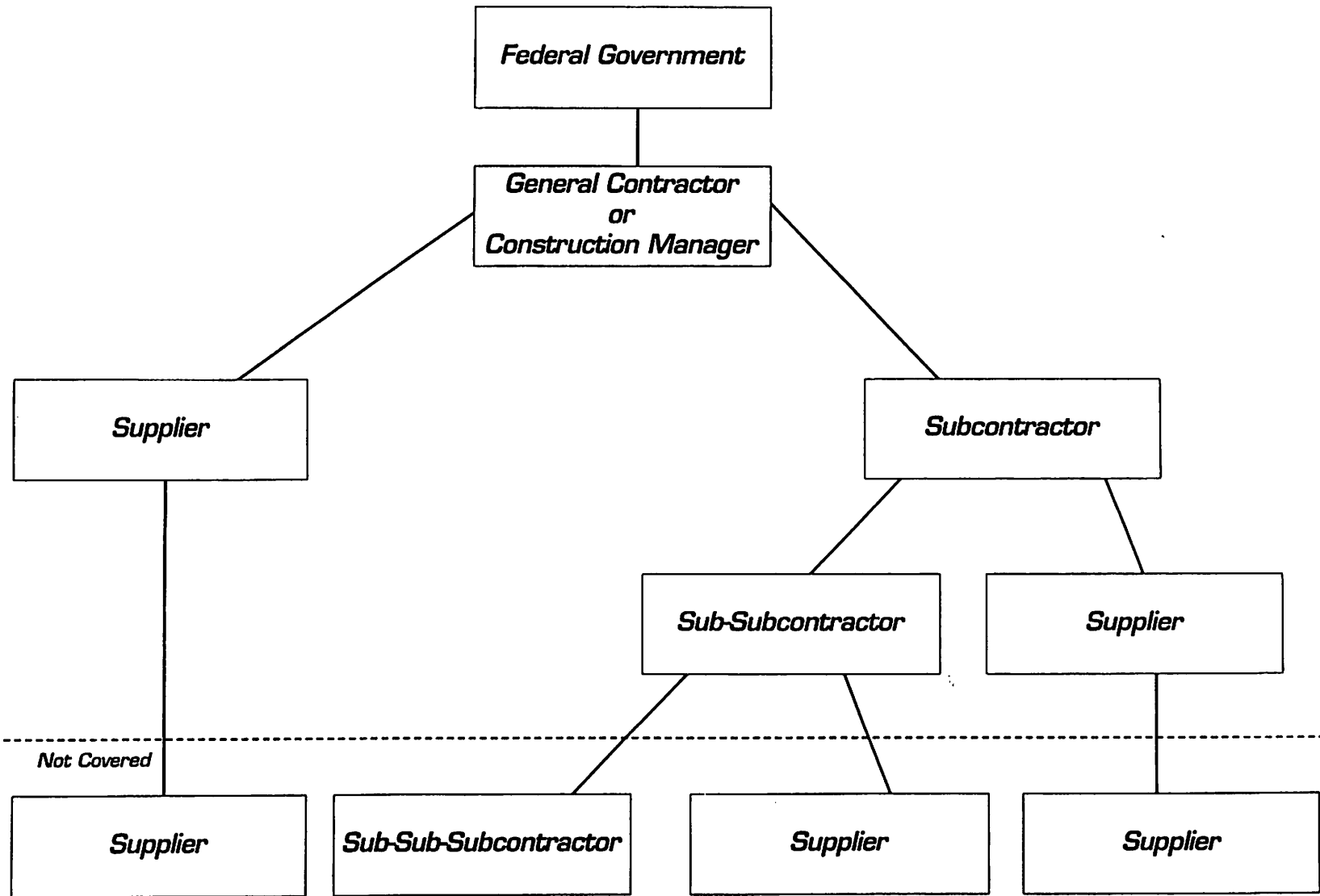
**This release does not apply  
to retainage, pending change  
orders or claims for breach  
of contract.**



# **Sample Rubber Stamp Amendment of Subcontract to Add Standard Form Terms and Conditions**

**This agreement is amended by  
Subcontractor's Standard Form Terms  
and Condition, a copy of which  
is attached.**

# Miller Act Coverage Chart



## Form: Sample Miller Act Notice

**Note: This notice is required for sub-subcontractors and suppliers to sub-subcontractors, and must be sent registered mail in time to be received 90 days from the date of the claimant's last work.**

[Date]

### REGISTERED MAIL NO.

-----  
[Prime Contractor]  
[Address]

Re: [Project name, location and name of federal agency]  
[Prime Contract Number]  
[Name of Subcontractor, Subcontract Number and Date]  
[Name of Surety and date and number of payment bond]

Dear Sir or Madam:

Pursuant to the terms of the Miller Act, 40 U.S.C. 3133 (2002), notice is hereby given of non-payment on the referenced project by [name of subcontractor], in the amount of \$ \_\_\_\_\_. This amount includes \$ \_\_\_\_\_ in past due progress payments, \$ \_\_\_\_\_ in pending change orders, and \$ \_\_\_\_\_ in retainage.

[Name of your company] entered into a subcontract for the \_\_\_\_\_ work on the project dated \_\_\_\_\_, pursuant to which our firm supplied [describe nature of labor and materials supplied], as more fully described in Section \_\_\_\_\_ of the Project Specifications. Our last work on the Project was [date of last labor performed or materials delivered to the site].

By copy of this Notice to the Surety, demand is hereby made for prompt payment of the sums due to us for the labor and material supplied to the Project.

**TAKE NOTICE AND GOVERN YOURSELF ACCORDINGLY.**

Very truly yours,

Copy to:  
[Name and address of surety]

# PAYMENT BOND

Bond No.:

**CONTRACTOR:**

*(Name, legal status and address)*

**SURETY:**

*(Name, legal status and principal place of business)*

**OWNER:**

*(Name, legal status and address)*

**CONSTRUCTION CONTRACT**

Date:

Amount:

Description:

*(Name and location)*

**BOND**

Date:

*(Not earlier than Construction Contract Date)*

Amount:

Modifications to this Bond: ☐ None ☐ See Section 18

**CONTRACTOR AS PRINCIPAL**

Company:

*(Corporate Seal)*

**SURETY**

Company:

*(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title:

Signature: \_\_\_\_\_

Name and Title:

*(Any additional signatures appear on the last page of this Payment Bond.)*

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment

furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

**§ 4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**§ 5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

**§ 5.1** Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

**§ 5.2** Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

**§ 6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

**§ 7** When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

**§ 7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

**§ 7.2** Pay or arrange for payment of any undisputed amounts.

**§ 7.3** The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

**§ 8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**§ 9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**§ 10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**§ 11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## **§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**§ 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**§ 18** Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

**SURETY**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

## Sample Form: Joint Check/Trust Fund Agreement (Owner/Contractor/Subcontractor)

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and among \_\_\_\_\_ ("Owner"), \_\_\_\_\_ ("Contractor"), and \_\_\_\_\_ ("Subcontractor").

WHEREAS Owner has entered into a contract with Contractor dated \_\_\_\_\_, 200\_, for the construction of \_\_\_\_\_ ("the Project"); and

WHEREAS Contractor has in turn proposed to enter into an agreement with Subcontractor for the supply and installation of the \_\_\_\_\_ portion of the work of the Project; and

WHEREAS Subcontractor is unwilling to extend credit to Contractor without adequate payment assurances, and will agree to enter into the proposed sub-contract only in reliance on the credit of Owner; and

WHEREAS Owner is willing to offer the accommodations set forth herein for the purpose of assisting Contractor in obtaining the services of Subcontractor.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound, do solemnly agree:

1. Contractor agrees to specify in each of its monthly and final pay requisitions to Owner the amount thereof which represents work supplied by Subcontractor during the period covered by the requisition, and to attach to such pay requisitions copies of Subcontractor's pay requisitions to Contractor.
2. Owner agrees to make payment to Contractor for the work performed by Subcontractor by means of separate joint payee checks to Contractor and Subcontractor. Owner will transmit the joint checks directly to Subcontractor.
3. Contractor hereby pledges and agrees that the funds paid by Owner to Contractor in the form of joint checks shall be deemed to be held in trust for Subcontractor, and agrees to promptly endorse such checks and immediately return them to the possession of Subcontractor. Contractor acknowledges that its interest in such funds is bare legal title only, and that equitable title shall be vested in Subcontractor.
4. Owner agrees that it will not offset any backcharges or claims it may have against Contractor against funds due to Contractor for work performed by Subcontractor, the intention of this agreement being that Owner will assure payment to Subcontractor for the work properly performed by it, regardless of any disputes which may arise during the Project between Owner and Contractor.

Initials)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



5. The termination of Owner's contract with Contractor shall operate as a termination of Contractor's contract with Subcontractor, and upon such occurrence Contractor consents to and authorizes Owner to enter into a novation with Subcontractor for the supply of the balance of the subcontract work directly to Owner, in exchange for direct payment by Owner to Subcontractor.

6. Nothing contained herein shall affect or diminish the rights of Subcontractor to enforce the Project payment bond.

7. Any dispute arising out of this agreement shall be resolved by means of binding arbitration under the Construction Industry Rules of the American Arbitration Association, with the losing party or parties responsible for arbitration fees.

[Owner]

---

By:  
Title:

[Contractor ]

---

By:  
Title:

[Subcontractor]

---

By:  
Title:

**Sample For: Joint Check/Trust Fund Agreement  
(Contractor/Subcontractor/Supplier)**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and among \_\_\_\_\_ (Contractor"), \_\_\_\_\_ ("Subcontractor"), and \_\_\_\_\_ ("Supplier").

WHEREAS Contractor has entered into a contract with \_\_\_\_\_ ("Owner") dated \_\_\_\_\_, 200\_, for the construction of \_\_\_\_\_ ("the Project"); and

WHEREAS Contractor has in turn entered into a subcontract agreement with Subcontractor dated \_\_\_\_\_ for the supply and installation of the \_\_\_\_\_ portion of the work of the Project; and

WHEREAS Supplier is unwilling to extend credit to Subcontractor without adequate payment assurances, and will agree to enter into the proposed sub-subcontract only in reliance on the credit of Contractor; and

WHEREAS Contractor is willing to offer the accommodations set forth herein for the purpose of assisting Subcontractor in purchasing required materials and/or equipment for use in the Project.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound, do solemnly agree as follows:

1. Subcontractor agrees to specify in each of its monthly payment applications to Contractor the amount thereof which represents materials or equipment supplied by Supplier during the period covered by the requisition, and to attach to such pay requisitions copies of Supplier's invoices to Subcontractor.
2. Contractor agrees to make payment to Subcontractor for materials or equipment provided to the Project by Supplier by means of separate joint payee checks to Subcontractor and Supplier. Contractor agrees to transmit the joint checks directly to Supplier.
3. Contractor hereby pledges and agrees that the funds paid by Contractor to Subcontractor in the form of joint checks shall be deemed to be held in trust for Supplier, and agrees when presented therewith to promptly endorse such checks and immediately return them to the possession of Subcontractor. Subcontractor acknowledges that its interest in such funds is bare legal title only, and that equitable title shall be vested in Supplier.

Initials)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Subcontractor agrees that it will not offset any backcharges or claims it may have against Supplier against funds due for work performed by Subcontractor, the intention of this agreement being that Owner will assure payment to Subcontractor for the work properly performed by it, regardless of any disputes which may arise in the course of the Project between Owner and Contractor.

5. The termination of Contractor's contract with Subcontractor shall operate as a termination of Subcontractor's contract with Supplier, and upon such occurrence Supplier consents to and authorizes Supplier to enter into a novation with Contractor for the supply of the balance of the materials or equipment directly to Contractor, in exchange for direct payment by Contractor to Supplier.

6. Nothing contained herein shall affect or diminish the rights of Supplier to enforce the Project payment bond.

7. Any dispute arising out of this agreement shall be resolved by means of binding arbitration under the Construction Industry Rules of the American Arbitration Association, with the losing party or parties responsible for arbitration fees.

[Contractor]

---

By:  
Title:

[Subcontractor ]

---

By:  
Title:

[Supplier]

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By:  
Title:

**Sample Form: Joint Check/Trust Fund Agreement  
(Contractor/Subcontractor/Sub-subcontractor)**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and among \_\_\_\_\_ (Contractor"), \_\_\_\_\_ ("Subcontractor"), and \_\_\_\_\_ ("Sub-subcontractor").

WHEREAS Contractor has entered into a contract with \_\_\_\_\_ ("Owner") dated \_\_\_\_\_, 200\_, for the construction of \_\_\_\_\_ ("the Project"); and

WHEREAS Contractor has in turn entered into a subcontract agreement with Subcontractor dated \_\_\_\_\_ for the supply and installation of the \_\_\_\_\_ portion of the work of the Project; and

WHEREAS Sub-subcontractor is unwilling to extend credit to Subcontractor without adequate payment assurances, and will agree to enter into the proposed Sub-subcontract only in reliance on the credit of Contractor; and

WHEREAS Contractor is willing to offer the accommodations set forth herein for the purpose of assisting Subcontractor in purchasing required materials and/or labor for use in the Project.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound, do solemnly agree as follows:

1. Subcontractor agrees to specify in each of its monthly payment applications to Contractor the amount thereof which represents materials or labor supplied by Sub-subcontractor during the period covered by the requisition, and to attach to such pay requisitions copies of Sub-subcontractor's invoices to Subcontractor.

2. Contractor agrees to make payment to Subcontractor for materials or labor provided to the Project by Sub-subcontractor by means of separate joint payee checks to Subcontractor and Sub-subcontractor. Contractor agrees to transmit the joint checks directly to Sub-subcontractor.

3. Contractor hereby pledges and agrees that the funds paid by Contractor to Subcontractor in the form of joint checks shall be deemed to be held in trust for Sub-subcontractor, and agrees when presented therewith to promptly endorse such checks and immediately return them to the possession of Subcontractor. Subcontractor acknowledges that its interest in such funds is bare legal title only, and that equitable title shall be vested in Sub-subcontractor.

Initials)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Subcontractor agrees that it will not offset any backcharges or claims it may have against Sub-subcontractor against funds due for work performed by Subcontractor, the intention of this agreement being that Owner will assure payment to Subcontractor for the work properly performed by it, regardless of any disputes which may arise in the course of the Project between Owner and Contractor.

5. The termination of Contractor's contract with Subcontractor shall operate as a termination of Subcontractor's contract with Sub-subcontractor, and upon such occurrence Sub-subcontractor consents to and authorizes Sub-subcontractor to enter into a novation with Contractor for the supply of the balance of the materials or labor directly to Contractor, in exchange for direct payment by Contractor to Sub-subcontractor.

6. Nothing contained herein shall alter the rights of Sub-subcontractor to enforce the Project payment bond.

7. Any dispute arising out of this agreement shall be resolved by means of binding arbitration under the Construction Industry Rules of the American Arbitration Association, with the losing party or parties responsible for arbitration fees.

[Contractor]

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By:  
Title:

[Subcontractor ]

---

By:  
Title:

[Sub-subcontractor]

---

By:  
Title:

## Form: Sample Novation Agreement

THIS AGREEMENT is made, in triplicate, this \_\_\_\_ day of \_\_\_\_\_, 200\_,  
by and among \_\_\_\_\_ ("Owner"), \_\_\_\_\_ (Contractor "  
and \_\_\_\_\_("Subcontractor").

WHEREAS on \_\_\_\_\_, 200\_, Owner entered into a contract with  
Contractor for the construction of \_\_\_\_\_ ("Project"); and

WHEREAS by agreement dated \_\_\_\_\_, 200\_ ("the Subcontract  
Agreement"), Contractor contracted with Subcontractor for the performance of the  
work encompassed in the \_\_\_\_\_ bid package for the Project; and

WHEREAS Contractor desires that the Subcontract Agreement be terminated,  
and Owner desires that a substitute contract be entered between Owner and  
Subcontractor;

NOW THEREFORE, in consideration of the mutual promises contained  
herein and other good and valuable consideration the sufficiency of which is hereby  
acknowledged, the parties, intending to be legally bound, agree as follows:

1. The parties stipulate that Subcontractor has completed work valued at  
\$ \_\_\_\_\_, and the value of the work yet to be completed ("the Remaining  
Work") is \$ \_\_\_\_\_. The parties further stipulate that Subcontractor has been  
paid \$ \_\_\_\_\_, leaving an unpaid balance of \$ \_\_\_\_\_.
2. As of the date hereof, the Subcontract Agreement is terminated, and  
each party thereto releases the other from all liability arising thereunder.
3. Subcontractor agrees to perform the Remaining Work directly for  
Owner, and Owner agrees to pay Subcontractor therefor, as well as to pay to  
Subcontractor, upon execution of this Agreement, the outstanding balance due from  
Contractor. Owner shall be entitled to a credit against amounts due to Contractor for  
such payments.
4. The Project Schedule is hereby amended to provide for a completion  
date for Subcontractor's work of \_\_\_\_\_, 200\_.

[SIGNATURES]

# Form: Sample Accounts Receivable Assignment

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_,  
by and among \_\_\_\_\_ ("Debtor") and \_\_\_\_\_ ("Supplier").

WHEREAS Supplier has sold to Debtor on open account certain building materials for use by Debtor on various construction projects, and Debtor acknowledged a debt to Supplier as of the date hereof in the amount of \$ \_\_\_\_\_ ("the Outstanding Debt"); and

WHEREAS Debtor is unable to pay its debt to Supplier, and in order to assure such payment, Debtor desires to assign to Supplier certain accounts receivable.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Debtor hereby assigns to Supplier the proceeds of the accounts receivable listed in Exhibit A hereto, up to the total of the Outstanding Debt.
2. Debtor agrees to send within three business days hereof written notice of such assignment to each of the creditors on such list, with a request that payment of amounts due to Debtor be made directly to Supplier. Debtor further agrees to fully cooperate with Supplier in the collection of such accounts.
3. Debtor hereby appoints \_\_\_\_\_ as its lawful attorney-in-fact, with authority to act in Debtor's name to take whatever action is required, including legal action (by lawsuit or arbitration), to collect such debts. The proceeds of such legal action shall be applied first to legal fees, and then to the Outstanding Debt.

4 Alternative clauses:

Supplier agrees to accept the accounts assigned to it as full payment of the Outstanding Debt, regardless of the amount collected.

or

Debtor shall be released from its obligations to Supplier only to the extent of collections in the event the proceeds of the assigned accounts exceed the amount of the Outstanding Debt, Supplier will pay the excess collected to Debtor.

[SIGNATURES]