

DOCUMENT A
BARTON MALOW COMPANY
TERMS AND CONDITIONS
for General Conditions Procurement
May 9, 2011

1. **CONTRACT OBLIGATIONS:** In performance of this contract, the Subcontractor assumes toward Barton Malow all the obligations, including Administrative and Procedural, Barton Malow assumes toward the Owner, and Barton Malow shall have all the rights and remedies as to said Subcontractor which the Owner has to Barton Malow and, except as specifically set forth herein, said Subcontractor shall not have any rights as to Barton Malow which Barton Malow does not have to the Owner.
2. **INDEMNIFICATION:** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless Barton Malow and its agents, employees, officers and successors from and against any and all liabilities, claims, causes of action or lawsuits seeking damages on account of personal injury or death to any person, including employees of the Subcontractor, or property damage, including claims for loss of use, which arise out of or result from, or are in any way connected with any work covered by this Agreement or the operations or acts of commission or omission of the Subcontractor, including those of its employees, agents or officers or its sub-subcontractors, or sub-subcontractors employees, agents or officers, regardless of whether or not they are caused in part by a party indemnified hereunder. The Subcontractor's indemnity obligation shall: (a) Include indemnity for all damages and judgment interest, all costs and fees, including all defense costs, expenses and actual attorney's fees, relating to or arising out of, resulting from or in any way connected with any claim, cause of action or lawsuit requiring indemnity by the Subcontractor and, (b) not include any obligation to indemnify for Barton Malow's sole negligence or willful misconduct. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph or to limit in any way any limitation on the amount or type of damages, compensation or benefits payable by or for any Subcontractor under Workers' or Workmen's Compensation Acts, Disability Acts or other Employee Benefit Acts.
3. **INSURANCE REQUIREMENTS:** As a condition of performing work for Barton Malow, the subcontractor must procure, at its expense, and maintain, until completion and acceptance of its work, the following minimum insurance coverages from insurance companies licensed in the State where work is being done and satisfactory to Barton Malow:
(a) Workers' Compensation Insurance covering the Subcontractor's statutory obligation in the State in which its work for Barton Malow is to be performed and Employers' Liability Insurance with limits of liability of \$1,000,000 per accident; (b) Automobile Liability Insurance with a limit of liability of \$1,000,000 per accident for its owned, non-owned and hired vehicles; (c) Commercial General Liability Insurance written on the 1988 ISO OCCURRENCE policy form, or subsequent versions, with minimum limits of liability of: (1) \$1,000,000 Each Occurrence, (2) \$1,000,000 General Aggregate, and (3) \$1,000,000 Products-Complete Operations Aggregate and (4) \$1,000,000 Personal and Advertising Injury. General liability and auto liability limits may be attained by individual policies or by a combination of underlying policies with umbrella and/or excess liability policies. Before commencing work, evidence of insurance coverages required herein, must be provided to Barton Malow on an ACORD Certificate Form or other form acceptable to Contractor and must indicate that Barton Malow Company, Owner, and all other entities as required by Owner shall be endorsed as additional insureds on Subcontractor's commercial general liability policy with respect to liability arising out of activities, "operations" or "work" performed by or on behalf of Subcontractor. Additional insured endorsements for Subcontractor's liability policies must also be provided to Barton Malow before the Subcontractor commences work, and the coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B CG 20 10 11 85 or CG 20 26 11 85 as determined by Contractor. Forms that do not provide additional insured status for completed operations will not be accepted. In no case shall any additional insured endorsement exclude coverage for Barton Malow's own negligence nor limit coverage for Barton Malow only to potential liability incurred solely as a result of Subcontractor's acts or omissions. Furthermore, nothing in the additional insured endorsement shall limit Barton Malow's products-completed operations coverage to only those liabilities resulting from Subcontractor's "ongoing operations". All coverage must be primary and not excess over or contributory with any other valid, applicable and collectible insurance or self-insurance in force for Barton Malow or other additional insureds, regardless of whether such coverage is written on a primary, excess or contributory basis. Each policy shall be endorsed so that the issuing insurance company will provide thirty (30) days written notice of cancellation to the Contractor and any additional insureds. Supplier also agrees to provide Contractor with written notice of any cancellation, non-renewal or material modification to any of the policies required under this GS Order.
4. **BONDS:** Barton Malow shall have the right to require the Subcontractor to furnish bonds, which are satisfactory to Barton Malow, to secure the faithful performance of the Contract and the payment of all obligations arising thereunder.
5. **GOVERNMENT LAWS & REGULATIONS:** Subcontractor will comply with Federal, State and Municipal laws, rules and regulations in the performance of the work and in the employment of persons, and shall obtain all necessary licenses and permits and pay all fees, taxes and other charges required thereby, and furnish, upon Barton Malow's request, evidence of compliance with any law and the payment of any fee, tax or charge. Subcontractor will indemnify and hold harmless Barton Malow against any and all claims, charges, liens, garnishments and levies arising out of Subcontractor's failure to comply as required by this Paragraph.
6. **SCHEDULE AND PERFORMANCE OF WORK:** Time is of the essence in this Agreement. Subcontractor shall indemnify and hold harmless Barton Malow from and against any penalty, liquidated damages, or liability of Barton Malow to Owner or other resulting from Subcontractor's failure to perform within the agreed time. In the event that the Subcontractor refuses or neglects to supply a sufficient number of properly skilled workers, or a sufficient quantity of materials of proper quality, or fails to perform timely to the project schedules, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors, or turns over its assets per a Trust Chattel Mortgage, or files a petition for receivership or liquidation with a State or Federal Court, or files for re-organization or liquidation, or has as appointed against it a receiver over a substantial part of its assets, or has a creditors committee appointed, or consents to the formation of a creditors committee, or has a Secured creditor foreclose upon a substantial part of its assets, or has a creditor issue an execution or garnishment, or

has a levy issued by the Internal Revenue Service or any other taxing authority, any or all of which is done without Barton Malow's consent, or fails to make prompt payment to his subcontractors, materialmen or laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or otherwise fails to perform fully any and all of the covenants herein contained, or fails to provide lien waiver as required or fails to provide certificates of payment from materialmen or its subcontractors or has its bond terminated or becomes ineligible for any reason for the issuance of a bond, Barton Malow may, at its option, without prejudice to any rights or remedies after giving seventy two (72) hours written notice to the Subcontractor (or notice as may be required by bond provisions): (a) provide any such labor and materials as may be deemed necessary by Barton Malow in its sole and absolute discretion. Barton Malow shall determine how to prosecute the work and take whatever other action it deems necessary to expedite or complete the work, and deduct the cost thereof, including Barton Malow's overhead, from any money then due or thereafter to become due to the Subcontractor under this Agreement; OR (b) Barton Malow may, at its option, terminate the Subcontractor's right to proceed with the work, and shall have the right to enter upon the premises of the project and take possession of, for the purpose of completing, the work included under this Agreement, all materials, tools and appliances thereon, and may employ any other person or persons to finish the work and provide the materials therefore. In case of such discontinuance of this Subcontractor's right to proceed with the work, said Subcontractor shall not be entitled to receive any further payments under this Agreement until the work in this Agreement undertaken by Barton Malow is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Barton Malow finishing the Subcontractor's work, such excess shall be paid by Barton Malow to the Subcontractor, but, if such expense shall exceed such unpaid balance, then the Subcontractor shall pay to Barton Malow the amount by which such expense exceeds such unpaid balance within ten (10) days of demand by Barton Malow. It is understood and agreed that the contract price includes an amount as a premium for prompt completion of the contract scope of work. Should Subcontractor, its assigns, or successors fail to take timely and continuous action to promptly complete the project after notice by Barton Malow, then the contract amount will be reduced by a percentage to be determined at that time.

7. **SAFETY:** Subcontractor is fully responsible for safety, and for providing a safe work place for its employees and others, and agrees to cooperate with Barton Malow on any overall project Safety Program, to submit its own trade related Safety Program and rules which shall be at least as stringent as set forth in Barton Malow's Safety Program. Subcontractor shall take all reasonable precautions for the safety of employees on the project, to actively assist in the prevention of accidental injury to persons or property in, about or adjacent to the premises where work is being performed, and to comply with all Federal, State and Local safety laws and ordinances applicable to the work. Failure of subcontractor to comply with the foregoing may be grounds for withholding progress or final payments. Subcontractor agrees to cooperate with Barton Malow on any overall Substance Abuse Program and will provide a copy of its own Substance Abuse Policy to Barton Malow prior to commencement of work. All labor, materials and equipment consumed, supplied or disposed of under this subcontract order including lower tiered subcontractors, shall conform to provisions and requirements of local, state and federal safety regulations (e.g., OSHA, EPA) and other government agencies' laws, rules and regulations.
8. **RIGHT TO KNOW LAW:** Subcontractor and its tiered subcontractors and suppliers shall comply with all requirements of any State or Federal Right-to-Know Law, especially: (a) Subcontractor shall maintain at a location(s) provided by Barton Malow, a copy of all Material Safety Data Sheets (MSDS) for each hazardous chemical, and have a copy of same available for its employees; (b) Shall provide required training of its employees; (c) Submit a copy of its written Hazard Communication Program to Barton Malow; and (d) Properly label all containers of hazardous chemicals or materials that are brought on the job site or used in the performance of this contract. Failure to comply with these requirements will be considered a material breach of this contract.
9. **LIMITATION OF ASSIGNMENT:** Except as provided for under the Uniform Commercial Code, it is agreed that Subcontractor shall make no assignment in whole or in part of its rights or duties with regard to this Contract, nor shall Subcontractor subcontract any of the work provided for herein, without the prior express written consent of Barton Malow, and no assignment is valid without preapproval by Barton Malow. In the event subcontractor does make an assignment of any monies due under this contract, the assignment shall contain a clause to the effect that the assignee's right in and to any money shall be subject to the claims of all persons or firms for services rendered or materials supplied for performance of that work under this contract.
10. **JOB CLEAN-UP:** Subcontractor will, at all times, keep the job clean and clear of all debris and rubbish resulting from its operations, and, upon completion of its work, will promptly remove all tools, equipment and excess material and any rubbish caused by its work and personnel. Subcontractor will protect all of its materials and work from hazards and be fully responsible for their condition until accepted by the Owner, and shall also be responsible for any damage caused by it to the work or property of others, including, but not limited to, the property of the Owner or Barton Malow. Subcontractor will reimburse Barton Malow for any expenses incurred to keep the job clean and clear of all debris and rubbish resulting from Subcontractor's failure to comply with this paragraph.
11. **WORKMANSHIP:** Subcontractor shall be responsible for correctness of its work. If Subcontractor shall (a) fail to correct, replace and/or re-execute faulty or defective work and/or materials furnished under this contract, (b) fail to complete or diligently proceed with this contract within the time period provided in the contract documents, (c) fail to correct or repair any damage to work caused by it or by its failure to protect its work, or (d) be unable to proceed with the work because of any action by one or more employees of Subcontractor or by a person or labor organization purporting or attempting to represent any employee of Subcontractor, then Barton Malow may consider a material breach has occurred, and, upon seventy two (72) hours notice to Subcontractor, shall have the right, but not the duty, to correct, replace and/or re-execute such faulty, defective or damaged work or to take over its contract with all materials, tools and appliances of Subcontractor on the premises, and to complete the contract, charging the cost, including, but not limited to, any and all legal fees and costs, plus a mark-up of General Conditions to monitor the work thereof to Subcontractor. Under such circumstances, Barton Malow shall also have the right to withhold any and all payments to Subcontractor until all such cost charges have been paid in full to Barton Malow. Further, if Subcontractor shall fail to complete its work on time, resulting in loss or damage to Barton Malow, whether or not

damages are stated liquidated damages in the Contract Documents, Barton Malow shall be entitled to recover any damages caused by Subcontractor's breach. The remedies of Barton Malow provided by law, by this paragraph and by the Contract Documents shall be cumulative.

12. **USE OF OTHERS' EQUIPMENT:** Subcontractor and Barton Malow shall not use or permit any of their employees to use any equipment, hoists, staging, scaffolds, or any other material belonging to the other without prior written agreement.
13. **CLAIMS:** Subcontractor agrees to make any claim for extra work, for extension of time, for delay or for damages in the manner and in such time as required in the contract between the Owner and Barton Malow and in such time as will enable Barton Malow to promptly submit such claims to the Owner for payment or recognition and Barton Malow shall not be liable to subcontractors or on any claim not timely and properly presented or if prohibited in the contract between Owner and Barton Malow, unless allowed by the Owner. As a minimum, any claim for changes, delays or extra work must be submitted within one (1) week of the occurrence or event giving rise to said claim(s).
14. **PAYMENT:** Barton Malow agrees to pay Subcontractor for the satisfactory performance of the Subcontractor's work, the amounts stated in this Agreement, with funds received by Contractor from Owner for the Work performed by Subcontractor as reflected in Contractor's applications for payment. Subcontractor will submit to Barton Malow applications for payment on or before the 25th of the month, or at such other times stipulated by Barton Malow. Barton Malow will make payment to Subcontractor after receipt of payment from Owner by Contractor. If Owner delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor and/or Contractor's sureties require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment including, but not limited to, mechanic's lien remedies. No payment shall be taken as an admission by Barton Malow of the amount of work done, its classification, quality, sufficiency or the sum due Subcontractor or as an acceptance or release of Subcontractor from responsibility under the terms of this contract. Each of Subcontractor's payment applications to Barton Malow shall include the appropriate Waiver and Release called for under California Civil Code Section 3262.
15. **TRUST OBLIGATION:** Subcontractor will receive the payments made by Barton Malow and will hold such payments as a trust fund to be applied first to the payment of any persons furnishing labor, materials or services for the work under this Agreement.
16. **TERMINATION BY OWNER:** Barton Malow's liability to the Subcontractor for any damages and claims caused by the Owner terminating for convenience shall be fully extinguished by Barton Malow awarding and paying over to the Subcontractor any additional time and/or money obtained from the Owner on the Subcontractor's behalf.
17. **ENFORCEMENT OF AGREEMENT:** This Agreement constitutes the entire understanding of the parties and supersedes any prior proposal or agreement, and shall not be modified, amended or revoked except in writing executed by Barton Malow. Should any portion of this contract be held invalid or unenforceable, the remainder of the contract shall be valid and enforceable to the fullest extent permitted by law. The failure of Barton Malow to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the Subcontractor of any of the provisions hereof, shall in no way be construed to be a waiver, nor in any way to affect the validity of this Agreement or any part thereof or the right of Barton Malow to thereafter enforce each and every provision. Reference in this Agreement to Subcontractor's quotation or bid does not imply acceptance of any terms and conditions in such quotation or bid. Any terms and conditions of such quotation or bid which are in addition to or inconsistent with the terms and conditions contained in this Agreement shall not be part of this Agreement. The indemnification provisions contained herein shall survive the completion of this subcontract order. This Agreement shall be governed by the laws of the state where the project is located.
18. **ACCEPTANCE OF AGREEMENT:** An acknowledgment or acceptance which contains terms in addition to or inconsistent with the terms and conditions of this Agreement, or a rejection of any term of this Order, shall be deemed to be a counter-offer to Barton Malow, and shall not be binding upon Barton Malow unless acceptance thereof is made in writing to the Subcontractor. However, performance by Subcontractor in the absence of written acceptance of such counter-offer by Barton Malow shall be deemed to be performance in accordance with the terms of this Order.