



PO Terms and Conditions

PO Terms and Conditions

These PO Terms and Conditions/ Subcontract are comprised of the contract, its schedules, appendices, all contract documents attached or referred to in it, the Prime Contract (as defined below) and these Terms and Conditions (collectively, the "PO Terms and Conditions") and is issued by Accurate Railroad Construction Limited ("ARC") for the Works (as defined below and on the face of the Purchase Order) to be performed by the Subcontractor (as defined below).

1. This Purchase Order is all in accordance with the drawings, specifications, supplemental conditions, and Contract (or subcontract) between the Owner (Owner includes General Contractor if ARC is not contracted directly with the Owner) and ARC copies of ARC's Contract are available on request. Price includes all freight, hoisting, labour and auxiliary charges to provide a complete works as required by the specifications. All progress claims are to be addressed to Accurate Railroad Construction and issued to ARC via email at info@accuraterailroad.com complete with supporting documents on as may be required, no later than the 20th of the current month in order to be included in the current request for payment. Invoices received by ARC after the 25th of the month will be included in the billing for the following month. Upon receipt, ARC will evaluate the progress claim, and at its sole discretion ARC may issue a Progress Payment Certificate.
2. **WORKS** - The entity to whom the PO Terms and Conditions is issued is referred to as the "Subcontractor". The Subcontractor shall perform the works and furnish the products specified in the Subcontract together with all materials, supplies, installation, labour, tools, construction machinery and related services (collectively the "Works"). These Terms and Conditions apply to the purchase of the Works from the Subcontractor and form an integral part of the Subcontract. The Subcontract constitutes the entire agreement between the parties and supersedes all previous agreements, written or verbal. **ARC shall not be bound by any terms and conditions of the Subcontractor's invoices, quotes, price lists, purchase orders, agreements, receipts, change order requests or any other document prepared by Subcontractor, regardless of execution of same by ARC.**
3. **OFFER AND ACCEPTANCE** - The Subcontractor agrees to perform the Works in accordance with the Subcontract. **The Subcontract shall come into effect, and shall become binding on ARC and the Subcontractor, upon commencement of the work, commencement of the work constitutes acceptance of the terms and conditions outlined herein.**
4. **PRIME CONTRACT** - ARC has entered into an agreement with the owner (or General Contractor) of the project, its authorized representatives, consultants or service providers (the "Owner") with respect to the performance of certain works and the supply of certain products and services (the "Prime Contract") and the Prime Contract includes the Works to be performed by the Subcontractor. The requirements, terms and conditions of the Prime Contract shall be binding upon ARC and the Subcontractor as if the word "owner" appearing therein had been changed to "ARC" and the word "contractor" appearing therein had been changed to "Subcontractor". In the event of any conflict between the Prime Contract and the Subcontract, the provisions most favorable to ARC shall govern. If any of the contract documents under the Prime Contract are amended, updated or revised by the Owner, ARC shall be entitled to make a corresponding amendment, update or revision to the Subcontract. The Subcontractor: (i) acknowledges that the Prime Contract is available for inspection at the work site or at ARC's address or upon request by the Subcontractor, with redactions of certain commercial terms; (ii) accepts and agrees to the terms and conditions of the Prime Contract; and (iii) represents and warrants that it has familiarized itself with the Prime Contract, the nature and conditions affecting the Works (including the project site and locality) and entered into this Subcontract based on its own examination, investigation and evaluation and not in reliance upon opinions, representations and warranties of ARC or the Owner.
5. **PRICE/PAYMENTS**
 - (a) Invoices for the Works referenced in the Subcontract shall be sent to the address listed on the front of the Subcontract (addressed to c/o ARC) or electronically to ap@accurate-group.ca. Subcontractor's invoices must be accompanied by all documentation and other information necessary to support the amount requested and to permit ARC to invoice the Owner in a timely manner, as reasonably determined by ARC, including all sworn statements and other documents required by the Subcontract or by ARC. **All payments to the subcontractor shall be in Accordance to the Ontario Construction Act, or Contingent upon ARC receiving payment from the Owner.**
 - (b) **Invoices for Works:** For approved invoices for Works, ARC shall be entitled to hold back 10.00% of the complete contract price as retainage, and hold back 3% of the complete contract price as a warranty holdback, which shall be paid to the Subcontractor upon the date set for payment of the final invoice or at the end of all applicable lien periods, whichever is later, provided that ARC has received payment for the project from the Owner and no lien(s) or notice of lien(s) has been provided. The following documents and materials must be furnished to ARC when submitting invoices or applications for payment: (i) a current Workplace Safety and Insurance Board clearance certificate, (ii) a Ministry of Labour Form 1000: Registration of Constructors and Employers engaged in Construction (in relation to the first invoice issued under the Subcontract only), (iii) a statutory declaration in a form acceptable to ARC to the effect that payment of all claims against the Subcontractor by others have been made by the Subcontractor, if applicable, (iv) a certificate of insurance satisfactory to ARC evidencing the Subcontractor's performance of its obligations under this Subcontract with respect to insurance, (v) replacement materials as per the Subcontract specifications, if applicable, (vi) letters warranting products and/or workmanship, (vii) extended warranties as required by the Subcontract, (viii) a list of any product parts that may require special maintenance or frequent replacement (as applicable), (ix) as-built drawings and/or maintenance and operations manuals (as applicable) and (x) other documents as ARC may reasonably require.
 - (c) **Invoices including Equipment, Materials or Goods:** For invoices which include the supply of equipment, materials or goods, the invoice shall contain the complete contract price and shall include all charges, including without limitation, charges related to packaging, preservation, transportation, delivery (as applicable), taxes, insurance, costs relating to customs and duties, and shall not be subject to adjustment due to change in rates. The following documents and materials must be furnished to ARC prior to release of any amounts: (i) packing slip, (ii) if applicable, Material Safety Data Sheets, (iii) letters warranting products and extended warranties as required by the Subcontract, (iv) maintenance and operations manuals (as applicable), (v) if applicable, replacement materials as per the Subcontract specifications, and (vi) other documents as ARC may reasonably require.
 - (d) Payment will be in Canadian Dollars. ARC shall have the right, acting reasonably, to dispute any invoiced amounts submitted by Subcontractor that are not supported by back-up documentation. In such an event, ARC shall pay the undisputed amounts to the Subcontractor within the time period outlined herein.
 - (e) ARC may, at any time, set-off any amounts ARC asserts Subcontractor owes ARC against any amounts ARC owes to Subcontractor or any of its affiliated companies. Payments shall not be acceptance of improper, faulty, defective or non-conforming Works, shall not release Subcontractor of any of its obligations under the Subcontract, including these Terms and Conditions and shall not constitute a waiver of any rights or provisions hereof by ARC.
6. **TAXES** - The Subcontractor's invoice shall include all applicable federal, provincial, county, municipal and other taxes in connection with the provision of the Works.
7. **TERMINATION** - ARC reserves the right to terminate the Subcontract, in whole or in part, at any time by written notice to Subcontractor which may be delivered by email, standard mail, courier or fax. Upon receipt of such notice, Subcontractor will immediately stop work related to the Works (and cause its contractors and suppliers to stop such work) and all shall preserve and protect any manufactured Works, and conclude performance in accordance with ARC's reasonable instructions. The Subcontract shall automatically terminate upon the termination of the Prime Contract. Upon termination, Subcontractor will be entitled to equitable compensation for Works delivered or manufactured, up to the date of such termination notice, provided the Subcontractor complies with the terms and conditions of Paragraph 4 and ARC has received payment therefor from the Owner. Subcontractor agrees that it will not be entitled to any damages for lost profits or lost opportunity related to the portion of the Subcontract terminated by ARC. These Terms and Conditions shall survive such termination. If the Subcontractor breaches a material term of the Subcontract, ARC may terminate the Subcontract with immediate effect without further liability or obligation and recover from the Subcontractor all direct costs relating to the termination including recovery of any amounts paid under the Subcontract.
8. **CHANGES** - ARC reserves the right at any time to make changes in requirements, specifications, materials, packaging, time and place of delivery, or delivery method related to the Works without invalidating the Subcontract. If such a change causes an increase or decrease in the cost or time required for performance of the requirements of the Subcontract, a change order may be delivered regarding the price, quantity or delivery terms as agreed upon by the Subcontractor and ARC. The Subcontract shall notify ARC within 5 (five) days of any change, otherwise the subcontractor accepts the changes and shall proceed with the work. The Subcontractor shall not carry out any work which is extra to the Work without the prior written approval of ARC. The Subcontractor acknowledges that it will be governed by the same provisions regarding changes in the Work that apply to

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ARC under the Prime Contract. In the case of changes to the Work that do not involve a change in the payment obligations of the Owner, ARC shall only be liable to pay a reasonable amount agreed upon in writing between ARC and the Subcontractor prior to the Subcontractor carrying out the extra work. In the case of all changes, the Subcontractor shall provide, within 5 days, quotations complete with a breakdown of labour, materials and equipment in sufficient detail to allow review and verification by ARC, and by the Owner where its approval is required. The Subcontractor will be revised in writing accordingly and executed by both parties. If Subcontractor performs extra Work or makes any change without a change order signed by ARC, Subcontractor shall not be entitled any additional payment or extension of time. The conditions of this Paragraph are of the essence and no course of conduct or understanding shall amend, waive or revise the terms of this Paragraph 7.

9. TIME IS OF THE ESSENCE - Subcontractor agrees to perform the Work as specified and instructed in the Subcontract and agrees that time is of the essence. Subcontractor acknowledges that ARC may incur costs and damages due to performance delays. All Works will be performed and/or delivered (as applicable) to meet the required delivery date as detailed in the Subcontract or as agreed with ARC. Subcontractor will notify ARC promptly of any delays or threatened delays in performance or delivery of the Works and the Subcontractor's recovery plan. Subcontractor retains all risk of loss with respect to the Works until they are properly performed and delivered to and accepted by ARC. If the Subcontractor fails to deliver the Works by the time set forth in the Subcontract, ARC reserves the right to cancel, in whole or in part, the Subcontract without any liability to the Subcontractor and Subcontractor waives any right to seek cancellation charges, penalties, storage expenses or any other charges related to the late delivery of the Works. Subcontractor shall be liable to and shall reimburse ARC for damages resulting from such delay of delivery of the Works. This shall not limit any other rights or remedies provided to ARC by law.

10. PERFORMANCE OF THE CONTRACT - The Subcontractor shall deliver the goods and provide the services at the time and place specified in the Subcontract and, if applicable, the Prime Contract. The Subcontractor shall ensure that all goods and services comply with all of the conditions of the Subcontract and, if applicable, the Prime Contract. All equipment, materials and goods provided shall be new and comply with the highest relevant commercially accepted standards and be fit for purpose unless varied in writing by ARC. ARC may reject, within a reasonable time, goods that are faulty or do not fully comply with this Subcontract or the Prime Contract. The Subcontractor shall make good or replace these goods at no additional cost, including removal and incidental costs, within the time specified by ARC. In performing its services and obligations under the Subcontract, the Subcontractor shall exercise the high standard of care, skill, and diligence that would normally be provided by an experienced and prudent subcontractor supplying similar services for similar projects. The Subcontractor acknowledges and agrees that throughout the Subcontract, the performance of the Subcontractor's obligations and responsibilities shall be judged against this standard. The Subcontractor shall exercise the same high standard of care, skill, and diligence in respect of any products, personnel or procedures which it may recommend to ARC. The Subcontractor warrants that equipment, materials and goods supplied in connection with the services will be fit for purpose. Subcontractor shall keep on sites where the Works are being performed, during the course of the Works, a designated, competent and responsible person and any necessary assistants to oversee the performance of the Works and to effectively communicate with ARC.

11. SCHEDULING - The Subcontractor shall commence, perform and complete the Works in accordance with the schedule provided by the Owner and ARC, which schedule may be modified by the Owner or ARC from time to time. If the Subcontractor fails to comply with such schedule, the Subcontractor will be in default under these Terms and Conditions. If requested by ARC, the Subcontractor shall submit a detailed schedule of the Work indicating conformity with the overall Prime Contract schedule. If the Subcontractor is not making sufficient progress in the performance of the Work and thereby is causing or threatening to cause delay in the general progress of the project, the Subcontractor will be in default under these Terms and Conditions.

12. TOOLS AND EQUIPMENT - Subcontractor shall provide all tools, machinery and equipment necessary to execute the Subcontract and the Works. ARC's tools, machinery and equipment shall be available to Subcontractor only at ARC's discretion and on terms satisfactory to ARC. Subcontractor agrees to assume sole responsibility for and indemnify ARC against all claims for loss or damage to all property, including its property, and ARC's property, arising out of Subcontractor's use of ARC's tooling, machinery and equipment.

13. EXAMINATIONS BY SUBCONTRACTOR - Subcontractor represents that it had full opportunity to review and examine the Subcontract, its schedules, the Prime Contract, all specifications applicable to the Works and the site. Subcontractor warrants that it has satisfied itself as to the character, quality and quantity of the Work to be performed, the conditions that will be encountered at the site or otherwise affect the cost or difficulty of performing the Work. By acceptance of the Subcontract, Subcontractor will be deemed to have inspected and approved all specifications applicable to the Works ordered as detailed in the Subcontract. Subcontractor shall be responsible for determining the location of all underground utilities and structures in relation to the performance of the Works. Should the subcontractor perform the work without signing a copy of this subcontract they agree that they accept all the terms and conditions of this purchase order.

14. INSPECTION AND ACCESS - All Works are subject to inspection and testing by ARC and Owner in respect of shortages, damage or material non-conformance from the specifications in the Subcontract. Neither performance of the Works by Subcontractor nor the payment for the Works by ARC shall relieve Subcontractor of its obligations herein. ARC shall be afforded reasonable access to all Works. If, at any time, Works are found to be short, defective, do not meet the specifications set forth in the Subcontract or are otherwise determined by ARC or the Owner to be non-conforming, ARC may, in its sole and absolute discretion, without limiting any of its other rights or remedies under these Terms and Conditions, (i) withhold all amounts owed to Subcontractor, (ii) accept the Works, at ARC's sole discretion, at a price reduction, and/or (iii) reject the Works and return at Subcontractor's cost. Subcontractor agrees to pay the costs and to assume all risk and liability associated with rejected Works, including but not limited to, costs of repair, storage, transportation charges for return, and delivery of replacement Works. The rights and remedies of ARC set forth in this Paragraph 13 are not exclusive and are in addition to any other rights and remedies available to it at law, equity or under these Terms and Conditions.

15. WARRANTY - Subcontractor shall promptly remedy and make good any defects, errors, imperfections, damages or faults in the Work as they become apparent whether or not the Owner or ARC brings such matters to the attention of the Subcontractor and in any event within the duration of any guarantee or warranty period specified in the Prime Contract. In addition, Subcontractor warrants that all materials furnished are new, the Works are of a quality equal to or greater than similar works of a similar nature performed by a skilled and competent Subcontractor, conform to the terms of the Subcontract and any specifications provided by ARC, are free from defects in materials and workmanship, are free from liens and encumbrances, are suited for their intended use and are merchantable. The establishment of the warranty period specified in the Prime Contract does not limit any rights or remedies provided to ARC by law related to the quality or suitability of the Works. Subcontractor warrants that its performance under the Subcontract will not violate or infringe upon the rights of any third party, including, but not limited to, rights related to property, contract, employment, trade-mark, trade secret, copyright, patent, proprietary information and non-disclosure obligations. ARC retains all rights and remedies available at law and in equity. If Works are not as warranted, ARC may: (a) rescind the Subcontract according to the provisions of Paragraph 6; (b) accept the Works with an equitable reduction in price; or (c) reject the Works and require performance or delivery of replacement or repaired Works, all at Subcontractor's expense. Subcontractor shall promptly correct defective Work that has been rejected by ARC and shall make good promptly other work destroyed or damaged by such corrections at the Subcontractor's expense. Subcontractor must remove rejected Works from ARC's premises no later than 30 days after their rejection at Subcontractor's risk and expense. Such remedies are cumulative and may be exercised concurrently or separately by ARC. The exercise of one remedy will not be an election to exclude other remedies. Any Works repaired or replaced are subject to the provisions of this Paragraph 14 and the warranty period in it will start again from the date of delivery or repair. All guarantees and warranties from manufacturers, suppliers, other subcontractors or any other persons or entities related to the provision of the Works shall run to ARC. The rights and remedies of ARC set forth in this Paragraph 14 are not exclusive and are in addition to any other rights and remedies available to it at law, equity or under these Terms and Conditions.

16. TITLE AND RISK - Subcontractor warrants that delivered goods are free of all liens, encumbrances and other defects of title. Without prejudice to ARC's right of rejection and its other remedies available to it at law, equity or under these Terms and Conditions, title in and risk of damage to or loss of the goods shall pass to ARC upon delivery of the goods to the delivery location specified by ARC in the Subcontract. The Subcontract shall be performed at the sole risk of the Subcontractor.

17. CONSEQUENTIAL DAMAGES - In no event will ARC be held liable to Subcontractor for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the Subcontract whether or not ARC was advised of the possibility of such damages including claims for loss of extra, extended or unallocable overheads or any indirect cost or expense.

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- 18. APPLICABLE LAW** - Subcontractor shall comply with the provisions of all applicable federal, provincial, and local laws, regulations, and orders and shall obtain at its own cost all licenses, permits, inspections, certificates and authorizations necessary for the Subcontractor to supply the Works. The Subcontract, including these Terms and Conditions shall be governed by, and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 19. DISPUTE RESOLUTION** - If a dispute arises under these Terms and Conditions that is in respect of a matter that which properly involves the Owner, the dispute shall be determined in accordance with the applicable dispute resolution provisions in the Prime Contract. The Subcontractor shall be fully and finally bound by the findings under the dispute resolution provisions in the Prime Contract. In the event a dispute arises with respect to the interpretation or performance of, or the relationship created by, all or any part of the Subcontract, ARC and the Subcontractor shall attempt in good faith to resolve the dispute. If such efforts prove unsuccessful, ARC and the Subcontractor irrevocably and unconditionally consent to the jurisdiction of the courts of the Province of Ontario for purposes of action, suit or proceeding arising out of or relating to the Subcontract and waive any objections based on venue in any such action, suit or proceeding. ARC shall have the option, exercisable in its sole discretion, to have any disputes between Subcontractor and ARC be arbitrated and finally resolved by private and confidential arbitration before a single arbitrator held in Toronto, Ontario, in English and governed by Ontario law pursuant to the *Arbitration Act 1991* (Ontario), as amended, replaced or re-enacted from time to time. The arbitration shall be a person who is legally trained and who has experience in the construction industry in Canada.
- 20. INSURANCE** - The Subcontractor shall take out, maintain and pay for all insurance necessary to cover its liability under the Subcontract as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of Subcontractor's operations or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverage and limits of liability specified in the Prime Contract, Subcontract or coverages and limits required by law.
- (a) Except as where a greater obligation for insurance is otherwise required under the Prime Contract, the Subcontractor shall take out, maintain and pay for:
- general liability insurance;
 - automobile liability insurance;
 - where applicable, aircraft and watercraft liability insurance; and
 - contractor's equipment insurance,
- in compliance with CCDC 41 - CCDC INSURANCE REQUIREMENTS (read "Contractor" as "Subcontractor" and "Owner" as "ARC") or, if ARC must provide greater limits and coverages for insurance under the Prime Contract than specified in CCDC 41, not less than such greater limits and coverages. Where a greater obligation for insurance is required under the Prime Contract, the Subcontractor shall procure and maintain insurance as required by the Prime Contract.
- (b) Subcontractor shall endorse its general liability insurance to add ARC and, if requested by ARC, the Owner as additional insureds with respect to liability arising out of: (a) operations performed for ARC by or for Subcontractor; (b) Subcontractor's product/completed work, (c) Subcontractor's use of ARC's tools and equipment; and (d) claims for bodily injury or death brought against the additional insured by Subcontractor's employees, or the employees of its subcontractors or suppliers of any tier, however caused, related to the Subcontract. Such insurance afforded to ARC as additional insured under Subcontractor's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by ARC.
- (c) Subcontractor shall be responsible for any deductible or self-insured retention amounts under the policies as may be applicable to their operations and activities and shall be liable to pay any deductible which shall become payable as a consequence of Subcontractor's conduct.
- (d) Subcontractor shall maintain in effect all insurance coverage's required under these Terms and Conditions at Subcontractor's sole expense and with insurance carriers licensed to do business in the province or territory in which the project is located.
- (e) Certificates of Insurance shall be filed with ARC. Renewal certificates shall be provided to ARC prior to the expiration date of any of the required policies and ARC shall have the right to examine any policy required under these Terms and Conditions.
- (f) Subcontractor agrees to waive all rights of recovery against ARC and Owner for loss or damage to Subcontractor's property including automobiles, other vehicles, equipment, tools and all other property that was not intended to become a permanent part of the Work, whether or not such loss or damage is insured. If such property is insured, the policies will be endorsed to include a waiver of subrogation against the parties referenced above. Compliance with the insurance requirements shall not release the Subcontractor from its liabilities under these Terms and Conditions should such liabilities exceed the required insurance coverages set forth herein.
- (g) Subcontractor shall ensure any subcontractors, suppliers and other persons engaged by it ("**Sub-Subcontractors**") performing Works shall procure and maintain all of the insurance coverage necessary to meet the requirements set forth herein. Where a greater obligation for insurance is required under the Prime Contract, Subcontractor shall ensure that Sub-Subcontractors procure and maintain insurance as required by the Prime Contract.
- 21. INDEMNIFICATION** - To the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend ARC, each Owner of the project where the Works are used or employed, their affiliates and each of their respective officers, directors, shareholders, employees, representatives, subcontractors and agents (collectively the "**Indemnified Parties**") from and against any and all suits, claims, damages, losses and expenses, including legal fees, attributable to injuries to persons or damage to property (including loss of use), arising out of or resulting from the Works, including all suits and claims for which any or all of the Indemnified Parties may be or may be claimed to be liable, but only to the extent that such suits and claims also arise out of any act or omission of the Subcontractor, any Sub-Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose act any of them may be liable or the negligence, fault or other wrongful conduct of any such party. Subcontractor understands and agrees that this Paragraph obligates Subcontractor to defend the Indemnified Parties from all suits and claims that allege negligence or other wrongful conduct on the part of the Indemnified Parties, and to pay all costs of defense of the Indemnified Parties, including legal fees and ancillary costs and expenses incurred by the Indemnified Parties. Subcontractor understands and agrees that this Paragraph also obligates Subcontractor to pay any and all legal fees and expenses incurred by any of the Indemnified Parties in connection with enforcing the obligations of this Paragraph. Subcontractor further agrees to indemnify and hold the Indemnified Parties harmless from all claims, including but not limited to liens, arising from or related to the demands of manufacturers, other subcontractors, employees, suppliers or third parties incurred in the production or delivery of the Works.
- 22. SETTLEMENT OF CLAIMS BY SUBCONTRACTOR** - The Subcontractor shall promptly settle and pay all accounts or claims related to the Works or supply of any equipment, goods or materials provided under the Subcontract, including claims made or alleged by any Sub-Subcontractor or supplier. ARC may give the Subcontractor five (5) days written notice to settle and pay such accounts or claims. If, after such notice, the Subcontractor fails to settle and pay the same, ARC may settle and pay such accounts or claims for the account of the Subcontractor, and incur such costs for the account of the Subcontractor in respect thereof, including legal fees on a solicitor and its own client basis and ARC shall be entitled to set off such costs in accordance with Paragraph 4. The Subcontractor indemnifies the Indemnified Parties from any and all loss and liability suffered or incurred in respect thereof.
- 23. CONFIDENTIALITY/PROPRIETARY RIGHTS** - Subcontractor will not release any advertising or any other form of publicity mentioning ARC, its employees, its customers, the Owner or the project where the Works are delivered unless ARC gives prior approval to such advertising or other form of publicity in writing. Subcontractor acknowledges that it may have access to confidential and proprietary information and trade secrets such as, but not limited to, designs, drawings, specifications, and data of ARC and agrees not to disclose any information to any person or entity except as necessary in connection with its performance of the Subcontract (and in such instance shall require that such person also comply with the obligations of this Paragraph), and Subcontractor shall not use such information for any purpose other than to perform its obligations under the Subcontract. If Subcontractor has executed a separate confidentiality agreement with ARC, Subcontractor agrees that its use and disclosure of ARC's confidential and proprietary information and trade secrets shall be governed by the terms and conditions of such confidentiality agreement. All information, equipment, materials and data of every kind and description that Subcontractor receives, directly or indirectly, from ARC or from a third party on behalf of ARC is and shall remain the property of ARC.
- 24. OWNERSHIP OF DELIVERABLE WORK** - Any deliverables or other creative work provided by Subcontractor under the Subcontract or referenced herein is ARC's property and is considered an integral part of the Works. Unless otherwise specified in the Subcontract, ARC will be the sole owner of all such items from the time of creation or invention. ARC will own all right, title and interest in such items including any intellectual property rights and Subcontractor hereby assigns such intellectual property rights to ARC. Subcontractor retains any rights it may have to pre-existing materials or work used in the creation of the Works. Subcontractor warrants that Works specified herein do not infringe any existing patents, copyrights or trademark rights, and agrees to indemnify, hold harmless, and pay ARC for all judgments, decrees, costs, and expenses, including legal fees, resulting from any such infringement. In addition to the other indemnity obligations hereunder, if the goods supplied or Works performed by Subcontractor or any part thereof are held to infringe any

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intellectual property right of any third party, Subcontractor shall, at its own expense, either procure for ARC the right to continue using the goods and/or Works or any part thereof or replace same with non-infringing goods or part thereof, or modify the goods and/or Works so that they become non-infringing, or in the event of the impossibility of the foregoing options grant ARC a credit for the purchase price of such goods and/or Works.

25. INDEPENDENT CONTRACTOR - Subcontractor is an independent contractor of ARC and not an employee, joint venture partner or other legal representative of ARC. ARC will not provide Subcontractor or its employees, directors, suppliers or agents with worker's compensation benefits, social insurance, unemployment or disability insurance, liability insurance or any other benefits or insurance that may be available to ARC's employees. Subcontractor will not represent that it is an agent or legal representative of ARC or incur any liabilities or obligations on behalf of ARC. Subcontractor has no authority to enter into any contracts, incur any liabilities or create any obligation or responsibility for or on behalf of ARC.

26. SUBCONTRACTING BY SUBCONTRACTOR - Subcontractor shall: (a) provide a detailed list of all Sub-Subcontractors who will be furnishing materials, skills, labour and equipment to or through Subcontractor in connection with the provision of the Works, including contract amounts, contact persons and telephone numbers; (b) ensure that each such Sub-Subcontractor agrees in writing to abide by the terms and conditions of the Subcontract, including these Terms and Conditions. Subcontractor shall promptly and satisfactorily settle and pay for all accounts, claims or liens with respect to any work or services provided by Sub-Subcontractors. If, after two days from receipt of notice in writing from ARC, Subcontractor fails or refuses to settle or pay same, ARC shall have the right to settle or pay such accounts, claims or liens for the account of the Subcontractor and the Subcontractor shall indemnify ARC for all losses, costs and expenses incurred in connection therewith. Any Sub-Subcontractors engaged to perform any Works shall also submit to ARC a Form 1000, WSIB Certificate and Certificate of Insurance for that Sub-Subcontractor prior to attendance at any job site.

27. QUALITY MANAGEMENT SYSTEM - Subcontractor shall ensure that it is at all times in compliance with the quality management system required by ARC, as notified to the Subcontractor and updated from time to time.

28. HEALTH, SAFETY AND ENVIRONMENT PROTECTION

- (a) Health, safety are of paramount importance to ARC. To the extent the Subcontractor, its employees, contractors, Sub-Subcontractors, suppliers, agents, and representatives must enter ARC's premises or project sites, they do so at their own risk and agree to take all necessary precautions to prevent injury or damage to persons or property. The Subcontractor shall comply, and shall cause its employees, contractors, Sub-Subcontractors, suppliers, agents, and representatives to comply, with all of the Owner's and ARC's health, safety and environmental policies, operating and site specific processes, copies of which the Subcontractor acknowledges having received, in addition to all applicable health and safety regulations. Subcontractor shall be responsible for any breach of any health, safety or environmental laws, rules, policies or procedures by any of its employees, contractors, Sub-Subcontractors, suppliers, agents, and representatives. The Subcontractor confirms that it has read and understood ARC's Health and Safety Environmental Protection Information Manual. Subcontractor shall provide a copy of Subcontractor's health and safety policies to ARC. Subcontractor shall also participate in and complete daily Job Assessment Review forms at each project site.
- (b) Subcontractor shall maintain a safe working environment and comply with all applicable laws, rules and regulations, including without limitation, those concerning employment and health and safety, in its performance of the Subcontract, and respect all safety precautions and programs of ARC. The Subcontractor will at all times strictly adhere to the Occupational Health & Safety Act (Ontario) (or any analogous legislation in any other jurisdiction outside of Ontario) and all applicable regulations thereunder. Upon request of ARC, Subcontractor shall provide a clearance certificate or other evidence of compliance with and good standing under provincial workers' compensation legislation for the province in which the project is located.
- (c) Subcontractor shall provide copies of proof of applicable training and license certifications (including, without limitation, fall protection, powered elevating working platform, electrician, plumber, welder, etc.). Subcontractor acknowledges that failure to comply ARC's policies and procedures, and with applicable health and safety rules and regulations, may result in disciplinary action and/or termination of all or part of the Subcontract. Any costs arising as a result of a health and safety infraction of Subcontractor or any of its Sub-Subcontractors shall be charged back to Subcontractor and/or deducted from monies owing.
- (d) Subcontractor will comply with all Workplace Hazardous Materials Information System ("WHMIS") legislation in effect at the project site. No WHMIS controlled products that are extraordinary to those in use by the Subcontractor shall be brought onto the project site unless the Subcontractor has first supplied ARC with Material Safety Data Sheet for such products. The Subcontractor shall be specifically responsible for ensuring that all of its personnel assigned to the Works have received appropriate training as required by WHMIS legislation and by ARC. Subcontractor will furnish ARC with all Material Safety Data Sheets for qualifying material upon the delivery of such material to ARC.
- (e) Subcontractor and any Sub-Subcontractors shall furnish ARC with (i) Ministry of Labour Form 1000: Registration of Constructors and Employers engaged in Construction, (ii) and ARC Form 1027 Project Hazard Assessment Environmental Aspects, prior to attending the project site.

29. MISCELLANEOUS

- (a) Subcontractor may not assign the Subcontract, in whole or in part, without the prior written consent of ARC. Any assignment or attempted assignment made without such approval shall be void as to ARC.
- (b) Subcontractor will defend, indemnify and hold ARC harmless for all damages and costs of any kind, without limitation, incurred by ARC and caused by Subcontractor's failure to pay any Subcontractor, employee or Sub-Subcontractor
- (c) Subcontractor shall not unreasonably encumber the place of work and shall maintain the Work in a safe and tidy condition free from the accumulation of waste products and debris.
- (d) Subcontractor will be responsible for all costs and expenses in connection with any recalls of any products used in the Works.
- (e) If any term of these Terms and Conditions is unenforceable for any reason, the other terms and conditions of the Subcontract will not be affected. If there is a discrepancy or ambiguity between any of the terms and conditions of the Subcontract (including the schedules, appendices, and contract documents attached or referred to in it) and these Terms and Conditions, these Terms and Conditions will prevail.
- (f) Those obligations of the parties hereunder which by their nature survive the exaction of the Subcontract and/or delivery of the Works shall survive and endure to the benefit of the parties.
- (g) ARC will not be held liable for any additional costs or charges due to misinterpretation by the Subcontractor of the Subcontract, drawings or specifications thereunder or the cost of correcting any errors resulting from such misinterpretation.
- (h) ARC will not be held liable for any additional costs or charges with respect to Works provided without a signed work order, change order, or similar necessary directive issued by the Owner or project manager.
- (i) Should ARC be subject to any term or condition in its contracts and/or agreements with the Owner which require Subcontractor to also comply with such term or condition, Subcontractor hereby agrees to duly comply and abide by such term or condition provided that it is communicated to Subcontractor by ARC or contained in the Subcontract.
- (j) The Subcontract shall not be amended or modified, and no waiver of any provision thereof shall be effective, unless set forth in writing and executed by ARC.