



General Terms and Conditions

Contractor:

FMGI, Inc. (“FMGI” or “Contractor”)

In completing any work under a Work Order, Purchase Order, Work Authorization, or email issued by FMGI to you, the Subcontractor, that document is controlled by the following General Terms and Conditions:

1. **General Terms.** Subcontractor agrees to do certain work for FMGI on projects assigned to it by FMGI. FMGI and Subcontractor agree that, if FMGI provides Subcontractor with any email or document (regardless of the title of the document) authorizing Subcontractor to complete work at a project (the email authorization or document issued by FMGI will be referred to as a “**Work Authorization**” in this document), the provisions of these General Terms are incorporated by reference into that Work Authorization. A Work Authorization is not effective unless signed by an authorized representative of FMGI; however, an email from an authorized representative of FMGI from his or her email address at FMGI constitutes a signature authorizing the work described in that email or an attachment to that email.
2. **Completion of Work in Workmanlike Manner.** Subcontractor will complete its work described in each Work Authorization (“**Work**” or “**Scope of Work**”) in a workmanlike manner in keeping with applicable industry standards, building codes, and State and Federal laws (“**Applicable Laws**”). If Subcontractor knows or believes that the Scope of Work may not be compliant with Applicable Laws, it will notify FMGI.
3. **Start Date and Completion Date.** Subcontractor will start its Work by the date contained in the Work Authorization (“**Start Date**”) and will complete its Work by the completion date contained in that Work Authorization (“**Completion Date**”).
4. **Contract Documents.** Subcontractor agrees that it is bound, with respect to its Work, to the duties and obligations set forth in any contract documents: between FMGI and FMGI’s Client (“**Owner**”) concerning a project (“**Contract Documents**”). If those Contract Documents provide for greater duties as to Subcontractor’s Scope of Work than set forth in the Work Authorization, Subcontractor will comply with the Contract Documents.
5. **Liens.** Subcontractor shall assure that each project property remains free and clear of all claims, encumbrances, and/or liens (each, a “**Lien**” and collectively referred to as “**Liens**”) for labor, services, materials, or rental equipment purchased, leased, or contracted for by Subcontractor, or its sub-subcontractors in the prosecution of the Work on such project. If a Lien is filed against a project by any Person (“**Person**” included individuals and business entities) who provided goods, services, labor, materials, or rental equipment to the project at the request of Subcontractor or by one of its employees, materialmen, sub-subcontractors, suppliers, vendors, or workers (each a “**Subcontractor Party**” and collectively, the “**Subcontractor Parties**”), Subcontractor shall have the Lien removed by filing the necessary bond to do so. In addition, Subcontractor shall indemnify, defend, and hold FMGI and Owner harmless from and against any monetary damages and reasonably necessary costs, expenses, or fees (including, but not limited to, reasonable attorneys’ fees) incurred because of a Lien filed against a project by Subcontractor, or by a Subcontractor Party. Upon written request by FMGI (which may be an email), Subcontractor will disclose the name, address, email address of each Subcontractor Party on the project and the amount then due from Subcontractor to each such Subcontractor Party. The requirement to bond off a Lien or indemnify FMGI for such Lien shall not apply if FMGI failed or refused to pay Subcontractor in breach of the Work Authorization on the project on which that Lien was filed.
6. **Indemnification.** To the fullest extent permitted by law, Subcontractor agrees to fully indemnify, defend, and hold harmless FMGI, Owner, and their officers, directors, shareholders, employees, sureties, and agents, and all other persons or entities FMGI is required to indemnify (collectively referred as “**Indemnitees**”) for, from, and against any and all claims, demands, causes of action, damages, liens, costs, penalties, fines (including fines for OSHA violations), liability and expenses (including reasonable attorneys’ fees), which an Indemnitee sustains or incurs as a result of:
 - 6.1. Any damages or injury to any person (including death), or injury to property, including, without limitation, to those that occur at each project site where Subcontractor worked or property adjoining such project, in any manner arising out of or relating to the acts or omissions of Subcontractor, its sub-suppliers, materialmen, or employees, or any Subcontractor Party, or the presence of Subcontractor on

the project site, even though the same may have resulted from the joint, concurring, or contributory act, omission or negligence, whether active or passive of FMGI or any other Indemnitee;

- 6.2. Any damage to or delay in the prosecution of the work on each project of FMGI, any subcontractor of FMGI, or any other person or entity, arising out of or relating to the acts or omissions of Subcontractor;
- 6.3. Any liens, notices, or bond claims filed against a project property, against FMGI, or against FMGI's surety relating to Subcontractor's work; or,
- 6.4. The amount that Subcontractor must indemnify any FMGI Indemnitee under this Section 6 is limited to One Million and 00/100 Dollars (\$1,000,000.00) per occurrence or the amount of the Work Authorization in question, whichever is the greater amount. (The Parties understand and agree that this indemnification provision shall be modified to be compliant with all applicable statutes or laws of the State where the project in question for which indemnification is sought is located. The Parties' intent is that this indemnification provision be modified by the applicable court or arbitrator in such a manner as deemed necessary to be fully compliant with such statutes or laws. The Parties also understand and agree that this indemnification provision shall be construed to incorporate any limiting conditions or limitations of liability contained in such statutes or laws even if those limitations would negate a provision of these General Terms. For instance, if the project is located in Florida, the Parties agree that to the extent the written terms of this indemnification provision conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08 of the Florida Statutes (as amended), and any limitations contained in those Sections of the Florida Statutes, the provisions of these General Terms are to be modified so they do not conflict with those statutes.).

7. **Mediation and Final Determination.** Prior to the commencement of any arbitration proceeding by Subcontractor under Section 8, below, Subcontractor must provide FMGI with written notice of the dispute along with all documentation supporting Subcontractor's claim. In response to such claim by Subcontractor, FMGI will have ten (10) days from receipt of all documentation to issue a final determination on the dispute. Subcontractor shall be conclusively bound to, and abide by, any final determination issued by FMGI concerning any disputed item or issue involving Subcontractor (including, but not limited to, joint checks, change orders, supplementation of Subcontractor's workforce, or any issue involving the amount owed by FMGI to Subcontractor), unless Subcontractor submits a formal notice requesting mediation disputing the final determination. The dispute shall then be submitted to a mediator jointly selected by the parties. The parties shall share equally in the cost of the mediation. If the mediation is unsuccessful in resolving the dispute, the aggrieved party must commence arbitration proceedings in accordance with these General Terms. If Subcontractor files a demand for arbitration, the controversy will be decided by an arbitrator (see Section 8, below) and that arbitration decision shall be final and binding on both Parties. The final determination by FMGI will become final and binding on FMGI and Subcontractor unless the Subcontractor files and serves a demand for arbitration by the earlier of the following dates: 60 days from and after receipt of FMGI's final determination, or 30 days from and after the mediator has determined that the mediation has been unsuccessful in resolving the dispute (if the matter was subject to mediation).

8. **Arbitration.**

- 8.1. **Requirement to Arbitrate Disputes.** Any dispute concerning the meaning of these General Terms or any Work Authorization, any breach of these General Terms or any Work Authorization, the indemnification provision contained in these General Terms, or any other matter or issue touching on or concerning these General Terms or any Work Authorization that cannot be resolved by the Parties or mediation, must be submitted to binding arbitration. The arbitration must be initiated with either the Henning Mediation & Arbitration Service, Inc. ("**Henning**") located in Atlanta, Georgia, or the American Arbitration Association ("**AAA**"). Henning will arbitrate all cases arising out of projects located in Georgia. The AAA will arbitrate cases arising out of projects located in any State other than Georgia.
- 8.2. **Service/Filing of Documents.** The Party that commences the arbitration ("**Complainant**") must serve the demand for arbitration on the other Party ("**Respondent**") via email and Physical Delivery, but may file it with Henning or the AAA (as applicable) electronically. Any dispute will be resolved by a single arbitrator regardless of the amount in dispute. The arbitrator is to issue a reasoned award.
- 8.3. **Payment of Arbitration Fees.** Each party to the arbitration shall share equally in all costs, expenses, and fees charged by Henning, the AAA, or the arbitrator ("**Arbitration Fees**"). If a party fails or refuses to pay any Arbitration Fee within the time specified for payment ("**Non-Paying Party**") and the other party pays that cost, expense, or fee, the Non-Paying Party shall lose its right to reimbursement if it is the Prevailing Party. The arbitrator shall enter a default against a party if that party: fails or refuses to

respond to or acknowledge the request/demand for arbitration; fails or refuses to attend meetings or conference calls scheduled by the arbitrator; or fails or refuses to attend the arbitration hearing. After entry of the default, the party that moved for default need only produce proof of its monetary damages to obtain an arbitration award. If the Complainant fails to pay the costs, expenses, or fees assessed to it at least 30 days prior to the arbitration hearing date, it will be deemed to have abandoned its claim and an award must be issued dismissing that claim with prejudice.

8.4. **Losing Party Pays.** The party who loses in the arbitration (“**Losing Party**”) shall reimburse the Prevailing Party for the costs, expenses, and fees (including reasonable attorneys’ fees) incurred by the Prevailing Party from the commencement of the arbitration through any final appeal of the arbitration award; If it is not apparent which party is the Prevailing Party, the arbitrator shall determine which party is the Prevailing Party. (The Prevailing Party is the one that prevailed on the largest number of significant issues involved in the arbitration).

8.5. **Miscellaneous Provisions Applicable to Arbitration.** Any claim brought by Subcontractor against FMGI must be commenced (*i.e.*, the request/demand for arbitration filed) prior to acceptance by Subcontractor of its final payment. If Subcontractor commences litigation rather than files for arbitration, Subcontractor must reimburse FMGI for reasonable attorneys’ fees and reasonably necessary costs, expenses, and fees incurred by it in having the litigation stayed or dismissed and arbitration ordered by the Court. Subcontractor must reimburse FMGI in this instance regardless of the outcome of the arbitration. Such costs, expenses, and fees must be reimbursed when incurred, but, in no event, not later than the date of the arbitration hearing. If Subcontractor fails to reimburse FMGI for these costs, expenses, and fees and Subcontractor is the Prevailing Party in the arbitration, it shall not be entitled to reimbursement of any of its costs, expenses, or fees. These General Terms and the arbitration provision are governed by the Federal Arbitration Act.

9. **Workers’ Compensation and Taxes.**

9.1. Subcontractor will carry the minimum workers’ compensation required by each both its State where it is located and the State where the project is located. If Subcontractor fails to maintain the required workers’ compensation coverage and a claim is brought against Contractor because of that failure, Subcontractor will indemnify, defend, and hold Contractor harmless from and against any such claim.

9.2. Subcontractor also understands and agrees that it is responsible for all taxes applicable to it regardless of the location of the project or the Subcontractor.

10. **Adherence to Law.** Subcontractor shall comply with any Federal, State, or Local law, ordinance, rule, regulation, or statute applicable to the Project, including, but not limited to, building codes and the Americans with Disabilities Act.

11. **Insurance.** Subcontractor warrants that it is carrying all necessary insurance on its tools, equipment, vehicles, employees, agents, servants, officers and directors. Subcontractor warrants that it is carrying commercial general liability insurance, comprehensive automobile insurance for bodily injury and property damage on all its vehicles, including Hired, Borrowed, and Non-Owned coverage, and workers’ compensation. Subcontractor shall provide FMGI with one or more certificates of insurance indicating that all insurance coverage is current and which list, at a minimum, that FMGI and Owner are additional insureds on all liability insurance, that subrogation is waived as to all liability insurance and workers’ compensation, and that such insurance is primary and non-contributory. FMGI may terminate Subcontractor if Subcontractor fails to provide the required Certificates of Insurance.

12. **Immigration Compliance.** Subcontractor understands and agrees that it is Subcontractor’s responsibility to comply with all applicable Federal, State, and local laws, regulations, rules, and statutes concerning immigration (“**Applicable Immigration Laws**”). By completing any work under a Work Authorization, Subcontractor verifies that it complies (and will continue to comply) with all such Applicable Immigration Laws. Furthermore, Subcontractor will provide immigration documentation to FMGI, including, but not limited to, I-9 forms as and when requested by FMGI, and, if advised that the forms are incorrect or incomplete, Subcontractor will correct the forms and submit the corrected forms to FMGI as and when requested in writing. If FMGI or Subcontractor is required to provide documentation for workers in conjunction with any type of badging system used at the Project, Subcontractor will assure that all its workers will provide the required identification. If FMGI and Subcontractor are required to comply with the Illegal Immigration Reform and Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, Subcontractor shall comply with that Program and provide evidence of such compliance. If Subcontractor employs any person that is not authorized to work within the United States of America and FMGI sustains monetary damages (including, but not limited to,

attorneys' fees), Subcontractor shall reimburse FMGI for such monetary damages. If Subcontractor fails to abide by the terms of this Section, such failure constitutes a material breach of the agreement on the Subcontractor's part.

13. **OSHA Violations.** If Subcontractor violates the Federal Occupational Safety and Health Act ("OSHA") or any equivalent Federal, State, or local statute, ordinance, rule or regulation and a fine is assessed against FMGI because of that violation, Subcontractor shall reimburse FMGI in the full amount of that fine.
14. **Time of the Essence.** Subcontractor shall comply with FMGI's requirements as to timely performance and, if necessary, employ additional crews and work overtime without additional compensation due Subcontractor by FMGI. If Subcontractor's performance delays FMGI's performance of the Work, Subcontractor shall have breached this Agreement and shall be responsible for all damages or loss suffered by FMGI. Subcontractor shall indemnify, hold harmless, and defend FMGI from any loss (including, but not limited to, FMGI's attorney's fees), costs and any damages (liquidated and/or actual), imposed, assessed or claimed by the Owner and attributable in any way to Subcontractor's delay.
15. **Confidentiality and Non-Solicitation Agreement.** Subcontractor agrees not to engage, either directly or indirectly, in competition with FMGI on accounts for which Subcontractor has had contact with through FMGI, or to knowingly solicit business or sales from any customer, client or account of FMGI for a period of two (2) years. (Subcontractor shall be entitled to accept work from a Person with which Subcontractor had a business relationship prior to the issuance of the first Work Authorization issued by FMGI to Subcontractor for that Person.). For a period of 2 years from the last Work Authorization issued by FMGI to Subcontractor, Subcontractor shall not use or disclose any Confidential Information obtained from FMGI other than to complete Subcontractor's Work under a Work Authorization. ("Confidential Information" shall mean any specifications, samples, designs, trade secrets, customer contact information, financial data, uses, processes, know-how and the like, whether written or oral that FMGI deems confidential and discloses to Subcontractor.).
16. **Assignment.** Subcontractor has no right to assign or transfer any of its rights under any Work Authorization or assign any payments to be received under a Work Authorization. Subcontractor cannot delegate any duties under a Work Authorization to any other Person. Unless an assignment is authorized by a statute, any such assignment or attempted assignment is void and of no force or effect. This Agreement shall inure to the benefit of FMGI and its successors and assigns.
17. **Construction/Interpretation.** This Agreement shall not be construed or interpreted for or against a party to this Agreement merely because that party or that party's legal representative drafted this Agreement.
18. **Headings of Sections.** The headings of the Sections of this document are for convenience only and not to be used in interpreting, defining or limiting the language of each such section.
19. **Governing Law.** This Agreement shall be considered a contract made in the State of Alabama and shall be governed by and construed in accordance with the internal laws of the State of Alabama.
20. **Survival.** The following provisions contained in this Agreement shall survive termination of this Agreement: the section regarding liens; all indemnification provisions; all insurance provisions; section 16 of these General Terms and Conditions; the confidentiality and non-solicitation agreement; the arbitration provision; and the governing law provision.
21. **Conflict.** If there is a conflict between the Subcontractor's bid documents and this Agreement or between any other agreement and the parties, the terms and conditions of this Agreement shall control.
22. **Entire Agreement.** This is the entire agreement between FMGI and Subcontractor concerning the matters covered by these General Terms and Conditions. Any communication, oral or written, made by FMGI or Subcontractor, or any agent, employee, or servant of either FMGI or Subcontractor previous to, or contemporaneous with, the effective date of these General Terms and Conditions and which are not contained in this Agreement are null, void and of no effect. Any modification of, or supplement to, these General Terms and Conditions must be in writing and signed by both FMGI and Subcontractor. Any change orders, modifications of these General Terms and Conditions or Work, extensions of time, or modifications of the amount payable to Subcontractor under these General Terms and Conditions are effective only if in agreed to by FMGI in writing (which may be an email). Subcontractor shall have no claim under any legal theory (whether based in contract or quasi-contract such as unjust enrichment or quantum meruit) for work completed without an approved change order.