



## **SUBCONTRACT - INSTALLATION SERVICES**

### **ARTICLE 1. AGREEMENT**

This Agreement is made effective on \_\_\_\_\_, by and between:

**Contractor:** AP Americas, Inc.  
3101 Skyway Cir N  
Irving, Texas USA 75038  
972-295-9100  
Email: \_\_\_\_\_

**Subcontractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice to Contractor and Subcontractor will be given at the above addresses. This Agreement is made for services to be provided from time to time by Subcontractor to Contractor, in connection with Contractor's customers' projects ("Projects").

### **ARTICLE 2. SCOPE OF WORK**

**2.1. Subcontractor's Work.** Contractor contracts with the Subcontractor, as an independent contractor, to perform all work necessary for the installation of Contractor's manufactured products and equipment on Customer projects (the "Work"). Subcontractor's work will be in strict accordance with and reasonably inferable from the Contract Documents. Subcontractor will perform Subcontractor's Work under the general direction of Contractor and in accordance with the Contract Documents.

**2.2. Contract Documents - Each Project.** The Contract Documents include:

- (A) this Agreement,
- (B) the complete Contractor-Customer Agreement on a Project, including all amendments and change orders,
- (C) Scope of Work specific details, drawings & Schedule of Work (Schedule A),

- (D) Contractor's Purchase Order issued to Subcontractor (Schedule B),
- (E) Safety Plan/Accident Prevention Program/Powered Industrial Truck Safety Program (Schedule C),
- (F) Agreement for Storage of Personal Property (Schedule D)
- (G) Non-Disclosure Agreement (Schedule E)

All documents listed in 2.2 (A)-(G) above are incorporated into this Agreement by reference. Upon Subcontractor's request, Contractor will make available a copy of any part of the Contract Documents. Nothing in this Agreement will be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor.

**2.3. Conflicts.** In the event of a conflict between this Agreement and other Contract Documents, this Agreement will govern.

**2.4. Extent of Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement, and integrates, merges, and contains all of the covenants and agreements between the parties with respect to the subject matter. Each party to this contract acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not integrated and set forth in this Agreement, and that no agreement, statement, or promise not contained in this Agreement will be valid or binding.

### **ARTICLE 3. SUBCONTRACTOR'S RESPONSIBILITIES**

**3.1. Obligations Derivative.** Subcontractor binds Subcontractor to the Contractor under this Agreement in the same manner as the Contractor is bound to its customer and will so bind its subcontractors, if any. Subcontractor will make available to its subcontractors the Contract Documents which are binding on the subcontractor.

**3.2. Responsibilities.** Subcontractor will furnish all of the labor, materials, equipment and services, including but not limited to, competent supervision, tools, scaffolding, and other supplies and materials as are necessary for the proper performance of Subcontractor's Work in strict accordance with this Agreement.

**3.3 Daily Cleanup.** Subcontractor will keep the project site and premises free from debris and unsafe conditions resulting from Subcontractor's work and will haul off or otherwise appropriately dispose of all such debris from the project premises on a daily basis.

**3.4. Safety** The prevention of accidents on or in the vicinity of Subcontractor's Work is Subcontractor's responsibility, even if the Contractor establishes a safety program for the Project as reflected in Schedule E. Subcontractor will follow all safety measures, policies and standards

conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction, and by Contractor and Contractor's Customer, including, but not limited to, requirements imposed by the Contract Documents. Subcontractor will comply with reasonable recommendations of insurance companies having an interest in the Project, and will stop any part of the Work which the Contractor deems unsafe until corrective measures satisfactory to Contractor and/or Customer will have been taken. Contractor's and/or Customer's failure to stop Subcontractor's unsafe practices will not relieve Subcontractor of its responsibility. Subcontractor will notify Contractor immediately following any accident and promptly confirm the notice in writing. A detailed written report will be furnished if requested by Contractor. Subcontractor will indemnify Contractor for fines, damages or expenses incurred by Contractor because of Subcontractor's failure to comply with safety requirements.

**3.5. Protection of the Work and Others' Work.** Subcontractor will take necessary precautions to properly protect Subcontractor's Work, and the work of others, from damage caused by Subcontractor's operations. Should Subcontractor cause damage to the Work or property of Contractor's Customer, or others, Subcontractor will promptly remedy such damage to the satisfaction of Contractor and Customer, or Contractor may remedy the damage and deduct its cost from any amounts due or to become due to Subcontractor, unless such costs are recovered under applicable property insurance.

**3.6. Licenses.** Subcontractor will be responsible for obtaining and maintaining all licenses, permits, and certifications necessary for Subcontractor to operate and provide the services required under this Agreement.

**3.7. Assignment.** Subcontractor will not assign, in whole or in part, Subcontractor's Work, without the prior written approval of Contractor, which approval will not be unreasonably withheld.

**3.8. Hazardous Materials.** A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. To the extent that Contractor has obligations under the Contract Documents or by law regarding such materials within the scope of Subcontractor's Work, the Subcontractor will have the same obligations.

**3.9. Warranties and Completion.** Subcontractor warrants that all materials and equipment furnished under this Agreement, if any, will be new, unless otherwise specified, and will be of good quality, and that all services will be performed in a good and workmanlike manner, free from defects, and in conformity with the Contract Documents. Such Warranties will commence on the date of Substantial Completion of the Work. . Substantial Completion occurs on the date when the Work is complete and all necessary testing has been completed to the satisfaction of Contractor and Contractor's Customer, so that Contractor's Customer can utilize the Project for the

use for which it was intended. Subcontractor agrees to correct all Subcontractor's Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Work or for a longer period of time as may be required by specific warranties in the Contract Documents.

**3.10. Use of Contractor's Equipment.** The Subcontractor, its agents, employees, subcontractors or suppliers will not use the Contractor's tools or equipment without the express written permission of the Contractor's designated representative. In the event that Subcontractor elects to utilize tools and/or equipment provided by Contractor for a given Project, then Subcontractor and Contractor will enter into a written equipment rental agreement. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Contractor's equipment, owned, leased or under the control of Contractor, Subcontractor will defend, indemnify and be liable to Contractor as provided in Article 9 for any loss or damage (including personal injury or death) which may arise from such use, except where the loss or damage will be found to have been due solely to the negligence of Contractor's employees operating Contractor's equipment.

**3.11. Contractor's Right to Perform.** If Subcontractor fails to perform its Work fully, Contractor reserves the right, on twenty four (24) hours' notice, to arrange for others to perform the remaining portion of Subcontractor's Work and charge the cost of such performance to Subcontractor.

**3.12. Compliance with Laws.** Subcontractor agrees to be bound by, and at Subcontractor's own costs comply with, all federal, state, and local laws, ordinances and regulations (Laws) applicable to Subcontractor's Work. Subcontractor will be liable to Contractor, and to Contractor's Customer, for all loss, cost, and expense attributable to any acts of commission or omission by Subcontractor, Subcontractor's employees and agents, resulting from the failure to comply with Laws, including but not limited to, any fines, penalties, corrective measures, attorney fees and expenses.

#### **ARTICLE 4. CONTRACTOR'S RESPONSIBILITIES**

Contractor will transmit to Subcontractor, with reasonable promptness, all written submittals, transmittals, and written approvals relative to Subcontractor's Work.

#### **ARTICLE 5. SCHEDULE OF WORK**

**5.1. Schedule Obligations.** Both Contractor and Subcontractor will be bound by the Schedule of Work. Subcontractor will provide Contractor with any requested scheduling information

for Subcontractor's Work. Subcontractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes. The Schedule of Work and all subsequent changes will be submitted to Subcontractor in writing, in advance of the required performance.

**5.2. Delay.** If the progress of Subcontractor's Work is substantially delayed without the fault or responsibility of Subcontractor, then the time for Subcontractor's Work will be extended by Subcontract Change Order to the extent obtained by Contractor under the Contract Documents, and the Schedule of Work will be revised accordingly. It will be a condition precedent to any right of Subcontractor to recover any damages for delay that Contractor first recover such damages from Contractor's Customer, or other person or entity liable for the delay, the amount which Subcontractor may recover from Contractor will be limited to the amount actually recovered by Contractor on behalf of Subcontractor.

## **ARTICLE 6. CONTRACT PRICE**

Contractor agrees to pay Subcontractor for the satisfactory performance of Subcontractor's Work the amount stated in Schedule B, subject to additions or deductions as provided in Article 7.

## **ARTICLE 7. CHANGES IN SUBCONTRACTOR'S WORK**

When the Contractor notifies Subcontractor of a change order Subcontractor, without nullifying this Agreement, will make any and all changes in Subcontractor's Work which are within the general scope of this Agreement. Any adjustment in the Contract Price or Schedule of Work will be set forth in a Subcontract Change Order. No adjustments will be made for any changes performed by Subcontractor that have not been ordered by Contractor. A Subcontract Change Order is a written document prepared by Contractor and signed by Subcontractor stating the parties' agreement upon the change in Subcontractor's Work.

## **ARTICLE 8. PAYMENT**

**8.1. Time of Payment.** Payment by Contractor to Subcontractor for satisfactory performance of Subcontractor's Work under this Agreement will be due and payable pursuant to the terms set out in Schedule B.

**8.2. Payments Withheld.** Should Subcontractor, its sub-subcontractors or agents cause damage to the Project or fail to perform or otherwise be in default under the terms of this Agreement, Contractor will have the right to withhold from any payment, or otherwise be reimbursed for, an amount sufficient to protect Contractor and Contractor's Customer from any loss that may result. When the grounds for withholding payment have been removed, payment will be made for amounts withheld because of them.

**8.3. Payment use Restriction and Verification.** Payment received by Subcontractor will be used to satisfy any indebtedness owed by Subcontractor to any person furnishing labor or materials for use in the performance of Subcontractor's Work. Contractor will have the right at all times to contact Subcontractor's sub-subcontractors and suppliers to ensure that such are paid promptly by Subcontractor for labor or materials furnished for use in the performance of Subcontractor's Work.

**8.4. Waiver of Claims.** Full and final payment to Subcontractor will constitute a waiver of all claims by Subcontractor relating to Subcontractor's Work, but will in no way relieve Subcontractor of liability for the obligations assumed under Paragraph 3.9, or for faulty or defective Work discovered after final payment. Upon full and final payment, Subcontractor will execute a full and final release of all claims arising from this Agreement, and will verify in writing to Contractor that all indebtedness owed by Subcontractor to any person furnishing labor or materials for use in the performance of Subcontractor's Work has been satisfied in full.

**8.5. Payment not Acceptance.** Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontractor's Work.

## **ARTICLE 9. INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION**

**9.1. - Indemnity-Subcontractor's Performance.** To the fullest extent permitted by law, Subcontractor will defend, indemnify and hold harmless Contractor, the Contractor's other subcontractors, Contractor's Customer and its agents, consultants and employees (the indemnitied) from and against all claims, damages, loss and expenses, including but not limited to attorney fees, costs and expenses arising out of or resulting from the performance of Subcontractor's Work, provided that:

(1) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself including resulting loss or use), caused in whole or in part by any negligent action or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or for anyone for whose acts Subcontractor may be liable, regardless of whether it is caused in part by an indemnified party, and

(2) such obligation will 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 Article 9.

**9.2. Indemnity - No Limitation on Liability.** In any and all claims against the Indemnities by any employee of Subcontractor, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable, the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**9.3. Insurance - Subcontractor's Insurance.** Before commencing Subcontractor's Work, and as a condition of payment, Subcontractor will purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by Subcontractor or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by any one for whose acts any of them may be liable.

**9.4 Insurance - Minimum Limits of Liability.** Subcontractor will maintain at least the following limits of liability in a company satisfactory to Contractor:

(1) Workers' Compensation and Employer's Liability Insurance in accordance with the laws of the State in which the Project is located.

(2) Commercial General Liability Insurance

(a)	Each Occurrence Limit	\$ 1,000,000
(b)	General Aggregate	\$ 2,000,000
(c)	Products Completed/Operations Aggregate	\$

(3) Comprehensive Automobile Liability Insurance

(a)	Combined Single Limit Bodily Injury and Property Damage	<u>\$ 1,000,000</u> Each Occurrence
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*or*

(b)	Bodily Injury	\$ _____ Each Person
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		\$ _____ Each Occurrence
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(c)	Property Damage	\$ _____ Each Occurrence
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Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

**9.5. Insurance - Additional Insureds.** Policies under Sections 9.4(2) and 9.4(3) will list Contractor as an additional insured, as well as other parties if required by the Contract Documents.

**9.6. Insurance - Cancellation, Renewal, and Modification.** Subcontractor will maintain in effect all insurance coverages required under this Agreement at Subcontractor's sole expense and with insurance companies acceptable to Contractor. The policies will contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days' prior written notice has been given to Contractor. Endorsements and certificates of insurance showing required coverage to be in force will be filed with Contractor prior to commencement of Subcontractor's Work. In the event Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, Contractor may purchase such coverage and charge the expense to Subcontractor, or terminate this Agreement.

**9.7. Insurance - Continuation of Coverage.** Subcontractor will continue to carry Completed Operations liability insurance for at least 1 year after either ninety (90) days following Substantial Completion of the Work or final payment to Contractor, whichever is earlier. Subcontractor will furnish Contractor evidence of such insurance at final payment and one year thereafter.

**9.8. Waiver Subrogation.** Contractor and Subcontractor waive all rights against each other and their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for damages caused by perils to the extent covered by insurance provided in Section 9.4, except such rights as they may have to the insurance proceeds. Subcontractor will require similar waivers from its subcontractors. If the policies of insurance referred to in this Article require an endorsement to provide for continuous coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed.

## **ARTICLE 10. CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT.**

**10.1. Failure to Perform - Notice to Cure.** If Subcontractor refuses or fails to maintain the Schedule of Work, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, Subcontractor will be deemed in default of this Agreement. If Subcontractor fails, within three (3) working days after written notification, to commence and continue satisfactory correction of the default with diligence and promptness, then Contractor without prejudice to any other rights or remedies, will have the right to any or all of the following remedies:



1. complete all Work which Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorney's fees, costs and expenses to Subcontractor;

2. contract with one or more subcontractors to perform such part of Subcontractor's Work as Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 10.1.1 and/or

3. withhold any payments due Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of Contractor and Contractor's Customer.

In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice.

**10.2. Termination by Contractor.** If Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) working days after written notification issued under Section 10.1.1, then the Contractor may, in lieu of or in addition to Section 10.1.1, issue a second written notification to Subcontractor and its surety, if any. Such notice will state that if Subcontractor fails to commence and continue correction of a default within three (3) working days of the written notification, the Agreement will be deemed terminated. Contractor also may furnish those materials, equipment, and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by Contractor in performing Subcontractor's Work, including reasonable overhead, profit, and attorney fees, costs and expenses, will be deducted from any monies due or to become due Subcontractor. Subcontractor will be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

**10.3. Termination - Bankruptcy.** If Subcontractor files a petition under the Bankruptcy Code, this Agreement will terminate if Subcontractor or Subcontractor's trustee rejects the Agreement or, if there has been a default, Subcontractor is unable to give adequate assurance that Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code. If Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work. Contractor may offset against any sums due or to become due Subcontractor, all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit, and attorney fees. Subcontractor will be liable for

any amount by which costs incurred may exceed the unpaid balance of the Contract Price.

**10.4. Termination - By Contractor's Customer.** If Contractor's Customer terminates its contract with Contractor or any part of which includes Subcontractor's Work, Contractor will notify Subcontractor in writing and upon written notification, this Agreement will be terminated and Subcontractor will immediately stop Subcontractors Work, follow Contractors instructions as to termination, and mitigate all costs. In the event of Customer's termination, Contractor's liability to Subcontractor will be limited to the extent of Contractor's recovery on Subcontractor's behalf under the Contract Documents.

**10.5. Suspension by Contractor.** Contractor may advise Subcontractor in writing to suspend all or any part of Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of Contractor. Phased work or interruptions of Subcontractor's Work for short periods of time will not be considered a suspension. To the extent allowed Contractor, under its agreement with the Customer, the Contract Price or Schedule of Work will be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. Neither the Contract Price nor the Schedule of Work will be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of Subcontractor or by a cause for which Subcontractor would have been responsible. The Contract Price will not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which Subcontractor would have been entitled only to a time extension under this Agreement.

## ARTICLE 11. DISPUTE RESOLUTION

**11.1. Party Resolution, Mediation.** If a dispute arises out of or relates to this Agreement, or its breach, the parties will endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the parties will endeavor to settle the dispute by mediation with a mutually agreed mediator, such agreement by either party not to be unreasonably withheld. Mediation will be held in Dallas County, Texas, in a county contiguous to Dallas County, Texas, or by video conference, as may be agreed between the parties. If the parties are unable to agree to a location for mediation, the mediator will determine the location. Mediation will occur within 60 days of the date the dispute arose or breach was discovered.

**11.2. Arbitration - Agreement.** A controversy or claim arising out of or relating to this Agreement or its breach which is not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, and the claims described in Section 11.3, will be decided by arbitration of the American Arbitration Association then in effect unless the parties agree otherwise.

**11.3. Arbitration - Exceptions.** The agreement to arbitrate will not apply to any claim:

(1) of contribution or indemnity asserted by one party to this Agreement against the other party and arising out of an action brought in a state or federal court or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto or does not consent to arbitration; or

(2) asserted by Subcontractor against Contractor if Contractor asserts claim, either in whole or part against Contractor's Customer, or asserted by Contractor's Customer against Contractor, when the contract between Contractor and Customer does not provide to binding arbitration, or does provide but the two arbitration proceedings are not consolidated, or Contractor and Customer have not subsequently agreed to arbitrate the claim. In either case, the parties hereto will notify each other before or after demand for arbitration is made.

Any question as to arbitrability will be decided by the appropriate court and not by arbitration.

**11.4. Arbitration - Notice of Demand.** A written demand for arbitration will be filed with the American Arbitration Association and the other party to this Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for legal or equitable proceeding would have run.

**11.5. Arbitration - Additional Terms.** The arbitration award will be final. Judgment upon the award may be confirmed in any court having competent jurisdiction. Nothing in this Article will limit any rights or remedies not expressly waived by Subcontractor which Subcontractor may have under lien laws or bonds. The parties agree that all parties necessary to resolve a claim will be parties to the same arbitration proceeding. Appropriate provisions will be included in all other contracts relating to the Project to provide for the consolidation of arbitrations.

**11.6. Cost of Dispute Resolution.** The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation will be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.

**ARTICLE 12. GENERAL PROVISIONS**

**12.1. Governing Law.** This Agreement will be governed by the law of the State of Texas.

**12.2. Severability.** The partial or complete invalidity of any one or more provisions of this Agreement will not affect the validity or continuing force and effect of any other provision.

**12.3. No Waiver of Performance.** The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, will not be construed as a waiver or relinquishment of term, covenant, condition or right with respect to further performance.

**12.4. Titles.** The titles given to the Articles of this Agreement are for ease of reference only, and will not be relied upon or cited for any other purpose.

EXECUTED in duplicate copies, and made effective on the date stated in Article 1.

**CONTRACTOR: AP AMERICAS, INC.**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**SUBCONTRACTOR:**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_