

2003 Subcontractor Agreement Template

SUBCONTRACT AGREEMENT "TEMPLATE"

This document is intended to be a "template" for use by members of the Home Builders Association of Tennessee. All or portions of this template may be used as a contract between a builder and a sub contractor. When using this template, please submit your final document or contract to your attorney for approval.

This Document is a binding contract, which will serve as a blanket agreement for and between _____, herein known as Builder, and the undersigned referred to hereafter as Subcontractor. By signing, Subcontractor and Builder agree to the terms set forth herein. This agreement shall remain in force from the date hereof and from year to year, unless a change is agreed to in writing by both Builder and Subcontractor. The parties agree to the following:

1. GENERAL PERFORMANCE

All Work of the Subcontractor will be performed in a good and workmanlike manner in accordance with the plans and specifications for each job and must comply with all Federal and State laws, codes and regulations and all county and/or municipal ordinances and regulations effective where the work is to be performed under this contract. All permits, fees, taxes, and expenses connected with such compliance are to be paid by the Subcontractor.

2. INDEPENDENT CONTRACTOR

The Builder and Subcontractor agree that the Subcontractor is being hired solely as an Independent Contractor and that neither the Subcontractor, nor his employees shall be deemed to be employees of the Builder.

3. TIME

The Subcontractor agrees to promptly begin work as soon as notified by the Builder, and to complete the work in a professional and workmanlike manner within a reasonable period of time once work is commenced and in any event by the deadlines established by the Builder in writing. Subcontractor shall cooperate with other trades who are also on the jobsite so that each reasonably may complete their respective work within the required time frames and Subcontractor shall in any event complete Subcontractor's work within a time that will allow any other trade whose work depends on the completion of Subcontractor's work to also timely complete its work. At all times, Subcontractor shall provide competent supervision, a sufficient number of skilled workers and adequate and proper materials to maintain Builder's work schedule. Subcontractor warrants to Builder that he has all proper and necessary licenses and permits to perform the services contracted for by Builder. If Builder determines that Subcontractor's work does not conform to the provisions of the Drawings and Specifications, or that the work is not of appropriate quality, Builder shall advise Subcontractor, and if Subcontractor does not correct such defects or errors on Builder's time table, builder shall have the right to correct the defects and to charge back the Subcontractor the cost of such corrections.

4. EXTRAS

No deviations from the work specified in the contract will be permitted or paid for unless a written extra work or change order is first agreed upon and signed as required.

5. ASSIGNMENT

No assignment of this subcontract agreement by Subcontractor is permitted without prior written permission from the Builder.

6. HOLD HARMLESS

The Subcontractor agrees to protect, defend and indemnify the Builder against and hold the Builder harmless for any and all claims, demands, liabilities, losses, expenses, suits and actions (including attorney's fees) for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise (or which may be alleged to have arisen) out of or in connection with the work covered by this subcontract even though such injury, death, or damage may be (or may be alleged to be) attributable in part to negligence or other fault on the part of the Builder or his officers, agents or employees. If Builder reasonably believes that Subcontractor will or has caused a claim to be made or a lien to be filed against Builder's Property, Builder may retain any and all monies due Subcontractor and make such payment to Subcontractor and claimant jointly. The obligation of the Subcontractor to indemnify and hold the Builder harmless shall not be enforceable if and only if it be determined by arbitration of judicial proceeding that the injury, death or damages complained of was attributable solely to the fault or negligence of the Builder or his officers, agents, or employees and not in any manner or in any part attributable to the Subcontractor. The Subcontractor agrees to reimburse the Builder for all sums which the Builder may pay or be compelled to pay in settlement of any claim hereunder, including any claim under the provisions of any workmen's compensation law or any plan for employees' benefits which the Builder may adopt. The Builder shall be entitled to withhold from payment otherwise due pursuant to this subcontract such amount or amounts as may be reasonably necessary to protect it against liability for any personal injury, death or property damage resulting from the performance of the work hereunder.

7. MECHANICS LIEN

Subcontractor shall furnish all partial and final lien waivers (waivers refer to the instruments executed by reason of payment or waiver of payment) and release and sworn statements under the Tennessee State Mechanic's Lien Law, for Subcontractor and for all Subcontractor's material men and suppliers in a form satisfactory and acceptable to Builder as a condition precedent to partial and final payments to Subcontractor hereunder, as may be required by Builder.

If any lien or other encumbrance or any claim of the nonpayment of labor, materials or supplies furnished to Subcontractor is asserted, claimed or filed against Builder's property arising out of the contract or said work hereunder, notwithstanding the furnishing of said lien waivers or sworn statements by Subcontractor on the making of any said payments to Subcontractor, the Subcontractor shall protect, indemnify, hold harmless and defend the Builder, and its successors assigns, from and against all such liens and encumbrances and all costs, fee, loss, damage and expenses (including, but not limit to attorneys fees and litigation expenses) in connection therewith. Any such assertion or claim may be treated by Builder as default of the contract and Builder on behalf of itself may take action as it deems necessary to mitigate its damages and charge the cost and expense thereof to Subcontractor.

8. CLEAN-UP

Subcontractor agrees to clean up all debris, trash, and refuse generated by his own trade at the end of each day and deposit into trash bin provided by Builder, and shall clean all walls, floors and other finished surfaces soiled as a result of his trade. Subcontractor further agrees to deposit into trash bin or haul away all boxes, crates, or containers that may have been used to bring materials or fixtures to the job site. Subcontractor agrees to leave the job broom clean for the next trade. In the event the Subcontractor fails to comply with the above after receiving the proper notice of the problem and the opportunity to correct it, Builder may back charge the Subcontractor for the cost of the debris removal and clean up. The subcontractor should report the Builder if the job has not been cleaned within acceptable practices by the prior Subcontractor.

9. DEFAULT

If Subcontractor shall default in the performance of any of his duties or obligations hereunder, and such default shall continue after verbal or written notice, Builder may immediately terminate this Agreement. Subcontractor shall be due only such sums for approved work up until termination and shall furnish lien waivers to Builder upon termination and payment.

10. CARE OF MATERIALS

Subcontractor agrees to be diligent in the proper care of materials supplied by Builder. All usable materials are to be stored in an orderly way that protects them from wind, moisture, and provides general site safety. All non-usable materials are to be culled and properly disposed of in trash bins provided. Builder may at its discretion hold Subcontractor accountable for value of materials damaged by negligent Subcontractor care. Builder may back charge the Subcontractor for the cost of materials, deemed by Builder to be damaged by negligent Subcontractor care. Subcontractor promptly shall notify Builder of any defects in any materials supplied by Builder.

11. PAYMENT

Builder shall provide stated time frames for Subcontractor to submit invoices for the work performed. Invoices not received by the stated time will be processed and paid in the next pay period. Invoices in question will be held in their entirety until the disputed charge is resolved. Payment for a disputed charge may be held from the Subcontractor's total payment regardless of the specific project in dispute.

12. INSURANCE

Subcontractor shall provide Builder at the time of the signing of this agreement with a Certificate of Insurance, showing the following insurance during the period of the contract and to provide evidence of such insurance when requested. Each certificate shall provide for 10 days advance written notice of cancellation or non-renewal.

- A. Commercial General Liability coverage with an insurance carrier rated A- or better by A.M. Best with limits equal to or exceeding:
 - \$500,000 Combined Single Limit each occurrence
 - \$1,000,000 General Aggregate
 - \$1,000,000 Products/Completed Operations AggregateBuilder is to be named as Additional Insured on Subcontractor's policy
- B. Workers Compensation Insurance covering all persons performing work at the Builder's job sites including, but not limited to any principles or officers of the Subcontractor, employees of the Subcontractor and subcontractors of the Subcontractor. Further, Subcontractor, including but not limited to a sole proprietor who has one or more employees shall also provide, at his own expense a current Certificate of Worker's Compensation Insurance.
- C. Automobile Liability Insurance for any and all vehicles used at any jobsites or to transport individuals or materials to or from jobsites for a minimum coverage amount of \$500,000 each accident.
- D. Architects, Engineers and other Professional Vendors shall provide a minimum coverage of \$500,000 each claim.

Subcontractor agrees to inform Builder immediately in the event of any changes in coverage, including without limitation, cancellation, non-renewal or limitations on coverage.

HEALTH AND SAFETY

Subcontractor agrees to exercise all precautions necessary to prevent accidents to himself, his workers, and all others. If applicable Subcontractor shall supply at his own expense all protective eyewear, ear protection, head protection, etc. to his workers. The Subcontractor will at his own expense comply with all specific health and safety requirements of the Federal Occupational Safety and Health Act, Tennessee Occupational Safety and Health Act, and any other applicable authority. The Subcontractor also agrees to defend at his own expense and be responsible for penalties of any nature assessed by such agencies for non-compliance by himself or his employees or agents. Subcontractor agrees that he and all his employees have undergone proper safety training and have been properly trained and educated with regard to any hazardous material used in conjunction with the trade as required by the State or Federal law or as mutually agreed to by both

parties. Any hazardous materials, containers, or waste shall not be left on the job by the Subcontractor and shall be removed from the job site and disposed of properly at the Subcontractor's own expense.

13. CONDUCT

Subcontractor agrees that he, employees and agents of the subcontractor shall conduct themselves in a professional manner at all times. Subcontractor further agrees, himself, employees and agents shall not use or be under the influence of alcoholic beverages or drugs on the job site. Subcontractor agrees that in the event of any kind of accident on the job site where subcontractor or employees and/or agents of the subcontractor are present, any or all present will submit to drug testing under the _____ drug policy, which is on file at its office. Additionally, Subcontractor further agrees to not enter into any agreement with the Builder's customer, while the house is under construction and until the Builder's customer has purchased the property.

14. MAINTENANCE OF EROSION CONTROL

Subcontractor agrees that he, his employees and all agents of the subcontractor shall not disturb any erosion control systems constructed on site in behalf of the Builder. If any silt fencing or hay bales are moved to gain access to site, then it structures shall be returned to their effective status immediately. Subcontractor shall indemnify, and hold harmless the Builder and all of its agents and employees from and against all claims, fines, damages, losses and expenses including attorney's fees arising out of or resulting from damage to erosion control structures on the job site caused by Subcontractor, his employees or agents.

15. ARBITRATION

It is hereby agreed that should any dispute arise respecting the provisions of this Agreement or of the true meaning of the Drawings or Specifications it shall be decided by binding arbitration and said arbitration shall be the sole remedy for dispute resolution. Such arbitration shall be by three disinterested parties, one of which arbitrator shall be selected by Subcontractor, one by Builder, and the third shall be selected by the two arbitrators so chosen. The decision of a majority of said arbitrators shall be binding, final and conclusive upon the parties hereto. The expense of such arbitration is to be borne equally by Builder and Subcontractor.

Initials _____.

16. WARRANTY

Subcontractor shall warrant against any defects in workmanship and/or materials which were supplied by subcontractor for a period of one year from the date the home is first occupied by the homeowner. The Subcontractor's warranty shall be of the same standards and duration as the Builder's warranty provided to the Owner. A copy of such warranty is available on request from Builder.

(Name of Subcontractor and/or corporate name)

(Name of Builder)

By: _____

By : _____

Title: _____

Title: _____

Date: _____

Date: _____