

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

This Manufacturing Subcontractor Agreement, (hereinafter "Agreement"), effective as of

DATE:	<div style="border: 1px solid black; padding: 2px;">Date</div>
--------------	--

is entered, by and between George Koch Sons, LLC, (hereinafter "GKS and/or GKS"), having its principal place of business at 10 South Eleventh Avenue, Evansville, Indiana 47744, and

SUBCONTRACTOR NAME:	
----------------------------	--

having its principal place of business at

SUBCONTRACTOR ADDRESS:	
-------------------------------	--

(hereinafter "Subcontractor").

1. PURPOSE

GKS and Subcontractor desire to enter into a mutually beneficial relationship whereby Subcontractor agrees to undertake and complete certain manufacturing work as requested by GKS ("Project" or "Projects"). Such Project(s) will be based upon the provisions of one or more "Purchase Order(s) (POs)" that are issued from GKS to Subcontractor.

This Agreement is intended to encompass one or more POs that may cover one or more GKS Projects. An individual PO may be initiated and incorporated into this Agreement at any time during the term of the Agreement. Each PO initiated between GKS and Subcontractor hereunder shall be described in a separately numbered PO issued by GKS to Subcontractor. Each PO shall be attached hereto and made a part of this Agreement. Such POs are hereby incorporated by reference.

2. DEFINITIONS

2.1. "Contract Documents"

"Contract Documents" shall mean and refer to: (1) this Agreement; (2) the terms and conditions of Purchase Orders issued from GKS to Subcontractor pursuant to this Agreement; (3) any other contract relating to the work as to which GKS is a party or otherwise bound thereunder; (4) any drawings, specifications, schedules, exhibits, addenda, modifications, revisions, general conditions and other documents referred and/or attached to Purchase Orders issued from GKS to Subcontractor pursuant to this Agreement.

2.2. "Work"

"Work" shall mean and refer to the manufacturing, materials and services required by the Contract Documents and set forth in any "scope of work" defined in any PO.

2.3. "Owner"

"Owner" shall mean GKS's customer for each Purchase Order.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

2.4. “Purchase Order (PO)”

“Purchase Order” or “PO” shall mean any Purchase Order issued from GKS to Subcontractor through GKS’ standard purchasing procedures.

2.5. “Change Order”

“Change Order” shall mean any Change Order issued from GKS to Subcontractor through GKS’ standard purchasing procedures. Any modification of this Agreement and/or the relevant Purchase Orders must be in writing and signed by GKS (see Exhibit “B”).

2.6. “Acceptance”

“Acceptance” shall mean GKS’s final approval and acceptance, in GKS’s sole discretion, of Subcontractor’s Work. Only after Acceptance, shall GKS be obligated to pay Subcontractor for the Work. GKS’s Acceptance shall not be unreasonably withheld.

3. CONTRACT DOCUMENT DISCREPANCIES

- 3.1. In accepting this Agreement, Subcontractor acknowledges that it (1) has studied carefully the Contract Documents and information furnished; (2) fully understands what is expected to fulfill this Agreement; (3) has notified GKS in writing of any error, inconsistency, omission ambiguity, conflict or discrepancy in the Contract Documents; and (4) will not assert any claim against GKS based upon any alleged error, inconsistency, omission, ambiguity, conflict or discrepancy in the Contract Documents not reported to GKS in writing prior to the execution of this Purchase Order. In the event of a conflict among or within the Contract Documents, the Subcontractor shall be required to perform to the higher standard or greater requirement.
- 3.2. If Subcontractor performs any Work knowing it to involve an error, inconsistency, omission, ambiguity, conflict or discrepancy in the Contract Documents, without written notice to GKS, Subcontractor shall assume responsibility for such Work and pay for the costs to correct the error, inconsistency or omission, ambiguity, conflict or discrepancy.
- 3.3. Any Work shown on the drawings, concerning which there are no particular specifications, or the omission from both drawings and specifications of express reference to any Work which obviously was intended under the Purchase Order shall not excuse or relieve Subcontractor from furnishing that part of the Work.
- 3.4. Any Work required to be done that would be understood to be included by someone skilled in such Work, but not specifically mentioned in either drawings or specifications or other portions of the Contract Documents, shall be considered as part of the Subcontractor's responsibility.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

- 3.5. In the event there are any inconsistencies between the provisions of this Agreement and the attached POs, this Agreement shall have priority and control in any case of conflict with the terms and conditions printed elsewhere on any Purchase Order, invoice, or other Contract Documents; provided however, where any Purchase Order contains more specific and more detailed written terms or conditions intended for the unique circumstances and said Project dealing with pricing, delivery, and quantities and such Purchase Order states such is to have priority, then the Purchase Order shall have precedence, priority and control superseding this Agreement.

4. FEDERAL, STATE, AND LOCAL REQUIREMENTS

- 4.1. Subcontractor shall comply with of all laws, rules and regulations of the national, federal, state, county, local and all other governmental authorities that govern building construction and equipment and all parts of the Work shall be performed in strict accordance with such requirements, even though each item involved may not be herein particularly mentioned or shown on the drawings. If any of the Work required by the Contract Documents is below the standard prescribed by the laws, rules and regulations, Subcontractor shall promptly notify GKS in writing and any necessary changes shall be adjusted as provided in this Agreement.
- 4.2. If Subcontractor performs any of the Work knowing, or without attempting to ascertain, that it is contrary to such laws, rules and regulations, and without providing such notice to GKS before performing the Work, Subcontractor shall assume responsibility for such Work and pay for the costs to correct such Work and to bring such Work into conformity to such laws, rules, and regulations.
- 4.3. All of Subcontractor's equipment and services shall meet the current requirements of the Department of Labor, Occupational Safety & Health Administration, and state or local OSHA requirements as amended from time to time.
- 4.4. Subcontractor shall comply with all provisions of the Americans with Disabilities Act (ADA) as it pertains to employment and providing access to employment, programs, and other applicable provisions as amended from time to time.
- 4.5. Subcontractor shall make arrangements for and pay for all tests required by federal, state, county and local authorities having jurisdiction, and/or those covered in drawings or specifications mentioned in the Purchase Orders.
- 4.6. These tests shall be made in the presence of the authorized representative of such authorities (if required) and of GKS's representative and shall conform to all requirements.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

5. INSPECTION

- 5.1. At GKS's discretion, all materials, workmanship and Work performed under this Agreement for any Purchase Order may be inspected, reviewed and tested at all times and places. The exercise of this right to inspect, review, and test shall in no way relieve Subcontractor of its obligation to furnish all material and perform all of the Work in strict accordance with the Contract Documents. Such inspection, review, or test, if performed, shall not imply acceptance of the Work.
- 5.2. On written notice from GKS, Subcontractor shall remove and replace at Subcontractor's expense all materials, whether worked or unworked, and all portions of the Work found by GKS to be unsatisfactory or not in conformity with the Contract Documents.
- 5.3. Subcontractor shall repair or replace at Subcontractor's expense any part of the Work which proves defective in materials furnished by Subcontractor or in workmanship within two (2) years from date of Acceptance of the Work, and shall be responsible for any damage to any other portion of the Work resulting therefrom.

6. MATERIALS, TOOLS, EQUIPMENT AND UTILITIES

- 6.1. Subcontractor shall furnish and pay for all materials, tools, construction equipment, labor, supervisory services and facilities needed to perform the Work, unless otherwise specified in the Contract Documents.
- 6.2. Unless otherwise stated in the Contract Documents, all raw material and articles incorporated in the Work shall be new. Subcontractor shall, if required, furnish evidence as to kind and quality of materials.
- 6.3. Unless otherwise stated in the Contract Documents, none of GKS's materials, tools or equipment may be used by Subcontractor.
- 6.4. The Work shall be accomplished in a workmanlike manner, shall be of a quality acceptable for industrial operation and shall be in compliance with the Contract Documents.
- 6.5. The Subcontractor shall examine all materials and equipment furnished by GKS or Owner. Should the Subcontractor fail to report any visible sign of damage immediately upon receipt, then it shall be presumed that damage occurred while materials and equipment were in the care, custody, and control of the Subcontractor. Subcontractor shall be liable for costs to replace material or equipment damaged or lost while in Subcontractor's care, custody, and control.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

7. SUBCONTRACTOR REPRESENTATION AND DIRECTION

- 7.1. Subcontractor must employ only skilled and reliable workmen. GKS has the right to request the discontinuance of the services of any workmen employed on the Work who do not, in GKS's opinion, possess satisfactory skill and qualifications or are otherwise objectionable.
- 7.2. GKS will designate one or more persons who shall be GKS's authorized representative(s) who shall represent GKS in the conduct of this Agreement and corresponding Purchase Orders (the "Authorized Representative(s)"). Such Authorized Representative(s) shall be the only person(s) to whom the Subcontractor shall look or rely upon for instructions, orders, and/or directions, except in an emergency. The decisions, instructions, and interpretation of the plans and specifications by GKS's Representative(s) shall be authoritative and binding upon Subcontractor.
- 7.3. Upon Subcontractor's request, decisions, instructions, directions, orders or interpretations of GKS's Representative(s) shall be issued in writing. Any exceptions that Subcontractor may take to such decisions, instructions, directions, orders or interpretations of GKS's Authorized Representative(s), or any claim by Subcontractor that additional compensation or time to perform the Work is due on account of any such decisions, instructions, directions, orders or interpretations of GKS's Authorized Representative(s), shall be made in writing to GKS within forty-eight (48) hours of such ruling and before the Work involved is performed; otherwise, it will be considered that such decisions, instructions, directions, orders, or interpretations of GKS's Authorized Representative(s) are accepted without question and any exception or claim for additional compensation or time to perform the Work not timely submitted in writing shall be deemed to have been waived.

8. SUB-SUBCONTRACTORS

- 8.1. Subcontractor shall not assign this Agreement or any Purchase Order or subcontract the Work in whole or in part without the prior written consent of GKS.
- 8.2. Approval of Sub-subcontractors by GKS does not relieve Subcontractor of the sole responsibility for the direction and performance of Subcontractor's Sub-subcontractors.

9. SCHEDULE/LIQUIDATED DAMAGES

- 9.1. For all POs issued, time is of the essence with respect to each Purchase Order, this Agreement and the Contract Documents. Whenever a Purchase Order refers to days, the reference shall be (calendar) days.
- 9.2. All work under each Purchase Order shall be arranged and performed in such a manner as to complete the Work in strict accordance to the delivery and/or ship date assigned by GKS on the Purchase Order or Change Order.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

- 9.3. The Subcontractor recognizes that changes may be made in the delivery and/or ship date and agrees to adhere to any reasonable changes required in Subcontractor's work occasioned by such changes, and the Subcontractor understands it may not recover payment for any damages, costs or losses caused or as a result of any delays or disruptions and such recovery for such damages, costs and losses is hereby waived by the Subcontractor.
- 9.4. Any expense, including but not limited to overtime expense, necessary to maintain the Schedule of Work required by each Purchase Order shall be paid by Subcontractor, and GKS shall not be liable in any way for such expense.
- 9.5. The Work to be performed under this Contract shall be commenced, executed and completed according to the written schedule duly agreed to by both parties. Subcontractor shall expedite the Work and achieve substantial completion before the completion date. The date of substantial completion of the Work is the date when construction is sufficiently complete so that GKS can occupy or utilize the Work for the use for which it is intended. If Subcontractor is delayed or disrupted at any time in the progress of the Work by changes ordered by GKS in the Work, by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond Subcontractor's control, or by any other cause which GKS determines may justify the delay or disruption, then the Completion Date shall be extended by written change order executed as provided herein, for such reasonable time as GKS may determine, and this will be the sole remedy to the Subcontractor for such delay or disruption.
- 9.6. Subcontractor understands and agrees that time is of the essence in the performance of this Contract. Should the Subcontractor fail to meet the completion date the Subcontractor shall be required to pay to GKS as liquidated damages the dollar amount of 1% of the dollar amount of the Purchase Order, as amended, for each week tardy after the completion date up to an amount not to exceed 10% of the dollar amount of said Purchase Order, as amended, and that said per week payment is a reasonable estimate at the time this Contract is entered into of actual damages GKS will incur as a result of Subcontractor's failure to complete the Work by said deadline.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

10. INDEMNIFICATION, LIABILITY LIMITATION

10.1. **SUBCONTRACTOR SHALL TURN THE WORK OVER TO GKS IN GOOD CONDITION; FREE OF ALL CLAIMS AND LIENS BY THE SUBCONTRACTOR OR ANY OF THE SUBCONTRACTOR'S SUB-SUBCONTRACTORS, MATERIAL OR EQUIPMENT SUPPLIERS. THE SUBCONTRACTOR AGREES TO INDEMNIFY , HOLD HARMLESS AND DEFEND GKS, THE OWNER, AND THEIR OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES TO THE FULLEST EXTENT PERMITTED BY LAW, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, LIENS, JUDGMENTS, DAMAGES, INJURIES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO, ATTORNEY'S FEES, EXPERT FEES AND OTHER COSTS WHICH ARISE IN WHOLE OR IN PART, AS A RESULT OF CLAIMS OR LIENS PLACED AGAINST THE PROPERTY ON WHICH THE SUBCONTRACTOR'S WORK WAS PERFORMED BY THE SUBCONTRACTOR, OR THE SUBCONTRACTOR'S SUB-SUBCONTRACTOR, MATERIAL SUPPLIERS OR EQUIPMENT SUPPLIERS.**

"CLAIMS" AS USED HEREIN SHALL INCLUDE, BUT NOT BE LIMITED TO:

- a) BODILY AND OTHER PERSONAL INJURIES TO OR DEATHS OF PERSONS;**
- b) DAMAGES TO TOOLS OR EQUIPMENT OWNED OR LEASED BY GKS;**
- c) DAMAGES TO OTHER PROPERTY;**
- d) THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE OR ANY POLLUTION OR CONTAMINATION OF OR OTHER ADVERSE EFFECTS ON THE ENVIRONMENT;**
- e) VIOLATIONS OF ANY APPLICABLE LAWS;**
- f) INFRINGEMENT OF PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER PROPERTY RIGHT; AND/OR**
- g) BREACH OF THE CONTRACT DOCUMENTS,**

RESULTING FROM ACTS OR OMISSIONS OF SUBCONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHER REPRESENTATIVES OR OTHERWISE FROM PERFORMANCE OF THE AGREEMENT, WHETHER SUFFERED DIRECTLY BY GKS OR INDIRECTLY BY REASON OF THIRD PARTY CLAIMS, DEMANDS, OR SUITS. THIS OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND SHALL APPLY WHETHER OR NOT IT IS ALLEGED THAT GKS IN ANY WAY CONTRIBUTED TO THE CLAIMS OR IS LIABLE DUE TO A NON DELEGABLE DUTY. THE SUBCONTRACTOR SHALL NOT BE RESPONSIBLE FOR ANY CLAIM(S) WHICH IS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF GKS WHERE SUCH IS CONTRARY TO LAW. THE INDEMNIFICATION OBLIGATION UNDER THE AGREEMENT MAY NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR ANY SUBCONTRACTOR(S) OR EQUIPMENT SUPPLIERS UNDER WORKER'S OR WORKMEN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS LAWS OR REGULATIONS.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

- 10.2. **IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE FOR OR HAVE ANY DUTY FOR INDEMNIFICATION OR CONTRIBUTION TO SUBCONTRACTOR FOR ANY CLAIMS FOR STATUTORY OR COMMON LAW INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TREBLE DAMAGES, WHETHER IN CONTRACT OR TORT LAW (INCLUDING STRICT LIABILITY AND NEGLIGENCE) SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, REVENUE, PROFIT, BUSINESS OPPORTUNITIES AND THE LIKE, DEPRECIATION OR DIMINUTION IN VALUE, EVEN IF CONTRACTOR HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**
- 10.3. Without limiting any of the other obligations or liabilities of Subcontractor, Subcontractor shall provide and maintain insurance deemed acceptable to GKS at its reasonable discretion, until the Work is completed and accepted by GKS and Owner and for a period of two (2) years thereafter, minimum insurance requirements as follows:
- A. Worker's compensation insurance and employees liability coverage to limits of \$1,000,000 bodily injury each accident, and \$1,000,000 bodily injury by disease each employee;
 - B. Automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers that may be used for deliveries or pickups at GKS's site or the Project site, and such insurance shall provide coverage not less than \$3,000,000 combined single limit per each occurrence for bodily injury and property damage; and
 - C. Commercial general liability insurance, including coverage for contractual liability, products and completed operations, bodily injury and property damage with limits of not less than \$5,000,000 combined single limit per occurrence.
- 10.4 Certificates of insurance evidencing the above coverages must be presented to GKS prior to beginning any work at the Project site and throughout the term of the Work and for a period of two (2) years following completion of said Work. **All certificates must name GKS and Owner as additional insureds.** It is further agreed to the extent permitted by their insurance carriers, the parties will enter neutral waivers of subrogation.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

11. INVOICING

- 11.1. All Subcontractor invoices must be received at the appropriate George Koch Sons, LLC office **no later than** the 25th of the month. Invoices received later than the 25th of the month will not be placed in process for payment until the 25th of the following month. GKS will not accept invoices for any Work until shipment of the Work has occurred. GKS will not pay invoices until acceptance of the Work has occurred. For Acceptance to occur, GKS's project manager and GKS's Authorized Representative must approve all invoices.
- 11.2. At GKS's sole discretion, GKS may withhold ten percent (10%) of all invoice amounts until Acceptance has occurred.
- 11.3. For work that has been Accepted, GKS will pay invoices net 45 days from date of receipt, unless early-pay discounts are offered and accepted.
- 11.4. All invoices must include any and all applicable federal, state and/or local taxes.

12. PAYMENT

- 12.1. GKS may withhold the whole or a part of a payment to such extent as may be necessary to protect GKS or Owner from loss because of:
 - A.** Defective work not remedied
 - B.** Third party claims filed or likely to be filed
 - C.** Failure of Subcontractor to pay Subcontractor's Subcontractors for labor, material, or equipment
 - D.** Damage to Owner, GKS, or another Subcontractor, or
 - E.** Failure to carry out the work in accordance with the Contract Documents.
- 12.2. GKS shall be under no obligation to make any progress, retainer, down payment, or other payment to the Subcontractor except to the extent that GKS has received funds from the Owner for the Work invoiced by the Subcontractor. Subcontractor shall not be entitled to payment if for any reason, including the Owner's financial situation or lack of available funds, the Owner fails to pay GKS for the Work. Payment from the Owner is a condition precedent to any obligation of GKS to pay the Subcontractor. Subcontractor acknowledges that it is assuming the risk incident to the credit-worthiness of the Owner, and that the Agreement price reflects that risk. Before paying any amount due to the Subcontractor as provided herein, GKS is hereby authorized to deduct from and offset an amount equal to any and all sums or obligations owed by the Subcontractor to GKS, and any and all claims, liquidated or unliquidated, by GKS against the Subcontractor.
- 12.3. If this is a time and material order, or if any portion of this work is performed on a Time and Material basis, Subcontractor must verify all work by submitting time tickets showing hours worked and classification of worker, when requested by GKS. These tickets must accompany the invoice.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

- 12.4. Payment to the Subcontractor does not constitute or imply acceptance by GKS or the Owner of any portion of the Subcontractor's work.
- 12.5. Application for final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work, but shall in no way relieve the Subcontractor of its obligations under this Agreement or any Purchase Order.

13. EXTRA WORK/CHANGE ORDER(S)

- 13.1. Subcontractor shall not perform any extra work or supply any extra materials over the PO amount without first receiving a Change Order for the extra work or extra material. If any additional work or materials are requested, Subcontractor shall submit a quotation for such work in writing to GKS as provided in Exhibit "A." The quotation shall include a detailed breakdown showing the difference in value of the work, labor, services, and materials altered, added, omitted or changed by the proposed Change Order.
- 13.2. If the quotation is acceptable to GKS, an additional Purchase Order or Change Order shall be issued by GKS. Subcontractor shall not proceed with extra work without first receiving the additional PO or Change Order. The Subcontractor shall not be entitled to, nor shall it receive, any increase in the Purchase Order price or increase in the time for performance of the Work except upon the written Purchase Order or Change Order from GKS.
- 13.3. The GKS may order changes, additions, or deletions in the Work by written Change Order(s) only. Any change or adjustment in the Purchase Order price by virtue of such Change Order shall be specifically stated in the Change Order.
- 13.4. If an agreement as to price, schedule, or other terms in the Change Order cannot be reached, GKS may direct in writing the Subcontractor to perform the Work on a time-and-material not-to-exceed basis. The failure of the Subcontractor to immediately commence performance of any Change Order, when so directed in writing by GKS, whether or not all terms have been agreed upon, may be deemed a material breach and the Subcontractor held in default of the Purchase Order and/or Change Order. Any extension of time needed as a result of a proposed Change Order shall be requested by the Subcontractor in writing prior to the issuance of the Change Order and shall be incorporated therein to the extent required by the change.
- 13.5. If GKS directs the Change Order work to be done by the Subcontractor on a time-and-material not-to-exceed basis, the Subcontractor shall prepare daily time and material tickets that shall be submitted to GKS when requested by GKS. The time-and-material tickets shall include only direct out-of-pocket material and labor costs and shall not exceed the not-to-exceed price. These tickets must accompany the invoice. To be valid, all tickets must be signed by GKS's Authorized Representative(s).

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

- 13.6. In cases where the Subcontractor's claim for extra work is disputed by GKS, or when payment for the extra work may involve third parties, or may require further research and/or documentation, GKS's Authorized representative'(s') signature on the time tickets shall serve only as verification of labor and material quantities related to the claimed extra work described on the ticket. Validity of the extra work claim, and costs related thereto, shall be mutually determined by GKS, Subcontractor, and involved third parties.
- 13.7. Modifications that do not substantially affect the Subcontractor's cost or time of performance of this Agreement will be performed without any price or time adjustment.
- 13.8. If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work may be extended by Change Order only to the extent such extensions are obtained by GKS from the Owner under the Contract Documents.

14. SUBCONTRACTOR'S DEFAULT

- 14.1. Subcontractor shall satisfy immediately any lien or encumbrance which, because of any act or default of Subcontractor, or Subcontractor's Sub-subcontractors, is filed against Owner's premises; AND SHALL INDEMNIFY AND SAVE CONTRACTOR HARMLESS FROM ANY AND ALL LOSS, DAMAGE, OR EXPENSE (INCLUDING ATTORNEY'S FEES) ARISING THEREFROM.
- 14.2. If Subcontractor failed to perform the Work in accordance with the Schedule of Work, or fails in the performance of Subcontractor's responsibilities and within ten (10) days after notice from GKS fails to remedy any such default, or if a petition in bankruptcy is filed against Subcontractor or Subcontractor becomes insolvent, GKS may without liability terminate the whole or part of this Agreement and/or the relevant Purchase Order(s). After such termination, GKS may take possession of all materials for the Work and all partially-completed work and Subcontractor shall not be entitled to receive any payment under this Agreement or Purchase Order until the Work is finished, at which time, if the unpaid balance of the amount to be paid Subcontractor under this Agreement or Purchase Order shall exceed GKS's cost of finishing the Work, plus any damages incurred through default of Subcontractor, such excess shall be paid to Subcontractor; if said amount exceeds such unpaid balance, Subcontractor shall be liable for and shall pay the difference to GKS.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

15. GENERAL

- 15.1. Subcontractor understands and agrees that all documentation and information related to the project which is provided by GKS, including but not limited to drawings, calculations, design, diskettes, or copied media, whether transmitted electronically or by other means, is proprietary information and is the property of GKS. The Subcontractor agrees that upon written request by GKS all such documentation and information, including any and all copies made by the Subcontractor, shall be returned to GKS within fifteen (15) working days. Subcontractor further agrees that any such information and documentation provided by GKS to the Subcontractor shall not be re-used by the Subcontractor for any work not specifically related to the work covered in this Agreement or any Purchase Order, nor shall the Subcontractor distribute or otherwise pass such documentation and information to any parties other than GKS without the express written consent of GKS.
- 15.2. This Agreement or the Contract Documents may be furnished in another language to facilitate the negotiation process and it is understood that notwithstanding such, if a conflict or ambiguity is derived as a result, the interpretation to prevail and apply shall be that of the English language versions and/or interpretation. Accordingly, any dispute resolution or other proceeding(s) to be undertaken with respect to this Agreement shall be conducted in the English language.

16. SUSPENSION BY OWNER

- 16.1. Should the Owner suspend the General Contract or any part of the General Contract which includes the Subcontractor's Work, GKS shall so notify the

Subcontractor in writing and, upon receipt of said notice, the Subcontractor shall immediately suspend the Subcontractor's Work. In the event of such Owner suspension, GKS's liability to the Subcontractor, if any, is limited to the extent of GKS's recovery on the Subcontractor's behalf.

17. TERMINATION BY OWNER

- 17.1. Should the Owner terminate the Project or any part of the Project which includes the Subcontractor's Work, GKS shall so notify the Subcontractor in writing and, upon receipt of said notice, the Subcontractor shall immediately stop the Subcontractor's Work. In the event of such Owner termination, GKS's liability to the Subcontractor, if any, is limited to the extent of GKS's recovery on the Subcontractor's behalf.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

18. TERMINATION FOR CONVENIENCE

- 18.1. Notwithstanding anything contained herein to the contrary, GKS may, without cause, terminate this Agreement or any Purchase Order at any time upon written notice to the Subcontractor. In the event of such termination Subcontractor shall be entitled to its actual direct costs for labor, materials and equipment incurred to the effective date of such termination plus a reasonable markup, not to exceed ten percent (10%) of such direct costs for overhead and profit. The Subcontractor shall not be entitled to anticipated profit or damages of any kind (including consequential damages) for any termination under this clause. Upon receipt of payments provided for above, the parties hereto shall have no further obligation to each other, except for Subcontractor's obligations to perform corrective and/or warranty Work relating to work actually performed by the Subcontractor or any of its Sub-subcontractors prior to the termination, and to indemnify GKS as provided for in this Agreement.

19. WRONGFUL DEFAULT CONVERTS TO CONVENIENCE TERMINATION

- 19.1. In the event GKS terminates Subcontractor for any cause under the terms of this Agreement or any Purchase Order and it is later determined that such termination for cause was not justified, then in such event, such termination for cause shall automatically be converted to a termination for convenience.

20. DISPUTE RESOLUTION

- 20.1. All disputes between GKS and the Subcontractor shall be resolved as follows:

The parties first shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement or Purchase Order promptly by negotiations between executives of GKS and Subcontractor who have authority to settle the controversy and preferably by executives who do not have direct responsibility for administration of this Agreement or any PO.

If such dispute has not been resolved by negotiation as provided in the preceding paragraph, the parties shall endeavor to settle such dispute by mediation within forty-five (45) days after the dispute arose in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. If the parties do not agree on a mediator within ten (10) days, either party may request the American Arbitration Association to appoint a mediator who shall be an attorney who has substantial experience in commercial law issues. This Agreement and all relevant Purchase Orders shall be construed and enforced in accordance with, and the rights of the parties shall be governed by the laws of the State of Indiana (not including the choice of law rules thereof). The place of the mediation shall be at a site mutually agreed upon by the parties and, in the absence of such agreement, the site of the mediation shall be Evansville, Indiana.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

If such dispute has not been resolved by negotiation or mediation as provided in the preceding two paragraphs, within sixty (60) days of the initiation of such procedures, the parties shall finally settle such dispute by binding arbitration conducted expeditiously in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a sole arbitrator; provided, however, that if one party has requested the other to participate in negotiation or mediation and the other has failed to participate, the requesting party may initiate arbitration before expiration of the above period. The sole arbitrator will be an attorney who has substantial experience in commercial law issues selected from the International Chamber of Commerce panel of neutral attorneys. If the parties encounter difficulty in agreeing on an arbitrator they will seek the assistance of the American Arbitration Association. The place of the arbitration shall be at a site mutually agreed upon by the parties and, in the absence of such agreement, the site of the arbitration shall be Evansville, Indiana. The arbitrator shall be bound to follow and apply the law of Indiana, although the arbitrator is not empowered to award consequential, incidental, indirect, treble, special, exemplary or punitive damages under any circumstances, whether statutory or common law in nature, including treble damages by statute. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving two (2) or more parties. The arbitrator shall be required to make written findings of fact and conclusions of law to support its award. Except as may be required by law, neither a party nor an arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. By execution of this Contract, the parties consent to the jurisdiction of the International Chamber of Commerce and waive any objection which either party may have to any proceeding so commenced based upon improper venue or forum non conveniens."

If GKS or Subcontractor is named as a party in any lawsuit or arbitration brought by or against any third-party that is not a party to this Agreement or any relevant Purchase Order, then GKS at its sole discretion may waive the arbitration provision herein above and compel Subcontractor to prosecute or defend its dispute with GKS in the same lawsuit or arbitration proceeding brought by or against such third-party.

Discovery in the form of depositions and requests for production of documents will be allowed pursuant to Federal Rules of Civil Procedure; provided, however, that the arbitrator shall be empowered to limit discovery for good cause shown and in the interest of justice in order to assure that the dispute resolution of the applicable matter will proceed without undue delay. The parties intend that the dispute resolution proceedings and discovery shall be conducted as expeditiously as possible. Without limiting the foregoing, it is intended by the parties that the arbitration of the dispute be completed within sixty (60) days of the selection of the arbitrator. All discovery obtained by the parties in the course of the dispute resolution shall be fully usable in connection with the dispute resolutions as though it were obtained under the Federal Rules of Civil Procedure.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

All awards shall be in writing, unless the parties agree otherwise, and shall state the reasoning on which the award rests. The award shall include a written determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy. The Arbitrator shall deliver a copy of the award to each party personally or by registered mail. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16 as amended from time to time, and judgment upon the award rendered by the Arbitrator(s) may be entered by any court having jurisdiction thereof.

The Arbitrator shall be bound to follow and apply the terms of the Contract Documents and shall decide in accordance with the express terms of the Contract Documents and shall take into account usages of the trade applicable to the Contract Documents.

- 20.2. The above terms and conditions control in any case of conflict with the terms and conditions printed elsewhere on any Purchase Order.

21. SEVERABILITY

- 21.1. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be enforced to the fullest extent permissible and the remaining portion of this Agreement shall remain in full force and effect.
- 21.2. The failure of either party to perform its obligations under this Agreement in any material respect or extent shall not necessarily render null and void the remaining terms and obligations of this Agreement.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

22. RELATIONSHIP OF THE PARTIES

22.1. Subcontractor is an independent contractor and is not an agent, joint venturer, partner or employee of GKS, nor shall Subcontractor or any of its employees contend to be employees of GKS. In addition, Subcontractor understands and agrees that its employees are not eligible for any benefit programs available to GKS's employees. Accordingly, Subcontractor shall be solely responsible for providing such insurance and other benefits as Subcontractor deems necessary, advisable or appropriate, or as required by law. Since Subcontractor is an independent subcontractor, GKS will not make any deductions from payments due from GKS to Subcontractor under this Agreement for any payroll or similar taxes, premiums or contributions now or hereafter required to be collected and/or paid by an employer for or on account of such employer's employees. Without limiting the generality of the preceding sentence, GKS will not deduct from sums due Subcontractor, nor pay for or on account of Subcontractor any (i) federal, state or local income tax withholding, (ii) social security or medicare tax, (iii) health, accident, disability or life insurance premiums mandated by any governmental agency, (iv) unemployment compensation premium or tax, or (v) workers' compensation premium or tax that would be required to be withheld and/or paid by the Subcontractor. The GKS shall not have any right to determine the route or means of transportation to and from the various places that Subcontractor must travel in providing services under this Agreement, and Subcontractor will be responsible for providing its own tools and equipment in connection with delivering the services. Further, Subcontractor understands and agrees that it does not have any right to enter into any contracts or commitments on behalf of GKS in any respect whatsoever.

23. TERM OF AGREEMENT

23.1. The term of this Agreement shall be from the effective date as stated above, and shall continue until performance has been completed under each of the Purchase Orders, unless prior termination has been effected pursuant to the terms herein.

24. CONFIDENTIALITY

24.1. Confidential Information

The parties acknowledge that in the course of performance of their obligations under this Agreement, each Party may obtain certain confidential and proprietary information of the other Party, including without limitation, information concerning copyrighted works, patents or patent pending investigations or development, source code, hardware, products, design documentation, system documentation specifications, and general information regarding such Party's financial, business, and marketing matters.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

All such information disclosed which has been identified or designated to be confidential and proprietary, or which a reasonable party would be judged to be confidential under the circumstances, shall be referred to hereafter as "Confidential Information." All such Confidential Information shall be held in the strictest confidence and trust by the receiving Party and not disclosed to any third parties for a period of five (5) years; provided however, that each Party may disclose the other's Confidential Information to employees, agents, consultants and subcontractors who have executed non-disclosure agreements and who have a need to know such Confidential Information, without the prior written permission of the disclosing Party. Further, Confidential Information shall only be used for purposes in the direct performance of this Agreement. Subcontractor acknowledges that the injury to which would be occasioned by subcontractor's failure to abide by the terms of this Agreement shall not be adequately compensated by monetary damages alone and GKS remedies at law shall be inadequate. Therefore, in addition to all other remedies available to GKS at law, in equity or pursuant to this Agreement, including but not limited to monetary damages, GKS shall be entitled to seek immediate and permanent injunctive and other equitable relief, including but not limited to, temporary restraining orders and/or preliminary or permanent injunctions to restrain or enjoin any violation of the terms and conditions of this Agreement. In the granting of any such equitable relief, subcontractors acknowledge and agree that GKS shall be entitled to such relief without the necessity of posting a bond or other security. These remedies are in addition to all other relief set forth in this Agreement and available at law, along with the reasonable attorneys' and experts' fees and costs of pursuing available remedies to enforce the terms of this Agreement. Subcontractor hereby waives, with respect to any future dispute related to this Agreement, any defense based on the argument that GKS will not be irreparably harmed or that GKS have available an adequate remedy at law.

24.2. Exclusions

Notwithstanding the foregoing, Confidential Information shall not include any information which is, a) published or otherwise available to the public other than by breach of this Agreement by the recipient Party; b) rightfully received by the recipient Party from a third party without confidential limitations; c) independently developed by the recipient Party by employees or subcontractors having no access to Confidential Information; d) known to the recipient Party prior to its first receipt of same from the disclosing Party; e) hereinafter disclosed by the disclosing Party to a third party without restriction on disclosure; f) approved for release by written authorization of the disclosing Party; or g) disclosed by reason of legal, accounting or regulatory requirements beyond the reasonable control of the receiving Party or the disclosing Party, provided however that if a recipient Party is required to disclose Confidential Information, such Party shall promptly notify the disclosing Party of the order or request and permit the disclosing Party (at its own expense) to seek an appropriate protective order.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

25. ATTORNEYS' FEES

- 25.1. In the event of any dispute, the prevailing Party shall be entitled to recover all of its reasonable attorneys' and experts' fees and costs incurred as a result of the dispute and those incurred in protecting any rights in any Bankruptcy proceeding or any action pursuant to any statutory right. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment.

26. INTEGRATION

- 26.1. This Agreement and each PO attached hereto contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and merges and supersedes all prior agreements, understandings, and representations. No addition or modification to this Agreement is valid unless made in writing and signed by both Parties hereto.

27. AUTHORITY

- 27.1. The parties executing this Agreement on behalf of Subcontractor and GKS warrant that they have the authority to enter into this Agreement and to bind their respective company to all of the terms and conditions of this Agreement.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

28. INTERPRETATION

28.1. This Agreement shall inure to the benefit of, and shall be binding upon, the respective legal representatives, successors, and assigns of each of the parties. This Agreement represents a compromise between the parties and is a product of arms-length negotiations. These parties have read this Agreement completely and have had the opportunity to seek the advice and assistance of competent legal counsel. In the event that ambiguity exists or is deemed to exist in any provisions of this Agreement, said ambiguity is not to be construed by reference to any doctrine calling for such ambiguity to be construed against the drafter of this Agreement. No statement, action, or omission of either of the parties hereto shall be considered to be a waiver of any right, including, but not by way of limitation, any failure of either party to insist upon the strict performance of any agreement, term or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, during the continuation of any such breach shall constitute a waiver of any such breach or any such Agreement, term or condition. No remedy or election hereunder shall be deemed exclusive, but shall, whenever possible, be cumulative with all other remedies at law or in equity. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings set forth herein are included for the convenience of reference only and shall not affect the interpretation hereof, nor shall any weight or value be given to the relative position of any part or provision hereof in relation to any other provision in determining such construction. As used in this Agreement, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall include any other gender. Except as stated herein otherwise, the Contract Documents represents the final agreement between the parties and contains the entire, complete and exclusive agreement between the parties concerning this subject, and supersedes all prior oral or written understandings, agreements or contracts, formal or informal, between the parties.

Manufacturing Subcontractor Agreement

Revision (International) Dated 1/17/2013

- 28.2. THIS PROVISION, AND EACH AND EVERY OTHER PROVISION OF The CONTRACT DOCUMENTS AND PURCHASE ORDER MAY NOT UNDER ANY CIRCUMSTANCES BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR WAIVED BY AN AGREEMENT IN WRITING EXECUTED BY ALL PARTIES HERETO.

GEORGE KOCH SONS, LLC (GKS)	
BY:	
TITLE:	
DATE:	1-Dec-09

SUBCONTRACTOR NAME:	
BY:	
TITLE:	
DATE:	1-Dec-09