

## Purchase Order Clause to Address Construction Trucking Services in AB 5

Last Updated: January 2, 2020



Subcontractor represents and warrants that subcontractor (i) provides trucking services in the construction industry, (ii) has all required business and tax registrations and contractor's licenses, (iii) is registered with the Department of Industrial Relations as a public works contractor pursuant to Labor Code § 1725.5, (iv) is a sole proprietor who operates the equipment to be used to perform the Work and holds a valid motor carrier permit issued by the Department of Motor Vehicles, or otherwise utilizes its own employees to perform the Work, (v) retains the authority to hire and to fire any employees performing the Work, (vi) maintains a business location separate from the location of the Work, (vii) customarily engages in an independently established business which includes provision of services of the same nature as the services to be provided under this Agreement, (viii) is a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation, and (ix) was provided the opportunity to negotiate this agreement. In addition to any insurance, bonds, or warranties obtained or provided by Subcontractor relating to the Work, Subcontractor assumes financial responsibility for any errors or omissions in the provision of labor or services under this Agreement and, to the fullest extent permitted by law, indemnifies, defends and holds harmless Contractor and the Owner, and each of their, partners, shareholders, members, managers, officers, directors, agents, representatives, employees and lender(s) (collectively, "Indemnitees") from and against any and all losses, damages, liabilities, demands, expenses, costs, causes of action, suits, claims and liens (including, but not limited to, mechanics' liens and stop payment notices), including, without limitation, attorneys' fees, consulting costs and court costs, arising out of, or relating in any way, directly or indirectly to the Work, any act or omission by Subcontractor, its sub-subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, or Subcontractor's breach or default of its obligations hereunder (each a "Claim" and collectively, "Claims"). The requirements of this section shall survive the completion of the Work or the earlier termination of this Agreement. Subcontractor shall include in all agreements with its sub-subcontractors clauses substantially similar to this section, wherein the sub-subcontractors agree to defend and indemnify Subcontractor, Contractor and Owner. "Work" means the services and obligations of Subcontractor under this Agreement.

Within ten (10) days following a written request by Contractor, Subcontractor shall provide to Contractor documents requested by Contractor substantiating Subcontractor's compliance with this provision.

*[Note, "Work" is probably defined already in most agreements/POs.]*

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