



## American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Termination for Convenience, Part 2 of 2

### Sample Language

#### ASA Recommends:

"In the event of termination by the project owner or Customer for any reason, regardless of default by Subcontractor, project owner or Customer shall be entitled to an interest in and the use of only those materials and supplies at the project site for which payment has been made to Subcontractor. Under no circumstances shall project owner or Customer be entitled to any interest in or use of Subcontractor's tools, machinery or equipment, regardless of whether the same are located on the Project site."

#### What You May See in the Wild:

"Upon termination of this Subcontract for any reason prior to its completion, the Contractor may take possession of the site and all materials, equipment, tools and construction equipment and machinery thereon owned by Subcontractor."

**Note:** Termination language frequently is pass-through language found in the Owner-Contractor agreement.

#### Additional Resources:

*ASA Subcontractor's Negotiating Tip Sheet on Termination for Convenience, Part 1.* Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*ASA Subcontract Addendum (2011)*, ¶ 21. Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*Podcast: Limiting Termination for Convenience.* Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*White Paper: Termination and Suspension for Convenience.* Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*ConsensusDocs Form 750, Standard Agreement Between Constructor and Subcontractor (2012)*, ¶ 10.4. Available at [www.ConsensusDocs.org](http://www.ConsensusDocs.org); ASA members can get a 20 percent discount by entering ASA100.

*American Institute of Architects Form A401, Standard Form of Agreement Between Contractor and Subcontractor (2007)*, ¶ 7.2. Available at [www.aia.org/contractdocs/](http://www.aia.org/contractdocs/).

### Impact on the Subcontractor

- The subcontractor could be terminated at any time even though it is not in default of any of its obligations.
- The subcontract agreement may be illusory if the contractor can opportunistically terminate the subcontract and complete the project with another subcontractor with a "better deal" or merely on a whim.
- The subcontractor could find that the owner or contractor has the right to seize control of the subcontractor's tools and equipment in the event of termination.

### Negotiating Tips

**When the GC Says:** "If you're terminated, regardless of the cause, I'll need you to leave the site immediately and leave your materials and equipment behind so that the owner can complete the project."

**The Sub Should Say:** "I understand the need to complete the project. But I can't agree to leave behind any materials for which I haven't been paid. And I certainly can't leave behind any equipment, which I'll need for other projects."