



American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Termination for Convenience, Part 1 of 2

Sample Language

ASA Recommends:

"In the event of any termination by the project owner or Customer, which is not justified by a default of Subcontractor, or termination by Subcontractor, Subcontractor shall be entitled to payment from Customer for all costs incurred by Subcontractor for which Subcontractor has not received payment, plus reasonable overhead, profit, expenses, attorney fees, interest, and overhead and profit on unperformed work."

What You May See in the Wild:

"The Contractor shall have the right at any time, and for any or no reason, including for convenience, to terminate this Subcontract and require the Subcontractor to cease work thereon."

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

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 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: "I need to be able to terminate you if project conditions change."

The Sub Should Say: "I can't agree to termination for just your convenience. I *can* agree to my termination only if the owner terminates you."

When the GC Says: "In the unlikely event that the owner does exercise the termination for convenience clause, it's all over. I won't be able to make further payments to you."

The Sub Should Say: "I can't agree to something that is so far off of standard industry practice. Everyone from the federal government, to model documents published by ConsensusDocs and AIA, allow reimbursements for costs caused by a termination. I'll also need to be reimbursed for reasonable overhead and profit for work not executed."

Additional Resources:

ASA Subcontractor's Negotiating Tip Sheet on Termination for Convenience, Part 2. Available to ASA members at www.ASAonline.com.

ASA Subcontract Addendum (2011), ¶ 21. Available to ASA members at www.ASAonline.com.

Podcast: Limiting Termination for Convenience. Available to ASA members at www.ASAonline.com.

White Paper: Termination and Suspension for Convenience. Available to ASA members at www.ASAonline.com.

ConsensusDocs Form 750, Standard Agreement Between Constructor and Subcontractor (2012), ¶ 10.4. Available at 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/.