



American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Payment Set Off

Sample Language

ASA Recommends:

Strike set off language.

What You May See in the Wild:

Example #1: "Contractor may set off or credit against amounts otherwise payable to Subcontractor, all amounts due from Subcontractor to Contractor, whether arising out of this project or otherwise."

Example #2: "Unless prohibited by law, Contractor may set off against the Subcontract price the amounts owing from Subcontractor to Contractor, whether or not related to the project."

Example #3: "Contractor may apply any payments otherwise due to the Subcontractor hereunder to any other indebtedness, liability or obligation of Subcontractor to Contractor whether under this Subcontract or any other agreement or circumstance."

Additional Resources:

ASA *Subcontract Addendum (2011)*. Available to ASA members at www.ASAonline.com.

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

Impact on the Subcontractor

- The subcontractor's cash flow could be severely impacted if a customer offsets a claim on one job against payment for all other jobs.
- A customer with its own cash flow problems may fabricate reasons to hold payment on all of a subcontractor's jobs.
- A customer could hold payments on all jobs as leverage to force a subcontractor into a compromised position on a dispute.

Negotiating Tips

When the GC Says: "You're working on multiple projects for us. We see it as one big picture."

The Sub Should Say: "Each job should stand on its own."

When the GC Says: "Each of these jobs is fairly small. If you create a major problem, we need to be sure you have enough skin in the game."

The Sub Should Say: "We have substantial amounts of insurance and net worth to offset any problem you may face on a project."

When the GC Says: "Filing and getting paid on an insurance claim can take some time. We need to keep this job moving."

The Sub Should Say: "If you hold back my pay on other jobs for a problem on this job, it could severely impact my company's cash flow, making it harder for me to perform. Robbing Peter to pay Paul won't achieve what you want."

When the GC Says: "We need to be sure that you'll expeditiously correct any problems that arise."

The Sub Should Say: "My company has never failed to correct a problem or pay for damage that we caused."