

AIA[®] Document A101[™]

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the in the year of
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

VOLKSWAGEN GROUP OF AMERICA, INC.

and the Contractor:
(Name, address and other information)

The Project is:

The Architect is:
(Name, address and other information)

The Construction Manager is:
(Name, address and other information)

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplemental and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8. Contract Documents do not include: soils, geotechnical, or other reports, surveys, or analyses, which may be printed, bound or assembled within the Contract Documents or otherwise made available to the Contractor for review or information under this Agreement, unless specifically enumerated and directly incorporated by reference in Article 8 of this Agreement. Such information is available to the Contractor for information purposes only. Contractor shall be solely responsible for the interpretation of all such information, and Owner makes no representation or warranty as to the reliability or accuracy of any such information. The Owner has issued a Purchase Order in connection with this Agreement. If there is any conflict between the Purchase Order and this Agreement, this Agreement shall control.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 3.2 The Contract Time shall be measured from the date of commencement, upon receipt of purchase order, no later than _____.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than _____, and as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

The Work shall be completed in accordance with the project schedule attached hereto as **Schedule 3.3** (the "Project Schedule") to the extent it does not conflict with the Milestone Dates listed below. The Contractor shall achieve Substantial Completion of the following Substantial and Final Completion dates ("Milestone Dates"):

Portion of Work

Milestone Completion Dates

In the event the Contractor fails to meet the final milestone completion date of _____, of this Agreement, the Owner may recover, from Contractor, consequential damages being limited to and not exceeding the aggregate sum equal to purchase order value of \$ _____. It is agreed that any consequential loss will be limited to no more than \$ _____, and payment of such claim will be subject to the terms and conditions of the applicable insurance policy(s). The limitation of Owner's consequential damages to the aggregate sum of \$ _____ does not apply to and shall not limit any other damages or remedies available to the Owner in accordance with this Agreement or applicable law.

Contractor waives any and all claims it may have for consequential damages against Owner. Contractor's waiver of consequential damages does not apply to and shall not limit any other damages or remedies available to the Contractor in accordance with this Agreement or applicable law.

Definition of Consequential Damages for the purposes of this Agreement: Such damage, loss, or injury that does not directly and immediately result from an event or a negligent act, but is a consequence of the initial event or act.

§ 3.4 The Contractor shall begin the Work on the Date of Commencement, _____, and shall perform the Work diligently, expeditiously, and with adequate resources so as to complete all the Work within the Contract Time and in accordance with the Project Schedule. The Contractor shall resequence or reschedule the Work, to the extent possible, to avoid or minimize any delay to the Contract Time, except for the final completion date of _____.

Neither the Owner or its representatives shall be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against them, or any of them, on account of, any damages, costs, or expenses of any nature whatsoever which the Contractor, its Subcontractors, or Subcontractors or any other person may incur as a result of any delays, interferences, suspensions, rescheduling, changes or omission of the Owner, or its representatives, it being understood and agreed that the Contractor's sole and exclusive remedy in such event shall be an extension of the Contract Time and an adjustment to the Project Schedule, but only in accordance with the provisions of the Contract Documents.

If, in the reasonable opinion of the Owner, the Work falls behind schedule, so that the Owner is concerned about the Contractor's ability to achieve Final Completion within the Contract Time, the Owner shall provide Contractor with written notice of such concerns and request that Contractor provide the Owner, within seven (7) calendar days of such request, with written assurances and a plan to achieve Final Completion within the Contract Time. If the Owner is, in its reasonable opinion, unsatisfied with the Contractor's response, the Owner may terminate this Agreement pursuant to Paragraph 14.2 of the AIA A201 as modified by the Owner and provided to the Contractor (the "A201").

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be _____, subject to additions and deductions as provided in the Contract Documents. The Contract Sum is based on the "Schedule of Values" attached hereto as **Schedule 4.1**.

§ 4.2 N/A

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

§ 4.3 Refer to section 7.16 regarding procedure for handling change orders.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner and/or its representatives by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Owner and/or its representatives not later than the last day of a month, the Owner shall make payment to the Contractor not later than the 21st day thereafter. If an Application for Payment is received by the Owner and/or its' representatives after the application date fixed above, payment shall be made by the Owner the following month.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of the A201;
- .2 Intentionally Deleted;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the A201.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the A201.

§ 5.1.8 N/A

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment shall be made by the Owner to the Contractor when (1) the Contract, including punch list items, has been fully performed by the Contractor except for the Contractor's responsibility to correct defective or nonconforming Work, as provided in the Agreement, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work and all required supporting documentation have been submitted by the Contractor and reviewed and approved by the Owner's accountants, to the extent applicable; (3) a final Certificate for Payment has been properly issued by the Owner; (4) Contractor has submitted all necessary paperwork all pertinent governmental agencies (if required) which will enable Owner to procure a final sign-off; and (5) all other requirements of Paragraph 9.10 of the A201 shall have been fulfilled.

Prior to and as an express condition precedent to final payment, the Contractor shall furnish the Owner with the following:

- (i) All documents outlined in Article 9 of the A201;
- (ii) All requirements of the Special Conditions, as hereinafter defined, are satisfied;
- (iii) All maintenance and operating manuals, and instruction (where appropriate) in the operation of electrical, mechanical and security systems;

- (iv) Subcontractor shop drawings reflecting “as built” conditions for concealed work if installed in locations other than indicated on the Contract Documents;
- (v) All original guarantees and warranties from Subcontractors, vendors, suppliers and manufacturers properly completed in Owner’s name or valid assignments and/or transfers thereof consented to by the insurers where required.
- (vi) A list of names, addresses and phone numbers of all Subcontractors and other persons providing guarantees and warranties.
- (vii) Written proof by the Owner or its representatives that all punchlist items have been corrected to the satisfaction of the Architect.
- (viii) Contractor’s final Waiver of Lien and Subcontractors’ Waivers of Lien which may be conditional on final payment; and within ten (10) days following final payment, Contractor shall submit final Waivers of Lien from those Subcontractors who shall have submitted conditional Waivers of Lien, and this obligation shall survive the completion of the Contract.

Contractor understands and agrees that the foregoing express conditions precedent to the Owner's obligation to make final payment are not merely timing provisions, and that Owner shall not have any obligation to make final payment until the foregoing enumerated conditions precedent (i) through (viii) have been fulfilled.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 21 days after the issuance of the Owner's final Certificate for Payment as the same may be approved in writing by the Owner, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the A201.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of the A201.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of the A201 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 [Intentionally Deleted]

§ 7.3 The Owner's representative is:
(Name, address and other information)
Cell:

Email:

§ 7.4 The Contractor's representative is:
(Name, address and other information)
Cell:
Email:

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days written notice to the other party.

§ 7.6 Other provisions:

§ 7.7 The forms of subcontract to be used between the Contractor and the Subcontractors shall be submitted to the Owner and/or its representatives for prior review and approval.

§ 7.7.1 Whenever any approval, confirmation, acceptance or similar action is required from Owner in the Design Documents, including without limitation with respect to approval of schedule of values, submittals, Drawings, Specifications, **Project Manual**, and **all additional terms and documents provided in the RFQ**, Milestone Dates, payments, change orders and other changes in the Work, such action shall be valid only if in writing and signed by Owner's Designate Representative or other person designated and authorized by Owner to sign on Owner's behalf. After execution of the Contract, Owner and the Contractor shall establish agreed procedures to be followed in connection with change orders and other changes in the Work, if any.

§ 7.7.2 The Work to be performed shall be commenced on and, subject to authorized adjustments and to delays not caused by the Contractor, Substantial Completion shall be achieved in accordance with the Milestone Dates set forth in Section 3.3 of the Agreement.

§ 7.7.3 The forms of subcontract to be used between the Contractor and the Subcontractors shall be submitted to the Owner or its representatives for prior review and approval.

§ 7.7.4 Subject to Section 3.7.3 and 3.7.4 of the A201, in the event of any conflict, inconsistency or ambiguity among any of the Contract Documents or between the Contract Documents and Applicable Law, standards, codes and ordinances, the Contractor shall immediately provide notice to the Owner or its representatives.

§ 7.7.5 The Contractor shall at all times act as an independent contractor, and nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Contractor as an agent for or joint venturer with Owner. Design-Builder shall at all times be responsible for the actions and omissions of the Subcontractors, suppliers and other persons and entities performing the Work or any part thereof.

§ 7.7.6 Contractor shall be responsible for ensuring that all subcontractors involved in providing the Work or other services in connection with the Project, have professional liability insurance coverage in the amounts satisfactory to the Owner and shall provide the Owner certificates evidencing such coverage prior to commencement of the Work.

§ 7.7.8 After the award of each contract or subcontract, Contractor shall assume full responsibility to Owner for the completion of the contracts within the Owner's Schedule and for the price set forth in the contract or subcontract, subject only to Change Orders approved by Owner, which approval shall not be unreasonably withheld.

§ 7.7.9 Contractor shall perform the Work in accordance with and the Project shall meet all applicable laws, ordinances, codes, rules, and regulations as they apply to means, methods, sequences and techniques for which Contractor is responsible.

§ 7.7.10 The Owner agrees to pay and the Contractor agrees to accept the sum set forth in the Contract Sum as full compensation for all labor, supervision, equipment, home office and field overhead, materials, administrative and incidental expense required in executing all of the Work provided for in this Agreement and set forth in the Drawings and Specifications, including all loss or damage arising out of the Work, as impacted by the elements or from any obstruction, delay or difficulties which may be encountered, subject to the other provisions of the Contract Documents relating to claims and insurance. It is further agreed that the Work may be modified, in nature or scope, and that the Contract Sum may likewise be modified only in accordance with the Contract Documents. No claims for extra compensation or adjustments in the Contract Sum will be made by the Contractor on account of any delays or costs incurred as a result of variations within the Project Schedule to the extent caused by the Contractor, its Subcontractors, agents or others for whom Contractor is responsible.

§ 7.7.11 Each Application for Payment shall constitute a representation by the Contractor that all Work covered by the application has been fully performed in accordance with the Contract Documents, that all materials and equipment are of good quality and new, and that all previous payments made by the Owner to the Contractor have been paid to the Subcontractors entitled to payment. In the event Contractor elects to withhold any payments to any Subcontractors or others performing Work, Contractor shall provide written notice to the Owner of all such amounts withheld and the Contractor's reasons for withholding such amounts.

§ 7.7.12 The Contractor shall furnish and assign to Owner, in the Owner's name, all warranties and guarantees provided by manufacturers, suppliers, dealers and other third parties for all equipment, appliances and materials incorporated into the Work. In addition to such warranties and guarantees, the Contractor shall remain directly responsible to the Owner for all warranty work including but not limited to (1) contacting applicable Subcontractor

or other third party, (2) inspecting all warranty work, and (3) obtaining approval by the Architect and Owner for any such warranty work. Such obligation and warranty of Contractor shall continue for two (2) years after the date of Final Completion.

§ 7.7.13 The Contractor shall comply at all times with its own Safety Program, as well as VWOA APG's Safety / Security Policies and Procedures.

§ 7.7.14 All Change Orders will have to be initiated by Owner or its representative, and the Contractor will provide detailed written estimate(s), which will be subject to Owner or its representative review and validation.

§ 7.8 All notices or other communications hereunder to either party shall be (1) in writing, via email and certified overnight mail, and, if mailed, shall be deemed to have been given on the earlier of actual receipt by the intended recipient or on the third business day after the date when deposited in the United States mail by certified mail with signature of receipt, postage pre-paid, Federal Express or other recognized and reputable overnight courier requiring signature confirmation of receipt, addressed as hereinafter provided, and (2) addressed as follows:

If to the Owner:

If to the Contractor:

or to either party at such other address as such party may designate, in a notice to the other party given pursuant to the terms above.

§ 7.9 All references to "Architect" in this Agreement and the A201 shall mean the Owner or a person or entity so designated by the Owner. All references to "Construction Manager" in this Agreement and the A201 shall mean the Owner or a person or entity so designated by the Owner.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The entire set of contract documents ("Contract Documents"), except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed Owner modified edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101.

§ 8.1.2 The General Conditions are the Owner modified edition of the General Conditions of the Contract for Construction, AIA Document A201 as provided to the Contractor (the "A201").

§ 8.1.3 The Request for Quote ("RFQ") identified as _____ and which was released on _____ contains the Specifications, which are incorporated herein by reference, including all clarifications and amendments, distributed throughout the entire bidding period. The RFQ document also contains Supplemental and other Conditions of the Contract which are as follows:

Document	Title
Appendix A	Vendor Profile
Appendix B	Administrative Complaints & Lawsuits
Appendix C	Organizational structure
Appendix D	Officers of the Company
Appendix E	Supplier Exceptions to VWGoA Requirements
Appendix F	VWGoA supplier procurement Code of Ethics
Appendix G	VWGoA supplier Diversity Program
Appendix H	Declaration of Social Rights and Industrial Relationships
Appendix I	Origin of Content
Appendix K	Environmental
Appendix M L	Safety

Appendix O	Confidentiality Agreement
Appendix P	Permits and compliance with state, local and federal laws and regulations
Appendix Q	Vendor Confidential Data Usage

In the event of a conflict between the provisions of this Agreement or the General Conditions and the Supplemental Conditions identified in this Section 8.1.3, the Supplemental Conditions shall control.

§ 8.1.4 The Specifications are defined as the Specifications and shall include the **Project Manual**, and **all** additional terms **and documents provided in the RFQ**.

§ 8.1.5 The Drawings are as follows: -- N/A
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
 See attached **Schedule 8.1.5**.

§ 8.1.6 The Addenda are as follows:

Number	Date
--------	------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7
 Documents other than those identified as Contract Documents above, if any, also forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibits:

- Exhibit 1** **AIA A201**
- Exhibit 2** **Evidence of Insurance**
- Exhibit 3** **Schedule 3.3 – Project Schedule**
- Exhibit 4** **Schedule 4.1 – Schedule of Values**
- Exhibit 5** **Negotiation Meeting Minutes dated _____**
- Exhibit 6** **Evidence of Bonding**
- Exhibit 7** **accepted proposal and clarifications**
- Exhibit 8** **instructions to bidders including the Questions and Answers submitted by and to all bidders**

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

OWNER *(Signature)*

(Printed name and title)

OWNER *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)