

PAYMENT CHECKLIST FOR STORED MATERIAL

SUBCONTRACTOR _____ DATE _____

JOB NAME _____ JOB # _____

- Executed Bill of Sale (with Subcontractor Corporate Seal)**
(Applicable if sub bought material from other vendors/suppliers)
- Schedule A** (Attached to Bill of Sale)
(Contract Value includes all taxes, Description of Material, Description of Location)
- Executed Security Agreement** (See Turner's Signature Matrix for Amount Limits)
- UCC-1 Form – Submit or File with the Secretary of State** (with \$5 Receipt / Instrument #)
(*Website for Online Filing: www.sos.ca.gov*)
- Certificate of Insurance (COI)** (Obtain from Subcontractor's insurance company)
(COI must cover material @ storage location with the **FULL VALUE of the material**)
(Additional insured also to be listed same as normal insurances)
- Loss Payable Endorsement** (Obtain from Subcontractor's insurance company)
(Required if Turner cannot be named as Additional Insured)
- Consent of Surety (If Bonded)** (Not applicable, if project has Subguard)
- Map of Facility where stored materials are located**
- Memo and Photos of Shop Inspection by Turner Staff**
- Subcontractor Information Letter (SIL)** – Indicating Location and Amount of Material
(Used when offsite material is **NOT** in the contract)
(Purchasing needs UCC-1 Instrument No. & Security Agreement to prepare the SIL)
- Lease Agreement**
(Not mandatory – Use if there is a concern over the financial stability of the subcontractor or storage facility)
- Copy of Owner Pay Application - AIA G702(Summary) & G703 (Schedule of Values - Amount must be specified under the Stored Material Column)**
- Copy of Subcontractor Billing - AIA G702(Summary) & G703 (Schedule of Values - Amount must be specified under the Stored Material Column)**
- Verify Receipt of Owner Payment before paying Subcontractor**
- UCC-3 Form (Termination to Financing Statement) – File with Secretary of State**
(*Website for Online Filing: www.sos.ca.gov*)

Policy on Paying for Material Stored Offsite

Chapter: 4.04 Bills of Sale

Rev 10/05/08

As an initial point of information, we would like to make it clear that whenever possible Turner should require that items purchased under a Bill of Sale be stored in locations other than the Seller's (Subcontractor's or Vendor's) plant or warehouse. While goods are in the possession of a Seller, the possibility exists that they can be sold (albeit wrongfully) to a "buyer in the ordinary course of business" who would then have rights in those goods superior to Turner's. In addition, where such Turner-owned and Seller-retained goods are not clearly segregated from the rest of the Seller's inventory, Turner's ownership rights can be subject to attack by the Seller's creditors, including lenders who might advance money to the Seller based on the value of their inventory.

Bill of Sale

A Bill of Sale is used when a Subcontractor/Vendor has material, either plain or fabricated, ready for delivery to a job in advance of our requirement. Circumstances such as lack of job progress, a Subcontractor's/Vendor's financial requirements when the material involves a substantial outlay of capital, or a shortage of the particular material may require Turner to pay for and take title to the material stored at an independent warehouse or as a last resort at the Subcontractor's/Vendor's premises prior to delivery at the job site. If it is determined that it is desirable to make a payment (with the approval of the Architect and/or Owner as may be required by our General contract) for material (either plain or fabricated) or for equipment, a Bill of Sale including proper evidence of Insurance must be obtained. Form 631 (with Acknowledgement forms for Corporation, Individual or Partnership as necessary) is designed for use on all jobs, regardless of the state in which the job is located.

The Bill of Sale is issued to the Subcontractor/Vendor (by Purchasing, Accounting or Operations-each Business Unit must determine who initiates the process), who completes three copies, two of which are to be properly executed and returned to the proper Turner Department.

Make sure that the Bill of Sale has been properly completed, executed and delivered to Turner and verify that Schedule A of the Bill of Sale adequately describes the Goods with sufficient detail that the nature, type and location of the Goods are clearly specified. After describing the materials, Schedule A must establish the total dollar value forming the basis of the Bill of Sale. Turner must have received the required Certificates of Insurance and Additional Insured or Loss Payable Endorsement from the Seller and/or its insurance agent before any payments are disbursed in connection with the Bill of Sale transaction.

Someone from Turner must visit the facility where the material is stored to verify that the material in the Bill of Sale is stored at the facility. It is important that any materials purchased by Turner are in areas that are fenced or roped off so the material is segregated by itself and the area and the material itself clearly tagged as belonging to Turner.

The Purchasing Agent should then issue a Subcontract Information Letter to the Subcontractor, or a modification to the Purchase Contract to the Vendor to establish the fact that a Bill of Sale has been received and that payment is approved.

Because we are changing the terms of our standard Form 36 or Purchase Contract it is very important that written Consent of Surety must be obtained before payment is made. The Consent of Surety form is included in this section.

The original executed and notarized Bill of Sale and accompanying insurance certificates are forwarded to the BU Financial Manager with a copy of the Subcontract Information Letter or Purchase Contract Modification. A copy of the Bill of Sale is attached to the Field Accountant's copy of the Subcontract Information Letter.

Sales Tax Liability - In the absence of a "peculiar" statute (such as that in Georgia which requires a general contractor to obtain confirmation from the state that its subcontractors have paid all sales taxes arising from a project), Turner will have no exposure for sales or use taxes if it can establish that it has paid all such taxes. Articles IV and XVI of Form 36 provide such evidence as does the face of the Purchase Contract.

Schedule A of the Bill of Sale and the body of the Bill of Sale both provide that the Contract Value includes all sales, use and personal property taxes, and that any partial payment to the Seller in connection with the Bill of Sale constitutes payment to the Seller of all such taxes. This language gives the same protection in the Bill of Sale "transaction" that Turner enjoys under Form 36 and the Purchase Contract.

Insurance Requirements – It is important that the certificate of property insurance clearly identifies that the insurance covers the specific material in at least the amount shown in Attachment A in the Bill of Sale and provides that the Seller's insurance policies shall **either** name Turner as an "**Additional Insured**" or as a "**Loss Payee**". This requirement will clearly establish Turner's right to recover under the subject insurance policies by directly enforcing the policy provisions or commencing an action to recover under such policies.

In this regard, since there are certain benefits to being named an "**Additional Insured**", Turner should always attempt to gain that status under the Seller's insurance policies. Given the fact that may not be possible in all situations so that we may have to accept being "**Loss Payee**", we have also addressed the primary shortcoming of being named a "**Loss Payee**", i.e., the possibility that an insurer could bring a subrogation action against Turner for loss or damage to the goods. To eliminate this risk, we have broadened the Seller's duties of defense and indemnification to Turner and required that the policies of insurance obtained by the Seller contain a waiver of the insurer's subrogation rights against Turner.

Finally, the insurance provisions of the Bill of Sale specifically address the obligation of the Seller to renew the insurance policies and to provide certificates of insurance and, where applicable, properly executed Loss Payable Endorsements. Since such endorsements really define Turner's rights as a "**Loss Payee**", our standard form Loss Payable Endorsement should be used in those Bill of Sale transactions where we cannot be "**Additional Insured**" included in this section.

Our first choice is to get the carrier to execute our Loss Payable Endorsement, however we will as a last resort, accept the carrier's standard Loss Payable Endorsement as long as we are given the status of "Lender's Loss Payable". This obligates the carrier to advise us if premiums aren't paid, so we have an opportunity to pay the premium on behalf of our Subcontractor/Vendor before the coverage expires.

Lease Agreements

While not mandatory, it is recommended that the following lease procedures be used when the BU has any doubt as to the stability of the Subcontractor/Vendor OR of the location where the material is being stored. Remember - "Discretion is the better part of Valor".

1. If material is stored at a warehouse owned by our Subcontractor/Vendor we obviously get the Subcontractor/Vendor to sign the lease along with the other paperwork mentioned above.

The primary legal problems created by storing purchased goods at the Subcontractor's/Vendor's premises are twofold. First, since there is no delivery, it is difficult to prove that a sale has been consummated. Second, allowing the goods to remain in the possession of the Subcontractor/Vendor makes it appear to third parties that the goods still belong to the Subcontractor/Vendor. The idea of Turner leasing an area in the Subcontractor/Vendor's premises is a good one because it creates a place where the goods can be "delivered" and simultaneously takes the goods out of the "possession" of the vendor.

The effectiveness of the lease concept will be greatly diminished unless treated as a "real" transaction by the parties. With this in mind, Turner should make sure that:

- (a) The leased premises are fenced, roped or otherwise marked off in a conspicuous manner and identified as being premises leased to Turner;
- (b) Only goods purchased by Turner are stored in the leased premises; and
- (c) All goods in the leased premises are tagged or otherwise identified as having been purchased by or sold to Turner.

Format of the lease (included in this section)

- (a) If the leased premises consist of a parcel of land, a legal description should be included; if the premises are a portion of a warehouse or building, a copy of a floor plan showing the leased area should be attached;
 - (b) The length of the lease and the monthly or yearly rental payments should be stipulated; and
2. If the Subcontractor/Vendor has the material stored at an independent warehouse, we should ask for a copy of the lease agreement between those 2 parties to ensure our interests are protected. At a minimum, the lease should a) provide for notice to Turner of any default in payment of rent and for the opportunity for Turner to remedy such default so as to keep the lease in effect b) stipulate that the material is owned by Turner for delivery to (Project Name) and c) confirm our rights to remove the material during normal working hours at any time.
 3. If, for some reason, Turner leases the space directly from a warehouse, we will either normally sign a standard agreement provided by the warehouse. We need to ensure that agreement clearly establishes our ownership of the material and our rights to remove the material during normal working hours at any time.

UCC-1 (Uniform Commercial Code Form One) to be used only if material is stored at manufacturers facility

If the material is stored at the manufacturer's facility, this process is an additional step that can be taken to further ensure that our rights to the material are protected if While the UCC security agreement and financing statements do nothing to establish "ownership" of the Bill of Sale Goods, or payment of sales or use taxes thereon, such documents, when properly filed on record; do improve the security of Turner's "ownership" rights in and to such Goods with respect to the claims of competing creditors of the Seller. In order to simplify the paperwork and further protect Turner's ownership rights in the Bill of Sale Goods, the Bill of Sale includes additional language with respect to the duty of the Seller to segregate the purchased goods, and an a clause which establishes the Bill of Sale itself as both a security agreement and a financing statement under the UCC, and gives Turner authority as an attorney-in-fact for the Seller to execute such UCC documents as may be needed to perfect Turner's security interest, such as the UCC-1 financing statement form and record the UCC-1 in the State where the material is in storage.

The following procedures are to be followed to implement the utilization of UCC-1 forms if the BU decides to do so:

1. Have the Business Unit Accounting Department obtain sufficient state- specific UCC-1 forms so that such form can be completed and executed by the Seller at the time of the execution of the Bill of Sale.
2. File the UCC-1 of record in at least the two (2) following locations:
 - i. The office of the Secretary of State (or similar agency) of the state where the Goods are located;
 - ii. The office of the county agency that handles and records legal notices in which the county where the Seller is located, or, if there is no such place of business, where the Seller resides.
3. If the Seller changes the county of its place of business or residence or moves the Goods within the original state of filing, another UCC-1, which need only be signed by Turner, must promptly be filed in the new county.
4. If the Seller relocates its residence or place of business or moves the Goods to another state, another UCC-1, which need only be signed by Turner, must promptly be filed in the new state.
5. Because there are variations from state to state with respect to the proper place of filing and/or refiling, the first few transactions should be monitored by counsel. In addition, because of the importance of the filing to the full protection of Turner's rights, such filing should in all cases be done directly by, or under the direct supervision of, the Financial Manager of the Business Unit who has become "**educated**" in the filing process.

A checklist is included in this section that you might want to use to ensure that all the necessary paperwork is in place before a payment is made.