

E. *AUTHORIZED VARIATIONS IN WORK*: Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner, and also on Contractor who shall perform the Work involved promptly.

....

I. *PROJECT REPRESENTATION*:

1. Owner may furnish Resident Project Representative and assistants to assist Engineer in observing the performance of the Work.

....

d. Resident Project Representative will not have authority to permit any deviation from the Contract Documents, except with the concurrence of Engineer.

Greenwood further argues that the contract specifically addressed the contractor's responsibilities:

ARTICLE 6-CONTRACTOR'S RESPONSIBILITIES

2. Unless otherwise specified in the General Requirements, Contractor shall furnish and assume full responsibility for all materials, equipment, labor ... necessary for the furnishing, performance, testing, start-up and completion of the Work.

¶ 32. We agree with Greenwood that Triconex's responsibilities according to the contract were not waived. The contract stated that Greenwood employees could assist, and Shaw did so. The contract also stated that Triconex had sole responsibility for testing. Thus, no provision of the contract was waived, and this issue is without merit.

V. *WHETHER GREENWOOD CAN RECOVER ON ITS NEGLIGENCE THEORY.*

¶ 33. The trial judge did not rule on this issue because

his holding was based upon breach of contract. Based on the ultimate disposition of this case, we need not address it.^{FN7}

FN7. In his findings of fact and conclusions of law, the trial judge stated, *inter alia*, that “[u]nder its contract Triconex was obligated to deliver a working system. The system that was installed was defective. Accordingly, the Court finds that Triconex is liable to Greenwood Utilities for Breach of Contract.” Also, it is to be remembered that Greenwood had contracted with Upchurch, which in turn subcontracted with Triconex.

VI. *WHETHER ATTORNEYS' FEES ARE ALLOWED BY THE CONTRACT.*

[11][12] ¶ 34. Where a contractual provision concerning the award of attorneys' fees is at issue, this Court will apply its rule concerning the interpretation of any contract, which is to “enforce a contract when its terms are clear and unambiguous.” *Hamilton v. Hopkins*, 834 So.2d 695, 700 (Miss.2003) (citing *Ivison v. Ivison*, 762 So.2d 329, 334 (Miss.2000); *1114*Gulfside Casino P'ship v. Miss. State Port Auth. at Gulfport*, 757 So.2d 250, 256 (Miss.2000); *Delta Pride Catfish, Inc. v. Home Ins. Co.*, 697 So.2d 400, 403 (Miss.1997); *Century 21 Deep S. Props., Ltd. v. Keys*, 652 So.2d 707, 717 (Miss.1995)).

¶ 35. Triconex directs our attention to the provision of Contract 103, Article 13 G., regarding the award of attorneys' fees, which stated:

G. *CORRECTION OR REMOVAL OF DEFECTIVE WORK*: If required by Engineer, Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with nondefective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.