

**GENERAL CONDITIONS FOR TIME AND MATERIAL CONTRACTS**

1. REPRESENTATIONS: Supplier understands that he must rely upon his own examination and investigation as to the scope and location of the Work to be performed, the surface and subsurface conditions at the site, and all local and general conditions which may affect performance of the Work.
2. SUPPLY OF ITEMS: Supplier shall supply and pay for all labor, tools, implements, equipment, machinery, utilities, materials, necessary supervision and any other item or service needed for the Work, except those items, if any, specified to be supplied by Owner.
3. PERFORMANCE OF WORK: The Work shall commence on the date designated by Owner and shall be completed as soon as good practice and due diligence permit. Supplier shall perform the Work in the best and most workmanlike manner, using qualified, efficient and careful workers, in strict accordance with the plans, drawings and specifications or any modifications thereto as approved in writing by Owner, and in compliance with all health, safety, security, fire protection and first aid requirements set forth in Exhibits "S" and "S-1," "Supplier Health, Safety, Security, Fire Protection and First Aid Requirements," to this Contract. Supplier shall take all reasonable precautions to perform the Work so as not to interfere with Owner's operations or with the operations of other suppliers working on Owner's premises. Supplier shall use his best efforts to ensure that all Work is performed expeditiously, economically and in the best interests of Owner.
4. PERMITS, LICENSES AND FEES: Supplier shall obtain and pay for all permits and licenses and shall pay all fees and shall make all deposits which may be required by law or regulation to be obtained, paid for or made in connection with the prosecution of the Work, except for any such permits, licenses, fees and/or deposits which Owner may be required by law or regulation to obtain, pay for or make directly. The actual costs thereof shall be reimbursable to Supplier as provided under Article 9 "Compensation."
5. BONDS: If required by this Contract, Supplier shall furnish Owner payment and/or performance bonds in the estimated dollar amount of the Contract and in such form as may be directed by Owner. The premiums for such bonds will be in addition to the Contract price and will be paid by Owner to the surety upon submission of a proper invoice.
6. SUPPLIER-FURNISHED INSURANCE:
  - A. Supplier shall, at his expense, procure and maintain the following insurance:
    - (a) WORKERS' COMPENSATION INSURANCE in the amount required by all applicable laws, including, without limitation, the Longshore and Harbor Workers' Compensation Act and any other federal compensation act or maritime act, and EMPLOYER'S LIABILITY INSURANCE to a limit of not less than \$1,000,000. Supplier before commencing the Work shall be qualified under the workers' compensation laws of the state or states in which the Work or any portion of the Work is to be performed and shall at all times comply with the provisions of said laws. All subcontractors of Supplier shall be required by Supplier to maintain the above described insurance coverages and to comply with qualification requirements of all applicable workers' compensation laws; Supplier shall do so on behalf of his subcontractors if his subcontractors fail to maintain said insurance or to comply with said qualification requirements.
    - (b) COMPREHENSIVE GENERAL LIABILITY INSURANCE, including, without limitation, automobile liability covering Supplier and his employees for all of Supplier's operations hereunder, including, without limitation, the operations of all subcontractors, the operation of vehicles and equipment by Supplier or any and all subcontractors and liability assumed under the "Indemnity" provision of this Contract, with limits of not less than \$1,000,000 as a combined single limit for injury to, or death of, any person or persons and for property damage, including consequential loss, arising out of any single occurrence.
  - B. Prior to commencement of the Work, Supplier shall provide Owner with certificates of insurance which demonstrate compliance with the terms of this Article 6. The Comprehensive General Liability Policy (a) shall name Kaiser Aluminum as an additional insured, (b) shall provide that other insurance which Owner may have to insure loss shall be in excess of and not contribute to a loss to which the insurance provided herein by Supplier is applicable, and (c) shall provide that the insurer waives any right to subrogation which might arise by reason of any payment under the policies against Kaiser Aluminum, its subsidiaries, its affiliated companies and the agents and employees of any of the foregoing.

C. Insurance deductibles, if any, shall not exceed \$10,000 per occurrence and shall be absorbed entirely by Supplier with no contribution by Owner. In the event of a reduction or exhaustion of any aggregate limit, Supplier shall secure additional insurance or shall have excess insurance available so as to comply at all times with the above requirements as to limits.

7. OWNER'S AND SUPPLIER'S REPRESENTATIVES AND EMPLOYEES:

A. Within five (5) days after the award of this Contract and prior to commencement of any Work, Supplier shall appoint a competent Supplier's representative who shall have charge of the Work. Supplier shall give Owner written notice of the name, address and telephone number (day and night) of such representative. Supplier's representative shall be authorized to receive orders and to act for Supplier in all matters and shall be qualified to superintend the Work.

B. Within five (5) days after the award of this Contract, Owner shall appoint a competent Owner's representative who shall be authorized to give direction and to act for Owner in all matters concerning the Work. Owner shall give Supplier written notice of the name, address and telephone number (day and night) of such representative.

C. Owner may require Supplier to remove any person employed by Supplier in or near Owner's premises if Owner determines that the presence of such person is detrimental to the performance of the Work or to Owner's other operations or if, in Owner's opinion, the employee is not qualified to perform the Work assigned to him or is guilty of improper conduct.

D. Supplier shall furnish to Owner on a daily basis a force report showing all personnel working each day. This report shall indicate the craft designation of each employee and shall identify any employees of Supplier's subcontractors.

8. RECORDS: Supplier shall keep a complete set of accounts and records on a cost accounting basis, in accordance with generally accepted accounting principles, showing all expenditures made under this Contract. As a condition precedent to any obligation of Owner to pay for Work hereunder, Owner shall have the right to inspect, audit and otherwise verify such accounts and records; and Supplier shall furnish any supporting information in connection with such accounts and records as Owner may request.

9. COMPENSATION:

A. Supplier shall be compensated for all Work performed hereunder on the following basis:

(a) Labor: The actual cost incurred and paid by Supplier for (i) base wages or salaries of all field personnel for Work performed during normal business hours at standard rates ("straight-time labor"), plus (ii) any premium wages paid for overtime Work, if duly authorized by Owner in advance ("premium wages"), plus (iii) all fringe benefits, exclusive, in each case, of any taxes, insurance or other costs reimbursable pursuant to any other provision of this Contract. Supplier shall submit salary, wage and fringe benefit schedules for all such field personnel to Owner for approval of rates prior to commencing any of the Work. All time expended in the performance of the Work shall be promptly recorded on daily time records and shall be submitted daily for Owner's verification and approval.

(b) Materials: The actual net cost reasonably incurred and paid by Supplier for purchased materials, if furnished hereunder with Owner's approval, including reasonable transportation, shipping and handling costs or, in the event such cost cannot be determined, then the fair market value at the time and place of delivery of such materials. All available trade and cash discounts for materials shall be taken or utilized by Supplier and shall be passed on to Owner.

(c) Construction Equipment: The actual net rental cost reasonably incurred and paid by Supplier for leased or rented field construction equipment directly engaged in the performance of the Work, at the rates set forth in the "Schedule of Equipment Rates" to this Contract or at such other rates as Owner has previously approved in writing. If such field construction equipment is owned by Supplier, the rates specified in the Schedule of Equipment Rates shall apply, or, if no such rates are specified, no amount shall be payable for such equipment. Time of equipment usage shall be verified by daily time records submitted for Owner's verification and approval, and transportation time, if applicable, shall be separately indicated on such time records.

(d) Insurance: The actual additional cost of premiums, if any, incurred and paid by Supplier to obtain and maintain the insurance coverage required hereunder in excess of the coverages and limits normally carried by Supplier

(e) Taxes: The actual cost incurred and paid by Supplier for (i) governmental imposts or duties and federal, state or local sales, use or excise taxes

levied upon, or measured by, the sale, sales price, value or use of the Work or any part thereof, and (ii) all contributions, taxes and assessments (other than income withholding taxes) which are measured by wages, salaries or other remuneration paid to persons employed by Supplier or his subcontractors for the Work and which are otherwise reimbursable hereunder, including those for social security, disability, unemployment and other benefits.

- (f) Permits Licenses and Fees: Except as otherwise provided herein, the actual cost incurred and paid by Supplier for any permits, licenses, bonds, fees and/or deposits required in connection with the Work.
- (g) Overhead and Profit: Pursuant to Exhibit "CTM-I," an amount calculated on the basis of (i) the percentages specified of the base wages or salaries for straight-time labor, exclusive of any fringe benefits or other payroll additives of any kind or description, and the percentage(s) specified of the reimbursable costs for materials purchased and furnished by Supplier, or (ii) the fixed fee specified, in which event no additional amount shall be payable hereunder for overhead and profit. If overtime is worked, overhead and profit shall be payable as though the overtime worked was at the straight-time labor rate and not at the premium wages rate.

B. In no event, unless otherwise specifically provided in this Contract, shall any amounts payable to Supplier pursuant to Paragraph A of this Article 9 include the following:

- (a) Salaries, wages or other expenses for secretarial or clerical services in the field or at the head or branch offices of Supplier or any salaries, wages or other expenses of whatsoever nature incurred in the ordinary course of business at Supplier's head office or any regularly established branch office;
- (b) Profit or overhead, directly or indirectly, except as expressly provided herein;
- (c) Amounts incurred to obtain licenses, permits, registrations, privileges or any similar taxes, levies or fees required for Supplier to qualify to do business in any jurisdiction in which the Work is to be performed;
- (d) Travel expenses or transportation time to the job site for any officers, directors, employees, agents, representatives or other personnel, unless required by labor agreements in effect on the date hereof or otherwise expressly provided herein;

- (e) Costs or expenses for any manual, power or pneumatic tools having a value of \$1,000 or less;
  - (f) The cost of any expendable supplies, such as welding rods, acetylene and fuel;
  - (g) Any costs or expenses incurred indirectly in the performance of the Work except as otherwise expressly provided herein, such as increased rates for taxes or insurance and any fines or other penalties of any kind imposed upon Supplier by any governmental body or agency;
  - (h) Any costs or expenses of any kind whatsoever attributable directly or indirectly to reperformance in whole or in part of defective, negligent or otherwise nonconforming Work by Supplier or any of his subcontractors; and
  - (i) Any other item, cost or expense of whatsoever kind not specifically stated to be reimbursable hereunder and not otherwise authorized and approved in writing by Owner.
10. **CHANGES**: Owner, at all times and without notice to Supplier's surety, if any, shall have the right to correct errors or omissions in and to make any changes in or deletions from or additions to the scope or complexity of the Work, and such right shall include, without limitation, the authority to change the drawings and specifications, the method or manner of performance of the Work, any Owner-furnished items and to accelerate the performance of the Work. Supplier shall not depart from the requirements of this Contract unless first directed, in writing, by Owner, and thereafter shall promptly comply with all such written directives of Owner.
11. **DELAYS**: The parties shall use their best efforts to minimize any delays in the performance of this Contract.
12. **INSPECTION AND ACCEPTANCE**:
- A. Owner may visit, take inventory and inspect the Work and make tests thereon at all times and places during the progress of the Work, and Supplier shall provide access and reasonable facilities for such inspection and tests. If any law, ordinance, regulation, code or governmental authority requires any of the Work to be tested, inspected or approved, Supplier shall give Owner reasonable notice of the time and place thereof and cause the same to be undertaken at Supplier's expense.
  - B. If Supplier's Work is defective or fails to comply with the plans and specifications, Owner may require Supplier to correct the defective Work or Owner may have the defective Work corrected by

others; and, in either event, Supplier shall bear the cost of such correction.

C. Within a reasonable time after receipt of notice from Supplier that the Work as a whole is completed and ready for inspection, testing and acceptance, Owner will make such inspections and tests as it may deem necessary. If the Work is acceptable, Owner shall issue to Supplier a "Certificate of Completion and Acceptance" covering the Work.

D. Neither the issuance of a Certificate of Completion and Acceptance nor any other inspection, approval or payment, including final payment, under this Contract shall be construed to be an acceptance of defective material or workmanship or shall be an admission of Supplier's satisfactory performance of the Work and shall not relieve Supplier of any of his obligations under this Contract.

### 13. PAYMENT:

A. Supplier shall receive the compensation provided under Article 9 "Compensation" as full and complete payment for the Work hereunder. Subject to all other provisions of this Contract, the above compensation shall be paid as provided in this Article 13.

B. Within ten (10) days after the end of each month, Supplier shall submit a detailed estimate of the value of the Work done and materials delivered to the project site during such month, together with copies of all applicable daily time records for labor, invoices for materials and rental equipment and such other supporting data as Owner may request from time to time.

C. Within forty-five (45) days after submittal of the above estimate, Owner will pay to Supplier, in accordance with Owner's usual practice of vouchering accounts and upon submission of proper invoices by Supplier, ninety percent (90%) of the amount determined by Owner to be due Supplier for that month.

D. As a condition precedent to any payment of retention moneys under this Contract, Supplier may be required to execute a written general release and waiver of all claims against Owner, its subsidiaries, affiliated companies and the directors, officers, employees, agents, representatives and property of any of the foregoing arising under or in any way connected with this Contract, and Owner may further require Supplier to furnish comparable written general releases and waivers of all claims by any and all subcontractors, assignees, vendors or others furnishing labor, materials, services or

equipment in connection with Supplier's performance of this Contract except, in each case, for disputed claims, made in good faith, and specifically reserved in any such release and waiver furnished by Supplier or any of his subcontractors, assignees, vendors or such others.

E. Without limiting any other rights which Owner may have, whether pursuant to this Contract or otherwise, Owner may withhold all or any portion of any progress payment or final payment as and to the extent Owner, in good faith, determines such withholding to be necessary in order to protect it from loss because of (a) defects in workmanship or materials, (b) claims, levies, attachments, stop notices or court orders filed, or evidence indicating probable filing of such claims, levies, attachments, notices or orders, including claims covered by insurance until such claims are accepted by Supplier's insurance carrier, (c) claims, whether valid or not, that Supplier has failed to make payments promptly or properly to his subcontractors, or for labor (including fringe benefits) or for materials, equipment, transportation, shipping costs, services, taxes, fees or any other obligation arising out of the Work, (d) damage to Owner's property, any portion of the Work or to any work performed by Owner, another supplier or subcontractor, (e) failure to furnish sufficient, properly skilled labor or to supply sufficient materials or otherwise to diligently prosecute the Work, (f) failure to deliver updated progress schedules if required under the provisions of this Contract as to content or time for submission, (g) failure to deliver, if required under the provisions of this Contract, insurance certificates, bonds, as-built information, written guarantees or warranties or to obtain permits or approvals required by any authority having jurisdiction over the Work, (h) failure to adhere to laws, ordinances, regulations or orders of any authority having jurisdiction over the Work or the project site, (i) failure to discharge or bond a mechanic's or materialman's lien or notice of lien or stop notice filed against any part of the Work or the project site in a manner satisfactory to Owner, or (j) any other failure to perform in accordance with the provisions of this Contract. If Owner exercises its right to withhold hereunder in good faith, Supplier shall not be entitled to any interest whatsoever on the money so withheld, regardless of the outcome of any subsequent claim resolution. When the cause for any withholding hereunder has been remedied by Supplier to Owner's satisfaction, the amount withheld shall be released and paid.

F. Any overpayment by Owner to Supplier shall be deemed to be a mistake of fact and promptly repaid to Owner upon demand.

14. LIENS: Supplier shall immediately discharge or obtain releases for stop notices, liens, attachments or levies which may be filed in connection with the Work or any work by Supplier under any other contract with Owner. Owner may withhold from any moneys due Supplier, in addition to amounts withheld under Article 13 "Payment," one hundred twenty-five percent (125%) of the aggregate amount of stop notices, liens, attachments or levies until the same are discharged, satisfied or released.

15. SUSPENSION OF WORK: Owner may, for its convenience, suspend the Work in whole or in part at any time by written notice to Supplier stating the nature, effective date and anticipated duration of such suspension; whereupon, Supplier shall suspend the Work to the extent specified and shall place no further orders or subcontracts relating thereto. During the period of any such suspension, Supplier shall protect and care for all Work, materials and equipment at the project site or at storage areas under his responsibility. Supplier shall give Owner copies of all outstanding orders and subcontracts for materials, equipment and services and shall take any action on such orders and subcontracts as Owner may direct.

16. TERMINATION FOR CONVENIENCE:

A. Owner may, for its convenience, terminate the Work in whole or in part at any time by written notice to Supplier stating the extent and effective date of such termination; whereupon Supplier shall (a) stop all work and place no further orders or subcontracts for materials, services, equipment or supplies, except as may be necessary to complete portions of the Work not terminated, (b) assign to Owner, in the manner and to the extent directed, all of the rights of Supplier under work orders, purchase orders and subcontracts relating to the terminated portion of the Work, (c) terminate work orders, purchase orders and subcontracts outstanding to the extent that they relate to the terminated portion of the Work and are not assigned to Owner, (d) take any necessary action to protect property in Supplier's possession in which Owner has or may acquire an interest, (e) complete performance of the unterminated portion of the Work, and (f) take any other action toward termination of the Work which Owner may direct.

B. In the event of a termination of the Work or any portion thereof under this Article 16, Owner shall pay to Supplier the sum of the amounts otherwise reimbursable hereunder with respect to the Work performed prior to termination and any other direct costs reasonably incurred by Supplier with respect to the terminated portion of the Work as a result of such termination. If a fixed fee is payable hereunder

for overhead and profit, such fee will be equitably adjusted on the basis of the percentage of the Work actually completed to the date of termination. Any payment due to Supplier under this Article 16 shall be made in accordance with the provisions of Article 13 "Payment."

17. FAILURE BY SUPPLIER:

A. In the event (a) Supplier fails to diligently prosecute the Work (except in cases for which an extension of time is provided), (b) Supplier fails to supply enough properly skilled workers or proper materials for the Work, (c) Supplier performs the Work in a manner which he knows or should have known to be defective, (d) Supplier disregards any laws, ordinances, regulations or orders of any authority having jurisdiction over the Work or the project site, (e) a mechanic's or materialman's lien or notice of lien is filed against any part of the Work or the project site and is not promptly bonded over in a manner satisfactory to Owner, (f) Supplier fails to pay any indebtedness when due, becomes insolvent, or in the event any voluntary or involuntary proceedings are instituted by or against Supplier in bankruptcy or insolvency, or in the event a receiver, trustee or assignee for the benefit of creditors of supplier is appointed, or (g) Supplier fails to perform any of the conditions of or obligations assumed under this Contract, Owner shall have the right, if it so elects and without prejudice to any other rights it may have, to suspend payment in whole or in part under this Contract until the default has been remedied and/or to take the Work remaining to be completed wholly or partly out of the hands of Supplier or any other person in whose hands or possession the Work or any part of it may be, in which event Owner may take over such of Supplier's and such other person's tools, equipment, materials and supplies as Owner deems necessary to complete such Work or may award such Work to another supplier, all at Supplier's expense. In such event, Supplier, in the manner and to the extent directed by Owner, and only to that extent, shall assign to Owner all of the rights of Supplier under work orders, purchase orders and subcontracts relating to the Work.

B. In the event Owner exercises any of its rights under Paragraph A of this Article 17, Supplier shall not receive any further payment for the portion of the Work taken out of the hands of Supplier until the Work is completed. When the Work is completed, Owner shall pay to Supplier the sum of the amounts otherwise reimbursable hereunder with respect to the Work performed prior to the date Owner exercises any of its rights under Paragraph A of this

Article 17 less the actual costs incurred by Owner in connection with the removal of Supplier or any other person in whose hands or possession the Work or any part of it may be and placing the remainder in the hands of others for completion, including, without limitation, Owner's managerial and administrative costs. In the determination of amounts otherwise reimbursable to Supplier hereunder, for purposes of the foregoing sentence, the provisions of Paragraph B of Article 16 "Termination for Convenience" shall apply. The actual costs incurred by Owner in connection with the foregoing shall be certified by Owner and shall be binding on the parties. If such costs exceed the unpaid balance of the Contract compensation, Supplier shall promptly pay the difference to Owner on demand. Upon completion of the Work, the property of Supplier or such other person taken over by Owner shall be released to Supplier or such other person, as the case may be, at the project site. Owner may retain possession of and/or place in storage Supplier's or such other person's equipment and property, at the sale risk and expense of Supplier or such other person, as the case may be, until any payment due Owner is made, and may, upon sixty (60) days' notice, sell the same at public or private sale and be a purchaser thereat and may execute any act or deed on behalf of and as agent of Supplier or such other person, as the case may be, to complete the sale and to transfer and perfect the title of any purchaser thereof.

C. In addition to the rights provided above, Owner shall have and may exercise or enforce any other rights or remedies provided by law or equity for any default or breach by Supplier; and Supplier shall be liable for and shall pay any losses or damages suffered by Owner arising out of any such breach or default by Supplier in the performance of this Contract.

18. CONFIDENTIAL INFORMATION: All information, including plans, drawings, designs, calculations, specifications, reports, daily logs, data and other information disclosed to Supplier by or on behalf of Owner, or prepared by Supplier in connection with the Work, shall remain or become, as the case may be, the property of Owner and shall be held in confidence by Supplier and shall neither be disclosed nor used by Supplier for any purpose other than the performance of the Work. All such material shall be delivered to Owner by upon completion of the Work or upon request, whichever is sooner. These provisions shall be likewise applicable to Supplier, his subcontractors, vendors, suppliers and the directors, officers, employees or agents of any of them and Supplier shall ensure that

each such person having access to such confidential information is made aware of, and shall comply with, the foregoing obligations as to non-disclosure and use.

19. CAMERAS,,PHOTOGRAPHS AND OTHER MEDIA: Supplier shall not bring any cameras onto the premises of Owner and shall not take, have taken or otherwise obtain photographs, films, videotapes or other media representations of any kind of Owner's premises, including, without limitation, photographs, films, videotapes or other media representations of the Work at various stages of progress or upon completion thereof, or photographs, films, videotapes or other media representations of any plans, drawings, specifications or other subject matter relating to the Work without the prior written consent of Owner. In the event that Owner does authorize Supplier to take, have taken, or otherwise obtain any such photographs, films, videotapes or other media representations, the receipt and use thereof will be subject to such terms and conditions as Owner deems appropriate at the time. The aforesaid restrictions concerning photographs, films, videotapes and other media representations shall also apply in the event any of the Work is to be performed off Owner's premises.

20. PATENTS, TRADE SECRETS, COPYRIGHTS AND TRADEMARKS:

A. Supplier shall indemnify, defend and hold Owner (including its successors in interest) harmless from and against any action against Owner based on a claim that the Work or any part thereof, including any process, system, method or arrangement used by Supplier, furnished by Supplier pursuant to this Contract, or the operation or use of the Work or any part thereof by Owner, constitutes infringement of any U.S. Patent, now or hereafter issued, or violates any other proprietary interest including, without limitation, copyrights, trademarks and trade secrets, if Supplier is notified promptly in writing and is given authority, information and assistance, at Supplier's expense, for the defense of the action.

B. In the event Owner is enjoined from the operation or use of the Work or any part thereof in connection with any said action, Supplier shall, at his expense, take all reasonable steps to procure for Owner the right to operate or use the Work. If Supplier cannot so procure the right within a reasonable time, Supplier shall then promptly, at his expense, (a) modify the Work so as to avoid infringement or violation of any patent or other proprietary interest, (b) replace the Work with work which does not infringe or violate any patent or other proprietary interest, or (c) remove the Work, refund

to Owner any Contract compensation theretofore paid to Supplier and pay to Owner any transportation costs and other expenses that may have been paid or incurred by Owner in connection with the Work so removed.

C. In the event any said action is based on infringement or violation of a proprietary interest (a) relating solely to specifications and drawings furnished by Owner, to a particular process or the product of a particular manufacturer specified by Owner or to Owner-furnished items, and (b) such specifications, drawings, processes or products are something other than that which has been offered or recommended by Supplier to Owner or to other parties, then the provisions of Paragraphs A and B of this Article 20 shall not be applicable.

21. LABOR AGREEMENTS: Operations at a number of Owner's plants are governed by agreements with labor unions, and copies of such agreements will be made available at Supplier's request. Supplier agrees to take such action as may be necessary to avoid disrupting relations between Owner and its employees, if not inconsistent with applicable laws.

22. INDEMNITY:

A. Supplier shall indemnify, save harmless and defend Owner, its subsidiaries, its affiliated companies and the directors, officers, employees, agents and representatives of any of the foregoing from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character, including, without limitation, attorneys' fees and expenses, arising out of or by reason of any liability or obligation in any manner caused or occasioned by or claimed to be caused or occasioned by, any act, omission, fault or negligence of Supplier or anyone acting on his behalf, including, without limitation, subcontractors and vendors, their subcontractors and subvendors and the directors, officers, employees, agents and representatives of any of the foregoing, in connection with or incident to this Contract or the performance of the Work except where caused by the concurrent negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf), in which event Supplier's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf) on the basis of comparative negligence or fault.

B. Without limiting the foregoing, Supplier shall indemnify, save harmless and defend Owner, its subsidiaries, its affiliated companies and the directors, officers, employees, agents and representatives of any of the foregoing from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character, including, without limitation, attorneys' fees and expenses, arising out of or by reason of any injuries (including death) or damage to any person or entity employed by or acting on Supplier's behalf in connection with this Contract, except where caused by the concurrent negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf), in which event Supplier's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Owner, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on his behalf) on the basis of comparative negligence or fault.

C. Supplier's obligations under this Article 22 and under Article 18 "Confidential Information" and Article 20 "Patents, Trade Secrets, Copyrights and Trademarks" shall continue without limitation as to time, notwithstanding the extinguishment of other rights and duties under this Contract by completion, Contract termination or any other manner.

23. TAXES:

A. The Contract price for the Work shall be exclusive of any governmental impost or duty and of any federal, state or local sales, use or excise taxes levied upon, or measured by, the sale, sales price, value or use of the Work or any part thereof. Supplier shall list separately in his pricing quotation(s) and on his invoice(s) any such impost, duty or tax lawfully applicable to the Work or any part thereof which is payable by Owner and with respect to which Owner does not furnish Supplier lawful evidence of exemption. The Contract price for the Work shall be deemed to include all other federal, state, local and other governmental taxes, imposts and duties including, without limitation, any gross receipts taxes, business and occupation taxes, franchise taxes, income taxes or taxes or charges imposed by reason of Supplier's place of business.

B. Supplier shall be responsible for and shall pay all contributions, taxes and assessments which are measured by wages, salaries or other remuneration paid to persons employed by Supplier or his subcontractors for the Work, or which arise by virtue of their employment, and which now or hereafter

may be imposed by any governmental body. Such contributions, taxes and assessments shall include, without limitation, those for social security, disability, unemployment and other benefits, and for income withholding taxes. Supplier shall comply with all administrative regulations relating to such matters.

C. The costs incurred by Supplier referred to in Paragraphs A and B of this Article 23 shall be reimbursable by Owner only to the extent provided in Article 9 "Compensation."

24. **TOXIC AND HAZARDOUS SUBSTANCES:** Supplier shall fully comply with all applicable toxic or hazardous substance information and/or control laws and regulations and shall notify Owner and all other employers with personnel at the site of the Work of any toxic or hazardous substance which Supplier uses or intends to use. Supplier shall further provide Owner and all other employers with personnel at the site of the Work with a "Materials Safety Data Sheet" pertaining to any toxic or hazardous substance which Supplier uses or intends to use in the Work. Supplier shall immediately notify Owner should he encounter any toxic or hazardous substances on the project site while performing the Work and shall take such action with respect thereto as is requested by Owner.
25. **LAWS AND REGULATIONS:** Throughout the performance of the Work, Supplier shall comply with all applicable federal, state and local laws, ordinances and regulations, whether existing or hereafter enacted, of all governing bodies having jurisdiction over the Work or any part thereof. In addition, Supplier shall comply with all rules and regulations which, from time to time, may be issued by Owner concerning security, health, welfare, conduct and other similar matters.
26. **NOTICES:** All notices under this Contract shall be in writing and may be served by either party on the other by hand, facsimile, telex, telegram, cablegram or regular mail addressed to the respective party at the address indicated in this Contract. The address of either party or their representative(s) may be changed at any time by written notice of such change to the other party. Any such notice shall be effective upon delivery to the intended recipient or seven (7) days after being placed in the ordinary course of the mail, postage paid and properly addressed, whichever occurs first.
27. **INDEPENDENT SUPPLIER:** Supplier shall perform the Work solely as an independent supplier and not as the agent or employee of Owner.
28. **ASSIGNMENT AND SUBCONTRACTING:** Neither this Contract nor any right, privilege or obligation

hereunder shall be assigned or delegated by subcontract or otherwise in whole or in part by Supplier without the prior written consent of Owner. Any attempted assignment without such prior written consent shall be void.

29. **WAIVER:** No waiver of any provision of this Contract shall constitute a waiver of any other provision of this Contract or of the same or any other provision in any other instance. No waiver shall be effective except in writing signed by the authorized representatives of the parties hereto.
30. **ENTIRE CONTRACT:** This Contract contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, proposals, agreements and understandings, whether written or oral, with respect thereto. No amendment, variance or change in the provisions of this Contract shall be effective except in writing signed by the authorized representatives of the parties hereto.
31. **APPLICABLE LAW AND RESOLUTION OF DISPUTES:**
- A. This Contract shall be governed by and construed in accordance with the laws of the State where Owner's facility or office requiring the Work is located without reference to principles regarding conflicts of laws.
- B. The parties hereto will attempt in good faith to resolve promptly any controversy, claim or dispute arising out of or relating to this Contract (collectively, a "Dispute") by means of negotiation. If any Dispute should arise, Owner's representative and Supplier's representative shall meet at a mutually acceptable time and place within ten (10) days after either party has received written notice from the other party of the existence of such Dispute, and thereafter as often as they reasonably deem necessary, to exchange all relevant information and to attempt to resolve the Dispute. If the Dispute has not been resolved within twenty (20) days after receipt of written notice of such Dispute or if the representative of the party receiving such notice will not meet within ten (10) days, the Dispute shall be referred to senior executives of the parties with full authority to settle the Dispute (the "Senior Executives") who shall likewise meet to attempt to resolve the Dispute. To the extent they have not already done so, the parties shall exchange all relevant information and statements of their position on all issues relevant to the Dispute. If the Dispute has not been resolved within twenty (20) days following referral to the Senior Executives or if no meeting of Senior Executives has taken place within ten (10) days after



such referral, either party may then initiate mediation of the Dispute as provided in Paragraph C of this Article 31.

C. If the Dispute has not been resolved through negotiations as contemplated in Paragraph B of this Article 31, the parties shall endeavor to settle the Dispute by mediation under the Construction Mediation Rules of the American Arbitration Association, as then in effect.

D. If the Dispute has not been resolved through mediation as contemplated in Paragraph C of this Article 31 within ninety (90) days of the commencement of such procedure, or if either party will not participate in such procedure, the Dispute (and any dispute, disagreement or controversy as to whether such Dispute is subject to arbitration pursuant to this Paragraph D) shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, by three (3) arbitrators of whom each party shall appoint one (1). The arbitration shall be governed by the United States Arbitration Act, as then in effect. The award of the arbitrators shall be final and binding upon all parties to the arbitration. Judgment upon the award may be entered by any court having jurisdiction thereof. The place of arbitration shall be the county where Owner's facility or office requiring the Work is located, unless the parties shall mutually agree otherwise. The arbitrators are not empowered to award damages in excess of actual damages, including, without limitation, any exemplary or punitive damages.