



LATROBE SPECIALTY METALS COMPANY TERMS
AND CONDITIONS FOR PROFESSIONAL
CONSULTING
(June 2011)

Section 1. Definitions.

- (A) "Company" means Latrobe Specialty Metals Company or its subsidiary(ies) or affiliate(s) executing this Contract.
- (B) "Consulting Services" means the services to be rendered by Vendor and purchased by Company as specified in the Contract.
- (C) "Contract" means these Professional Consulting Contracts Terms and Conditions ("Terms and Conditions") together with all documents specifically referenced herein and any written purchase order, contract or agreement which attaches, incorporates or otherwise references these Terms and Conditions.
- (D) "Vendor" means the individual, corporation or other entity who is to perform the Services purchased by the Company pursuant to this Contract.

Section 2. Scope and Acceptance.

All Consulting Services are supplied pursuant to this Contract. This Contract will become legally enforceable on the earlier of delivery of a signed acknowledgment, commencement of performance or delivery according to schedule of all or any portion of the Consulting Services covered under this Contract, by Vendor. Any acceptance of this Contract is limited to acceptance of the express terms of this Contract. Without the written consent of Company's authorized representative, no additional or different terms proposed by Vendor in its acknowledgement will be effective to modify the Contract and Vendor will be deemed to have accepted the Contract without such modifications. Additional or different terms or any attempt by Vendor to vary in any degree any of the terms of the Contract will be deemed material and are expressly objected to and rejected.

Section 3. Independent Contractor Status/Safety.

- (A) Vendor is an independent contractor and not an employee or agent of Company. Company disclaims any right to control the manner of performance by Vendor and Company will not control the manner of performance by Vendor.
- (B) Vendor has no authority to direct or control the performance of any employee of Company. Vendor's role will be that of adviser and not of master to any Company employee.
- (C) Vendor does not have any Company title and Vendor is not eligible for Company benefits or employee plans.
- (D) Vendor shall provide all safeguards, and take all precautions necessary in connection with the production and delivery of the Consulting Services sold hereunder to prevent the occurrence of any accident, injury, death, loss or damage to any person or property, and shall be solely responsible therefore.

Vendor warrants that all Consulting Services delivered hereunder will be produced and delivered in a safe, proper, and workmanlike manner and in compliance with all applicable codes, regulations, laws, standards, specifications and Company requirements concerning safety, performance and otherwise, including, without limitation, any Consulting Services or services related thereto performed on premises controlled by Company.

Section 4. Confidentiality.

- (A) All data and other information of every kind, whether expressed in writing or otherwise, disclosed or revealed at any time to Vendor by Company or any of its parents, subsidiaries, affiliates, customers and contractors, learned at any time by Vendor by observing Company's facilities, or made or developed by Vendor in the course of performing Consulting Services for Company under this Contract (all called "Information"), regardless of whether it is identified as "confidential", will be:
 - (1) received and maintained in strict confidence by Vendor and will not be disclosed, directly or indirectly, by Vendor to any related or unrelated party whatsoever; and
 - (2) used by Vendor only for the performance of Consulting Services for Company.

Any description of Consulting Services, including that set forth in this Contract will, unless otherwise specified, be considered Information.

- (B) The foregoing obligations of confidentiality, limited use and non-disclosure will not apply to the following three exclusions:
 - (1) Information which was known to Vendor and reduced to writing or other document form by Vendor prior to the date of this Contract, and which was not first acquired, directly or indirectly, from Company; or
 - (2) Information which is or becomes available in issued patents, published patent applications or printed publications of general public circulation other than by acts or omissions of Vendor; or
 - (3) Information which Vendor after the date of this Contract lawfully obtains without restriction from a third party other than from a third party who obtained such Information from Company.

Notwithstanding the fact that any of the above exclusions apply to any part of Information covered by this Section 4, Vendor may not, without the express written approval of Company, directly or indirectly, expressly or impliedly, reveal to any third party, Company's interest in or opinion of any such Information nor reveal Company as a source of such Information. Vendor may not reveal to any party whatsoever without

Company's express written approval that Vendor is performing services for Company or the character of such services. Without limiting the direct liability of Vendor's employees and others who may have received Information directly or indirectly from Vendor, Vendor will be responsible for the disclosure or other misuse of Information by Vendor's employees and others, and Vendor will immediately take such steps as may be necessary to terminate any continuing disclosure or misuse by any of Vendor's employees and others of which Vendor becomes aware.

If Vendor believes that any of the exclusions set forth in Subsections 4(B)(1), (2) or (3) apply with respect to certain Information so as to permit disclosure to a third party or as beyond that specified in this Section 4, Vendor will first give notice to Company of such belief, specifying the facts upon which such belief is based. Such notice will include specific reference to documents and other writings relied upon by Vendor for claiming that an exclusion applies to said Information. Specific Information will not be deemed to be within said exclusions merely because it is embraced by general information within such exclusions nor will a combination of features be deemed within such exclusions merely because the individual features of such combination are separately within such exclusions. Vendor will, upon the reasonable request of Company, furnish such available additional information as may be reasonably requested by Company in its evaluation of the validity of the said claim.

(C) Vendor will do the following as part of Vendor's compliance with the obligations of confidentiality, limited use and non-disclosure:

- (1) Vendor may reveal Information only to Vendor's employees, but only when and to the extent necessary for Vendor to perform Consulting Services requested by Company, and Vendor will advise all such employees to whom Information is disclosed of the obligations imposed on Vendor.
- (2) Vendor will maintain all documents or other media (including computer programs or software) which contain Information, and all copies of the documents or other media, in a secure location inaccessible to third parties and others not authorized to receive Information.
- (3) All writings, drawings, pictures or other documents or other media, including all copies, which contain Information, will be marked by Vendor with the legend "Confidential", if they are not already so marked and Vendor will not reproduce, copy or photograph any such document or other medium without the prior written approval of Company. Vendor will deliver to Company all documents, media or tangible property made or received by Vendor which contain Information upon notice from Company requesting the delivery of such documents, media or other tangible property.

(D) Vendor will take the following safeguards for all tangibles as may be provided to Vendor, or made by Vendor pursuant to this Contract, including all products, compositions, machines, equipment, constructions, apparatus, process embodiments, metal or other work stock, tools, dies or other goods or materials:

- (1) maintain and hold such tangibles in a secure area and separate from materials and goods for other parties,
- (2) use such tangibles only to render Consulting Services to Company as requested by Company.
- (3) prevent observation of such tangibles by visitors to Vendor's premises or by Vendor's employees, officers, agents and directors who do not have a need to observe such in order for Vendor to perform Consulting Services for Company.
- (4) maintain such tangibles in the exclusive possession of Vendor and not permit such or samples of such tangibles to leave its possession at any time, except with the express (and not implied) written approval of Company.

(E) Company makes no representation or warranty of any kind, express or implied, with respect to any Information. Company may, at its sole discretion, elect at any time, by written notice to Vendor, to terminate Vendor's further use of Information for any purpose. Upon receipt of such notice, Vendor will, and will cause Vendor's employees to, promptly cease all further use of Information, return to Company all physical materials containing Information, whether the materials were originally provided by Company or copied or otherwise prepared by Vendor or any Vendor employee, and erase or otherwise destroy any Information kept by Vendor or any Vendor employee in electronic or other non-physical form. Such termination by Company will not affect Vendor's continuing obligations in this Section 4. Vendor agrees that no information disclosed by it to Company will be confidential unless due notice thereof is given in advance to and accepted by Company in writing.

(F) The obligations imposed by this Section 4 will continue in effect for a period of ten (10) years from the date on which the last Consulting Services are performed by Vendor for Company, and will survive any termination of this Contract by either party.

(G) Company will have an unlimited right to publish, use, duplicate or disclose Information and all copyrights in Information will be the sole and exclusive property of Company.

Section 5. Export of Information.

Notwithstanding any other provision or understanding between Company and Vendor, Vendor



will not at any time whatsoever or under any circumstances whatsoever disclose or reveal any Information to any person not a United States citizen and resident, or to any person outside the United States, or to any person within the United States for export outside the United States or to any representative of a foreign national or foreign interest or in any manner export any Information from the United States when to do so would be contrary to or in violation of any law or regulation of the United States or any agency of the United States, including laws and regulations concerning export of data and information. Even after expiration of this Contract and the confidentiality term specified in Section 4(F), Vendor may not export any Information or disclose any Information to any such above-mentioned person until Vendor has procured the licenses, assurances and approvals, if any, necessary under such laws or regulations.

Section 6. Ownership of Materials and Goods.

- (A) All products, compositions, constructions, machines, equipment, apparatus, processes or other goods or materials, including metal or other work stock and tools and dies, as may be provided to Vendor by Company for performance of Consulting Services or made by Vendor pursuant to this Contract, will be the sole and exclusive property of Company and will be used only for performance of Consulting Services, without modification or alteration, except as reasonably necessary or appropriate to the performance of Consulting Services and, upon Company's request, will be delivered by Vendor to Company.
- (B) All Company property, while in Vendor's custody or control, will be held at Vendor's risk, free of all liens, encumbrances or security interests of Vendor or third parties, and will be kept insured by Vendor at Vendor's expense in an amount equal to replacement cost with loss payable to Company. Vendor will indemnify, protect, defend and hold harmless Company, its successors and assigns from and against all claims and liens adverse to Company's ownership of Company's property and all loss or damage to such property occurring while in Vendor's custody or control. All property of the Company is subject to removal by Company at any time, and to return upon Company's request. Vendor will assume all risk of death or injury to persons or damage to property arising from use of Company's property. Company does not guarantee the accuracy of any Company property or the availability or suitability of any property furnished by it. Vendor assumes sole responsibility for inspecting, testing and approving all of Company's property supplied by Company prior to any use by Vendor.
- (C) Vendor will abide by the terms and conditions of each third party license agreement between any software licensor and Company for software furnished by Company to Vendor and accessed or used by Vendor in providing Service.

Section 7. Data, Information, Inventions, Patents and Copyrights.

- (A) Vendor will promptly disclose to Company all data, information, discoveries, inventions and improvements, whether or not patentable or copyrightable, including any and all expressions of computer programs, manuals, data bases and all forms of computer hardware, firmware and software, conceived, made, first reduced to practice, or developed by Vendor arising out of the performance of Consulting Services, all referred to in this Contract as Contract Developments. All Contract Developments, including patents and copyrights, will be the sole and exclusive property of Company in respect to any and all countries, their territories and possessions. Company shall have complete and unrestricted right to use all Contract Developments prepared by Vendor and its subcontractors in connection with the performance of Consulting Services. Said documents shall constitute the property of Company and are not to be used on other projects except by agreement of Company in writing. At such time as Consulting Services are completed or the Contract is terminated, Vendor shall deliver all said Contract Developments to Company. All said Contract Developments may be used by Company for any purpose without additional compensation to be paid to Vendor.
- (B) Vendor will perform at the request of Company all lawful acts and execute, acknowledge, and deliver all instruments, including assignments, deemed necessary, useful, or appropriate by Company to vest in Company the entire right, title, and interest in and to such Contract Developments and obtain and record title to such Contract Developments and to enable Company to prepare, file, and prosecute patents, copyrights and other forms of industrial property protection on such Contract Developments, as well as continuations, divisions, continuations-in-part, additions, reissues, renewals, and extensions of such Contract Developments, as Company at any time deems useful or desirable to preserve such interests in any and all countries selected by Company, and to obtain and record title to patents, copyrights and other forms of industrial property protection and applications for such Contract Developments so that Company will be the sole and absolute owner of the Contract Developments in any and all countries in which Company may desire such protection. As used in this Contract, "industrial property" includes patents and copyrights as well as any other form of industrial or intellectual property protection which is presently available or applicable, or which may become available or applicable, to Contract Developments, including developments in expressions of data and computer software. Any reasonable additional costs to Vendor required to satisfy the obligations of this Subsection 7(B) will be reimbursed by Company.

- (C) To the extent permitted by law, any Contract Development, including software, that generates copyrightable material will fall within the enumerated categories of §101 of the 1976 Copyright Act definition of "work for hire" subsection (2) and thus be considered a "work made for hire"; and Vendor acknowledges that by so considering any Contract Development as a "work made for hire" that Company will own all right, title and interest in and to any copyright associated with such Contract Development. To the extent under applicable law that such work may not be deemed a "work made for hire", Vendor expressly assigns and agrees to assign to Company all right, title and interest in and to Vendor's copyright for such work. Vendor will execute and deliver to Company such instruments of transfer and take other such action that Company may reasonably request, including, without limitation, such assignments and other documents required to vest in Company the entire right, title and interest in and to any copyright associated with such Contract Developments.
- (D) Vendor agrees that any Contract Development is the exclusive property of Company and Vendor will not sell, trade, give or intentionally make available any Contract Development to any private or public individual, corporation or other entity and will take all reasonable precautions to prevent the illegal use of such Contract Development.
- (E) Vendor will indemnify, protect, defend or settle (at Vendor's expense) and hold harmless Company, its parents, affiliates and its and their directors, officers, employees, agents, successors and assigns ("Indemnitees") from all liabilities, expenses, suits, actions, claims, demands, judgments, settlements, costs, losses, damages and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all attorney fees and any other costs of litigation incurred (collectively "Liabilities") as a result of actual or alleged infringement of any present or future patent, copyright, trademark, trade secret, or other actual or alleged intellectual property right of any third party arising from Company's purchase or use of Consulting Services supplied under this Contract. In the event of an allegation of intellectual property infringement or if the use or sale of the Consulting Services is enjoined, Vendor will, at its own expense and at Company's option, either (i) procure the right to continue using the Consulting Services; (ii) make such alterations, modifications or adjustments to the Consulting Services so that they become non-infringing without incurring a material diminution in performance or function; (iii) replace same with a non-infringing equivalent; or (iv) refund Company's price for Consulting Services proportionate to the extent affected by the infringement. Vendor's obligations will apply even though Company specifies all or any portion of the processing used by Vendor. All such obligations of Vendor to indemnify, hold harmless,

protect and defend Company are in addition to Vendor's warranty obligations and all other rights or remedies of Company and will survive acceptance and use of, and payment for, the Consulting Services, and completion, termination, or cancellation of this Contract. If any settlement requires any affirmative obligations (other than ceasing use of the Consulting Services) or, results in any ongoing liability to or prejudice or detrimentally impacts Company in any way and such obligation, liability, prejudice or impact is material, then such settlement shall require Company's written consent and Company may have its own counsel in attendance at all proceedings and substantive negotiations relating to such Liabilities.

Section 8. Skills, Performance and Conflict of Interest.

- (A) In entering into this Contract with Vendor, Company is relying on Vendor's expressed credentials, expertise and experience regarding the Consulting Services. Vendor represents and warrants that the Consulting Services provided by Vendor and its subcontractors shall be consistent therewith and with the professional standards of diligence, care and skill currently recognized in Vendor's profession, and shall comply with all applicable federal, state and local laws, regulations, codes, ordinances, rules and regulations.
- (B) Before Vendor takes any action to retain professional assistance or assign or subcontract any tasks covered by this Contract, Company will be consulted about such proposed action and such action will not be undertaken by Vendor unless Company has given its prior written consent to Vendor. No such retention of assistance, assigning or subcontracting of tasks will relieve Vendor of its obligations under this Contract.
- (C) Vendor will enter into agreements to effectuate the provisions of Sections 4 and 7 with all persons who perform any part of the Consulting Services for Company prior to any such performance, and a copy of said agreements will be provided to Company by Vendor if requested by Company.
- (D) Vendor represents that Vendor has the right to enter into this Contract and perform Consulting Services for Company and that there are no restrictions whatsoever imposed on Vendor, nor any conflict of interest which would prevent or conflict with Vendor's performance of Consulting Services for Company and compliance with all the provisions of this Contract.
- (E) Vendor will not undertake consulting work or projects, including research or development projects, for or on behalf of, a client other than Company when a conflict of interest may result.
- (F) Company has the right to immediately bar or remove from its premises, for any lawful reason, any individual employed or retained by the Vendor.

Section 9. Vendor Liability and Indemnity Obligations.

Vendor will indemnify, protect, defend or settle (at Vendor's expense) and hold harmless Indemnitees from and against all Liabilities arising out of or in any manner connected with personal injury, including death, or property loss or damage to Company or to others (including Vendor and employees and invitees of Vendor and of Company) arising out of or in any manner connected with (i) the performance, production and/or delivery of, or any defect in, Consulting Services supplied or purchased hereunder, (ii) any act or omission of Vendor, and/or (iii) breach of any representation, warranty or covenant, whether caused by Vendor, or a supplier of Vendor, or employees or invitees of either of them, and in each case whether or not caused or contributed to by the fault or negligence of any of the Indemnitees. For the avoidance of doubt, Vendor expressly agrees that Vendor will indemnify, defend and hold harmless the Indemnitees in connection with this Section 9 even if any of all of the Liabilities incurred by any or all of the Indemnitees are caused in part by the concurrent negligence of one or more of the Indemnitees. Vendor waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Vendor's indemnity. Vendor agrees to waive and release any rights of contribution, indemnity or subrogation it may have against any of the Indemnitees as a result of any indemnity claim asserted by another Indemnitee under this Section 9. Vendor, for itself, its successors, assigns and subcontractors hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Vendor could preclude its joinder by Company as an additional defendant, or avoid liability for damages, contribution or indemnity in any action at law, or otherwise where Vendor's or its subcontractor's employee or employees, heirs, assigns or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against any Indemnitee. Vendor's obligation to Company herein will not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Vendor under any workers' compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Company by an employee of Vendor or anyone employed directly or indirectly by Vendor or anyone for whose acts Vendor may be liable. In particular, but without altering or in any way limiting the general application of such waiver as set forth in the previous sentence, Vendor expressly waives application of Section 303(b) of the Pennsylvania Workers' Compensation Act and Section 35, Article II of the Ohio Constitution and Ohio Revised Code Section 4123.74, each as may be amended from time to time. The obligations in this Section are in addition to Vendor's duty to provide insurance and will not be altered by any limitation on the amount or type of damages, compensation, or benefits payable by Vendor under any Workers' Compensation Act, U.S. Longshoremen's and Harbor Workers' Act, or any other employee benefit act. Vendor's obligations hereunder will not be limited to the extent of any insurance available to or provided by Vendor.

Section 10. Insurance.

(A) Unless otherwise specified in this Contract, Vendor will, during the progress of the Consulting Services,

maintain the following types of insurance coverage:

- (1) Worker's Compensation Insurance or qualification as a self-insurer to satisfy the laws of the states which have jurisdiction over Vendor's employees. To the extent permitted by law, Vendor's Worker's Compensation Insurer or Vendor, if self-insured, agrees to waive rights of subrogation against Company;
 - (2) Employers' Liability Insurance for Bodily Injury per accident with limits of not less than \$1,000,000 and Bodily Injury by Disease with limits of not less than \$2,000,000 per policy;
 - (3) Commercial General Liability Insurance for bodily injury, personal injury and property damage, including coverage for products/completed operations and contractual liability, with combined limits of not less than \$5,000,000 per occurrence; and
 - (4) Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles with minimum combined single limits of liability for bodily injury and property damage, with combined limits of not less than \$1,000,000 per occurrence.
 - (5) Professional Liability Insurance covering Vendor's legal liability for damages and financial loss arising out of professional services due to error, omission or negligence of Vendor, any person employed by or contracted for Vendor or any other person for whose acts Vendor is legally responsible, as described in this Contract with a minimum amount of \$2,000,000 per claim and in the aggregate. Vendor agrees to maintain such insurance for the duration of this Contract and for a period of two years following termination of this Contract.
 - (6) Umbrella Coverage in the amount of \$5,000,000 per occurrence.
- (B) Vendor agrees during the progress of the Consulting Services, Company will be an additional insured on all of Vendor's above policies and that all of Vendor's insurance identified in Section 10(A) above will specifically indicate that coverage with respect to Company will be primary without right of contribution of any other insurance carried by or on behalf of Company. All of the above mentioned Vendor insurance will be occurrence-based coverages. Vendor may satisfy the limits of insurance required herein with any combination of primary and umbrella/excess insurance policies.
- (C) Upon Company's request, Vendor will provide Company with written certification, reasonably acceptable to

Company, certifying that (a) the required insurance coverages are in effect and will not be cancelled or materially changed until thirty (30) days after prior written notice has been delivered to Company

- (D) The requirements in this Section 10 are separate and distinct from any other obligations of Vendor under this Contract.

Section 11. Payments & Limitation on Use of Payment.

- (A) Unless otherwise expressly set forth in this Contract, the terms of payment are net sixty (60) days after Company's receipt of Vendor's valid invoice. Vendor will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Company after delivery of the Consulting Services, and Company may withhold payment until a correct and complete invoice or other required information is received and verified. All cash discounts will be computed from the date of receipt by Company of a valid invoice. Cash discounts will be based on the full amount of the invoice, less freight charges and taxes if itemized separately on the invoice. Delay in receiving valid invoices or Consulting Services will be considered good cause for withholding payment without losing cash discount privileges. Payment by Company of an invoice from Vendor does not constitute acceptance of the Consulting Services covered by the invoice. If the production or delivery of Consulting Services covered by this Contract may give rise to mechanics' or other similar liens, payment shall not be due and the cash discount period shall not commence until Vendor has delivered to Company a complete release of all liens arising out of the production or delivery of such Consulting Services or receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to the Company indemnifying it against any lien. If payments are required to be made under this Contract by Company in a currency other than USD, Vendor shall provide Electronic Funds Transfer (EFT) instructions to Company and Company shall make such payments to Vendor electronically, to the extent permitted by law. Company shall have the right, at any time, to set off and apply against any monetary obligations that Company owes to Vendor or any of its parents, subsidiaries or affiliates, any obligations that Vendor, or any of its parent, subsidiaries or affiliates, may owe to Company.

- (B) No money, property or thing of value received by Vendor under or pursuant to this Contract may be offered or used, directly or indirectly, to influence improperly or unlawfully any decision, judgment, action or inaction of any official, employee or representative of any government or agency or instrumentality thereof, or of any other person or entity, in connection with or relating to the subject matter of this Contract or any supplement or amendment

hereto. It is the intent of Company and Vendor that no payment or transaction shall be made during the term of this Contract that is illegal, improper or is intended to unduly or improperly influence any third party, including without limitation, extortion, kickback or bribery. If Vendor breaches the terms of this section, Company may immediately terminate this Contract without any liability.

Section 12. Publicity.

No advertising or publicity matter having or containing any reference to Company or to the subject matter or existence of this Contract or in which the name of Company is mentioned will be made by or for Vendor without obtaining written approval from Company. Vendor may not use the Company's name and/or logo in any manner other than as may be identified in this Contract without first obtaining written permission from Company.

Section 13. Termination.

Company may terminate this Contract, in whole or in part, at any time for convenience by giving written notice to Vendor. After receiving written notice of termination, Vendor will immediately cease production and delivery of all Consulting Services indicated in the notice of termination. Unless such termination is due to default of Vendor or failure of Vendor to assure adequate performance, Company will pay Vendor, on a pro rata basis, for Consulting Services delivered as of the date of termination. Upon such payment, all finished services for which Company has paid will become the property of Company and will be released by Vendor to Company upon demand. The provisions of this clause are without prejudice to any other rights or remedies of Company, including those resulting from default by Vendor hereunder.

Section 14. Cancellation.

Company will have the right to cancel this Contract, in whole or in part, if the Consulting Services are, in Company's judgment, non-conforming or defective or not delivered as scheduled, or if Vendor fails to comply with or fulfill at any time any of the terms and conditions of this Contract, or with Company's shipping and billing instructions, or if, in Company's opinion, the credit or ability of Vendor to perform this Contract becomes impaired, whereupon Company will have the continuing right to obtain Consulting Services from another source.

Section 15. Transition of Supply.

In connection with termination or cancellation of this Contract or Company's decision to change to an alternate source of supply, Vendor will cooperate in the transition of supply, including the following (collectively, "Transition Support"): (a) Vendor will continue delivery of all Consulting Services as ordered by Company, at the prices and other terms stated in this Contract, without premium or other condition, during the entire period reasonably needed by Company to complete the transition to the alternate supplier(s), such that Vendor's action or inaction causes no interruption in Company's ability to obtain Consulting Services as needed; and (b) subject to Vendor's reasonable capacity constraints, Vendor will provide special services as expressly requested by Company in writing. If the transition occurs for reasons other than Vendor's breach, Company will, at the



end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Vendor has advised Company of its estimate of such amounts and obtained Company's prior written consent prior to incurring such amounts. Any costs incurred by Vendor without Company's prior written consent shall be for Vendor's account.

Section 16. Environment, Health, Safety and Security.

Vendor and any subcontractors agree to comply with Company's rules and regulations, including its environmental, health, safety and security rules and regulations, when performing any Consulting Services for Company.

Section 17. Records.

Vendor will complete daily or weekly time records as may be required by Company. Company shall have the right, from time to time and upon reasonable notice, to examine Vendor's books and records relating to the direct costs, charges, expenses and disbursements made or incurred in connection with the Consulting Services.

Section 18. No Violation of Law.

Vendor and the Consulting Services will comply with all applicable foreign, federal, state and local laws, rules, regulations, orders, conventions, ordinances or standards including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon request, Vendor will furnish Company with certificates of compliance therewith. Unless this Contract is otherwise exempted by law, Vendor will comply with Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity) the Rehabilitation Act of 1973, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, the Americans with Disabilities Act, as they have been or may be amended from time to time, and regulations implementing such statutes; and any similar state and local laws and ordinances and the regulations implementing such statutes. If requested by Company, Vendor will furnish to Company an executed Certificate of Nonsegregated Facilities. Vendor warrants that the Consulting Services delivered hereunder were produced at facilities complying with all applicable provisions of the Occupational Safety and Health Act and applicable regulations under that Act and agrees to, upon request, provide Company with all explanatory and factual information needed to verify such compliance and to enable Company to comply therewith, and with any other laws and regulations applicable hereto. Vendor further warrants that it will comply, where applicable, and without limitation, with all orders, standards, and regulations of the National Highway & Transportation Safety Administration, Federal Aviation Administration, Environmental Protection Administration, Department of Homeland Security, Food and Drug Administration, Consumer Product Commission, and Occupational Safety & Health Act Administration.

Section 19. Taxes.

(A) Vendor will bear and pay all applicable taxes of the United States and any other country, including any political subdivision of any of them, if the tax is based on or measured by gross receipts or net income, or payment of which is required to maintain a legal

existence or a general right to transact business within its taxing jurisdiction.

(B) Vendor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of the United States, any other country or any political subdivision of any of them which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors as required by the United States Internal Revenue Code, the United States Federal Insurance Contribution Act, the United States Federal Unemployment Act, and any laws of any other country or any political subdivision of any of the foregoing which requires withholding of any income or employment taxes as measured by wages, salaries or other remuneration. Vendor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

(C) Company agrees to pay all value added tax and sales and use tax (including any gross receipts tax imposed similar to a sales and use tax) imposed by any foreign, national, state or local taxing authority on the ultimate purchase price of the Consulting Services provided under this Contract. If Vendor is required to collect such value added tax or sales and use tax on behalf of any taxing jurisdiction, Vendor will provide to Company invoices which separately state and clearly indicate the amount of tax, and Company will remit any such tax to Vendor. Vendor will have the responsibility of complying with all applicable foreign, national, state or local laws regarding value added tax and sales and use tax or substitutes therefor including registration, collection of taxes and the filing of returns where applicable. Notwithstanding whether Vendor must collect value added tax or sales and use tax from Company, Vendor will state on every invoice the taxing jurisdiction (e.g. country, state and local jurisdiction) in which the Consulting Services invoiced, or allocated portion thereof, were provided. If applicable, in lieu of payment for any sales and use tax, Vendor will accept a properly executed exemption or direct pay certificate from Company. The determination of whether an exemption or direct pay certificate will be submitted to Vendor in lieu of payment for any sales and use tax will be made by Company on a location by location basis.

(D) With the exception of value added tax and sales and use tax as described in Section 19(C) above, all other taxes, however denominated or measured, imposed upon the price or compensation under this Contract, or upon the Consulting Services provided hereunder, will be the responsibility of Vendor. In addition, all taxes assessed by any taxing jurisdiction based on Vendor property used or consumed in the provision of the Consulting Services such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Vendor. The parties will cooperate in good faith to minimize

- such tax liabilities to the extent legally permissible.
- (E) Vendor and subcontractors will file such returns, reports or forms necessary for the payment of all taxes which Vendor is required by law to file.
- (F) Vendor will, upon written request, submit to Company written evidence of any filings or payments of all taxes, including government-furnished receipts and detailed documentation of a taxing authority. Company reserves the right to contest, or cause Vendor to contest, any tax, fee or assessment, and Vendor will use its best efforts in cooperating with Company in any such contest.

Section 20. Price/Terms.

Vendor warrants that the prices set forth in this Contract are complete and that no additional charge of any type will be added without Company's express written consent in advance. Vendor further warrants that the prices set forth in this Contract are the lowest prices charged for the Consulting Services, or substantially similar Consulting Services, sold by Vendor to its other customers. If, after execution of this Contract, but prior to payment by the Company for Consulting Services purchased hereunder, Vendor (i) sells, or offers to sell, Consulting Services, or substantially similar Consulting Services, to another customer at a lower price, (ii) offers a reduction in price to any customer already purchasing Consulting Services, or substantially similar Consulting Services, or (iii) sells, or offers to sell, Consulting Services, or substantially similar Consulting Services, on commercial terms that are, in Company's reasonable judgment, more favorable than those set forth in this Contract, such lower price or more favorable terms will be applicable to all purchases of Consulting Services by Company hereunder. If, at any time during the term of this Contract, Company receives a *bona fide* offer from a third party to supply Consulting Services to Company on similar commercial terms, but at a lower price, Company may notify, and provide the necessary particulars of such offer to Vendor, and Vendor will, inform Company whether it will match such offer for Consulting Services purchased hereunder. If Vendor does not agree to match such offer, Company may, in its sole discretion, elect to purchase Consulting Services from such third party, and any obligation of Company to purchase Consulting Services from Vendor pursuant to the terms of this Contract will be deemed to be waived by Vendor to the extent of any such purchases. Upon request of Company, Vendor will be required to certify that it is in compliance with the requirements of this paragraph. In addition, Company will have the right to examine and audit, during normal business hours, any and all records, data and documents, in whatever shape or form, including, but not limited to, electronic media, that may contain information relating to Vendor's obligations as set forth in this paragraph. Such records will be kept in a form that is clear and accurate and containing content sufficient and adequate detail to permit the aforementioned audit. Except as expressly set forth in this Contract, Company will have no obligation to purchase any specific quantity of Consulting Services from Vendor and Company will be entitled, in its sole discretion, to purchase the same or similar Consulting Services from other suppliers. Company expressly reserves the right to disclose the terms of this Contract, excepting price, to third parties.

Section 21. Warranty.

Vendor warrants that (a) it will strictly comply with the descriptions and representations of the Consulting Services (including performance capabilities, accuracy, completeness, characteristics, specifications, standards and requirements) which appear in this Contract, (b) Vendor and the Consulting Services will not be in violation of any applicable law, rule or regulation and Vendor will have obtained any permits or licenses required to comply with such laws and regulations, (c) the Consulting Services will not violate or in any way infringe upon the rights of third parties, including property, contractual, employment, trade secrets, proprietary information, and nondisclosure rights, or any trademark, copyright or patent rights, and (d) it is not subject to and will not enter into any agreements or arrangements which preclude compliance with the provisions of this Contract. These warranties are in addition to all other warranties, express, implied or statutory, which may be applicable. Limitations on Company's remedies in documents of Vendor or otherwise will not be effective and are hereby objected to and rejected. All warranties and other provisions of this paragraph will survive inspection or acceptance of and payment for the Consulting Services and completion, termination or cancellation of this Contract.

Section 22. Force Majeure.

Neither party will be in default for any delay or failure to perform its obligations under this Contract if caused by an extraordinary event beyond reasonable control and without its fault or negligence, provided that any delay or failure to perform caused by default of a supplier of Vendor at any lower tier must be beyond the reasonable control of both Vendor and such supplier without the fault or negligence of either and services to be furnished must not be obtainable from other sources in sufficient time to permit Vendor to meet the delivery schedule, and provided further that Vendor furnishes prompt written notice of any delays or non-performances (including its anticipated duration) after becoming aware that it has occurred or will occur. If Vendor is unable to perform for any reason, Company may purchase the Consulting Services from other sources and reduce its purchases from Vendor accordingly without liability to Vendor. If the non-performance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.

Section 23. Electronic Commerce.

Vendor acknowledges that Company currently uses, or will in the future use, an electronic "business to business" framework to facilitate the transmission of Key Documentation relating to the purchase of Consulting Services hereunder. For purposes of this provision "Key Documentation" means purchase orders, order confirmations, advanced shipping notices (ASN), change orders, invoices and other similar documentation which form a part of the Contract. Vendor acknowledges and agrees that (i) it has in place currently, or will implement as soon as possible after execution hereof, the system designated by Company to facilitate transmission of Key Documentation electronically, and (ii) Key Documentation transmitted hereunder by such methods will not be deemed invalid solely because they have been transmitted or executed electronically. To the extent required by Company, a digital signature will be deemed for all purposes to constitute a "signature" and



will have the same effect as a signature on a written document.

Section 24. Background/Credit checks.

Vendor, at its own expense, will have background and credit checks performed on each employee that it plans to assign to work on the Company's premises. Vendor will comply with all applicable C-TPAT security criteria as issued and updated by the U.S. Customs and Border Protection Agency from time to time. Vendor will provide Company with documentation of such compliance upon request.

Section 25. Miscellaneous Provisions.

(A) This Contract may not be assigned by Vendor without the prior written approval of Company. Any attempted assignment without the prior written consent of Company will be null and void. Nothing in this Contract, express or implied, is intended or may be construed to confer upon any person other than the parties to this Contract any right, remedy or claim under or by reason of this Contract.

(B) It is expressly understood that no representations, promises, warranties or agreements have been made by either party except as the same are set forth in this Contract. Except as otherwise expressly provided in this Contract, this Contract may not be amended or terminated except in writing and signed by the proper and duly authorized representatives of the parties.

(C) No party may be deemed to have waived any right, power or privilege under this Contract or any provision of this Contract unless such waiver is duly executed in writing and acknowledged by the party to be charged with such waiver. The failure of any party to enforce at any time any of the provisions of this Contract may in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Contract or any part of this Contract, or the right of any party to subsequently enforce each and every such provision. No waiver of any breach of this Contract may be held to be a waiver of any other or subsequent breach. All remedies permitted under this Contract will be taken and construed as cumulative. Time is of the essence with respect to Vendor's performance hereunder.

(D) If any provision of this Contract or its application to any person or circumstance is judged invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Contract or the application of such provision to other persons or circumstances will not be affected by such adjudication. If any provision or application of this Contract is invalid or unenforceable, then a suitable and equitable provision will be substituted for such provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of this Contract, including the invalid or unenforceable provision.

(E) This Contract will be governed by and interpreted in accordance with the laws

of the Commonwealth of Pennsylvania, not including, however, the rules relating to the choice or conflict of laws.

(F) Vendor may not use the Company's name and/or logo in any manner without first obtaining written permission from Company.

(G) Vendor will procure all licenses, permits and other approvals from all applicable government authorities and agencies which are necessary for performance of Consulting Services for Company prior to performing such Consulting Services.

(H) Company may, at any time, in writing, make changes to the general scope of this Contract, and Vendor will continue performance of this Contract as so changed. If any such change causes an increase or decrease in the cost of, or time required for, the performance of Vendor's obligations under this Contract, an equitable adjustment will be made to the price or delivery schedule, or both, and this Contract will be modified in writing accordingly.

Section 26. Dispute Resolution.

(A) All disputes that may arise between the parties regarding the interpretation or application of these terms and the legal effect of these terms shall first attempted to be resolved by mutual agreement between the parties. Failing a mutual resolution, the dispute shall then be arbitrated and determined by an arbitrator governed by the rules of the American Arbitration Association. The arbitration proceeding shall be governed by the statutes of the Commonwealth of Pennsylvania, and the proceeding shall be held in the city in that state where the principal office of Buyer is located. The parties recognize and consent to the above-mentioned arbitration association's jurisdiction over each and every one of them. Each party hereto submits to the jurisdiction of the Courts of Common Pleas of Westmoreland County and agrees that all claims in respect of the action or proceedings may be heard and determined in such court. Each party hereby waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

(B) If any legal action is brought hereunder, the prevailing party shall be entitled to receive its reasonable attorneys' fees and court costs in addition to any other relief it may receive.